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BİLİM DALI

AN ASEAN PERSPECTIVE TOWARD THE RESPONSIBILITY TO PROTECT (R2P):
CAN THE ASEAN FULLY ADAPT THE R2P CONCEPT IN RESOLVING
HUMANITARIAN CRISIS IN THE CASE OF ROHINGYA ISSUE?
(2012-2018)

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YÜKSEK LİSANS TEZİ

Danışman:
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2005 yılında Birleşmiş Milletler (BM) tarafından The Responsibility to Protect (R2P) ortaya çıkması, insani müdahalenin ilkenin egemenliğini ihlal ettiği görüldüğünden, insani krizle başa çıkmak için gümüş bir çizgi olması bekleniyordu. R2P'nin belgesi, söz konusu devletin nüfusunu koruma ve ülkenin nüfusu koruyamaması durumunda müdahaleye izin verme yükümlülüğünü vurgulamaktadır. R2P'nin ilamından yedi yıl sonra Myanmar, ülkede uzun süredir bulunan Rohingya halkına ciddi zulüm yapmakla suçlandı. Ancak hükümet bağımsızlığından bu yana Rohingya halkını, ülkenin oluşturduğu 1982 Vatandaşlık Yasası'na göre ülkenin bir parçası sayılmadığı için ülkeden kovmaya çalıştı. Bu yeni yasa Myanmar'da yalnızca 135 etnik köken tanıyor, Rohingya ise hükümet tarafından tanınan etnik kökenlerin bir parçası değil. Öte yandan 1967'de kurulan Güneydoğu Asya Ülke (ASEAN), R2P'nin kurulmasına destek veriyor. Bununla birlikte, kur tüm konseptte uygulamaya tereddüt ettiği için uygulama aksini söylüyor. analiz materyali olarak çeşitli perspektifleri inceleyerek R2P'nin N uygulanma olasılığını inceleyecektir.

Anahtar kelimeler: BM, Koruma Sorumluluğu, ASEAN, Myanmar, Rohingya.

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ABSTRACT

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The emergence of the Responsibility to Protect (R2P) in 2005 by the United Nations (UN) has expected to be a silver line to deal with the humanitarian crisis since humanitarian intervention has been seen as violating the sovereignty of the state principle. The document of the R2P highlights the obligation of the given state to protect its population and allowing intervention if the country failed to protect the population. Seven years after the R2P was declared, Myanmar was accused of committing serious atrocities toward Rohingya people who have been in the country for a long time. However, since its independence, the government tried to expel Rohingya people from the land because they are not considered as part of the country by 1982 Citizenship Law that was constituted by the country. This new law only recognizes 135 ethnicities in Myanmar while Rohingya is not part of the ethnicities recognized by the government. The Association of the Southeast Asian Nations (ASEAN), which was established in 1967 on the other side, does support the establishment of the R2P. However, the implementation speaks the otherwise since the organization seemingly hesitates to implement the R2P in the whole concept. This paper will examine the possibility of the implementation of the R2P in Myanmar by examining various perspectives as the analysis material

Keywords : The UN, Responsibility to Protect, ASEAN, Myanmar, Rohingya

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This study was conducted in partial fulfillment of the M.A. requirements in South Asian Studies and International Relations, Social Science Institute, Necmettin Erbakan University. Besides, this study was also written to express my academic responsibility to department and my interest. Thus, I took the title “An ASEAN Perspective Towards The Responsibility to Protect (R2P): Can the ASEAN Fully Adapt The R2P Concept in Resolving Humanitarian Crisis in The Case of Rohingya Issue (2012-2018).”

First of all I thank the Almighty Allah for the strength and guidance all the way. To my family in Indonesia, despite the long-distance, thank you for being my vanguard and support system. Especially, for my mother who is in heaven now. I also would like to extend my gratitude to professors that helped me; Dr. Murat Cemrek, Prof. Dr. Göktuğ Sönmez, Prof. Dr. Guner Ozkan, Dr. Gökhan Bozbaş, and Dr. Üyesi Oğuzhan Yanarisik. To research assistants, especially Ahmet Uluer and Zehra. Thank you very much

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LIST OF ABBREVIATION

A.U	: African Union
AEC	: ASEAN Economic Community
AICHR	: ASEAN Intergovernmental Commission of Human Right
AMM	: ASEAN Foreign Ministerial Meeting
ANZUZ	: The Australia, New Zealand, United States Security Treaty
APSC	: ASEAN Political-Security Community
APT	: ASEAN Plus Three
ARF	: ASEAN Regional Forum
ASA	: Association of Southeast Asia
ASCC	: ASEAN Socio-Cultural Community
ASEAN	: Association of Southeast Asian Nations
CAFTA	: China-ASEAN Free Trade Area
CENTO	: Central Treaty Organization
ECOWAS	: Economic Community of West African States
ECSC	: European and Steel Community
EEC	: European Economic Community
EU	: European Union
Euratom	: European Atomic Energy Community
ICISS	: International Commission on Intervention and State Sovereignty
IDP	: Internally Displaced Person
LAFTA	: Latin American Free Trade
LAS	: League of Arab States
NAFTA	: North American Free Trade Area
NATO	: North Alliance Treaty Organization
OAS	: Organization of American States

OAU	: Organization of African Unity
OHCHR	: United Nations High Commissioners of Human Rights
OIC	: Organization of Islamic Countries
R2P	: Responsibility to Protect
SEATO	: Southeast Asia Treaty Organization
TAC	: Treaty of Amity and Cooperation
U.S.	: United States
UN	: United Nations
UNDP	: United Nations Development Programme
UNITAF	: Unified Task Force
UNOCI	: United Nations Operation in Côte d'Ivoire
UNSC	: United Nations Security Council
UNSMIS	: United Nations Stabilization Mission in Syria
ZOPFAN	: Zone of Peace Freedom and Neutrality

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CHAPTER I

INTRODUCTION

1.1 Background of the Problem

The Responsibility to Protect (R2P) is a new doctrine constituted by the United Nations (UN) in 2005. Paragraphs 138 and 139 of the 2005 World Summit Outcome Document explicitly explain that every state has a responsibility to protect its civilians from four kinds of atrocities: genocide, ethnic cleansing, crimes against humanity, and war crimes. In the R2P, there are three pillars that must be obeyed by all the UN member-states;¹

- Pillar One: Every state has the responsibility to protect its populations from four mass atrocity crimes: genocide, war crimes, crimes against humanity and ethnic cleansing.
- Pillar Two: The wider international community has the responsibility to encourage and assist individual states in meeting that responsibility.
- Pillar Three: If a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter.

The first pillar gives each UN member state an obligation to protect its population, while the last two pillars seem to contradict sovereignty and non-interference principles. The UN itself recognizes firmly the non-interference principle, which is written in Article 2(4) of the UN Charter.

In international politics, the concept of sovereignty can be understood by the history of Westphalia settlement (1648) which ended the Thirty Years' War and the birth of a nation-state concept. In this concept, each country must respect the sovereignty and territory of other states, including their domestic problems.² The

¹ Global Centre for the Responsibility to Protect, http://www.globalr2p.org/about_r2p Accessed on 11 March 2020

² Rigo Sureda, A. (1973), "The evolution of the right of self-determination: a study of United Nations practice". Leiden: Sijthoff, p 28.

non-interference concept, on the other side, can be understood by the Act of State doctrine which was constituted by the Circuit Court of the United States for the Eastern District of New York in 1892. The court rejected the case of George F. Underhill, an American citizen who was forced to stay in Venezuela by General Jose Manuel Hernandez who had taken the Venezuelan government by force. General Hernandez had rejected Underhill's exit passport multiple times before he gave the exit passport and let Underhill return to the US. Underhill brought this case to the court claiming that General Hernandez had caused him damages.³

However, after examining the case, Chief Justice Fuller refused to hear Underhill's further claim, citing the reason that "Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory".⁴ In other words, the US at that time could not interfere with the action of General Hernandez because he acted as Venezuelan government and had right to reject Underhill's exit passport proposal in his territory. The practice of this law then became a 'common law principle' and has been discussed by a number of law scholars worldwide.

The Association of Southeast Asian Nations (ASEAN) as a regional organization for Southeast Asian countries also supports the non-interference principle, as stated in Article 2(e) of the ASEAN Charter. However, although the non-interference principle has become a strong foundation for the ASEAN to ensure stability, this regional organization also endorses R2P. Alex J. Bellamy & Catherine Drummond (2011) to this context raised a question of whether or not R2P can be 'localized' for regional organizations such as the ASEAN.

In a similar context, Kate Seaman (2015) argued that the implementation of R2P should consider the differences in regions. In other words, even though R2P has become a universal norm, the implementation would be different in some regions, depending on the cultural and political space. Such differences in a region could be seen in the ties of regional organizations.

³ Bayzler J. M. (1986), *Abolishing the Act of State Doctrine*, The University of Pennsylvania Law Review, p 332

⁴ Justia US Supreme Court, *Underhill V. Hernandez*, 186 U.S 250 (1897), <https://supreme.justia.com/cases/federal/us/168/250/> accessed on 20 March 2020

The European Union (EU), for instance, has the EU Court of Justice, whose role is ensuring that the EU members abide the EU Law. In other words, there is a strong tie between the members and the law. This means that the EU, as an organization, has a strong tie among its members, and its laws are applied in the same way to the members. Similarly, the Organization of African Unity (OAU) also has the right to intervene in such cases as crimes against humanity, war crimes, and genocide, which is stated in article 4(h) of the Constitutive Act of African Union.⁵ Similar to the EU and the OAU, ASEAN as a regional organization has its way called “the ASEAN Way” to deal with disputes and issues within the region.

Hiro Katsumata (2003) argues that the “ASEAN Way” consists of four essential elements, including the non-interference principle, quiet diplomacy, the non-use of force principle, and the principle of decision-making through consensus.⁶ The ‘ASEAN Way’ has become a debate among scholars as many of them are skeptical about the mechanism, calling it a form of unwillingness to solve a dispute.⁷

Skeptics of ‘the ASEAN Way’ believe that it can not resolve the humanitarian issues in Myanmar because a diplomatic approach is preferable than imposing sanctions or intervening Myanmar on the Rohingya issue, which the UN calls a textbook example of ethnic cleansing.⁸ However, the ASEAN has ASEAN Political-Security Community that supposedly maintains peace and stability among its members. As the UN has a legal binding for all countries, including the ASEAN member countries, to abide R2P, ASEAN should implement the R2P principles, including obeying Pillar Two and Pillar Three of R2P. Moreover, ASEAN Human Rights Declaration, which was established in 2012, is also in favor of the R2P purpose, which is to protect freedom and human security. This paper aims to examine the possibility of ASEAN to fully adopt R2P with its ASEAN Way and other principles.

⁵ Constitutive Act of African Union, https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf accessed on 4 September 2020

⁶ Katsumata H., (2003), *Contemporary Southeast Asia* Vol 25, ISEAS-Yusof Ishak Institute, p 104-121.

⁷ Ibid

⁸ Charney, M. W. (2009). *A history of Modern Burma*. Cambridge: Cambridge University Press., p 3

1.2 Research Topic and Problem

Even though the R2P was established in 2005 by the UN, the implementation across the globe is still facing difficulty. Nevertheless, many experts have expressed opinions that this new doctrine can be a solution to deal with humanitarian issues in a “safe” way without harming any state’s sovereignty. With this expectation, when the Rohingya issue occurred in 2012, the R2P should have had a possibility to be implemented. On top of that, the incident happened in Myanmar, which is located in the Southeast Asia region. However, ASEAN as a regional organization in Southeast Asia could not yet resolve Myanmar's situation even though it established the ASEAN Inter-governmental Commission of Human Rights (AICHR) in 2009. Moreover, ASEAN has a mechanism called the “ASEAN Way” that upholds consensus and consultation to produce policies and deal with certain issues. The question is whether AICHR and the ASEAN Way are unable to bring peace for Rohingya people in Myanmar, which leads to the next question of whether or not it is possible for the ASEAN to implement R2P. On the other hand, the ASEAN claimed that it had put an effort regarding the issue by conducting a humanitarian workshop in Yangon on October 3-4, 2014, two years after the first incident occurred.

More importantly, ever since the Rohingya case occurred, there has never been criticism from the ASEAN because it would be regarded as a violation of the non-intervention principle contained in the ASEAN Charter. The weakness of this organization is that the Member-States are refrained from confronting Myanmar directly in ASEAN meetings because it will affect the relationships among them. Therefore, the atrocities toward Rohingya people are still happening. Acknowledging this problem, the author would like to discuss and seek the possibility of the R2P implementation in the ASEAN.

1.3 Purpose of Research

The purpose of this research is to identify and elaborate the role of the ASEAN in the Southeast Asia region in implementing the R2P. This research will then narrowly focus on how the ASEAN political development could adopt the R2P concept. Since the UN treaties and resolution could bind the member-states, ASEAN,

or more specifically, ten members of the ASEAN should comply with these documents. In the Rohingya case, the ASEAN, until now, has stumbled in the ASEAN Way. Consequently, Myanmar, which is a member of the ASEAN, is still unable to protect its population, in this case, the Rohingya ethnic group who has lived in Myanmar long before its independence from the British colonization.

In this context, this dissertation would also assess the possibility of implementing R2P in the case of Rohingya in the context of the ASEAN. With this purpose, related political situations and developments at the government to government relations, the effort of organizations, international organizations, and the international community will be evaluated regarding the Rohingya issue.

1.4 Theoretical Framework and Review of Related Literature

This paper will discuss the connectivity between the international community and international and regional organizations in their political influence on human security. This thesis will focus on the use of norms as the code of conduct in the regional organization, regionalism theories, and the R2P concepts in order to elaborate the research question and the analysis.

First, in terms of influence, norms have become a topic of discussion in international relations. While norms will set out states' actions in an organization or region, some scholars such as Annika Björkdahl (2002) argue that norms represents a state' standard behavior and function as rules of engagement.⁹ In the same line with Björkdahl, Finnemore and Sikkink (1998) also agree that norms can be seen as a single rule that controls behavior.¹⁰ On the contrary, the realist perspective has a different opinion as it always focuses on political power and influence. In other words, countries that have more power can ignore norms as rules of conduct in organizations or politics without worrying about the consequences or punishment. To answer this issue, compliance becomes essential to address. In the study of norms, there are three bases that make a state comply to the norms: coercion, self-

⁹ Björkdahl A. (2002), *Norms in International Relations: Some Conceptual and Methodological Reflections*, Cambridge Review of International Affairs, UK, Routledge, p 13.

¹⁰ Sikkink, F. a. (1998). *Norm Dynamic and Political Change*. Massachusetts : Intenational Foundation and Massachusetts Institute of Technology, p 893.

interest, and legitimacy.¹¹ The compliance is related to why the norms are established and correlated with self-interest or state interest on specific issues. For instance, the non-intervention norm was established because it contains many states' interests to protect their sovereignty to deal with the domestic issues and from foreign influences. Later, when it achieves a legal legitimacy, such as being written in an agreement, charter, and law that agrees with it in an organization or regional organization, the norm could also work by force.

Furthermore, international norms initially started from domestic norms and gained legitimacy through three stages. The first stage is called “norm emergence,” which can be understood as the process of norm formation. The second stage is called “norm cascade,” which can be understood as the widespread and dissemination phase of a norm by the international community. And the last stage is internalization or the legitimacy process by international treaties and laws.¹² In order to understand the legitimacy of the international norms, it is important to pay attention to the book *Legitimacy in International Society: Japan's Reaction to Global Wildlife Preservation*, written by Isao Miayoka (2004). In his book, he combines liberalist, constructivist, and realist perspectives in defining international norms. He argues that international norms influence the norms of legitimacy through international law and treaties which then influence state behavior.¹³

Secondly, the R2P must also apply to regional organizations since they are also part of the UN. Furthermore, in order to examine how a regional organization works and can be linked to the R2P, it is essential to understand regionalism. There are many perspectives on regionalism. Eric Storm (2003), in his book *Regionalism in History, 1890-1945: The Cultural Approach*, argues that regionalism arises because of the regional identity of the nations in the region. Furthermore, in his book, he examined regionalism in Europe and said that German regions were formed during the Napoleonic period, suggesting that regionalism has existed for a very long time.

¹¹ Miyaoka I. (2004), *The Legitimacy of International Norms*. In: *Legitimacy in International Society*. St Antony's Series. Palgrave Macmillan, London, pp 7-8.

¹² Ibid p 895

¹³ Miyaoka I. (2004), *Legitimacy in International Society: Japan's Reaction to Global Wildlife Preservation*, Palgrave Macmillan p 8-12.

But in regionalism, he argues, although not all nations have equal strength, the similarity in goals, culture, economy, and politics bring them together.¹⁴

As many scholars took Europe as the region to examine regionalism, Ranja A. Borzel (2016) argues that regionalism has driven the regions to make policies based on the geopolitical interests and the economic concerns of their constituents.¹⁵ Similar to Borzel (2016), Fredrik Soderbaum (2009) states that “regionalism represents the policy and project, whereby state and non-state actors cooperate and coordinate strategy within a particular region as a world order.”¹⁶

In international politics, there are many regional organizations; ASEAN, the EU, the Organization of American States (OAS), and the Organization of African Unity (OAU) consist of countries in the same region that share the same purposes. In his book *Security Regionalism in Theory and Practice*, Bjorn Hettne (2008) defines regionalism as a “tendency and a political commitment to organize the world in terms of regions.”¹⁷ In line with Hettne (2009), Hagerty (2006) defines the concept of regionalism as “a bloc set up, with the political or economic motive for development and prosperity, by member-states of a certain region.” In regionalism, several sectors would be affected, such as economics, culture, and politics.

The work from Wilson, Mann, and Otsuki (2005) concludes that regionalism provides a platform for economic benefit and integration. Besides, Haas (1958), in the journal 'The Challenge of Regionalism,' explains that security communities are always attached to the regional organization. Security communities, in his opinion, are "the attainment, within a territory, of a 'sense of community' and of institutions and practices strong enough and widespread enough to assure, for a 'long' time, dependable expectations of 'peaceful change' among its population."¹⁸ Haas's (1958) opinion makes sense with the ASEAN forming the ASEAN Community policy at the end of 2015. The ASEAN Community Policy includes the ASEAN Political-

¹⁴ Storm, E. (2003), *Regionalism in History, 1890-1945: The Cultural Approach*, Sage publisher, p 3-4.

¹⁵ Borzel, T. A. (2016), *Oxford Handbook of Comparative Regionalism*, Oxford University Press p 5.

¹⁶ Söderbaum F. (2009), *The SAGE Handbook of Comparative Politics; Comparative Regional Integration and Regionalism*, SAGE Publication, London, p 26

¹⁷ Hettne, B. (2009), *Security Regionalism in Theory and Practice*, Hexagon Series on Human and Environmental Security and Peace vol 3, Springer, Berlin Heidelberg p 27

¹⁸ Haas E. B (1958). *The Challenge of Regionalism. International Organization*, University of Wisconsin Press, p 442

Security Policy which aims to to protect the peace realm, security, and political stability in the ASEAN.

Thirdly, R2P is a new doctrine constituted by the UN and written officially in the World Summit Document 2005. It urges that every state protect its population from four mass crimes of genocide, ethnic cleansing, war crimes and crimes against humanity.¹⁹ Before it was constituted, Gareth Evans, Mohammed Sahnoun, and Michael Ignatieff (2001) promoted the concept of the R2P in the International Commission on Intervention and State Sovereignty (ICISS) roundtable in 2001. the R2P has designed the mechanism and duty for every UN member.

The concept of the R2P has similarities with humanitarian intervention. Pillar Three of the R2P states that the international community can take action if a country fails to implement it. The urgency of the R2P can be traced in the concept of human security, which was brought as a notion by the Independent Commission on Disarmament and Security Issue in its Common Security Report in 1982. In the report, the institution concludes that “the common security requires that people live in dignity and peace that they have enough to eat and can find work and live in a world without poverty and destitution.”²⁰

The concept and definition of human security, which is the root of R2P, was also promoted by Mahbub ul Haq (1994) in his work *New Imperative of Human Security*. He argued that security refers to “the security of individuals, not just security of their nations,” which, in other words, was not about the territorial of state only, but also the living of each individual.²¹ The concept of human security has two essential elements: first, the security from threats such as violence, sexual abuse, and death; and second, the security of basic human needs, such as health, employment, and food.²² Similar to Haq (1994), the United Nations Development Programme (UNDP) Human Development Report of 1994 also defined human security as “the legitimate concerns of ordinary people who sought security in their

¹⁹ United Nations World Summit Document Outcome 2005, A/RES/60/1, https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf, p 30.,

²⁰ The Independent Commission on Disarmament and Security Issues (1982), “*Common Security: A Blueprint for Survival*”, New York, Simon and Schuster, p. xv and 172.

²¹ Haq Ul H. (1994), “*New Imperatives of Human Security*”, RGICS Paper No. 17, Rajiv Gandhi Institute for Contemporary Studies (RGICS), Rajiv Gandhi Foundation, New Delhi, p. 1.

²² Ibid p 3-17

daily life.”²³ In the same context, Shahrbanou Tadjbakhsh (2005), who works as a consultant for the UN for peacebuilding, conflict resolution, and anti-terrorism, sees human security as “the absence of insecurity and threats.”²⁴

As R2P becomes a silver lining to reaching individual security around the world, its concept is related to the practice of humanitarian intervention, which for many scholars, came out as a violation of the sovereignty principle of the state, such as the humanitarian intervention in Haiti in 1994, which was done by the United States to oversee the democracy transition in the country but did not have the UNSC approval. As humanitarian intervention was seen as violation of the sovereignty of the state principle while there was no other best option to do to save human life, in September 1999 Kofi Annan, who was presenting the annual report to the UN General Assembly, raised a question; “how should we react if humanitarian intervention assaults the concepts of sovereignty?”²⁵

Annan believed that humanitarian intervention to save human life was essential. Thus, he wanted to change the perception of humanitarian intervention as a solution to secure human security, especially when many lives are in danger due to a riot, failed government or other factors. Based on this question, the ICISS, which was established in September 2000 under Canadian government, answered Annan’s question by publishing the ICISS report entitled “Responsibility to Protect” in 2001 and presented it in the ICISS roundtable in the same year.²⁶ The report described the mechanism of humanitarian intervention and the conditions that are allowed for humanitarian intervention on behalf of the applied R2P.²⁷

In contrast, Aidan Hehir (2017) expressed his disagreement toward the effectiveness of R2P. In his article *Utopian in the Right Sense: The Responsibility to Protect and the Logical Necessity of Reform*, he compelled a systematic argument by putting forward two factors; first, the norm as the necessary foundation of this

²³ The United Nations Development Programme (1994), “*Human development Report 1994*”, Oxford University Press, New York, p. 229.

²⁴ Tadjbakhsh S. (2005), “*Human Security: Concepts and Implication with an Application to Post-Intervention Challenges in Afghanistan*”, Center for Peace and Conflict Resolution, Sciences Po, p. 5

²⁵ The United Nations Office on Genocide Prevention and The Responsibility to Protect, <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml> accessed on 20 March 2020

²⁶ Steven Haines, G. K. (2010). *Humanitarian Intervention : Genocide, Crimes against Humanity and the Use of Force Chapter 18* . Ashgate Publishing, p 307

²⁷ Gareth Evans, M. S. (2001). *The Responsibility to Protect*. Canada: International Commission on Intervention and State Sovereignty(ICISS), International Development Research Centre, p. 29

doctrine was not strong enough to change state behavior.²⁸ Therefore, the implementation of R2P failed in the case of Libya in 2011. This argument was supported by Diana Panke and Ulrich Petersohn (2011), who said that “the establishment of that norm does not necessarily mean it will have the intended positive influences on state behavior.”²⁹ Likewise, Edward Luck (2010) argued that the success of R2P depends on the political will of every state, which, according to Luck, is an unstable condition that can change over time.³⁰ The second factor, put forward by A. Hehir, is related to the responsible institution. For A. Hehir, the obligation of R2P is more like being given to the host state rather than the UN, with the United Nations Security Council (UNSC) being the right authority.³¹

To sum up, this literature review points out that a norm, according to Finnemore and Sikkink (1998) and Björkdah (2002), in the international system has its power to set the standard behavior of the countries in the world. For instance, the norm of non-interference is based on the sovereignty principle that is also written in the UN Charter. Following the norm as the primary standard behavior, the R2P, which values human security and peace as the goal, shall be implemented in every country in the world. Thus, the ASEAN, as part of the UN integration and cooperation, shall also implement the R2P. Moreover, related to the topic, according to the ASEAN Charter Article 1(j), the organization upholds the UN Charter. In other words, the ASEAN has interdependency toward the UN. However, the R2P as a new norm in international politics seems to have difficulties in its implementation, as stated by Hehir (2017).

²⁸ Hehir, A. (2017). “Utopian in the Right Sense”: The Responsibility to Protect and the Logical Necessity of Reform. *Ethics & International Affairs*, Cambridge University Press, p 342

²⁹ Panke, D., & Petersohn, U. (2011). “*Why international norms disappear sometimes.*” *European Journal of International Relations*, SAGE Publication, p. 719–742.

³⁰ Luck, E. C. (2010). “*The Responsibility to Protect: Growing Pains or Early Promise?*” *Ethics & International Affairs*, 24(4), p.349–365.

³¹ Hehir, A. (2017). “Utopian in the Right Sense”: The Responsibility to Protect and the Logical Necessity of Reform. *Ethics & International Affairs*, Cambridge University Press, p 342

1.5 Hypothesis

Examining the urgency of the R2P as declared by the UN, the ASEAN will put an effort to implement it by bringing the Rohingya case into the ASEAN Way mechanism to resolve the conflict and empowering the AICHR as a legal body to resolve humanitarian issues in the region.

1.6 The Importance of Research

This research will add to the limited literature and studies by providing a comprehensive and insightful view of ASEAN's role in implementing the R2P. This study is intended to be a reference for ASEAN and future researchers. The author emphasizes the values of ASEAN as a regional organization that is expected to solve the Rohingya problem by implementing the R2P. In this scenario, regional organizations such as ASEAN, the EU, and others have a significant role in dealing with regional issues, for example through the establishment of a free trade area, conflict resolution and regional policies. This study will cover the ASEAN perspective by examining regional theories, organizational norms, the ASEAN Charter as a basic foundation, and ASEAN political developments. This research can serve as an example for the ASEAN and other regional organizations facing similar problems on how to overcome them to save human lives from atrocities.

1.7 Methodology

This paper seeks to link the concept of the R2P and regionalism to the ASEAN political development by using international norms, treaties, and other legally binding documents. The conduct of research will be accompanied by theoretical studies and review of the related literature.

1.7.1. Research Method

Throughout the research, this study will employ qualitative methodology through archival research. The conduct of archival research allows the collection of essential data on the concept and theories of the R2P, legal binding international norms and treaties, and works on regionalism. In addition, the political development in the ASEAN will also be examined.

The result of this literature review will set the framework that will further define points related to regionalism in the ASEAN and how international treaties should affect regional and state-level organizations.

This research will examine the strength of regionalism in relation to the extent to which international law and treaties are obeyed. The political situation among the ASEAN member-states will be examined to seek the possibility of adopting the full content of R2P by the same regional organizations. Furthermore, the Rohingya issue will be used as a case study and reference on how R2P should be implemented.

1.7.2. Data Collection and Tools

Qualitative or archival research is able to generate necessary data to discuss the subject matter of discourse. This type of data collection is based on books, journals articles, theses, official statements, international treaties, and international law as well as online sources that discuss the R2P concept and ASEAN political developments.

Based on initial resource gathering, there were some books and journal articles at hand citing R2P and the ASEAN political developments. Similarly, the same process applied to the discussion of how ASEAN can adapt R2P through its legal binding. Numerous articles and theses were written by Southeast Asian scholars which were available for reference in the case of this study.

1.7.3. Data Analysis

Data collection through qualitative archival research is expected to produce vital information on related concepts and other dynamics of regionalism. Other topics that become the focus of research on political developments in the region will also be considered and used as a reference. In this framework, information related to the R2P and ASEAN in political context will be used as a model to explain the application of these theories. The conduct of the analysis of the data sought, the R2P, the ASEAN, and Rohingya cause in Myanmar will provide the study with a clear case exemplifying the

pursuit of the regional organization and international treaties and resolution in terms of their political binding strength in a given region.

After collecting data and conducting analysis, the writer will prove the opinion that regional organizations and international treaties will have a powerful impact on political developments in a region, in this case, ASEAN.



CHAPTER II

REGIONALISM, THE R2P, AND ROHINGYA CASE

Like globalization, regionalism is a phenomenon and a reform of the international system that allows countries to grant a portion of the region's sovereignty to the organization. In international relations, regional organizations such as the OAS, the ASEAN, the EU, and the LAS are always linked to the UN. In this chapter, regionalism will be explained to get the necessary knowledge to analyze how the ASEAN works by comparing regionalism history and theories to the 'ASEAN Way' phenomenon. Moreover, the R2P and Rohingya issue will also be provided as the study case.

2.1. The Emergence of the Regionalism

Regionalism in international relations shapes how regional organizations are affecting foreign policy in international politics. According to Columbis and Wolfes (1986), the emergence of regionalism in the work of Introduction to International Relations, Power and Justice, could be identified by four-point analysis. On the other hand, identity has also played a role in the regionalism. Eric Storm (2003) argues that in the historical approach, regionalism has existed during the Napoleonic period. Catalonia, Brittany, and Saxony regions in his argument support that cultural or identity was the other factor how regionalism was formed.³² Moreover, regions acts as the main factor why and how regional mechanisms was formed. Mansbaach (1973) argues that regional groupings could be identified based on geographical, cultural, trade, and economic interdependence.

In the political context, regionalism can be seen by the joint military and a mutual defence pact which resulted in the First International Conference of American States in 1889 and 1890 in Washington D.C. In this conference, 18 nations in

³² Storm, E. (2003), *Regionalism in History, 1890-1945: The Cultural Approach*, Sage publisher, p 3-4

America, later called the Pan-American and then transformed into the OAS.³³ Many scholars argue that economy and geography are also the root of regionalism. The establishment of regionalism be seen by the establishment of the European Coal and Steel Community, which put French and German steel industries under a joint authority in order to lessen the possibility of war between the two countries. Thus, the regional community was born with Belgium, Italy, Luxembourg and the Netherlands as the original members along with West Germany and France. Driven by the possibility of economic cooperation in Europe, the European Economic Community (EEC) was formed in 1957.³⁴ In international relations study, regionalism divided into two; old or classical regionalism and new regionalism.

2.1.1. Classical Regionalism

Many scholars, including Soderbaum (2015), believe that old or classical regionalism emerged in the post-World War II period. It happens due to many countries have experienced a devastating inter-war nationalism and World War II.³⁵ The old regionalism is typically high politics that focuses on the power and political influence among the country. Thanks to globalization, in the period of regionalism, borders, in politics were not as strong as before. In other words, many countries would integrate their political sovereignty in one institution in the region

Soderbaum believes that regionalism started in Western Europe in the late 1940s and then spread around the world. After the Second World War, old regionalism began with approaches and philosophies that focus on stability and are skeptical about the nation-state system (Westphalian), such as theories of federalism and functionalism that oppose the presence of state territorial borders. The economy was a more critical aspect of politics for federalists. Thus, international organizations were set up to establish transnational cooperation and activities. Second, the state's presence is obsolete for functionalists since it is the product of the Westphalia Treaty.

³³ Söderbaum, F, (2015), Old, New, and Comparative Regionalism, The Scholarly Development of the Field, KFG Working Paper Series, No. 64, October 2015, Kolleg-Forschergruppe (KFG) "The Transformative Power of Europe", Freie Universität Berlin. p 10.

³⁴ Ibid p 11

³⁵ ibid

Third, neo-functionalism, the last theory of old regionalism pioneered by Ernest Haas, suggests that when a country's dependence rate is high, political integration can occur.³⁶ Acknowledging this issue, the creation of regional integration was viewed as a solution to achieve peace and stability. Therefore, the establishment of European Communities such as the European Coal and Steel Community (ECSC) in 1951 and the European Economic Community (EEC) in 1958 came up as the solution to prevent more wars from happening

In the regional studies, many scholars argue that members in the regional organization must act multilaterally, including the security issue. Furthermore, peace as a norm becomes a goal that many countries need to achieve. Thus bilateral security was the option. Besides, the economic factor was also the reason regionalism was formed. In terms of economic, trade barrier and economic aid could be eased by agreement in the regional organization. Such consideration has influenced the EEC in 1958.³⁷ Lack (2008) defines the old regionalism concept as a purpose to strengthen bilateral cooperation and to form collective security. This concept is limiting the intervention from another party outside the regions.³⁸ As regional ties become a key element to form policy, the institution becomes a major actor to create functional and political policy.³⁹

The existence of regional bodies in the old regionalism has also been acknowledged by the UN. The preliminary version of the UN Charter, drawn up in Dumbarton Oaks in 1944, states that: 'The existence of regional bodies on issues of peace and security should not be impeded.' Moreover, at this point, the presence of regionalism focused in particular on issues such as the emergence of the North Alliance Treaty Organization (NATO), the Warsaw

³⁶ Hettne, Bjorn dan Soderbaum F.(2008). "*The Future of Regionalism: Old Divides, New Frontiers*" in *Regionalisation and Global Governance: the Taming of Globalisation?*, Routledge, London, p 63

³⁷ *ibid*

³⁸ Warleigh-Lack, Alex. (2008), *Studying Regionalisation Comparatively: a Conceptual Framework in Regionalisation and Global Governance: the Taming of Globalisation?*, by Andrew F. Cooper, Christopher W. Hughes and Philippe De Lombaerde (eds). London: Routledge, p 45

³⁹ *ibid*

Pact, and The Australia, New Zealand, United States Security Treaty (ANZUS).⁴⁰

As mentioned before, in Soderbaum analysis, regionalism was started in the Western Europe and then spread across the world. The discussion of regionalism has also developed in America, Africa and Asia. The work of Soderbaum has clearly discussed the development of the regionalism outside of Europe. In Asia, the topic of regionalism has been linked to colonialism vs anti-colonialism, nation-building, and industrialization in the newly independent nation-states. In Latin America, the development of regionalism has been linked with the depression in the 1930s, which has an impact in the Latin American regions economic. This, the phenomenon becomes one of the reasons why in Latin America, there was a notion to liberalize intra-regional trade in order to stimulate industry, economic growth, and investment. The economic regionalism type has resulted in the creation of the Latin American Free Trade Association (LAFTA) in Montevideo in 1960.⁴¹ However, the establishment of the LAFTA did not mean that regionalism based on economic factor would be successful. Due to internal conflict and disintegration in the LAFTA, this association was failed to pursuing cooperation amongst the member.

In conclusion, most of the scholars conclude that old regionalism focused on the work of economic, nation-building, and security issue. The condition could understand this in the period which many countries have experienced the effect of intra-war and World War II, and economic depression such as in 1930. The establishment of the ASEAN in 1967, was also driven by security issue since at the post- World War II, there were two polar powers; The U.S. and Soviet Union. The Cold War have forced many countries to choose one side. However, the non-bloc alignment became a safe zone for some countries, including Indonesia, to avoid the war. Thus, the

⁴⁰ United Nations, "Chapter VIII: Regional Arrangements," <http://www.un.org/en/sections/un-charter/chapter-viii/index.html>. Accessed on 11 May 2020

⁴¹ Soderbaum F. (2015), *Early, Old, New and Comparative Regionalism*, The Scholarly Development of the Field, KFG Working Paper Series, No. 64, October 2015, Kolleg-Forschergruppe (KFG) "The Transformative Power of Europe", Freie Universität Berlin, p 13

ASEAN becomes a regional organization with its own regional authority to not dependent in only one bloc, or in other words, become a neutral bloc.

2.1.2. New Regionalism

Post-Cold War marks the beginning of the new regionalism era. Many scholars stressed, the new regionalism began around the mid-1980s where the issue is no longer about security and economic cooperation. Soderbaum believes that aside of the escalated number of trade agreements, there are an anti-hegemonic regionalism and the rise of a multi-dimensional type of regionalism.⁴² The new phase of regionalism could be linked by the post-Cold War period, which was ending the bipolarity in international politics. New regionalism has made intellectual progress in which many debates to define what is regionalism appears.

Soderbaum argues that in the new regionalism there are no ‘natural regions’, but these are made, remade, an unmade – intentionally or non-intentionally – in the process of global transformation, by collective human action and identity formation”. In other words, interest and identities were shaped by the process of interaction. Boas (2003) supported this argument by stating that, “regionalism is clearly a political project, but it is obviously not necessarily state-led, as states are not the only political actor around...we clearly believe that, within each regional project, several competing regionalizing actors with different regional visions and ideas coexist”.⁴³

In the new regionalism, the basic principle of politics, interest has played a significant role. Therefore, in this phase, the actor was no longer between government to government (g to g), but the non-state actor also influences the bilateral integration. For instance, the creation of the North American Free Trade Area (NAFTA) and the Asia Pacific were based on the business interest. Moreover, The South African enterprises have also

⁴² ibid

⁴³ Morten Bøås, Marianne H. Marchand, and Timothy M. Shaw (2003), “The Weave-World: The Regional Interweaving of Economies, Ideas and Identities,” in *Theories of New Regionalism*, ed. Fredrik Söderbaum and Timothy M. Shaw (New York: Palgrave Macmillan, , 201.

developed mining, banking, trade, and financial service as a regional strategy to boost the economy.⁴⁴ In addition, the establishment of the China-ASEAN Free Trade Area (CAFTA) could be seen as the way China enterprises broaden the trade agreement to the ASEAN countries.

Interestingly, in this phase, the regional organizations were no longer focus on internal integration, but also engagement with cooperation with the actors from the outside of the organization. For instance, the ASEAN has ASEAN Regional Forum (ARF) and ASEAN+, which has the US, Australia, Japan, and Brazil as the member. In other words, new regionalism seemingly seeks for a better opportunity and broader engagement with not an only state actor, but also the non-state actor in order to gain benefit. Examining the change of the ASEAN's characteristic, during the establishment period, the organization could be characterized as the old regionalism because the organization prioritizes only government to government communication and relationship without a non-state actor to be included. However, as now the ASEAN also cooperates with parties outside of the organization, such as establishing the free trade area and dialogue partners, the ASEAN is an example of the new regionalism because it also considers the non-state actor such as enterprises in the policymaking.

Furthermore, the ASEAN has experienced a development from old regionalism to new regionalism in which including the non-state actor in the decision making such as the establishment of CAFTA. In this view, by understanding the development the ASEAN along with regionalism theories, it would be easier to examine in which way the ASEAN can take to implement the R2P.

2.1.3. The Debate of Regionalism Concept and Theories

Regionalism as the subject in international relations has affected the political structure in international politics because regional problems will first be handled by the regional organization rather than directly to the UN as an

⁴⁴ Alan M. Rugman and Alain Verbeke. (2004), "*A perspective on regional and global strategies of multinational enterprises*," *Journal of International Business Studies* 35, no. 1, p 6

international organization. Throughout history, the concept and theory have experienced development. It can be seen from the two-phase of regionalism (old and new regionalism) where the scope and topics have broadened since the beginning of regionalism study emerged. As mentioned briefly, the old regionalism focuses on the security and economic topics with governments as the main actor. On the other side, new regionalism developed with the non-state actor as the main instrument in the political movement. However, both regionalisms, according to Soderbaum, provide a less precise definition and explanations from many scholars. In the international relations, regionalism also creates debates in the concept and theory. First and foremost, Storm (2003) belief that identity and geographical factors are the main instrument why regionalism was originally formed. Another scholar such as Norman Palmer (1991) in the book of *The New Regionalism in Asia and The Pacific* is also state the similar thing.⁴⁵

Aside of the geographical factor, there is another scholars, Giovanni Barbieri (2019) who assumes that political necessity was the factor that drives regional bodies to be established. In his perspective, he took the situation in the Cold War period, when two blocs were dominating political movement in international politics. In his work, he said; *The Cold War period was marked by bipolar confrontation and the building of regional blocs.*⁴⁶ Furthermore, the political necessity, including the collective security interest in the situation makes it possible for the country to give part of their sovereignty to a regional organization. Therefore, in the member of a regional organization in the end, would have to follow the norm that created in the organization as the code of conduct. Interestingly, the regionalism cannot be understood by not providing economic instrument to the content of discussion. A scholar namely Jagdish Bhagwari (1993) said that regionalism as a policy designed to lift trade barriers regardless of the geographical proximity.⁴⁷ This, then

⁴⁵ Palmer N (1991), *The New Regionalism in Asia and The Pacific*, Lexington: Lexington Books., p.6.

⁴⁶ Barbieri G. (2019): *Regionalism, globalism and complexity: a stimulus towards global IR?*, *Third World Thematics: A TWQ Journal*, DOI: 10.1080/23802014.2019.1685406, p 3

⁴⁷ Bhagwati J. (1993), *Regionalism and Multiculturalism: An Overview*, Cambridge: Cambridge University Press, p. 43

supported by Paul Bowles (2003) in his work of *Regionalism and Development After the Global Financial Crises* by stating that regionalism as an economic policy choice of government in the form of regional economic integration schemes.⁴⁸

To sum up, regionalism has taken varying forms over time. Firstly, classical regionalism focused more on high politics or government to government (g to g) relations while also considering economic integration. Later, new regionalism has a broader understanding of the regionalism concept. Whereas, the actor is also included non-state actor such as enterprises. Therefore, the free trade area was established in regions such as North America and China with the ASEAN. Ultimately, this history of regionalism explains that the ASEAN has interdependence with actors outside of the organization. Furthermore, there is a hierarchy such as structure and the code of conduct in the regional organization that the member-states obey. In this chapter, functionalist, institutionalism, and integration theory will be set out by the author in order to give an understanding on how the organization works. This is also related to how the regional organization is running. These theories are often used to explain how the organization governs the members by providing values, power, and norm in the organization as the foundation. The theories will also set out the reason for the member's compliance in an organization.

A. Functionalist theory

Jaap De Wilde (1991) in his work of *Saved from Oblivion: Interdependence Theory in the First Half of the 20th Century: A Study on the Causality between War and Complex Interdependence* has mentioned that David Mitrany was the father of functionalism.⁴⁹ This theory is perhaps, one of the oldest theories in the international relations. This theory belief that cooperation could begin with detaching political, social, and economic ties

⁴⁸ Bowles P. (2003), *Regionalism and Development After the Global Financial Crises* in Fu-kuo Liu and Philippe Reigner. *Regionalism in East Asia: Paradigm Shifting?*, Oxon: Routledge, , 6.

⁴⁹ Wilde d. J. (1991), *Saved from Oblivion: Interdependence Theory in the First Half of the 20th Century : A Study on the Causality Between War and Complex Interdependence*, Dartmouth Publishing, p 170

which could minimized disagreement.⁵⁰ In other words, functionalism tried to emphasize that collective purpose has the highest authority to constitute a policy.

This theory was emerged due to the effect of the war such as social distrust and economic depression.⁵¹ Therefore, peace as the achievable goal would have a bigger and more tangible effect in forming a policy. In comparison, functionalism challenged the nation-state system and realist perspective which state as the only actor that matters. It can be said that collective purpose such as peace for a better world would drives nations to detach political ties and focus on the purpose only with cooperation.

B. New Institutionalism theory

Institutionalism theory is a perspective that emphasizes the power and value of the institution for the member of an organization. The importance of the institution's role to govern can be seen by Stephen Bell's (2011) argument in which he addresses that institution is a critical matter to define the behavior of the actors in the region.⁵² Of course, in the institution, there are norms as the behavior control applied, and it is the institution's duty to make sure the members comply with the norms. In other words, the institution has a bigger power over a member-state to influence political movement in the region. Furthermore, Johnson, Christer, Tallberg, and Jonas (2001) in the work of 'Institutional Theory in International Relations' took Oran Young (1989) definition of institutions as; "social practices consisting of easily recognized roles coupled with clusters of rules or conventions governing relations among the occupants of these roles," which can be interpreted as the practice of recognized body (recognized role) to govern in the region.⁵³

⁵⁰ Bhagabati M. (1999), *"Regionalism and Its Impact on The Multilateral Trading Arrangement"*, doctoral dissertation, Jawaharlal Nehru University, p. 23

⁵¹ AJR Groom and Paul G. Taylor (1975), *Functionalism: Theory and Practices in International Relations* London: University of London Press. London, pp. 119-145.

⁵² Bell S. (2011), *"Do We Really Need a New 'Constructivist Institutionalism' to Explain Institutional Change?"*, British Journal of Political Science 41, Issue 04, p 886

⁵³ Jönsson, C., & Tallberg, J. (2001). *Institutional Theory in International Relations*. Lund University, p 3

In order to understand this theory, it is important to explore three approaches, namely rational choice institutionalism, historical institutionalism and normative institutionalism. Firstly, rational choice institutionalism focuses more on the reason why actors (states) would agree on the organization. This approach concludes that interest of the countries have driven actors to be loyal to an institution, which actors would depend on the interaction and collective action. In other words, the 'zero sum game' concept is applied since actors agreed to obey 'rule of the game' in the organization.⁵⁴ For instance, in the EU, 27 countries devote their loyalty along with sanction and punishment applied in the organization. In the higher level, international organization holds a bigger power over a country's interest that every member should obey the resolutions and the rule of the international organization.

Secondly, 'historical institutionalism' can be understood by how institutionalism defines an institution. According to Peter A. Hall and Rosemary C. R Taylor (1996), historical institutionalism sees the institution as 'the formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy.'⁵⁵ By this definition, historical institutionalism is more focus on the value of the organization has. The value is affecting the norms and behavior for the actor as the member. Thirdly, normative institutionalism sees institutionalism as a system of belief in which the member of the organization shapes the existence of norms and behavior. Both historical and normative institutionalisms are almost identical While historical institutionalism said that actor would bind to norms provided by the institution, the normative institutionalism sees that norms in the institution are kept and shaped by the actor.⁵⁶

⁵⁴ ibid

⁵⁵ Hall, P. A., & Taylor, R. C. R. (1996). *Political Science and the Three New Institutionalisms*. Political Studies Association, p 938

⁵⁶ Ibid 935

In conclusion, the three approaches emphasized that the institution creates order and rule for the member-states. It also sets the value of the organization in which agreed as well by the members. In this theory, scholars of institutionalism believe that institution should hold power influence the member.

C. Regional Integration Theory

Regional integration theory could be understood by two factors, economic and politics. Firstly, economic integration could be seen as a tool for political integration, it is a process and a goal for a bigger purpose. Balessa (1969) defines economic integration as a process and state of affairs.⁵⁷ The theory was developed by many liberal scholars who highlights economic integration as a process whose goal was to establishing a political union and has purpose to remove all the unnecessary restrictions for trade. The interaction in the economic according to Ballesa would create political ties in which interest such as lessen the trade barrier and create a sustainable cooperation are the main reason. In international relations, there are many factors that influence the policy. Economy is one of them. The EU for instance, has been one regional organization that could lessen the trade barriers in the EU. In fact, this factor has benefited many countries in the European countries.

Secondly, political integration could be best understood with the condition after many wars in history in the European countries, including World War II. The awareness in the security sense has driven political integration happens. In order to stop the war, a higher authority was needed, this is the idea of the regional organization and also international organization such as the UN that produces policy and punishment in order to maintain peace. In other words, supranationalism, according to Beloff (1970), shifts the loyalties from the nation-state concept to a bigger concept such as regional

⁵⁷ Balessa B. (1969), *The Theory of Economic Integration*, London George Allen and Unwin, p.1

organization.⁵⁸ Related to political integration, Karl Deutsch (1957) points out that political integration as a process that solves conflict without violence.⁵⁹ The critical element of the political integration concept is 'security community' when a group of states have the awareness to avoid any war because they have experienced the effect of it.

Ultimately, having examined both factors, the whole concept of integration is determined by the willingness of the country to loyal to a higher power such as regional organization with economic and political factor as the reason. Sannwald and Stohler (1959) support this notion by arguing that political integration can be facilitated by economic cooperation.⁶⁰ In other words, both factors are related to each other with the consideration of 'cost and benefit' concept. The political factor would keep the member in the regional organization safe by settling conflict without violence or creating another war, while economic factor would ease the trade which will have an impact to economic growth for the member.

The debate on regionalism theory points out that, according to Storm (2003) and Palmer (1991), identity and geographical factors may be the fundamental explanation why actor (state) would be willing to join a regional organization. Therefore, it cannot be differentiated from the fact that political necessity and desire often take the form of the structure of an organization as Wilde (1991) argues that the interdependence in the organization has driven by the same goal such as peace to be achieved. In the organization, it is essential to note that there is a rule that must be obeyed by all members

New institutionalism theory, with its approaches, argues that norms of the organization are influencing the behavior of the actors. The work of the regional organization cannot be separated by integration. In other words, the organization could not do its function if the member would not be willing to be loyal on it. The reason for integration could be best understood by Balesa

⁵⁸ Max Beloff in Carol Ann Cosgrove and Keuneta Twitched (eds.) (1970), *The New International Order*, London, Macmillan, p. 95.

⁵⁹ Karl Deutsch, et. al., (1957), *Political Community and North Atlantic Area: International Organization in the light of Historical Experience*, Princeton: Princeton University Press, p. 5

⁶⁰ Sannwald and Stohler (1959), *Economic Integration*. Princeton New Jersey : Princeton University Press , p.92.

(1969), Beloff (1970), and Deutsch (1957) thoughts. It always is driven by the economic factor and circumstantial necessity, such as the security community. These debates conclude that there is one supranational power that rules the member of the organization. The necessity of a higher power such as institution would affect the political movement in the organization..

In conclusion, these theories have explained the factor of the regional integration in the regional organization and the hierarchy concept of the regional organization. Firstly, the functionalist theory explains that peace as the status quo had driven states to join the regional organization. Secondly, New Institutionalism theory, as explained by Stephen Bell (2011) and Oran Young (1989), stressed out that institution is an essential element to define the norm and behavior of the organization. In other words, the institution holds a supranational power to rule the member-states behavior and foreign policy. Thirdly, regional integration theory explains that economic factors and the sense of security, as explained by Beloff (1970), are what drive states to trust the regional organization to rule the member-states. In the ASEAN case, it can be understood that the organization was formed due to the sense of security during the cold war and economic factors. Moreover, the ASEAN has ASEAN Charter as the rule book of the organization's norm, which shall be obeyed by the member-states.

2.1.4. The Practice of Regionalism Around the World

Regionalism in international politics marks how regional politics will have an effect on the member-states. There are many kinds of regional organizations with their own culture, hierarchy, and regime in international relations. This chapter will examine four kinds of regional organizations that will be discussed, starting from the emergence factor, hierarchy, structure, and political culture in those organizations. The discussion will be used to understand the similarity and differences toward the ASEAN. Therefore, it will be easier to understand how the ASEAN political culture and hierarchy differ from the other regional organizations.

2.1.4.1. Pan-Africa as the Beginning of Africa's Regionalism

Pan-Africa movement in the 19th century led by Africans diaspora in London was the core of the unity of African descent. The historical background such as slavery, colonialism, and racism led the African diaspora to be united. The idea of this movement is to fight discrimination and support Africa's liberty from colonization. The consciousness of African descent from racial discrimination has also created momentum to be united. Guy Martin (2005) has examined the work of Adi Hakim and Sherwood Marika (2003) toward the Pan-Africa movement and concluded that the movement was first happened in 1897 in London and began to conduct its first congress three years later in the same city.⁶¹ In the early time of the movement, activist W.E.B Du Bois was seen as the ambassador of Pan-Africa due to his work and life that concern on the African descent life.

In addition, during the first congress of Pan-Africa, he made petitions to the League of Nation in order to protect the right of Africans, especially for African laborers.⁶² The historical background and the same sense of community have successfully attracted the common sense to unite. Thus this movement proliferated, and it is noted that there were at least five Pan-Africa Congress during 1900-1945. The independence of Ghana in 1957 marks the new type of Pan-Africa movement. Kwame Nkrumah, as the first president of Ghana, has influenced the ideology of this movement to a new goal, 'total liberation of Africa' from colonial.⁶³

Charles F. Adrain (1962) noted a comprehensive explanation of Pan-African notion by providing several analyses. He argues that aside of the unity of African descent and the struggle of African freedom, economic growth and restoration were also the goal of this

⁶¹ Martin, G. (2005). *Adi Hakim and Sherwood Marika. Pan-African History: Political Figures from Africa and the Diaspora since 1787*, African Studies Review, p 215

⁶² Adrain, C. F. (1962). *The Pan-African Movement: The Search for Organization and Community*, Clark Atlanta University, p 7-9

⁶³ *ibid*

movement. In his point of view, Pan-Africa is a pragmatic movement, which led to further steps such as the establishment of the *Union des Republiques d'Afrique Centrale* in order to share a common nationality and diplomatic representation for French-speaking Equatorial Africa.⁶⁴

The regionalism in Africa that related to the development of the Pan-Africa movement can be seen by the formation of the Organization of African Unity (OAU) in 1963 which has the purpose to maintain the sovereignty and territorial integrity and struggle for independence of African countries from colonialism.⁶⁵ The OAU has experienced many development and integration in which still established until now.

2.1.4.2. The American's Regionalism

Regionalism in America could be traced by the establishment of the International Union of American Republics or Pan American Union in 1910. This union established after long series meeting in Washington DC named The International Conference of American States from October 1889 to April 1890. In this meeting, the participants agreed to establish norms and promote cooperation. The Pan American Union also supported President Franklin Roosevelt policy called "Good Neighbor" policy. In this matter, it can be seen as the first time American countries agreed to be part of the union.⁶⁶

As the Pan American Union successfully worked to resolve a conflict between the members during World War II. This union developed into the OAS which was established during the conference in Bogota in 1948.⁶⁷ In this organization, conflict and development had happened, thus, in 1962, due to the tension with Cuba, majority

⁶⁴ *ibid*

⁶⁵ Adi H. and Sherwood M. (2003), *Pan-Africa History: Political Figures from Africa and the Diaspora since 1787*, London: Routledge, p 2

⁶⁶ Meyer J. Peter (2018), *Organization of American States: Background and Issues for Congress*, Congressional Research Service, p 2.

⁶⁷ Norman P. J. (1976), *The Dynamics of International Politics*, New York: MacMilan Publishers, 472.

vote agreed to exclude Cuba from the participation of the OAS. The organization itself carries four central missions which is also written in the OAS Charter 1948. First, the promotion of representative democracy, which this mission renewed with Protocol of *Cartagena de Indias* in 1985. Second, the mission of protecting human right which this mission was written and signed by the “American Declaration of the Rights and Duties of Man” in 1948. The development of this mission can be seen by the establishment of the Inter-American Commission on Human Right in 1960 and the Inter-American Court for the Protection of Human Rights in 1979.

Third, the mission to resolving security matter such as collective security and conflict prevention. This mission was taking a significant conference on security in October 2003 in Mexico City. At the same time, the discussion was to implement the “declaration on Security in the America” with many elements discussed such as drug trafficking and related violence. The fourth mission is the development of the OAS, which has many sectors to be handled, such as education, culture, science and technology, and sustainable development. The Executive Secretariat for Integral Development was the body that responsible for these tasks.⁶⁸

The OAS actually faces many challenges from effectiveness, resources, and inclusiveness. The condition in the America which has various issue from security, economic, and foreign cooperation issue have made the OAS effectiveness questioned by many scholars. The issue such as September 2001 also added the challenges of the OAS.

2.1.4.3. Middle East’s Arab League

The Arab League, founded in Cairo on 22 March 1945, is a regional body for Arab countries. At first, it was just six members (Iraq, Jordan, Egypt, Lebanon and Syria) and now has 22 members.

⁶⁸ Mace G. (2012), *Organization of American States*, The Encyclopedia of Globalization, Oxford, Blackwell pp 1-2.

Nevertheless, as a result of the situation in Syria, the Arab League has excluded Syria from participating since November 2011.⁶⁹ Under the League of Arab States Pact of 1945, the purpose of this organization is to develop closer ties and cooperation between member-states and to build cooperation in a number of sectors, such as culture, health, cultural, political, social and industrial sectors.⁷⁰ This organization has three bodies such as the General Assembly, the Office of the Secretary-General, permanent councils for the sectors like culture, economic, human rights, and health.

Security in the internal organization also becomes an essential issue to be discussed. Despite the fact that the organization prohibits any force in order to resolve disputes among the member, the use of force happened in many events such as in the 1960s when Egypt entered Yemen, the force of Syria in Lebanon between 1975 and 2005, and the tension between United Arab League and Yemen in the present day.⁷¹ The Arab League actually has the mechanism for this matter; Macdonald (1965) noted that if a member state has been attacked or threatened, it is possible to resolve the issue through the council in the organization. This council has the power to form a resolution such as sanction and embargo to maintain peace in the member.⁷²

Interestingly, despite the theories of regional organization have repeatedly mentioned about loyalty to the highest power such as structural order from the organization; the Arab League faces the challenges such as the ambiguity in term of power of the organization towards the member-states and the willingness of the member to the

⁶⁹ Sly L. (2011), *Syria suspended from Arab League*, The Washington Post, https://www.washingtonpost.com/world/syria-suspended-from-arab-league/2011/11/12/gIQAvqGxEN_story.html accessed on 1 April 2020

⁷⁰ The Avalon Project. Yale Law School. *Pact of the League of Arab States*, 22 March 1945, https://avalon.law.yale.edu/20th_century/arableag.asp accessed on 1 April 2020

⁷¹ Ulger I. K and Hammoura J. (2018), *The Arab League: Fro Establishment to Failure*, e-journal of Social and Legal Studies, p 40

⁷² MacDonald, R. (1965). *The League of Arab States: A Study in Dynamics of Regional Organization*. United State of America: Princeton University Press. Pp. 321-322.

rule of the game in the organization. It can be seen by the condition of Syria that cannot be intervened by the closest organization in the region.

2.1.4.4. The European Union

The EU is a regional organization that consists of 27 countries in the European regions. This organization was originally purposed to reconstruct economic and political sphere in the region. In 1950s, the first integration was seemed in the formation of European and Steel Community (ECSC), European Atomic Energy Community (Euratom), and European Economic Community, with six member-states; West Germany, Italy, Luxemburg, Belgium France and Netherland. The cooperation in the region enhanced over the time and in 1957 the Treaty of Rome was signed which marks the willingness of the members to tighten economic cooperation.⁷³

Many scholars took the EU as the root of the regionalism, the prolonged wars history and devastation due to the effect of war such as World War II becomes one of the factors why the EU was formed. Furthermore, an economic motive seems to be a strong reason for European countries to join the organization. From the economic perspective, joining the EU means that goods tariffs could be reduced and human mobilization becomes more effortless in the region. For instance, the Schengen agreement that signed in March 1995 makes Europeans can travel with ease in Europe. Moreover, the member-states of this organization since 1999 have agreed to merge their currencies in EURO, except Britain, Denmark and Sweden.

The strong integration in the EU can be seen by many bodies that already established. For instance, the EU Court of Justice that established in order to ensure the EU law applied by the member-

⁷³ MuthaiahK. (2001), *International Relations* (Mumbai: Himalaya Publishing House, pp 124-125.

states.⁷⁴ This court is quite unique since the regional organization has power to force member-states to obey the law constituted by the organization.

All in all, these regional organizations have differences in history, code of conduct, decision-making process, and the hierarchy, which is essential to understand to analyze the problem the ASEAN faces. First of all, it can be seen that in the OAU, the background as the third world countries that have economy, freedom, and colonialism problem has driven African countries to have a 'common sense' to be part of the organization. Second of all, the OAS history has shown that security and conflict prevention became the factors why the OAS was established. Therefore, during the tension with Cuba, the organization decided to exclude Cuba from the organization's participation. On the other side, cooperation and integration reasons were the factors of the LAS establishment.

Furthermore, the last regional organization provided in this chapter is the EU, which Soderbaum took as the embryo of regionalism. This organization, for many scholars, is viewed as the organization that has strong integration. It can be seen by the single policy produced by the EU that must be obeyed by the member-state. In fact, the body, such as the Court of Justice, was established to ensure all member-states to obey the EU policies. If we examine these organizations, it is clear that some organizations such as OAS, LAS, and EU have supranational power given to the organization to produce a policy. Therefore, exclusion as punishment can be implemented. In contrast with the ASEAN, the organization has the "ASEAN Way" as the mechanism to reach a final decision on certain issues. A number of scholars have compared these organizations, which implies that the EU has more control over its member-states than in the ASEAN. Moreover, the ASEAN in the implementation is considering too many factors that eventually makes the decision-making process becomes slow.

⁷⁴ The European Union website, https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en#:~:text=The%20Court%20of%20Justice%20of,national%20governments%20and%20EU%20institutions. Accessed on 1 April 2020

2.2 The R2P Concept and Implementation

As the R2P emerged in 2005, it is considered to be a new silver line for the resolution of humanitarian crises linked to atrocities. Some scholars argue that the R2P is similar to the humanitarian intervention that gives rise to debate as humanitarian use force to save human life. On the contrary, the R2P for other scholars is seen as a new strategy for dealing with humanitarian crises in a more diplomatic manner. Although the UN constitutes it, the implementation is not always successful. This section will analyse the origin, concept and implementation of the R2P in order to gain a deeper understanding of the R2P.

2.2.1. The History of the R2P

The issue of humanity in the world has become one of the most important issues for decades since World War I, World War II and Cold War. This issue has been the concern for many activists, agencies, organizations and international communities. Back in the World War I, there were mass killings and deportations during the period of World War II; there was genocide on Jews in Germany. The UN, which was established in 1945, has the vision to end the war and to make the world a better place.⁷⁵ The origin of R2P comes from the Rwanda genocide in 1994 and the Srebrenica massacre in 1995. At that time, the international community failed to respond with the immediate act. As a result, more than 1,000,000 people killed brutally, while other victims experienced gang rape and other kinds of human right violations.

Kofi Annan, as the Assistant Secretary-General during that time insisted to redefine the concept of state sovereignty in international politics. Annan concerned that there was no solution to prevent and react towards the atrocities in a country while intervention from other state was an act that prohibited in international politics.⁷⁶ In fact, the Westphalian Settlement 1648 and the UN Charter have stated about the intervention from other state as well. Kosovo crisis in 1999 became one of the factors why R2P was produced. Kofi Annan in

⁷⁵ *History of the United Nations*. United Nations website, <https://www.un.org/en/sections/history/history-united-nations/> Accessed on 1 April 2020

⁷⁶ United Nations (2000), *"We the peoples: the role of the United Nations in the twenty-first century"*, A/54/2000 document pp35

September 1999 in his presentation on the annual report to the UN General Assembly raised a question; on “how we should react if humanitarian intervention assaults the concept of sovereignty”.⁷⁷

Gareth Evans, Mohamed Sahnoun and Michael Ignatieff in ICISS Roundtable Meeting in February 2001 promoted the R2P as the way to resolve humanitarian crisis.⁷⁸ In addition, in December 2001, the ICISS released a report entitled "Responsibility to Protect" as a guideline for the R2P. The report clearly clarified the structure and function of the R2P. At the 2005 UN World Summit, the R2P principle was unanimously adopted and published in the Outcome Document of the UN World Summit. The declaration was a testament to the determination to protect the people of every state from genocide, ethnic cleansing, mass murder, war crimes and crimes against humanity. Moreover, the R2P acknowledges three pillars that must be obeyed by all the UN members:⁷⁹

- Pillar One: Every state has the responsibility to protect its populations from four mass atrocity crimes: genocide, war crimes, crimes against humanity and ethnic cleansing.
- Pillar Two: The wider international community has the responsibility to encourage and assist individual states in meeting that responsibility.
- Pillar Three: If a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter.

The third pillar clearly mentions that if a country fails to implement the R2P, the international community can act collectively. Collective action can

⁷⁷ The United Nations Office on Genocide Prevention and The Responsibility to Protect, <https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml> accessed on 1 April 2020

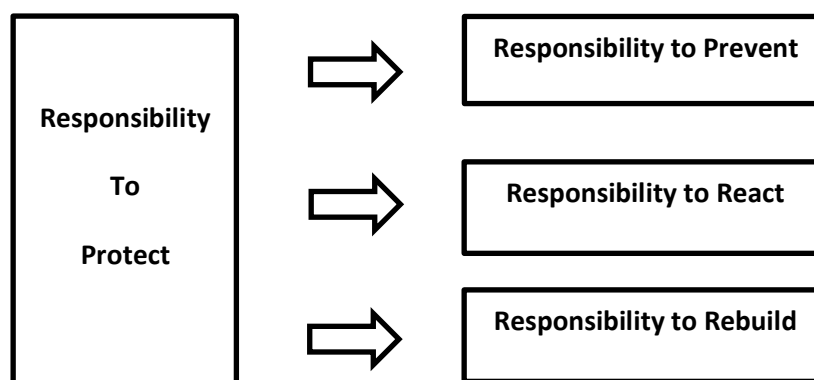
⁷⁸ Steven Haines, G. K. (2010). *Humanitarian Intervention : Genocide, Crimes against Humanity and the Use of Force Chapter 18* . Ashgate Publishing, p 307.

⁷⁹ Global Centre for the Responsibility to Protect, http://www.globalr2p.org/about_r2p Accessed on 2 April 2020

include political, humanitarian and other peaceful means. The UNSC is responsible for deciding whether or not a country needs action from the UN. The Global Centre for The Responsibility to Protect policy brief on September 2018 states that the UNSC can take action under Article 53 of the UN Charter which means the sanctions, arms embargoes and other form of sanction is allowed to do if a state fails to respond with the peaceful, diplomatic effort and collective action.⁸⁰

On the same page of the R2P, the 2005 UN World Summit Document also mentions the concern about children in armed conflict. The UN states in the document that the UN commits to ensuring that children in armed conflicts receive effective humanitarian assistance such as education and social rehabilitation. The R2P supports human rights and aims to preserve human protection so that people can feel secure without fear of being killed, abused and faced with genocide. The document thus also acknowledges the duty of all states to guarantee human rights and fundamental freedoms.⁸¹

Figure 1. The R2P Elements



The R2P vision can be understood by preventing crimes against humanity or violations of human rights on a large scale, and also by building peace. The UN encourages and urges all states to ensure the safety and prosperity of civilians. The vision of the R2P can be understood in three types of action First,

⁸⁰ Genser, Jared, Global Centre for the Responsibility to Protect Policy Brief 2018, p. 2, <http://www.globalr2p.org/media/files/un-security-council-application-of-r2p-jared-genser.pdf> Accessed on 2 April 2020

⁸¹ United Nations, Treaty Series, vol. 1577, No. 27531.

the responsibility of prevention, which can be understood as action and policy for direct prevention in the short and long term where the atrocities are likely to occur. According to the Pillar One of the R2P, all states must be willing to provide protection for their population.

Second, the responsibility to react which is the act to restore peace and security in states. In response to the violation of the R2P, this element allows the international community to take collective and proportionate action, such as diplomatic approach, embargo and, in the worst case, last resort, military intervention.⁸² Responsibility to react is also set out in a document that explains that the international community can take the necessary and diplomatic steps to restore peace in the conflicting country. Last but not least, there is a responsibility to rebuild, which requires the interveners to commit themselves to build a lasting peace in that state.⁸³

Ban Ki Moon, the Secretary-General of the UN, also addressed his vision for the R2P. He wanted the governments and UN agencies to take action to prevent genocide, war crimes, ethnic cleansing and crimes against humanity.⁸⁴ In other words, the UN will not only engage in dialog and diplomatic action, but more like effective direct action. This concept was brought forward by the UN after a number of conflicts emerged from the terrorist groups of Boko Haram, ISIL and Al Shaab. Military intervention can be carried out within the framework of the R2P if six principles are met.⁸⁵

a. The Just Cause

Military intervention for the purpose of human security is an unprecedented act and must provide strong evidence of massacres such as genocide, ethnic cleansing and crimes against humanity that have caused a great deal of loss of life.

⁸² Gareth Evans, M. S. (2001). *The Responsibility to Protect*. Canada: International Commission on Intervention and State Sovereignty (ICISS), International Development Research Centre, p. 29

⁸³ Paris R. (2014), *"The 'Responsibility to Protect' and the Structural Problems of Preventive Humanitarian Intervention"*, International Peacekeeping Journal, p. 577

⁸⁴ 'Ten years on, 'responsibility to protect' must be more than words – UN officials', UN News website <https://news.un.org/en/story/2015/09/508272> Accessed on 2 April 2020

⁸⁵ Gareth Evans, M. S. (2001). *The Responsibility to Protect*. Canada: International Commission on Intervention and State Sovereignty, International Development Research Centre, P. XI

b. Right Intention

The primary purpose of action must be the aim of preventing people's misery. Regional opinions and evidence must support the intention.

c. Last Resort

Military intervention can only be justified if the conditions in the States cannot be stabilized through non-military actions. Military action must provide a sound basis for limited disruption of the operation.

d. Proportional Means

The intervention shall take into account the effect, length and plan of intervention. Military action must not exacerbate the situation but must give priority to human security.

e. Reasonable Prospects

The probability of success of the military action must be transparent and fair. When the evaluation of the military action showed no chance of success, the operation will not be carried out.

f. Right Authority

This principal required a legal body in international law. The UN under the UN charter chapter VII appointed the UNSC as the legal authority to do military intervention in order to “restore international peace and security”. In addition, the ICISS report 2001 stated that the authority should be free from veto right of the Permanent Five members of the UNSC so that the military intervention can be free from any states' interest.

To sum up, the R2P concept, along with the responsibility to react element allows military intervention with a clear purpose and reasonable prospect as long as the UNSC as the authorizing body from the UN gives permission. Moreover, the element of responsibility to rebuild also needs to be considered after the approval of the military intervention.

2.2.2. The Implementation of the R2P around the World

The implementation of the R2P in the world is not always a success. Even though the R2P is constituted by the UN and expected to be obeyed by all its members, the reality may be different. Throughout this chapter, the author will account for the implementation of the R2P throughout three separate regions: Côte d'Ivoire, Libya and Syria in order to provide a more comprehensive understanding of the implementation of the R2P. First, the case in Côte d'Ivoire in the period 2010-2011. The issue in Côte d'Ivoire is the presidential election between Alassane Ouattara and President Laurent Gbagbo, in which Gbagbo rejected the election result and insisted on remaining in office. Both candidates declared themselves as the winner. Ouattara established his seat of government in the hotel du Golf in the Ivorian capital barricaded by Pro-Gbagbo forces.⁸⁶

Tension escalated after the election, as pro-Gbagbo forces started targeting the forces of Ouattara and immigrants from neighboring West African countries. Gbagbo called for the invaders to leave the country and tried to create "real" Ivorian propaganda.⁸⁷ Throughout December 2010, abduction, murder, sexual harassment and persecution by Gbagbo forces took place. Approximately 400 civilian deaths and 16,000 internally displaced persons (IDPs) have occurred as a result of the conflict. As Côte d'Ivoire was in crisis and fear, on 20 December 2010, the UNSC called for Resolution 1962 to be adopted immediately as a response to the Côte d'Ivoire problem. The United Nations Operation in Côte d'Ivoire (UNOCI) has therefore been set up to restore peace in Côte d'Ivoire. In the conflict, Gbagbo forces used heavy artillery and other heavy weapons.

The UNSC warned Côte d'Ivoire about the Pillar one of the R2P, but it appeared pointless. The dispute escalated, and the UN attempted at first to use a diplomatic approach until January 2011, when Secretary-General Ban

⁸⁶ Adam Nossiter, 'Ivory Leader's Rival Remains Under Blockad', New York Times, <http://www.nytimes.com/2011/01/06/world/africa/06ivory.html>. Accessed on 2 April 2020

⁸⁷ 'Côte d'Ivoire: Crimes Against Humanity by Gbagbo Forces', Human Right Watch, <https://perma.cc/6HA7-9YVP> Accessed on 2 April 2020

Ki-moon recommended a range of steps to ensure that UNOCI was willing to take action to protect civilians. Ban Ki-moon also reminded the UNSC of the possible genocide and gross abuse of human rights in the conflict. On March 2011, the African Union (A.U), the Economic Community of West African States (ECOWAS) and the EU condemned the Gbagbo Forces brutality against civilians and urged Gbagbo to recognize Ouattara as President. Around 255 civilian deaths and 28,000 displaced persons were reported in the same month.⁸⁸ The UN ran out of time and, on 30 March 2011, the UNSC called to adopt Resolution 1975 immediately and gave the mandate of UNOCI "all necessary means." On 2 April 2011, Ban Ki-moon permitted the UN and French military to act.

The UN military helicopter started targeting Gbagbo troops and putting an end to the Gbagbo military's heavy weapons. On 12 April 2011, after a long battle and several deaths, Gbagbo was eventually captured by the Outtara Forces and brought to court for crimes of murder, rape and gross human rights abuse, which he was extradited to The Hague a year later, to face a trial in the International Criminal Court (ICC).⁸⁹ After the arrest of Gbagbo, the UN peacekeeping chief, Alain Le Roy said that there approximately 1,000 men who were still loyal to him and the might be a small resistance. On the other side, prior to the trial, the supporter of Outtara celebrated the end of the nightmare by dancing and singing on the street.⁹⁰

To sum up, the implementation of the R2P in this matter could be considered as successful since the diplomatic approach had worked, but in the final act, the UN had to stabilize the situation by force without any permission from any political forces involved in the country.

Second, the situation in Libya in 2011 could be a topic to be examined for the introduction of the R2P. It started on 15 February 2011, when the

⁸⁸ Press Release, 'Top U.N. Official Tells Security Council Post-Electoral Crisis in Côte d'Ivoire Ended; Says 'I Remain Hopeful', as Country Moves towards Reconciliation, Reconstruction', 18, U.N. Press Release SC/10223

⁸⁹ 'Laurent Gbagbo: Ivory Coast ex-leader denies war crimes', BBC News, <https://www.bbc.com/news/world-africa-35424653> Accessed on 2 April 2020

⁹⁰ Nossiter Adam et al, , "Leader's Arrest in Ivory Coast Ends Standoff", The New York Times <https://www.nytimes.com/2011/04/12/world/africa/12ivory.html> accessed on 2 April 2020

unprecedented wave of demonstrations against Gaddafi's government suddenly shifted from a peaceful to a violent march. Gaddafi's regime has responded repressively to the protest. Gaddafi declared war on the opposition in March 2011, and there was a strong possibility that the demonstrators would be suppressed in Benghazi. The UN criticized Gaddafi's response to the demonstrators as the protester experienced a massive breach of human rights. On 22 February, the UN authorities announced that Libya was a clear example of a violation of R2P. In addition, the European Union, the League of Arab States (LAS), the Organization of Islamic Countries (OIC) and the Peace and Security Council of the African Union have also condemned the actions of the Gaddafi regime.. There were many convincing evidences of human right violations such as bombardments and murders of the opposition groups. Gaddafi ignored many diplomatic approaches of the UN and even the UNSC resolution S-15/1 that urged Libyan regime to "put an end to all human right violations".⁹¹

The UNSC passed the Resolution 1973, which said the use of all necessary measures to stop the violation in Libya. The UNSC also declared that the situation in Libya was a threat to international peace and security. The resolution passed with ten votes in favor and five abstentions by China, Brazil, Germany, Russia and India.⁹² By the end of the day, the UN permitted NATO armed forces to operate in Libya. On October 2011, Gaddafi's rule collapsed with the death of Moammar Gaddafi after intense clashes with the rebels under NATO security. The end of Gaddafi's regime meant that the dictatorship would no longer exist in Libya.

Third, the situation of Syria in 2011 that is still going on and shows no evidence that it will be resolved in the near future. President Bashar al-Asaad's regime has been condemned by a number of states, human rights organizations and other international organizations. In Syria, 15 children in

⁹¹ Situation of Human Rights in the Libyan Arab Jamahiriya, GA Res S-15/1, UN GAOR; 15th spec sesss, 2nd mtg, UN Doc A/HRC/RES/S-15/1(3 March 2011, adopted 25 February 2011) (Resolution S-15/1), adopted by the UN Security Council in Resolution 1970, UN Doc S/RES/1970.

Dara were jailed in March 2011 for expressing their thoughts in public by writing, "People want the regime to fall" on the wall. The government had little tolerance for the opposition. Afterwards, there was a protest in response to the regime's action, but the regime responded with brutality by an open fire with the order of President Asaad. Worse still, tanks were sent to cities and villages, while the media were restricted, preventing foreign journalists from investigating and reporting on Asaad's actions.⁹³

After the UN Human Rights Council investigated and released the first report on Syria's issue detailing about President Assad's crime against humanity on 23 November 2011, the UN High Commissioners of Human Rights (OHCHR), Navi Pillay briefed the UNSC that the UN had to take action.⁹⁴ Draft resolution of the UNSC on Syria on February 2012 actually proposed that al-Asaad had to step down and to stop the persecution. However, this draft resolution was blocked by Russia and China. The vote did not produce any real resolution since it was stopped by Russia and China. On the other side, former the UN Secretary General, Kofi Annan proposed a six-point plan to end the crisis;⁹⁵ The Syrian government must be cooperative with the UN by letting the UN Envoy to address the legitimate aspirations and concerns of the Syrian people.

1. The Syrian government must stop the fighting and violations. The UN will supervise the condition in Syria. Both Syrian government and the Envoy must cooperate to bring a sustained cessation of armed violence.
2. The Syrian government must ensure the humanitarian assistance from international communities to all areas that affected by the fighting.

⁹³ Marsh, Katherine. Et al, 'Syria's crackdown on protesters becomes dramatically more brutal', The Guardian, <https://www.theguardian.com/world/2011/apr/25/syria-crackdown-protesters-brutal> Accessed on 2 April 2020

⁹⁴ OHCHR Document A/HRC/S-17/2/Add.1, *Report of the independent international commission of inquiry on the Syrian Arab Republic*.

⁹⁵ 'Kofi Annan's six-point plan for Syria', Al-Jazeera, <https://www.aljazeera.com/news/middleeast/2012/03/2012327153111767387.html> Accessed on 2 April 2020

3. The Syrian government must release the people who detained with no apparent reason including the people who have been detained because of peaceful political activities.
4. The Syrian government must ensure the freedom for journalist to investigate the situation in Syria.
5. The Syrian government must respect for freedom of the association and the right to demonstrate peacefully as legally guaranteed.

This plan was endorsed by the UNSC and urged the Syrian government to obey it. However, these plans had no any effect to the Syrian government since it rejected any foreign influence. The UNSC, on April 14, 2012 passed the Resolution 2042 to deploy thirty unarmed military observers to monitor the ceasefire component of the Special Envoy's plan. The number of the military observers increased rapidly from 30 to 300 within a week. Moreover, the UN also established UN Stabilization Mission in Syria (UNSMIS) on July 2012. However, the UN's efforts had no impact on the regime.⁹⁶

During this time of conflict, there had been many talks, meetings, and condemnation from states and non-state bodies, notwithstanding, none was able to end the conflict. The Syrian Observatory for Human Right reported on March 2018 that approximately 511,000 lives were lost in this conflict.⁹⁷ The UNHCR also reported that over 13.5 million people in Syria were in need of humanitarian assistance. The R2P by the UN has failed to be implemented in Syria.

Examining these cases, it can be seen that the implementation of the R2P is not always successful. There are many factors that influence the success rate in the implementation of this policy. However, we can draw a conclusion that 'willingness' and 'power' hold the most important element. In

⁹⁶ Genser, J. (2018). *The United Nations Security Council's Implementation of the Responsibility to Protect : A review of Past Interventions and Recommendations of Improvement*. Chicago: Chicago Journal of International Law. Vol 18: No 2, Article 2.p 486

⁹⁷ 'Syria events of 2018' Human Right Watch, <https://www.hrw.org/world-report/2019/country-chapters/syria> accessed on 2 April 2020

the case of Côte d'Ivoire and Libya, it is clear that the UN use its power to use 'any means necessary' method to settle the conflict while these countries had no option but accept it. On the other hand, Syria case was the proof of the unwillingness from the country to accept the UN resolution to resolve the conflict. But, the conflict is still happening and seems to be not having a silver line when this issue will end.

2.3. The Rohingya Issue in Myanmar

The Rohingya issue has become an international concern since 2012 due to the massive atrocities, and many states have expressed their position by condemning it. Many articles, official statements and documents point to the inability of the Government of Myanmar to deal with this case. At the same time, many Rohingya survivors are already talking about what they have experienced. Many witnesses point out that the government of Myanmar is the one that oppressed its kind. However, it is quite complicated to understand, since the government of Myanmar has recognized Rohingya as an 'outsider' since 1982. On the other hand, the R2P since its establishment in 2005, the issue of Rohingya in Myanmar, which occurred in 2012, has yet to be resolved.

2.3.1 The Origin of Rohingya Issue

Rohingya is an ethnic minority group living in Arakan, Myanmar, for decades, long before Myanmar became an independent country. The Rohingya people, who primarily believe in Islam as their religion, have been excluded from the Union Citizenship Act since 1948, which allowed the Rohingya people to be marked as an alien on their ID card. Myanmar was systematically persecuted. After the coup in 1962, General Ne Win took over the government as the official leader. Until then, Myanmar has imposed a law that bans the Rohingya people from having equal rights to full citizenship. The army is solely in charge of the province of Arakan and Rakhine to supervise Rohingya people.

The policy led to the Rohingya being persecuted and forced them to go to Bangladesh. There were about 240,000 Rohingya people in Bangladesh between

1978 and 1979.⁹⁸ The situation worsened with a new law called the 1982 Citizenship Law, which was established by the Government of Myanmar.⁹⁹ The citizenship law acknowledged only 135 ethnicities living in Myanmar. Nevertheless, Rohingya was not part of the 135 recognized ethnic groups in Myanmar.¹⁰⁰ As a result, Rohingya lost their nationality and became stateless. People without nationality cannot have equivalent basic human needs, such as employment, food and medical services. The military junta, as the ruler of Myanmar, turned a blind eye to Rohingya and regarded them as Bengali belonging to Bangladesh.¹⁰¹

Being refugees without nationality, the people of Rohingya had no choice or power to protest against the policy. In fact, Myanmar was not a democratic republic, but it had been dominated by military officers for decades. In a country with a dictatorship, it became impossible to speak out against the government. Aung San Suu Kyi, for example, has been a home hostage for 21 years since 1989 after the government accused her of planning to take over military rule because she speaks against the government persistently. The death toll for Rohingya happened in 2012 when there was an incident which resulted in massive violence toward Rohingya people. It was the rape and murder case of a 27 years old Buddhist girl named Ma Thida Htwe on 28 May 2012 by three Rohingya men.¹⁰² Because there was a tension between Muslim and Buddhist in Myanmar that has existed for a long time, the situation changed rapidly from rape and murder case to ethnic and religious conflict. As a result, the locals who are majority Buddhist went enraged to Muslim Rohingya. At the same day, ten Rohingya people were beaten to death.¹⁰³

⁹⁸ Mohshin Habib, C. J. (2018). *Forced Migration of Rohingya : The Untold Experience*. Canada: Ontario International Development Agency p 04

⁹⁹ Ibid 1

¹⁰⁰ Ibid 2

¹⁰¹ 'Myanmar: Aung San Suu Kyi defends policies towards Rohingya', Aljazeera, <https://www.aljazeera.com/news/2018/08/myanmar-aung-san-suu-kyi-defends-policies-rohingya-180822060114385.html> Accessed on 3 April 2020

¹⁰² 'Myanmar Conflict Alert: Preventing communal bloodshed and building better relations', International Crisis Group, <https://www.refworld.org/docid/4fd85cdd2.html> accessed on 3 April 2020

¹⁰³ Ibid

The problem led to persecution on Rohingya people in Rakhine State and Arakan district. Nearly 200 Rohingyas were killed by the locals and Buddhists, while 1,400 more had to run to Bangladesh in horror.¹⁰⁴ On July 2013, Time Magazine released a cover story under the title of “The Face of Buddhist Terror”. The story was about a monk named Ashin Wirathu spreading hatred to Muslim.¹⁰⁵ He was the one who spread the propaganda to Buddhists in Myanmar aiming to dispel the Muslims, including the Rohingya. However, he stated that the propaganda was only to protect the people of Myanmar.¹⁰⁶ In his words he said;” I am preaching this as the means of protecting our people, religion, culture and country for national security.”¹⁰⁷

Ever since the tragedy in 2012, Myanmar closed all access for international media to prevent them from investigating and reporting what happened in Rakhine State and Arakan. Even worse, there was no access for international aids as well, while the Rohingyas lived in hunger and sickness. Another crackdown occurred in 2016 after Arakan Rohingya Salvation Army (ARSA) from Rakhine State attacked several border police posts in Rakhine State and killed nine police. As a result of this attack, the Myanmar military began to attack villages in the northern Rakhine States which led to the arrest of 230 and hundreds of Rohingyas deaths.¹⁰⁸ Not only were those, according to the OHCHR, there also gang-rape, burned houses and mass killing done by the military.¹⁰⁹ Not only were those, according to the Office of the OHCHR, there also gang-rape, burned houses and mass killing done by the military.¹¹⁰ On the

¹⁰⁴ ‘Atrocities Prevention Report 2016’, The US Department of State, , <https://2009-2017.state.gov/j/drl/rls/254807.htm> Accessed on 3 April 2020

¹⁰⁵ “Full Text Of The Banned Time Story – “The Face Of Buddhist Terror”, Colombo Telegraph,, <https://www.colombotelegraph.com/index.php/full-text-of-the-banned-time-story-the-face-of-buddhist-terror/> Accessed on 3 April 2020

¹⁰⁶ ‘It only takes on terrorist : the Buddhist monk who reviles Myanmar’s Muslims’, The Guardian, <https://www.theguardian.com/global-development/2017/may/12/only-takes-one-terrorist-buddhist-monk-reviles-myanmar-muslims-rohingya-refugees-ashin-wirathu> Accessed on 3 April 2020

¹⁰⁷ Ibid

¹⁰⁸ Griffith James, ‘Is The Lady listening? Aung San Suu Kyi accused of ignoring Myanmar’s Muslims’, CNN, <https://edition.cnn.com/2016/11/17/asia/myanmar-rohingya-aung-san-suu-kyi/> Accessed on 3 April 2020

¹⁰⁹ ‘Hundreds of Rohingyas’ killed in Myanmar crackdown’, Al Jazeera, <https://www.aljazeera.com/news/2017/02/rohingyas-killed-myanmar-crackdown-170203101817841.html> accessed on 3 April 2020

¹¹⁰ ‘Hundreds of Rohingyas’ killed in Myanmar crackdown’, Al Jazeera, <https://www.aljazeera.com/news/2017/02/rohingyas-killed-myanmar-crackdown-170203101817841.html> accessed on 3 April 2020

other side, Myanmar military denied the OHCHR's accusation. Instead, the Myanmar military said that;

"Out of 18 accusations included in the [UN human rights body] OHCHR report, 12 were found to be incorrect, with [the] remaining six accusations found to be false and fabricated accusations based on lies and invented statements".¹¹¹

Following the crackdown in Rakhine State and Arakan, the *de facto* leader of Myanmar, Aung San Suu Kyi said that Myanmar did not need the UN' fact-finding mission.¹¹² Since 2012, Myanmar had not opened the access for media and investigator to perform investigation, leaving the world to wonder why Myanmar has been keeping a secret from the world about what they did to the Rohingyas.

In 2018, clash occurred again, according to report from Ontario International Development Agency, there were approximately more than 23,000 Rohingyas were killed; 17,000 women experienced gang rapes and sexual violence and, more than 34,000 people were thrown into fire with no further explanation whether they died or survived.¹¹³ The Rohingya people experienced the humanitarian crisis not only in Myanmar. Many survivors in the refugee camps reportedly have a trauma since most of them saw and experienced brutal attacks. For instance, Hasina Begum, a 21-years-old woman had to witness her 4 month baby thrown into fire, while her sister and mother were raped and killed.¹¹⁴ In the Cox's Bazar district refugee camp in Bangladesh, many Rohingyas struggled from illness and hunger while Bangladesh also struggled with its economy. Since 2012, Rohingyas had to flee from their home. According to BBC, there were about 947,000 Rohingyas in Bangladesh; 350,000 in Pakistan; 40,000 in India; 500,000 in Saudi Arabia, 5000 in Thailand; 139,200¹¹⁵ in Malaysia and 11,941 in Indonesia.¹¹⁶

¹¹¹ 'Myanmar army rejects UN Rohingya abuse claims', BBC News, <https://www.bbc.com/news/world-asia-40011437> Accessed on 3 April 2020

¹¹² Ibid

¹¹³ Mohshin Habib, C. J. (2018). *Forced Migration of Rohingya : The Untold Experience*. Canada: Ontario International Development Agency p 70.

¹¹⁴ Ibid p 73.

¹¹⁵ UNHCR Malaysia report, https://web.archive.org/web/20141230060328/http://www.unhcr.org.my/About_Us-%40-Figures_At_A_Glance.aspx accessed on 3 April 2020

The oppressions towards Rohingya and the systematic ethnic cleansing in Myanmar were condemned from many countries in the world. The European Union, in 2016, called the Rohingya as “one of the world’s most persecuted minorities” and urged Myanmar to stop the persecution towards Rohingya.¹¹⁷ The UN Secretary General, Antonio Guterres in August 2017 had strongly condemned the attacks by the Myanmar security against Rohingya in Rakhine State.¹¹⁸ He also appointed Nicholas Koumjian, an experienced prosecutor, to investigate serious crimes in the Rohingya issue.¹¹⁹

The President of Turkey, Recep Tayip Erdogan said that the international community has failed to resolve Rohingya crisis. He also expressed his disappointment towards the UNSC since it did not take immediate action to stop the killings.¹²⁰ Just like Erdogan, the President of France, Emmanuel Macron asked Myanmar’s military campaign to stop its violence, and described that the action Myanmar had taken was an ethnic cleansing.¹²¹

The United Kingdom, on 13th of September 2017, had asked the UNSC to immediately discuss the Rohingya issue in Myanmar. British Foreign Secretary, Boris Johnson gave his statement;¹²²

“Aung Sang Suu Kyi is rightly regarded as one of the most inspiring figures of our age but the treatment of the

¹¹⁶ ‘Jumlah Pengungsi Rohingya di Indonesia Capai 11.941 Orang’, Aceh Tribun News,, <https://aceh.tribunnews.com/2015/05/19/jumlah-pengungsi-rohingya-di-indonesia-capai-11941-orang> accessed on 3 April 2020

¹¹⁷ ‘EU parliament condemns Myanmar persecution of Rohingya’, Al Jazeera, <https://www.aljazeera.com/news/2016/07/eu-parliament-condemns-myanmar-persecution-rohingya-160707171133855.html> Accessed on 3 April 2020

¹¹⁸ ‘Top UN officials strongly condemn attacks on Myanmar security forces in Rakhine state’, The UN News, <https://news.un.org/en/story/2017/08/563872-top-un-officials-strongly-condemn-attacks-myanmar-security-forces-rakhine-state> Accessed on 3 April 2020

¹¹⁹ ‘U.N. Condemns Violence in Western Myanmar’, New York Times , <https://www.nytimes.com/2019/04/05/world/asia/un-myanmar-rakhine.html> Accessed on 3 April 2020

¹²⁰ ‘World leaders condemn Myanmar’s violence against Rohingya Muslims’, Daily Sabah, <https://www.dailysabah.com/asia/2017/09/19/world-leaders-condemn-myanmars-violence-against-rohingya-muslims> Accessed on 3 April 2020

¹²¹ *ibid*

¹²² ‘Foreign Secretary calls for an end to violence in Rakhine’, Gov.UK, <https://www.gov.uk/government/news/foreign-secretary-calls-on-an-end-to-violence-in-rakhine> Accessed on 3 April 2020

Rohingya is alas besmirching the reputation of Burma. She faces huge challenges in modernizing her country. I hope she can now use all her remarkable qualities to unite her country, to stop the violence and to end the prejudice that afflicts both Muslims and other communities in Rakhine. It is vital that she receives the support of the Burmese military, and that her attempts at peacemaking are not frustrated. She and all in Burma will have our full support in this".

Furthermore, the UK also provided £8 million to help Rohingya refugees in Bangladesh. The silence of Aung San Suu Kyi was questioned by many leaders in the world. In 2017, Aung San Suu Kyi, the Nobel Prize winner for Peace, told the BBC that no ethnic cleansing in Myanmar had happened. In her words, she said that “I don't think there is ethnic cleansing going on. I think ethnic cleansing is too strong an expression to use for what is happening”.¹²³

Zeid Bin Ra'ad, a former Jordanian diplomat who served as United Nations Commissioner for Human Right in 2014 – 2018, said that the Nobel Prize of Aung San Suu Kyi should be reconsidered since, as *de facto* leader of Myanmar, she did not do anything regarding the issue. Moreover, Amnesty International, in 2018, also criticized Suu Kyi for her failure regarding the issue. It said that Suu Kyi had no intention to take care of Rohingya at all.¹²⁴

Indeed, it seems that UN committed to ensure the human security for the victim in Myanmar by sending humanitarian aid such as foods and medicines. However, this was quite a challenge since Myanmar had blocked all access from the UN aid agencies to Rakhine State. The UN World Food Programme, which already gathered aids for Rohingya, had to suspend its action. This blockade made thousands of Rohingyas to live in fear and

¹²³ ‘Rohingya crisis: Myanmar leader Suu Kyi ‘should have resigned’, BBC News, <https://www.bbc.com/news/world-asia-45351000> Accessed on 4 April 2020

¹²⁴ ‘From peace icon to pariah: Aung San Suu Kyi's fall from grace’, The Guardian, <https://www.theguardian.com/world/2018/nov/23/aung-san-suu-kyi-fall-from-grace-myanmar> Accessed on 4 April 2020

uncertainty.¹²⁵ On the other side, the Rohingyas had to leave Myanmar by boat and feet to Bangladesh because it is the closest neighboring country, and also to others countries such as Thailand, Malaysia and Indonesia.

In 2015, Thailand did an awful action by enacting their “push back policy” by the Navy in Thailand’s coastal territory. Thailand rejected the refugees due to national security and put the Rohingyas who had crossed the ocean by boat in desperate situation seeking for asylum.¹²⁶ Meanwhile in 2017, Malaysia sent 2,200-tonne aid by ship for Rohingya in Myanmar, but it was rejected by Myanmar government. The Prime Minister of Malaysia at that time, Najib Razak also condemned Myanmar for its failure to protect Rohingya people in Myanmar.¹²⁷

2.3.2 The Debate of the R2P Implementation in Rohingya Issue

The R2P as a new norm constituted by the UN in 2005 may poses a hope to solve many disputes and conflicts in order to save human life. However, the implementation, as mentioned earlier is not always successful. In the same context, the implementation for Rohingya issue is still debatable whether it could be done or not. Firstly, the R2P is a norm that has power because the UN constituted it. Norms, for Finnemore and Sikkink (1998) is a single rule that control behavior.¹²⁸ There are two types of norm, local and international norm. In this context, the R2P becomes an international norm that can have influence for member-states behavior. This theory of norm also aligned with new institutionalism theory that the value of the organization makes countries willingly to merge into the organization.¹²⁹ So long as the

¹²⁵ ‘Myanmar blocks all UN aid to civilians at heart of Rohingya crisis’, The Guardian,, <https://www.theguardian.com/world/2017/sep/04/myanmar-blocks-all-un-aid-to-civilians-at-heart-of-rohingya-crisis> Accessed on 4 April 2020

¹²⁶ ‘Thailand Needs to Stop Inhumane Navy ‘Push-Backs’’, Hurriyet Daily News ,<https://www.hrw.org/news/2017/09/22/thailand-needs-stop-inhumane-navy-push-backs> Accessed on 4 April 2020

¹²⁷ ‘Malaysian PM sends aid for Muslim Rohingyas in Myanmar’, Reuters, <https://www.reuters.com/article/us-myanmar-rohingya-malaysia/malaysian-pm-sends-aid-for-muslim-rohingyas-in-myanmar-idUSKBN15I14D> Accessed on 4 April 2020

¹²⁸ Sikkink, F. a. (1998). *Norm Dynamic and Political Change*. Massachusetts : Intenational Foundation and Massachusets Institute of Technology, p 893.

¹²⁹ Hall, P. A., & Taylor, R. C. R. (1996). *Political Science and the Three New Institutionalisms*. Political Studies Association, p 938

UN considers that preserving stability as an international practice is concerned, the actions of the Member-states cannot be influenced. Moreover, the first pillar of the R2P explicitly notes that every state must protect its citizens from four kinds of atrocities. Throughout this sense, each member state has a responsibility to prevent any human suffering due to atrocities, throughout particular significant human losses. Myanmar, however, continues to oppress the Rohingya people.

The two latter pillar of the R2P actually allows international community to do assistance and collective action if necessary to settle the situation. Interestingly, these actions could be regarded as a violation of the sovereignty of the state principle. Whereas no external factor can interfere with the domestic conflict. The case of Syria can be an example on how a state can refuse any intervention to resolve the conflict. As a result, the conflict still continues to happen. The practice of the R2P may possess humanitarian intervention which contains military intervention just like the case of Côte d'Ivoire. In this matter, Myanmar has right to feel threatened by the military intervention.

This could be linked by the UN Charter Article 2(4) that prohibits the use of military force to other country. On the other hand, peace as international norm should be kept by the highest authority that allows military force with reason 'threat to the peace'. The Article 39 of the UN states that;

“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”¹³⁰

¹³⁰ Chapter VII — Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression Article 39, Charter of the United Nations, <http://legal.un.org/repertory/art39.shtml> Accessed on 5 April 2020

According to this Article, the UNSC has a right to determine which action is considered as threat of peace and take action to restore international peace. The existence of atrocities in the Rohingya issue are indeed obvious since there are number of people had to flee from their homes in order to save their life. In short, if peace becomes norm needs to be protected, the UN has not only rights but also obligation to maintain peace. In this context, we can examine two cases. First, the case of Libya where the UNSC passes Resolution 1973 to stop the violation in Libya by “any means necessary” even if they involved the use of force (military).¹³¹ And second, the Syria case where the UNSC passes the Resolution 2042 to observe human right violation in the country.

The UNSC actually can do such things for Rohingya issue. However, it is stumbled in two problems; sovereignty principle of the state and the willingness of the UNSC. In every states, national security is important to protect their country from external threat and potential colonization. National security for Berkowitz and Bock (1965) is an ability of a country to protect it from external threat.¹³² This argument also agreed by Cohen and Tuttle (1972) which describe national security as the right of a country to protect its policies from external or internal threats.¹³³ Both definitions applied in the case of Myanmar with its determination to refuse any observation and intervention from the UN and other states.

Furthermore, since the UNSC needs all permanent members’ approval to constitute a resolution just like Libya and Syria cases. It is quite problematic since China and Russia as permanent member of the UNSC in 2017 have blocked the UNSC proposal to urge the government of Myanmar to stop persecution and more likely keep refusing any proposal for Rohingya

¹³¹ The United Nations Security Council 1973 Resolution(2011), S/RES/1973, <https://www.un.org/securitycouncil/s/res/1973-%282011%29> accessed on 4 April 2020

¹³² Berkowitz, et al. (1965), eds. American National Security New York Free Press, p x.

¹³³ Tuttle, C. I. (1972). National Security Affairs; A syllabus. New Jersey: The National Strategy Information Center, Seton Hall University.p 1..

issue.¹³⁴ Examining the R2P, the implementation is possible if it has meet three conditions. First, there is a crime against humanity which in Pillar One of the R2P clearly addressed that every state has the responsibility to protect its population from genocide, crimes against humanity, war crimes and ethnic cleansing.in Rohingya issue, there are many evidences that support the activity of ethnic cleansing against Rohingya people. Even the UN has already called that the issue is a textbook of ethnic cleansing.

Secondly, Pillar Three of the R2P allows international community to take collective actions to settle the conflict. From giving humanitarian assistance until bringing this case to the UNSC have been done. However, the conflict is still cannot be resolved. Thirdly, all members of the UNSC agree to pass the resolution for Rohingya case. However, China and Russia in this matter seems to have different opinion. In the UN Draft Resolution, in 2017, for Rohingya, both countries voted against it. Although one of the six principles for military intervention, Right Authority principles, clearly mentioned that the authority (the UNSC) shall free from veto, China and Russia were and will more likely to continue to using veto power against it.

In conclusion, the implementation of the R2P faces two major problems. The sovereignty and non-intervention principle that give Myanmar a right to deal with its domestic problem without any external intervention, and the unwillingness of the UNSC members (Russia and China) to pass the resolution against Myanmar.

¹³⁴ France Agence, 'China and Russia oppose UN resolution on Rohingya', The Guardian <https://www.theguardian.com/world/2017/dec/24/china-russia-oppose-un-resolution-myanmar-rohingya-muslims>
Accessed on 4 April 2020

CHAPTER III

THE ASEAN WAY AND POLAR POWER IN THE ASEAN

The ASEAN Way is an ASEAN policy-making political mechanism that, according to the organization, has been running well in promoting mutual respect and cooperation between member-states. Therefore, as part of regionalism's work on this organization, it is crucial to address the ASEAN Way in this chapter. On the other hand, it cannot be ignored that state power in the organization is often relevant in the decision and policy-making process. This chapter will address the power of the member-states in the ASEAN along with the influence and the organization's political development to provide detailed material to explore the possibility of implementing R2P in the organization.

3.1. Overview of the ASEAN

The ASEAN is a regional organization established on August 8, 1967 through the Bangkok Declaration. This declaration was signed by five countries; Indonesia, Malaysia, the Philippines, Thailand, and Brunei Darussalam, which were later, referred to as the ASEAN's founding fathers. The formation of a regional organization in the Southeast Asian region was driven by the post-Cold War situation in which two polar powers, the U.S and Soviet Union, were in the phase of power struggle. These two forces were then called the Western Bloc and the Eastern Bloc. As defined by Borzel (2016) that regionalism can be formed due to geopolitical interests and economic concerns, one of the ASEAN's goals was to accelerate economic growth and cultural development in the region.

Furthermore, security issues were also the reason for the ASEAN establishment. Before the ASEAN, there was a regional organization called the Association of Southeast Asia (ASA) in 1961. However, this organization was not effective in uniting Southeast Asian countries. Since its establishment, ASEAN has grown with 10 members and an ASEAN secretariat located in Jakarta since 1976. This secretariat office functions to coordinate the ASEAN organs.

This regional organization appears to be concern about security issue in the region. Therefore, two agencies were formed; ASEANAPOL and ASEAN Intergovernmental Commission of Human Right (AICHR). However, the progress for these bodies remains low. For instance, one of the functions of ASEANAPOL as stated in its website is to facilitate cross-border cooperation in intelligence and information sharing, but in the case of Rohingya in Myanmar, there is no information on who is the responsible person that can be charged. It is clear that many people have lost their life in brutal ways, but the evidences are not shared with other members in this agency. From a realist perspective, a country's information is confidential and crucial. Therefore, sharing information can be a threat since it can be used for other purposes. In addition, AICHR, which was founded in 2009 and focuses on the humanitarian issues, has not been able to solve the humanitarian problems in the region. For example, the Rohingya issue in 2012.

The ASEAN believes in constructive engagement and this can be seen from the words “promote” and “respect” that are used repeatedly in the ASEAN charter. It is different with the EU which has a Court of Justice to ensure that EU laws can be applied to all members. In other words, this organization seems hesitant to implement a single policy for all of its members. According to David B. H. Deenon and Evelyn Colbert (1998), ASEAN tends to be an organization that avoids conflicts rather than seeking solution to resolve them.¹³⁵ There are many crucial events that support this opinion. For example, the border dispute between Cambodia and Thailand that occurred between 2008-2013 which was resolved through legal actions facilitated by the UN, while the ASEAN as regional organization did not contribute to resolve this issue.¹³⁶

Another example is the dispute between the Philippines and Malaysia over Sabah. The ASEAN could not take any action on this issue and left it to bilateral

¹³⁵ Denoon, D. B. H., & Colbert, E. (1998). *Challenges for the Association of Southeast Asian Nations (ASEAN)*. Pacific Affairs, p 506

¹³⁶ Hunt L (2017), *Is ASEAN Really Worthy of a Nobel Peace Prize?*, <https://thediplomat.com/2017/02/is-asean-really-worthy-of-a-nobel-peace-prize/> accessed on 10 April 2020

diplomatic process.¹³⁷ From both cases, it can be ascertained that the effectiveness of conflict resolution in the organization is worth questioning.

In the decision-making process, the ASEAN has a consensus mechanism in which every state shares the same power. In other words, if a member disagrees on a policy, the draft of the policy will likely fail to be implemented because the ASEAN will avoid disagreement that can risk the comfort level in the organization.¹³⁸ Therefore, it is quite challenging to put the same vision in the ASEAN since the members themselves have various backgrounds and interests. Unlike the UN, whose organization has veto rights and a voting system, the ASEAN draft policy often faces obstacles due to the interests of the members. In the case of a deadlock, the members tend to choose bilateral negotiations through dialogue and consultation.¹³⁹ This system was inspired by traditional Malay practice of *mushawarah*(consultation) and *mufakat*(consensus) which have also been practiced in Islam for long time. But on the other side, this system creates a consensus dilemma because one policy needs to get approval for all members.¹⁴⁰

Within the organization, related to security issues, the ASEAN has two important meetings. The first is ARF, which was established in 1994 and has 21 countries listed as participants, including India, Japan, and New Zealand.¹⁴¹ Because the ASEAN strongly believes in the diplomatic method, the external participants (non-member of the organization) are important because they are expected to be able to suggest any schemes related to security and political issues. ARF uses the Treaty of Amity and Cooperation (TAC), which was signed in 1976, as a code of conduct. The treaty highlights the mutual respect, non-interference principal, and dispute settlement by peaceful means.¹⁴² The treaty has brought a concept named Zone of Peace Freedom and Neutrality (ZOPFAN) in order to protect the organization from

¹³⁷ Denoon, D. B. H., & Colbert, E. (1998). *Challenges for the Association of Southeast Asian Nations (ASEAN)*. Pacific Affairs, p 506

¹³⁸ Feraru S. A. (2015), *ASEAN Decision-Making Process : Before and After the ASEAN Charter*, Asian Development Policy, p 29

¹³⁹ *ibid*

¹⁴⁰ Hiep H. L (2016), *Can ASEAN Overcome the 'Consensus Dilemma' over the South China Sea?* Yusof Ishak Institute, p 3

¹⁴¹ Narine, S. (1997). ASEAN and the ARF: The Limits of the "ASEAN Way". Asian Survey, p 961

¹⁴² The ASEAN Website, <https://asean.org/treaty-amity-cooperation-southeast-asia-indonesia-24-february-1976/> accessed on 10 April 2020

external threats and influence. ARF is a remarkable move from ASEAN which realizes that external relations are somehow important as consulting agencies to resolve a dispute. The second is the ASEAN Foreign Ministerial Meeting (AMM), which is held at least three times a year. The goal of this meeting is to discuss cooperation in the field of political security and external relations.

In addition, the ASEAN external relations and cooperation are not only conducted in the ARF mechanism. There are several frameworks that ASEAN uses to engage with external parties. The ASEAN Plus Three (APT) dialogue partnership was initiated in 1997 during the 2nd ASEAN Informal Summit which two years later became a Joint Statement of East Asia Cooperation signed by the heads of ASEAN member-states, China, Japan, and South Korea.¹⁴³ Although the APT focuses more on the economic sector, at the 19th APT Summit held in September 2016, the focus widened to the political-security sector. It emphasizes the APT framework for counter-terrorism. This framework is proven by the establishment of the APT Ministerial Meeting on Transnational Crime Consultation.

Another framework for external cooperation in the ASEAN can be seen with the formation of the ASEAN Dialogue Partnership and Sectoral Dialogue & Development Partnership. The Dialogue Partnership began in 1972 with the UNDP and expanded to 11 external parties including China and Russia.

¹⁴³ The ASEAN website, https://asean.org/?static_post=joint-statement-on-east-asia-cooperation-28-november-1999#:~:text=In%20this%20context%2C%20they%20underscored%20their%20commitment%20to%20build%20upon,Economic%20and%20Social%20Fields accessed on 10 April 2020

Tabel 1. The ASEAN Dialogue Partners

Partner	Year of Joining Dialogue Partnership
UNDP	1972
Japan	1973
Australia	1974
New Zealand	1974
EU	1975
Canada	1977
United States	1977
South Korea	1991
India	1996
Russia	1997

The dialogue partnership focuses on economic and political relations. This framework mechanism is carried out through consultations at ministerial meetings such as the ASEAN Defense Minister Meeting Plus and ASEAN Minister Plus Three. Furthermore, the ASEAN Sectoral Dialogue & Development Partnership consists of 5 external parties, notably Pakistan, Norway, Switzerland, Germany and Turkey. This framework carries out the assistance function in developing the economic sector in the region.¹⁴⁴

3.2. The ASEAN Way

In many regional organizations, differences in cultural, economic and political interests will always be an obstacle. However, stability and peace among the members will always be a status quo that needs to be a priority. With the distrust among the members, ASEAN has developed a diplomatic style to face instability and insecurity in the organization called as 'the ASEAN Way'. Katsumata (2003) defines

¹⁴⁴ Merced, L D. <http://www.fsi.gov.ph/partners-for-change-understanding-the-external-relations-of-asean/> accessed on 15 April 2020

the ASEAN Way as diplomatic norms shared by the members of the organization.¹⁴⁵ These norms are brought to a mechanism where soft diplomacy would be first on the list of actions to settle a dispute. However, there has been a debate on this mechanism due to the effectiveness and efficiency of the organization in solving a problem. This is considering that in many cases such as Rohingya and South China Sea dispute, the organization takes a long time to conclude a solution and appears to avoid confrontation among its members.

In order to understand how the ASEAN Way works, it is important to examine the work of Archaya (1998) and Katsumata (2003) which promote the basic elements of this organization's mechanism and principles of the ASEAN Way. Both scholars agree that in the ASEAN Way, there are 4 principles that need to be acknowledged. First, the principle of non-intervention. This principle is contained in the ASEAN Charter, Article 2(a); "respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN member-states" and article 2(e); non-interference in the internal affairs of ASEAN member-states.¹⁴⁶ These articles show that all member-states should let a country deal with its internal problem itself. Thus, ASEAN as a regional organization holds no power to impose a sanction over internal problems of its member-states. Malaysian Foreign Minister Musa Hitam in 1985 said that peace in the organization had been maintained since there were fundamental ground rules such as the non-interference principle.¹⁴⁷ Moreover, intervention is a subject that has been discussed in international relations for decades.

Because intervention is an act of intervening or even using force in the territory of another country, this course violates the sovereignty of a country. In fact, Article 2(4) of the 1945 UN Charter has stated that UN Member-States shall refrain from using force against the territory of other states. Moreover, intervention will always pose a threat to national security which Berkowitz and Bock (1965) interpret as protecting values from external threats.¹⁴⁸ ¹⁴⁹ However, since globalization affects

¹⁴⁵ Kastumata H., (2003), *Contemporary Southeast Asia Vol 25*, ISEAS-Yusof Ishak Institute, p 104

¹⁴⁶ The ASEAN Charter, <https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf>, p 6. Accessed on 15 April 2020

¹⁴⁷ Archaya A. (1998), Culture, security, multilateralism : The 'ASEAN way' and regional order, *Contemporary Security Policy*, p 57

¹⁴⁸ Bock, M. B. (1965). *American National Security*. New York: New York Press. p x.

¹⁴⁹ Bock, M. B. (1965). *American National Security*. New York: New York Press. p x.

international politics, some cases such as terrorism, human trafficking, mass killings, and drug trafficking sometimes can not be solved locally. The problem with the ASEAN's non-interference principle is that when a member faces issues like atrocities that inflict many victims, the regional organization can not take any action because it would violate a country's sovereignty.

The Second element of the ASEAN Way is quite diplomacy and informality. Quiet diplomacy has a comfort level as the status quo. The ASEAN would avoid any tensions between its members. In line with the non-interference principle, any intervention would cause tension and offend other members. Therefore, in the quiet diplomacy that the ASEAN adopts, it is prohibited to openly criticize other members.¹⁵⁰ Katsumata (2003) in his journal also mentions that the 'comfort level' is an important condition for the ASEAN diplomacy. Moreover, informality in the organization is sometimes more important than formal dialogue.

This informality is supported by the statement of Carlos Romulo, the former Minister of Foreign Affairs of the Philippines; "We often find that private talks over breakfast prove more important than formal meetings."¹⁵¹ As the main instrument of foreign policy, diplomacy in the ASEAN shares broader goals and strategies for a particular issue. In the organization, interactions must be based on mutual understanding and respect. Therefore, in most cases, the ASEAN seeks a win-win solution and tries to not create a disagreement. Informality, or in diplomatic practice, lobbying, often occurs in informal talks. Such a constructivist approach is an essential element of quiet diplomacy. Publicly criticizing other members will create disintegration and raise distrust among members.

The informality in the ASEAN could be attributed to the culture of Southeast Asian countries carried over through the centuries. Norms, in this context, are very important to define how communication works internally in the ASEAN. In many Southeast Asian cultures, it is not polite to criticize or confront publicly. Such a norm has been nurtured in their political style. This manner of politics could be considered

¹⁵⁰ Haacke J. (1999): *The concept of flexible engagement and the practice of enhanced interaction: Intramural challenges to the 'ASEAN way'*, The Pacific Review, p 584

¹⁵¹ Archaya A. (1998), *Culture, security, multilateralism : The 'ASEAN way' and regional order*, Contemporary Security Policy, p 58

as the personality of the ASEAN way.¹⁵² However, it does not mean that formal institutions are useless. Meetings such as ARF and the ASEAN regional meetings are still important to discuss common issues that have the potential to produce the same understanding in a resolution. Archaya believes that the informal talks before and during a meeting will impact the resolutions that are brought to the formal meeting.

The third element of the ASEAN Way is the non-use of force principle. Since the organization must act based on mutual respect and understanding, all state members should not use any force to influence a state's policy. This principle is supported by the ASEAN Charter and the UN Charter.

Article 2(k) of the ASEAN Charter, reads as follows:

*Abstention from participation in any policy or activity, including the use of its territory, pursued by any ASEAN member state or non-ASEAN state or any non-state, which threatens the sovereignty, territorial integrity or political and economic stability of ASEAN member-states.*¹⁵³

Article 2(4) of the 1945 UN Charter reads as follows:

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 any other manner inconsistent with the purposes of the United Nations.

Many realists believe that a country's sovereignty and territory are fundamental elements that need to be protected. Based on these factors, ASEAN will not use any military or political force to change policies within a state member. In other words, the organization negates any actions that would jeopardize a state's sovereignty.¹⁵⁴

¹⁵² Goh G. (2003), *The 'ASEAN Way' Non-Intervention and ASEAN's Role in Conflict Management*, Stanford Journal of East Asian Affairs, pp 114-115

¹⁵³ ASEAN Charter, p. 7, <https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf> accessed on 20 April 2020

¹⁵⁴ Amer, R. (2012). *Non-use of Force, Non-interference and Security: The Case of Pacific Asia*. In R. Amer, A. Swain, & J. Öjendal (Eds.), *The Security-Development Nexus: Peace, Conflict and Development*. Anthem Press, p 91

The fourth key point in the ASEAN Way is the principle of decision-making through consensus.¹⁵⁵ This consensus holds the second most crucial aspect of understanding how the mechanism works. Unlike the UN and the EU, which have a voting mechanism, there is no voting for the resolution in consensus. Decisions will be based on two important processes.. First, ‘consultations’ (*musyawarah*), or in other words, a discussion. In this process, all member-states will sit together and negotiate certain issues. The former Indonesian Foreign Minister Subianto said that in the consultation, all member-states would be seen as friends rather than opponents. The second process is ‘consensus’ (*mufakat*), or in other words, decision making. After consultation carried out, a consensus decision will be based on the comfort level. Thus, it can be said that the decision must be accepted by all member-states.¹⁵⁶ If a member does not agree to a resolution or decision on a particular issue, then the resolution will not be constituted by the ASEAN. In other words, the consensus is an amalgamation of the most acceptable views of each member.¹⁵⁷

3.2.1 The Debate on the ASEAN Way

The ASEAN Way as ASEAN’s unique method of resolving disputes may seem so promising. It is a fact that since the establishment, the organization has never experienced armed conflict and war among its members, even though there have been bilateral conflicts in several occasions.¹⁵⁸ However, some scholars have different opinions about the effectiveness of the ASEAN Way. Katsumata (2003) argues that this mechanism is an unwillingness to resolve a dispute.¹⁵⁹ Katsumata’s argument can be understood by examining how the ASEAN Way works. First, it is important to note that ‘comfort level’ in the organization is highly considered. Thus, any confrontations are avoided by the organization. In line with this

¹⁵⁵ Kastumata H., (2003), *Contemporary Southeast Asia Vol 25*, ISEAS-Yusof Ishak Institute, p 107

¹⁵⁶ Archaya A. (1998), *Culture, security, multilateralism : The 'ASEAN way' and regional order*, *Contemporary Security Policy*, pp 60-63.

¹⁵⁷ Ibid1

¹⁵⁸ Nischalke, T. (2000), *Insights from ASEAN's Foreign Policy Co-operation: The "ASEAN Way", a Real Spirit or a Phantom?*, *Contemporary Southeast Asia*, ISEAS - Yusof Ishak Institute p 89

¹⁵⁹ Kastumata H., (2003), *Contemporary Southeast Asia Vol 25*, ISEAS-Yusof Ishak Institute, p 104-121.

argument, Kei Koga (2010) states that cooperation becomes a critical element to make a decision.

Second, the principle of non-interference has become an obstacle in resolving the Rohingya issue since every member state must respect Myanmar's authority in dealing with its domestic problems. Third, in the ASEAN Way, consensus is the most important aspect to pay attention to. In the ASEAN consensus, ten member-states hold the same power which if one idea is not approved by one country, it will fail to be implemented. Therefore, any resolution offered by the member-states regarding the Rohingya issue will fail because the comfort level will be threatened, in this context, the sovereignty of Myanmar.

The opinion of Katsumata (2003) is supported by the way organizations work. In the ASEAN, shared-interest becomes the status quo that must be maintained.¹⁶⁰ In other words, it is more important to maintain regional stability. Issues like the Rohingya are quite complex, and even though Malaysia has criticized Myanmar, the organization will not constitute a condemnation towards the issue.¹⁶¹ This happened because the organization was seeking better and more peaceful ways to convince Myanmar to stop the killings without offending the country as an ASEAN member state. This is contradicts the new institutionalism theory, which highlights the role of an organization that possesses higher power over its member-states. The ASEAN Way, with its shared-interest, makes all members have equal voting rights. Unlike the UN which can make resolutions with the majority votes, ASEAN needs the approval of all member-states to be able to make a resolution or policy.

The ASEAN Way faces not only criticism, but also challenges. In the high-level forum on the ASEAN 50 celebration, the former Minister of Foreign Affairs of Thailand, Surin Pitsuwan, expressed his views. He said

¹⁶⁰ Ibid p 85

¹⁶¹ *Malaysian PM sends aid for Muslim Rohingyas in Myanmar*, Reuters, <https://www.reuters.com/article/us-myanmar-rohingya-malaysia/malaysian-pm-sends-aid-for-muslim-rohingyas-in-myanmar-idUSKBN15I14D>
Accessed on 24 April 2020

that one of the problems with the ASEAN way is the diversity of the organization that cannot be easily managed to satisfied all member-states. He also highlighted how the ASEAN Way can be “very slow, very deliberative, and let time heal many of the suspicious among us”.¹⁶²

In terms of conflict resolution, Shaun Narine (1997) argues that the organization is not capable to resolve many issues since it practices cautious diplomacy that tends to avoid any tension.¹⁶³ He also expressed his critics towards the consensus of the ASEAN Way which, according to him, the process was often “slow and tedious”. However, consensus can be the best way to maintain political stability in the organization. Furthermore, the mechanism has many weaknesses, such as weak leadership and a tendency to prioritize national interest over regional interest.¹⁶⁴

3.2.2. ASEAN Community and Its influence

The implementation of the ASEAN Community policy in 2015 marked a new phase for ASEAN.¹⁶⁵ This was a more intense integration for all member-states. This policy consists of three important pillars; the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC), and the ASEAN Socio-Cultural Community (ASCC). The Declaration of this policy aimed to make ASEAM members have better interactions. Furthermore, since the policy was implemented, the organization has a motto of ‘One vision, One Identity, One Community’, and this motto, along with the policy, should be understood by every community in the region and not only by the organization.

In the APSC blue print, the organization aims to promote good governance and protection of human rights. Article A.1.5 (iv) clearly states its purpose to strengthen the interaction with internal sectoral bodies related to human rights. In this context, the ASEAN has an AICHR which focuses on

¹⁶² ‘Asean way’ needs reassessment, say experts, <https://www.nationthailand.com/asean-plus/30329766> accessed 25 April 2020

¹⁶³ Narine, S. (1997). *ASEAN and the ARF: The Limits of the "ASEAN Way"*. Asian Survey, 37(10), pp 961-978

¹⁶⁴ Bahana Menggala Bara, *Weaknesses in the ASEAN way*, Jakarta Post, <https://www.thejakartapost.com/news/2014/05/10/weaknesses-asean-way.html> accessed on 25 April 2020

¹⁶⁵ ASEAN Secretariat, Bali Concord II, <http://www.aseansec.org/15159.htm> accessed 25 April 2020

human rights.¹⁶⁶ The APSC blue print also aims to promote peace and stability in the region by promoting dialogue among various religious and ethnic groups.

Within the ASEAN Community, ASC and ASCC seek greater opportunities for benefit of member-states through economic agreements and cultural exchanges. Indeed, for many organizations, economic factors have become an important element to boost economic growth in a region. However, the purpose of the community establishment seems too ambitious. First, scholars like Ravichandran Moorthy and Guido Benny (2012) compared community formation in the ASEAN and the EU. While the EU has experienced many events such as the establishment of World War II, the establishment of EEC, and the signing of Maastricht treaty which gave the EU strong integration, the ASEAN for the community, according to both scholars, seemed to materialize in very short time and too hastily.¹⁶⁷

Second, integration in the security context seems to focus more on regional stability than on internal member-states. For instance, the case of Rohingya; even though it has received international attention and is even called as the 'text book of ethnic cleansing' by the UN, AICHR still cannot take a position to resolve it. It is important to note that the Rohingya conflict crackdown took place in 2012 and is still ongoing, while the ASEAN Community was established in 2015.

AEC, on the other hand, is an attempt to carry out economic integration for all member-states. This economic community has four important strategic pillars. Pillar 1 is about a single production based market whose scope is the free flow of goods, services, and investment. Pillar 2 is about competition policy, consumer protection, intellectual property rights, and taxation. Pillar 3 is about the development of small and medium-sized

¹⁶⁶ ASEAN Political-Security Blue Print, <https://asean.org/wp-content/uploads/images/archive/5187-18.pdf>, accessed on 20 June 2020.

¹⁶⁷ Moorthy R and Beny G (2012), *Is an "ASEAN Community" Achievable?*, Asian Survey, p 1043-1045

enterprises (SMEs), and Pillar 4 is focused on enhancing participation and global supply networks.¹⁶⁸

This ambitious project set out the AEC Blue Print to ease trade tariffs and regulations, and increase the economic growth for the member-states. As a result, in mid-2016, ASEAN successfully reduced 99.2% of tariffs in Brunei Darussalam, Malaysia, the Philippines, Indonesia, Singapore, and Thailand. Furthermore, it has also eliminated 90.9% tariffs in Cambodia, Myanmar, Vietnam, and Laos.¹⁶⁹ However, even though it has successfully reduced tariffs for member-states, the single market (pillar 1) as the priority goal of the AEC faces many challenges. This is actually similar to EU economic integration, but due to ASEAN's different cultures and historical backgrounds, the implementation of single market policies is hardly successful.

The ASEAN Community, particularly APSC, aims to promote transparency and good governance. Myanmar on the other hand, at the beginning of the crackdown rejected transparency and investigation of the conflict by media. However, the conflict has put many lives in danger and many lives were forcibly taken. ASEAN has ASEANAPOL as a unified police body in the organization. However, until now, there is no single evidence of the suspect that needs to be convicted for this issue.

3.3 Political Power in the ASEAN

The establishment of the ASEAN was signed by five countries; Thailand, Indonesia, Singapore, Malaysia and the Philippines. These countries were later referred to as the 'founding fathers' of the organization. The holding of the Bangkok Declaration in Thailand in 1967 marked the importance of this country. Prior to establishment of the organization, Thai Foreign Minister Thanat Khoman stated that if only the leaders in Southeast Asia region could trust each other, cooperation could

¹⁶⁸ Ponciano S. Intal, Jr. (2017), *Building the ASEAN Economic Community: Progression and Progress*, Economic Research Institute for ASEAN and East Asia, p 34

¹⁶⁹ Ibid p 38

be achieved.¹⁷⁰ Having a close encounter such as the border war with Vietnam in 1979, Thailand played crucial role in formulating the ASEAN policies and strategies in the beginning.¹⁷¹

Table 2. Member-states' date of joining ASEAN

No.	Country	Date of joining ASEAN
1.	Thailand	August 8, 1967
2.	Indonesia	August 8, 1967
3.	The Philippines	August 8, 1967
4.	Singapore	August 8, 1967
5.	Malaysia	August 8, 1967
6.	Brunai Darussalam	January 8, 1984
7.	Vietnam	July 28, 1995
8.	Laos	July 23, 1997
9.	Myanmar	July 23, 1997
10.	Cambodia	April 30, 1999

Examining the historical timeline of the ASEAN, the founding fathers of the organization had more political influence in the organization. Brunai Darussalam joined the ASEAN in 1984, while Vietnam, Laos, and Myanmar joined the organization in 1990s. Indonesia for instance, in the early establishment of this organization successfully mediated Malaysia and Philippines during Sabah territory dispute in 1968-1969 which also became a threat to the ASEAN sustainability.¹⁷² If the conflict escalated, distrust between the original member-states could cause the organization to dissolve. Indonesia's role in the organization could be seen at the first ASEAN Summit in 1976 in Bali. Moreover, Indonesia was appointed as the place where the ASEAN Secretariat office was established in the same year.

¹⁷⁰ Chongkittavorn K. (2013), *The Future of ASEAN Political and Security Cooperation*, ASEAN@50 • Volume 1 | The ASEAN Journey: Reflections of ASEAN Leaders and Officials, p 252

¹⁷¹ *ibid*

¹⁷² RAU, R. (1981). *The Role of Singapore in ASEAN*. Contemporary Southeast Asia, 3(2), ISEAS-Yushof Ishak Institute, , p 102

Malaysia's role, on the other hand, was less active than Thailand and Indonesia in the early years. Many factors could be linked to the answer why Malaysia's role was not as active as the two founding fathers. First, the Malaysia economy was quite stable; it had the second highest per capita income in the region. Second, the country was experiencing conflict with the Philippines and the separation of Singapore.¹⁷³ However over the time Malaysia has experienced development in terms of engagement with the organization. This can be seen by the AMM on November 27, 1971 which took place in Malaysia. In this meeting Malaysia declared that all member-states had agreed to ZOPFAN which later became the foundation of the ASEAN Way such as the non-interference norm in the organization.¹⁷⁴

Singapore's political influence in ASEAN is quite different. Although Singapore is one of the founding fathers, in the early years the country did very little engagement with the organization and was called as the "weakest link" by ASEAN observers.¹⁷⁵ This happened due to Singapore was experiencing economic struggle and frustration. However, Singapore developed a global vision that helped the country gain more income and become a well-established economy country. Singapore's role in ASEAN can be seen in the establishment of the ASEAN Free Trade Area which eases tariff barriers for its member-states.¹⁷⁶

The Free Trade Area scheme was proclaimed at the ASEAN Summit in 1976. Furthermore, since consensus was chosen as a dispute settlement scheme within the organization, Singapore and Prime Minister Lee Kwan Yew suggested the 'five minus one' scheme during the Ninth Meeting of the ASEAN Economic Ministers on April 21, 1980. In his opening speech, he explained how the scheme works; "...when four agree and one does not object, this can still be considered as consensus..." He believed that consensus is not always 'all agree' or 'zero sum game', but rather seeks better options when one can't decide. However, in the 'five minus one' scheme, objections still can cancel the resolution proposal at the meeting.

¹⁷³ Ibid p 103

¹⁷⁴ Pero S. D. M. & Apandi L. S. A (2018), *Malaysia's Leadership Role in Asean: An Assessment*, *Journal of International Studies* Vol. 14, Universitas Utara Malaysia, p 70.

¹⁷⁵ RAU, R. (1981). *The Role of Singapore in ASEAN*. Contemporary Southeast Asia, 3(2), ISEAS-Yushof Ishak Institute, p 105

¹⁷⁶ Ibid, p 108

In the Bangkok Declaration, The Philippines was represented by Foreign Minister Narciso Ramos. In the early years of the establishment of ASEAN, the Philippines was not very active.¹⁷⁷ However, the country seemed to fully commit and rely on the ASEAN consensus. The passive participation was due to the internal political situation and bilateral border issue the country was having. Over the time the Philippines gained its political stability and now is having political influence for the ASEAN consensus.

To sum up, the ASEAN's founding fathers seem to have more voice to be heard in ASEAN political developments. Indonesia and Thailand have been active since the beginning in protecting the organization sustainability. On the other hand, Singapore and the Philippines are also major powers in the ASEAN today. Based on the timeline of the joining of these countries to become ASEAN members, the initial members played an important role in the organization. Therefore, they have more political influence than the others.

¹⁷⁷ Weatherbee D. E. (1987), *The Philippines and ASEAN: Options for Aquino*, University of California Press, p 1224

CHAPTER IV

CHALLENGING THE ASEAN FOR THE R2P IMPLEMENTATION

In international politics, a regional organization will always have a relationship with international organizations. In this matter, the UN and ASEAN, in which the power of the UN is clearly higher than the ASEAN. The UN resolutions and decisions will, therefore, have an effect on the regional organization. The R2P, for example, comes from the UN, which is supposed to be implemented by UN member-states. The ASEAN's position on the R2P also is clear that the organization endorses it. However, the complicated political dynamics have arisen since the R2P can be referred to as 'cherry pick' which makes its implementation for the Rohingya issue blurred. In this chapter, the author would like to explore the R2P related to regional organization power in a number of ways.

4.1. Examining the Legal Binding of the R2P

The R2P as new norm and doctrine constitutes by the UN has creating a debate in the international politics. As the implementation is not always successful if we take Syria's case as the example. The legal binding of the R2P is worth to questioning. Firstly, the establishment of the R2P has various factors. Aside of the question from Kofi Annan has addressed responding the Rwanda genocide in 1994 and Srebrenica massacre in 1995 where humanitarian intervention was regarded as violation for the sovereignty of the state principle; meanwhile there was not much option to stop the killings.

The Universal Declaration of Human Right is also the reference for the R2P. The Article 5 of the declarations states that; "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment", the article 15 (1) of declaration also supported the safety of human life by stating; "Everyone has the right to a nationality".¹⁷⁸ In many articles of the declaration, we can conclude that every people have the right to life without a threat whether it is domestically or

¹⁷⁸ The United Nations, <https://www.un.org/en/universal-declaration-human-rights/> accessed on 20 June 2020

internationally. This declaration constitutes by the UN and shall be obeyed by all member-states.

Secondly, Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide addresses that genocide is a crime under international law and punishable.¹⁷⁹ As most countries in the world are the party of this treaty, in broad agreement, it can be concluded as customary international law and has a legal binding to all countries. And thirdly, the 2005 Outcome Document was also agreed by all member-states which reflects the willingness and awareness of the R2P, including Myanmar to obey it. These reasons have indicated that the R2P has supported by many documents in international politics.

Furthermore, peace as international norms could be a strong factor for the R2P to be implemented. It is aligned with the UN Charter Chapter I Article 1(1) that says; “To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace.....”¹⁸⁰ As for this matter, peace can be interpreted by many meanings such as the definition of peace brought by Joan Galtung (1995) which argues that peace is an absence of violence.¹⁸¹ By this reason, the Rohingya issue could be defined as a violation for peace.

On the other hand, it is interesting to examine the R2P in the international law aspect since there is a debate whether the R2P has strong legal status to be obeyed by the UN member-states. Pandiaraj (2016) wrote his argument after examining the ICISS Report which states that the R2P can be characterized as an emerging principle of customary international law.¹⁸² However, in order to be included as customary international law, it needs to fulfill two conditions; first, state practice, which the practice must be constant and widespread. Second, *Opinio Juris Sive necessitatatis* which based on the ‘sense of obligation’ that can be a foundation of the

¹⁷⁹ Arbour, L. (2008). *The Responsibility to Protect as a Duty of Care in International Law and Practice*. Review of International Studies, Cambridge University Press, p. 450

¹⁸⁰ The United Nations, <https://www.un.org/en/sections/un-charter/chapter-i/index.html> accessed on 20 June 2020.

¹⁸¹ Galtung J. (1995), *Violence, Peace, and Peace Research, Essays on Peace: Paradigms for Global Order*, ed. Michael Salla, Walter Tonetto & Enrique and Martinez, Central Queensland University press, p 1

¹⁸² Pandiaraj, S. (2016). *Sovereignty as Responsibility: Reflections on the Legal Status of the Doctrine of Responsibility to Protec*, Chinese Journal of International Law, p 801

international law. The second condition is similar to how the international norm works. The sense of obligation in international politics that practiced in a long term can be the source to creating international law.¹⁸³

These points of views draw a question, if there is a strong legal binding and status for the R2P, surely there is a consequence for countries who do fail to implement it. Yet, there is none. Looking at the case of Syria whose the country has failed to protect its population due to domestic conflict, the UN yet could not urge international community to penetrate the country in order to stop the atrocities. The R2P seems to be giving an obligation for the member-states without any consequences. In fact, the R2P becomes a soft law which weak in the implementation and there is no strong order, more like recommendation and suggestion. Therefore, the violation of the R2P in Syria faces no consequences.

Another debate of the R2P can be seen by examining the Pillar Three of the R2P which similar with the practice of humanitarian intervention which contain military intervention. Indeed, for many scholars, it is violating the sovereignty principle of the states. The ICISS Report 2001 has written the Right Authority requirement which states that the UNSC under The UN Charter chapter VII is appointed as the legal body as the decision-maker for the implementation.¹⁸⁴ The UNSC according to the report shall be free from the veto right. However, in the implementation for the Rohingya case, we can see the intention from Russia and China to not passing any resolution in Rohingya case to settle the situation. Such the violation of the requirement makes the case hard to be resolved. As a result, until now the implementation of the R2P is being questioned since there is no single resolution passed and no action from international community to stop the atrocities in Myanmar.

To sum up, while the R2P is supported by many legal documents such as the UN World Summit Outcome Document 2005, the Universal Declaration of Human Right, UN Charter Chapter 1 Article 1(1), and Article 1 of the Convention on the

¹⁸³ International Legal Research Tutorial, [https://law.duke.edu/ilrt/cust_law_2.htm#:~:text=The%20elements%20of%20customary%20international,obligation%20\(opinio%20juris\)%3B%20and](https://law.duke.edu/ilrt/cust_law_2.htm#:~:text=The%20elements%20of%20customary%20international,obligation%20(opinio%20juris)%3B%20and) accessed on 20 June 2020.

¹⁸⁴ Gareth Evans, M. S. (2001). *The Responsibility to Protect*. Canada: International Commission on Intervention and State Sovereignty, International Development Research Centre, P. XI

Prevention and Punishment of the Crime of Genocide, many scholars argue that the R2P has weak legal binding to make the UN member-states obey it. In similar context, even though the R2P can be considered as emerging customary international law, it still lack of the evidence for the two conditions required. Therefore the implementation of this doctrine, even though constituted by the UN is still being questioned. Looking at the Syria case, the targeted country has right to reject foreign influence in order to protect national security.

4.2. The ASEAN Political Stance on the R2P

As the ASEAN is attached in the principle of non-intervention, the organization position for the R2P is worth to questioning. It is because the latest two pillars of the R2P are quite contradicted to the principle of non-intervention. The first Pillar of the R2P mentioned the obligation of the UN member-states to protect its population from genocide, crimes against humanity, ethnic cleansing, and war crimes, but if a country is failed the second and third pillar of the R2P allows international community to take action.

Table 3. The ASEAN Countries' stance on the R2P

Advocates	The R2P-Engaged	Fence-Sitters	Opponent
The Philippines (2004-05)	Singapore	Vietnam (2005-07)**	Myanmar*
	Indonesia	Brunei	
	The Philippines (2006-08)	Cambodia	
	Vietnam (2008)	Malaysia	
		Thailand	

*Myanmar was not explicitly rejects to have the R2P

**Vietnam was almost opposed to the R2P prior to the UN World Summit 2005

Alex J. Bellamy & Sara Davies (2009) in their work of 'The Responsibility to Protect in the Asia-Pacific Region. Security Dialogue' have examine the position of Asia-Pacific countries for the R2P that can be seen in the

table 1.¹⁸⁵ The Philippines was already embraced and committed to the R2P concept prior to the establishment. The R2P-engaged criteria shows those who endorsed the R2P in 2005 and had contributed to the discussion of the principle's scope and operationalization. Furthermore, the fence-sitters are those who were aware and endorse the R2P notion but had not expressed any further opinion regarding the principle. On the other hand, Myanmar prior to the summit had a tendency to criticize the principle and objection for the R2P establishment. However, Myanmar did not express the objection in explicit way.¹⁸⁶ Therefore, the R2P was officially announced in the summit and become new doctrine for all member-states.

The former Secretary-General of the ASEAN Dr Surin Pitsuwan, in the High Level Advisory Panel on the R2P held in the UN Office in New York in 2014 addressed his point of view that the R2P is in the same path with the ASEAN which the member-states have pledged themselves to protect the people from atrocities.¹⁸⁷ In the same panel, Dr. Pitsuwan also states that the ASEAN member-states have contributed actively in peace keeping missions which being a logical extension for the organization to be committed to the R2P.¹⁸⁸

Even though almost all member-states endorse the R2P, the distrust of the implementation still exists. Therefore, the implementation should be under scrutiny from the organization in order to avoid any political influence from powerful countries. The ASEAN is most likely do humanitarian aids rather for the victims such as in the Rohingya case rather than practicing the R2P in the whole concept because it violating the non-intervention principle. Indeed, in the sovereignty principle of the state, any country has right to solve its domestic problem without any foreign influence.

¹⁸⁵ Llamy, A., & Davies, S. (2009). *The Responsibility To Protect in the Asia-Pacific Region*. Security Dialogue, 40(6), Sage Publication, P 551

¹⁸⁶ *ibid*

¹⁸⁷ Dr Surin Pitsuwan, 'R2P offers pathway to a caring Asean community', Bangkok Post <https://www.bangkokpost.com/opinion/opinion/430783/r2p-offers-pathway-to-a-caring-asean-community> accessed on 21 June 2020

¹⁸⁸ Report of the High-Level Advisory Panel on The Responsibility to Protect in Southeast Asia, https://www.un.org/en/genocideprevention/documents/responsibility-to-protect/HLAP%20Report_FINAL.pdf accessed on 21 June 2020

Having examined the R2P concept with the ASEAN position for it, Bellamy and Drummond (2011) argues that the R2P norm can be in favor with the ASEAN vision if it can be localized by the norm in the organization.¹⁸⁹ The word ‘localized’ by Bellamy and Drummond (2011) is contested by many points of views which raised a question, ‘to what extend localized means?’ For this matter, we can examine on two important aspects. First, in the AHRD that adopted on 18 November 2012 it emphasizes that ;every person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality, and freedom’.¹⁹⁰ The word ‘people’ can be interpreted as person who has legal nationality. Having nationality as identity means access for basic human needs such as healthcare, job, food, security and education. However, Rohingya people face a difficulty since they have no nationality under 1982 Citizenship Law of Myanmar. Therefore, as stateless people they cannot be called as citizen and presumably removed from the title of ‘the ASEAN citizen’.

Second, the World Summit Outcome Document 2005 regarding to the R2P refers the protection for population in a country which means, every human being in regardless their nationality that lives in the state. These both aspects have challenged the firm understanding in the implementation. Thus, it is worth to questioning whether ‘localizing’ the R2P definition in the ASEAN can be regarded as the right act or not.

4.2.1 The Problem with the ASEAN way

As discussed earlier in the debate of the ASEAN Way, this mechanism faces difficulty in settling disputes. First of all, the ASEAN Way most important core lies in the consensus, giving all member-states the same bargaining position. In other words, there is no supranational power in the organization. It challenged the New Institutionalism theory that Stephen Bell (2011) pointed out the institution's role is

¹⁸⁹ Bellamy, A. J., & Drummond, C. (2011). *The responsibility to protect in Southeast Asia: between non-interference and sovereignty as responsibility*. The Pacific Review, p 180

¹⁹⁰ ‘ASEAN Human Rights Declaration’, ASEAN Statements and Communiques, signed 18 November 2012, <http://www.asean.org/news/asean-statement-communiques/item/asean-human-rights-declaration> accessed on 22 June 2020

important for the organization.¹⁹¹ However, in the ASEAN Way, the member-states seemingly have more power than the organization to set out a resolution. It is different from the UN or the EU which the member-states of giving the authority to the organization to produce rules, regulations, and resolutions. As a result, the ASEAN Way often afraid to have a disagreement. Indeed, without a supranational power in the organization, the member-states have their choice to not obey any resolution the organization attempts to constitute. Therefore, it is hard for the ASEAN to have collective action for some cases such as Rohingya issue. Event though, the organization has mechanism called “five minus one” scheme brought by Prime Minister Lee Kwan Yew of Singapore in 1980, in the implementation the organization is still considering each member’s opinion regarding the issue discussed. In other words, the “five minus one” scheme is often not applied in the organization.

The principle of quiet diplomacy in the ASEAN Way refrain all members of the organization to do confrontation during the consensus. Thus, the sensitive issue related to the domestic problem, which can also carry the crimes against humanity is hard to be discussed because it will increase tension among the members. The comfort level in this mechanism is critical to keep the member-states willing to have active participation in the organization. The TAC 1976 as the code of conduct in some points protecting the state from external intervention such as the use of force which violating the sovereignty of the state principle, but also it limiting the organization’s role to solving humanitarian issues. This limitation is supported by Kei Koga (2010) argument that the ASEAN has never successfully discussed high-politics issue.

As the ASEAN integration recognize norm as the foundation of the organization, peace as international norm also becomes a foundation of the ASEAN. The concept of peace includes the human security concepts which point out the freedom from fear, freedom from want, and freedom to live in dignity.¹⁹² The

¹⁹¹ Bell, S. (2011), “Do We Really Need a New ‘Constructivist Institutionalism’ to Explain Institutional Change?”, *British Journal of Political Science* 41, Issue 04, p 886

¹⁹² Owen, T. (2004). *Human security – Conflict, critique and consensus: Colloquium remarks and a proposal for a threshold-based definition*. *Security Dialogue*, 35(3), pp 373-387.

ASEAN must aware that maintaining peace, not only in regional organization but also in the countries as status quo. By this matter, the ASEAN supposedly has right to dictates its member-states to produce strict resolution for the sake of peace.

However, since the sensitive issues are hardly brought into the discussion in the consensus, the ASEAN could not produce it. The belief of not offending other members creates a huge wall for the ASEAN to have more in-depth cooperation. The organization and its member must concern about other countries' interests and try not to cross it. Hence, the organization falls into an option of 'only concern' rather than having a right to act aggressively.

The normative power of the organization relies on the member-states willingness. Therefore, the organization is only act if it will benefit all members. In other words, the concept of organization along with the rule and sanction is not fully accepted for all members. As a result, many issues sensitive issues are not brought to the meeting, especially the security issue, because the organization is afraid to create tension which led to disintegration.

The effectiveness is also become the problem in the ASEAN Way mechanism. Shaun Narine (1997) points out his argument that the consensus in the ASEAN way often works 'slow and tedious' because the organization is only agree to a common interest which mostly a resolution with low risk of disintegration.¹⁹³ Dr. Surin Pitsuwan also agree that the ASEAN Way is hardly well-managed which affecting the organization's agility to act or produce a resolution. He argues that diversity which hard to manage is the root of the problem. It is affecting the satisfactory level from the member-states that often different.¹⁹⁴

The slow process of consensus can be linked to distrust among the member. Since almost all members-state except Thailand have experienced a colonization before the independence, it becomes a nature that a country afraid to be colonized again by other form of colonization. Therefore, there will always be a suspicion in

¹⁹³ Narine, S. (1997). *ASEAN and the ARF: The Limits of the "ASEAN Way"*. Asian Survey, 37(10), p 965

¹⁹⁴ Dorris Dumlao-Abadilla, 'Asean way' needs reassessment—experts, business inquirer <https://business.inquirer.net/238918/asean-way-needs-reassessment-experts> accessed on 23 June 2020

the consensus. As a result, the negotiation will carefully assess each member's interest and seek the best option that will not offend the others. .

4.3 Analysis of the Adoption of the R2P in the ASEAN: The Case of Rohingya

In some respects, international norms can be a strong foundation for the behavior of regional organizations. As Finnemore and Sikkink (1998) have pointed out, the norm is the rule of conduct for controlling behavior.¹⁹⁵ There is an understanding that exists in the norm. As far as the R2P is concerned, if human security and peace are the status quo that must be prioritized, the ASEAN Member State should be aware that the violation of the principle of human security and the breach of peace also violates the norm in the organization. However, if the logical flaw in the implementation of the R2P is to be found in the international norm that is nurturing the regional organization as well.

The norm principle is also contrary to the other norm, such as the principle of non-interference. Whereas Myanmar has always used this standard to make other Member-states intervene on the Rohingya issue. This principle has led to a debate that concludes that it is challenging to implement the R2P. Human security and peace must be protected on the one hand, but ASEAN must not violate Myanmar's sovereignty on the other. This issue is also set out in the ASEAN Charter, which is the foundation for Myanmar's foreign intervention to address its domestic problems. As in the law, which relates to the state principle's sovereignty, Myanmar has the right to expel Rohingya through the 1982 Citizenship Law, which does not recognize Rohingya as part of the country.

In order to analyze further of the R2P implementation in the ASEAN, there are two important instrument that must be discussed. First, the legal instrument in which the R2P has weak legal binding since it has no power in the international law. In 2008, the Secretary General of the UN Ban Ki Moon stated that the R2P is just a

¹⁹⁵ Sikkink, F. A. (1998). *Norm Dynamic and Political Change*. Massachusetts: Intenational Foundation and Massachusetts Institute of Technology, p 893.

mere concept and yet to be policy. Indeed, the R2P is seen as new doctrine in the UN World Summit in 2005.¹⁹⁶

As a new doctrine, the R2P lies in the political will and commitment of the members of the UN. Although there were no states in the 2005 declaration that strongly objected to the outcome document. In fact, not all countries have the political will to adopt the R2P concept as a whole. In addition, Pillar Two and Three are potentially endangering the State principle's sovereignty since sovereignty is a status quo that must be protected. Both pillars are seen as instruments for legalizing conflict resolution intervention and violating the sovereignty of both the UN and the ASEAN member-states.

On the other hand, in international law concerning the UN, there are only two resolutions which are legally binding even though it has limitation; the General Assembly and the Resolution of the UNSC.¹⁹⁷ Some resolutions of the United Nations Security Council, such as the Somali issue of 1992, can be seen. Whereas the U.S. as permanent member of the UNSC, proposed a proposal for humanitarian intervention to the UNSC, which would then proceed with the establishment of a United Task Force (UNITAF) to resolve the conflict in Somalia¹⁹⁸

In examining this case, the R2P has no evidence of legal status to force the regional organization to comply with it. Although it was formed by the UN, it was not produced by the General Assembly or the UNSC. Consequently, the R2P has no legitimacy to be implemented. The weakness of the R2P is that this doctrine is only based on normative value without legalization by a strong body. On the other hand, the international community has its own interest if it intends to intervene in the Rohingya issue.

The 'right authority' and 'right intention' of the ICISS report of the R2P are also worth examining. The principle of the 'right authority' appoints the UNSC as the

¹⁹⁶ Asia-Pacific Centre for the Responsibility to Protect (2009), *"Implementing the Responsibility to Protect: Asia-Pacific in the 2009 General Assembly Dialogue"* p 8, https://r2pasiapacific.org/files/425/APin2009GADialogue_implementation.pdf accessed on 25 June 2020

¹⁹⁷ Öberg, M. D (2006), *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, The European Journal of International Law Vol. 16 no.5, pp 883-885

¹⁹⁸ Seybolt, T. B. (2008). *Humanitarian Military Intervention The Conditions For Success And Failures*. Stockholm: Stockholm International Peace Research Institute (SIPRI), Oxford University p. 55

legal body responsible for producing a resolution. It can actually produce a resolution appointing ASEAN to intervene in Myanmar on the basis of the principle of 'right intention'.¹⁹⁹ However, referring to the same document, the UNSC must be free from personal interest. Interestingly, it seems that China and Russia are not in favor of this if Myanmar is to intervene.

The second instrument that can be discussed is the bargaining position of the ASEAN. The regional organization according to the New Institutionalism theory should have a supranational power. However, in order to have supranational power, it needs a bargaining position. In this matter, it can be seen that the ASEAN is lack of bargaining position. As a result, even though the ADHR and the ASEAN Charter have declared the importance of the human security, it hardly dictates the member-states to implement the R2P. This problem surely related to the statement of the Bellamy and Drummond (2011 which stating that the ASEAN is only 'mimicking' to endorse the R2P.²⁰⁰

The ASEAN differs from regional organizations such as the EU and the LAS, both of which have a tangible link that binds the Member-states to their legislation. Taking the EU as an example, if a member of the EU expelled one of its members from the organization, it will have a major impact on countries with a lower bargaining position. Losing EU membership will affect the economy and access in the European region. As for a comparison with the ASEAN, This organization has at least five types of legal act that are strongly binding on the Member-states. First, the EU treaties that establishing the rule of conduct in the EU institutions. EU countries must comply with everything decided by this Treaty.

Second, the regulations legal act that governs regional law will impact the national law of the EU Member State. Thirdly, the directives legal act, which consists of a suggestion from the EU that the EU member-states must comply. The member-states must implement this legal act, but it also gives the member-states the freedom to implement it. Fourth, the delegated acts enable to change some part of

¹⁹⁹ Gareth Evans, M. S. (2001). *The Responsibility to Protect*. Canada: International Commission on Intervention and State Sovereignty, International Development Research Centre, P. XI

²⁰⁰ Bellamy, A. J., & Drummond, C. (2011). *The responsibility to protect in Southeast Asia: between non-interference and sovereignty as responsibility*. The Pacific Review, Routledge publisher. p 180.

the EU legislative rule of behavior and act. This legal act can be implemented in a strong manner if the Parliament and the Council have no objection and, lastly, the implementing act which operates within the framework of a committee consisting of the supervision of representatives of the EU countries.²⁰¹

The LAS is also one of the regional organizations with supranational power. It can be seen by its act of expelling Syria from its participation in the organization.²⁰² In other words, the Arab League has a supranational power capable of producing a policy or imposing sanctions on its members.

Looking at both the EU and LAS, the ASEAN itself faces a number of challenges with a view to 'localizing' the R2P. The ASEAN lacks a supranational strength and determination in many critics although it has foundations relating to humanitarian concerns such as the ASEAN Charter and AHRD. In contrast to the EU which has legal acts binding all members and the LAS which can take action to expel Syria from participation. The ASEAN sees the Member-states as a 'family' in which the collective action that the organization needs to take must consider the level of comfort in the organization

In fact, ASEAN has two tools that can be used to implement the R2P. First, the AICHR that this body was supposed to be in a position to address humanitarian issues such as trafficking in human rights, human rights abuses and the protection of human security. Interestingly, an article published in the Wall Street Journal in July 2009 presented its criticism of this institution by stating 'ASEAN's Toothless Council' because AICHR's incapability to cope with humanitarian issues in the region.²⁰³ In other words, the existence of this body would not help the ASEAN to resolve such cases in Myanmar. The AICHR's inability was different from the original version of Indonesia and Thailand, which initially wanted this body to be

²⁰¹ EU website, https://ec.europa.eu/info/law/law-making-process/types-eu-law_en accessed on 24 June 2020

²⁰² Sly L. (2011), *Syria suspended from Arab League*, The Washington Post, https://www.washingtonpost.com/world/syria-suspended-from-arab-league/2011/11/12/gIQAvqGxEN_story.html accessed on 23 June 2020.

²⁰³ 'Asean's Toothless Council', Wall Street Journal, <https://www.wsj.com/articles/SB10001424052970203517304574303592053848748> Accessed on 25 June 2020

able to coordinate with the ASEAN Member-states in the investigation of humanitarian issues, in particular human rights abuses.²⁰⁴

On the other hand, AHRD, which has always been upheld by the ASEAN Member-states, appears to be merely a rhetorical charter rather than an action. The ASEAN Charter as the foundation of ASEAN should also have a strong foundation in the eyes of the law, since there is no power given to the organization to take collective action. The APSC is the second tool that the ASEAN can use. The ASEAN Member-states have agreed to this community in order to protect the region's political stability and security. Lee Leviter (2010) argues that the APSC blueprint was too ambitious without any firm commitment. He also points out that the blue print of this community is only a rhetorical victory to build optimism in the community.²⁰⁵

In the theory of regional integration, one of the most important factors for regional organization is the commitment of Member-states to entrust the organization with the rule of law or the law of the Member-states. In reality, however, the ASEAN Charter is seen only as a normative foundation that governs an organization without any strong legitimacy. As a result, the issue of Rohingya in Myanmar has not been resolved by the ASEAN as a regional organization with its collective action.

The ASEAN is faced with a political dilemma. Myanmar on the one hand is in the ASEAN political area where the organization is also concerned about the humanitarian problem. On the other hand, it has right to defend the country from external intervention. Furthermore, Myanmar has persistently told the ASEAN that it will address the issue of Rohingya through its domestic framework. At the same time, the ASEAN hesitates to take concrete action against Myanmar which could lead Myanmar to leave the organization. Historically, the ASEAN now depends on how the 10 countries' representatives manage political activity and economic cooperation. Myanmar's political stance on any threat, including intervention, is also reflected in its statement to the ICC that the court has violated international legal

²⁰⁴ Leviter L (2010), *The ASEAN Charter: ASEAN Failure or Member Failure?*, New York University of International Law and Politics, Vol 43. Pp 205-207

²⁰⁵ *ibid*

norms for bringing Rohingya to court because Myanmar is not a member of the Rome Statute. In fact, when it comes to the term 'Rohingya,' Myanmar would not be in agreement with that term and would refer to it as a community affected by the conflict.²⁰⁶ Moreover, Myanmar also believes that Rohingya does not belong to the country and refuses to recognize them as a citizen of the country.

There have been immense hopes that for many reasons, the ASEAN could play a proactive role in resolving the Rohingya crisis. First, the Rohingya crisis is the most serious issue on the planet and has affected the security of the ASEAN countries. First, the Rohingya crisis is one of the most serious issues on earth which has effect in the ASEAN security. There has been a political tension between the member-states because condemnation addressed from Malaysia. Mahatir Mohammad in 2018 gives his statement of disappointment toward Ang San Suu Kyi as de facto leader of Myanmar who was awarded the Nobel Prize in 1991. Second, the ASEAN has instrument to penetrate in to the conflict which potentially will make the conflict settled. Agus Trihartono (2017) believes that the participation of the ASEAN could accelerate the peace settlement of both Myanmar and Rohingya. He also points out that the pragmatic way the organization can use is through the use of the APSC framework. On the other hand, ASEAN needs to understand the political dynamics of Myanmar that are very complex to deal with.²⁰⁷

The ASEAN way as a rule of conduct in the organization, due to its weakness, faces criticism. As mentioned above, the ASEAN path is considered incapable of fulfilling the commitment made by the member state. The principle of quiet diplomacy in the ASEAN Way can only make Myanmar open humanitarian aid after the diplomacy of Retno Marsudi.²⁰⁸ On the other hand, the grassroots conflict has never been brought to the discussion of the ASEAN Way (consensus). This is because political stability in the region will be disturbed if there is a confrontation

²⁰⁶ Hui Ying Lee (2018), ASEAN's Limited Role in Solving the Rohingya Crisis, The Diplomat, <https://thediplomat.com/2018/10/aseans-limited-role-in-solving-the-rohingya-crisis/> accessed on 25 June 2020

²⁰⁷ Trihartono, A. (2017). *Myanmar's Worsening Rohingya Crisis: A Call for Responsibility to Protect and ASEAN's Response*. Sustainable Future for Human Security, Springer Singapore, pp 11-16

²⁰⁸ *Indonesia to hand over two schools and aids for two communities in Rakhine State*, Information Committee News Myanmar, <http://www.informationcommittee.gov.mm/en/scoic-news/indonesia-hand-over-two-schools-and-aids-two-communities-rakhine-state> Accessed on 25 June 2020

that offends one of the members. As a result of the consensus, the organization must maintain a level of comfort.²⁰⁹

There are three important elements of this doctrine in the early discussion of R2P: the Responsibility to Prevent, the Responsibility to React, and the Responsibility to Rebuild. In the case of the Rohingya issue, both Myanmar and ASEAN have failed to implement the Responsibility to Prevent because the atrocities and death tolls occurred during the 2012 and 2016 crackdowns. In further action, the Responsibility to React was to be carried out with Pillar Two and Pillar Three as the foundation.

However, Pillar Two was done by Indonesian diplomacy for humanitarian aid. Pillar Three, which would allow the international community to take action, has never been done at the regional level by ASEAN. This creates confusion whether or not ASEAN is willing to adopt the whole concept of the R2P. Moreover, the term 'localized' brought by Bellamy and Drummond (2011) should never change the substance of the R2P, which is to protect human life and restore peace, even by force. In analyzing the concept of R2P, the concept of humanitarian intervention was quite similar to that of Pillar Three. However, examining the ASEAN Way and the ASEAN principles laid down in the ASEAN Charter and the TAC, this could not be done.

²⁰⁹ Hui Ying Lee (2018), *ASEAN's Limited Role in Solving the Rohingya Crisis*, The Diplomat <https://thediplomat.com/2018/10/aseans-limited-role-in-solving-the-rohingya-crisis/> accessed on 25 June 2020

CHAPTER V

CONCLUSION

The Rohingya people have suffered extensive violations of human rights and desperately need an immediate attention by the international community. On the other side, the Myanmar government keeps denying the existence of the atrocities in Rakhine State. However, the fact has shown the otherwise. In other words, Myanmar has failed to protect its population. Regarding this issue, the R2P that declared in the UN World Summit 2005 seems to be a promising solution to solve humanitarian issues that in many cases are hard to deal with. The dialogue about Rohingya issue has been brought in the UN table. But, until now, there are no significant action taken by international community to solve the issue. The ASEAN, on the other hand, is also expected to be a legal body in order to solve the issue both for Myanmar and Rohingya. Particularly, to stop the human rights violation in Myanmar. The reason why the ASEAN is expected to be a legal body is because the issue is happened in the Southeast Asia region. However, even though the R2P seem to be a silver line to solve humanitarian issue, the implementation in the ASEAN faces several problems.

The main idea of the R2P is that giving the UN Member-States an obligation to protect its population and if the given state failed to do it, the international community has a permission from the UN to take action whether settling the dispute diplomatically or direct intervention as it has written in the R2P pillars. However, the practice of this doctrine for many scholars and experts is debated due to the intervention point. Regarding this context, intervention is prohibited without the UN approval because it violating the sovereignty from the independent state. In international politics, sovereignty is related to the authority from that states and interfering the domestic problem will harming the national security.

However, the practice of intervention, especially humanitarian intervention has been implemented in the case of Somalia in 1991 and Rwanda 1994. As discussed earlier, from a legal point of view, the R2P appears to have a weak foundation that cannot dictate the UN Member-State to implement it. Taking the Syria case as an

example, this new doctrine has no punishment for those who do not exercise it. Therefore there is no strict order from the UN to obey the R2P. Although the R2P has constituted by the UN, the implementation only lies from the given state's willingness. On the other hand, examining the ICISS report on the R2P, the UNSC could be appointed as 'the right body' to permits to do an intervention accordingly

In the same document, it has been mentioned that the UNSC as the 'right authority' must free from national interest. However, in 2017, Russia and China as the permanent member of the UNSC have voted against the UN resolution regarding the Rohingya issue.²¹⁰ Russia and China's action has made a doubt that these countries are free from their national interest. Furthermore, the same document also stated that the R2P could be exercise as the last resort and with the right intention. In this context, ever since the crackdown happened in 2012, the condemnation and suggestion from the UN member-states have failed to make Myanmar stop the atrocities. Even worse, Myanmar has closed the access for media and humanitarian aid for the Rohingya people.

The general idea of this dissertation is to seek the possibilities of the R2P implementation in the ASEAN using the organization's instrument. The ASEAN has experienced development from the old regionalism to the new regionalism, which in the policy formulation will also consider the non-state actor. Examining the political character of the ASEAN, it is essential to examine some theories of regionalism. From the emergence of the regionalism, scholars such as Storm (2003), Barbieri (2019), and Bhagwari (1993) stated that geographical identity, political necessity, and economic factors are the main reason why regionalism has created. As such, the ASEAN's establishment had driven by these reasons in which the common identity has shared among the Member-States, as the South East Asian nations. Furthermore, during the ASEAN establishment, the Cold War has created a political and security necessity for Southeast Asian countries. Therefore there is a necessity to form an organization. Additionally, in the ASEAN Charter, it is also written that prosperity and economic cooperation are the ASEAN establishment's

²¹⁰ France Agence, 'China and Russia oppose UN resolution on Rohingya', The Guardian <https://www.theguardian.com/world/2017/dec/24/china-russia-oppose-un-resolution-myanmar-rohingya-muslims>
Accessed on 4 April 2020

purposes. These factors made the ASEAN member-states are willing to give part of their sovereignty to the organization, in which norm that has been agreed by the ASEAN member-states could be applied as the code of conduct in the organization.

In the analyses of this dissertation, the findings reveal that even though the R2P implementation in the ASEAN faces a number of difficulties, but there are possibilities for the adoption of this doctrine. The author would like to address that the difficulties in the ASEAN lie in two factors; norm contradiction and the organization's power over the member-states. In the first factor, we can see that the R2P is aligned with norms in the ASEAN such as in the ASEAN Charter and AHRD which both documents has also written the importance of the human rights to be exercised by the ASEAN's member-states. It appears that in the ASEAN, there is a norm contradiction for the implementation of R2P. Even though maintaining peace and protecting human rights become a status quo in the ASEAN's norm as it is written in the AHRD and the ASEAN Charter, it also contrasts with the ASEAN Charter 2(f), which stated that to all ASEAN Member-States shall respect the non-intervention principle. Scholars such as Finnemore and Sikkink (1998) and Björkdahl (2002) believe that norm is a code of conduct to rule a state's behavior. Therefore, according to these scholars, any states should act according to the norm in the organization.

In this case, peace and human security as the organization's status quo have been recognized through the ASEAN Charter and AHRD. The fact that AHRD was established six months after the first crackdown of the Rohingya issue in 2012 was a proof that Myanmar was actually aware that the humanitarian crisis happened in the country. However, the Myanmar government's action to not provide an immediate solution for this issue is concrete evidence that the country was unwilling to protect the Rohingya people. The norm to protect human security experienced a norm contestation toward the non-intervention principle written in the UN Charter and ASEAN Charter. On one side, the organization and Myanmar aware that it is an obligation to protect the population and citizen, but on the other side, the Myanmar, which showing its incapability to settle the conflict is always use the non-intervention principle as a defense.

However, regarding the Rohingya issue, the other member-states are refrain from addressing the issue in the meetings as it would same as “pointing a finger” toward Myanmar and will be regarded as intervening the domestic issue. Meanwhile, the non-interference principle is applied and uphold firmly in the organization. In this matter, the non-interference principle as the code of conduct has benefited Myanmar.

The power of the ASEAN also creates a question of whether the organization is capable of resolving the Rohingya issue or not. Ever since the establishment of the ASEAN, mutual respect among the member-states has also being upheld. A journalist named Hui Ying Lee (2018) in *The Diplomat* has written her critics toward the ASEAN’s action toward the Rohingya issue saying that the organization has its own limit and an aggressive action would have a potential cause of Myanmar leaving the ASEAN.²¹¹ On the other side, the institutionalism theory has explained the importance of supranational power which is essential to exercise in an organization.

In comparison, some regional organizations such as the OAS, and LAS have shown its supranational power by the exclusion of a member; Cuba in the OAS and Syria in the LAS. Moreover, according to OAU charter, there is one particular article mentioned that the organization has the right to do an intervention to the member-states regarding human rights cases. Besides, the supranational power of the EU can be seen by the establishment of the Commission of European Communities and EU Court of Justice to make sure the EU law is applied in the same way in all EU member-states. The ASEAN, on the other hand, is quite different as the inability of the organization to address the issue has shown that the ASEAN has lost its supranational power. Therefore, the ASEAN Way can be seen as a prominent mechanism for the organization to act accordingly.

Following the obstacles the ASEAN has, some possibilities may apply for the Rohingya case related to the R2P. The first thing to be understood is that the Rohingya case is a sensitive issue because it is related to Myanmar's sovereignty

²¹¹ Hui Ying Lee (2018), “*ASEAN’s Limited Role in Solving the Rohingya Crisis*”, <https://thediplomat.com/2018/10/aseans-limited-role-in-solving-the-rohingya-crisis/> accessed on 1 December 2020

and some principles that the ASEAN respects. Therefore the ASEAN would never directly confront Myanmar. Instead, a more diplomatic approach is more accepted such as what Indonesia did to open the access for aid and media in Myanmar. So far, the ASEAN has several instruments that are related to the Rohingya case; the ASEAN Way and AICHR. Moreover, ever since the ASEAN establishment, there has been no single sanction or embargo applied that indicated that the organization prefers to have a diplomatic way to resolve a problem.

Thus, in this situation, the ASEAN Way could be the best mechanism to be applied. One principle of this mechanism, quiet diplomacy, apparently affects Myanmar's foreign policy regarding the issue. Therefore, after several meetings, Indonesia successfully convinces Aung San Suu Kyi that the ASEAN help would not harm Myanmar's sovereignty. Therefore, Myanmar agreed to open the aid access for Rohingya in Rakhine State. On the other side, confrontation or condemnation will make Myanmar stays defensive and create distrust in the organization.

In the regional integration theory, Karl Deutsch (1957) has explained that political integration is a process to solve conflict without violence, which is related to the ASEAN.²¹² Therefore, this theory fits the ASEAN political style that prioritizes the comfort level in the organization. The institutionalism theory, however, fits better for the EU, OAU, LAS, and OAU. Examining what Indonesia had done to persuade Aung San Suu Kyi reveals that it is possible to implement the R2P with the ASEAN's style of politics as long as the organization or the member-states can ensure the sovereignty of Myanmar is safe. Which also not violates the non-intervention principle if a state such as Myanmar gives its consent.

The second instrument that can be used for the Rohingya issue is the AICHR that apparently possible to be a legal body to reconcile the situation in Myanmar. In this body, there are member-states' representatives who can also have a talk or to do negotiation since the body itself focused on the humanitarian issue. Ultimately these two bodies are the best option for the R2P implementation regarding the Rohingya

²¹²Karl Deutsch, et. al., (1957), *Political Community and North Atlantic Area: International Organization in the light of Historical Experience*, Princeton: Princeton University Press, p. 5

issue because the ASEAN will not risk the political stability in the region. Thus, diplomatic approaches such as informal talk, quiet diplomacy, and persuasion will produce a better understanding to solve the problem, even though the ASEAN is not like the UN or EU, whose the organizations can impose sanctions and exclude the member-states from participation. But, the R2P is still possible to be "localize" with the ASEAN's political style

Furthermore, with the ASEAN Community framework, the APSC could be an alternative instrument to maintain the region's security and stability. The ASEAN Community's establishment is proof that the functionalist theory that Wilde (1991) has been addressed actually happens in the regional organization. Therefore, collective action among the Member-States affects forming a policy. By using the ASEAN Community, APSC, in particular, will ease the consolidation and consultation for the Rohingya issue. Additionally, the principal of quiet diplomacy in the ASEAN Way seems to work effectively in the APSC platform.

In conclusion, even though in institutionalism and functionalist theories highlight the importance of supranational power in the organization, the ASEAN itself has a unique way of politics. However, the organization still has possibility to implement the R2P in a limited way. Since the ASEAN is unlike the other regional organizations provided in this dissertation as the comparison material. The key point of the ASEAN's political style is about acceptance. The findings have shown that even though the ASEAN Way, APSC, and AICHR could be instruments for the R2P implementation, but it will be hard to take action without approval from the ASEAN's consensus. Furthermore, because the ASEAN countries are prohibited from doing confrontation due to it will affect the comfort level in the organization, the ASEAN Way with the concept of quiet diplomacy and consultation mechanism is likely to be a potential action plan to enforce the R2P. By providing dialogue and diplomatic approach directly to Myanmar, such as what Indonesia has done to open access to humanitarian aid, the Rohingya issue can be resolved through negotiation and eventually a resolution that Myanmar can embrace.

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