
THE ASEAN WAY AND ITS RELEVANCE IN INTERNATIONAL DISPUTE RESOLUTION

Prathyush Rajan, NUALS, Kochi.

ABSTRACT

This article examines the relevance of the ASEAN Way in international dispute resolution, focusing on its consensus-based, non-interventionist, and dialogue-driven approach. It explains how ASEAN's methods are rooted in regional political culture and used to maintain harmony among diverse member states. The article discusses the policy of constructive engagement, Asian values, and the tension between sovereignty and human rights, showing how ASEAN balances stability with limited collective action. It evaluates major disputes involving the South China Sea, Thailand-Cambodia, Myanmar, and transboundary haze to explain both the strengths and weaknesses of the ASEAN Way. While the model has helped prevent escalation and preserve regional unity, the article argues that its dependence on consensus often produces slow, ambiguous, and nonbinding responses. It concludes that ASEAN must evolve toward more effective and flexible mechanisms while preserving its cooperative spirit.

I. Introduction

Southeast Asia is a unique region in many different ways. Unlike Northeast Asia (China, Japan, North Korea, South Korea) and South Asia (India, Pakistan, Bangladesh, Nepal and Sri Lanka), it does not contain any great powers which have a global reach.¹ These countries also do not have a shared culture, beyond colonialism.² The willingness to create such an organisation arose out of a need for protection from communist powers, particularly an expansionist Vietnam.³ The 'ASEAN Way' refers to a set of diplomatic norms shared by the members of the Association of Southeast Asian Nations (ASEAN). It encourages the Southeast Asian countries to seek an informal and incremental approach to co-operation through lengthy consultation and dialogue. It is rooted in local customs, particularly its dialogue practices, which have links with "the traditional Malay practice of *mushawarah* (consultation) and *mufakat* (consensus)."⁴

II. The ASEAN Policy of Constructive Engagement

The core aspect of ASEAN's dispute resolution framework is consensus. The consensus itself works in a simple manner and all member states need to agree. If there is one out of the ten member states who objects the idea or proposal, then there is none in place.⁵ Since the lowest common denominator is usually agreed upon, most decisions tend to be very ambiguous, abstract, and nonbinding.⁶ This resembles the margin of appreciation doctrine in international human rights treaties, allowing states significant room for interpretation as per their social and cultural context.⁷ ASEAN insists that calm dialogue is needed to resolve conflicts, a process it characterized as "constructive engagement."⁸ The idea of constructive engagement originated during the administration of American President Ronald Reagan to describe his approach

¹ Sheldon Simon, *ASEAN and Multilateralism: The Long, Bumpy Road to Community*, 30 *CONTEMP. SOUTHEAST ASIA J. INT. STRATEG. AFF.* 264,265 (2008).

² Attilio Pisanò, *Human Rights and Sovereignty in the ASEAN Path Towards a Human Rights Declaration*, 15 *HUM. RIGHTS REV.* 391,392 (2014).

³ Hyung Jong Kim, *ASEAN WAY AND ITS IMPLICATIONS AND CHALLENGES FOR REGIONAL INTEGRATION IN SOUTHEAST ASIA*, 12 *JATI - J. SOUTHEAST ASIAN STUD.* 17,18 (2007).

⁴ S. C. Padmakumara, *A Conceptual Analysis on 'ASEAN Way' as a Normative Approach for Conducting Regional Affairs*, 6 *COLOMBO J. MULTI-DISCIPL. RES.* 1,5 (2021).

⁵ Mochamad Diaz Alichsan, *Non-Interference Principle or Doing Nothing? Role of ASEAN in Contemporary Geopolitical Conflicts: The Case of South China Sea Dispute*, 11 *J. ASEAN Stud.* 1,30 (2023).

⁶ Otto F. Von Feigenblatt, *Avoidance and Consensus Building in the Association of Southeast Asian States (ASEAN): The Path Towards a New "ASEAN Way"*, 13 *Entelequia: Revista Interdisciplinar* 121,124 (2011).

⁷ Frederick Cowell, *Defensive Relativism: The Use of Cultural Relativism in International Legal Practice* 11 (University of Pennsylvania Press, 2022).

⁸ Taku Yukawa, *ASEAN Norms—Argument Yielding to Change*, 4 (2009).

towards South Africa. It emphasized intergovernmental cooperation, lending South Africa financial resources to contribute to its economic development, and repudiating sanctions to punish South Africa for its government's apartheid policy.⁹ For ASEAN, noninterference is in many ways the *raison d'être* of the organization itself, following a Westphalian model of sovereignty.¹⁰ It is centred around protection of state sovereignty, conflicting with victim-centric ideas such as R2P. Thai Foreign Minister Surin Pitsuwan had proposed a new "flexible" approach to interference in 1998. Even though the proposal from Dr. Surin has been denied by most of the ASEAN member states, except Philippines, the insightful idea about the "enhanced interaction" without formal constraint marked the starting point of new dynamics of ASEAN diplomacy.¹¹

III. The Protection of Asian Values

Asian values were particularly highlighted during the region's rapid economic growth in the 1990s, and stressed collectivism, social discipline and hierarchical authority in comparison to Western individualism.¹² The ASEAN Way can also be characterized as granting more importance towards social and economic rights, over civil and political rights. Mahathir Mohamed, former prime minister of Malaysia, argued that although democracy was useful, Asians "should respect authority because it guarantees stability" and that political processes, such as challenging political leaders, was "treachery" according to Malay tradition. These arguments were echoed by other leaders such as the former prime minister of Singapore Lee Kuan Yew.¹³

IV. The South China Sea Dispute

The South China Sea is a contested sea area that lies as a part of Pacific Ocean with covers around 3.5 million square kilometre and encompasses an area around Karimata and Malacca. Nearly all ASEAN countries have territorial disputes over this area. The ASEAN way was applied, with the organisation resolving to solve the issue by means of informal workshops between the parties. The initial aim of the workshop itself is to be a continuing dialogue process

⁹ Logan Masilamani & Jimmy Peterson, *The "ASEAN Way": The Structural Underpinnings of Constructive Engagement*, *Foreign Policy Journal*, 141015-Masilamani-Peterson-ASEAN.pdf.

¹⁰ Aarie Glas & Marion Laurence, *Changing Norms in Practice: Noninterference in the UN and ASEAN*, 7 *J. Glob. Sec. Stud.* 1, 11 (2022).

¹¹ *id.* At 11.

¹² Kim, *supra* note 4. At 18.

¹³ Cowell, *supra* Note 8. At 118.

to prevent any extension and appearance of potential conflict by exploring the area of cooperation among states in the disputant area by creating a conducive atmosphere and develop concrete operation on technical matters.¹⁴ These talks led to the 2002 Declaration of Conduct signed by ASEAN and the PRC in November 2002.¹⁵ It is not a binding document, and was designed to solve territorial disputes. It only offers support to the parties in their efforts to bring about a peaceful resolution. China's expansive claims, rooted in historical narratives and national legitimacy, remain non-negotiable under President Xi's leadership. This makes China resistant to any binding Code of Conduct that would dilute its control or open the door to international scrutiny.¹⁶

V. The Resolution for Cambodia

One of the times in which the ASEAN Way has faced its greatest challenge is the dispute between Thailand and Cambodia. The conflict between Thailand and Cambodia began over control of the Preah Vihear Temple. The International Court of Justice had ruled that the temple belongs to Cambodia. However, the lack of a clear demarcation line sparked further border skirmishes.¹⁷ The issue was taken up again in 2008, after the Preah Vihear temple was registered as a UNESCO World Heritage Site by Cambodia. The Thai and Cambodian border clashes started escalating at this time.¹⁸ During this period, Indonesia was the chair of ASEAN. ASEAN was ineffective in resolving the conflict, since the Thai leadership did not wish for external intervention in what was seen as a bilateral conflict.¹⁹ The Cambodian leaders approached the ICJ, which reaffirmed its previous ruling in 2013. The situation also stabilized following the election of Yingluck Shinawatra as Prime Minister of Thailand.²⁰ Despite this, the conflict erupted again in 2025. This time, Malaysia was the chair, and it took a more active role in resolving this issue. With the consent of both states, it sent interim observation teams

¹⁴ Pek Koon Heng, *The "Asean Way" and Regional Security Cooperation in the South China Sea* (Dec. 1, 2014), <https://papers.ssrn.com/abstract=2540049>.

¹⁵ *DECLARATION ON THE CONDUCT OF PARTIES IN THE SOUTH CHINA SEA*, ASEAN Main Portal (May 14, 2012), <https://asean.org/declaration-on-the-conduct-of-parties-in-the-south-china-sea-2/>.

¹⁶ Joanne Lin & Pou Sothirak, *The Elusive Code: Why ASEAN Needs a New Playbook for the South China Sea*, ISEAS Perspective No. 2025/39,6 (2025).

¹⁷ Pavin Chachavalpongpun, *Thai-Cambodian Conflict: The Failure of ASEAN's Dispute Settlement Mechanisms*, 1 *Asian J. Peacebuilding* 65,68 (2013).

¹⁸ Ananda Ramadhanti Utomo, *Implementation of the ASEAN Way in Resolving the Dispute Conflict between Thailand - Cambodia in 2011*, 3 *GRACE PROCEEDINGS*,94,96 (2023).

¹⁹ Chachavalpongpun, *supra* note 17. At 75.

²⁰ I Savira Lukmana & Zakaria Anton Wicaksono, *The Role of ASEAN as a Regional Governance Actor in the Conflict Resolution between Thailand and Cambodia: The Preah Vihear Temple Dispute, 2008–2011*, 23 *Spektrum: Jurnal Ilmu Sosial*,148,163 (2026).

along the border region.²¹ However, it's activities were still constrained since it was bound by the principles of non-interference. It can be said that the activities of ASEAN did encourage Thailand and Cambodia to pursue a peaceful resolution, which led to the December 2025 ceasefire signed in China.²²

VI. The Myanmar Crisis

Myanmar, alongside Vietnam and Laos, was admitted into ASEAN in 1997. However, Myanmar was noted for behaviour that was not in accordance with the principles of ASEAN. During the latter half of the 1990s ASEAN had only hoped for Myanmar's voluntary internal efforts to improve human rights, and it had taken no steps to pressure Myanmar to move toward democracy or to delay its admission to ASEAN membership.²³ The civil society group Alternative ASEAN Network severely criticized the inability of ASEAN to deal with Myanmar and demanded the abolition of the non-interference principle as the precursor to effective ASEAN reform.²⁴ ASEAN's attitude changed after the Depayin massacre, where at least 70 people associated with Myanmar's National League for Democracy were killed in Depayin township by Myanmar's military junta. The official statement from the ASEAN foreign ministers meeting (AMM) had expressed its concern about the slow pace of democratization in Myanmar and requested national reconciliation.²⁵ At the beginning of 2016, Myanmar faced an allegation of genocide, and severe human rights violations against Rohingya Muslims in Rakhine State. This situation became such that Malaysia, one of Myanmar's early supporters, called for their expulsion from ASEAN.²⁶ In 2021, ASEAN adopted a peace plan known as the Five Point consensus, to create a framework for resolving the Myanmar crisis. Despite accepting it, the Myanmar junta has shown no willingness to implement any of it's proposals.²⁷

²¹ Abdul Rahman Bin Yaacob, *The Limits of ASEAN: The 2025 Cambodia-Thailand Border Conflict and the Role of External Actors*, 21 *Asia Pol'y*, 64, 68 (2026).

²² *Id.* At 74.

²³ Yukawa, *supra* note 9. At 8.

²⁴ Kim, *supra* note 4. At 26.

²⁵ Sanae Suzuki, *Interfering via ASEAN? In the Case of Disaster Management*, 40 *J. CURR. SOUTHEAST ASIAN AFF.* 400, 403 (2021).

²⁶ Sean Woon, *ASEAN at the Crossroads: An Analysis of the ASEAN Way and Its Approach in Conflict Resolution* (2016). https://www.researchgate.net/profile/Sean_Woon/publication/308515608_ASEAN_at_the_Crossroads_An_Analysis_of_the_ASEAN_Way_and_its_Approach_in_Conflict_Resolution/links/5f48dec492851c6cfd0076b/ASEAN-at-the-Crossroads-An-Analysis-of-the-ASEAN-Way-and-its-Approach-in-Conflict-Resolution.pdf

²⁷ ASEAN, *ASEAN Leaders' Review and Decision on the Implementation of the Five-Point Consensus* (2024), [Final-ASEAN-Leaders-Review-Decision-on-the-Implementation-of-5PC-2025_as-adopted.pdf](#).

VII. The Hazing Issue in Indonesia

The issue of transboundary haze has long plagued Indonesia and its neighbours since October 1972 and has caused major economic impact, including decreased gross domestic product (GDP) of 0.1 to 0.4 per cent each year in Singapore. Haze consists of sufficient smoke, dust, moisture, and vapor suspended in air to impair visibility. The haze resulted from burning of wide areas by Indonesian agro-industrialists to create plantations.²⁸ Even though a Regional Haze Action Plan was endorsed in 1997 with the aim of establishing operational procedures for monitoring land and forest fires, the impact was limited mainly due to the lack of political will on Indonesia's part.²⁹ In 2002, ASEAN constituted the Agreement on Transboundary Haze Pollution. Neither the AATHP nor ASEAN more generally contained mechanisms that could compel Indonesia to act more quickly.³⁰

VIII. The ASEAN Charter and its Impact

The ASEAN Charter was formulated by a group of learned persons known as the Eminent Persons Group (EPG). The EPG submitted their report to the High-Level Task Force composed of government officials from ASEAN countries. On three separate occasions the AMM raised the HLTF deliberative process, giving specific instructions on contents of the HLTF deliberations, which shows how strongly the HLTF, unlike the EPG, reflected the thoughts and confrontations of the various governments.³¹ The Charter itself ensures that human rights remain subordinate to the Association's bedrock principle of non-interference. The final text of Article 20 Verse 1 of the Charter stated that the basic principle of decision making in ASEAN would be based on consultation and consensus.³² One high-ranking official from Myanmar noted, "No, non-interference has not changed. It has been 52 years . . . The Charter formalized things, made it more of a rules-based organization. But the TAC is still the principle at ASEAN."³³ In Article 14 of the Charter, ASEAN stated that it has planned to establish a regional human rights body.³⁴ This led to the formation of the ASEAN Intergovernmental Commission on Human Rights. However, it faced many issues. It did not create a framework

²⁸ Linjun Wu, *East Asia and the Principle of Non-Intervention: Policies and Practices, 2000 Md. Ser. Contemp. Asian Stud.* 1,28 (2000).

²⁹ Kim, *supra* note 4. At 22.

³⁰ Suzuki, *supra* note 26. At 404.

³¹ Yukawa, *supra* note 9. At 10.

³² ASEAN Charter, art 20.

³³ Glas and Laurence, *supra* note 11. At 13.

³⁴ ASEAN Charter, art 14.

to adjudicate human rights abuses. it was permitted to do no more than further promotion of human rights through educational and promotional activities.³⁵

IX. Dilution of the ASEAN Way

During the drafting of the terms of reference for the AICHR, the Philippines, Malaysia, and Thailand supported giving it a monitoring function, while Cambodia, Vietnam, Laos, and Myanmar emphasized that it must only have consultative status.³⁶ Recently, ASEAN has taken steps interpreting the non-interference principle in a more liberal manner. The declaration of ASEAN Concord II included democracy as an ASEAN principle.³⁷ ASEAN members participated in the INTERFET coalition to resolve the conflict in East Timor.³⁸ Soon after Cyclone Nargis hit Myanmar, causing devastation, in May 2008, ASEAN took the lead in co-ordinating and liaising with the international community to deliver aid by establishing the ASEAN Humanitarian Task Force for the victims of the cyclone.³⁹ The AHA Centre has also emerged as a way to implement decisions on disaster management. The organisation took a collective stand against terrorism passing the Convention on Counter-Terrorism in 2007.⁴⁰ ASEAN members exerted pressure on Myanmar to resign from its chairmanship role in the 2006 ASEAN Foreign Ministerial Meeting, after repeated human rights abuses.⁴¹ The nature of the organisation is still based on the policy of non-intervention. However, ASEAN has had to take some potentially intrusive steps to protect their organisation's credibility.

X. Conclusion

ASEAN's policy of non-interference has been an important principle in preserving unity among the organisation's members. A rigid interpretation of this policy may lead to an inability for the organisation to respond to global challenges. ASEAN must also pursue greater engagement with non-state actors, particularly civil society groups and must give due respect to their concerns. It must come out of its need to view issues through a state-centric lens, and

³⁵ Yukawa, *supra* note 9. At 12.

³⁶ Gerard Clarke, *The Evolving ASEAN Human Rights System: The ASEAN Human Rights Declaration of 2012*, 11 *Nw. J. Hum. Rts.* 1, 11 (2012).

³⁷ Suzuki, *supra* note 26. At 403.

³⁸ J. Haacke, *ASEAN's Diplomatic and Security Culture: A Constructivist Assessment*, 3 *INT. RELAT. ASIA-PAC.* 57, 60 (2003).

³⁹ Hitoshi Nasu, *Revisiting the Principle of Non-Intervention: A Structural Principle of International Law or a Political Obstacle to Regional Security in Asia?*, 3 *ASIAN J. INT. LAW* 25, 49 (2013).

⁴⁰ Simon, *supra* note 2. At 271.

⁴¹ Yukawa, *supra* note 9. At 9.

understand the human-centric perspective. It has taken steps toward resolving these issues, such as establishing the AICHR. However, these institutions must be given operational authority, and have power to judge human rights disputes. In a world that is dominated by western liberal norms, ASEAN's role must also change. Rather than a forum for discussion, ASEAN could be a body which can resolve all issues within the group in a practical, and timely fashion.