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# ASEAN and the principle of non-intervention: the case of Thailand

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# ABBREVIATIONS

ACFTA: ASEAN-China Free Trade Agreement

AFTA: ASEAN Free Trade Area

AIA: ASEAN Investment Area

ALRC: Asian Legal Resource Centre

APEC: Asia Pacific Economic Cooperation forum

APT: ASEAN Plus Three

ASEAN: Association of South East Asian Nations

BSPP: Burma Socialist Party Programme

EAS: East Asian Summit

ECOWAS: Economic Community of West African States

EU: European Union

FFP: Future Forward Party

H.E.: His Excellency

ICJ: International Court of Justice

ICK: International Conference on Kampuchea

IO: International Organization

KR: Khmer Rouge

MAPHILINDO: Malaysia, the Philippines and Indonesia Confederation

MEC: Myanmar Economic Corporation Limited

MEHL: Myanmar Economic Holdings Public Company Limited

MILF: Moro Islamic Liberation Front

M.S.: Member States

NAFTA: North American Free Trade Agreement

NCCC: National Counter-Corruption Commission

NCPO: National Council for Peace and Order

NGO: Non-Governmental Organization

NLD: National League for Democracy

NRM: Nation, Religion, and Monarchy

OIC: Organization of Islamic Conference

PAD: People's Alliance for Democracy

PAS: Parti Islam Se-Malaysia, or Pan-Malaysian Islamic Party

PDRC: People's Democratic Reform Committee

PM: Prime Minister

PMC: Post-Ministerial Conference

PRK: People's Republic of Kampuchea

SLORC: State Law and Order Restoration Council

TAC: Treaty of Amity and Cooperation in Southeast

TRT: Thai Rak Thai

UN: United Nations

UNGA: United Nations General Assembly

USA: United States of America

ZOPFAN: Zone of Peace, Freedom and Neutrality Declaration

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## INTRODUCTION

### Objective of the study

International cooperation is something we are accustomed to. The aftermath of the Cold War has changed inevitably the geopolitical strategic alignment of the world's countries. Some of them, perceiving to be moved from pillar to post, decided to establish regional cooperative bodies to countervail the increasing influence endured by the Great Powers: the USA, Russia, and their respective allies.

South-East Asian countries were no exception, as in 1967 five of them decided to come together to merge economic resources for better development in the so-called "Association of South East Asian Nations" (hereby, called ASEAN). As reported by then Philippine Secretary of Foreign Affairs, Narciso Ramos: "The fragmented economies of Southeast Asia, (with) each country pursuing its own limited objectives and dissipating its meager resources in the overlapping or even conflicting endeavors of sister states carry the seeds of weakness in their incapacity for growth and their self-perpetuating dependence on the advanced, industrial nations. ASEAN, therefore, could marshal the still untapped potentials of this rich region through more substantial united action"[1].
Since the very beginning, one of the strong holds for ASEAN's Member States in dealing with intra-states' international relations were the "principle of non-interference". According to it, nations were refrained from intervening in domestic issues to respect their own sovereignty. Reasons for adopting such principle are numerous, and I will discuss some of the key points in the following section "literature review". As it would be seen, history tells us that the principle of non-intervention has undergone some changes in its interpretation throughout the decades. Academic literature on this point is vast, and I will go through it as well in the following section. During my research, I will look deep in understanding the reasons behind ASEAN's shifting approach to international relations in matters concerning Southeast Asia. More specifically, I will look on how Thailand, as one of the founding countries of ASEAN, has changed its attitude toward non-intervening in other sovereign states' businesses. It is in my understanding that Thailand has been one of the nations whose contribute has been crucial, due to its influence over the other

[1] Narciso Ramos Speech, on the signature of the Bangkok Declaration in 1967, ASEAN's founding document. Available at: https://asean.org/asean/about-asean/history/

ASEAN's states. Consequently, my research question is the following. "What explains Thailand's changing attitude toward the regional principle of non-interference?". As stated above, socio-historical approach will be a valid lens of interpretation to grasp the changes occurred on the international scenario. It is undeniable that part of the reasons to explain such evolution, rely on the ever-changing international scenario and geopolitical asset. My focus of analysis will be on ASEAN's (and on Thailand's) foreign policy and position on non-interference principle: to do so, I will study the role played by ASEAN and Thai's geopolitics and the historical setting in determining different interpretation of the principle.

Understanding how the mechanisms operate in the ASEAN international organization will be useful to other international organizations, as well as single nation-states, to better deal with ASEAN States in international relations and international economic agreements. Mutual understanding of the rationale operating in their legal fields will deepen the acknowledgement of the "non-intervention" principle operating in ASEAN. Consequently, it will limit the requests of Western countries to adopt westernized legal standards as requirement for undertaking diplomatic and commercial arrangements.

Methodology

For the purpose of this dissertation, the methodology I will adopt is described as follows. I will proceed with empirical research of previous analysis on the topic, and I will undergo through the pros and cons of adopting different theoretical approaches to the matter under scrutiny. I want to know why ASEAN has changed approach to "non-interference" during the past decades. In particular, I want to know why, among all nations, Thailand has been on the frontline in proposing new interpretation of such principle. Observable facts I can collect are:

- Written norms and declarations (ex. ASEAN Bangkok Declaration, Art. 2 paragraph E);
- Historical stages in interpreting it.
- Declarations by the Foreign or the Prime Ministers on some occasions (Cambodia, Myanmar, East Timor cases)
- How interferences have occurred in Myanmar in early 1990s, while today not.

My explanation is that ASEAN states have been pressured to change their approach from non-interventionism to involvement of some sort by regional economic interests first, and foreign pressures later. I believe that pushes for change came from the international community. International community posed the alternative interpretation of the principle as a *sine qua non* condition to get access to international aids and to play a role in foreign affairs. This theory is supported by the indirect intervention of ASEAN in matters concerning social and political stability in Cambogia and by the stands ASEAN took in 2003 against the military junta in Myanmar. As a matter of fact, ASEAN has repeatedly sought to get involved in Myanmar's domestic politics, asking that they be 'given a role to play' to boost ASEAN's 'credibility.' Several ASEAN foreign ministers have tried unsuccessfully to mediate between the government and its critics. My analysis will look to the two abovementioned cases, and in the final stage it will make a comparison on the ASEAN's approach to Myanmar in early 1990s-2000s and today's situation.

Literature review

Literature that analyzes the principle of "non-intervention" is extensive, especially for ASEAN and the regional cooperation in Southeast Asia. Scholars that study this fundamental aspect of the international organization often talk about the "ASEAN way", counterposed to the Western way. Since its foundation, ASEAN's Member States have relied on the principle of "non-intervention" to approach international relations with one another. Scholars[2] debate whether such a principle has been absolute or not and the reasons for understanding such changes. Answers focus on dissimilar aspects according to the different schools of thought, and I will proceed to take into consideration some of the most striking approaches to the subject. Realism[3] has provided flourishing literature, and it is not difficult to understand the reasons. Starting from the assumption that regional cooperation is motivated by the willingness to contrast great power's influence over the

[2] Robin Ramcharan. "ASEAN and non-interference: a principle maintained," *Contemporary Southeast Asia* (2000): 60-88.;

Hiro Katsumata, "WHY IS ASEAN DIPLOMACY CHANGING? From ""Non-Interference"" to ""Open and Frank Discussions""," *Asian Survey* 44.2, (2004): 237-254

[3] Michael Leifer, "The ASEAN peace process: a category mistake," *The Pacific Review* 12.1, (1999): 25-38. See also: Leifer Michael. *ASEAN and the Security of South-East Asia (Routledge Revivals)*. (Abingdon UK: Routledge, 2013).

area, smaller states are more likely to join regional or intranational organizations. Such reasoning goes well with the historical development that occurred from the mid-70s onward and the growing feeling of tension perceived by the South-East Asian nations to be dragged in the tug of war during the Cold War years. As reported by the scholar Acharya, "Realists viewed the security and stability in the Asia-Pacific region as a function largely of U.S. strategic dominance. The latter served to balance the expanding Soviet presence in the 1970s and 1980s and kept regional conflicts under check".[4] In realists' minds, the principle of non-intervention is one of the cornerstones of profitable foreign affairs, as to interfere in another state's domestic affairs will disrespect that State's national sovereignty. Still, by looking at the ASEAN approach to the non-intervention principle, some changes in interpreting and applying this principle have occurred. Therefore, a mere realist approach would not be sufficient to grasp the whole evolutionary process. It is thus necessary to move to one of the sub-schools of realism and try to find an answer on the adoption of the principle of non-intervention in the defensive neo-realism's school. The reasons for such shift can be summed up to two: firstly, as for liberalism, a mere realist approach would not be able to grasp the whole dynamics behind the Southeast Asian' foreign affairs. Secondly, defensive neo-realism is well-inserted in the historical period taken into consideration, as well as it is compatible with the pure historical-sociological approach described a few paragraphs below. In international affairs, defensive neo-realism is a structural philosophy drawn from the school of neo-realism. It is based on the political scientist Kenneth Waltz's Theory of International Politics, in which Waltz maintains that the anarchic nature of the international system allows states to maintain moderate and restrained strategies to achieve stability. On the other hand, offensive realism suggests that states aim to optimize their strength and authority to gain security through dominance and hegemony. Defensive neo-realism argues that aggressive growth, as advocated by offensive neo-realists, upsets states' propensity to adhere to the balance of power principle, lowering the primary goal of the State, which they contend is to ensure its stability. Although defensive realism does not dispute the existence of interstate conflict or that there are incentives for state growth, it contends that these incentives are intermittent rather than endemic. Defensive neo-realism

[4] Amitav Acharya, "Realism, institutionalism, and the Asian economic crisis," *Contemporary Southeast Asia* (1999): 1-29. Page 3

refers to "structural changes" such as security dilemmas and geography and elite views and expectations to justify the eruption of violence. As it is understood, neorealism's assumption starts from geopolitical structures, which are constantly evolving according to historical development. Nonetheless, realism does not take history and social development into consideration for analytical purposes. Consequently, while brilliantly analyzing defensive and offensive strategies, the neo-realist approach lacks an essential element to understand the reasons behind ASEAN's switch in approaching its Member States' domestic affairs entirely. History and geopolitical reasons are at the basis for such understanding, which has, of course, evolved during the decades.

By taking a historical and sociological approach, the scholar Jones in his work, argues that: "non-interference has been […] upheld or ignored in line with the interests of the region's dominant social forces in maintaining particular social and political orders"[5]. In addition, neo-realists fail at centering their theories on the defensive-offensive dichotomy. Regime defense is an unduly narrow vision of what state managers are dealing with. Rather than merely sticking to office, the majority often aim to handle social, political, and economic tensions (at home and abroad, by means like intervention) in specific ways, with the implicit privilege of certain interests over others.

The scholar Jones observes some stages to understand better the variation in interpreting the "non-intervention" principle. The author's opinion is that its application: "depends on the strategies adopted by state managers to further the interests of dominant social groups against their domestic and foreign opponents"[6]. The foundation of ASEAN occurred in 1967, in the background of the Cold War. Fear for the apparent spread of communism and governmental takeovers was so strong that the founding Member States opted for defending the (at the time) current social order. Therefore, the principle was applied for several main reasons. First of all, to isolate ASEAN populations from 'subversive' foreign forces to stabilize imperialist social order. Consequently, the non-interference principle allowed single Nations to better focus on their domestic economic growth without relying

[5] Lee Jones, "ASEAN's unchanged melody? The theory and practice of 'non-interference' in Southeast Asia," *The Pacific Review* 23.4, (2010), 479.

[6] Jones, "ASEAN's unchanged melody? The theory and practice of 'non-interference' in Southeast Asia" (2010), 484

on foreign aids. Therefore, socio-economic development and stability were the shared starting points for the South-East Asian countries joining the regional organization.

One further aspect that could explain the occasional ignorance of the non-intervention principle by the ASEAN Member States is the impact of globalization. As proposed by the scholar Kraft in his Ph.D. dissertation, the term globalization not only refers to trades and increasing capital mobility but also relates to: "the intensification of other forms of interaction that have been facilitated by the opening up of markets and borders"[7]. Globalization made interdependence among States stronger: the economic crisis started in Thailand, but it then caused a ripple effect on neighboring countries, who also suffered economic difficulties. The scholar Ramcharan[8], by taking a more liberal approach, sees the increasing concern for human rights protection in the area as the reason for changes, as in the case of Cambodian's national disorders. Such perspective could be inserted to expose Thailand's "flexible engagement" after the 1997 Asian economic crisis. Nonetheless, increasing concern for human rights is partly explained by regional growing endogenous concern for their protection. Taking the above-mentioned words of the scholar Kraft on globalization, the rising intensification of interactions increase the chances of inter-states influences, especially from Western countries and international organizations. It is undeniable that, due to the economic crisis, international organizations like the International Monetary Fund have shown interests in managing the crisis in South-East Asia. What is also undeniable is that those international bodies brought the attention and asked for improving human rights' status in the area as a *sine qua non* condition to get access to international aids. Thus, Thailand's flexible engagement proposal could be understood on the basis of foreign forces, pressing for attitudinal changes within single Nation States, and also within ASEAN's decision-making mechanism as well. Other schools of thoughts have made their arguments in explaining why a non-interference approach has been taken. For constructivist scholars, their

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[7] Herman Kraft and Joseph Santos, "The principle of non-intervention and ASEAN: Evolution and emerging challenges," *Strategic and Defence Studies Centre* 344, (2000), 12

[8] Ramcharan. "ASEAN and non-interference: a principle maintained," *Contemporary Southeast Asia* (2000): 60-88.

argument basis on the "collective identity" principle. According to them, "collective identity, which was formed as they shared norms created in their interactions over time, led to peace"[9]. As this approach might answer well to liberal scholars as well, such understanding alone will not be useful for the purpose of such dissertation. Why does the constructivist approach not apply? Because, as highlighted by the scholar Yukawa, the theory on construction of a common identity is based on empirical observations, which demonstrated how a "South-East Asian" identity has not been formed, nor has a common legislative body/ies been established yet. In social science, to demonstrate empirical concepts such as "identity" or "common values" is empirically complex and never fully trustworthy, and constructivism fails in demonstrating concretely the convergence of South-East Asia countries toward a "common identity". Several ASEAN agreements, discourses and documents put great emphasis on "non-interference". One example is the "Peace, Freedom and Neutrality Zone Declaration" of 1971. For the first time, the term 'non-interference in State affairs' emerged in the Agreement and the idea of non-interference was put forward as an essential definition for ASEAN. Since then, non-interference has been recognized and embraced as an essential norm, and this is an unquestionable fact. Thus, emphasis on shared legal practice of reciprocal respect for national sovereignty and the principle of consensus decision-making was already present since the earliest stages of ASEAN. However, it will be incorrect to claim that such elements are part of a shared identity, as to define that it would be necessary to rely on empirical evidence only. Instead, what is possible is to look at the term "ASEAN way", and the growing international interests it has generated. One of the legal practices included in such definition is the "constructive engagement", as reported by scholar Yukawa[10].

To sum up, different schools of thoughts agree in recognizing a shift in ASEAN's attitude toward foreign affairs and intra-states relations. What differs among them are the explanations according to which such change has taken place. As proposed by Hiro

[9] Taku Yukawa, "The ASEAN Way as a symbol: an analysis of discourses on the ASEAN Norms," *The Pacific Review* 31.3, (2018), 3.

[10] Yukawa, "The ASEAN Way as a symbol: an analysis of discourses on the ASEAN Norms," (2018), 4.

Katsumata[11], the constructivist approach holds that ASEAN's shift has been influenced by the global normative variation occurred during the early 2000s. Increasing global concerns for environment and human rights protection has provoked alterations in ASEAN's diplomacy. By holding such interpretation, Thailand and the Philippines would have changed their attitude toward non-interventionism and asked to the other Member States to re-evaluate the normative interpretation. However, such explanation entails that only external factors, such as pressures received by International NGOs, IOs and foreign States, have influenced the normative shift at the regional level. This analysis fails to grasp the role played by domestic national actors, such as civil societies. It would limit the full understanding of the topic to take only external factors, caused by intensified interactions among different nations, as the sole justification. New challenges are in front of many international organizations, starting with health issues and the socio-economic challenges raised because of the current Covid-19 pandemic. Constructivists and realists agree on demonstrating that new challenges are ahead of us, and new approaches should be considered while keeping an eye on how much those should changes alter the current approach to International Relations. However, what is still missing in those approaches is the historical and social domestic development within Thailand itself. 1997's economic crisis demonstrated the structural fragilities present in South-East Asian countries' economic sectors. Thailand is one of the countries that has been seriously impacted by the financial crisis. It shares land boundaries with Myanmar and Cambodia, all of which are politically relatively dysfunctional. Thailand then called for a frank discussion of domestic matters. Moreover, constructivist theory holds that countries whose government does not wish to open to foreign scrutiny, appear to be unable to foster frank talks, whereas countries with comparatively little domestic challenges do not hesitate to encourage a versatile understanding of the concept of non-interference. As recalled by the scholar Haacke[12], historical records hold that South-East Asian countries have indeed interfered with their neighbors' domestic affairs. The Malaysian then Prime Minister Anwar Ibrahim suggested a "constructivist approach" to neighbors in July 1997, a point

[11] Katsumata, "WHY IS ASEAN DIPLOMACY CHANGING? From ""Non-Interference"" to ""Open and Frank Discussions""," (2004): 237-254

[12] Jurgen Haacke "The concept of flexible engagement and the practice of enhanced interaction: intramural challenges to the 'ASEAN way'," *The Pacific Review* 12.4 (1999)

reaffirmed more firmly after the economic crisis of 1997. Thailand's Foreign Minister Pitsuwan Surin, during the 31st ASEAN Meeting advocated for an approach of "flexible engagement" to adopt in international relations. Although the other members refused it, the proposal left room for taking the so-called "enhanced interaction", "which affirmed member states' freedom to pursue interactions *vis-à-vis* one another"[13].

It almost looks like ASEAN reached an agreement on regional cooperation to be a united front against possible interferences from other powerful nations, both from the West like the USA or the European countries, and from China and Russia's influence. Such regional organization would thus keep the outsiders out from domestic businesses and, in addition, would serve as a dividing line among nations within ASEAN' boundaries.

In addition, academic sources have expanded analysis on the topic by looking at the possibilities of having an authoritarian turn of international law: some scholars have demonstrated how changes at regional level and regional phenomena have deep influences on international law, by arguing that the volitive nature of international law, which is based on customs and practices, allows alteration of international law itself.

Structure of the thesis

This dissertation is structured as following: on the first chapter, I will provide for some historical background on the establishment and development of the Association of South East Asian Nations (ASEAN). On the second chapter, I will look at the historical development of Thailand's approach to International Relations in regional cooperation, when it comes to crisis and tension in other ASEAN's Member States. in this chapter, I will take the case of Cambodia as first example of evolution of the interpretation of the "non-intervention" principle. The third chapter will deal with the specifics of Thailand's detailed process in interpreting the principle of non-intervention through the decades. More specifically, I will look at three different stages of Thai's politics: constructive engagement, flexible engagement, and non-interference principle again. Those political steps will be contextualized within the historical framework of Thailand's domestic affairs, as well as the influence played by the Cambodian and the Burmese conflicts. To do so, the chapter will be divided into different specific sectors that will analyze the working of Prime Minister Chatichai and Army in Chief Chavalit in introducing the

[13] Haacke "The concept of flexible engagement and the practice of enhanced interaction: intramural challenges to the 'ASEAN way'," 4 (1999)

"constructive engagement" as a policy of accommodation to the Burmese SLORC. In a second moment, I will look at the Chuan Leekpai's new government in 1997 and his response to the Asian financial crisis through the "flexible engagement" approach as a mean to cope with the regional economic failures. Thirdly, I will look at Thaksin's rise to power in 2001 and the reasons why, during his government, he decided to embrace non-intervention's principle again. The fourth chapter will discuss about possible development of such changes in the field of international law: as posed by some scholars, are we witnessing a drift toward new forms of authoritarian international law? Starting from the analysis illustrated in the chapters before, Thailand's choices in foreign policy at the regional level will be contextualized in the broader framework of international law. During this last chapter I will look at how today's systems of regional organizations are boosting the activities of authoritarian states both as single units and as regional groups. Despite some scholars' opinion that international law is shifting toward authoritarian features, it is in my opinion that, while changes are occurring, it might be too soon to describe the phenomenon as such. For that, I will look at the constitution of Thailand and the expression of "constitutionalism" in the country. To conclude, I will look at some of the aspects the Thailand's constitution has taken with authoritarian shapes.

# Chapter 1

# 1. HISTORY OF ASEAN AND OF ITS INTERNATIONAL RELATIONS

## 1.1 History of ASEAN

This chapter examines the history of the Association of Southeast Asian Nations (ASEAN) in its foreign affairs. During its 40-year history, ASEAN has played an essential role in shaping institutional development in the Asia Pacific region, especially since the 1990s. It is also at the heart of Asia Pacific regionalism, despite its fluctuant centrality during the decades. This is clear from the existence several initiatives that go beyond the borders of ASEAN itself: East Asian Summit (EAS), the Asia Pacific Economic Cooperation forum (APEC), the ASEAN-China Free Trade Agreement (ACFTA) and the ASEAN Plus Three (APT). On 8 August 1967, five Ministers of Foreign Affairs inaugurated ASEAN in Bangkok: those who were later referred to as the "Founding Fathers" of the association were the representatives of Indonesia, Malaysia, the Philippines, Singapore and Thailand. On its early stage, the establishing document, later called "the Bangkok Declaration", enlisted only 5 articles declaring the foundation of ASEAN, its aims and purposes. The pillars of ASEAN have been clear since the very beginning: respect for independence, collective responsibility, non-interference, aiming to create an association that could: "maintain and enhance peace, security and stability and further strengthen peace-oriented values in the region"[14].

The "non-interference" had an important meaning for the Founding Fathers, due to both national and historical conditions. Domestic reasons are at the basis for embracing this principle as core value of the whole association. The ASEAN Member States aimed to alleviate numerous friction sources that were straining ties among Southeast Asian countries by encouraging greater socioeconomic cooperation among them. To ensure success, the constituent states concluded that the focus of inter-regional dialogue's fundamental concept would be on non-interference in each other's domestic relations and equal respect for national sovereignty. Moreover, there was a definite acceptance that all parties should take decisions unanimously and that disputes had to be settled collegially

[14] Article 1 paragraph 1, ASEAN Charter. Available at: https://asean.org/storage/2012/05/The-ASEAN-Charter-14042020-final.pdf

rather than by the direct enforcement of legally binding laws. Consequently, the introduction of the norm of "non-intervention" would have allowed each Member State to develop and to preserve national identities independently form one another. The identity-building processes was also crucial for those nations. When established, ASEAN's Foreign Ministers endorsed the task of coordinating sets of foreign policies among themselves. One of the original motives for the founding of ASEAN was the need to promote regional reconciliation. Before its formation, numerous tensions among its prospective participants marked Southeast Asia's politico-security situation. The norms codified in the 1976 Treaty of Amity and Cooperation became known as the "ASEAN Way" because they required participants to commit all of their attention and efforts to what was considered the most pressing challenge in Southeast Asia: nation-building.

The following table contains a summary of the sources of tensions in Southeast Asia before the signing of the Bangkok Declaration in 1967, and the description of the States involved in each situation.

| States concerned | Source of tension |
|---|---|
| Indonesia, Malaysia, Singapore | Indonesia's policy of confrontation (*konfrontasi*) |
| Malaysia, Singapore | Singapore's ejection from the Malaya Federation |
| Malaysia, Thailand | Thai uncertainty over Kuala Lumpur's intentions towards its southern Malay Muslim provinces |
| Philippines, Malaysia | Manila's claim over Malaysia's Sabah province |

*Source: Achieving 'centrality' in the emerging Asian order, Chapter 2*

As shown in the graph, Indonesia's foreign policy of *konfrontasi* casted a shadow over other two countries, Malaysia and Singapore, three out of five founding states of ASEAN. In 1967 those three countries had just gone through three years of conflicts, as Indonesia had challenged the political legitimacy of Malaysia and Singapore. Furthermore, also the Philippines supported Indonesia's position, due to territorial disputes with Malaysia. Therefore, the founding member states hoped to mitigate the leftovers of the *konfrontasi* by setting up a regional intra-state association based on political and economic cooperation. In addition, the ASEAN's establishment would have benefitted the economic growth of each nation and foster political peace.

About the international political scenario of that decade, it must be kept in mind that ASEAN was founded against a peculiar backdrop: Cold War. During those years, geopolitics was strongly influenced by the tensions and the security assets deployed by the USSR and the USA against each other. Moreover, not only the previous mentioned

two superpowers, but also their allies were drawn in the conflicts, and the South East region was not exempted. Therefore, nations like Thailand had to fight strongly against the Communist forces within their borders, causing severe tensions at security level. It is important to understand the reasons behind the establishment of ASEAN to better comprehend what the principles and aims are and why were they chosen by the Founding Fathers.

ASEAN served three purposes: to lessen intra-ASEAN tensions, to limit the regional impact of external actors, and to encourage the socioeconomic growth of its members. Member states agreed that the highest security threat they faced was a foreign-backed communist insurgency. However, the ASEAN countries had differing perspectives on how to best achieve their goals. ASEAN was ostensibly formed to "promote regional peace and stability," primarily through the pursuit of socioeconomic goals. In fact, ASEAN member states were worried about security. ASEAN could not form a military alliance because such an alliance would necessitate the identification of a regional threat. Meanwhile, tensions illustrated above between ASEAN member countries also posed a barrier to security cooperation. Despite that, the presence of a common external threat played an important role in the formation of ASEAN. Over the past 40 years, ASEAN's evolution in response to external threats has been a coherent motivating force behind ASEAN's growth. During the first decade from its foundation, ASEAN had not been given enough space on the geopolitical platform to accomplish significant changes. Its member states necessitated sticking together, supporting each other, due to foreign operations occurring in the region: the USA and the UK decided to withdraw their forces from South-East Asia while Russia and China made efforts to play more significant roles. The Vietnam War and the continued involvement of foreign powers in security matters kept the ASEAN States make a common frontline to face such challenges. The focus of the first regional agreements was, in fact, security and how to consolidate it in the area. In November 1971, the Member States came together in Kuala Lumpur and signed the "Zone of Peace, Freedom and Neutrality Declaration" (ZOPFAN), also known as the Kuala Lumpur Declaration. The first stage called for a neutralization zone in Southeast Asia guaranteed by the great powers, including China, and non-aggression among ASEAN's Member States. As stated by Tun Dr Ismail Abdul Rahman, who first proposed such agreement on behalf of Malaysia: "it is time that the countries of Southeast Asia

signed non-aggression treaties with one another. Now is the time for the countries in Southeast Asia to declare a policy of co-existence in the sense that the countries […] should not interfere in the internal affairs of each other and to accept whatever form of government a country chooses to elect or adopt [...]. The alternative to the neutralization of Southeast Asia guaranteed by the big powers [...] is an open invitation by the region to the current big powers to make it a pawn in big power politics."[15]. From this speech, it is clear that the role foreseen for the ZOPFAN concerned with more than just ASEAN and it had a double purpose. Firstly, mutual respect for nation sovereignty is at the base for respecting the non-aggression and non-intervention principle and, by that, security must be kept among nations by devising ways for ensuring stability and peace among themselves. The difference between "non-aggression" and "non-intervention" is, in fact, important in the context of foreign affairs. While "non-aggression" is more a legal term that indicates the prohibition of using force against another sovereign-nation, it does not however prohibit other forms of intervention in the nation's domestic affairs, such as soft-power intervention. Meanwhile, "non-intervention" is a more general term which includes the prohibition of intervening through armed force in other parties' domestic issues. In addition, "non-intervention" principle is funded on the assumption that nation-states should respect the principle of sovereignty and autonomy of each nation, thus it avoids any form of interference in domestic affairs from third parties. [16]Secondly, the involvement of great powers like the USA, USSR and China was necessary to attest the neutrality of the region, but it had the consequent effect to also recognize the political value to the Association itself. Notwithstanding the position of some nations like Singapore, who would have opted for a more balanced system in the area, the ZOPFAN served as a practical political tool used by Malaysia. The purpose was to maintain a neutral foreign policy stance as well as to obtain a measure of external security and prevent excessive major power influence. Nonetheless, some scholars like Haacke[17] point

[15] Johan Saravanamuttu, "ASEAN Security for the 1980s: The Case for a Revitalized ZOPFAN," *Contemporary Southeast Asia* 6.2 (1984), 187.

[16] Maziar Jamnejad and Michael Wood. "The principle of non-intervention." *LJIL* 22 (2009): 349-353.

[17] Jürgen Haacke, "The ASEANization of Regional Order in East Asia: A Failed Endeavor?," *Asian Perspective* (1998)

to the fact that ZOPFAN is an example of how Member States, especially during their early stage, could not settle for shared visions dealing with foreign affairs. The end of the Vietnamese War in 1975 motivated ASEAN to further boost cooperation among Member States on security issues. During the Bali Conference of 1976, the Head of States of the Association met for the first time to deal with two main questions. On one side, how to handle the emerging communist forces in Cambodia, Laos and Vietnam, while on the other how to manage the unclear US commitment into the area. The products of the Bali Conference were two agreements: firstly, the signing of the Treaty of Amity and Cooperation in Southeast Asia (TAC) and secondly the declaration of ASEAN Concord. The latter discussed the economic aspect of security by establishing four areas of intra-ASEAN economic cooperation. It also promoted military cooperation among ASEAN members, although on a non-ASEAN basis. Meanwhile, the TAC served as a code for ASEAN's conduct: it compelled its signatories to resolve disputes peacefully and prohibited states from using force against one another. Non-ASEAN countries were welcome to join and today it has enlarged its membership to include vast amount of the Asia Pacific nations, like Australia, and others like Japan and China. Ultimately, the TAC has evolved into one of the most powerful symbols of ASEAN's influence in the Asia Pacific region for its adherence. Moreover, it is quite functional for this thesis to highlight the presence of the principle of non-intervention also in this Treaty. Article 2, paragraph b, recites as follows: "The right of every State to lead its national existence free from external interference, subversion or coercion"[18]. Such norm safeguards the right of each State to be free from interferent actions by other nations. Complementary, the prohibition of any act of intervention in other countries' domestic affairs is regulated by Article 2 paragraph c of the same Treaty, which goes as follow: "In their relations with one another, the High Contracting Parties shall be guided by the following fundamental principle […] Non-interference in the internal affairs of one another" [19].

The Vietnamese war against Cambodia in 1978 challenged the interpretation of the principle of non-intervention and triggered ASEAN's response to the conflict.

[18] Article 2 Paragraph b, TAC. Available at: https://asean-aipr.org/wp-content/uploads/2018/07/Treaty-of-Amity-and-Cooperation-in-Southeast-Asia-1976-TAC.pdf

[19] Article 2 Paragraph c, TAC. Available at: https://asean-aipr.org/wp-content/uploads/2018/07/Treaty-of-Amity-and-Cooperation-in-Southeast-Asia-1976-TAC.pdf

Throughout the '80s, ASEAN was highly active in representing the interests of the Khmer Rouge at the United Nations Assemblies. At the time, the UN Security Council had considered to intervene in the conflict, but the Sino-Soviet rivalry stopped any foreseeable resolution or plan of action. On one side, China proposed to invade North Vietnam as a response to its actions against Cambodia, while on the opposite side the USSR proposed only resolutions against Vietnam. ASEAN, with the backing of the United States and China, mobilized opposition to Vietnam at the United Nations, refusing the Vietnamese-installed government of Cambodia (the People's Republic of Kampuchea) its seat. ASEAN also played a role in coordinating the military and political opposition to the Vietnamese-backed government in Phnom Penh. However, its efforts were hampered by the fact that the most effective opposition-fighting force was the internationally reviled Khmer Rouge. ASEAN also sought diplomatic projects aimed at bringing the conflict to a close, such as the sponsorship of the International Conference on Kampuchea (ICK) in New York 1981.

Although it seemed that ASEAN's States presented a united front on the international stage, the intra-state relationship had some frictions due to their different strategic mindsets. For the purposes of this dissertation, the specifics of such political setting will be discussed in the next paragraph.

After Brunei Darussalam became a Member of ASEAN in January 1984, the Association started noticing a growing number of free-trade areas established in all continents. From Europe with the European Economic Community to the NAFTA accord signed among the USA, Canada and Mexico, Southeast Asian countries perceived that economic cooperation had to be strengthened. To do that later in the 1980s, more exactly in 1989, ASEAN established with Australia the Asia-Pacific Economic Cooperation (APEC). This process provided new opportunities for ASEAN Member Countries to collaborate not only with China, Japan, and the Republic of Korea, but also with Chinese Taipei and Hong Kong. Participation in the APEC process is still today based on global economics. In addition, to foster intra-regional economic cooperation, Member States decided to establish a Free Trade Area (AFTA) that could facilitate economic integration, support local trade and draw more foreign investors in the region. Thailand recommended such agreement in 1991, and during the Singapore Summit of 1992 ASEAN implemented it. According to the scholar Narine, reasons for pursuing AFTA were mainly four. Firstly,

to give ASEAN a new purpose in the post-Cold War era, as in early '90s it had come to an end. Secondly, to counteract the rise of economic regionalism in other parts of the world and give AFTA members a stronger voice and economic clout in international economic talks. Third reason points out that such agreement would make it easier for multinational companies to develop themselves at the regional level. Lastly, AFTA would have served as a regional investment zone that draws foreign investment and competes on a more level playing field with China. As a matter of fact, much of the impetus for promoting AFTA and other economic initiatives stemmed from a number of foreign economic threats that arose in the 1990s and early 2000s. in fact, the rise of China as a global economic power was the single most powerful force driving AFTA's continued growth. In July 1995, Vietnam was appointed as the new Member State of the Association. Reasons to apply for the membership were several: at the beginning, the prime objective was to secure a safer and more peaceful international setting. This would have guaranteed to Vietnam protection against foreign threats. A second reason for Vietnam to join ASEAN was to carry out economic renovation, to evolve international relations with the other Member States and to put an end to the territorial disputes.

July 1997 called for two other major events in ASEAN's history: both Laos and Myanmar joined the regional organization, while the terrible Asian financial crisis started in Thailand and swamped Southeast Asian economies. Last country applying for membership in ASEAN was Cambodia, whose request got forwarded in 1997. However, because of domestic violence and turmoil, its request got accepted only in 1999, although relationship between ASEAN and the nation even during the previous years had existed. The attempt to establish a market within Southeast Asia goes along with the establishment of the principle of non-intervention and a more general willingness to improve political cooperation among the states. In fact, an increased cooperation emphasizes the value of stakeholder consultation as a way of improving knowledge flows and the domestic sector's ability to perform. As a matter of fact, after the end of the Cold War and the Cambodian crisis, the ASEAN Free Trade Area (AFTA) was formed in the early 1990s to give the association/region a new political meaning. As ASEAN agreed to form the AEC more than a decade back, many global powers had already forced the ten tiny Southeast Asian economies to move forward with their economic integration. The ASEAN countries realized the importance of a joint economic framework for regional

stabilization and the avoidance of potential financial crises after the financial crisis of 1997. Second, China's admission to the World Trade Organization (WTO) and rapid development as a desirable consumer and manufacturing base pressed ASEAN countries to work together in order to achieve economies of scale. Finally, the expansion of regional trade agreements (RTAs) by European and American countries has prompted ASEAN governments to establish frameworks to stay competitive and relevant in multilateral negotiations[20]. By establishing an integrated economic market among several nations, the members of the Association are less likely to engage in armed conflicts against each other, or to interfere into others' domestic affairs. In this way, nations are likely to create strong deterrents, as the ripple effect of a military intervening action could cause economic harms to the attacker. When combined together, non-intervention norms establish the legal ban of intervening in other states' affairs. Meanwhile, regional economic cooperation strengthens interdependence among states. Such dependency is likely to decrease the chances of military intervention.

### 1.2 ASEAN and the impact of the 1997 financial crisis

In July 1997, Southeast Asian economies were shaken by the tremendous financial crisis that negatively influenced the local currency value. The 1997-98 Asia crisis's roots were partly since several nations had efficiently connected their currencies to the dollar when the dollar was appreciating relative to the Japanese yen and Chinese renminbi. Asian currencies, such as the Thai baht or the Indonesia rupiah, gained in value relative to the yen and renminbi. Consequently, Thai, Indonesian, and other Asian goods became more expensive than those of Japan and China. The decline in competitiveness placed downward pressure on their currencies, causing them to depreciate. Other significant factors were at work in the Asian crisis, such as bank depositor panic and vulnerable banking structures, caused by a lack of incentives for successful risk management generated by implied or explicit government guarantees against failure. What began as a financial liquidity issue in one country, Thailand, with its currency depreciation policies, rapidly spread and impacted the rest of the region. What was remarkable about this ripple

[20] Tham Siew Yean and Sanchita Basu Das, "The ASEAN economic community and conflicting domestic interests: An overview," *Journal of Southeast Asian Economies,* (2015)

effect was that the financial crisis had quickly spiraled out of control, becoming not only an economic crisis but also a political and security crisis of epic proportions.

Up to that moment, ASEAN had demonstrated great capabilities in cooperating for security reasons, but it had failed in starting a process of effective internal market. Moreover, it totally lacked a safety net and a central economic structure that could coordinate shared fiscal policies in the Association. The scholar Guan offers various explanations to justify the failure of the integrated economic system. He points out to the earliest stage of the Southeast Asian integration based on security concerns. ASEAN was then a response to avoid external influences during the Cold War, but the intra-state market had remained weak. As a matter of fact, despite the establishment of AFTA in 1992 and of AIA in 1995, the volume of intra-regional trade did not grow as much as expected, neither before nor after the 1997's financial crisis.

**Intra-Regional Trade Shares (Merchandise Trade), 1980–2014 (%)**

| | 1980s | 1990s | 2000s | 2010–2014 |
|---|---|---|---|---|
| ASEAN | 18.6 | 22.5 | 24.4 | 25.3 |

As shown in the graph above, the volume of intra-state trade from the 1990s to the 2000s has not increased as much as expected after the implementation of specific regional compromises.

ASEAN showed an inability to draft a treaty with consistent rules and processes that would have arguably bound and guaranteed commitment. This inability is linked to a political culture that reveres sovereignty and non-interference. One example is the way ASEAN addressed the security problems brought by increasing phenomenon of terrorism in the region. Malaysia, for example, has accused some of its residents, many of whom are affiliated with the opposition party PAS (Parti Islam Se-Malaysia, or Pan-Malaysian Islamic Party), of having links to regional militant organizations such as As Jemaah Islamiah (Islamic Congregation). However, after a string of terrorist attacks in Indonesia in 2002 and 2003, Indonesia and Malaysia, both Muslim-majority nations, have seen the terrorists' religious motivations differently. Any of them accuses the other of being the source of their problems. Malaysia chastised Indonesia for being too lenient with Islamic militants, while Indonesia accused Malaysia of harboring terrorists. The only regional

collective response of ASEAN to terrorism was the adoption of the Declaration on Joint Action to Counter Terrorism, but many more measures were taken with the USA. In 2002, ASEAN and the United States signed a counterterrorism agreement that aimed to increase information cooperation and border patrols while also requiring signatories to freeze terrorist groups' funds. As a result, the ASEAN countries are in a pickle. In the one hand, successful counter-terrorism policies necessitated collaboration with a foreign force, such as the United States. On the other hand, this goes against a key ASEAN principle of regional resilience, which states that ASEAN should solve its problems without external intervention. In this situation, the non-intervention principle prevented ASEAN states to take collective actions to solve a problem within Southeast Asia itself. ASEAN was forced to come to terms with external forces, which had the legal opportunities to interfere in their domestic businesses without breaking institutional rules.

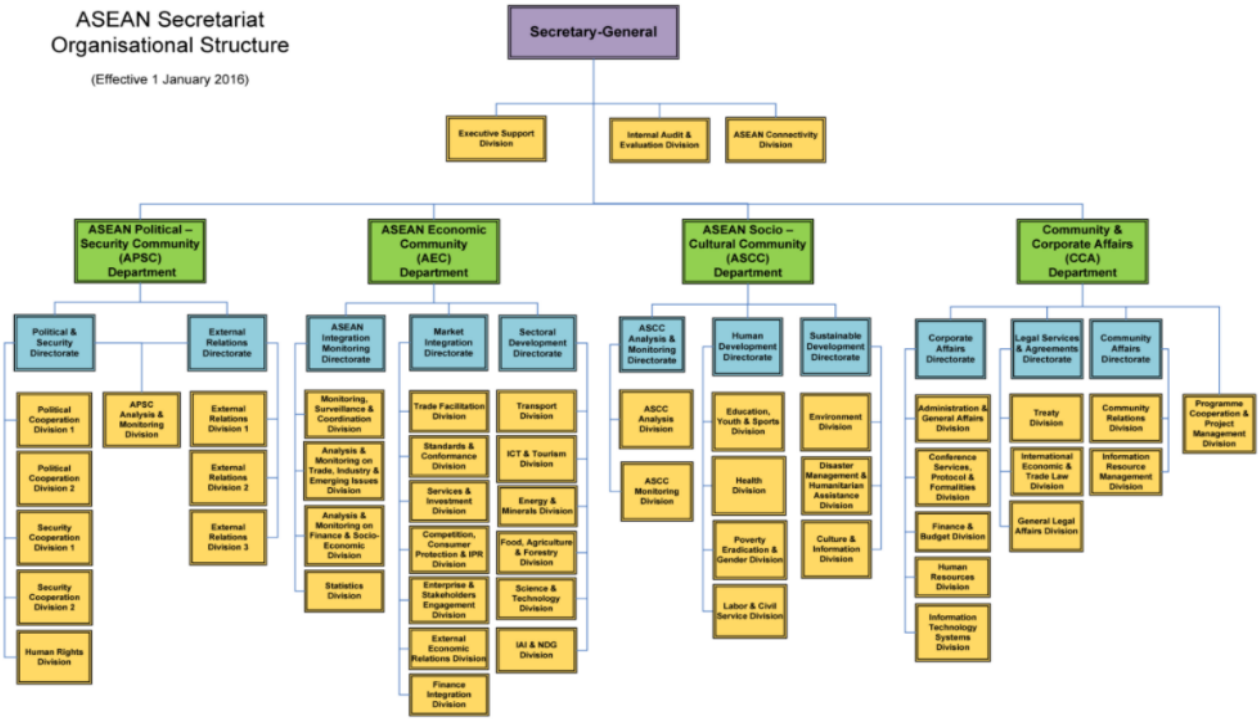
As the Association became more firmly ensconced within its standards, it found it more difficult to establish the institutional structures necessary for increasing intra-trade and deepening economic integration. Another explanation for ASEAN's failure was the political attitude of single States' governments. As a matter of fact, the realist perspective would point to the government's attitude not to foster closer economic integration because it would have meant loss of power at the domestic level to be transferred at the supranational level. The formation of AFTA and the signing of numerous economic treaties represented a recognition of external market forces such as globalization rather than strong internal market integration needs. The implementation of such agreements kept being a challenge, such as the Hanoi Plan of Action, which sought to accelerate AFTA's action. Further proposals considered the formation of an ASEAN Action Plan for Social Safety Nets in 1998 and the "ASEAN Troika" by Thailand in 1999. Nonetheless, both provisions were limited by their constituent nature which precluded any decision-making capability and by the ASEAN's Charter itself. As reported in Article 2, paragraph f and k, members shall act in accordance with: "the respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion"[21] and they must respect: "abstention from participating in any

[21] Article 2 Paragraph k, ASEAN Charter. Available at: https://asean.org/storage/2012/05/The-ASEAN-Charter-14042020-final.pdf

policy or activity, […] which threatens the sovereignty, territorial integrity or political and economic stability of ASEAN Member States".[22]

### 1.3 Organizational Structure

ASEAN delineates its organizational structure in Chapter IV and X of its Charter, and the several departments' organization can be schematized with the following graph.




*Source: ASEAN Organizational Structure Website*

The following sections will be useful to understand better, from a juridical perspective, how the Founding Fathers have designed the network within the Association, its bodies and the respective functionings and interactions. The Chapters of ASEAN Charter under analysis are the fourth, which enlistes the organs of ASEAN, and the tenth, which deals with administration and procedures.

[22] Article 2 Paragraph k, ASEAN Charter. Available at: https://asean.org/storage/2012/05/The-ASEAN-Charter-14042020-final.pdf

### 1.3.1 Chapter IV: Organs

Chapter IV of ASEAN Charter comprehends 9 articles, each one explaining one body of the Association and its working. It starts with Article 7, dealing with the ASEAN Summit. Heads of State or of Government are the members of the Summit. Its tasks concern primarily with policy-making, but it also can deliberate and take decisions on issues referred by the Coordinating Council, the Community Councils, and Sectorial Ministerial Bodies. Matters over which it has jurisdictions are enlisted in Chapter VII and VIII of the Charter. In addition, the ASEAN Summit has the power of appointing the Secretary-General.

Article 8 presents the ASEAN Coordinating Council, where all ASEAN Foreign Ministers are its members. Their role is to prepare the ASEAN Summit meetings to coordinate the implementation of the ASEAN Summit's decisions. Moreover, it coordinates its working with the ASEAN Community Council to make politically coherent decisions and approve the Deputy Secretary-General's appointment.

Article 9 deals with the ASEAN Community Councils, and it includes three bodies: ASEAN Political-Security Community Council, the ASEAN Economic Community Council, and the ASEAN Socio-Cultural Community Council. This body is composed of Member States' designated representatives: they must ensure the implementation of ASEAN Summit decisions, and it submits reports and recommendations to the ASEAN Summit. Meanwhile the ASEAN Sectoral Ministerial Bodies, described in Article 10, focuses on strengthening cooperation in common ministerial fields to support integration and community building.

Article 11 is one of the longest articles in the Charter, since it provides with the specifics of the Secretary-General of ASEAN and ASEAN Secretariat. The ASEAN Summit oversees the appointment for a non-renewable term of 5 years. The Secretary-General facilitates and monitors the implementation of ASEAN decisions and agreements and it is responsible for submitting annual reports on ASEAN's work to the Summit. Lastly, it recommends the appointment and termination of the Deputy Secretaries-General to the ASEAN Coordinating Council. Article 12 deals with the Committee of permanent representatives to ASEAN. Members of this committee are appointed by the Member State they represent, and their rank is equivalent to Ambassadors in Jakarta. The

Committee supports the ASEAN Community Council's work, it collaborates with the Secretary-General and it facilitates ASEAN cooperation with external partners.
The subsequent three articles (13, 14, 15) regulates respectively the ASEAN National Secretariats, the ASEAN Human Body, and the ASEAN Foundation.

### 1.3.2 Chapter X: Administration and procedures

Chapter X of the ASEAN Charter regulates procedures and administration affairs. It includes four articles: two among them refer to the role of Chairman. Article 31 explains what role covers the Chairman in the Association. It is an annually rotating position, and it chairs all the Councils and Summit illustrated above. Article 32 completes the description of the Chairman's role: it will actively promote and enhance ASEAN's interests to build an ASEAN Community through policy initiatives, cooperation, and consensus, while representing ASEAN with external partners.

### 1.3.3 ASEAN's norms and practices

Why is "non-intervention" one of the most stressed principle in ASEAN, yet the first to be interpreted differently throughout history? The answer relies in history itself: ASEAN was funded for security reasons, which were to keep great powers' collisions out of the region during the Cold War, while limiting the spread of domestic disorders. Especially the latter point relied on the reasoning of avoiding any possible intra-state unrequested intervention, to prevent rapid escalation of violence. In addition, Southeast Asian nations in mid-60s were building up their domestic governmental framework: non-intervention practices granted a proper autonomous development and recognition of sovereignty. Thus, ASEAN' Member States applied the strictest interpretation of "non- intervention" in dealing with foreign affairs. Nonetheless, in the case of the Cambodian conflict, intervention by ASEAN was inevitable due to the feasible ripple effects not only in Cambodia, but also on neighboring countries like Thailand. Possible influences by the revolutionary Vietnamese forces in terms of ideologies and violent actions was so concrete that it had to be counterposed.

## 1.4 The Cambodian conflict: an example of politicized interpretation of "non-intervention"

The case of Cambodia is quite complex, and to try to simplify it in few lines will be challenging, yet important to the purposes of this analysis. The historical events are the following: Vietnam attacked Cambodia on December 25, 1978, deposing the Khmer Rouge and cementing China's enmity with Cambodia. China prepared a punitive assault on Vietnam in February–March 1979, but it was defeated. Consequently, China shifted its strategy and began funding the Khmer Rouge's guerilla war against Vietnam. However, to supply the KR, China needed Thailand's cooperation as the "front line" state bordering Cambodia. For this reason, Thailand became a transit point for Chinese arms destined for the KR and it also obtained a reiteration of US security assurances from the White House. Meanwhile, on the international stage and as reported in the previous paragraph, ASEAN worked incredibly hard to keep the seat of Khmer Rouge as UN representative of Cambodia. Besides, ASEAN successfully campaigned on affirming the infringement by Vietnam of TAC's principles of sovereignty and of use of force's prohibition.

Indonesia was a strong supporter of Thailand, as it also shared the initiative of Bangkok to exert its regional power via ASEAN.

It goes without saying that in the case of the Cambodian conflict the interpretation of the non-interference norm shows how deeply politicized it is in international relations. As stated before, ASEAN's foundation in 1967 addressed the need for regional security to face major foreign powers. In that scenario, the ASEAN Declaration sought to end the rampant intervention against each other's law that had historically dominated regional foreign relations. In a historical moment when 'national ideologies' were fragile or non-existent, the aim was to give oppressive elites enough leeway to participate in violent political consolidation. Pressure to intervene in the Vietnamese-Cambodian conflict have come from neighboring countries, such as Thailand, since they feared the revolution could have had a ripple effect. Also, in previous episodes of violent outbreaks ASEAN decided to intervene to keep stability and order in the nation, for example when Indonesia annexed East Timor or Malaysia granted military support against communist guerrillas in Indonesia. Those precedents indicate that the ASEAN elites wanted to defend their own fragile social orders, not an abstract legal doctrine.

# Chapter 2

# 2. THAILAND'S DEVELOPMENT IN ASEAN'S INTERNATIONAL RELATIONS

## 2.1 History of Thailand in international relations in Southeast Asia

Thailand's participation in ASEAN has always been promising. The Association of Southeast Asian Nations (ASEAN) was established in Bangkok in 1967. In terms of economics, Prime Minister Anand Panyarachun launched AFTA while, in terms of politics, Bangkok hosted the first ASEAN Regional Forum. At the same time, ASEAN membership has always been essential to Thailand's interests. The extent to which it is essential, and the role that Thailand plays in it, is heavily influenced by domestic political trends related to international affairs. Policymakers face challenges or openings because of the external world. How policymakers respond to the external environment is heavily influenced by the available political space, especially in Thailand. From the foundation of ASEAN until today, Thailand has changed its position within the Association and toward some its core approaches to foreign affairs, such as the principle of non-intervention. Some scholars like Snitwongse[23] argue that the complexity of Thailand's ASEAN position is primarily a result/function of domestic policy-making climate and it relies in the stability of foreign policy leadership, which is closely linked to the current political structure. As a matter of fact, the position of Thailand in relation to its foreign affairs and international partners is amply justified by its strong ties with the USA. the relationship with the USA has granted to Thailand enormous political power on the international stage, in addressing the changes and the reinterpretation of the principle of non-intervention in ASEAN. In occasion of several conflicts occurred in the last decades of the 20th century in Southeast Asia, the American government has always pushed for intervention by arguing the necessity to put an end to humanitarian crisis. For the USA, it was essential to have a strategic ally within Southeast Asia that could back their request up. Meanwhile, for Thailand it was relevant to have the USA as ally to increase its credibility and prestigious both on the international and on regional stage.

[23] Kusuma Snitwongse, "Thailand and ASEAN: Thirty years on," *Asian Journal of Political Science* 5.1, (1997)

### 2.1.1 1950s and 1960s: Thailand and the United States of America

Previously to the foundation of ASEAN, during the '60s, Thanat Khoman, Thailand Foreign Minister, played a decisive role in positioning Thailand at the forefront of the regional cooperation system. During the Cold War, the spread of communism in Indochina frightened Thailand's political system. The willingness to hold on to principles of neutrality and cooperation with all nations was a pillar of Thai diplomacy for decades. Nonetheless, it had already been getting closer to a security relationship with the US even before Thanat's tenure as Foreign Minister. Further actions showed the centrality of the role covered by Thailand with the USA. Thanat and US Secretary of State Dean Rusk signed a bilateral communiqué in March 1962 in which Washington agreed to come to Thailand's aid if it encountered hostility from neighboring countries. The communiqué improved on an already US-Thai solid friendship developed in the nineteenth century with the bilateral Treaty of Amity and Trade in 1833. During the years that followed the communiqué, the US significantly increased Thailand's military forces, and Thai troops were heavily engaged in Laos and South Vietnam wars. Besides their Vietnam efforts, Thai troops assisted a Laotian nationalist general during a civil war in Vientiane in 1960. Later, when the army of Hmong and other hill tribes commanded by Vang Pao faced tragedy in Laos' highlands, Thai troops regularly reinforced Hmong irregulars. Between the mid-1950s and the mid-1970s, the United States lavished defense and economic aid on Thailand, quickly modernizing its physical infrastructure. Genuine shared needs at the time of the Thanat-Rusk communiqué were the basis of the US-Thailand partnership. In retrospect, the communist challenge to Thailand was limited[24]; for example, the actual Communist Party of Thailand never gained substantial momentum in the kingdom. It seemed rational to think that Southeast Asia's political turmoil would endanger Thailand. Meanwhile, Thai leaders required US defense, diplomatic support, and massive US economic and security assistance. The US needed a secure and peaceful Thailand for its bases, its leadership of non-communist Asian countries, its example of economic growth by free-market economics, and its willingness to make South Vietnam's defense seem to be a global effort. Despite all those aspects and the great cooperation, Thai Minister of

[24]US Office of the Historian Foreign Relations of the United States, 1961–1963, Volume XXIII, Southeast Asia, Document 471. Available at: https://history.state.gov/

Foreign Affair decided to listen to the growing criticisms against the US's involvement in the Vietnam War. He concluded that the time for this partnership had come to an end, as there was a lack of interest between American and Southeast Asian foreign forces. Minister Thanat was yet prepared for such a future perspective: as a matter of fact, he saw international cooperation as a long-term option that needed to be planned for, rather than being a substitute for an alliance with the United States[25]. As a result, he saw cooperation as a slow and informal mechanism that would offer participants a forum to share ideas. Moreover, Thanat firmly believed that cooperation would only succeed with countries with shared interests, notably neighboring nations[26].

### 2.1.2 1960s and 1970s: Thailand in Southeast Asia

Referring to the principle that cooperation would succeed only among neighboring countries, Thailand made a first step to toward regional institutionalism. First, it was the main promoter of the 1961 Association of Southeast Asia, whose members were the Philippines, Malaysia, and Thailand. A crucial turnover occurred in 1965, at the end of the conflicts among the Philippines, Malaysia and Indonesia that followed the breakup of the MAPHILINDO Confederation. The change in the Indonesian leadership in 1965 and the renewed intention to solve the Sabah issue between Malaysia and the Philippines was an excellent chance for Thailand to call for major regional cooperation and to put itself as mediator. Thanat was fast to deliver Thailand's best endeavors in the reconciliation process by helping Indonesia: Thai Ministry of Foreign Affairs collaborated closely with Indonesian Adam Malik and volunteered to draft a working paper to create the organization that would become ASEAN. It is already clear how important the role of Thailand in the region was. It is undeniable that its past role of great partner with the USA gave Thailand a relevant *status quo* in the foreign affairs of Southeast Asia. Thus, such alliance made the nation highly trustworthy both on the international stage and in Southeast Asia, the latter being remarked by its role as one of the funding members of ASEAN in 1967. The early '70s were dedicated to the new organization's consolidation and the research for a more clear-cut identification role. For instance, Malaysia proposed

[25] Snitwongse, "Thailand and ASEAN: Thirty years on," (1997), 100.

[26] Frank C. Darling, "Thailand: de-escalation and uncertainty," *Asian Survey* 9.2 (1969)

in 1971 to set up the networking of ZOPFAN to identify more as a security organization. Nonetheless, both the Philippines and Thailand already had some US military bases in their territories that assured their security. Thus, they did not support Malaysia's position vehemently, as they considered the US presence in their nations to be a sufficient guarantee for their safety. Minor changes for Thailand started around the mid-'70s. Following the military regime's downfall in October 1973, the foreign policy came back under civilian control until October 1976, when the military regained power in a violent coup d'état. During those years, Thailand followed an "equidistance" strategy in which relations with China, the Soviet Union, and the Communist Indo-Chinese countries strengthened. However, relations with the US deteriorated when Thailand ordered the US to shut down its bases. The triumph of North Vietnam over South Vietnam in 1975 and the Communist takeover of Laos and Cambodia, and the unforgettable picture of the less-than-orderly evacuation of US troops from Saigon, were representing the United States' dwindling presence and assurances in the region. The role of Thailand in ASEAN's foreign and security policy has grown in domestic and international political environments. Such importance was evident in Thailand's support for ASEAN's efforts to advance its regional order vision at the 1976 Bali Summit, which resulted in the acceptance of the TAC in Southeast Asia and the Declaration of ASEAN Concord.

### 2.2 The Cambodian conflict: general overview

Up to the 1980s, it was evident that ASEAN, as a regional organization, would focus on security matters.[27] The MSs ha envisaged for the Association were several treaties and official documents that remarked the idea of respecting reciprocal sovereignty while avoiding any form of domestic intervention. ASEAN had envisioned a structured but selective involvement in conflict prevention with international coordination and pacific dispute resolution as the two primary tools for conflict' prevention. Those are stated in the 1971 Kuala Lumpur Declaration and expanded upon in the 1976 ASEAN Concord Declaration. When disagreements occur, member states are invited to resolve them by respectful consultations under the 1976 Treaty of Amity and Cooperation procedures.

[27] Lee Jones, "ASEAN intervention in Cambodia: from Cold War to conditionality," *The Pacific Review* 20.4, (2007): 523-550.

However, such mechanism has some weaknesses. There is no compulsion on contracting states to use the treaty arrangements for pacific conflict resolution. As a result, they are unused. Besides, there is no provision for a scheme of national defence if a state resorts to the use of force to accomplish its aims; the Association has purposefully avoided discussing the role of force in upholding its prescription for regional order. To conclude this brief overview on ASEAN related to the Cambodian conflict, it is possible to affirm that, in terms of external disputes, ASEAN did not envision conflict avoidance, containment, or resolution positions. It hoped that ultimately all ten states in the region would be involved and that ASEAN's plans for peace and security should include all Southeast Asia, not just the ASEAN sub-region. The Indochinese states and Burma, on the other hand, did not sign on the 1976 Treaty. As a result, non-ASEAN Southeast Asia had not applied for the Association's conflict management mechanisms. ASEAN has expressly rejected any form of military alliance among member states to deter external threats. However, the Vietnamese invasion of Cambodia compelled the Association to investigate defence positions concerning external conflicts.

To talk about the Cambodian conflict, it is necessary to provide with some general knowledge on its outbreak and on the parties involved. The dispute was primarily bilateral (Khmer-Vietnamese) and domestic (Intra-Khmer), but it became internationalized due to the complexities of deep-seated regional Thai-Vietnamese and Sino-Vietnamese antagonisms as well as global Sino-Soviet and Soviet-American rivalries. The breakdown of Khmer-Vietnamese bilateral relations after 1975, on the other hand, was the root cause of the dispute. Perceiving the Khmer Rouge (KR) government as unalterably opposed to particular relations and worried about Chinese military aid to Cambodia, Hanoi responded to the Khmer military incursions by invading Cambodia and establishing a puppet regime in December 1978. Hanoi perceived Beijing's military support to the Pol Pot regime as a move to deny Vietnam's legitimate security interests and a continuation of a Chinese policy aimed at undermining Indochina's independence and dominating the countries on its southern flank. On the other hand, Beijing saw Vietnam's bid to control Indochina and its increasing geopolitical alliance with the former Soviet Union as a threat to Chinese stability. Vietnam's need for a dominant role in Indochina and the elimination of the Chinese threat necessitated political, commercial, and military resources well beyond its means. As a result, it allied with the Soviet Union. For the Soviet Union, this coalition

would build insecurity on China's southern side, and Moscow might become a significant player in Southeast Asia through Hanoi. Access to military bases in Vietnam aided the Soviet Union's military rivalry with the United States. As a result, the Sino-Soviet war fuelled the Cambodian conflict.

### 2.2.1 Perception of ASEAN

According to ASEAN, Vietnam's invasion and occupation violated two cardinal ASEAN security norms: non-interference and non-intervention in another country's internal relations and the use of force to settle diplomatic conflicts. ASEAN has repeatedly and unequivocally opposed military intervention to reaffirm the Cambodian people's right to self-determination free of foreign interference. From such perspective, Thailand saw the Vietnamese invasion and occupation of Cambodia as a danger to national security. The problem was not military aggression but Vietnam's dominant role in Indochina and its ability to undermine Thai stability by promoting insurgency and secession, especially in Northeast Thailand. The idea of an expansionist Vietnam also influenced Singapore and Malaysia's security views. At the same time, Indonesia saw China as the long-term danger to Southeast Asia's security — and Vietnam as a potential shield against this threat. Nonetheless, Indonesia acknowledged Thailand' worries and decided to back it up at the ASEAN level, especially after the numerous Vietnamese' incursions in Thailand' lands from June 1980. The latter was the crucial moment for ASEAN' Member States, as the Foreign Ministers defined Vietnam' attacks as direct and grave threats to Thailand's security. In addition, they recognized the ripple effect that those actions had on the overall security for ASEAN and in the region. Meanwhile, Indonesia and Malaysia saw the Cambodian war as exposing excellent power competition in the region, resulting in the ZOPFAN and nuclear-weapons-free zone initiatives' indefinite postponement. While there were disputes within ASEAN on these matters, the member states held a collective stand on the Cambodian conflict and were determined to reverse Cambodia's situation. The conflict was a great testing ground to evaluate the power of ASEAN at the international stage. Especially in the United Nations, ASEAN actively fought for Cambodia's UN seat to be retained by the Khmer Rouge. This was an unprecedented development with significant implications for the balance of powers inside Cambodia. Using non-interventionist rhetoric, ASEAN rallied Third World countries to vote at the UN General Assembly against the PRK's credentials in favour of Democratic Kampuchea

(DK), embodied by Ieng Sary, Pol Pot's deputy. Its interventions were crucial. It was unusual for an overthrown government to keep its UN office, and it had significant implications for the trajectory of the Cambodian war. As a result, ASEAN could deny success to Vietnam and the DPRK and use the United Nations and its institutions to spread its viewpoint on the war. Its interventions were crucial. It was unusual for an overthrown government to keep its UN office, and it had significant implications for the trajectory of the Cambodian war. As a result, ASEAN could deny success to Vietnam and the DPRK and use the United Nations and its institutions to spread its viewpoint on the war. Due to ASEAN's isolation drive, the PRK was denied the ordinary aid and development support afforded to developing countries, making it more difficult for the new government to get performance reliability. Lastly, from a political perspective, ASEAN was able to keep control over the assignment of Cambodia's seat to use it as a bargaining tool for negotiations with Vietnamese forces.

### 2.2.2 Thailand's assistance to the Khmer Rouge

As the Democratic Kampuchea survived thanks to ASEAN political backing up, Thai military support was fundamental for the KR's victory. By January 1979, Thailand had set up bases on national soil for Khmer Rouge troops, where they were fed and treated before being sent back across the border to combat the Vietnamese. While borders were scattered with mines to forbid refugees' escaping roots, Thai army vehicles transported Khmer Rouge soldiers across the border at safe points away from Vietnamese troops. Another example is the island of Khemara Phumin, which was fortified as a transit point for Chinese weaponry. Such Sino-Thai assistance to the KR forces could be justified under strategic security reasoning. Assisting the Khmer Rouge would place a buffer zone to curb the spread of riots and guaranteed that Cambodia's power remained disputed, which legitimized ASEAN's continued activism on DK's behalf.

Meanwhile, internal affairs within Cambodian resistance groups were going to a different direction. Many nationals were reluctant to join neither the Khmer Rouge nor the Vietnamese forces. At the time, both Sihanouk (previous king of Cambodia) and Son Sann (previous Prime Minister of Cambodia) felt uneasy in front of the perspective to build a common front with the KR. On the other side, China allegedly put pressure on the Khmer Rouge in 1979 and 1980 to form a united front led by Sihanouk or Son Sann. The ASEAN countries have encouraged the Khmer Rouge to leave its bloody picture behind

it and rebuild its diplomatic fences with non-communist opposition movements. The United Nations told the Khmer Rouge that if its deposed government were to maintain its seat in the organization, it would need to follow a new action style. 1989 marked the end of the Third Indochina War: Vietnam announced officially that, by the end of September 1989, it would have withdrawn all its troops from Cambodia. These moves toward peace occurred along with a transition in Soviet leadership. Mikhail Gorbachev was elected President of the Soviet Union in March 1990. As domestic and economic issues worsened, Gorbachev recognized that improving the Sino-Soviet war and disentangling China from the Western security establishment was a much more critical goal than having strong relations with Vietnam and substantial influence in Indochina. Following a decline in Soviet economic and military assistance, Vietnam was largely abandoned. Military aid to Vietnam was almost entirely Soviet. By the 1980s, the Soviet Union had supplied Vietnam with 97% of its military arms. Without Soviet assistance, Vietnam was unable to finance its wartime economic and military policies in Cambodia. Vietnam has no choice but to submit to China. In exchange for Vietnamese withdrawal from Cambodia, Beijing promised decreased border tensions and lower defence prices. As Vietnam started to remove all its forces from Cambodia, China began to relieve tensions along the Sino-Vietnamese border and strengthen diplomatic ties between them. In August 1990, the Cambodian parties set a Supreme National Council to represent Cambodia at the United Nations. The Third Indochina War officially ended on October 23, 1991, with the foundation for a Cambodian settlement in place and the conclusion of the Cold War.

### 2.3 ASEAN, Thailand and the "reinterpreted" principle of non-intervention

A realist analytical logic can be used to understand the situation of the Third Indochina War. The Soviet Union and Vietnam represented a direct threat to all foreign forces and ASEAN members. They reacted to this challenge by implementing external and internal balancing policies to protect the essential state interests of autonomy and stability. This alignment of interests between an ASEAN state and an external player resulted in ASEAN front state opposition to sovereignty violations by actors outside the region.

ASEAN can be seen as an actor at times when ASEAN presented a united front in favour of state interests. Minor deviations from harmony should not revoke a group actor classification. As a result, Indonesia and Malaysia's variations from unitary action during the Cambodian conflict do not deny the group actor status because these deviations did

not jeopardize the united front that ASEAN portrayed from late 1979 until the end of the war in 1991.

It is then undeniable that ASEAN, and especially Thailand, played a pivotal role in finding an agreement among parties in Cambodia[28]. To do so, the Association had to interfere with the principle enshrined in its Charter, on non-intervention and respect of national sovereignty. At the international level, ASEAN actively participated at round tables to decide whether to intervene in the conflict and how to pursue such objective. Politically speaking, the type of relations performed by ASEAN at the UN General Assembly are comparable to an – not so veiled - indirect intromission to the internal affairs of Cambodia and Vietnam. The political power exerted over the other Members of the UNGA prevented support to the Vietnamese cause from international organization. In this case, ASEAN was able to take advantage of its prominent position in Southeast Asia and to pose itself as the most suitable mediator between the conflicting parties and international interventions. Such demonstration of diplomatic capacities had as objective to assure and to preserve security within the region. As stated previously, the Cambodian conflict was a testing ground for ASEAN, as it had to demonstrate its effectiveness in preserving security of its members[29]. Moreover, ASEAN had also to prove the validity of its declarations – such as ZOPFAN. ASEAN gained a reputation as an essential and successful foreign player due to this experience; its member states learned to collaborate to a degree they had not previously accomplished. Nevertheless, among all States, Thailand was the one risking the most from negative spillovers from the conflict and thus, the one having more interests in intervening – more or less directly – in the war. Vietnam's security cooperation with the Soviet Union provided the government with extraordinary access to Southeast Asia, bringing the Sino-Soviet conflict to the forefront of regional politics. More specifically, Vietnam's activities posed a threat to Thailand, which shares a border with Cambodia. Backed by Singapore, Thailand saw in Vietnam' violence an attempt to its domestic security and China as a suitable ally to contrast Vietnam and the Soviet Union's influence. Indonesia and Malaysia on the contrary, considered China as

[28] Muthiah Alagappa, "Regionalism and the Quest for Security: ASEAN and the Cambodian Conflict, " *Australian Journal of International Affairs* 47.2, (1993): 189-209.

[29] Eric Corthay, "The ASEAN doctrine of non-interference in light of the fundamental principle of non-intervention," *APLPJ* 17, (2015).

the major threat in the region on long-term perspective. Nonetheless, Thailand was the ASEAN country most specifically threatened by Vietnam's hostile behaviour in Indochina. As a result, when developing organizational policy on the Vietnam issue, the other ASEAN members deferred to Thailand's interests.

The election of the Prime Minister Chatichai Choonhaven meant a shift in non-intervention's approach. The prime minister's views surpassed those of the foreign-policy elite, which had been formulating Vietnam policy. Chatichai announced his intention to turn Indochina from a battleground to a marketplace without consulting ASEAN. It meant improving trade relations with Vietnam, a strategy that strongly contradicted ASEAN's policies and initiatives. Surely, the new government's composition influenced the shift of approach, as the more independent personality of the new Prime Minister. It was common for Chatichai not to inform, nor to consult the Foreign Ministry before taking any decisions. Further, he decided to surround himself with scholars and to coordinate more closely intra-departmental activities supervised by the Ministry of Industry and of Commerce. This tendency was compounded by the business sector's increased participation in policymaking, particularly foreign policy. More people in business became actively involved in politics as Members of Parliament and Cabinet members. Big business was gradually controlling the leadership of major political parties. Politicians with corporate experience served in the senate, parties, and administration comfortably represented their interests. Alongside with changes into the political realm, another notable change in Thailand was the establishment of a significant agreement on foreign policy course. The consensus emerged from Thailand's phenomenal economic growth, which averaged more than 10% in 1987, 1988, and 1989. During the same time slot, inflation was less than 4%, while exports rose at a rate of around 24% per year in the late 1980s[30]. This economic growth boosted Thailand's self-confidence, allowing it to use its newfound economic power to turn geopolitics to its advantage. The Cambodian issue seemed to be nearing resolution when, in 1988, Vietnam reaffirmed its intention to withdraw its troops entirely from Cambodia by 1990, with or without a prior diplomatic solution. Such scenario appeared as the perfect opportunity for Thailand to get down to business to reinforce Thai economic and security sectors. As a regional exchange and commerce centre, Thailand could connect the Indo-Chinese countries and Burma into an

[30] Snitwongse, "Thailand and ASEAN: Thirty years on," (1997), 94.

interdependence network. Prime Minister Chatichai decided then to take diplomatic initiatives by inviting the head of the Phnom Penh regime, Hun Sen, to visit Bangkok. The initiative upset the other ASEAN' Members, as the Association had labeled Hun Sen and his government as Vietnam' puppets. It was unsurprising that Indonesia felt especially resentful of Thailand, given that it had bowed to Thailand's hardline stance for the sake of ASEAN unity, despite being detrimental for Indonesia's national security interests. Indonesia regarded China as a possible challenge and was worried that the Cambodian problem had paved the way for Chinese intervention in the region. The fact that Chatichai declared he was abandoning his efforts in Hanoi and Phnom Penh was interpreted as submission to the Chinese veto by other representatives yet another sign of Thailand's preference for China over ASEAN. Nevertheless, as stated at the beginning of this paragraph, divergences among ASEAN' states did not prevent the formation of a united front of the whole Association. According to research, behavioral cohesion was a reaction to the external threat faced by the Soviet Union and Vietnam during the Third Indochina War. Thailand eagerly pursued a total great-power commitment to its security interests in its search for survival. In collaboration with the rest of ASEAN, Thailand was able to influence the international allocation of power by increasing the capabilities of China and the United States while constraining those of Vietnam and the Soviet Union.

### 2.4 Contrasting literature interpretation

Several strands of literature have attempted to explain ASEAN's opposition to the infringement of sovereignty during the Third Indochina War. One strand of literature[31] has focused on a constructivist approach in explaining how ASEAN interpreted the Third Indochina War as a challenge to the Association' norms, unity and cohesion. The scholar Ba [32]best represents the overall constructivist argument, asserting that the Association was able to work well thanks to common security concerns. Other constructivists argue that the Third Indochina War was a victory for ASEAN, which emerged stronger in its

[31] Laura Southgate, *ASEAN Resistance to Sovereignty Violation: Interests, balancing and the role of the vanguard state*. (Bristol, Bristol University Press, 2019), Chapter 6

[32] Alice Ba, "Institutional divergence and convergence in the Asia-Pacific? ASEAN in practice and in theory," *Cambridge Review of International Affairs* 27.2, (2014): 295-318.

mandate and core norms due to the conflict. According to Acharya[33], for ASEAN, Vietnamese aggression was a blatant breach of the non-intervention principle of nations' internal affairs and the focus of non-use of force in interstate relations. It is undeniable that the conflict gave ASEAN political and security cooperation a more meaningful context. Meanwhile, it also provided positive implications for ASEAN's pursuit of regional identity. According to this viewpoint, the conflict inspired ASEAN members to resolve competing security interests and territorial disputes within the organization, thus bringing it closer to being a security community. Nevertheless, some other scholars - like Haacke[34] – highlighted that, while the role of ASEAN was elevated, the role of external powers has been downplayed. He observed that, in the end, ASEAN had to yield to considerable power leverage and accept the political settlement that was presented as a foregone conclusion. On the other hand, the realist perspective presented its viewpoint. According to Leifer, Jones, and Smith, ASEAN's position in the Cambodia dispute is subordinate to external forces. According to Leifer[35], China's intervention represented a much more powerful means of challenging Vietnam's hegemonic status than ASEAN's diplomatic support. As a result, the Association's stance favoured China's interests above all else. Jones and Smith[36] have downplayed ASEAN's role in ending the Third Indochina War, arguing that the final settlement embodied an archetype of great power politics. According to this viewpoint, ASEAN's genuine commitment to the Cambodian settlement demonstrates an ambiguous and primarily limited role. The Association's efforts were only effective when they coincided with superpowers' interests, with ASEAN acting as a convenient front for international players and interests. According to Jones and Smith, the fact that China and the Soviet Union effectively concluded the dispute by bilateral diplomacy showed the region's continuing dependence on foreign actors and the illusory nature of ASEAN's attempt to create a *cordon sanitaire* around Southeast Asia. It is

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[33] Amitav Acharya, "The evolution and limitations of ASEAN identity," *ASEAN* 50 (2017): 25-38.

[34] Haacke, "The concept of flexible engagement and the practice of enhanced interaction: intramural challenges to the 'ASEAN way'," (1999): 581-611.

[35] Michael Leifer, *ASEAN and the Security of South-East Asia* (Abingdon: Routledge, 2013).

[36] David Martin Jones and Michael Lawrence Rowan Smith. *ASEAN and East Asian international relations: Regional delusion*. (Cheltenham: Edward Elgar Publishing, 2006)

important to note that some realist scholars do not aim to establish a connection between a foreign power and regional state interests. As a result, ASEAN state interests remain hostage to China's, and regional sovereignty remains entirely dependent on external actors. According to them, ASEAN appeared to be successful only because its activities aligned with China and the United States' interests. This approach views ASEAN autonomy and the status of ASEAN states in an excessively restricting manner. As shown in this paragraph, Thailand tried to protect its interests in response to the Vietnamese challenge and collaborated with ASEAN to avoid a Vietnamese fait accompli. Jones and Smith represent the position of great powers in Indochina during the Cold War accurately while downplaying ASEAN's role. As a result, such an approach presents shortcomings. As a matter of fact, ASEAN referred to Vietnam's invasion of Cambodia not to uphold its non-interference principle but rather to contain the Indochina revolution. To that end, the ASEAN states intervened, fomenting civil unrest in Cambodia to hold Vietnamese forces pinned down and unable to sustain nationalist movements beyond Indochina. To sum up, the explanation provided is well- suited for a realist approach to explain the change in interpretation of the non-intervention principle in the Cambodian conflict. ASEAN interest convergence's paradigm explains ASEAN's opposition to sovereignty violations during the Third Indochina War well. Since Thailand and China shared concerns about the Vietnamese invasion, Thailand (and thus ASEAN) was able to avoid an expansionist Vietnam's breach of sovereignty.

# Chapter 3

# 3. THAILAND AND THE INTERPRETATION OF THE PRINCIPLE OF NON-INTERVENTION

Throughout history, Thailand has found itself on the frontline for changes in the interpretation of the principle of non-intervention because of economic or security reasons. Such statement is better explained in the following chapter, where I will analyze the historical steps followed by Thailand in readdressing the interpretation of non - intervention according to the historical framework.

## 3.1. Thailand from 1988: constructive engagement's approach

Thailand had decided to fund ASEAN in 1967, together with other four Southeast Asian countries: Malaysia, Indonesia, Singapore and the Philippines. Originally, all countries agreed on the assumption that, within ASEAN, foreign politics would have been conducted by following the so-called "principle of non-intervention" to avoid entering in domestic affairs of other member states and to stay away from violation of the sovereignty principle. Nonetheless, over the decades, Thailand has proposed different interpretations of the principle according to the evolving political situation in the region.

First shift from the strict interpretation of the non-intervention principle occurred during the '80s due to the Cambodian conflict, which was briefly explained in chapter 2 of the present dissertation. The conflict, which started in December 1978, went beyond the mere domestic conflict because of deep-seated regional Thai-Vietnamese antagonism. From Thailand's perspective, the Cambodian conflict had jeopardized security plans for Thailand. Historically, Thai military planners see Laos and Cambodia's neutral position as critical to stopping the spread of communist communism from Vietnam. Consequently, the Vietnamese invasion and occupation of Cambodia was seen as a threat to Thai defense. The military's position in Thai politics, in which it supported its own business interests while identifying them with those of the Thai state, aided the emphasis on national security as the overriding foreign policy goal. Thailand's military was concerned with the country's immediate stability along its borders with Cambodia, Laos, and Burma, which it considered to be its own prerogative. The national security establishment oversaw Thailand's immediate security, while the Foreign Ministry was responsible for maintaining ties with the rest of the world, ASEAN, the US, and China. Nevertheless,

border defense was a political domain from which the Foreign Ministry was exempt, as shown by the military's coordinated support for the Khmer Rouge as a shield against Vietnam. Consequently, it is not a surprise to notice that Thai military had their say in matters concerning foreign affairs. Changes in Thailand's vision of the Cambodian conflict came around 1988, when the Thai Nation Party came to power and Chatichai Choonhavan became Prime Minister. A major breakthrough in the conflict occurred with him thanks to its change in approaching the event.

When Chatichai came to power, he discarded Thailand's hardline stance in favor of a new step-by-step approach to dispute resolution based on his idea of turning the Indochina battlefield into a business spot. In the words of the scholar Agalappa: "Bangkok was now prepared, in the short term, to accept some Vietnamese political influence in Cambodia and Laos in return for a settlement, hoping that this influence would consequently be reduced by the resulting economic liberalization of the region."[37]. At the same time, all ASEAN countries were pressuring the international community not to recognize the military as the new government holding Cambodia's seat at the UN General Assembly. The political power exerted in the UN General Assembly prevented support to the Vietnamese cause from international organization. In this case, ASEAN was able to take advantage of its prominent position in Southeast Asia and to pose itself as the most suitable mediator between the conflicting parties and international interventions. Chatichai's approach to the Cambodian conflict demonstrated the predominant role Thailand could play in the region in case its security would have been compromised. Meanwhile, there was another major historical event which was occurring almost contemporarily to the Cambodian conflict: the change of government in Myanmar. Around the 1988, the military transition of government in Myanmar resulted with the establishment of the State Law and Order Restoration Council (SLORC). Rather than just keep the distance from Myanmar, Chatichai and the Commander in Chief of the Royal Army, General Chavalit Yongchaiyudh decided to shift the approach toward a policy of accommodation to SLORC. The new approach took the name of "constructive engagement", and Thailand's strategy was established in response to a particular dilemma in its relationship with Myanmar. It was intended to cross the divide between Thai

[37] Muthiah Alagappa, "Regionalism and the Quest for Security: ASEAN and the Cambodian Conflict, " *Australian Journal of International Affairs* 47.2, (1993): page 201.

interests in Myanmar and Western condemnation of SLORC on the one hand, and Western condemnation of SLORC on the other. It served as a diplomatic tool to ensure and encourage SLORC's receptivity to Thailand's security and economic interests: the only way for Thailand to get away with its interests protected was to engage with SLORC directly and by avoiding any attempt of condemnation or imposition. The understanding was that democracy and human rights were not forced on Myanmar from without, and that they would have to develop in the light of Myanmar's culture. Actually, Thai leaders were more concerned with securing concrete security and economic goals that were being discussed with SLORC than with democratic reform or democratization in Myanmar. Thailand faces the risk of uncontrolled internal transition, which could lead to a sudden state breakdown and ethnic strife and instability. Thailand would suffer the consequences as a neighboring nation, and the gains of constructive engagement for which its leaders had fought for so long, would be lost.

As mentioned before, the two politicians that pushed for a "constructive engagement" approach were the Prime Minister Chatichai and the Chief of Army General Chavalit Yongchaiyudh. By the analysis of the scholar Buszynski[38] on the matter, both Thai politics and the army had envisaged Thailand as the future economic and political centre of Southeast Asia. In particular, the military revived the idea of a "Golden Land" (*Suwannaphume*), a portion of Southeast Asia's mainland which includes Myanmar which creates a "bridge" between Indochina and South Asia. The Thai military took the initiative with Chavalit at the helm. 'Constructive partnership' was later used to describe a strategy of stronger relations with SLORC. When the Thai side lobbied Myanmar military representatives for logging concessions, Chavalit paid a visit to Yangon on December 14, 1988. The consequences of the visit were mainly two. Firstly, after SLORC took power on September 18, 1988, the first forced repatriation of Burmese students who had fled to Thailand occurred. When the United States argued that the lives of Burmese students returning to Myanmar were in jeopardy, Thailand countered that the repatriation was voluntary. Secondly, Thailand's attitude toward ethnic groups that had revolted toward Yangon since 1948 had shifted drastically. Thailand had previously assisted the

[38] Leszek Buszynski, "Thailand and Myanmar: the perils of 'constructive engagement'," *The Pacific Review* 11.2, (1998): 290-305.

Karens in particular as a way of exerting control on the Burmese. However, logging concessions in ethnically dominated areas were granted to Thailand, signaling a change. Concessions in the Karen region were granted to Thai businesses. In the name of border protection, Thailand started to work with Myanmar to control ethnic groups. The logical outcome was Thailand's acceptance of Myanmar's military incursions against these ethnic groups. Reasons to understand the decision to shift from "strict non-interference" to "constructive engagement" are thus found in security reasons. It is undeniable that the Thai government and military have tried to do all in their power to guarantee their safety from possible ripple effects caused by both the Cambodian conflict and the SLORC's rise to power. As a matter of fact, the fall of Myanmar's state would have jeopardized stability not only along Thailand's border but across ASEAN, with Myanmar's two largest neighbors, China and India, likely to benefit. Southeast Asia would have then become a battleground for Sino-Indian rivalry.

#### 3.1.1. ASEAN constructive engagement's approach

In the context of ASEAN, the constructive engagement approach has been adopted under the assumption of pursuing and facilitating economic and strategic interests of the Association: one of the main goals in the '90s for ASEAN was the expansion of the economic market and of the trading network [39]. Also, by following Thailand's involvement, single ASEAN started to engage with Myanmar. As reported by the scholar Jones: "Malaysia and Singapore also deliberately pushed domestic firms to invest in Burma in the hope that ASEAN capital would help "lift the country up," […] This would pacify Burma's population in the same way as growth had defused unrest in ASEAN states, reduce cross-border drugs flows, stimulate growth in Thailand and the region more broadly, and preclude Burmese dependence on China." [40]. Moreover, ASEAN was convinced that Burma's acceptance of ASEAN's constitutional trappings would improve peace and ease Western pressure. Nonetheless, despite the attempts to smooth and to guide toward domestic reconciliation, ASEAN failed to support Myanmar via diplomatic and indirect practices of intervention. Rather, by granting membership to Myanmar in 1997, ASEAN got lots of critics from the international community. While ASEAN has

[39] Lee Jones, "ASEAN's albatross: ASEAN's Burma policy, from constructive engagement to critical disengagement," *Asian Security* 4.3, (2008): 271-293.
[40] Jones, "ASEAN's albatross: ASEAN's Burma policy, from constructive engagement to critical disengagement," (2008): 274

benefited from stronger economic relations with Burma's military government, its interactions with the country have drawn negative attention and jeopardized ASEAN's international standing with major global players.

### 3.2. Thailand in the aftermath of the economic crisis (post 1997): flexible engagement

During the year 1997, Thailand suffered from a serious financial crisis which rapidly spread to neighboring economies. It started as a currency crisis when Bangkok decoupled the Thai baht from the US dollar, triggering a sequence of devaluations and large capital outflows. The Asian financial crisis has a wide range of implications. Despite the fact that the situation is commonly referred to as a financial or economic crisis, what really occurred was also a governance crisis on all major political stages. The Asian financial crisis exposed in particular the state's inability to fulfill its historical regulatory roles, as well as to control globalization forces and pressures from foreign actors. Having provided the framework, it would be easier to understand the reasons that pushed Thailand to propose and pursue a new reinterpretation of the non-intervention principle called "flexible engagement". To address the financial crisis, Chuan Leekpai was nominated Prime Minister while Surin Pitsuwan was appointed Ministry of Foreign Affairs. The latter is the one who started to present the opportunity to embrace such interpretation. The first occasion was a talk Dr Surin Pitsuwan gave at the 1998 Asia-Pacific Roundtable in Kuala Lumpur. There, he focused on how to deal with Asia's economic and financial crisis as a strategic problem that challenged the Association's standing, efficacy, and potential regional position. In this occasion, Surin encouraged the Association's new participants to reconsider their economic and political planning processes. But it was during the weeks prior to the 31st ASEAN Ministerial Meeting held in Manila in July 1998 that the Ministry started talking about adopting "flexible engagement" in dealing with foreign affairs. Reasons for advocating such solutions were several: the financial crisis had opened a Pandora box, as it underlined the critical aspects of an Association which had never dealt with the increasing interdependence within the region. Secondly and following the previous point, flexible participation was meant to deal with emerging security challenges like economic instability and a variety of cross-border security issues like mass migration, illicit drugs, transnational violence, and environmental degradation. The third goal of flexible engagement was to help ASEAN countries improve their

democratization and human rights. Lastly, the flexible engagement would have allowed ASEAN' countries to speak openly about the lack of uniformity as regional organization and to go beyond the governmental structures of member states that would impair their self-criticism and lack of transparency. The idea behind such decision was a strategic reasoning Surin made when formulating this interpretation. The aftermath of the economic crisis was going to be dramatic for all nations of Southeast Asia. Financial aids from the International Monetary Fund, alongside with economic support from the international community were expected to come. Nonetheless, after the partial failure on the international stage about the unresolved criticized situation in Myanmar, despite the promises of a solution, ASEAN had lost part of its credibility as reliable partner. Moreover, the failed implementation of serios regional market's regulations were expected as leverage for getting access to the financial aids. In addition, to answer to the continuous critics made by the Western countries, Thailand and ASEAN were supposed to take different and more direct approach to deal with the situation in Myanmar on matters concerning human rights' violations. Those are the reasons why the Foreign Ministry Surin proposed to ASEAN a reinterpretation of the principle of non-intervention. The international community needed a strong response from Southeast Asia to the economic crisis. To do so, in Surin's idea the solution was a more closely coordination of ASEAN in trade, investment, finance and macroeconomic issues via shared and binding policies on cooperation. Besides, as reported by the scholar Haacke, Surin decided to advocate for the flexible engagement because: "By June 1998, the Democrat-led Chuan government had attracted criticism over the gap separating declaratory human rights policy and its actual practice, from both the Thai media and various non-governmental organizations, including Thailand-based Burmese pressure groups such as the All Burma Students Democratic Front."[41].

### 3.2.1. Rejection of the flexible engagement by ASEAN

ASEAN countries made lots of critics to the proposal of flexible engagement. The first point that was criticized was the unclear definition of the word "flexible". As a matter of

[41] Jürgen Haacke, "The concept of flexible engagement and the practice of enhanced interaction: intramural challenges to the 'ASEAN way'," *The Pacific Review* 12.4, (1999): 592

fact, the term used by Surin was evaluated too broad, meaning that also the proposal did not clearly explain what ASEAN would have done to act in the scope of the interpretation. In addition, the criteria of its application were not clearly stated in Surin's proposal. Another major criticism held on the idea that such new engagement practice, being so unclear in its application and its definition, would have caused more harm than benefits to the parties involved. Finally, by proposing that ASEAN should get active in intra-state issues even though doing so would have negative implications for other members, "flexible participation" questioned the long-standing rule that ASEAN should not take joint action on issues that affect other members. Thai's Minister was of the opinion that, although that "flexible engagement" would be a changing step for ASEAN, he firmly believed that "flexible engagement" was not incompatible with the policy of non-interference at the time. In the end, Surin's suggestion was opposed by a vast majority of ASEAN countries, mostly because failing to do so seemed to open up a can of worms that could jeopardize intramural peace and, in some cases, regime protection. Despite rejecting "flexible participation," ASEAN governments have informally agreed to provide for "enhanced cooperation" in the future.

### 3.2.2. Alternative solutions proposed by ASEAN

Up to 2001, ASEAN members experimented with a host of procedural changes in the face of regional adversity and mounting security threats. First, ASEAN agreed to develop a monitoring system to aid in the prevention of a repeat of the Asian financial and economic crisis. The mechanism would have worked via practices of sharing and exchanging data, as well as allowing member states to share any questions they might have about macroeconomic conditions in another member state. Secondly, ASEAN endorsed Singapore's plan to hold a foreign ministers' retreat where candid intramural discussions could take place. ASEAN also accepted a Thai plan for an ASEAN Troika in the wake of international interference in East Timor in September 1999, whose purpose was to empower ASEAN to resolve urgent and relevant regional political and security matters, as well as situations of common concern that threaten regional peace and harmony, in a timely manner. Lastly, in 2001 ASEAN implemented the codes of protocol for the ASEAN High Council.

### 3.3. Thaksin and the re-adoption of non-intervention

The impact of the Asian financial crisis on Thailand's economy in 1997 boosted Thaksin and his party, Thai Rak Thai (TRT) which he established in 1999, two years before the elections, and the popular popularity of a populist platform. Practical measures to obtain a measure of internal self-sufficiency became central to the populist agenda (*mahajanaka*). The Thaksin era was Thailand's most unusual, colorful, and contentious in modern times. It was a time when "Chief Executive Officer" Prime Minister Thaksin Shinawatra "privatizes" the Thai body politic, which had previously been solidly controlled by Bangkok insiders with heavy backing from members of the military, business classes, and the palace. Thaksin's achievement in persuading the Thai people to support his policies was widely praised, and TRT's results in the general elections of 2001 was nothing short of spectacular. With 248 seats, the party only required three additional seats to gain a simple majority in the legislature. Given the strength of the party's negotiating power, and the fact that its nearest challenger had only managed to win 128 seats, this was a simple task. Such results granted to the newly elected Prime Minister enormous political power and set the beginning of an unprecedent policy of domestic consolidation. Up to that moment, minority parties had disproportionate ability to express their own interests and "assert" lucrative and influential ministries and agencies, broad-based coalitions tended to weaken major parties. There were few such pressures on Thaksin. Similarly, given the rules defined for his party representatives and the presence's number in parliament, factionalism, an entrenched characteristic of the Thai party system, was a minor issue for Thaksin.

#### 3.3.1. Domestic policies

In the aftermath of the Asian economic crisis, the Chuan government's inability to enact fast economic recovery undermined the credibility of the party, which favoured the rise to power of Thaksin's TKT. One of the pillars of Thaksin's political program was to respond to the precedent government's grievances and to start a process of strengthening the domestic political consolidation. Thaksin sought to co-opt formerly autonomous centers of influence and control at the state level. The military, banking and business

institutions, and elements of the empire are among them[42]. One of the major problems were the security issues connected to the Thai-Burmese borders. Tensions between the local Burmese minorities and the army were frequent, and the previous government took a hard line by condemning the Burmese army. Instead, after Thaksin came to power in 2001, Thailand's stance against Myanmar changed dramatically. The appointment of Chaovalit as Defence Minister, who led NAP in Thaksin's coalition, helped the latter to pull the military into line. Military threats were quickly deflected by 2002, thanks to a patronage, interference, and nomination policy. Thaksin did also work on the domestic economy of Thailand. The financial and corporate elites have been courted as well. Daily meetings, write-downs on non-performing debts, awarding tenders for large public projects, and the selling of state-owned companies were also examples of how this was accomplished.

### 3.3.2. Regional policies

In the field of regional policies, Thaksin maintained previous governments' policies of improving relations with mainland Indochina countries, such as Vietnam, Laos, and Cambodia. Thaksin, on the other hand, greatly overturned the Chuan government's historically aggressive stance against Myanmar and attempted political consolidation. Outside of mainland Southeast Asia's immediate outskirts, bilateral relations with Malaysia to the south, Bangladesh and India to the west, and China to the east have been significantly improved. In addition, unlike previous administrations in the 1990s, Thaksin has sought a military alliance with the United States. in such terms, Thaksin pursued an equally ambitious strategy of stabilizing the immediate regional climate and carving a niche for Thailand to participate in the growth of Southeast Asia's mainland. In order to reach these goals, Thaksin engaged in a non-intervention approach: economically speaking, Thailand reaped significant economic benefits from its bilateral trade with Myanmar, as well as China. For Thai factories along the border, Myanmar offered a cheap and plentiful supply of labor. Politically speaking, in case of direct confrontation, the risks of Thailand to push for chaos in Myanmar in an attempt to end the Burmese military junta would cause security harm and flow of immigrants to Thailand.

[42] Ganesan Narayanan, "Thaksin and the Politics of Domestic and Regional Consolidation in Thailand," *Contemporary Southeast Asia*, (2004): 26-44

### 3.3.3. Example of Thaksin's non-intervention

Other ASEAN members were drawn to the Tak Bai incident in southern Thailand in October 2004, when at least 85 unarmed Muslim protesters were killed by the Thai government. This problem has ramifications because all of the victims were Malays. Despite criticism from his peers, Thaksin has ruled out any ASEAN discussion on the subject. As recalled by the scholar Suzuki: "Malaysia and Indonesia planned to raise the issue at the ASEAN summit in late 2004,42 but Thaksin warned that "if this issue is raised during the meeting, I'll walk out immediately and fly back to Bangkok."[43]. Malaysian and Indonesian leaders did not mention the Tak Bai massacre at the meeting, instead focusing on the wider problem of unrest in southern Thailand. Consequently, to ease tensions while removing the threat of ASEAN meddling, Thaksin convened a trilateral meeting with Malaysian and Indonesian officials, which resulted in the formation of an independent panel to examine the situation. Such solution suggested by Thaksin worked on the assumption that member states could agree to intra-states dispute-solving mechanisms internal disputes using their own resources, without including ASEAN and/or external countries. As stated earlier, reasons for Thaksin to resume non-intervention's approach was influences mainly by the previous government's failure to address national economic recovery policies fast. According to his political strategy, the solution to speed up the economic recovery was to consolidate domestic policies over business. Moreover, in the TKT's idea, the best strategic to regain a predominant position within Southeast Asia was to resume the original philosophy behind non-interference, as the previous approaches had demonstrated their fallacies on their long term's application. In Thaksin's view, the strongpoint of regional cooperation was in bilateral cooperation rather than overall regional's because, by keeping problems and solutions just between the parties involved, peace and stability – two elements necessary for Thailand's economic recovery- would have been granted.

[43] Sanae Suzuki,"Why is ASEAN not intrusive? Non-interference meets state strength," *Journal of Contemporary East Asia Studies* 8.2, (2019): 167

# Chapter 4

# 4. DRIFTING TOWARD NEW SHAPES OF INTERNATIONAL LAW

The swinging phenomenon of changes manifested in Thailand's approach has had repercussion on politics and on the management of international relations in Southeast Asia. It would be reductive to circumscribe such consequences to one specific event, when politicians decided to adopt more or less stringent interpretation of the "non-intervention" principle alternatively. As a matter of fact, Thailand's approaches have shaped the interpretation of ASEAN core norm in dealing with internal affairs of other member states and have funded the leading approach at regional level. Thus, from a regional perspective, it can be said that the leading role of a single country has provided the basis for the whole region's approach. Such reasoning and attempting to understand the mechanism behind regional cooperation, for this case of Southeast Asia, is fundamental for analysis of international relations per se. Moreover, its importance also influences another field, which is international law. Why? Because regionalism has become a prominent type of international cooperation to manage ties between neighboring states all over the world, which occurs within international law's mechanisms. Since international law is based on several elements, among all customary practices, by its very nature it can undergo some changes due to different states' practices. Up to the past decade, most of the countries in the world were democracies, thus the norms and practices have been assuming features and principle of democracy itself. Nonetheless, after the Cold War, several countries have emerged, being defined as non-democratic or authoritarian. Major nations like Russia and China, who are considered authoritarian systems for some, have then played strategic roles in international organizations such as the United Nations, and shaped themselves customary laws through practices and conventions. Having said that, it can be affirmed that changes in practices of some states considered authoritarian could lead to an alteration of international norms and practices toward more authoritarian systems of international law. Understandably, making a change requires time, and this last chapter aims at tracing the path/connection from regionalism to possible new forms of international law with authoritarian shapes.

4.1. Regionalism and authoritarianism

The academic field has for long addressed the topic of regionalism and of regional-boosting phenomena, having research focused on the unintended stabilizing effects of foreign aid or sanctions, as well as the effects of competing influences from both democratic and autocratic actors on authoritarian resilience. According to The Economist Intelligence Unit, in recent years regions considered authoritarian have worsened their political situation and the most autocratic countries in the globe saw the greatest regressions in 2020. These governments took advantage of the worldwide health emergency generated by the coronavirus epidemic to persecute and imprison political opponents and dissenters. In particular, such trend is occurring in Sub-Saharan Africa and in Middle East & North Africa, as shown in the table below.

**Democracy Index 2006-20 by region**

| | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 | 2011 | 2010 | 2008 | 2006 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Asia & Australasia | 5.62 | 5.67 | 5.67 | 5.63 | 5.74 | 5.74 | 5.70 | 5.61 | 5.56 | 5.51 | 5.53 | 5.58 | 5.44 |
| Eastern Europe | 5.36 | 5.42 | 5.42 | 5.40 | 5.43 | 5.55 | 5.58 | 5.53 | 5.51 | 5.50 | 5.55 | 5.67 | 5.76 |
| Latin America | 6.09 | 6.13 | 6.24 | 6.26 | 6.33 | 6.37 | 6.36 | 6.38 | 6.36 | 6.35 | 6.37 | 6.43 | 6.37 |
| Middle East & North Africa | 3.44 | 3.53 | 3.54 | 3.54 | 3.56 | 3.58 | 3.65 | 3.68 | 3.73 | 3.62 | 3.43 | 3.54 | 3.53 |
| North America | 8.58 | 8.59 | 8.56 | 8.56 | 8.56 | 8.56 | 8.59 | 8.59 | 8.59 | 8.59 | 8.63 | 8.64 | 8.64 |
| Western Europe | 8.29 | 8.35 | 8.35 | 8.38 | 8.40 | 8.42 | 8.41 | 8.41 | 8.44 | 8.40 | 8.45 | 8.61 | 8.60 |
| Sub-Saharan Africa | 4.16 | 4.26 | 4.36 | 4.35 | 4.37 | 4.38 | 4.34 | 4.36 | 4.32 | 4.32 | 4.23 | 4.28 | 4.24 |
| World average | 5.37 | 5.44 | 5.48 | 5.48 | 5.52 | 5.55 | 5.55 | 5.53 | 5.52 | 5.49 | 5.46 | 5.55 | 5.52 |

*Source: The Economist Intelligence Unit*

In addition, attention must be drawn also to the world average tendency: as much as Western countries are driven to consider democracy to be worldwide spread, the reality is far away from it. The world average is deterioring, as on the scale from 1 to 10 the standard is set at 5.37 in 2020, considering a steady worsening starting from year 2016. The Asia and Australasia area has made greater progress than any other region in boosting its worldwide rankings. In the decade leading up to 2016, the area showed remarkable growth, with an average score of 5.74 in 2016. The average regional score, on the other hand, fell considerably in 2017 and stayed unchanged at 5.67 in 2018-19. Official attempts to prevent the coronavirus epidemic resulted in some of the world's most severe restrictions on individual freedoms and civil rights in 2020, lowering the regional score to its lowest level since 2013. China, Singapore, South Korea, and others went far beyond the rest of the world in tracking, policing, and limiting their populations' freedoms in the

name of preventive health measures. As a result, the overall score of more than half of the nations in the area has dropped.

### 4.1.1. Features of Thailand

To proceed with the analysis, it is required to assess the level of democracy and of freedom in Thailand, as to later proceed with evidence to the fact that the country can be considered as an autocratic system. According to the Democracy Index [44] by The Economist Intelligence Unit, Thailand's score in Southeast Asia fell in 2020. After holding its first election since a military coup in May 2014, the nation was promoted from a "hybrid regime" to a "flawed democracy" in 2019. Several of Thailand's ratings, especially those related to the treatment of the opposition and restrictions on freedom of expression, worsened in 2020. In February 2020, Thailand's Constitutional Court, which has a history of ruling against the opposition, ordered the dissolution of the second-largest opposition party, the Future Forward Party (FFP), after finding it guilty of breaking the campaign financing rules during the general election in 2019. It imposed a ten-year prohibition on the party's leaders holding political office. The FFP was recognized for its outspoken anti-military attitude and became the third-largest party thanks to youthful and urban voters' backing.

**Asia and Australasia 2020**

| | Overall score | Global Rank | Regional rank | I Electoral process and pluralism | II Functioning of government | III Political participation | IV Political culture | V Civil liberties | Regime type |
|---|---|---|---|---|---|---|---|---|---|
| New Zealand | 9.25 | 4 | 1 | 10.00 | 8.93 | 8.89 | 8.75 | 9.71 | Full democracy |
| Australia | 8.96 | 9= | 2 | 10.00 | 8.57 | 7.78 | 8.75 | 9.71 | Full democracy |
| Taiwan | 8.94 | 11 | 3 | 10.00 | 9.64 | 7.22 | 8.13 | 9.71 | Full democracy |
| Japan | 8.13 | 21 | 4 | 8.75 | 8.57 | 6.67 | 8.13 | 8.53 | Full democracy |
| South Korea | 8.01 | 23 | 5 | 9.17 | 8.21 | 7.22 | 7.50 | 7.94 | Full democracy |
| Malaysia | 7.19 | 39 | 6 | 9.58 | 7.86 | 6.67 | 6.25 | 5.59 | Flawed democracy |
| Timor-Leste | 7.06 | 44 | 7 | 9.58 | 5.93 | 5.56 | 6.88 | 7.35 | Flawed democracy |
| India | 6.61 | 53 | 8 | 8.67 | 7.14 | 6.67 | 5.00 | 5.59 | Flawed democracy |
| Philippines | 6.56 | 55= | 9 | 9.17 | 5.00 | 7.78 | 4.38 | 6.47 | Flawed democracy |
| Mongolia | 6.48 | 61 | 10 | 8.75 | 5.71 | 5.56 | 5.63 | 6.76 | Flawed democracy |
| Indonesia | 6.30 | 64= | 11 | 7.92 | 7.50 | 6.11 | 4.38 | 5.59 | Flawed democracy |
| Sri Lanka | 6.14 | 68 | 12 | 7.00 | 5.71 | 5.56 | 6.25 | 6.18 | Flawed democracy |
| Papua New Guinea | 6.10 | 70 | 13 | 6.92 | 6.07 | 3.33 | 6.25 | 7.94 | Flawed democracy |
| Thailand | 6.04 | 73 | 14 | 7.00 | 5.00 | 6.67 | 6.25 | 5.29 | Flawed democracy |

*Source: The Economist Intelligence Unit*

[44] As defined by the official website, "The Democracy Index is based on five categories: electoral process and pluralism, functioning of government, political participation, political culture, and civil liberties. Based on its scores on a range of indicators within these categories, each country is then classified as one of four types of regime: "full democracy", "flawed democracy", "hybrid regime" or "authoritarian regime"."

Student protestors sought the dissolution of parliament, respect for freedom of expression and assembly, and a new, more democratic constitution, among other demands. The government retaliated by detaining protestors and erecting more barriers on domestic and foreign media.

It is interesting to take into consideration a second source of data, which is the Freedom House[45]. Research conducted by this institute look for evidences to assess the level of freedom in the countries of the world by looking at two main indicators: political rights and civil liberties on a scale from 0 to 100. According to their research, Thailand's score is 30/100, labeling the nation as "not free" in 2021 compared to last year's label as "partly free". Reasons behind such decline rely on the breakup of a popular opposition party that had fared well in the 2019 elections, as well as the military-dominated government's assault on youth-led rallies demanding for political reforms. It must be considered that Thailand moved to a military-dominated, semi-elected administration in 2019 after five years of military rule. In 2020, the country's greatest antigovernment rallies in a decade were sparked by a mix of democratic decline and dissatisfaction with the monarchy's position. The administration resorted to classic authoritarian techniques in reaction to the youth-led protests, including arbitrary arrests, intimidation, lèse-majesté accusations, and harassment of activists. There is a lack of journalistic freedom, due process is not protected, and crimes against activists are not punished.

According to the latest research on Thailand by the Freedom House, one of the worst category's performances is in the "rule of law" assessment, an area where Thailand performed poorly, and it is also the area of most interest for this dissertation. For instance, despite the most recent constitution provides for one, there is no independent judiciary as they are too politicized. Due processes cannot be granted either in civil or in criminal matters. The police and military frequently act with impunity, which is worsened by the lack of any laws against torture. To conclude, Thailand has not signed the United Nations Convention on Refugees, putting refugees at danger of being detained as illegal migrants and preventing them from accessing asylum proceedings. Plus, laws, rules, and practices do not ensure that different parts of the population are treated equally.

[45] Freedom House conducts research and publishes studies on a variety of key topics concerning democracy, political rights, and civil freedoms.

From the evidences presented above, it is possible to affirm that Thailand is adopting domestic political behaviors resembling authoritarian systems.

### 4.1.2. Empirical evidence regionalism and authoritarianism

While previous research has made significant contributions to understanding the regional dimension of authoritarian resilience, it frequently fails to connect regional dynamics and domestic politics in order to theorize and empirically test how membership in regional organizations can actually increase the likelihood of incumbent survival. While this regional-domestic connection has been extensively theorized in the study of Europeanization and EU democracy promotion and dissemination overseas, it still exists in non-democratic regimes when it comes to regionalism and domestic politics. Moreover, existing research relies on the assumption that international organizations are merely tools of powerful member states, ignoring the fact that regional organizations differ significantly in terms of authority and agency, and that they can influence domestic actors' behavior regardless of power politics. To look at the link between domestic survival of authoritarian forms of government and the existence of regional organizations, I have taken into consideration a recent paper by Maria J. Debre[46]. In her paper, the scholar claims that regional organizations have an impact on domestic politics by redistributing resources among players, therefore strengthening the executive ability of authoritarian incumbent elites to carry out survival tactics against internal and external adversaries. Regional organization's membership can thus give incumbents with important material, informational, and ideational boosts during times of political upheaval, increasing their prospects of keeping the reins of power. While the EU membership has not systematically benefited one group over another, due to the existing limited domestic context in which opposed players must operate, authoritarian rulers have an advantage in benefitting from regionalism. Strategic political elites in authoritarian regimes aim for political survival by overcoming the double-dilemma of authoritarian rule: gaining control over the population while also creating suitable power-sharing agreements with society elites. In addition, as expressed by the scholar Gerschewski[47]

[46] Debre, Maria J. "The dark side of regionalism: how regional organizations help authoritarian regimes to boost survival." *Democratization* 28.2 (2021): 394-413.
[47] Gerschewski, Johannes. "The three pillars of stability: legitimation, repression, and co-optation in autocratic regimes." *Democratization* 20.1 (2013): 13-38.

and by his three-pillars theory, elements to ensure authoritarian stability are: legitimation, repression, and co-optation. Legitimization works on the assumption that today's autocracies, unlike the unrestrained tyrants of the past, cannot rely only on their misuse of power in a rigidly hierarchical, pyramid-shaped political structure in the long run. Moreover, they are marked by a higher degree of interdependence between the ruling and the ruled, including all aspects related to ideology, indoctrination, and performance of the ruling élites. Repression can take different shapes, either being visible or more subtle, and be addressed to the whole population or to targeted groups. Co-optation instead is "the capacity to tie strategically-relevant actors (or a group of actors) to the regime elite"[48]. Having briefly introduced the pillars, how does autocratic ruling reinforce to the point of stabilizing itself? By looking at neo-institutional literature, the answer is found in the institutions and, more specifically, in the institutionalization process. The most popular and obvious definition of institutionalization is a non-self-sustaining process that requires external propulsion, apart from the three pillars. Legitimacy, repression, and co-optation do not have a built-in self-reinforcing mechanism, thus they require continual external motivation. A second form of institutionalization process is the path-dependency, which refers to the fact that once an institution has established a course, it is difficult to deviate from it, and it reinforces itself. There might be various reasons for this: a legitimation mechanism that reproduces itself because players feel it is morally right or appropriate, a power imbalance mechanism, and a utilitarian mechanism that reproduces itself owing to cost-benefit calculations.

Considering the above presented analysis, regime-boosting regionalism may be seen of as a form of executive empowerment that operates by bolstering each individual survival strategy, further limiting internal and foreign opponents, and increasing the chance of incumbent survival. By symbolically engaging in regionalism, domestic legitimation and foreign appeasement are frequently used simultaneously. Both are basically mimic methods that authenticate governments as democratically elected, globally engaged, and committed to international governance principles without really enforcing them. An example is the behavior adopted in the field of international cooperation. As a matter of facts, autocrats might also shift obligations to democracy, human rights, or the rule of law

[48] Gerschewski, "The three pillars of stability: legitimation, repression, and co-optation in autocratic regimes," page 22.

to merely declarative regional accords, to ward off pressure for democratization, to control negative externalities and eventual loss of international recognition, or to please foreign donor communities. This practice is very essential when it comes to certifying elections. Many electoral autocracies work together to legitimize rigged elections by establishing regional "shadow" monitoring missions. At the same time, autocrats try to boost their internal legitimacy by mining democracy and human rights, as well as the actions of local and foreign democracy activists. As ideational communities, regional organizations provide as a source of identity for member governments. People in office can enhance domestic legitimation narratives and fight the legitimacy of challenges based on democracy, the rule of law, or human rights by portraying themselves as members of an "alternative" ideational community. In this framework, the ASEAN's previously mentioned "ASEAN Way" is a different way of conducting international relations, that is based on informal and consensual politics.

In addition, the scholar Debre found that while the extent to which participation in regional organizations contributes to domestic survival varies from case to case, regional resources frequently play a key role in effectively resolving political crises. As a matter of fact, autocratic members of regional organizations like ASEAN, ECOWAS, and the African Union, for example, have become more restricted by institutional requirements for good governance, which have empowered civil society players, resulting in unequal empowerment.

An important aspect of authoritarianism and regionalism deals with security and military cooperation, which could also trace back to the purposes of this dissertation. Many regional organizations have built up their security and military capabilities through time or were formed especially as security institutions. Member states might take advantage of this security component by using security discourses from regional organizations to legitimize repression and prosecute dissidents in the name of regional security.

#### 4.1.3. Authoritarianism in Southeast Asia

The conflict between traditional and contemporary notions of power and authority was emphasized in early academic explanations of authoritarianism in Southeast Asia. In Southeast Asia, Lucian Pye compared two concepts of authority: one inspired by colonial rule, which was bureaucratic, legal, and logical, and the other based in traditional culture and religion, which produced a patrimonial political framework. The former first

triumphed because Western liberal conceptions of power were popular among nationalist movements headed by Westernised elites. However, a return of traditional power ideas led to a rejection of liberal democracy. Returning to more "traditional" ideas of power had ramifications not just for the nations' domestic politics, which became increasingly patrimonial, but also for foreign policy and regional cooperation, where it resulted in the creation of the "ASEAN way", as mentioned above. Thailand, Indonesia, the Philippines, Malaysia, and Singapore were the founding members of ASEAN in 1967, all of which had suffered a retreat from liberal democracy to various degrees. While ASEAN's outer goal was to promote its members' socioeconomic growth, its underlying foundation was the members' shared concern for regime survival in the face of home and external challenges, particularly communist subversion. At the same time, ASEAN states rejected Western forms of regionalism, such as the supranational and heavily institutionalised European Community framework since they were still nationalist-minded and passionate about their hard-won autonomy. The "ASEAN way" could be thus defined in terms of informality, consultations, and agreement, organizational simplicity, and flexibility. As defined by the scholar Acharya: "On the surface, the process of consultations and consensus in ASEAN, with its basis in traditional culture, is supposed to be a democratic approach to decision making, but the ASEAN process was managed through close interpersonal contacts among the top leaders, who shared a reluctance to institutionalise and legalise co-operation which could undermine the regime's control over the conduct of regional co-operation."[49]. One of the core values of ASEAN is the principle of non-intervention, widely discussed during the previous chapters for its volatile nature and its openness to broad interpretation according to the geopolitical situation in Southeast Asia. ASEAN nations established a vast network of bilateral security connections with the goal of denying rebel organizations a safe space and defeating them. In general, the "ASEAN way" promoted a narrow elite-centred and sovereignty-bound framework of regionalism confined to intergovernmental contacts, leaving little room for collectively addressing emerging transnational issues such as the environment, migration, and refugees, or securing the participation of social forces in the regional identity-building project. As referred by the scholar Acharya and Pye, such organization could be defined as

[49] Acharya, Amitav. "Democratisation and the prospects for participatory regionalism in Southeast Asia." Third World Quarterly 24.2 (2003): 379.

"patrimonial regionalism", as it reflects the concept of an overarching desire for unity, the regime's demand for conformity in the sake of the "collective good", domestic institutions that are "adjuncts" of governments or are a "product of government prodding". Domestic negotiating institutions that are not rigorously codified but may be twisted to the convenience of power holders are preferred over institutions that are rigorously codified[50]. For that, it is undeniable the difference between ASEAN and other Western regional organizations, the latter considered the footprint of democratic regional organizations. As a matter of fact, since the EU adopted the Copenhagen criteria for membership, the perception given to other nations on regional phenomena was of consolidating democracy via deeper regional integration. The EU criteria, for example, provided democrats in then-aspirants such as Slovakia and Romania with a platform to criticize the democratic inadequacies of their own administrations. There was scholarly criticism of this viewpoint, but it did not call into doubt the fundamental assumption that regional organizations would, overall, support the spread of democratic principles. Such vision now appears to be less straightforward.

New regional groups are sprouting up across Eurasia, the Middle East, Africa, and Latin America. However, their political goals appear to be shifting away from reinforcing democratic ideals and may even be veering toward new procedures that help to insulate their authoritarian members from external criticism of what they do at home.

Agreements and treaties forged by various regional organizations, frequently in the name of new standards of regional security, stability, or counterterrorism, are of special importance. These treaties are establishing legal frameworks that have the potential to institutionalize authoritarian and anti-constitutional actions.

To sum up, whatever the precise extent of global democratic regression, it is evident that counter-norms to liberal democracy have taken root and are assisting authoritarians in maintaining power.

### 4.2. Authoritarianism and international law

As illustrated in the paragraphs above, authoritarian forms of governments are taking roots worldwide, and their presence is fostered by regional organization systems which are allowing them to be more resilient to political shocks and changes. In comparison to

[50] Pye, Mary W., and Lucian W. Pye. *Asian power and politics: The cultural dimensions of authority*. Harvard University Press, 2009. Page 329–331

past times, there are three key aspects of today's authoritarian governments that must be understood. To begin with, today's dictatorships are largely integrated into the global economy, and so rely significantly on foreign trade, investment flows, and labor. All benefit from consistent market regulations, and regulatory authority is just as vital for markets as military force is for security. For that, ASEAN has started its process of regional integration from a security point of view, finding itself unprepared to deal with the Southeast Asia economic crisis of 1997 started in Thailand. The relative decrease of ideology is a second aspect. Surely, still few authoritarians largely rely on ideological discourse. However, the overwhelming appeal of global ideologies are largely a thing of the past, and many authoritarian governments are motivated more by political survival than by a clear ideological agenda. For that, Thailand has well served as example in dealing with foreign policy towards its neighboring countries. It can be asserted that the general approach to "non-intervention" by Thailand has been influenced by the "ASEAN way" ideology. Nonetheless, Thai foreign ministers have deliberately interpreted the principle via its flexible nature and according to different geopolitical scenarios, thus without sticking to a single strict ideological interpretation. Another prominent aspect is the exploitation of democratic forms for anti-democratic goals. Many of today's authoritarian regimes have constitutions with extensive lists of rights that, in form, are indistinguishable from those found in democratic regimes. They have courts that are fundamentally autonomous and have true control over areas of activity.

As expressed by local NGOs, in particular by the Asian Legal Resource Centre (ALRC), on several occasions Thai Military Court has shown its independent character from the national courts, despite Thai government's numerous statements[51]. Thai Military Courts have obtained jurisdiction over civilians thanks to the National Council for Peace and Order (NCPO)'s decisions No. 37/2014, No.38/2014, and No.50/2014, which expanded Military Courts' powers. Also, the features of those courts are non-democratic. The Military Court is part of the Ministry of Defence, and Military Court judges are appointed by and report to their commanders. While judges in civilian courts are required to have legal training, Military Courts have panels of three judges, with just one of the three required to have legal expertise; the other two members of the panel are military officials, not required to have legal training.

[51] 13th March 2015

International law, on the other hand, is a complex yet not accurately defined concept to deal with. Briefly, it could be described as a set of shared norms and regulations agreed upon by nation-states in the legal field. While such explanation is quite straightforward, it does not provide us with relevant content of what international law talk about. In reality, the settings and the functioning of international law have changed during time according to historical moments. The twentieth century has sawn the strengthening of ties between economy and law, alongside with security. Especially because of increasing globalization, also the phenomenon of global governance has increased and is still ongoing, rising also new concerns on the exercise of authority within international legal structures. What is clear is that the fundamental goal of international law is not to promote any specific form of government, but rather to ease relations between governments of many diverse sorts. According to this viewpoint, international law is simply the working out of relationships between nations as they cope with relatively specific challenges of international cooperation, without promoting a singular political ideology. There are of course some things designed within international law that both protect and extend the influence of democratic values, like the establishment of supra-national mechanisms to ensure human rights' protection. However, most of the international legal activity of democratic countries lacks these distinctive features. Indeed, democracies are quite willing to work with authoritarian governments if economic or political considerations need it. In contrast, authoritarian regimes are interested in specific types of foreign public goods that benefit them and their supporters. In fact, as drawn by the scholar Ginsburg[52], authoritarian regimes are less willing to include third parties to solve disputes and more propense to engage in commitments with higher flexibility. Consequently, authoritarian application of general international law differs from that of democracies and is more compatible with conventional ideas of sovereignty that stress noninterference in domestic matters.

### 4.3. Authoritarian constitutions

Features of authoritarianism are found in politics, governmental structures, approaches to foreign affairs, and so forth. A fundamental aspect to look at are also constitutions, as

[52] Ginsburg, Tom. "Authoritarian International Law?." *American Journal of International Law* 114.2 (2020): page 231.

they serve as the basic mechanism regulating the functioning of laws and establishing the bedrocks of a nation's legal setting, thus "[…] to constrain political institutions, actors, and processes[53]". Such constrains are accepted, because of the support the political order receives from "commitment … to accept the legitimacy of and to be governed by, constitutional rules and principles[54]". Such theoretical aspect implies that the constitution regulates political action in such a way that no extra-constitutional bearers of power or extra-constitutional ways and means to wield such authority are recognized. Nonetheless, the application of a constitution does not always match its practical aspect. As a matter of fact, the behavioral result often does not reflect the outcome predicted given the initial societal model. To put it another way, when decision-making devices are removed from their original cultural context, they frequently do not program actions in the way one would anticipate. Internal and external observers in Thailand frequently underline this remark, which is commonly referred to as the contrast between form and content. People could protest, for example, that Thailand has long embraced a kind of school-based education for children without adhering to its original substance or spirit. When it comes to constitutional law, this means that even in countries where constitutions exist, such as Thailand, constitutionalism may remain a variable: while globalization has almost universally resulted in the adoption of constitutions, it has not always resulted in constitutionalism. This has led to questions like Niklas Luhmann's, who wonders if constitutions are "particularly European institutions that, due to their cultural dependence, cannot operate abroad"[55]. It would be possible to agree with Luhmann that constitutions are frequently established only for "symbolic" reasons, or to be: "used as an instrument of a governing elite (for example, a military regime) that does not comply with the intended conditions, but governs 'unconstitutionally' with the help of the constitution"[56]. This situation, described by the scholar Okoth-Ogendo as "constitutions

[53] Heywood Andrew, "Politics." *Hampshire: Palgrave Macmillen* (2013), page 337.

[54] Stone Sweet Alec, "Constitutions and Judicial Power." In *Comparative Politics*. Third Edition. Oxford: Oxford University Press. page 152.

[55] Luhmann, Niklas. 1990. "Verfassung als evolutionäre Errungenschaft." *Rechtshistorisches Journal* 9: page 212.

[56] Luhmann, Niklas. 2000. *Die Politik der Gesellschaft*. Frankfurt am Main: Suhrkamp. p. 428).

without constitutionalism"[57] when referring to Africa, is also analyzed by the author Albert Chen. In his book Constitutionalism in Asia in the Early Twenty-First Century, Chen's idea is based in part on a reassessment of prior ideal-versus-reality classifications by Karl Loewenstein (1957) and Giovanni Sartori (1962). Moving from that, he theorizes a distinction between "genuine constitutionalism," "communist/socialist constitutionalism," and "hybrid constitutionalism"[58]. The latter is said to be "practiced in states in which both elements of liberal constitutionalism and authoritarian elements that subvert or are inconsistent with such constitutionalism exist". [59] According to this classification, Thailand could be defined to be a country with "hybrid constitutionalism". Such definition fits well with other scholars' definition of Thai politics, like Harding and Leyland: "there are not three branches of the State (executive, legislature and judiciary) but five, if we regard both the monarchy and the military as having powers of their own […] extra-constitutional power"[60]. As a matter of fact, it is undeniable the influence the military in Thailand has, as illustrated in the previous paragraphs. Consequently, the military and the monarchy appear to be the primary institutional counterpoints to Thai constitutionalism. They do not, however, operate solely as power elites (as opposed to functional elites) who resist the Thai polity's institutionalization of a constitutional text. Rather, they have their own ideological support system that not only competes with the constitution in terms of reflecting the greatest, or unifying, value of the political order, but also has its own ideological support structure. This ideological support structure is applied within the state apparatus as the trinity of "Nation, Religion, and Monarchy" (*chart, satsana, phramahakasat*, or NRM), which are the pillars of Thailand, while elements such as "constitution" and "democracy" are considered coexisting with the

[57] Okoth-Ogendo, Hasting W. 1993. "Constitutions Without Constitutionalism: An African Political paradox." In *Constitutionalism and Democracy: Transitions in the Contemporary* World, ed. by Douglas Greenberg, S. N. Kartz, B. Oliviero, and S.C. Wheatley. New York: Oxford University Press. Page 65

[58] Albert H. Y. 2014. "The Achievement of Constitutionalism in Asia: Moving Beyond 'Constitutions without Constitutionalism.'" In *Constitutionalism in Asia in the Early Twenty-First Century*, ed. by A.H.Y. Chen, pp. 1-32. Cambridge: Cambridge University Press. Page 14

[59] *Ibidem*

[60] Harding, Andrew, and Peter Leyland. "The Constitutional Courts of Thailand and Indonesia: Two Case Studies from South East Asia." *J. Comp. L.* 3 (2008): Page 136

pillars, although subordinated to them. Surely, one might picture the military as a force entirely apart from society, relying on its weaponry and the power hungry of its senior officers. However, when a military has larger aims, as Negretto explains for authoritarian governments in South America, substantial changes in the political, social, and economic order may occur. Therefore, a constitution is written to: "preserve their reforms and protect their personal and corporate interests after leaving power, [while being] able to mobilize popular and partisan support for the authoritarian regime" [61]. As seen before, in Thailand the military is not isolated from society, but rather goes deep into society with the assistance of the civil bureaucracy and is therefore able to constantly enter the minds of people even in distant villages with the official ideology propagated by the state machinery. As a result, Thailand has a thick layer of political culture that supports that philosophy, which includes military coups. One example is the mass protest of early 2000s, by the People's Alliance for Democracy (PAD) - which led to the military coup in September 2006 - and the People's Democratic Reform Committee (PDRC) - which led to the military takeover in May 2014. The PDRC demonstrations were a clear rejection of the concept of constitutionalism, which assumes that all political actors in the polity accept and are dedicated to the constitution as a restricting and programming framework for their actions. This meant that citizens who sought to exercise their constitutional rights during the 2014 elections, which were canceled, had little chance against people acting in the context of the NRM. In such framework, one might argue that the problem of Thai constitutionalism is that there are "societal forces against which autonomous politics cannot prevail, because such influences do not proceed via elections and neither operate in the form of different political parties within the political system"[62]. Solutions for politically unsolvable issues may readily be sought in a military takeover under these circumstances. Furthermore, constitutions may appear to be little more than "symbolic politics" or "a tool of struggle". The forces operating in this scenario (such as the military) work outside of the constitutional political system and utilize the writing of the new

[61] Negretto, Gabriel L. 2014. "Authoritarian Constitution-Making: The Role of the Military in Latin America." In *Constitutions in Authoritarian Regimes*, ed. by Tom Ginsburg and Al-berto Simpser, pp. 83-110. Cambridge and New York: Cambridge University Press.

[62] Luhmann, Niklas. 1990. "Verfassung als evolutionäre Errungenschaft." *Rechtshistorisches Journal* 9:176-220.

constitution to fight the forces and institutions that Anek[63] categorizes as "democracy" in his model. In such struggle, the governing forces have taken control of a significant portion of state authority and people's sovereignty by rewriting the constitution and the military and drafters' actions are "abusive" in the sense of Landau[64], since their constitution will revert to a level of democracy that appeared to have been attained in Thailand. An example of authoritarian features of Thailand's 2014 constitution after the coup is the protection of human rights. As reported by Davis: "It allows rights restrictions so long as they comply with a vague notion of the rule of law; it says that speech can be controlled if it might lead to hatred or division in society; it decrees that academic freedom must not breach civic duties or public morals; and it privileges Buddhism over other religions. And the application of all these open-ended qualifications attached to rights is to be judged by agencies thoroughly beholden to the regime"[65].

#### 4.3.1. Constitutional courts: examples of variety

Nearly every Asian democracy has implemented constitutional judicial review to ensure constitutional conformity, while judicial independence has a mixed record. The lack of this fundamental institution has long been associated with authoritarian regimes. While democratization experts have long recognized the value of constitutional judicial review, they have paid less attention to how it may contribute to general democratic debate. Judicial review has been critical to the constitutional system's survival in rising Asian democracies. The possibility that dominant groups would reject the restraint of adverse judicial judgments is common in emerging democracies. One of the great benefits of the Republic of India's creation was the Indian National Congress's determination to construct independent courts rather than judicial organizations subject to the ruling party's agenda, which dominated the constitution-drafting process. Unfortunately, not every Asian

[63] Anek Laothamatas. 1996. "A Tale of Two Democracies: Conflicting Perceptions of Elections and Democracy in Thailand." In *The Politics of Elections in Southeast Asia*, ed. by R. H. Taylor, pp. 201-223. Cambridge, New York, Melbourne: Woodrow Wilson Center Press and Cambridge University Press.

[64] Landau, David. 2013. "Abusive Constitutionalism." *University of California, Davis, Law Review* 47:189-260.

[65] Davis, Michael C. "Strengthening constitutionalism in Asia." *Journal of Democracy* 28.4 (2017): page 156.

democracy has fared as well as India's. Burma, the Philippines, and Thailand all have constitutional courts that are problematic in different ways. Constitution-makers in a developing democracy are unlikely to understand the seriousness of a lack of competent constitutional law without adequate training and experience. At the same time, as pointed by the scholar Ginsburg[66], Southeast Asian constitutional courts have found themselves part of the striking phenomenon of providing judicial constrains to authoritarian executives, while guiding towards new constitutions when needed. In the case of Thailand, the first Constitutional Court was established with the 1997 constitution, as an attempt to break the circle of coups and corruption in politics. A number of radical aspects in the Constitution were meant to enhance participation and responsibility. It began by attempting to decentralize authority to the hitherto dormant local administrations. Second, it created broad administrative rights to information, the ability to challenge the government, and the right to get reasons for unfavorable government judgments. As described by Ginsburg: "two powerful new independent bodies were set up to improve the political process, an Election Commission and a National Counter-Corruption Commission (NCCC). The former was designed to minimize the chronic problem of vote-buying; it had the power to monitor elections, ban candidates and political parties, and order a re-run of any election it deemed to have been fraudulent. The NCCC collected reports on assets from politicians and senior bureaucrats to ensure that there were no mysterious increases during the time they were in public service. Those who failed to report assets could be barred from office, subject to approval from the new Constitutional Court."[67]. The new Constitutional Court was one of the major institutions established to improve legitimacy and check a Parliament that has a reputation for corruption and special interests. It was to be a permanent body with 15 members selected by the King for nine-year non-renewable tenure on the suggestion of the Senate. Members have to be at least forty years old. The body includes a number of qualifications and appointment processes to meet the demand for diverse types of constitutional interpretation competence. A wide range of auxiliary authorities were also exercised by the Court. Aside from the p

[66] Ginsburg, Tom. "Constitutional Courts in East Asia: Understanding Variation." *J. Comp. L.* 3 (2008): 80-99

[67] Ginsburg, Tom. "Constitutional Courts in East Asia: Understanding Variation." *J. Comp. L.* 3 (2008): page 88

ower to confirm and evaluate the Election Commission's and NCCC's findings, the Court could also: review whether any appropriations bill would result in an elected official being involved in the expenditure of funds (Section 180); decide whether an Emergency Decree is issued in the event of a genuine emergency (Section 219); whether Election Commissioners should be disqualified (Section 142); and whether political party regulations are in violation of the Constitution or fundamental principles of Thai governance (Section 47)[68]. The Court had the ability to require papers or evidence in order to carry out its tasks, because to the 1997 Constitution's underlying concern with corruption. It functioned as a type of inquisitorial Constitutional Court in this way, and it covered such role for Thaksin's election. The NCCC discovered that Thaksin had submitted a fraudulent assets report. The Constitutional Court was asked to affirm the decision, and it was placed in an awkward situation. The Court ruled that the fake report was not made on purpose and enabled Thaksin to become Prime Minister in a split ruling that has been regarded as perplexing. To sum up, it seems that the primary worry that arises from the debate of Thailand is the level of reliance on the Constitutional Court as the last arbitrator for many contentious political and legal issues under the 2007 Constitution, to the point where it becomes one of the keys to constitutional success. A problem found by Harding and Leyland is that: "[not only] enormous pressure is placed on a small judicial panel (sometimes a quorum of five) to decide key constitutional appointments but that the Constitutional Court may become the main locus for determining political issues"[69].

[68] *Ibidem*

[69]Harding, Andrew, and Peter Leyland. "The Constitutional Courts of Thailand and Indonesia: Two Case Studies from South East Asia." *J. Comp. L.* 3 (2008): Page 136

# CONCLUSION

Thus, could we talk about new forms of authoritarian international law in Southeast Asia? In the analysis presented above, we could suggest that a process of changes is happening. More and more domestic situations are influencing approaches in the field of foreign affairs at regional level, and we can see Thailand as the forefront of such change. Especially in dealing with Myanmar's riots and social tensions, it is evident how the position of Thailand has been influencing all ASEAN countries' approach to not intervening in the country's domestic affairs, despite pressures from the international community. The main reason that pushed Thailand to such position has been the willingness to affirm independency of ASEAN from the Western countries' approach, breaking the past pattern of being more influenced from the international community. By choosing not to intervene for humanitarian reasons – as suggested and pressured by the international community – Thailand has implicitly given a new interpretation of international law, in particular of humanitarian international law. A new debate on the balancing between the responsibility to protect and the principle of sovereignty must be raised, as it would become a new alternative to the traditional Western-USA driven interpretation. This, combined to the regional organization's dimension of the phenomenon, could raise some concerns over the possibility of international law's changes. Moreover, the fact that such changes are coming from regional organizations whose members cannot be considered totally democratic would also be of high impact. Nonetheless, it might be too soon to call for an "authoritarian international law", as expressed by the scholar Ginsburg in his paper[70]: to this day, there is no strong evidence of an authoritarian "turn" of international law. It is undeniable that changes are occurring, as it is also part the fluid nature of international law, and most of those changes are strengthened when they come from regional organizations rather than just single nations. Despite that, more cases and further development would be necessary to assess the direction such change is undertaking: if more authoritarian or something different.

Meanwhile, the imperative of security issues, whether national security, regime security, or regional security, has been instrumental in determining the interpretive framework of the concept of non-intervention in the eyes of Asian states in both historical and

[70] Ginsburg, Tom. "Authoritarian International Law?." *American Journal of International Law* 114.2 (2020): 221-260

contemporary contexts. This aspect explains the transition from a liberal approach to the concept of non-intervention, which was initially accepted by a few Asian states before decolonization, to a much tougher approach in terms of what constitutes an intervention, especially when the problems of their neighboring states are debated in multilateral forums. This means that the rigid understanding of and commitment to the concept of non-intervention, which is often found by observers in relation to Asian states, is not exclusive to the field, but rather reflects the political realities of the moment.

This is particularly true when it comes to analyze the swinging interpretation that Thailand gave to the "non-intervention" principle. As I have analyzed in the previous chapter, Thailand has gone through several stages of different interpretation of the principle, which I have analyzed in deep. My conclusion is that Thailand's behavior can be explained by two elements: the never-ending evolution and changes occurring in Southeast Asia and the struggle to hold still regional security's matters. As a matter of fact, it seems like Thailand has always pursued different strategies to find compromises that could guarantee its survival as one of the most influential nations within ASEAN and in the region. This is demonstrated by the different stances Thailand has taken against Myanmar's military junta. Because of such behavior, today the discussion on the principle of non-intervention and of its interpretation is still an important topic with serious consequences. The latest position held by ASEAN has been the proclamation of the "Five-Points Consensus" during the leaders' meeting on April 24, 2021, in Jakarta[71]. Differently from some decades ago, during another Burmese domestic crisis, to the present-day Thailand has not declared a firm position of engagement with Myanmar. It is unlikely that a solution proposed in 1998 by PM Chuan would be repeated, as the Thai economic is not as damaged as it was in the aftermath of the Asian crisis. Consequently, the answer to my research question is that Thailand has changed its interpretation according to the best scenario in the long-term in terms of security control of national borders, economic predominance and/or recovery, and because of the willingness to be considered the most reliable partner within Southeast Asia to deal with the international community.

[71] ASEAN Chairman's Statement on the ASEAN Leaders' Meeting: "Five-Points Consensus". 24 April 2021, Jakarta. Available at: www.asean.org

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# SUMMARY

International cooperation is something we are accustomed to. The aftermath of the Cold War has changed inevitably the geopolitical strategic alignment of the world's countries. Some of them, perceiving to be moved from pillar to post, decided to establish regional cooperative bodies to countervail the increasing influence endured by the Great Powers: the USA, Russia, and their respective allies. South-East Asian countries were no exception, as in 1967 five of them decided to come together to merge economic resources for better development in the so-called "Association of South East Asian Nations" (hereby, called ASEAN).

Since the very beginning, one of the strong holds for ASEAN's Member States in dealing with intra-states' international relations was the "principle of non-interference". According to it, nations were refrained from intervening in domestic issues to respect their own sovereignty. Reasons for adopting such principle are numerous. As it would be seen, history tells us that the principle of non-intervention has undergone some changes in its interpretation throughout the decades. During my research, I will look deep in understanding the reasons behind ASEAN's shifting approach to international relations in matters concerning Southeast Asia. More specifically, I will look on how Thailand, as one of the founding countries of ASEAN, has changed its attitude toward non-intervening in other sovereign states' businesses. It is in my understanding that Thailand has been one of the nations whose contribute has been crucial, due to its influence over the other ASEAN's states. Consequently, my research question is the following. "What explains Thailand's changing attitude toward the regional principle of non-interference?". As stated above, socio-historical approach will be a valid lens of interpretation to grasp the changes occurred on the international scenario. It is undeniable that part of the reasons to explain such evolution, rely on the ever-changing international scenario and geopolitical asset. My focus of analysis will be on Thailand and ASEAN's foreign policy and position on non-interference principle. To do so, I will study the role played by ASEAN and Thai's geopolitics and the historical setting in determining different interpretation of the principle. Mutual understanding of the rationale operating in their legal fields will deepen the acknowledgement of the "non-intervention" principle operating in ASEAN. Consequently, the requests of Western countries to adopt westernized legal standards as

requirement for undertaking diplomatic and commercial arrangements could be rediscussed, with a consequent increase of mutual understanding between Southeastern and Western countries.

My explanation to the ever-changing interpretation of the principle of non-intervention is that ASEAN states have been pressured to change their approach from non-interventionism to involvement of some sort by regional economic interests first, and foreign pressures later. It can be affirmed that pushes for changes came especially from the international community, since it posed the alternative interpretation of the principle as a *sine qua non* condition to get access to international aids and to play a role in foreign affairs. This theory is supported by the indirect intervention of ASEAN in matters concerning social and political stability in Cambogia and by the stands ASEAN took in 2003 against the military junta in Myanmar. Like every slight change, also those alternative interpretations have provoked consequences at the international law level. Some scholars talk about an authoritarian turnover of international law because of a world general trend of countries turning more toward authoritarian behaviors. Being a current topic of discussion, it will be further analyzed as part of this dissertation on the possible consequences of shifting approaches to regional international affairs.

The dissertation is thus structured as following: on the first chapter, I will provide for some historical background on the establishment and development of the Association of South East Asian Nations (ASEAN). On the second chapter, I will look at the historical development of Thailand's approach to International Relations in regional cooperation, when it comes to crisis and tension in other ASEAN's Member States. in this chapter, I will take the case of Cambodia as first example of evolution of the interpretation of the "non-intervention" principle. The third chapter will deal with the specifics of Thailand's detailed process in interpreting the principle of non-intervention through the decades. More specifically, I will look at three different stages of Thai's politics: constructive engagement, flexible engagement, and non-interference principle again. Those political steps will be contextualized within the historical framework of Thailand's domestic affairs, as well as the influence played by the Cambodian and the Burmese conflicts. To do so, the chapter will be divided into different specific sectors that will analyze the working of Prime Minister Chatichai and Army in Chief Chavalit in introducing the "constructive engagement" as a policy of accommodation to the Burmese SLORC. In a

second moment, I will look at the Chuan Leekpai's new government in 1997 and his response to the Asian financial crisis through the "flexible engagement" approach as a mean to cope with the regional economic failures. Thirdly, I will look at Thaksin's rise to power in 2001 and the reasons why, during his government, he decided to embrace non-intervention's principle again. The fourth chapter will discuss about possible development of such changes in the field of international law: as posed by some scholars, are we witnessing a drift toward new forms of authoritarian international law? Starting from the analysis illustrated in the chapters before, Thailand's choices in foreign policy at the regional level will be contextualized in the broader framework of international law. During this last chapter I will look at how today's systems of regional organizations are boosting the activities of authoritarian states both as single units and as regional groups. Despite some scholars' opinion that international law is shifting toward authoritarian features, it is in my opinion that, while changes are occurring, it might be too soon to describe the phenomenon as such. For that, I will look at the constitution of Thailand and the expression of "constitutionalism" in the country. To conclude, I will look at some of the aspects the Thailand's constitution has taken with authoritarian shapes.

Throughout history, Thailand has found itself on the frontline for changes in the interpretation of the principle of non-intervention because of economic or security reasons. First shift from the strict interpretation of the non-intervention principle occurred during the '80s due to the Cambodian conflict. From Thailand's perspective, the Cambodian conflict had jeopardized security plans for Thailand. Historically, Thai military planners see Laos and Cambodia's neutral position as critical to stopping the spread of communist communism from Vietnam. Consequently, the Vietnamese invasion and occupation of Cambodia was seen as a threat to Thai defense. The two politicians that pushed for a "constructive engagement" approach were the Prime Minister Chatichai and the Chief of Army General Chavalit Yongchaiyudh. Changes in Thailand's vision of the Cambodian conflict came around 1988, when the Thai Nation Party came to power and Chatichai Choonhavan became Prime Minister. A major breakthrough in the conflict occurred with him thanks to its change in approaching the event. When Chatichai came to power, he discarded Thailand's hardline stance in favor of a new step-by-step approach to dispute resolution based on his idea of turning the Indochina battlefield into a business spot. At the same time, all ASEAN countries were pressuring the international community

not to recognize the military as the new government holding Cambodia's seat at the UN General Assembly. The political power exerted in the UN General Assembly prevented support to the Vietnamese cause from international organization. In this case, ASEAN was able to take advantage of its prominent position in Southeast Asia and to pose itself as the most suitable mediator between the conflicting parties and international interventions. Chatichai's approach to the Cambodian conflict demonstrated the predominant role Thailand could play in the region in case its security would have been compromised. In the context of ASEAN, the constructive engagement approach has been adopted under the assumption of pursuing and facilitating economic and strategic interests of the Association: one of the main goals in the '90s for ASEAN was the expansion of the economic market and of the trading network.

During the year 1997, Thailand suffered from a serious financial crisis which rapidly spread to neighboring economies. It started as a currency crisis when Bangkok decoupled the Thai baht from the US dollar, triggering a sequence of devaluations and large capital outflows. The Asian financial crisis exposed in particular the state's inability to fulfill its historical regulatory roles, as well as to control globalization forces and pressures from foreign actors. To address the financial crisis, Chuan Leekpai was nominated Prime Minister while Surin Pitsuwan was appointed Ministry of Foreign Affairs. The latter focused on how to deal with Asia's economic and financial crisis as a strategic problem that challenged the Association's standing, efficacy, and potential regional position. Consequently, during the the 31st ASEAN Ministerial Meeting held in Manila in July 1998 that the Ministry started talking about adopting "flexible engagement" in dealing with foreign affairs. Reasons for advocating such solutions were several: the financial crisis had opened a Pandora box, as it underlined the critical aspects of an Association which had never dealt with the increasing interdependence within the region. Secondly, flexible participation was meant to deal with emerging security challenges like economic instability and a variety of cross-border security issues like mass migration, illicit drugs, transnational violence, and environmental degradation. Lastly, the flexible engagement would have allowed ASEAN' countries to speak openly about the lack of uniformity as regional organization and to go beyond the governmental structures of member states that would impair their self-criticism and lack of transparency. ASEAN countries made lots of critics to the proposal of flexible engagement. The first point that was criticized was

the unclear definition of the word “flexible”, as the proposal did not clearly explain what ASEAN would have done to act in the scope of the interpretation. Another major criticism held on the idea that such new engagement practice, being so unclear in its application and its definition, would have caused more harm than benefits to the parties involved. Finally, by proposing that ASEAN should get active in intra-state issues even though doing so would have negative implications for other members, "flexible participation" questioned the long-standing rule that ASEAN should not take joint action on issues that affect other members.

The impact of the Asian financial crisis on Thailand's economy in 1997 boosted Thaksin and his party, Thai Rak Thai (TRT) which he established in 1999, two years before the elections, and the popular popularity of a populist platform. One of the pillars of Thaksin’s political program was to respond to the precedent government’s grievances and to start a process of strengthening the domestic political consolidation. In the field of regional policies, Thaksin maintained previous governments' policies of improving relations with mainland Indochina countries, such as Vietnam, Laos, and Cambodia. Thaksin, on the other hand, greatly overturned the Chuan government's historically aggressive stance against Myanmar and attempted political consolidation. Outside of mainland Southeast Asia's immediate outskirts, bilateral relations with Malaysia to the south, Bangladesh and India to the west, and China to the east have been significantly improved. In addition, unlike previous administrations in the 1990s, Thaksin has sought a military alliance with the United States. in such terms, Thaksin pursued an equally ambitious strategy of stabilizing the immediate regional climate and carving a niche for Thailand to participate in the growth of Southeast Asia's mainland. In order to reach these goals, Thaksin engaged in a non-intervention approach.

The swinging phenomenon of changes manifested in Thailand’s approach has had repercussion on politics and on the management of international relations in Southeast Asia. Thailand’s approaches have shaped the interpretation of ASEAN core norm in dealing with internal affairs of other member states and have funded the leading approach at regional level. Thus, from a regional perspective, it can be said that the leading role of a single country has provided the basis for the whole region’s approach. Such reasoning and attempting to understand the mechanism behind regional cooperation, for this case of Southeast Asia, is fundamental for analysis of international relations per se. Moreover, its

importance also influences another field, which is international law. Why? Because regionalism has become a prominent type of international cooperation to manage ties between neighboring states all over the world, which occurs within international law's mechanisms. Since international law is based on several elements, among all customary practices, by its very nature it can undergo some changes due to different states' practices.

While previous research has made significant contributions to understanding the regional dimension of authoritarian resilience, it frequently fails to connect regional dynamics and domestic politics in Southeast Asia to theorize and empirically test how membership in regional organizations can increase the likelihood of incumbent survival. To look at the link between domestic survival of authoritarian forms of government and the existence of regional organizations, I have taken into consideration a recent paper by Maria J. Debre[72]. In her paper, the scholar claims that regional organizations have an impact on domestic politics by redistributing resources among players, therefore strengthening the executive ability of authoritarian incumbent elites to carry out survival tactics against internal and external adversaries.

Considering the analysis, regime-boosting regionalism may be seen of as a form of executive empowerment that operates by bolstering each individual survival strategy, further limiting internal and foreign opponents, and increasing the chance of incumbent survival. By symbolically engaging in regionalism, domestic legitimation and foreign appeasement are frequently used simultaneous. The conflict between traditional and contemporary notions of power and authority was emphasized in early academic explanations of authoritarianism in Southeast Asia. In Southeast Asia, Lucian Pye compared two concepts of authority: one inspired by colonial rule, which was bureaucratic, legal, and logical, and the other based in traditional culture and religion, which produced a patrimonial political framework. The former first triumphed because Western liberal conceptions of power were popular among nationalist movements headed by Westernised elites. However, a return of traditional power ideas led to a rejection of liberal democracy. Returning to more "traditional" ideas of power had ramifications not just for the nations' domestic politics, which became increasingly patrimonial, but also

[72] Debre, Maria J. "The dark side of regionalism: how regional organizations help authoritarian regimes to boost survival." *Democratization* 28.2 (2021): 394-413.

for foreign policy and regional cooperation, where it resulted in the creation of the "ASEAN way". This could be thus defined in terms of informality, consultations, and agreement, organizational simplicity, and flexibility. One of the core values of ASEAN is the principle of non-intervention, widely discussed for its volatile nature and its openness to broad interpretation according to the geopolitical situation in Southeast Asia. Up to toady, Thai foreign ministers have deliberately interpreted the principle via its flexible nature and according to different geopolitical scenarios, thus without sticking to a single strict ideological interpretation. In addition, they exploit democratic institutions for anti-democratic goals. One example is the Thai Military Court, which has shown its independent character from the national courts, despite Thai government's numerous statements. Such thing is possible since Thailand's political and ideological values give rise to the trinity state apparatus: "Nation, Religion, and Monarchy" (*chart, satsana, phramahakasat*, or NRM), while elements such as "constitution" and "democracy" are considered coexisting although subordinated to them. In fact, Thailand the military is not isolated from society, but rather goes deep into society with the assistance of the civil bureaucracy and is therefore able to constantly enter the minds of people even in distant villages with the official ideology propagated by the state machinery. As a result, Thailand has a thick layer of political culture that supports that philosophy, which includes military coups. In this framework, concepts of constitutionalism may not work, and constitutions may appear to be little more than "symbolic politics" or "a tool of struggle". Such domestic values and patterns have been reflected also on regional affairs within the ASEAN's management of regional problems and discussions on whether to intervene or not. Thailand has implicitly given a new interpretation of international law, in particular of humanitarian international law. A new debate on the balancing between the responsibility to protect and the principle of sovereignty must be raised, as it would become a new alternative to the traditional Western-USA driven interpretation. This, combined to the regional organization's dimension of the phenomenon, could raise some concerns over the possibility of international law's changes. Moreover, the fact that such changes are coming from regional organizations whose members cannot be considered totally democratic would also be of high impact. Nonetheless, it might be too soon to call for an "authoritarian international law", as expressed by the scholar Ginsburg in his

paper[73]: to this day, there is no strong evidence of an authoritarian "turn" of international law. It is undeniable that changes are occurring, as it is also part the fluid nature of international law, and most of those changes are strengthened when they come from regional organizations rather than just single nations. Despite that, more cases and further development would be necessary to assess the direction such change is undertaking: if more authoritarian or something different.

[73] Ginsburg, Tom. "Authoritarian International Law?." *American Journal of International Law* 114.2 (2020): 221-260