



저작자표시-비영리-변경금지 2.0 대한민국

이용자는 아래의 조건을 따르는 경우에 한하여 자유롭게

- 이 저작물을 복제, 배포, 전송, 전시, 공연 및 방송할 수 있습니다.

다음과 같은 조건을 따라야 합니다:



저작자표시. 귀하는 원저작자를 표시하여야 합니다.



비영리. 귀하는 이 저작물을 영리 목적으로 이용할 수 없습니다.



변경금지. 귀하는 이 저작물을 개작, 변형 또는 가공할 수 없습니다.

- 귀하는, 이 저작물의 재이용이나 배포의 경우, 이 저작물에 적용된 이용허락조건을 명확하게 나타내어야 합니다.
- 저작권자로부터 별도의 허가를 받으면 이러한 조건들은 적용되지 않습니다.

저작권법에 따른 이용자의 권리는 위의 내용에 의하여 영향을 받지 않습니다.

이것은 [이용허락규약\(Legal Code\)](#)을 이해하기 쉽게 요약한 것입니다.

[Disclaimer](#)

Master's Thesis of International Studies

The Analysis of ASEAN Mediation Process
- A Comparative Study of the Preah Vihear and the Ambalat Block
Disputes -

아세안 중재 과정 분석: 프리아 비히르와 암발랏 블록 분쟁의
비교 연구

August 2021

Graduate School of International Studies
Seoul National University
International Area Studies Major

Amelia Limanjaya

The Analysis of ASEAN Mediation Process
- A Comparative Study of the Preah Vihear and the Ambalat Block
Disputes -

Examiner Professor Oh Yoon Ah

Submitting a master's thesis of International Studies

August 2021

Graduate School of International Studies
Seoul National University
International Area Studies Major

Amelia Limanjaya

Confirming the master's thesis written by
Amelia Limanjaya
August 2021

Chair Professor Sheen Seongho

Vice Chair Professor Park Jeehwan

Examiner Professor Oh Yoon Ah

ABSTRACT

Since its establishment in 1967, ASEAN continuously seeks to enable the environment of peace and stability in the Southeast Asia region. One important aspect of ASEAN in fulfilling this objective is the institutionalization of the ASEAN conflict management mechanisms in view of the fact that interstate disputes still becoming a looming challenge for the region. This study looks upon the utilization of the mediation process in a dispute settlement and observe the factors that influence the conduct of the mediation process in ASEAN. It suggests that the presence of a reliable mediator plays an important role in the resort to the mediation process by the ASEAN member states, as reflected in the case study of the Preah Vihear dispute. Notwithstanding the constructive presence of a mediator in an interstate conflict between the ASEAN member states, the availability of a mediator is limited in most conflict management efforts of ASEAN, including the one observed in the Ambalat Block dispute. Thus, it is imperative that ASEAN strengthen its cooperative leadership to instill the sense of belonging in each and every member state of ASEAN, in order to nurture deeper trust among them. This effort will encourage the availability of a mediator in the occurrence of a conflict. Furthermore, this study also argues that the ASEAN norms and principles have served a limited but meaningful purpose in the ASEAN community-building process and will continuously be relevant as the foundation of ASEAN cooperation in the future. It is timely to preserve and strengthen the application of ASEAN norms and principles to enable an effective implementation of the conflict management mechanisms, including the ASEAN mediation process.

Keywords: ASEAN, mediation, conflict management, mediator, the ASEAN Way, regional cooperation

Student Number: 2019-21199

Table of Contents

| | |
|--|----|
| Table of Contents | i |
| List of Abbreviations | ii |
| Chapter 1. Introduction | 1 |
| 1.1. Background | 1 |
| 1.2. Purpose and Significance of the Research | 2 |
| 1.3. Research Question and Methodology | 3 |
| Chapter 2. ASEAN Mediation Process | 5 |
| 2.1. Mediation in Theory | 5 |
| 2.2. Explaining the ASEAN Way of Conflict Management | 10 |
| 2.3. ASEAN Mediation Process | 16 |
| Chapter 3. Instruments of the ASEAN Mediation Process | 21 |
| 3.1. ASEAN (Bangkok) Declaration and the Treaty of Amity and Cooperation (TAC) | 21 |
| 3.2. ASEAN Charter | 23 |
| 3.3. International Court of Justice (ICJ) | 25 |
| 3.4. The ASEAN Mediation Process within the ASEAN Conflict Management Mechanisms | 26 |
| Chapter 4. Interstate Disputes Among ASEAN Member States | 29 |
| 4.1. Preah Vihear Dispute | 29 |
| 4.1.1. Historical Background | 29 |
| 4.1.2. ASEAN Mediation Process of the Preah Vihear Dispute | 32 |
| 4.2. Ambalat Block Dispute | 33 |
| 4.2.1. Historical Background of the Sipadan and Ligitan Islands Dispute | 33 |
| 4.2.2. Historical Background of the Ambalat Block Dispute | 35 |
| 4.2.3. ASEAN Mediation Process of the Ambalat Block Dispute | 36 |
| 4.3. ASEAN Mediation Process in Interstate Disputes among ASEAN Member States | 38 |
| 4.3.1. The Attributes of Interstate Disputes among ASEAN Member States | 38 |
| 4.3.2. Enabling Factors of ASEAN Mediation Process | 40 |
| Chapter 5. Conclusion | 44 |
| Bibliography | |

List of Abbreviations

| | |
|--------|--|
| ASEAN | Association of Southeast Asian Nations |
| EPG | Eminent Persons Group |
| GDP | Gross Domestic Product |
| HCP | High Contracting Parties |
| ICJ | International Court of Justice |
| TAC | Treaty of Amity and Cooperation |
| UN | United Nations |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| UNSC | United Nations Security Council |

I. INTRODUCTION

1.1. Background

The Asia region continuously becoming the most dynamic region in the 21st century, filled with opportunities as well as challenges. Unfinished disputes, particularly those of territorial disputes, still present amidst the encouraging development in the economic and other social dimensions of the region. Given the delicate nature of the territorial disputes, they need to be addressed properly. Since its establishment in 1967, ASEAN has arguably providing the Asia region, specifically the Southeast Asia region, an enabling environment of peace and stability. The region has been enjoying the benefits of a peace dividend, with no war ever took place for the last 54 years, allowing prosperity to spur in the region.

ASEAN has been going through a continuous development to maintain peace and stability in the region. One important aspect of ASEAN in fulfilling this objective is the institutionalization of the ASEAN conflict management mechanisms in view of the fact that interstate disputes still becoming a looming challenge for the region. Historically, ASEAN has been assisting the Southeast Asia region in managing regional conflict, both interstate and intra-state conflicts (Oishi 2016). ASEAN, through the trust building mechanism known as the ASEAN Way, has allow its member states to have a productive relationship. The ASEAN Way incorporates norms and principles as the guiding rules, including the peaceful means of dispute settlement, the non-interference of the internal affairs of other members and the consensus decision making process (Acharya 2009). Based on these principles, ASEAN established the conflict management mechanisms that stipulated in the guiding documents of the organization, including the Treaty of Amity and Cooperation (TAC) as well as the ASEAN Charter and its Protocol on Dispute Settlement Mechanisms.

The ASEAN mediation process highlighted in this study due to its function that could assist in addressing incompatibilities among disputed parties while absorbing tensions that may arise due to the incompatibilities (Oishi 2016, 13). It can provide a space for the disputed parties to conduct negotiations, thus reduce the risk of an open conflict. The objective of a mediation process would be an integration or a peaceful coexistence between the parties, thus a workable crisis management tools are needed in the pursuance of this objective (Ibid., 15). ASEAN is perceived to possess an inherent crisis management capacity through the implementation of the ASEAN Way in a dispute settlement process, thus make the ASEAN mediation process a favorable practice in the conflict management of ASEAN. However, this study found a variation of response from the member states in the utilization of the ASEAN mediation process.

1.2. Purpose and Significance of the Research

This study aims to examine the ASEAN mediation process as a conflict management mechanism in the region. In order to contribute to the studies about ASEAN conflict management, this research would provide a new perspective into the mediation process of ASEAN by elaborating the factors that affect the ASEAN mediation process that influence the utilization of the mediation process in settling disputes between member states. Some studies acknowledged that the utilization of mediation in ASEAN has yet to be effective in managing conflicts between the ASEAN member states (Acharya 2012; Vatikiotis 2009), while the consensus as well as the non-interference principles of ASEAN are heavily criticized as the source of the ineffectiveness of the ASEAN mediation process (Hiep 2016; Limsiritong 2017). However, this study would try to go beyond the critics on the ASEAN way as the stumbling block of the ASEAN mediation process. Rather, it would argue that the availability of a reliable mediator, the leadership role of Indonesia in ASEAN, as well as the different attributes of the disputed parties are the factors that affect the utilization of the ASEAN mediation process in the effort of a dispute settlement in the Southeast Asia region.

1.3. Research Question and Methodology

Against this backdrop, this study would like to address the main question regarding the utilization of the ASEAN mediation process: “What is the defining factor that influence the variation of the utilization of the ASEAN mediation process?”

This study is adopting the qualitative method to analyze and address the research question. Levy (2002, 134) defines the method as “structured, focused comparison which focuses on a particular analytically defined aspect of a set of events and uses a well-defined set of theoretical questions to structure empirical inquiry”. He further argues that the core of the qualitative research methodology in the international relations field focuses on comparative and case study methods (Ibid., 132). Therefore, this study is following this approach by applying the framework of the ASEAN mediation process, focusing on the enabling factors that influence the utilization of the mediation process, to the case studies of the Preah Vihear dispute and the Ambalat Block dispute.

This study will try to explain the ASEAN mediation process through the comparison of the case studies of the Preah Vihear dispute and the Ambalat Block dispute. Both case studies take on the similar nature of incompatibilities, that is the issue of territorial disputes, and the utilization of the ICJ arbitration to determine a legal verdict on a partial portion of the dispute. However, both differ in terms of the utilization of the ASEAN mediation process in the effort of the dispute settlement. In the case of the Preah Vihear dispute, a mediation process by ASEAN was in place, fostering a conducive environment for negotiation for the disputed parties. On the contrary, the disputants in the Ambalat Block dispute were hesitant to utilize the mediation mechanism of ASEAN and directly brought the case upon the ICJ arbitration. Thus, this study will examine what factors that affect the utilization of the ASEAN mediation process in managing interstate disputes among its members, as reflected by the case studies.

In the process of the data collection, this study uses primary and secondary sources. The primary sources come from the official documents of ASEAN and the International Court of Justice (ICJ) obtained through the ASEAN Secretariat and the ICJ data center. This study also exercises secondary sources of data from various publications, books, articles, journals, and the internet.

II. ASEAN MEDIATION PROCESS

2.1. Mediation in Theory

The study of conflict resolution takes on its foundation from the social psychological study that has been examining conflict for more than a hundred years. Darwin, Marx, and Freud thinking dominated this study with their perspective on the competitive and destructive aspects of conflict (Deutsch 2006, 13). It is later developed with empirical orientation of the study with focus on the socialization of the individual that engenders various derivative studies, including discourses on the cooperation-competition concept, which is the precursor to the empirical study of conflict (Ibid., 14-15). The theories of cooperation and competition are important concepts in conflict resolution as they will determine the outcome of the conflict, whether it will generate a constructive result or a destructive one.

In order to discuss a framework of conflict resolution mechanism, it is imperative to identify the ‘conflict’ itself as the object of study. Moore (2014, ix) explains conflict as a fact of life that ‘exists when people or groups engage in competition to achieve goals that are incompatible’. In accordance with Deutsch, Moore emphasizes that conflicts and disputes are not necessarily bad in nature. They only become destructive when they go beyond competitive behavior and acquire the additional purpose of inflicting serious damage on their opposition. Otherwise, conflicts and disputes serve as an impetus for growth and productivity for those who are involved (Ibid.). Wallensteen (2002, 16) explains conflict as “a social situation in which a minimum of two actors, or parties, strive to acquire at the same moment in time an available set of scarce resources”. From these notions, we can derive three key components of conflict, that are action, incompatibility, and actors. By understanding the concept of conflict, we can now delve deeper into the efforts to transform the conflict into peace.

The outcome of a conflict or dispute depends on how the parties manage their incompatibilities

and develop mutually beneficial solutions to meet their common interests. Conflict management takes on many forms, including avoidance, negotiation, mediation, arbitration, as well as adjudication (Bercovitch and Lee 2003, 2). Moore (2014, 6-7) illustrates a vast range of conflict management that can be chosen by disputed parties to address their incompatibilities. It varies from an informal, collaborative, and private approach to a coercive public action on the other end, with a variety of third-party approaches that provide decision making assistance in between those extremes. These third-party approaches include the mediation process that has been widely utilized as a reliable conflict management approach.

Mediation described as “a conflict resolution process in which a *mutually acceptable third party*, who has *no authority* to make binding decisions for disputants, intervenes in a conflict or dispute to assist involved parties to improve their relationships, enhance communications and use effective problem solving and negotiation procedures to reach *voluntary and mutually acceptable* understandings or agreements on contested issues [emphasis added]” (Moore 2014, 8). Bercovitch (1992, 7) elaborates in his study that mediation in the international relations context defined as “a process of conflict management, related to but distinct from the parties’ own efforts, where the disputing parties or their representatives seek the assistance, or accept an offer to help, from an individual, group, state or organization to change, affect or influence their perceptions or behavior, without resorting to physical force or invoking the authority of the law”. Both definitions highlighted the attributes of the mediation process that involve a third party in a peaceful conflict management process that is mutually accepted by the disputed parties to assist them in resolving the issues.

Mediator: Roles, Interests, and Leverage

From the definition of mediation process explained above, we can understand that the third party involved in a mediation process is the important actor who is expected to become a game changer in a conflict situation. These third parties will be regarded as the mediator. Mediator becomes an important subject to be studied in the effort of understanding international mediation. There are a number of actors

that are eligible to become mediators in international conflict management. There are at least three groups of international mediators, ranging from individuals, states, as well as institutions and organizations (Bercovitch 1992, 13). The role of mediator played by international organizations will be elaborated more in this study, especially the involvement of regional organizations in the mediation process.

There is a long list of roles that can be played by a mediator in managing a conflict, ranging from passive roles to an active involvement in promoting settlement ideas. In the common practice of a mediation process, a mediator would play multiple roles that they perceive suitable to be taken in order to fulfill their function best. These many roles that they played in a comprehensive manner can be regarded as the mediation strategy and tactics. As defined by Kolb (1983, 249), strategy refers to “an overall plan, approach, or method a mediator has for resolving a dispute. ... it describes what the mediator believes he is trying to accomplish and how he intends to do it”. While mediation tactics can be understood as the concrete behaviors that actually are taken by the mediators to bring the parties to settlement (Ibid.).

The strategies and tactics are an integral part of a mediation. It can be classified into three categories that include the facilitative communication, substantive formulation, and procedural manipulation strategies (Kolb 1983; Zartman and Touval 1985). The first strategy is the facilitative communication strategy that allows disputing parties to open a communication channel through the mediator. In this strategy, the mediator role is limited and relatively passive. Secondly, the substantive formulation strategy allows a mediator to play a more active role in the mediation process, mostly in providing a conducive environment in the efforts of conflict resolution or management. Lastly, the procedural manipulation strategies might need the mediator to utilize their positions or other resources to encourage the disputing parties to come to an agreement. There is a high degree of involvement of the mediator in conducting this strategy, requiring a considerable level of trust from both disputing parties.

In a mediation process, the mediator should consider the environment of the conflict such as the

interests, possessed resources and expectations of each actor, including the mediator itself, to come up with a coherent strategy (Bercovitch 1992, 18). The mediator and the disputed parties are intertwined in a system of exchange and influence (Ibid.). For a mediator to choose which strategies to be applied, they have to take into account the whole conflict system and this caused a number of variations in the mediation process (Ibid., 18-19). It is rarely found that a mediation process conducted in the same manner due to the differences of actors as well as the conflict environment.

There is a common goal of all mediators, that is to accomplish a settlement of the conflict or at least a conflict reduction. However, each mediator usually carries interests that motivate them and thus distinguish them from each other. Zartman and Touval (1985, 32) explain the two types of interest that can be promoted through mediation. First, a defensive interest, in which mediators are protecting their own interests due to the detrimental characteristic of the conflict, and second, a self-interested motive, that encourages mediators to extend and increase their influence. In the context of regional organizations as international mediators, a commonly found interest for regional organizations in mediating conflicts, especially those that occur in close vicinity of the region, is the defensive interest to maintain peace and stability in the region (Ibid., 34). It is their utmost concern to defend their region from external intervention and interference that could potentially bring harm to the peace and stability of the region.

Finally, in order to function effectively, a mediator has to possess power or leverage that becomes their tool to maneuver in the mediation process. There are five sources of leverage for a mediator to utilize, including persuasion, extraction, termination, deprivation, and gratification (Zartman and Touval 2007, 447). The mediators take the advantage of resources available to them to be able to influence the process of conflict settlement and therefore, the outcome. The principal elements of leverage for mediators are persuasion and the disputed parties' need for a solution (Ibid., 449). These elements are highly related to the reliability and acceptability of the mediators. The nature of mediation as a third-party mechanism of conflict management requires mediators to obtain acceptance from the disputed parties on their involvement in the conflict management itself. The consideration of the disputed parties regarding the consequences of acceptance or rejection of a mediator is decided through their perception of the mediator's capability in bringing about acceptable outcomes (Zartman and

Touval 1985, 36). Therefore, a mediator's leverage that is perceived favorable by the disputed parties will increase their chance to be welcomed as a mediator.

It was previously believed that impartiality and neutrality are the most important attributes of a mediator (Zartman 2008, 306). It is only in the 1970s that William Zartman conducted a deeper study about mediation in international conflicts with 'bias' or impartiality as the main subject of his research. His research has found that neither impartiality nor neutrality have an impact on the acceptance of a mediator by the disputed parties. Instead, partiality, or 'bias' as mentioned by Zartman, provides an entry point and even leverage for the mediator over the disputed parties (Ibid.). Prior to Zartman's study, impartiality was closely linked to the reliability of a mediator in conducting a mediation process. However, considering that impartiality is not necessarily an attribute to the mediator, the characteristic of a reliable mediator includes the ability to be an honest messenger, the willingness to help disputed parties finding a stable and mutually satisfying solution, as well as the ability to provide balanced benefits to both parties (Ibid.).

Bercovitch and Houston (1993, 301) further affirmed Zartman's notion on mediator's impartiality and explained that a mediator is chosen on the account of 'their ability to influence, protect, or extend the interests of each party in conflict.' Mediators play their role in a mediation process by maneuvering their leverage and resources to align the disputed parties into acceptable solutions. In doing this task, there are three criteria that can increase the effectiveness of a mediator, thus makes them reliable: mediator rank and identity, relationship with the disputed parties, and previous attempts as a mediator in a mediation process (Ibid.). Additionally, the behavior of a mediator also plays as a significant factor in determining the effectiveness of a mediation process (Ibid., 303). A high-level representative who is able to make use of their legitimacy and resources would gain trust from the disputed parties, allowing them to play the mediator role. The prestige, resources, and leverage that are owned by a high-level individual would help them to be a reliable mediator in a conflict situation (Ibid., 317). It was also found that a mediator who shares a common affiliation or in the same network of interdependence with the disputed parties have higher chance to conduct a successful mediation process (Ibid.). Previous attempts in taking the role as a mediator associated with how skillful a mediator in maneuvering their strategies.

More attempts, regardless of the outcome, are considered to accord more experience, thus a mediator with various past experiences would have better strategies to be utilized in conducting the mediation process. In this regard, an active behavior of a mediator is believed to bring positive outcome in a mediation process (Ibid.).

Mediation takes place in the presence of certain interests of the mediator as well as the disputed parties, and when the mediator skillfully maneuvers its leverage in providing a prospective outcome (Amoo and Zartman 1992, 132). There is, however, a limitation for regional organizations acting as a mediator in a conflict situation, as explained by Amoo and Zartman, due to the nature in the establishment of the regional organizations themselves. The authority of regional organizations comes from the consent of its member states, hence the decision to mediate will be based on the individual interests and judgements of the member states for the preservation of the organization itself (Ibid.). Moreover, regional organizations are built upon the general principles of sovereign equality, frontier inviolability, as well as the non-interference in their member's domestic affairs. Thus, individual member states often exercise these principles to justify their positions in a conflict (Ibid.). Therefore, mediation is commonly conducted 'within' the regional organizations rather than 'by' them, through the regular mechanisms provided as the instruments for individual states acting as the mediator on behalf of the organization (Ibid., 133).

2.2. Explaining the ASEAN Way of Conflict Management

ASEAN was established on 8 August 1967 by the five founding members, Indonesia, Malaysia, the Philippines, Singapore, and Thailand. The establishment of a regional organization in the Southeast Asia region at that time was an effort to enhance stability in a region that was facing threats from external powers as well as internal insurgencies (Acharya 2009, 5). The Cold War was at its height at the time and communism was an ideology that was feared (Ibid.). Trust deficit was also observed in the relationship between nations that are fundamentally diverse (Ibid.). The geopolitical landscape of the

Southeast Asia region at the time was calling for an organization that fosters and strengthens mutual trust and understanding amongst its members (Acharya 2012, 158).

It was a challenging situation for an organization to dwell in, however ASEAN has survived and arguably thrived as one of the most successful regional organizations today (Mahbubani and Sng 2017). There are norms and principles held up by the ASEAN member states that allow them to have a productive relationship, including the peaceful means of dispute settlement, the non-interference of the internal affairs of other members and the consensus decision making process (Acharya 2009). These norms and principles are attributed as distinct features of ASEAN and also known as the ‘ASEAN Way’ (Ibid.).

Peaceful Means of Dispute Settlement

As discussed above, the Southeast Asia region manifested with geopolitical instability in the eve of the ASEAN establishment. The founding members of ASEAN were desperately in need of a mechanism that could preserve the peace and stability in the region amidst the intra-regional mistrust and animosity (Acharya 2009, 58). In virtue of the coercive diplomacy of *Konfrontasi* between Indonesia and Malaysia, the Southeast Asia nations have witnessed the high cost of the use of force in dispute settlement. By the end of the confrontation, the five founding members of ASEAN came to the conclusion that the region needed a supporting mechanism to avoid the unfavorable conditions reappearing.

The founding members of ASEAN have the aspiration to uphold the peaceful means of dispute settlement as they see that this approach would provide the region with peace and stability that were necessary in order to build an enabling environment for economic development. The conventional peaceful means of settlement utilized by ASEAN was the conflict avoidance through self-restraint and the non-use of force (Oishi 2016, 192). The conflict avoidance practice of the ASEAN Way gives priority to the informal process of dispute settlement, including the constructive dialogues and

negotiations. It was furthermore developed into a more formal mechanism¹, as the leaders of ASEAN committed to the practice of the non-use of force in the management of conflicts in the region (Acharya 2009, 61-62), although such mechanism has yet to be activated up to today.

Non-Interference Principle

At the outset of the ASEAN establishment, the dire trust deficit between member states portrayed the relationship between them. A number of disputes took place between Indonesia, Malaysia, the Philippines and Singapore (Acharya 2009, 58-61). The newly independent nations, except Thailand that has never been colonized, were also in search of internal stability and regime security (Ibid., 71). It is on this basis that the non-interference principle becomes the pivot of the relationship among ASEAN member states. The leaders of ASEAN are of the view that the principle would ensure sovereignty and independence of each member state. They believe that the non-interference conduct between the member states would preserve domestic stability and encourage national economic development, and thus will benefit the region's economy at large (Acharya 2012, 164). The ASEAN leaders conceived the organization to be an engine for promoting regional economic development as their first objective and maintaining the regional stability as a derivative purpose.

Acharya (2009, 72) noted four main aspects of the principle, including:

- (1) Refraining from criticising the actions of a member government towards its own people, including violation of human rights, and from making the domestic political system of states and the political styles of governments a basis for deciding their membership in ASEAN;
- (2) criticising the actions of states which were deemed to have breached the non-interference principle;
- (3) denying recognition, sanctuary, or other forms of support to any rebel group seeking to destabilise or overthrow the government of a neighboring state;
- (4)

¹ The Treaty of Amity and Cooperation signed in 1967 instituted the dispute settlement mechanism of ASEAN. This mechanism will be further elaborated in Chapter 3.

providing political support and material assistance to member states in their campaign against subversive and destabilising activities.

It is true that the principle received much criticism, especially on how the principle could not lend constructive assistance to the human rights issues in the region (Ibid., 72-73). However, it is arguable that the principle of non-interference has served as a glue to the member states of ASEAN for the past 54 years. The non-invasive approach of the principle does not mean that the members of ASEAN are indifferent to each other's internal power struggle. The fourth aspect of the principle provides an obligation for member states to provide assistance in the effort to counter threats that are domestically originated (Ibid., 74). The key element here is the mutual approval from the member states. To sum up, the non-interference principle cannot be separately implemented with the consensus practice in ASEAN.

Consensus

The two principles previously described are not unique to ASEAN. Most regional organizations are built upon the expectation to provide a peaceful mechanism to settle regional disputes and the principle of non-interference becomes essential for the assurance of sovereignty of their members. However, the consensus approach in ASEAN decision making process can be regarded as a distinct characteristic of the organization, as a by-product of cultural similarities among the ASEAN societies, such as Malaysia's *kampung* (village) spirit of 'togetherness' and Indonesia's *musyawarah mufakat* (consultation and consensus) norms (Acharya 2009, 78, 82). The ASEAN consensus emphasizes the equity attribute in the decision making process, as noted by Acharya that "consensus means searching for an amalgamation of the most acceptable views of each and every member" (Ibid., 83). The consensus in the ASEAN context must be set apart from the unanimity style of decision making (Acharya 2009; Collins 2017). The ASEAN member states do not have veto power in their decision making process. On the contrary, they are bound to have friendly negotiations, however arduous it might be, to come up with a solution that is agreeable for every member state. The solution that resulted from the negotiations

might not be everyone's best option, but it will never be detrimental for their national interests either.

Therefore, the effectiveness of the ASEAN consensus might be limited in the issues regarding sovereignty and territorial integrity, as both are the fundamental aspect of national interest (Acharya 2009, 84). Subsequently, the ASEAN consensus had been constructively modified to remain relatable with the development of the organization. In the process of formulating the ASEAN Charter in 2006, the ASEAN Eminent Persons Group (EPG) underlined the importance of preserving the consensus decision making process as the guiding principle of ASEAN. Moreover, the EPG submitted a recommendation for a more effective decision making process in ASEAN by implementing the flexible application of 'ASEAN minus X' formula, subject to the discretion of the relevant ASEAN Community Councils (ASEAN Secretariat 2006, 6). However, the utilization of ASEAN minus X formula is still limited to economic issues as its practice for political and security matters is still largely debated (Emmers 2017; Hiep 2016; Collins 2017).

Leadership in ASEAN

Leadership in ASEAN, as in other regional organizations, is a complex, fragmented, multidimensional issue (Rattanasavee 2014, 118). It usually refers to the formal definition of leadership in which embedded in the form of presidency or chairmanship of the organizations (Ibid.). Based on this formal definition, the incumbent president or chairman of the organization technically has a conventional ability to influence the decision making process. This formal definition of leadership also found in ASEAN through the implementation of Article 31 of the ASEAN Charter, that explains the annual rotation mechanism of ASEAN chairmanship including their obligation to lead the ASEAN Summit and related summits, the ASEAN Coordinating Council, the ASEAN Community Councils, the relevant ASEAN Sectoral Bodies, as well as the Committee of Permanent Representatives of ASEAN. Furthermore, Article 32 of the charter elaborates more on the roles that shall be taken by the chairman of ASEAN, including but not limited to, the Article 32(c) in which they are expected to "ensure an effective and timely response to *urgent issues or crisis situations* affecting ASEAN, including providing

its good offices and such other arrangements² to immediately address these concerns [emphasis added].”

The definition of leadership also has another dimension that can be understood through its informal form. It refers to the members of the organization who possess greater influence and ability to provide initiatives and persuade the other members (Ibid.). The informal definition of leadership comes in various forms of leadership, including sectoral leadership, cooperative leadership, and periodical leadership (Ibid., 118-120). Firstly, the sectoral leadership refers to the leadership in which a member country has the competency to take the lead in one area of cooperation at the time. Some members of ASEAN are generally acknowledged to lead in particular areas, such as Indonesia in the political and security cooperation; Singapore, Thailand, and Malaysia in the economic cooperation; as well as the Philippines in the socio-cultural cooperation (Ibid., 118). Secondly, the cooperative leadership refers to a form of coalition in which several members of the organization who share similar vision play a strategic role of collective leadership (Ibid., 119). Lastly, the periodical leadership assumes that leadership is embedded in the personal ability of an individual. It requires a leader figure with strong characters. ASEAN has had several influential leaders, namely Indonesia’s President Soeharto, Singapore’s Prime Minister Lee Kuan Yew, and Malaysia’s Prime Minister Mahathir Mohammad (Ibid., 120). The periodical leadership of such leaders played an important role in the development of ASEAN. However, this form of leadership is lack of continuity as individual leaders tend to have a time limit of their leadership.

Indonesia has been acknowledged as the ‘natural leader’ of ASEAN (Roberts and Widyaningsih 2015; Emmers 2014; Rattanasevee 2014) on account of Its vast areas, significant population, as well as strong economic growth. Indonesia has always been playing an active role throughout the development of ASEAN since its establishment until today. As one of the founding members of ASEAN, Indonesia has been contributing to ideas that are beneficial for the development of the organization, including in shaping an effective coordinating and decision making body capable of protecting the interests of the people in the Southeast Asia region (Roberts and Widyaningsih 2015, 277). Indonesia has also made

² According to Article 23 and 25 of the ASEAN Charter, the Chairman of ASEAN could be invited by the disputed parties to provide good offices, conciliation, mediation, or arbitration.

various attempts to be a part of the solution during crisis situations in the region, started from the Sabah conflict in 1968, the Cambodian conflict between 1979 and 1991, as well as the Preah Vihear conflict in 2011 (Ibid., 266-267).

2.3. ASEAN Mediation Process

The conflict management in the Southeast Asia region is conducted through various mechanisms. Borrowing from Moore's (2014) framework of conflict management and resolution approaches and procedures, Figure 1.1 tries to illustrate the options that Southeast nations have for settling a dispute.

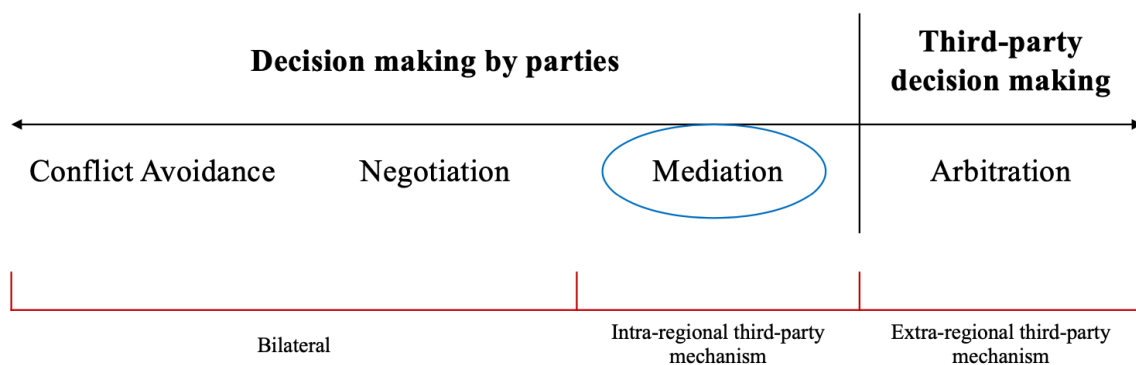


Figure 1.1. Conflict Management Mechanisms in the Southeast Asia Region

Moore illustrates his idea of possible approaches and procedures of conflict management and resolution as a continuum. A continuum reflects continuous sequence of a process, indicating a linear course of action that typically steps forward to the higher level. However, this study would argue that the conflict management process in the Southeast Asia region makes use of various mechanisms available without fixed sequence. Irewati's (2014, 57) study demonstrates that the dispute settlement mechanism applied to manage conflicts in the Southeast Asia region varies among observed conflicts, depending on the historical background and domestic interests of the parties. The settlement of disputes between the ASEAN member states utilizes the following mechanisms, but not in a fixed sequence nor instituting each and every measure.

Conflict avoidance is performed through the doctrine of self-restraint and the non-use of force at the time of conflict arise. These are the basic principles of the ASEAN Way of conflict management that are tightly embraced by its member states. The Southeast Asia nations have the common understanding that war conditions in the region will not bring any benefit for their efforts in pursuing economic development (Oishi 2016, 4-6). The non-interference principle of ASEAN also contributes to the implementation of conflict avoidance as the fundamental mechanism of conflict management in the region.

Negotiation is a structured communication and bargaining process that aims to reach agreements on the perceived, or actual, differences regarding an issue, or to resolve a dispute or conflict (Moore 2014, 24). Negotiation has long been performed as an instrument of conflict management, even before the emergence of the nation-state (Cohen and Meerts 2008, 150). ASEAN has allowed its members to engage in a peaceful environment through the norms and principles set by the organization. The practice of negotiation is in line with ASEAN Way of conflict management that put forward peaceful means in the efforts of dispute settlement. Negotiation, especially bilateral negotiation between member states, has been observed as the main instrument for ASEAN member states in managing conflicts (Irewati 2014; Acharya 2009, 2012; Oishi 2016).

The key element in negotiation is a two-way communication between parties that has to be open and clear from any obstacle. More often than not, in a conflict situation, the communication channels between parties are difficult to be maintained. For this, an intervention from a third party is needed to provide the disputed parties a forum to communicate their aspiration (Moore 2014, 24).

Mediation as a third-party mechanism for conflict management is provided as an option out of the other ASEAN conflict management mechanisms. The ASEAN mediation functions as an intra-regional mechanism of conflict management where a mutually acceptable third party from the region is invited to be a part of the solution in the conflict management (Tuan 1996, 69). In various interstate conflicts between the ASEAN member states, however, the degree of implementation of the ASEAN mediation varies between cases.

Arbitration in the ASEAN context is conducted by the ICJ as an extra regional process of conflict management. The ICJ arbitration is utilized by the ASEAN member states as a resort to find the solution to long, drawn-out disputes, especially in the settlement of territorial disputes (Anthony 2005, 77). The utilization of an extra-regional mechanism of conflict management might seem underplaying the ASEAN conflict management mechanism, however as Anthony (2005, 78) suggested that it is a constructive development of the ASEAN's approach in managing disputes.

Out of the mechanisms of conflict management explained above, this study will emphasize on the mediation process of ASEAN. Some studies acknowledge that the utilization of mediation in ASEAN has yet to be effective in managing conflicts between the ASEAN member states (Leifer 1992; Vatikiotis 2009), while the consensus as well as the non-interference principles of ASEAN are heavily criticized as the source of the ineffectiveness of the ASEAN mediation process (Hiep 2016; Limsiritong 2017). These skeptical views of ASEAN demand that the regional organization go through reforms, especially in its procedural matters of decision making process (Ibid.). On the other hand, the proponents of ASEAN believe that the regional organization is able to provide its member states with regional arrangements to maintain peace and stability of the region (Anthony 1998; Mahbubani and Sng 2017; Natalegawa 2018). The ASEAN processes are perceived to be able to provide a foundation for trust and confidence building measures among the member states, thus allowing effective conflict management mechanisms (Anthony 1998).

Previous studies on the ASEAN mediation process mostly focus on the outcome of the process, in which they examine the effectiveness of the mediation. However, this study would focus on the process of the ASEAN mediation itself, specifically on the factors that influence the different response from the ASEAN member states on the initiation of the ASEAN mediation process. ASEAN is perceived to possess an inherent crisis management capacity through the implementation of a set of norms and principles in the ASEAN processes, including in its conflict management mechanisms, thus make the ASEAN mediation process a favorable practice in the conflict management of ASEAN. Based on this hypothesis, this study would draw an analytical framework illustrated through the following diagram:



Figure 1.2. Analytical Framework of the ASEAN Mediation Process

This study will look upon the utilization of the mediation process in a dispute settlement and observe the factors that enable the environment for an ASEAN mediation process to be taken place. The ASEAN Way has been guiding ASEAN in enabling a conducive environment for a peaceful relation among its member states for more than 50 years. The implementation of the ASEAN Way enables ASEAN to possess an inherent capacity for crisis management, providing the regional organization with dispute settlement mechanisms to be utilized during a conflict situation, including the mediation process. For an ASEAN mediation process to take place, there are factors that encourage the utilization of the mediation process by the disputed parties. This study argues that the availability of a reliable mediator, the leadership role of Indonesia in ASEAN, as well as the different attributes of the disputed parties are the factors that affect the utilization of the ASEAN mediation process in the effort of a dispute settlement.

The analytical framework discussed above will be applied to the case studies of the interstate conflicts between ASEAN member states, namely the Preah Vihear dispute and the Ambalat Block dispute. Both case studies take on the similar nature of incompatibilities, that is the issue of territorial disputes, and the utilization of the ICJ arbitration to determine a legal verdict on a partial portion of the dispute. However, both differ in terms of the utilization of the ASEAN mediation process in the effort of the dispute settlement. Following this chapter, Chapter 3 will look into the instruments that are provided by ASEAN that allow the activation of a mediation process, as well as the extra-regional instrument of the ICJ arbitration that is frequently utilized by the ASEAN member states in their resort to disputes settlement. Furthermore, Chapter 4 will elaborate on the case studies of the Preah Vihear dispute and the Ambalat Block dispute following the flow of thoughts discussed in the analytical framework. The involvement of a reliable mediator during the period of the disputes and the behavior of the disputed parties in conforming to the ASEAN way of conflict management will be examined in

the investigation of the case studies. Finally, Chapter 5 will then conclude this study by underlining the factors that influence the application of the ASEAN mediation process in managing interstate disputes.

III. INSTRUMENTS OF THE ASEAN MEDIATION PROCESS

3.1. ASEAN (Bangkok) Declaration and Treaty of Amity and Cooperation (TAC)

The ASEAN Declaration, also known as the Bangkok Declaration, was adopted by the founding members of ASEAN on 8 August 1967. The declaration exhibits ASEAN leaders' vision of a peaceful region through the strengthening of regional solidarity and cooperation (PP1) at a time where trust deficit was deep-rooted in the relations among countries in the Southeast Asia region (Antolik 1982, 316-317; Poon-Kim 1977, 753-755). The establishment of ASEAN was aimed to achieve the main objectives of accelerating economic growth, social progress, and cultural development as well as promoting regional peace and stability in the region (OP2). Antolik (1982, 317) claimed that the Bangkok Declaration was a 'loose pledge' of the five founding members of ASEAN to work together in consolidating regional cooperation and security. He further noted that the desire to solve the disputes among member states as well as to guard the region against the undesirable ideology of communism performed as the adhesive factor in the one of the most heterogeneous regional groupings in the world (Ibid.).

The consolidation of ASEAN was further strengthened through the promulgation of the Treaty of Amity and Cooperation (TAC) on 24 February 1976 by the five leaders of the ASEAN Member States. Following the expansion of ASEAN Members, the TAC then was acceded by the other member states in the following order: Brunei Darussalam in 1987, Vietnam and Lao PDR in 1992, Cambodia and Myanmar in 1995 (ASEAN Secretariat (a)). It also allows accession by other states and regional organizations whose members are only sovereign states, subject to the consent of all ASEAN Member

States³. The formulation of the TAC was a manifestation of the Southeast Asia region's effort to build regional security following the victory of the pro-communist Vietnam in mid-1975 and the withdrawal of the United States troops from the region (Antolik 1982, 318). The ASEAN leaders believed that the regional security building through the strengthening of regional unity would be an effective defense strategy for the region (Ibid.). The TAC has served as a foundational basis for ASEAN in the spirit of maintaining peace and stability in the region and further strengthened the ASEAN centrality in the broader regional architecture (Yamakage 2017, 41-44).

The TAC sets up the principles in fostering harmonious relationships in the Southeast Asia region through a 'no-war regime' (Ibid., 41). The principles as stipulated in the treaty include: i) mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations; ii) the right of every state to lead its national existence free from external interference, subversion or coercion; iii) non-interference in the internal affairs of one another; iv) settlement of differences or disputes by peaceful mean; v) renunciation of the threat or use of force; and vi) effective cooperation among themselves (Article 2). These principles have been successfully fulfilling the purpose of the treaty in reducing the possibility of interstate disputes that could possibly jeopardize the regional stability of the Southeast Asia region (Poon-Kim 1977; Yamakage 2017).

In addition to the principles set by the treaty, it also provides the instrument of dispute settlement mechanism. The TAC provides the High Contracting Parties (HCPs) with a mechanism of pacific settlement of disputes that uphold the principles of refraining from the threat or use of force and encouraging dispute settlement through friendly negotiations (Article 13). It provides the guidance on the establishment of a High Council that consists of a representative at ministerial level from each HCPs to take cognizance of the existence of disputes and recommend appropriate means of settlement such as good offices, mediation, inquiry, or conciliation (Article 14-15). The High Council has yet to be invoked in any dispute settlement in the Southeast Asia region up to today. However, this should not

³ The TAC has been amended three times in 1987, 1998, and 2010 respectively through the three Protocols Amending the Treaty of Amity and Cooperation in Southeast Asia to accommodate the expansion of membership of the treaty (ASEAN Secretariat 1987; 1988; 2010).

preclude the establishment of the TAC, as the Article 16 of the treaty regulates the activation of a High Council should be applied upon an agreement of all disputed parties, and thus diminish the concern regarding the powers of the council (Amer 2015). Natalegawa (2018, 32) further reaffirms that the TAC provided an essential basis in transforming the trust deficit into strategic trust in the Southeast Asia region. He firmly believes that the norms and principles stipulated in the TAC cannot be underestimated as they provide a restraining effect on the hostile behavior of ASEAN member states, even in the absence of overt sanctions (Natalegawa 2018, 36). In other words, the idle of the High Council does not imply the ineffectiveness of the council. In fact, the norms and principles provided by the TAC continuously became the foundation of ASEAN dispute settlement mechanisms in its development.

3.2. ASEAN Charter

The formulation of the ASEAN Charter began with the leaders' mandate on the 11th ASEAN Summit in Kuala Lumpur in 2005 through the formation of an Eminent Persons Group (EPG) to explore the forward-looking and progressive recommendations for an ASEAN Charter (ASEAN Secretariat 2006, 7). The objectives of the charter were to enable ASEAN to remain relevant amidst the challenges it was facing and retain its role as 'the driving force in regional dialogue and cooperation (Ibid.). The ASEAN Charter was formulated on the foundation of its common principles⁴ that have safeguarded the common interests of its member states and are expected to continue to serve as the foundation for mutual trust and the way of living of the ASEAN member states. The charter was also developed to institutionalize a more effective decision-making process with consultation and consensus as the fundamental principles with the ASEAN minus X formula to be applied for less sensitive issues (Ibid.,

⁴ The ASEAN Principles are codified in the second paragraph of Article 2 of the ASEAN Charter that include (d) reliance on peaceful settlement of disputes; (e) non-interference in the internal affairs of ASEAN Member States; and (g) enhanced consultations on matters seriously affecting the common interest of ASEAN, as well as other principles that serve the purpose of ASEAN as an intergovernmental organization of the Southeast Asian nations.

41). The establishment of the dispute settlement mechanisms within the ASEAN Charter has initiated ASEAN to become a more rules-based organization (Anthony 2008, 77).

The Chapter 8 of the ASEAN Charter set down the settlement of disputes mechanisms to be utilized by the member states. It begins by laying down the fundamental principle of a peaceful resolution to all disputes in a timely manner through dialogue, consultation, and negotiation (Article 22 Paragraph 1). Article 23 of the charter provides the mechanisms that can be chosen, including the good offices, conciliation, and mediation. In addition, the role of the ASEAN Chairman and the Secretary-General of ASEAN is enhanced through Paragraph 2 of Article 23, in which they are authorized to provide the good offices, conciliation, or mediation. While the ASEAN Charter has provided the member states with the foundation for the dispute settlement mechanism, it is criticized for the lack of any effective compliance mechanism (Anthony 2008, 77). Article 27 stipulates that the ASEAN Secretariat, led by the Secretary-General of ASEAN, perform the monitoring function of the compliance of the member states, while the decision on a non-compliance case would be referred to the ASEAN Summit. However, with the practice of consensus in the ASEAN decision making process, it raised skepticism on how the ASEAN Summit would be able to resolve disputes in an effective and timely manner (Ibid.,79).

The ASEAN Charter further calls for the establishment of dispute settlement mechanisms in all fields of ASEAN cooperation⁵ (Article 22 Paragraph 2). Therefore, the ASEAN member states formulated the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms that was signed on 8 April 2010. However, the Protocol only became effective on 28 July 2017 following the notification from Singapore as the tenth member state who ratified the Protocol (ASEAN Secretariat (b)). The 2010 Protocol provides the ASEAN member states with available mechanisms of dispute settlement, including the provision of an ASEAN arbitration in addition to the good offices, mediation, and conciliation mechanisms. It also sets down the rules of each mechanism in detail, demonstrating that

⁵ At the time of the formulation of the ASEAN Charter, the dispute settlement mechanism available for the ASEAN member states was the ASEAN Protocol on Enhanced Dispute Settlement Mechanism under the auspices of the ASEAN economic cooperation framework.

ASEAN has further developed its dispute settlement mechanisms.

3.3. International Court of Justice (ICJ)

In the process of the ASEAN conflict management, it is observable that the ICJ arbitration resorted in various interstate disputes, especially disputes related with the border issues. Irewati (2014) classified the ICJ arbitration as a multilateral process, implying that the mechanism is an extra regional process. The utilization of the ICJ arbitration, as an extra regional third-party mechanism in an ASEAN conflict management process, is set out in the ASEAN documents, including the TAC and the ASEAN Charter. Article 17 of the TAC stipulates that the other procedures provided for in the Charter of the United Nations may be utilized in an ASEAN dispute settlement process when the disputed parties have conducted friendly negotiations but to no avail. In this connection, the reference of legal disputes to the ICJ arbitration is stipulated in the third paragraph of Article 36 of the UN Charter, thus giving the process an authorization to be performed within the ASEAN conflict management mechanism. In addition, the ASEAN Charter affirms the utilization of the ICJ arbitration in a dispute settlement process through the provision in Article 28 that stated:

“Unless otherwise provided for in Unless otherwise provided for in this chapter, Member States have the right of recourse to *the modes of peaceful settlement contained in Article 33(1) of the Charter of the United Nations or any other international legal instruments* to which the disputing Member States are parties [emphasis added].”

The utilization of ICJ arbitration in settling disputes between the ASEAN member states were commonly resorted when the members have exhausted other means of dispute settlement (Syofyan et al. 2021). Syofyan and others further argued that the ASEAN member states are in need of a judicial agency that has the authority to make a final and binding decision for disputes related to border issues. In the absence of such agency, the ASEAN member states have no other recourse than to resort to the

ICJ arbitration. However, Woon's (2013, 104) study highlighted the limitation of the arbitration process, that it is a zero-sum game and vulnerable to cause resentment of the loser towards the court decision. Another limitation of the ICJ arbitration also found in Butcher's (2013, 241) study which underlines the nature of the proceedings of the court that confine its role to considering only the questions asked by the parties. Thus, the disputed parties only resort to the arbitration process with a great deal of cost and benefit calculations, including to confer only minor parts of the dispute upon the application to the court.

3.4. The ASEAN Mediation Process within the ASEAN Conflict Management Mechanisms

As discussed in this chapter, ASEAN has provided its member states with various instruments as the foundation of the ASEAN conflict management mechanisms. Anthony (1998, 46) categorized the ASEAN conflict management mechanisms into three types, including the institutionalized mechanisms, formal mechanisms, and informal or normative mechanisms. Firstly, the Bangkok Declaration is noted to serve as the foundation for the institutionalized mechanisms, in which ASEAN established 'a framework for discussions, consultations, deliberations on matters of mutual interest as a means of fostering better understanding, good neighborliness and cooperation (Ibid.).' This framework also serves the important purpose of preventing the development of misunderstanding and disputes among the member states of ASEAN (Ibid.). The institutionalized mechanisms of ASEAN include the regular meetings of ASEAN in various levels: Summit Meetings, Ministerial-level Meetings, Senior Officials' Meetings, as well as the working-level officials' meetings. It is also important to note the bilateral mechanisms outside the formal ASEAN meetings, including the joint committees and commissions to deal with border issues between the member states (Ibid., 47).

Secondly, the formal mechanisms provide the arrangement and the legal instrument for member

states to conduct their cooperation based on the ASEAN norms and principles (Ibid., 49). This includes the TAC and the ASEAN Charter, as well as its Protocol on Dispute Settlement Mechanisms. These legal documents of ASEAN have provided the ASEAN member states with a range of available choices of dispute settlement mechanisms, starting from the formation of a High Council; the provision of good offices, mediation, and conciliation mechanisms; as well as the establishment of an arbitration mechanism.

Finally, informality has been the most sought-after approach in the relationships among the ASEAN member states, and it is also applicable in its conflict management mechanism (Ibid., 52). ASEAN member states have been practicing the conflict avoidance, or ‘diplomacy of accommodation’ (Ibid.), by upholding the self-restraint and the non-use of force principles. The consensus approach of ASEAN decision-making process also contributes to the informal conflict management mechanism of ASEAN (Ibid., 57-61). Anthony also categorized the third-party mediation process as an informal mechanism of the ASEAN conflict management, due to the practices of mediation were conducted discreetly (Ibid., 61). However, he also noted the increasing posture of the third-party mediation process in the ASEAN conflict management mechanism, especially to settle the long, drawn-out territorial disputes (Ibid.).

The ASEAN mediation process is perceived to be able to address incompatibilities among disputed parties while absorbing tensions that may arise due to the incompatibilities (Oishi 2016). It provides a confidence building measure in parallel to the efforts of conflict management. Moreover, the ASEAN mediation process also plays an important function to contain regional conflicts to not spill into the global level. Former Indonesian Foreign Minister, Marty Natalegawa (2010), highlighted the importance of the role of regional organizations, in particular ASEAN, to contain regional conflicts, thus contribute to the management of global problems. He further commends the invaluable of regional support in helping to remove distrust, enhance confidence in the conflict management process, and assure respect of the outcome (Natalegawa 2011).

The role of a mediator in an ASEAN mediation process is further examined to provide a better

understanding on the process. It is suggested that due to the dependency of the presence of a mediator for a mediation process to be in place, the sustainability of the ASEAN mediation process could not be maintained, as observed in the Preah Vihear dispute. However, despite the incapability of the ASEAN mediation process to exert compliance measures to the disputing parties, it worth the consideration that the ASEAN mediation process managed to guide efforts in a dispute settlement, more than halfway of the Preah Vihear dispute. It is commendable, especially taking into account that the ASEAN mediation process was activated for the first time.

IV. INTERSTATE DISPUTES AMONG ASEAN MEMBER STATES

4.1. Preah Vihear Dispute

4.1.1. Historical Background

The dispute between Cambodia and Thailand over the ownership of the Preah Vihear Temple began with the incompatibility of document interpretation. France, the colonizer of Cambodia, and Siam, which later changed its name into Thailand, signed two treaties in 1904 and 1907 respectively, on the purpose of sorting out the territorial delimitation of the two countries. The Convention between France and Siam for the Regulation of Certain Difficulties, hereinafter referred to as the 1904 Treaty, stipulated that the watersheds of the Dangrek Mountain range would be the frontier line between Cambodia and Thailand. It was understood by both parties that the Preah Vihear Temple located within the Siam boundary, although there was no map drawn to describe the demarcation (Singhaputargun 2016, 113-4). The second treaty signed in 1907 was called Treaty between Siam and France with a Protocol Concerning the Delimitation of Frontiers, hereinafter referred to as the 1907 Treaty. The 1907 Treaty has a clear mandate that both parties draw a map to determine the territorial boundaries demarcation. The map was completed in 1908 and titled 'Annex 1 Map'. The judges of ICJ acknowledged that there was an unjust process of drawing the Annex 1 Map, where practically only the French officials undertook the mapping of the territory due to the lack of Siamese technical staff with relevant mapping skills at the time (International Court of Justice 1962, 18-19). However, there was no objection from Thailand regarding the matter despite the number of chances it had (Ibid., 25-27). Finally, the ICJ issued its ruling on 15 June 1962, explaining that the Preah Vihear Temple is situated in the territory of

Cambodia and Thailand was obliged to withdraw all of its military forces from the area (Ibid., 34-35).

The Cambodian ownership status of the Preah Vihear Temple was acknowledged by Thailand while both countries still work on the status of the 4.6-kilometer square of land surrounding the temple (Wagener 2011; Singhaputargun 2016). Both countries were also working together for various bilateral joint-management efforts⁶ in order to achieve a conclusive settlement to the dispute (Singhaputargun 2016, 117-119). However, the adoption of the inscription of the Preah Vihear Temple to the UNESCO World Heritage Site on 7 July 2008 has triggered nationalist protests from the Thailand society and thus increased tension along the border (Ibid., 120-122). Wagener (2011, 32) noted the increasing border tensions that resulted in armed conflicts in October 2008, April 2009, 3 incidents in 2010, and culminated in 2011 with greater intensity and duration of incidents. Since the beginning of the armed conflict in 2008, the Cambodian government has tried to resort to third party conflict management in the effort to manage the crisis, while Thailand insisted that the dispute be managed bilaterally (Singhaputargun 2016; Wagener 2011). The United Nations Security Council (UNSC) was the first priority for Cambodia in seeking assistance, bypassing the ASEAN mechanism in the effort (Singhaputargun 2016, 122). Singhaputargun explained the two reasons behind Cambodia's choice by underlining the lack of trust of the Cambodian government in the ASEAN conflict management mechanism and the wariness about ASEAN impartiality due to the Thai national, Surin Pitsuwan, occupying the ASEAN Secretary General position at the time (Ibid., 122-123). Although Vietnam, a member of ASEAN and a non-permanent member of the UNSC in 2008, was able to convince the UNSC members that the dispute be managed through bilateral mechanisms under the auspices of ASEAN, the regional organization failed to provide a mediation mechanism as the disputed parties decline the proposal during the 41st ASEAN Ministerial Meeting in Singapore (Security Council Report

⁶ Bilateral management efforts carried out by Cambodia and Thailand include the short-term dispute management of the General Border Committee (GBC) and the Regional Border Committee (RBC) as the mitigation effort in the case of armed clashes break out, the mid-term dispute management of the Joint Boundary Commission (JBC) and the Framework Agreement on Economic Cooperation as the confidence building measures mechanisms, as well as the long-term dispute management function of the JBC in its efforts to determine the boundary demarcation (Singhaputargun 2016).

2011; Singhaputargun 2016).

As mentioned above, armed clashes repeatedly break out in the temple's vicinity and reached its peak in 2011, in which Cambodia once again resorted to the UNSC for a solution (Singhaputargun 2016, 128). Similar to the first attempt that Cambodia sought help from the UNSC, the council referred the dispute back to be concluded at the regional level through ASEAN (Ibid.). Indonesia, the then ASEAN Chairman, immediately played the mediator role for the dispute and received the UNSC invitation to attend the consultation session as an observer (Security Council Report 2011; Wagener 2011; Woon 2013). Indonesian Foreign Minister Marty Natalegawa conducted a shuttle diplomacy, visited Phnom Penh on 7 February 2011 and Bangkok on 8 February consecutively in the effort to settle the dispute through peaceful means (ASEAN Secretariat 2011a; Woon 2013). Woon (2013, 102) further emphasized that there were no 'threats of armed intervention, economic sanctions, or even diplomatic isolation' in the effort of the dispute settlement. As a follow-up, Indonesia initiated an Informal Meeting of the Foreign Ministers of ASEAN on 22 February 2011, where the Chairman of ASEAN briefed the foreign ministers in regard to the Preah Vihear Dispute (Wagener 2011; ASEAN Secretariat 2011b).

Indonesia's mediation effort, on behalf of ASEAN, resulted in constructive behavior from both parties by putting armed conflicts into halt, avoiding further armed clashes, and resuming bilateral negotiations (ASEAN Secretariat 2011b). Cambodia and Thailand were also in agreement to invite observers from Indonesia to 'assist and support the parties in respecting their commitment to avoid further armed clashes between them' (Ibid.). However, the dispatch of Indonesian observers cannot be implemented due to the reservation from Thailand's military that considered the deployment of observers as an intervention from an outside party (Singhaputargun 2016, 128-129). Cambodia and Thailand also did not draw their troops from the disputed areas following the foreign ministers' meeting (Wagener 2011, 35). The change of behavior of the disputed parties amidst the constructive prospect of the ASEAN mediation process marked the shortfall of the ASEAN mediation.

Further to the stagnancy of the ASEAN mediation, Cambodia decided to submit an application to the ICJ regarding the interpretation of the vicinity area surrounding the Preah Vihear Temple and the

obligation for Thailand to withdraw any troops stationed in the area on 28 April 2011 (International Court of Justice 2013). Subsequently, the ICJ court ruled that Cambodia has sovereignty over the promontory of the Preah Vihear Temple and thus require Thailand to withdraw its troops from the area (Ibid.). However, the ICJ did not define the demarcation for the ‘promontory of the Preah Vihear Temple’ itself, but rather ordered Cambodia and Thailand to negotiate the demarcation in good faith and without unilateral action (Singhaputargun 2016, 130).

4.1.2. ASEAN Mediation Process of the Preah Vihear Dispute

The ASEAN mediation process in the effort to settle the dispute over the ownership of the Preah Vihear Temple was conducted by Indonesia, as the then Chairman of ASEAN. Indonesia, acting on behalf of ASEAN, utilized its legitimacy as the Chairman of the regional organization to perform the mediator role, in accordance with the article 23 of the ASEAN Charter that arranges the function of the Chairman of ASEAN, or the Secretary General of ASEAN, to provide the mediation mechanism. Indonesia, as a mediator, played an important function to open a channel for the disputed parties to continue their negotiations in the effort to seek for an agreeable dispute settlement.

Indonesia’s utmost goal in its early engagement in the Preah Vihear dispute was to ensure ASEAN’s credibility in maintaining the peace and stability of its own immediate region (Natalegawa 2018, 37). The swift shuttle diplomacy performed by Indonesian Foreign Minister Marty Natalegawa served its purposes, as conveyed by the minister himself, in the manner of:

First, it opened a diplomatic window and helped solidify direct ASEAN engagement on the issue.... Second, ... [it] serve[s] as a safety valve – for the contending parties to be able to channel their respective positions and grievances to a neutral third party in a constructive and problem-solving manner. ... [T]hird, ... ASEAN would be able to demonstrate to the Security Council that it is actively engaged on the issue and that there exists an ASEAN “script” too which the council members can rally around (Ibid., 42-43).

Indeed, the effort resulted in the acceptance of Indonesia to play the role as mediator in the Preah Vihear conflict. The disputed parties, as well as the UNSC, were convinced that Indonesia has the capacity to objectively manage the dispute. The favorable outcomes resulting from the conduct of Indonesia's shuttle diplomacy can be regarded as the success of ASEAN mediation process, considering the role taken by Indonesia as the Chairman of ASEAN. However, this commendable result did not persist indefinitely. The ASEAN mediation process has generally provided the conflict mitigation of the Preah Vihear dispute but insufficient to put the dispute to an end (Roberts and Widyaningsih 2015, 269). The ASEAN dispute settlement mechanism, especially the mediation process, perceived as a fragile mechanism due to the requirement of voluntary recourse by all disputed parties and lack of binding outcomes. Trust deficit in the ASEAN Secretariat or other member states also present in the dynamic of ASEAN, thus hindering the process (Ibid.).

Although the ASEAN mediation process was in place for the Preah Vihear dispute, we have witnessed that it was not able to provide a conclusive settlement to the dispute. The ASEAN mechanisms appear to lack power in enforcing the disputed parties to comply with its decisions. Even in the presence of a constructive outcome from the mediation process, a sudden change in the behavior of the disputed parties may hinder the implementation of such outcome. Eventually, an extra-regional mechanism was resorted to settle the interstate dispute between the ASEAN member states.

4.2. Ambalat Block Dispute

4.2.1. Historical Background of the Sipadan Island and Ligitan Islands Dispute

The dispute between Indonesia and Malaysia in the Ambalat Block can be traced back to the dispute of Sipadan Island and Ligitan Island. Indonesia and Malaysia began their bilateral negotiation for continental shelf territorial delimitation in 1969, discussing several territorial issues, including those

in the Straits of Melaka, the Straits of Singapore, the South China Sea, and the Celebes Sea (Butcher 2013, 237). The negotiation ended with an Agreement⁷ on 27 October 1969, in which both countries exchanged their ratification instrument on 7 November 1969, that primarily resolved the territorial issues in those areas, except disputes in the Celebes Sea, those are the Sipadan and Ligitan Islands (UN DOALOS 2002).

Ten years following the 1969 Agreement, Malaysia unilaterally published the nation's new map, called *Peta Baru*, that claimed the disputed areas of Sipadan and Ligitan Islands as Malaysia's territory (Butcher 2013, 238-239). Indonesia immediately issued a formal objection on 8 February 1980 to Malaysia and both countries decided to bring the issue to the negotiation table (Ibid., 239). The leaders of both countries led several rounds of high-level negotiations and assigned special envoys to conduct productive negotiations to find the solution to the territorial dispute. However, the negotiations under bilateral framework did not bring any conclusion to the Sipadan and Ligitan Islands dispute.

In 1994, Malaysia suggested that both parties bring the territorial dispute to the ICJ (Ibid., 243). Indonesia's Foreign Minister at that time, Dr. Mochtar Kusumaatmadja, suggested that the dispute settlement process among ASEAN member states be settled through the ASEAN mechanisms. He suggested that the Sipadan and Ligitan dispute be negotiated under the ASEAN High Council mechanism, as stipulated in the TAC. Malaysia objected to this notion, as the High Council would consist of judges from all ASEAN member states, while Malaysia still had unresolved territorial disputes with other ASEAN member states as well. Meanwhile, from the Indonesian part, the friendly relationship between the leaders of the countries -Indonesian President Soeharto and Malaysian Prime Minister Mahathir Mohamad- played a big influence on the expeditious decision to bring the Sipadan and Ligitan dispute to the ICJ (Ibid., 244).

In October 1996, both leaders agreed to bring the Sipadan and Ligitan Islands dispute to the ICJ

⁷ The Agreement between the Government of Malaysia and the Government of Indonesia on the delimitation of the continental shelves between the two countries, 27 October 1969 specified the coordinates of the points of the continental shelf boundaries in the Straits of Malacca, in the western side of the South China Sea (off the east coast of West Malaysia), and in the eastern side of the South China Sea (off the coast of Sarawak).

and both countries submitted the required documents on 2 November 1998. The ICJ issued a ruling on 17 December 2002, concluded that on the basis of the *effectivités* principle⁸, the sovereignty over Sipadan Island and Ligitan Island belonged to Malaysia (International Court of Justice 2002).

4.2.2. Historical Background of the Ambalat Block Dispute

There were no open conflicts between Indonesia and Malaysia during the process of negotiation of the Sipadan and Ligitan Islands dispute. However, the domestic situation in both countries got intense when the ICJ announced its ruling in 2002. Since then, the domestic politics, the mass media and public opinion fuelled the tensions and reached its height when the naval standoff incident broke out in 2005, although the authorities managed to subdue any violent conflicts (Irewati 2014; Druce and Baikoeni 2016).

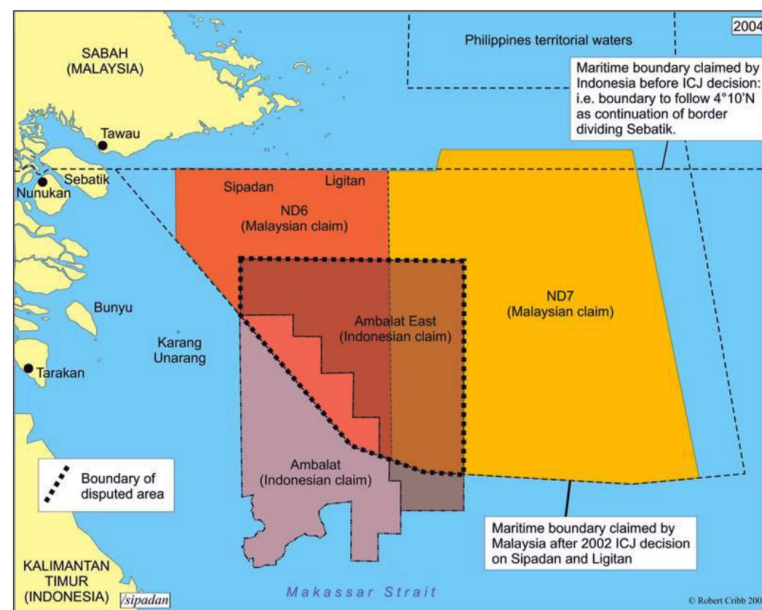


Figure 4.1. Overlapping Territorial Claims in the Ambalat Block (Cribb 2010)

⁸ Acts by a State relevant to a claim of title to territory by occupation or prescription, the factual elements that demonstrate the exercise of governmental authority in a territory (Grant and Barker, 2009:177).

The consequences of the ICJ ruling over Sipadan and Ligitan Islands, that favoured Malaysia's claim, is that an overlapping claim over the continental shelf between Indonesia and Malaysia came back to light. Malaysia, having granted the ownership of Sipadan and Ligitan Islands, is entitled to extend its continental shelf jurisdiction by drawing the baselines from Sipadan and Ligitan Islands (Druce and Baikoeni 2016, 142). However, this claim would overlap with Indonesia's claim over the Ambalat Block, due to Indonesia's special status as an archipelagic state, that allows Indonesia to draw baselines from the most outlying islands of its territory (Ibid.). The overlapping claim over the Ambalat Block becomes a complex issue as the economic dimension of the area becomes apparent. The Ambalat Block consists of an area of 15,235 square kilometers that has huge economic potential from the oil and natural gas found beneath its seabed. It is estimated that 30,000-40,000 barrels of oil per day could be extracted from the Ambalat Block for approximately 20 years to come (Roughneen, 2009).

While the dispute over Sipadan and Ligitan Islands has been settled by the ICJ ruling, the Ambalat Block dispute has yet to be resolved. As indicated by the Defense Minister of Malaysia, Sri Ahmad Zahid Hamidi, the economic potential of the Ambalat Block hinders the dispute resolution process more than the issue of borderline dispute (Ibid.).

4.2.3. ASEAN Mediation Process of the Ambalat Block Dispute

The ASEAN mediation process was bypassed by the disputed parties of the Sipadan-Ligitan Islands Dispute (Irewati 2014, 51). Both Indonesia and Malaysia undertook the bilateral mechanisms as their initial response towards the dispute and followed by taking the dispute upon the ICJ arbitration. The decision to bring the dispute upon the multilateral mechanism was taken due to the lack of satisfactory outcome during the bilateral negotiations. The attempt to utilize the ASEAN mechanisms to manage the dispute was made by Indonesia, but to no avail. Malaysia turned down the proposal due to the

wariness about the impartiality of the ASEAN High Council, which consists of representatives from each of the High Contracting Parties, that is the ASEAN member states themselves (Djalal 2003, 130). While at the same time, Malaysia was dealing with various territorial disputes against other ASEAN member states (Ibid.), thus explaining the hesitant behavior of Malaysia to bring the case upon the ASEAN High Council.

In contrast to the Preah Vihear Dispute, where Indonesia, as the Chairman of ASEAN at the time, played a mediator role for the disputed parties, no ASEAN member states were ready to offer such assistance during the Sipadan and Ligitan Islands dispute. However, although the ASEAN mediation did not take place for the dispute, other ASEAN conflict management mechanisms were utilized moderately. Both parties exercised the self-restraint in order for the conflict to not develop into an open war situation. They also utilized other peaceful means of dispute settlement by having various bilateral negotiations and the ICJ arbitration in the efforts to find a solution to the dispute. From this observation, we can understand that the ASEAN norms and principles enable the environment of peace and stability for the region, in which both Indonesia and Malaysia were behaving in accordance with the norms and principles in the conflict management of the Ambalat Block dispute.

While the dispute over Sipadan and Ligitan Islands was fundamentally a territorial dispute, it takes on additional dimension for the broader Ambalat Block dispute. The economic potential of the oil-rich area has further hindered the adoption of a complete conflict resolution. The problem of economic potential has also been acknowledged as a huge stumbling block as compared to the apparent territorial dispute (Druce and Baikoeni 2016, 144). In the case of territorial dispute, as shown in the Preah Vihear case and the Sipadan-Ligitan case, the disputed parties tend to be willing for a conflict resolution through international arbitration, the ICJ, to come up with a definitive delimitation. However, Malaysia and Indonesia who are in dispute over the Ambalat Block seem to be averse in bringing the dispute to a third-party dispute settlement mechanism.

Neither ASEAN mechanisms nor the ICJ arbitration are likely to be utilized in the conflict management of the Ambalat Block Dispute. Butcher (2013) argued that because of the high stakes

involved in territorial disputes, such as shown by the high military tension between Indonesia and Malaysia in 2005, bilateral mechanisms would be more preferable than the international arbitration or any other third-party mechanisms. Moreover, ICJ Judge Shigeru Oda (2002) explained that “... [Indonesia and Malaysia] had shown no interest in sovereignty over these two islands ... The issue of sovereignty arose only as a result of the Parties’ maneuvering for better bargaining positions in the continental shelf delimitation.” It is evident that the issue of delimitation, that has broader economic implication, became the bigger part of the dispute and efforts to solve this issue would take more attentiveness from both parties.

4.3. ASEAN Mediation Process in Interstate Disputes among ASEAN Member States

4.3.1. The Attributes of Interstate Disputes among ASEAN Member States

The ASEAN mediation process between the case studies in this research varies in terms of its utilization. The mediation process was taking place as a part of the efforts to settle the Preah Vihear dispute, while it was not invoked throughout the dispute settlement process of the Ambalat Block dispute. Figure 4.2 describes the varying attributes between both case studies that could be useful in explaining the factors that influence the utilization of the ASEAN mediation process.

| | Disputed Parties | Incompatibilities | Conflict Management |
|------------------------------|--|---------------------|---|
| Preah Vihear Dispute | ASEAN Member States: Cambodia and Thailand | Territorial dispute | ICJ Arbitration, ASEAN Mediation, Bilateral Negotiations |
| Ambalat Block Dispute | ASEAN Member States: Indonesia and Malaysia | Territorial dispute | Conflict Avoidance, Bilateral Negotiations, ICJ Arbitration |

Figure 4.2. Attributes of Interstate Disputes among ASEAN Member States

Firstly, the root cause of both disputes was due to the territorial incompatibility that impaired the

relationship between the ASEAN member states. The Preah Vihear dispute has this territorial incompatibility rooted as a legacy from the colonialism era dated back in the early 1900s. Although a delineation of the territory through an ICJ ruling has been made in 1962 with Cambodia granted the ownership of the Preah Vihear Temple, the conflict between Cambodia and Thailand resurfaced following the application of the temple to be listed as a UNESCO World Heritage Site by Cambodia in 2008. The territorial dispute further escalated into armed conflicts along the border, thus demand for immediate action to solve the conflict. Meanwhile, the Ambalat Block dispute is a spill-over from the Sipadan and Ligitan dispute. The ICJ ruling of the Sipadan and Ligitan islands to be a part of Malaysia has caused an overlapping claim for the Ambalat Block due to the extension of Malaysia's territory as the consequence of the ruling, and the status of Indonesia as an archipelagic country that allows the country to draw baselines from the most outlying islands of its territory. Moreover, the territorial dispute over the Ambalat Block incorporated with an economic dimension of the oil-rich area, has made the dispute settlement process even more delicate.

Secondly, the conflict management applied to both disputes vary, especially on the utilization of the ASEAN mediation process in the effort of dispute settlement. The mediation process took place in the effort of dispute settlement of the Preah Vihear dispute, while the disputed parties of the Ambalat Block preferred bilateral mechanisms in their effort of dispute settlement. Other ASEAN mechanisms of conflict management can also be observed throughout the dispute settlement process in both case studies. Peaceful means of dispute settlement through bilateral negotiations and the ICJ arbitration was resorted to assist the disputed parties in managing the conflicts. It was also observable that Indonesia and Malaysia held up the non-use of threat of force principle amidst the heated domestic situation.

As member states of ASEAN, the disputed parties are bound to the norms and principles of the organization enumerated by the ASEAN Way. This study argues that the ASEAN conflict management mechanisms, as the byproduct of these norms and principles -known as the ASEAN Way, has played an important function in contributing to the peace and stability of the Southeast Asia region. As observed in the Preah Vihear dispute and the Ambalat Block dispute, various ASEAN conflict management mechanisms, such as conflict avoidance, bilateral negotiations, mediation, and arbitration, were taken

place during various stages of the conflicts in order to manage the situation, thus preventing any open war in the Southeast Asia region.

Furthermore, this study would like to elaborate on the utilization of the ASEAN mediation process during a conflict situation in the region, particularly on the factors that enable the utilization of the mediation process in interstate disputes among the ASEAN member states. Given the similar source of incompatibilities between the two case studies, the different response of the ASEAN member states towards the utilization of the ASEAN mediation process generates an interesting object of study. As the result from comparing the case studies of the Preah Vihear dispute and the Ambalat Block dispute, this study found that at least three factors give significant influence towards the utilization of the ASEAN mediation process, namely the availability of a reliable mediator, the leadership of Indonesia in ASEAN, as well as the varying attributes of the disputed parties.

4.3.2. Enabling Factors of ASEAN Mediation Process

Role of a Reliable Mediator

The variation of the utilization of the ASEAN mediation process can be observed through the availability of a reliable mediator in the conflict. Indonesia, playing its function as the Chairman of ASEAN, proactively performed the role of a mediator on behalf of ASEAN in the Preah Vihear dispute. The mediator role was performed to enhance ASEAN credibility for conflict management provision, thus validating ASEAN's capability in maintaining peace and stability of the region. As previously discussed, a reliable mediator possesses some criteria such as the mediator rank and identity, relationship with the disputed parties, and previous attempts as a mediator in a mediation process, to conduct a successful mediation process in a conflict situation. A mediation is also commonly conducted 'within', not 'by', the regional organizations, through the regular mechanisms provided as the instruments for individual states acting as the mediator on behalf of the organization. The mediation process conducted by Indonesia in the Preah Vihear dispute led by the Minister of Foreign Affairs of

Indonesia, one of the most seasoned diplomats the country has. As a high-level official of the country, Minister Marty Natalegawa possessed the resources and abilities needed to be a reliable mediator in the conflict. Previously assigned as the Director General for ASEAN Cooperation, Minister Natalegawa has the expertise in the delicate process of ASEAN (Natalegawa 2018). The frequent meetings of ASEAN also allowed him to have close relations with the key persons of other ASEAN member states as his counterparts, thus allowing him to conduct a swift shuttle diplomacy between Cambodia and Thailand. Furthermore, Indonesia's previous attempts in providing assistances in conflict situations among the ASEAN member states has enhanced Its credibility as a mediator in the Preah Vihear dispute.

On the other hand, the presence of a mediator was not available in the Ambalat Block dispute, thus the ASEAN mediation process was not taken place throughout the dispute settlement effort. The variation of availability of an ASEAN mediator in both case studies provides a rationale for the notion of the important role of a mediator to encourage the utilization of the ASEAN mediation process in the effort of dispute settlement between the Southeast Asian nations.

Indonesia's Leadership in ASEAN

The contribution of Indonesia as a mediator in the Preah Vihear dispute could also be understood from the perspective of Indonesia as the natural leader of ASEAN. Indonesia has been playing an active role in the contribution to the peace and stability of the region and it also shown through the country's contribution to conduct the ASEAN mediation process during the Preah Vihear dispute. In 2011, in which the Preah Vihear dispute reached its peak, Indonesia was resuming a chairmanship role of ASEAN, thus allowing the country to have an embedded form of the formal leadership. As the chairman of ASEAN, Indonesia was authorized to provide the good offices, conciliation, or mediation, as stipulated by Article 23 of the ASEAN Charter. However, this form of leadership lacks continuation, due to the annual rotation mechanism of ASEAN chairmanship.

Moreover, in the case that Indonesia became one of the disputed parties, as shown in the Ambalat Block dispute, ASEAN could hardly find another member state to engage in the mediation process. This

fact demonstrates that ASEAN need a more sustainable form of leadership. The cooperative leadership, in which more than one member states who share similar vision play a strategic role of collective leadership, could be encouraged to be adopted by the member states of ASEAN. The cooperative leadership could help to instill the sense of belonging in each and every member state of ASEAN, in order to nurture deeper trust among them. This effort will encourage the availability of a mediator in the occurrence of a conflict in the region.

Attributes of the Disputed Parties

The different attributes of the disputed parties also considered as another factor that affects the utilization of the ASEAN mediation process in the conflict management. In the Preah Vihear dispute, Cambodia and Thailand was the parties in conflict. In terms of size and influence of the country, Thailand was the ‘bigger country’ with larger geographic area and four times higher of total population compared to Cambodia at the time of the conflict⁹. In terms of economy, Thailand also possessed higher capacity with 5,094 US dollar of GDP per capita, six times higher than of Cambodia that was accounted for 827 US dollar. Thailand also has bigger influence in the region as one of the founding members of ASEAN, while Cambodia joined the organization at a later time in 1999. These differences of capacity institute an asymmetrical form of conflict, thus required Cambodia to pursue a more strategic interaction with Thailand in order to not lose in the dispute (Toft 2005, 18). To engage Thailand in a strategic interaction of ASEAN mediation process could be one of the viable strategies for Cambodia at the time.

On the other hand, in the Ambalat Block dispute, Indonesia and Malaysia possess a more or less balanced posture. While Malaysia possessed a stronger economic posture with approximately three times higher of GDP per capita compared to Indonesia, due to Indonesia’s large population, the country was accounted for a more substantive GDP of 571 trillion US dollar, compared to the 204 trillion US dollar of Malaysia’s GDP¹⁰. Both countries also gain a favorable outcome from their close economic

⁹ Based on the 2011 data acquired from the World Bank World Development Indicators

¹⁰ Based on the 2005 data acquired from the World Bank World Development Indicators

ties, with Malaysia as Indonesia's second largest trading partner in Southeast Asia and source of Indonesia's foreign direct investment (Hadi 2014, 5). In terms of regional influence, both are the founding members of ASEAN, putting them together as the guardian of ASEAN's ultimate goal of a peaceful and stable region, as well as a good example for other ASEAN member states (Ibid., 4). However, their status as the core members of ASEAN did not equal to their accordance to utilize the ASEAN mediation process in managing the dispute. In fact, the ASEAN way of conflict management were utilized through other mechanisms such as conflict avoidance and negotiations on bilateral level.

V. CONCLUSION

The relatively peaceful and stable Southeast Asia region we witnessed today is an outcome of the constructive relations that have been nurtured by the visionary leaders of the five founding members of ASEAN. ASEAN was a breath of fresh air for the Southeast Asia region during a tumultuous period of the Cold War era. Since its establishment in 1967, ASEAN has sought to be able to maintain the peace and stability of the region. One important aspect of ASEAN in fulfilling this objective is the institutionalization of the ASEAN conflict management mechanisms in view of the fact that interstate disputes still becoming a looming challenge for the region. The ASEAN mediation process has only been resorted to in the Preah Vihear dispute, while it is not utilized in other interstate conflicts between the ASEAN member states.

The ASEAN mediation process, as one of the conflict management mechanism of ASEAN, is the focus this study. The capability of the mediation process in addressing incompatibilities among disputed parties while absorbing tensions that may arise due to the incompatibilities has made it attractive to be the object of study to contribute to the conflict management studies. This study would contribute to the strengthening of ASEAN conflict management mechanism, particularly in encouraging the conduct of the ASEAN mediation process in the effort of settling interstate disputes between its member states. This study suggests that the presence of a reliable mediator plays an important role in the resort to the mediation process by the ASEAN member states, as reflected in the case study of the Preah Vihear dispute. The mediator plays a proactive role to engage the disputed parties, allowing them to establish a line of communication during the intense set of circumstances and work together to mitigate the incompatibilities between them. In the future, it is imperative that ASEAN strengthen its cooperative leadership to instill the sense of belonging in each and every member state of ASEAN, in order to nurture deeper trust among them. This effort will encourage the availability of a mediator in the occurrence of a conflict. ASEAN also need to strengthen the ASEAN Secretariat to allow the Secretary-General of ASEAN to perform the role as a mediator in the application of the ASEAN mediation process,

as stipulated in Article 23 of the ASEAN Charter.

At the same time, the norms and principles provided by ASEAN instruments such as the Bangkok Declaration, the TAC, the ASEAN Charter and its 2010 Protocol, has laid a solid foundation for the conduct of harmonious relations among the ASEAN member states. The resort to peaceful means of dispute settlement should be uphold at all times, ensuring the region free from open conflicts that can put harm to the peace and stability of the region. The implementation of consensus and the principle of non-interference also has served a solid foundation for ASEAN, in which these principles have contributed to the trust-building efforts between the member states of ASEAN. Thus, these norms and principles are also important to be preserved and strengthened to enable an effective implementation of the ASEAN conflict management mechanisms, including the ASEAN mediation process. Despite the limitation of the ASEAN mediation process to provide a definitive dispute resolution as of today, the process has successfully contended the regional issues to not overflow into the global stage, thus has made the conflict manageable.

BIBLIOGRAPHY

- Acharya, Amitav. *Constructing a Security Community in Southeast Asia: ASEAN and the problem of regional order*. 2nd ed. London: Routledge, 2009.
- _____. *The Making of Southeast Asia: International Relations of a Region*. Singapore: Oxford University Press, 2000. Reprint, Singapore: ISEAS Publishing, 2012.
- Amer, Ramses. "ASEAN and Conflict Management: The Need for a High Council." *Institute for Security and Development Policy: Policy Brief*, No. 178, May 13, 2015.
<https://isdpr.eu/content/uploads/publications/2015-amer-asean-and-conflict-management-the-need-for-a-high-council.pdf>.
- Amoo, Samuel G., and I. William Zartman. "Mediation by Regional Organizations: The Organization of African Unity (OAU) in Chad." In *Mediation in International Relations: Multiple Approaches to Conflict Management*, edited by Jacob Bercovitch and Jeffrey Z. Rubin, 131-148. New York: Palgrave Macmillan, 1992.
- Anthony, Mely Caballero-. "Mechanisms of Dispute Settlement: The ASEAN Experience." *Contemporary Southeast Asia* 20, No. 1 (1998): 38-66.
<http://www.jstor.org/stable/25798408>.
- _____. *Regional Security in Southeast Asia: Beyond the ASEAN Way*. Singapore: ISEAS Publications, 2005.
- _____. "The ASEAN Charter: An Opportunity Missed or One That Cannot Be Missed?" *Southeast Asian Affairs* (2008): 71-85. <http://www.jstor.org/stable/27913353>.
- Antolik, Michael. "The Cautious Consolidation of ASEAN." *Contemporary Southeast Asia* 4, No. 3 (1982): 316-329. <http://www.jstor.org/stable/25797721>.
- ASEAN. *The ASEAN Declaration (Bangkok Declaration)*. Bangkok, August 8, 1967.
<http://agreement.asean.org/media/download/20131231005052.pdf>.
- _____. *Treaty of Amity and Cooperation in Southeast Asia*. Denpasar, February 24, 1976.
<http://agreement.asean.org/media/download/20131230235433.pdf>.
- _____. *Protocol Amending the Treaty of Amity and Cooperation in Southeast Asia*. Manila, December 15, 1987. <http://agreement.asean.org/media/download/20131231005052.pdf>.
- _____. *Second Protocol Amending the Treaty of Amity and Cooperation in Southeast Asia*. Manila, July 25, 1998. <http://agreement.asean.org/media/download/20140117142023.pdf>.
- _____. *The ASEAN Charter*. Jakarta: ASEAN Secretariat, 2008. Reprint, Jakarta: ASEAN Secretariat, 2020. <https://asean.org/storage/November-2020-The-ASEAN-Charter-28th-Reprint.pdf>.
- _____. *Protocol to the ASEAN Charter on Dispute Settlement Mechanisms*. Ha Noi, April 8, 2010. <http://agreement.asean.org/media/download/20200128121018.pdf>.
- _____. *Third Protocol Amending the Treaty of Amity and Cooperation in Southeast Asia*. Ha Noi, July 23, 2010. <http://agreement.asean.org/media/download/20140117144104.pdf>.

- ASEAN Secretariat (a). "Instruments of Ratification (of the Treaty of Amity and Cooperation)." *ASEAN Legal Instruments*. <http://agreement.asean.org/agreement/detail/60.html>.
- _____. (b). "Instruments of Ratification (of the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms)." *ASEAN Legal Instruments*. <http://agreement.asean.org/agreement/detail/42.html>.
- _____. *Report of the Eminent Persons Group on the ASEAN Charter*. December 2006. <https://www.asean.org/wp-content/uploads/images/archive/19247.pdf>.
- _____. "Historic Firsts: ASEAN Efforts on Cambodian-Thai Conflict Endorsed by UNSC." *ASEAN Secretariat News*, February 21, 2011. <https://asean.org/historic-firsts-asean-efforts-on-cambodian-thai-conflict-endorsed-by-uns/>.
- _____. *Statement by the Chairman of the Association of Southeast Asian Nations (ASEAN) following the Informal Meeting of the Foreign Ministers of ASEAN, Jakarta, 22 February 2011*. <https://www.asean.org/wp-content/uploads/images/archive/documents/N110222.pdf>.
- Bercovitch, Jacob. "The Structure and Diversity of Mediation in International Relations." In *Mediation in International Relations: Multiple Approaches to Conflict Management*, edited by Jacob Bercovitch and Jeffrey Z. Rubin, 1-29. New York: Palgrave Macmillan, 1992.
- Bercovitch, Jacob, and Allison Houston. "Influence of Mediator Characteristics and Behavior on the Success of Mediation in International Relations." *The International Journal of Conflict Management* 4, No. 4 (1993): 297-321. <http://lps3.doi.org.libproxy.snu.ac.kr/10.1108/eb022730>.
- Bercovitch, Jacob, and Su-Mi Lee. "Mediating International Conflicts: Examining the Effectiveness of Directive Strategies." *International Journal of Peace Studies* 8, No. 1 (Spring/Summer 2003): 1-17. <http://www.jstor.org/stable/41852891>.
- Butcher, John G. "The International Court of Justice and the Territorial Dispute between Indonesia and Malaysia in the Sulawesi Sea." *Contemporary Southeast Asia* 35, No. 2 (2013): 235-257. <http://www.jstor.org/stable/43281252>.
- Collins, Alan. "The Subtlety of ASEAN Consensus." *RSIS Commentary*, November 22, 2017. <https://www.rsis.edu.sg/rsis-publication/rsis/co17222-the-subtlety-of-asean-consensus/>.
- Cribb, Robert. *Digital atlas of Indonesian history*. Copenhagen: Nordic Institute of Asian Studies Press, 2009.
- Deutsch, Morton. "Introduction." In *The Handbook of Conflict Resolution: Theory and Practice*, edited by Morton Deutsch, Peter T. Coleman, and Eric C. Marcus, 1-20. San Francisco: Jossey-Bass, 2006.
- Djalal, Hasjim. "Penyelesaian Sengketa Sipadan-Ligitan: Interpelasi?" (in Indonesian Language, Settlement of the Sipadan-Ligitan Dispute: Interpelation?) *Jurnal Hukum dan Pembangunan*, No. 1 (January-March 2003): 126-133. <http://jhp.ui.ac.id/index.php/home/article/download/1374/1296>.
- Druce, Stephen C., and Efri Yoni Baikoeni. "Circumventing Conflict: The Indonesia-Malaysia Ambalat Block Dispute." In *Contemporary Conflicts in Southeast Asia: Towards a New*

- ASEAN Way of Conflict Management*, edited by Mikio Oishi, 137-156. Singapore: Springer, 2016.
- Emmers, Ralf. "Indonesia's role in ASEAN: A case of incomplete and sectorial leadership." *The Pacific Review* 27, No. 4 (2014): 543-562. <https://doi.org/10.1080/09512748.2014.924230>.
- _____. "ASEAN minus X: Should This Formula Be Extended?" *RSIS Commentary*, October 24, 2017. <https://www.rsis.edu.sg/rsis-publication/cms/co17199-asean-minus-x-should-this-formula-be-extended/>.
- Grant, John P., and J. Craig Barker. *Parry & Grant Encyclopaedic Dictionary of International Law*. New York: Oxford University Press, Inc., 2009.
- Hadi, Syamsul. "The Dispute of Ambalat in the Perspective of Indonesian Foreign Policy in the Post-New Order Era." *Jurnal Hukum Indonesia* 12, No. 1 (2014): 1-20. <https://media.neliti.com/media/publications/66658-EN-the-dispute-of-ambalat-in-the-perspectiv.pdf>.
- Hiep, Le Hong. "Can ASEAN Overcome the 'Consensus Dilemma' over the South China Sea?" *ISEAS Perspective* 2016, No. 58. Singapore: ISEAS-Yusof Ishak Institute, October 24, 2016. https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2016_58.pdf.
- International Court of Justice. "Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgement of 15 June 1962." *ICJ Reports* 1962. <https://www.icj-cij.org/public/files/case-related/45/045-19620615-JUD-01-00-EN.pdf>.
- _____. "Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment." *ICJ Reports* 2002. <https://www.icj-cij.org/public/files/case-related/102/102-20021217-JUD-01-00-EN.pdf>.
- _____. "Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Judgment." *ICJ Reports* 2013. <https://www.icj-cij.org/public/files/case-related/151/151-20131111-JUD-01-00-EN.pdf>.
- Irewati, Awani. "Reviewing the Mechanism of Border Disputes Settlement in ASEAN." (in Indonesian Language) *Jurnal Penelitian Politik* 11, No. 1 (June 2014): 39-58. <http://ejournal.politik.lipi.go.id/index.php/jpp/article/viewFile/190/74>.
- Kolb, Deborah M. "Strategy and the Tactics of Mediation." *Human Relations* 36, no. 3 (March 1983): 247-268. <https://doi.org/10.1177/001872678303600303>.
- Leifer, Michael. "Debating Asian Security: Michael Leifer Responds to Geoffrey Wiseman." *The Pacific Review* 5, No. 2 (1992): 167-169. <https://doi.org/10.1080/09512749208718972>.
- Levy, Jack S. "Qualitative Methods in International Relations." In *Evaluating Methodology in International Studies*, edited by Frank P. Harvey and Michael Brecher, 131-160. Michigan: University of Michigan Press, 2002.
- Limsiritong, Nattapat. "The Deadlock of ASEAN Dispute Settlement Mechanisms and Why ASEAN Cannot Unlock It?" *RSU International Journal of College of Government* 3, No. 1 (2016): 18-25. https://www.researchgate.net/publication/328214049_The_Deadlock_of_ASEAN_Dispute_Settlement_Mechanisms_and_Why_ASEAN_Cannot_Unlock_It.

- Mahbubani, Kishore, and Jeffery Sng. *The ASEAN Miracle: A Catalyst for Peace*. Singapore: Ridge Books, 2017.
- Meerts, Paul, and Raymond Cohen. "The Evolution of International Negotiation Processes." *International Negotiation* 13, 2 (2008): 149-156.
<http://lps3.doi.org.libproxy.snu.ac.kr/10.1163/157180608X320171>.
- Moore, Christopher W. *The Mediation Process: Practical Strategies for Resolving Conflict*. 4th ed. San Francisco: Jossey-Bass, 2014.
- Natalegawa, R. M. Marty M. "General Debate: Indonesia." *General Assembly of the United Nations*, September 28, 2010. <https://gadebate.un.org/en/65/indonesia>.
- _____. "Statement by H.E. Dr. R.M. Marty M. Natalegawa, Indonesian Foreign Minister, Chair of ASEAN, Before the UNSC." New York, February 14, 2011.
https://asean.org/?static_post=statement-by-he-dr-rm-marty-m-natalegawa-indonesian-foreign-minister-chair-of-asean-before-the-unsc.
- _____. *Does ASEAN Matter? A View from Within*. Singapore: ISEAS-Yusof Ishak Institute, 2018. Kindle E-book version.
- Oishi, Mikio, ed. *Contemporary Conflicts in Southeast Asia: Towards a New ASEAN Way of Conflict Management*. Singapore: Springer, 2016.
- Poon-Kim, Shee. "A Decade of ASEAN, 1967-1977." *Asian Survey* 17, No. 8 (1977): 753-770.
<https://www.jstor.org/stable/2643336>.
- Rattanasavee, Pattharapong. "Leadership in ASEAN: The Role of Indonesia Reconsidered." *Asian Journal of Political Science* 22, Vol.2 (2014): 113-127.
<https://doi.org/10.1080/02185377.2014.895912>.
- Roberts, Christopher B., and Erlina Widyaningsih. "Indonesian Leadership in ASEAN: Mediation, Agency and Extra-Regional Diplomacy." In *Indonesia's Ascent: Power, Leadership, and the Regional Order*, edited by Christopher B. Roberts, Ahmad D. Habib, and Leonard C. Sebastian, 264-286. New York: Palgrave Macmillan, 2015.
- Roughneen, Simon. "Naval Standoff Between Indonesia, Malaysia." *World Politics Review*, June 12, 2009. <https://www.worldpoliticsreview.com/articles/3910/naval-standoff-between-indonesia-malaysia>.
- Security Council Report. *Update Report No. 1: Thailand/Cambodia*, February 9, 2011.
https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Update%20Report%209%20February%202011%20Thailand_Cambodia.pdf.
- Shigeru, Oda. *Declaration of Judge Oda*. December 17, 2002. <https://www.icj-cij.org/public/files/case-related/102/102-20021217-JUD-01-01-EN.pdf>.
- Singhaputargun, Nichan. "The Thailand-Cambodia Preah Vihear Temple Dispute: Its Past, Present and Future." In *Contemporary Conflicts in Southeast Asia: Towards a New ASEAN Way of Conflict Management*, edited by Mikio Oishi, 111-135. Singapore: Springer, 2016.
- Syofyan, Ahmad, Achmad Gusman Siswandi, Idris, and Huala Adolf. "ASEAN Court of Justice: Issues, Opportunities and Challenges Concerning Regional Settlement Disputes." *Journal*

- of Legal, Ethical and Regulatory Issues* 24, No. 1 (2021): 1-1F.
<http://lps3.www.proquest.com.libproxy.snu.ac.kr/scholarly-journals/asean-court-justice-issues-opportunities/docview/2519042869/se-2?accountid=6802>.
- Toft, Ivan Arreguin-. "Introduction." In *How the Weak Win Wars: A Theory of Asymmetric Conflict*, 1-22. Cambridge: Cambridge University Press, 2005.
- Tuan, Hoang Anh. "ASEAN Dispute Management: Implications for Vietnam and an Expanded ASEAN." *Contemporary Southeast Asia* 18, No.1 (June 1996): 61-80.
<http://www.jstor.org/stable/25798320>.
- UN DOALOS. *Agreement between the Government of Malaysia and the Government of Indonesia on the delimitation of the continental shelves between the two countries, 27 October 1969*. March 15, 2002.
<https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/MYS-IDN1969CS.PDF>.
- Vatikiotis, Michael. "Managing Armed Conflict in Southeast Asia: The Role of Mediation." *Southeast Asian Affairs* 2009: 28-35. <http://www.jstor.org/stable/27913376>.
- Wagener, Martin. "Lessons from Preah Vihear: Thailand, Cambodia, and the Nature of Low-Intensity Border Conflicts." *Journal of Current Southeast Asian Affairs* 30, No. 3 (September 2011): 27-59. <https://doi.org/10.1177/186810341103000302>.
- Wallensteen, Peter. *Understanding Conflict Resolution: War, Peace and the Global System*. London: Sage Publications, 2002.
- Woon, Walter. "Dispute Settlement in ASEAN", *The Korean Journal of International and Comparative Law* 1, Issue 1 (2013): 92-104.
<http://lps3.doi.org.libproxy.snu.ac.kr/10.1163/22134484-12340012>.
- World Bank. *World Development Indicator*. <https://databank.worldbank.org>.
- Yamakage, Susumu. "Evolving ASEAN and Changing Roles of the TAC." In *ASEAN@50 Volume 4: Building ASEAN Community: Political-Security and Socio-cultural Reflections*, edited by Aileen Baviera and Larry Maramis. Jakarta: Economic Research Institute for ASEAN and East Asia, 2017.
https://www.eria.org/ASEAN_at_50_4A.3_Yamakage_final.pdf.
- Zartman, I. William. "Introduction: Bias, Prenegotiation and Leverage in Mediation." *International Negotiation* 13 (2008): 305-310.
<http://lps3.doi.org.libproxy.snu.ac.kr/10.1163/157180608X365226>.
- Zartman, I. William, and Saadia Touval. "International Mediation: Conflict Resolution and Power Politics." *Journal of Social Issues* 41, no. 2 (1985): 27-45.
<https://doi.org/10.1111/j.1540-4560.1985.tb00853.x>.
- _____. "International Mediation." In *Leashing the Dogs of War: Conflict Management in a Divided World*, edited by Chester A. Crocker, Fen Osler Hampson, and Pamela Aall, 437-454. Washington DC: United States Institute of Peace Press, 2007.

초록

아세안은 1967년 설립 이후 동남아 지역의 평화와 안정 환경을 조성하기 위해 지속적으로 노력하고 있습니다. 아세안의 이러한 목표 달성에 있어 한 가지 중요한 측면은 국가간 분쟁이 이 지역에 여전히 다가오는 도전이 되고 있다는 점에서 아세안 분쟁 관리 메커니즘의 제도화이다. 본 연구는 분쟁조정에서 조정 절차의 활용을 검토하고, 아세안의 조정 절차의 수행에 영향을 미치는 요소를 조사한다. 이는 프리아 비히어 <Preah Vihear> 분쟁 사례연구에 반영된 것처럼 아세안 회원국들의 중재 과정에 신뢰할 수 있는 중재자의 존재가 중요한 역할을 한다는 것을 시사한다. 아세안 회원국 간의 국가 간 분쟁에서 중재자의 건설적인 존재에도 불구하고, 중재자의 가용성은 암발랏 블록 <Ambalat Block> 분쟁에서 관찰된 것을 포함하여 아세안의 대부분의 분쟁 관리 노력에서 제한된다. 따라서 아세안의 협력적 리더십을 강화하여 아세안의 각 회원국에 대한 소속감을 심어주는 것이 무엇보다 중요하다. 따라서 본 연구는 또한 아세안 규범과 원칙이 아세안 공동체 구축 과정에서 제한적이지만 의미 있는 목적을 이루었으며, 향후 아세안 협력의 토대로서 지속적으로 관련될 것이라고 주장한다. 아세안 조정 절차를 포함한 분쟁 관리 메커니즘의 효과적인 이행을 위해 아세안 규범과 원칙의 적용을 보존하고 강화하는 것은 시기적절하다.

키워드: 아세안, 중재, 분쟁 관리, 중재자, 아세안의 방식, 지역협력