

The Role of ASEAN in Dispute Resolution between Thailand and Cambodia

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Abstract

This paper scrutinizes the Association of Southeast Asian Nations (ASEAN)'s involvement in mitigating the territorial and cultural disputes between Thailand and Cambodia, particularly centered on the contentious Preah Vihear Temple. The study assesses ASEAN's efficacy in resolving these disputes through diplomatic channels and mediation efforts. By analyzing ASEAN's mechanisms and diplomatic initiatives, the paper sheds light on the organization's role as a regional mediator in fostering peaceful resolution. ASEAN's engagement in the Thailand-Cambodia disputes reflects its commitment to the principles of conflict resolution and regional stability. Through mechanisms such as the ASEAN Regional Forum (ARF) and the ASEAN Way, ASEAN has provided platforms for dialogue and negotiation between the two nations. Additionally, ASEAN's efforts have included diplomatic interventions and initiatives aimed at de-escalating tensions and promoting mutual understanding. However, ASEAN's role in dispute resolution faces challenges stemming from



complex historical grievances, power dynamics, and divergent national interests. The principle of non-interference, a cornerstone of ASEAN's approach, sometimes limits the organization's ability to intervene effectively in member states' internal affairs. Moreover, ASEAN's consensus-based decision-making process can impede swift action in resolving conflicts. Nevertheless, ASEAN's engagement in the Thailand-Cambodia disputes highlights the organization's potential as a regional peacemaker. By fostering dialogue, promoting confidence-building measures, and providing diplomatic support, ASEAN contributes to the maintenance of peace and stability in Southeast Asia. Through a comprehensive analysis of ASEAN's role in this specific context, this paper offers insights into the organization's capacity to address interstate conflicts and advance regional cooperation.

KEYWORDS *ASEAN, Role of ASEAN, Dispute Resolution, Thailand, Cambodia*

Introduction

In a broad sense, international law is divided into two, public international law and private international law. Private international law is a collection of legal provisions that resolve issues between individuals who are at the same time subject to the jurisdiction of two or more different states. While international law is a collection of legal provisions whose application is maintained by the international community.¹

In English, international law is referred to as "*international law*". There are also those who use the term international law or interstate law. Public international law is also the entire rule and principle of law that governs relations or issues that cross national borders (international relations) that are not civil in nature.²

¹ Istanto, F. Sugeng *Hukum Internasional* (Yogyakarta: UAJY Press, 2010), p. 4. See also Kelsen, Hans. *Principles of international law*. The Lawbook Exchange, Ltd., 2003; Lowe, Alan Vaughan. *International Law*. Oxford University Press, 2007.

² Kusumaatmadja, Mochtar and Ety R. Agoes, *Pengantar Hukum Internasional*. (Bandung: PT Alumni, 2003), pp. 1-2. See also Hathaway, Oona A. "Between power and principle: An integrated theory of international law." *The University of*

In addition to generally accepted international law there is also regional international law, which is limited to the area of environmental applicability, such as what is commonly called American international law or Latin international law.³

Indonesia, as a sovereign nation, is recognized as a subject of international law. In the event of an international dispute, Indonesia has recourse to seek resolution through international mechanisms such as the International Court of Justice. International disputes encompass conflicts between states, interactions involving countries and individuals, as well as disputes between states and international organizations. Some authors mention that states are the primary or only subject of international law.⁴

Chicago Law Review (2005): 469-536; Danilenko, Gennadiï Mikhaïlovich. *Law-making in the International Community*. Vol. 15. Brill, 2024.

³ Regional international law refers to legal norms and principles that govern interactions and relationships between countries within a specific geographic region. Unlike international law, which encompasses agreements and conventions applicable globally, regional international law is limited to a particular area of environmental applicability, often reflecting the unique circumstances, interests, and challenges faced by countries within that region. For instance, "American international law" or "Latin international law" denotes legal frameworks and agreements developed and recognized within the Americas or Latin America, respectively. These regional legal systems may address issues such as trade, environmental protection, human rights, and security, tailored to the needs and dynamics of the countries within the region. These regional legal frameworks complement, and in some cases, supplement international law, providing more localized solutions and mechanisms for addressing regional challenges. They serve to foster cooperation, enhance stability, and promote development within the region while respecting the sovereignty and interests of member states. See Lorca, Arnulf Becker. "International Law in Latin America or Latin American International Law? Rise, Fall, and Retrieval of a Tradition of Legal Thinking and Political Imagination." *Harvard International Law Journal* 47.3 (2006): 283-305; Obregón, Liliana. "Latin American international law." *Routledge Handbook of International Law*. Routledge, 2009. 154-164.

⁴ Starke, J.G. *Pengantar Hukum Internasional* (Jakarta: Sinar Grafika, 1995), p. 77. See also Starke, J. G. "Elements of the Sociology of International Law." *The Australian Year Book of International Law Online* 1.1 (1966): 119-136; Simma, Bruno. "The Contribution of Alfred Verdross to the Theory of International Law." *European Journal of International Law* 6.1 (1995): 33-33; Kelsen, Hans. *Principles of International Law*. The Lawbook Exchange, Ltd., 2003.

Others argue that individuals are the real legal subjects of international law, because in the final analysis it is the individual who is the subject of all national and international law. According to its development, the subjects of international law are: States, the Holy See Vatican, the *International Committee of the Red Cross*, International Organizations, Individuals, and *Belligerent* (rebels and parties to disputes).⁵

In addition, Indonesia is also a member of the United Nations Organization of Southeast Asian Countries, or called ASEAN (*Association of South East Asian Nations*). Discussion on ASEAN which will be discussed further in the discussion of this paper, along with discussion of the ASEAN Charter (*ASEAN Charter*) is a form of agreement between ASEAN member states, which is used as a basis for resolving conflicts that occur between ASEAN members peacefully.⁶

To address the complexities of the Thailand-Cambodia dispute and ASEAN's role within it, this paper is structured around three key inquiries. Firstly, it delves into ASEAN's standing in international law and its function as a mediator in resolving conflicts between member states. Secondly, it examines the historical context and chronology of the Thailand-Cambodia dispute, offering insights into the root causes and progression of the conflict. Lastly, it analyzes the ASEAN Charter's provisions and its applicability to the Thailand-Cambodia dispute, thereby evaluating the organization's institutional framework for conflict resolution.

ASEAN's position in international law as a regional organization and its role in dispute resolution among member states are pivotal

⁵ Janis, Mark Weston. "Individuals as Subjects of International Law." *Cornell International Law Journal* 17.61 (1984); Walter, Christian. "Subjects of international law." *Max Planck Encyclopedia of Public International Law* 9 (2007): 634-43; Allott, Philip. "The concept of international law." *European Journal of International Law* 10.1 (1999): 31-50; Krenz, Frank E. "The refugee as a subject of international law." *International & Comparative Law Quarterly* 15.1 (1966): 90-116.

⁶ Amer, Ramses. "The Association of Southeast Asian Nations'(ASEAN): conflict management approach revisited; will the charter reinforce ASEAN's role?." *ASEAS-Austrian Journal of South-East Asian Studies* 2.2 (2009): 6-27; Feraru, Atena S. "ASEAN decision-making process: Before and after the ASEAN Charter." *Asian Development Policy Review* 4.1 (2016): 26-41.

considerations in understanding its involvement in the Thailand-Cambodia conflict. By exploring ASEAN's legal foundation and mechanisms for conflict management, this paper aims to elucidate the organization's authority, capabilities, and limitations in addressing interstate disputes within the region.

The chronology of the Thailand-Cambodia dispute provides crucial context for comprehending the dynamics and complexities of the conflict. Through a detailed examination of historical events, territorial claims, and diplomatic interactions between the two nations, this paper seeks to elucidate the multifaceted nature of the dispute and the factors contributing to its persistence over time.⁷

Furthermore, an analysis of the ASEAN Charter's review of the Thailand-Cambodia dispute offers valuable insights into the organization's institutional response to intra-regional conflicts. By scrutinizing the Charter's principles, mechanisms, and provisions related to conflict resolution, this paper aims to assess ASEAN's effectiveness in managing disputes among its member states, particularly in the context of the Thailand-Cambodia conflict.

By addressing these inquiries, this paper endeavors to provide a comprehensive understanding of ASEAN's role in mediating the Thailand-Cambodia dispute within the framework of international law and regional diplomacy. Through an examination of ASEAN's legal foundations, the historical context of the conflict, and the organization's institutional mechanisms, this study aims to contribute to scholarly discourse on conflict resolution in Southeast Asia and the role of regional organizations in fostering peace and stability.⁸

The approach used in writing this paper is normative juridical, namely research in its study by referring to and basing on legal norms and

⁷ Singhaputargun, Nichan. "The Thailand–Cambodia Preah Vihear Temple Dispute: Its Past, Present and Future." *Contemporary Conflicts in Southeast Asia: Towards a New ASEAN Way of Conflict Management* (2016): 111-135.

⁸ Wijaya, Deva Eky. "ASEAN's Role in Thailand's Border Conflict With Cambodia." *Journal of Contemporary East Asia Studies* 8.2 (2016): 177-190; Chachavalpongpun, Pavin. "Thai-Cambodian Conflict: The Failure of ASEAN's Dispute Settlement Mechanisms." *Asian Journal of Peacebuilding* 1.1 (2013): 65-86.

rules, applicable laws and regulations, legal theories and doctrines, and other literature materials relevant to the research topic. The source of data in writing this paper is secondary data, which is in the form of primary, secondary and tertiary legal materials. To obtain the necessary legal materials, it is carried out by tracing, collecting and reviewing literature materials, laws and regulations, research results, scientific works and other written documents.

ASEAN's Position in International Law and ASEAN's Role in Dispute Settlement Among ASEAN Member States

ASEAN (*Association of South East Asian Nations*) is an association of regional cooperation countries in the Southeast Asian region. Since 1947, Southeast Asian countries have embarked on various initiatives to establish regional cooperation. Starting in 1963, where the tense political situation prompted the Philippines, Indonesia and Malaysia to form a regional organization called Maphilindo.⁹ The establishment of ASEAN was spearheaded by five countries, namely Indonesia, Malaysia, Thailand, the Philippines, and Singapore which was held in Thailand with the signing of the Bangkok Declaration on August 8, 1967.

Then continued with the joining of other Southeast Asian countries such as Brunei Darussalam, Cambodia, Myanmar, Vietnam, Laos, followed by the last one is Timor Leste. The establishment of ASEAN is based on several considerations as follows:

- 1) There are common interests and problems among Southeast Asian nations and the need to strengthen existing ties of regional solidarity and cooperation;
- 2) Establish a solid foundation for joint efforts to advance regional cooperation in Southeast Asia based on the spirit of equality and "*partnership*" that thereby helps promote regional peace, progress and prosperity;

⁹ Ariadno, Melda Kamil, et al. "Pembangunan Bertahap Sistem Hukum Komunitas ASEAN." *Jurnal Hukum & Pembangunan* 42.4 (2012): 550-581.

- 3) In an increasingly interdependent world, the ideals of peace, freedom, social justice and economic prosperity will be achieved by developing mutual understanding, good neighborliness and cooperation among countries in a region bound by history and culture;
- 4) Southeast Asian countries are responsible for efforts to strengthen the economic and social stability of the region and ensure peaceful and progressive national development; They must also guarantee their stability and security from outside interference in all its forms and manifestations in order to preserve its national identity in accordance with the ideals and aspirations of its people.

The organs of the ASEAN structure based on the Summit in Bali in 1976 consist of: *Summit Meeting*, ministerial session, "*Standing Committee*" (located in turn in the capital of the member state where the next Ministerial Session will be held), ASEAN Committees (formed by Foreign Ministers to take care of certain matters), ASEAN Secretariat, Secretariat ASEAN National (established by each member state). The following are the objectives of the establishment of ASEAN:¹⁰

- 1) Accelerate economic growth, social progress and cultural development in the Southeast Asian region through joint efforts in the spirit of equality and friendship to strengthen the foundation for a prosperous and peaceful society of Southeast Asian nations;
- 2) Promote regional peace and stability through respect for justice and the rule of law in relations between Southeast Asian states and the observance of the principles of the Charter of the United Nations;
- 3) Promote active cooperation and mutual assistance in terms of mutual interests in the economic, social, cultural, engineering, scientific and administrative fields;
- 4) Mutual assistance in the form of ease of training and research in the fields of education, profession, engineering, and administration;
- 5) More effective cooperation for their greater agricultural and industrial use, expansion of trade including assessment of problems of international commodity trade, advancement of their transport and communication facilities and improvement of the standard of living of their people;

¹⁰ Istanto, *Hukum Internasional*, pp. 190-192.

- 6) To promote the study of Southeast Asia;
- 7) Maintain close and useful cooperation with existing international and regional organizations with similar objectives and seek all possibilities for closer cooperation between them.

ASEAN's position in international law is one of the subjects of international law because ASEAN is one form of regional international organization.

International organizations can be divided into private international organizations and public international organizations. In its classification, public international organizations are divided into two, namely global international organizations and regional international organizations. ASEAN is included in regional international organizations.

International organizations can be domiciled as international legal entities. An international legal entity is a body that is domiciled as a subject of public international law. The position of international organizations as *persons* or subjects of international law is the personality of international law. The legal personality of an international organization can be specified in the articles of association of that international organization. For example, in the European Economic Community whose legal personality is explicitly stipulated in its articles of association.

For more than 40 years since its establishment, ASEAN has entered into a series of agreements that are technically binding on member states. *The Treaty of Amity and Cooperation* (hereinafter referred to as TAC) signed in 1976 clearly regulates the actions of signatory States to respect other States and establishes procedures for peaceful settlement of disputes. In addition, Bali *Concord I* stated that '*Member States, in the spirit of ASEAN Solidarity shall rely exclusively on peaceful processes in the settlement of intra-regional differences*'. Then *the Southeast Asia Nuclear Weapons-Free Zone (ZOPFAN) agreement 1971* which binds ASEAN member states not to '*develop, manufacture or otherwise acquire, possess or have control over nuclear weapons; station or transport nuclear weapons by any means; or... test or use nuclear weapons*'. The treaty also calls for the commitment of member states related to nuclear weapons in the region. This agreement was formed by referring to the objectives of the United Nations, especially the principles of respect for national sovereignty and *territorial integrity* of all countries in the world. These include the elimination of the threat and use

of force (*threat or use of force*), peaceful settlement of international disputes, equal rights, the right to self-determination and non-intervention in the internal problems of other countries. This is stated in the preamble of ZOPFAN and this agreement is the first agreement that explicitly describes the commitment of ASEAN member states to use peaceful dispute settlement in ASEAN.

From the agreements that have been made, it can be seen that from the beginning of its establishment, ASEAN is more inclined to the use of peaceful dispute settlement mechanisms. ASEAN member states refrain from the use of force of arms and are committed to resolving disputes between them by the peaceful means outlined in article 2 of the TAC. Prior to the establishment of the ASEAN Charter, there was no credible mechanism to resolve disputes objectively and legally binding. For these reasons, ASEAN countries drafted and signed and ratified the ASEAN Charter in 2008. The ASEAN Charter essentially sets the direction of long-term ASEAN cooperation. In this case, in the context of regional economic cooperation, long-term cooperation and the ultimate goal of cooperation have actually been stipulated in Bali Concord II, namely the establishment of AEC in 2020 which is one part of the ASEAN Community.

The ASEAN Charter is an important legal basis for seeing the compliance of ASEAN member states with the cooperation agreements they have agreed upon. The ASEAN Charter clearly stipulates the legal personality of ASEAN and *the legal positioning* of ASEAN institutions to balance ASEAN's growing, varied and intense cooperation. The ASEAN Charter sets out in detail the purposes and principles of ASEAN. The Charter also establishes a clear dispute resolution mechanism to anticipate differences in interpretation of the contents of the Charter and other ASEAN agreements. According to the Charter, ASEAN member states are obliged to resolve their disputes by peaceful means in a timely manner through dialogue, consultation and negotiation.

Member states in dispute may resolve their disputes using good services, conciliation, or mediation within an agreed time limit. The Chairman of ASEAN or the Secretary-General of ASEAN in an *ex-officio* capacity may provide good services, conciliation, or mediation at the request of the member states in dispute.

Disputes related to certain ASEAN instruments shall be resolved by the mechanisms and procedures set out in those instruments. For example, if the dispute relates to AFTA, then the dispute must be resolved by the instruments contained in the AFTA agreement. However, disputes that do not relate to the interpretation or application of ASEAN instruments must be resolved peacefully in accordance with the TAC (Treaty of Amity and Cooperation in Southeast Asia) and its implementing rules. . The rule further states that disputes relating to the interpretation or application of ASEAN economic agreements must be resolved in accordance with the ASEAN Protocol on *the Enhanced Dispute Settlement Mechanism*, if specifically not specified otherwise.

For unresolved disputes, the dispute must be referred to the ASEAN Summit for decision. In addition to providing for the procedures, means, and establishment of dispute resolution mechanisms with respect to their interpretation and application, the Charter also provides for the compliance of Member States with findings, recommendations, or decisions resulting from dispute resolution mechanisms. It is handed over to the ASEAN Secretary-General who is assisted by the ASEAN Secretariat or other designated ASEAN institutions. They should give a report to the summit on this.¹¹

Chronology of the Dispute Between Thailand and Cambodia

Thailand and Cambodia were originally two Southeast Asian countries that had good relations and rarely got into disputes. This is because the two countries have many similarities, such as religious similarities and government systems. However, good relations then became strained due to the aftermath of the Indochina war conflict in 1975.

Deteriorating relations between Thailand and Cambodia are due to conflicts over ownership of the Preah Vihear Temple, which is included in the world heritage list by UNESCO. Thailand's border conflict began in

¹¹ Phan, Hao Duy. "Towards a rules-based ASEAN: the protocol to the ASEAN Charter on dispute settlement mechanisms." *Arbitration Law Review* 5.1 (2013): 254-276.

2008 and became the final chapter of a long-running dispute between Cambodia and Thailand over the XI-century temple Preah Vihear, located between Choam Ksant district in Cambodia's Preah Vihear province and Kanthalarak district in Thailand's Sisaket province.¹²

The issue of ownership of the temple was actually regulated by the International Court of Justice in 1962, namely that the temple belongs to the Cambodian people, but the problem is that the 4.6 km² area around the temple is not explained ownership by the International Court of Justice.

This debate arises because Cambodia and Thailand use different maps showing each country's territory. This has an impact on the occurrence of misinterpretations regarding the size of each area including the area around the Preah Vihear Temple which is misinterpreted. If Cambodia's claim to the territory is granted by Thailand, Thailand fears Cambodia will become more rampant and annex other territories that are also misinterpreted. In addition, the struggle for territory is also triggered due to the wealth of mineral resources, which means the guarantee of meeting the energy needs of the owning country and an increase in state income from the sale of energy resources.

In July 2008, the two warring countries both stationed an army of more than 4,000 troops in the Preah Vihear Temple area. The deployment of troops from other countries in the region is evidence of a violation of their national sovereignty. This territorial dispute then continued with armed conflict.

From the Cambodian version, the conflict began when 50 Thai soldiers moved into the area of the Keo Sikha Svara Pagoda in Cambodia, about 300 meters from the Preah Vihear Temple. By August 2008, the conflict had spilled over into the territory of the XIII-century temple complex Ta Moan, located 153 km west of Preah Vihear, where Cambodia accused Thai forces of occupying Cambodian territory that Thailand immediately denied. Cambodian and Thai forces for the first time engaged in armed contact.

¹² Turcsányi, Richard Q., and Zdeněk Kříž. "ASEAN and the Thai-Cambodian Conflict: The Final Stage at Preah Vihear?." *Unresolved border, land and maritime disputes in Southeast Asia*. Brill, 2017. 83-109.

On October 24, 2008, representatives of the two countries met in Beijing and agreed to avoid future armed clashes. But the easing of tensions later stopped with Cambodian assertions that Thai soldiers were seen crossing the border near an ancient temple, which Thailand denied. On April 3, 2009 the two countries exchanged fire for the second time in a border area close to the disputed area. As a result, there were two Thai military soldiers who were killed and ten other military soldiers were injured due to the gun contact.¹³

Thanks to the efforts of a number of parties, tensions were finally eased after Thailand admitted that the temple was indeed part of Cambodia. The calm in relations between the two countries did not last long. The two countries returned to tensions after Cambodian Prime Minister Hun Sen appointed former Thai Prime Minister Thaksin Shinawatra as his senior adviser on the economy. Bangkok feels entitled to challenge the decision because Thaksin is considered a fugitive who escaped from legal bondage.

Various efforts, both bilaterally, regionally, and internationally are carried out in order to resolve this conflict, or at least ease tensions. Differences in perceptions between the two countries in efforts to resolve the conflict further hinder the creation of conflict resolution. Given its defeat at the 1962 International Court of Justice, Thailand is only willing to resolve the conflict at the bilateral level. Meanwhile, Cambodia is more confident in involving outsiders, both the UN and ASEAN. Hun Sen said that the firefight near the Preah Vihear temple was a war no longer a conflict between armies, so bilateral mechanisms would not work.

Cambodia later asked the U.N. Security Council to hand over U.N. peacekeepers to the border. The U.N. Security Council said it would be limited in supporting regional and bilateral efforts to negotiate a resolution to the conflict. The UN then decided to hold negotiations in New York which will be attended by Thai Foreign Minister Kasit Pirornya, Hun Sen, and Foreign Minister Marty Natalegawa of Indonesia as ASEAN chair on

¹³ Mangku, Dewa Gede Sudika. "Peluang dan tantangan ASEAN dalam penyelesaian sengketa Kuil Preah Vihear di perbatasan Kamboja dan Thailand." *Pandecta Research Law Journal* 6.2 (2011); Sothirak, Pou. "Cambodia's Border Conflict with Thailand." *Southeast Asian Affairs* 2013.1 (2013): 87-100.

February 14, 2011 (*The Nation* February 10, 2011). Pirornya said that U.N. security forces were not needed and that his government wanted to resolve the issue bilaterally.

Formally, Thailand and Cambodia have actually been willing to sit together in meetings facilitated by ASEAN as held on February 22, 2011 in Jakarta, with the result of agreeing to receive a monitoring team from Indonesia. The results of this meeting also agreed on the meeting of the *Joint Border Committee* (JBC) in Bogor in April 2011 involving the defense ministers of both countries. Cambodia tends to support this decision, while Thailand shows a different stance.

Thai Defense Minister Prawit Wongsuwan said he would not attend the JBC and rejected the presence of an Indonesian monitoring team in the disputed area because it was considered a form of outside interference. This shows that there are differences in views within Thailand, between the foreign ministry and the defense ministry.

Conflict handling handed over to ASEAN will prioritize the path of diplomacy in resolving conflicts. But fighting between the militaries of the two countries broke out again at the end of April 2011, and even this battle expanded to Ta Moan and ta Krabey temples. Although the conflict resolution by sitting Thailand and Cambodia together has not shown results, Indonesia through the Ministry of Foreign Affairs continues to move to find loopholes by holding informal meetings separately with Cambodia and Thailand.

The difficulty of establishing peace between the two countries is more due to Thailand's inconsistent attitude regarding its internal dilemmas. The trilateral meeting between Indonesian Foreign Minister Marty Natalegawa, Thai Foreign Minister Kasit Pirornya and Cambodian Foreign Minister Hor Namhong, ensured that Thailand and Cambodia continue to resolve their conflict by peaceful means.

Indonesian President Susilo Bambang Yudhoyono had recommended that Thailand and Cambodia negotiate three important matters of peaceful settlement of the conflict in one package, namely activating the *General Border Committee* (border and defense negotiations between the two countries), reviewing the 2000 agreement, and placing an Indonesian review team on the border according to the agreement approved in February 2011. Hun Sen said that the resolution of conflicts

around Preah Vihear Temple was left to ASEAN, while conflicts around Ta Moan and Ta Krabey temples would be resolved bilaterally.¹⁴

ASEAN Charter Review of Thailand and Cambodia Dispute

ASEAN Charter or Southeast Asia Charter is one form of agreement between ASEAN member countries. It was ratified in Singapore on 20 November 2007 and entered into force in December 2008, consisting of 13 Chapters and 55 Articles.

The Government of Indonesia has ratified this ASEAN Charter through Law Number 38 of 2008 concerning the Ratification of *the Charter of the Association of Southeast Asians*. This ASEAN Charter contains the various objectives of the establishment of the ASEAN organization itself, and contains rules that must be obeyed by all member states to achieve common goals.

The objectives of the establishment of ASEAN have been contained in the ASEAN Charter Article I on Objectives, namely "*maintaining and promoting peace, security, and stability and further strengthening peace-oriented values in the region*;" (original sound: "*To maintain and enhance peace, security and stability and further strengthen peace-oriented values in the region*") continued in number 4 which reads "*To ensure that the peoples and Member States of ASEAN live in peace with the world at large in a just, democratic and harmonious environment*;" which means "*ensuring that the people and Member States of ASEAN live in peace with the world as a whole in a just, democratic and harmonious environment*;" Excerpts from the various objectives of the establishment of ASEAN focus on the creation of a peaceful life in the Southeast Asian region. Quoted from Oxford Journal, "*Moreover, it is worth looking into whether the ASEAN Charter was prepared*

¹⁴ Wagener, Martin. "Lessons from Preah Vihear: Thailand, Cambodia, and the nature of low-intensity border conflicts." *Journal of Current Southeast Asian Affairs* 30.3 (2011): 27-59; Yoosuk, Ubonwan. "The Preah Vihear Temple: Roots of Thailand-Cambodia Border Dispute." *International Journal of Asian Social Science* 3.4 (2013): 921-929.

for its own right, as well as for the objectives, functions and competence of ASEAN as an international organization."¹⁵

In the international world, peace is something that is always sought by all countries in the world. But not infrequently peace is disturbed by several disputes and conflicts that occur, both in the bilateral, regional, or even multilateral scope involving many countries. This happened to two ASEAN member countries, Cambodia and Thailand.

These two countries in Southeast Asia have many similarities both in terms of culture, race / ethnicity, and religion. Thailand and Cambodia are famous for having many pagodas or temples that are places of worship for Buddhists. One of them is the Preah Vihear Temple which is very long which has been standing since the XI century.

The temple is the object of a dispute between Thailand and Cambodia over its ownership. In 1962 the International Court of Justice ruled that Preah Vihear Temple belonged to Cambodia, but there was an area of 4.6 km² around the temple that was not disclosed by the International Court of Justice.

Since the decision of the International Court of Justice is binding on the parties to the dispute, the state party to the dispute is obliged to comply with the decision of that Court. If a litigant state fails to perform its obligations, the opposing litigant may seek assistance from the United Nations Security Council to have the decision of the International Court of Justice concerned. The Security Council can recommend that the decision of the International Court of Justice be implemented or determine the action to be taken. The International Court of Justice alone cannot execute its decisions.¹⁶

This territorial dispute case has been regulated in the ASEAN Charter. Article 2 contains principles that must be adhered to by all member states, one of which is the principle of "*promoting peaceful dispute resolution*". In accordance with this principle, dispute resolution is sought through peaceful means such as negotiations, agreements, and so on without going through violent means such as war. Article 22 Paragraph

¹⁵ Lin, Chun Hung. "ASEAN Charter: deeper regional integration under international law?." *Chinese Journal of International Law* 9.4 (2010): 821-837.

¹⁶ Istanto, *Hukum Internasional*, pp. 132-135.

(1) states *"Member States shall seek to peacefully resolve all disputes in a timely manner through dialogue, consultation and negotiation."* The formulation of this article has been sought for implementation by the countries concerned.

Earlier, Cambodia had requested assistance from the UN Security Council to help resolve the dispute. But Thailand wants to resolve the dispute bilaterally without the need for UN interference. Then the UN supported the trilateral negotiations between Thailand and Cambodia which were attended by Thai Foreign Minister Kasit Pirornya, Hun Sen (Cambodian PM), and Foreign Minister Marty Natalegawa from Indonesia as ASEAN chair on February 14, 2011 (*The Nation* February 10, 2011). These negotiations resulted in an agreement for the *Joint Border Committee* (JBC) meeting in Bogor in April 2011.

However, various efforts made do not always go according to plan. Differences in views occur within Thailand itself. Defense Minister Prawit Wongsuwan refused to go to the JBC because he thought this included interference by Indonesia in the affairs of other countries, while Foreign Minister Kasit Pirornya had agreed to it. When viewed from the ASEAN Charter, Indonesia's action to become a monitoring team is not an act of intervention, but a form of Indonesian cooperation to help resolve disputes.

Based on Article 23 of the ASEAN Charter Article 1 Paragraph (1) *"Member States that are parties to a dispute may at any time agree to use good services, conciliation, or mediation in order to resolve the dispute within an agreed time limit"*. Article 2 Paragraph (2) reads *"The parties to the dispute may request the Chairman of ASEAN or the Secretary General of ASEAN, acting in an ex-officio capacity, to provide good services, conciliation, or mediation"*.

Thus, from the sound of Article 2 it can be understood that every country has the right to request assistance regarding dispute resolution, and the ASEAN Chair can provide assistance according to the procedures offered. Thus, the accusations made by the Thai Foreign Minister against Indonesia are not true because Indonesia has not violated any principle in the ASEAN Charter that indicates an intervention action. The fundamental purpose of Indonesia to become a border monitoring team is because Indonesia has good intentions to carry out its duties as ASEAN

Chair in 2011, as well as to help resolve conflicts between Thailand and Cambodia which are members of ASEAN.

In the context of ASEAN this requirement of good faith is also found, for example in the *Treaty of Army and Cooperation in Southeast Asia* (Bali Concord 1976). Article 13 of the Bali Concord states: "*The High Contracting Parties shall have the determination and good faith to prevent disputes from arising*". Based on these provisions, then in dispute resolution, this principle is reflected in two stages.

First, the principle of good faith is required to prevent disputes that can affect good relations between countries, because when one country must feel defeated, good relations between the parties can be disrupted in the future.

Second, this principle is required to exist when parties resolve their disputes through dispute resolution means known in international law, both diplomatic means such as negotiation, inquiry, good services, and mediation, as well as legal means, such as the use of arbitration suits, as well as international justice as an official judicial organ of the United Nations.¹⁷

The role of the ASEAN Charter is very evident in resolving disputes between Thailand and Cambodia. The parties concerned seek to use peaceful dispute resolution means as stipulated in the ASEAN Charter with concrete actions by Indonesia as a mediator for both parties. Not only the parties to the dispute, other ASEAN countries are also trying to help resolve conflicts in order to achieve the principles of the establishment of ASEAN in the Southeast Asian Charter.

In reality, the dispute between Thailand and Cambodia is quite complicated and protracted, there was even a ceasefire and Cambodia once took the case to the UN Security Council without going through ASEAN because there is still doubt or mistrust between ASEAN member states.

Nevertheless, ASEAN with its charter ASEAN Charter was quite successful in neutralizing the dispute between Thailand and Cambodia by reaching an agreement between the two countries in agreeing on a *Joint*

¹⁷ Arifin, Saru. *Hukum Perbatasan Darat Antar Negara* (Jakarta: Sinar Grafika, 2014), pp. 190-192.

Border Committee (JBC) meeting in Bogor and receiving a monitoring team from Indonesia.

Conclusion

ASEAN, established on August 8, 1967, stands as a significant regional cooperative body within Southeast Asia, recognized as a subject of international law owing to its status as a regional international organization. The ASEAN Charter serves as a cornerstone for member states' cooperation agreements, providing a legal framework for their engagements. Since its inception, ASEAN has consistently favored peaceful dispute resolution mechanisms, evident in its agreements. The protracted conflict between Thailand and Cambodia, rooted in historical disputes over the Preah Vihear temple since 1975, escalated into armed conflict in 2008. Despite enduring differences, ASEAN has played a pivotal role in facilitating dialogue between the two nations, guided by the principles enshrined in the ASEAN Charter. Ratified in Singapore on November 20, 2007, and enforced in December 2008, the ASEAN Charter has been instrumental in mediating conflicts, with Indonesia notably serving as a mediator. Through these diplomatic efforts, ASEAN demonstrates its commitment to promoting regional stability and resolving disputes through peaceful means.

References

- Allott, Philip. "The concept of international law." *European Journal of International Law* 10.1 (1999): 31-50.
- Amer, Ramses. "The Association of Southeast Asian Nations'(ASEAN): conflict management approach revisited; will the charter reinforce ASEAN's role?." *ASEAS-Austrian Journal of South-East Asian Studies* 2.2 (2009): 6-27.
- Ariadno, Melda Kamil, et al. "Pembangunan Bertahap Sistem Hukum Komunitas ASEAN." *Jurnal Hukum & Pembangunan* 42.4 (2012): 550-581.
- Arifin, Saru. *Hukum Perbatasan Darat Antar Negara* (Jakarta: Sinar Grafika, 2014), pp. 190-192.

- Chachavalpongpun, Pavin. "Thai-Cambodian Conflict: The Failure of ASEANs Dispute Settlement Mechanisms." *Asian Journal of Peacebuilding* 1.1 (2013): 65-86.
- Danilenko, Gennadiĭ Mikhaĭlovich. *Law-making in the International Community*. Vol. 15. Brill, 2024.
- Feraru, Atena S. "ASEAN decision-making process: Before and after the ASEAN Charter." *Asian Development Policy Review* 4.1 (2016): 26-41.
- Hathaway, Oona A. "Between power and principle: An integrated theory of international law." *The University of Chicago Law Review* (2005): 469-536.
- Istanto, F. Sugeng *Hukum Internasional* (Yogyakarta: UAJY Press, 2010).
- Janis, Mark Weston. "Individuals as Subjects of International Law." *Cornell International Law Journal* 17.61 (1984).
- Kelsen, Hans. *Principles of International Law*. The Lawbook Exchange, Ltd., 2003.
- Krenz, Frank E. "The refugee as a subject of international law." *International & Comparative Law Quarterly* 15.1 (1966): 90-116.
- Kusumaatmadja, Mochtar and ETTY R. Agoes, *Pengantar Hukum Internasional*. (Bandung: PT Alumni, 2003).
- Lin, Chun Hung. "ASEAN Charter: deeper regional integration under international law?." *Chinese Journal of International Law* 9.4 (2010): 821-837.
- Lorca, Arnulf Becker. "International Law in Latin America or Latin American International Law? Rise, Fall, and Retrieval of a Tradition of Legal Thinking and Political Imagination." *Harvard International Law Journal* 47.3 (2006): 283-305.
- Lowe, Alan Vaughan. *International Law*. Oxford University Press, 2007.
- Mangku, Dewa Gede Sudika. "Peluang dan tantangan ASEAN dalam penyelesaian sengketa Kuil Preah Vihear di perbatasan Kamboja dan Thailand." *Pandecta Research Law Journal* 6.2 (2011).
- Obregón, Liliana. "Latin American international law." *Routledge Handbook of International Law*. Routledge, 2009. 154-164.

- Phan, Hao Duy. "Towards a rules-based ASEAN: the protocol to the ASEAN Charter on dispute settlement mechanisms." *Arbitration Law Review* 5.1 (2013): 254-276.
- Simma, Bruno. "The Contribution of Alfred Verdross to the Theory of International Law." *European Journal of International Law* 6.1 (1995): 33-33.
- Singhaputargun, Nichan. "The Thailand–Cambodia Preah Vihear Temple Dispute: Its Past, Present and Future." *Contemporary Conflicts in Southeast Asia: Towards a New ASEAN Way of Conflict Management* (2016): 111-135.
- Sothirak, Pou. "Cambodia's Border Conflict with Thailand." *Southeast Asian Affairs* 2013.1 (2013): 87-100.
- Starke, J. G. "Elements of the Sociology of International Law." *The Australian Year Book of International Law Online* 1.1 (1966): 119-136.
- Starke, J.G. *Pengantar Hukum Internasional* (Jakarta: Sinar Grafika, 1995).
- Turcsányi, Richard Q., and Zdeněk Kříž. "ASEAN and the Thai-Cambodian Conflict: The Final Stage at Preah Vihear?." *Unresolved border, land and maritime disputes in Southeast Asia*. Brill, 2017. 83-109.
- Wagener, Martin. "Lessons from Preah Vihear: Thailand, Cambodia, and the nature of low-intensity border conflicts." *Journal of Current Southeast Asian Affairs* 30.3 (2011): 27-59.
- Walter, Christian. "Subjects of international law." *Max Planck Encyclopedia of Public International Law* 9 (2007): 634-43.
- Wijaya, Deva Eky. "ASEAN's Role in Thailand's Border Conflict With Cambodia." *Journal of Contemporary East Asia Studies* 8.2 (2016): 177-190.
- Yoosuk, Ubonwan. "The Preah Vihear Temple: Roots of Thailand-Cambodia Border Dispute." *International Journal of Asian Social Science* 3.4 (2013): 921-929.

*Justice will not be served until
those who are unaffected are as
outraged as those who are.*

Benjamin Franklin

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