The Dispute Settlement Mechanism of ASEAN, Does it work?
กลไกการระงับข้อพิพาทของอาเซียน, ใช้ได้จริงหรือไม่?

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Abstract

Community integration for mutual prosperity and security is a big task of ASEAN that has a wide range of challenges. One of these areas is the peaceful settlement of dispute. As it aims to settle disputes that arise in all fields of cooperation; subsequently, many protocols had been adopted under the ASEAN Charter 2007 including the treaty that existed before. The community typically achieves to establish its own dispute settlement mechanism which enables member states to solve their problems in the form of diplomatic negotiation, consultation, good offices, mediation, and conciliation to the quasi-judicial, arbitration, but no court. These are a wide range of options that member states commit themselves to settle dispute amicably and peacefully under the 1976 Treaty of Amity and Cooperation in Southeast Asia, the 2004 ASEAN Protocol on Enhanced Disputes Settlement Mechanism and the 2010 Protocol to the ASEAN Charter on Dispute Settlement Mechanism. However, the signatories fail to comply with them and resort to other international organizations which they have more reliance as the World Trade Organization or even the International Court of Justice. If the obligations of the signatories could not be enforced it would not increase the practical value of the commitments undertaking under the ASEAN protocols on the dispute settlement. This article seeks the reasons over the non-use of those procedures and finds some weaknesses on such mechanisms as the limited time-frame of concluding report of the panel and the trust in the implementation of recommendations and rulings.

Keywords: the dispute settlement mechanism; ASEAN Charter; Treaty of Amity and Cooperation in Southeast Asia

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บทคัดย่อ

การรวมตัวกันเพื่อสร้างความเจริญรุ่งเรืองและความมั่นคงร่วมกันของประเทศในภูมิภาคอาเซียนถือว่าเป็นภาระอันยิ่งใหญ่ที่มีความท้าทายหลายประการ หนึ่งในนั้นคือ ประเด็นเรื่องของการระงับข้อพิพาท โดยอาเซียนมีเป้าหมายให้มีวิธีระงับข้อพิพาทในทุกด้านที่มีความร่วมมือกัน ดังปรากฏความอยู่ในกฎบัตรอาเซียนและสนธิสัญญาที่มีอยู่ก่อนหน้านั้น หากว่ากันตามรูปแบบแล้ว นับได้ว่าอาเซียนประสบความสำเร็จในการสร้างกลไลการระงับข้อพิพาทเพื่อให้ประเทศสมาชิกสามารถยุติข้อขัดแย้งระหว่างกันได้ในหลากหลายวิธี กล่าวคือ มีวิธีระงับข้อพิพาทด้วยการเจรจาฉันท์มิตร การปรึกษาหารือ การใช้คนกลางที่มีความน่าเชื่อถือ การไกล่เกลี่ย การประนีประนอม ไปจนวิธีกึ่งกระบวนการยุติธรรมอย่างอนุญาโตตุลาการ หากแต่ไม่มีกระบวนการทางศาล วิธีการระงับข้อพิพาทเหล่านี้ถือเป็นความหลากหลายในทางเลือกที่ประเทศสมาชิกได้ร่วมกันตกลงให้มีขึ้นเพื่อให้ประเทศสมาชิกใช้แก้ปัญหาความขัดแย้งอย่างสันติและฉันท์มิตร กลไกในการระงับข้อพิพาทเหล่านี้ได้บัญญัติอยู่ในสนธิสัญญามิตรภาพและความร่วมมือแห่งเอเชียตะวันออกเฉียงใต้ พ.ศ. 2519 พิธีสารว่าด้วยกลไลระงับข้อพิพาทของอาเซียน พ.ศ. 2547 พิธีสารของกฎบัตรอาเซียนว่าด้วยกลไลระงับข้อพิพาท พ.ศ. 2553 แต่อย่างไรก็ตาม ประเทศสมาชิกที่ลงนามรับรองพิธีสารดังกล่าวไม่ใช้กลไลที่ตนเองรับรอง แต่กลับไปใช้กระบวนการระงับข้อพิพาทที่ตนมีความไว้วางใจมากกว่า เช่น การนำคดีสู่องค์การการค้าโลก หรือศาลยุติธรรมนานาชาติ ทั้งนี้ถ้าหากไม่สามารถที่จะบังคับให้ภาคีสมาชิกใช้สนธิสัญญาที่ตนเองร่วมรับรองได้ ก็ไม่อาจที่จะเพิ่มคุณค่าในทางปฏิบัติภายใต้พิธีสารของอาเซียนที่กำหนดกันขึ้นมาเพื่อใช้ในการยุติข้อพิพาทระหว่างกัน บทความนี้จึงค้นหาถึงเหตุผลที่ประเทศสมาชิกไม่เลือกใช้กลไลการระงับข้อพิพาทของอาเซียนและพบว่าในตัวกลไลเองนั้นมีความบกพร่องในเรื่องของระยะเวลาอันจำกัดในการทำสรุปรายงานของคณะกรรมการผู้พิจารณาตัดสินข้อพิพาท และความเชื่อมั่นว่าจะสามารถนำกลไกต่างๆที่มีมาใช้เพื่อยุติข้อพิพาทได้จริงหรือไม่

คำสำคัญ: กลไกระงับข้อพิพาท อาเซี่ยน

1. Introduction

Since August 1967 the Association of South-East Asian Nations (ASEAN) was established, it has been nearly 48 years so far. The regional nations were integrated for the acceleration of economic growth, social progress and cultural development in the region to mutual endeavours in the spirit of equality and partnership in order to strengthen the

foundation for prosperity and peace in the community. As wealth and stability of ASEAN will be sustainable development upon the providing of reliable and clear procedure of dispute settlement. The ASEAN Charter clearly stipulated that ASEAN shall maintain and establish dispute settlement mechanisms in all fields of ASEAN cooperation (The ASEAN Charter, 2007: art. 22(2)). In principle, disputes between member states should be solved peacefully in a timely manner through dialogue, consultation and negotiation (The ASEAN Charter, 2007: art. 22(1)). The Chairman of ASEAN or the Secretary-General of ASEAN may be requested to offer their good offices, conciliation and mediation (The ASEAN Charter, 2007: art. 23(2)). Disputes is not concern the application of interpretation of ASEAN agreements are settled under the 1976 Treaty of Amity and Cooperation in Southeast Asia (TAC), while the disputes on economic matter shall be applied by the 2004 ASEAN Protocol on Enhanced Dispute Settlement Mechanism (EDSM). Where not otherwise specifically provided, all disputes are settled by the 2010 Protocol to the ASEAN Charter on Dispute Settlement Mechanism (DSMP) (The ASEAN Charter, 2007: art.24). Unsolved disputes and non-compliance with the finding of dispute settlement mechanism shall be offered to the ASEAN Summit (The ASEAN Charter, 2007: art.26). Even though, ASEAN has a clear procedure and mechanism of dispute settlement which are the range from informal models depending on negotiations to formal mode as arbitration, but it does not have any dispute cases utilise the available mechanism insofar. Interestingly, the ASEAN Protocol on Enhanced Dispute Settlement Mechanism replicates to one of the World Trade Organization mechanism but the disputing parties intend to resort to the WTO for solving their problems. It could be doubted that how does the ASEAN dispute settlement mechanism work or it could be considered to the state members in the question of compliance with the result of a settlement. Subsequently, this article will seek the matter over the reasons for the non-use of the solution that provided by the Charter. The article, in the first place, will describe a distinctive feature which conducts on ASEAN dispute settlement mechanisms and analyse to find the reason over the omission of the procedures for the last place.

2. The procedure and dispute settlement mechanism of ASEAN

The Charter was designed to create the legal framework for ASEAN as a ruled-based organization. As the framework for the dispute settlement is founded in Chapter VII of the Charter. The matter; which is not concern the interpretation or application of any ASEAN instruments, shall be solved in accordance with the Treaty of Amity and Cooperation in Southeast Asia. As seen on Article 13 of TAC which stipulates that the dispute is likely to disturb regional peace and harmony shall be settled under this treaty. The disputes arise under the economic agreement will be settled by the ASEAN Protocol on Enhanced Dispute Settlement Mechanism. Other concerns in the interpretation or application of the ASEAN Charter and other ASEAN instruments which do not provide a specific procedure shall be fallen under the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms.

2.1 The Treaty of Amity and Cooperation in Southeast Asia

The Treaty of Amity and Cooperation in Southeast Asia (TAC) was adopted in 1976 and signed in conjunction with the 1976 Declaration of ASEAN Concord. The treaty sets up the fundamental principle of dispute resolution of ASEAN with peaceful settlement through friendly negotiation, and commits member states to refrain from the threat or use force (The Treaty of Amity and Cooperation in Southeast Asia, 1976: art. 13). It is appropriate for the conflicts in the political and security field which are not concern with the interpretation of application of any ASEAN instruments (Naldi, 2014: p. 14). In case of no solution through the direct negotiation the High Council comprises a representative at ministerial level from each of the High Contracting Parties shall be constituted and so far one representative from non-ASEAN members that are directly involved in the dispute is consisted in the High Council (Rules of Procedure of the High Council of the Treaty of Amity and Cooperative, 2001: rule 3(b)). The High Council's role is to recommend appropriate means of settlement to the disputing parties such as good offices, mediation and conciliation. The High Council may also offer its good offices, or constitute itself into a committee of mediation, inquiry or conciliation; however, the role of the High Council is

limited by the fact that all parties to the dispute must have agreed to the procedure (The Treaty of Amity and Cooperation, 1976: art. 16). Nonetheless, nothing under the TAC shall preclude the disputing party to resort to the modes of peaceful settlement contained in Article 33(1) of the Charter of the United Nations (The TAC, 1976: art. 17). The Article 33(1) of the Charter of The United Nations states that the party to any dispute which is likely to endanger the maintenance international peace and security shall settle the conflict through negotiation, inquiry, mediation, conciliation, arbitration or judicial settlement. It is remarkable that these methods of dispute settlement are duplicated by the TAC. Subsequently, it is questionable what the difference between the settlements through the TAC of ASEAN and the Charter of the United Nations if it does not concern the trustworthiness or organisation per se.

2.2 The Protocol for Enhanced Disputes Settlement Mechanism

The prosperity of the community mirrors through the pillar of economic cooperation and integration. ASEAN thus adopted more than 50 agreements in trade and investment covered as follows; the Creation of an ASEAN Free Trade Area (AFTA), ASEAN industrial joint ventures and projects, Protection of investment, Services and intellectual property, and Cooperation in food and agriculture, fisheries and forestry, tourism, air services and energy (Sompong Sucharitkul, 2003: p.2). The 1987 Agreement for the Promotion and Protection of Investment and the 1992 Framework Agreement on Enhancing ASEAN Economic Cooperation provide specially for disputes relating to the interpretation and application of ASEAN agreements. These agreements specified that the disputes on economic matter shall be settled amicably between the parties. Wherever necessary an appropriate body shall be called upon for disputes settlement (The Framework Agreement on Enhancing ASEAN Economic Cooperation, 1992: art. 9). The agreements were superseded by the 1996 Protocol on Dispute Settlement Mechanism (DSM) and subsequently the 2004 ASEAN Protocol on Enhanced Disputes Settlement Mechanism (EDSM) or the Vientiane Protocol. It is similar pattern of the Dispute Settlement Understanding of the World Trade Organization which shown on the annex 2 of the WTO Agreement.

The Vientiane Protocol designs an alternative dispute settlement procedure apart from the main resolutions through consultation between member states, good offices, conciliation or mediation (ASEAN Protocol on Enhanced Disputes Settlement Mechanism, 2010: art. 3(1), (4)). The heart of this protocol is a request to the Senior Economic Officials Meeting (SEOM) to establish a panel (The EDSM, 2010: art. 2(1)). The core of the dispute settlement mechanism is the mandatory procedure under the Vientiane Protocol if the disputing party to which the request for consultation is made does not reply within 10 days after the date of the request, or does not enter into consultation within the period of 30 days, or even the disputes fall upon consultation but it does not provide a satisfied resolution of the problem within 60 days after the date of receipt of the request. The matter shall be raised to the SEOM which will set up a panel afterward, unless the SEOM decides by consensus not to do so (The EDSM, 2010: art. 5(1)). The SEOM has 45 days to make a decision whether the panel should be established (The EDSM, 2010: art. 5(2)). The decision will be taken either at a meeting of the SEOM or by circulation. The Protocol specified that if any members are not reply the panel will be established (The EDSM, 2010: art. 5(2)). It is noteworthy that there is avoidance of tactic of keeping silent to let the problem goes away (Walter, 2012: p. 16). Hence it is a default that a panel will be established. The panel obliges to submit its report and recommendations to SEOM within 60 days (The EDSM, 2010: art. 8(2)). The SEOM shall adopt the panel report within 30 days, unless SEOM decides not to do so or a party to the dispute notifies its decision to an appellate body (The EDSM, 2010: art. 9(1)).

An appeal submits to an appellate body which is established by the ASEAN Economic Ministers Meeting (The EDSM, 2010: art. 12(1)). The appellate body shall conclude report within 60 days and it will be further adopted by SEOM within 30 days, unless it should be decided not to do so (The EDSM, 2010: art. 12(5), 13). The report will be accepted by the disputing parties unconditionally and comply with the finding and recommendations of panel or appellate body reports which adopted by SEOM within 60 days (The Vientiane Protocol, 2010: art. 15(1)). If the finding and recommendation fail to comply the aggrieved party may request negotiation to develop mutually acceptable

compensation. If no satisfactory compensation has been agreed within agreed period the party may request authorisation from SEOM to suspend the concessions or other obligation under the covered agreement (The Vientiane Protocol, 2010: art. 15(2)). If the offending party is not constant conform, the matter may refer to the ASEAN Summit for a decision under the ASEAN Charter. However, it is noteworthy that nothing in the Charter impedes the parties to the dispute resorting to any other international legal instruments as the WTO mechanism (The ASEAN Charter, 2007: art. 28).

As the foregoing provision of the Vientiane Protocol, it could be remarked that the Protocol was similar to the dispute settlement procedure of World Trade Organization, especially with its strict timeframe and provisions to ensure that the panel and appellate reports would be adopted unless there is a consensus not to do so (Koesnaidi, Shalmont, Fransisca, and Sahari, 2014: p. 11).

2.3 The Protocol to the ASEAN Charter on dispute Settlement Mechanism

According to Article 22(2) of the ASEAN Charter which stipulates that ASEAN shall establish dispute settlement mechanism in all fields of ASEAN cooperation. To active this goal, the High Level Experts Group (HLEG) was set up afterward to study issues relating to legal personality of ASEAN, dispute settlement mechanism, privileges, immunities, and other legal issues. (ASEAN, 2009) The working of the HLEG resulted in the Protocol to the ASEAN Charter on Dispute Settlement Mechanism (DSMP) which signed by the foreign minister of the ASEAN states on 8 April 2010 in Hanoi. The DSMP shall settle any disputes that do not fall under the ambit of the TAC or the Vientiane Protocol. The Procedure of this protocol desires the parties to the dispute reach a mutually agreed solution by consultation in the first place (The Protocol to the ASEAN Charter on Dispute Settlement Mechanism, 2010: art. 5). The parties to dispute shall enter into consultation within 60 days from the date of receipt of the request and shall conclude within 90 days or other agreed periods. If the consultation fails the parties may refer to an arbitral tribunal (The DSMP, 2010: art. 5(3), 8(1)). If the parties to dispute cannot establish a tribunal within 15 days or agreed period of not exceed than 30 days from the dated of receipt of the notice the

problem may refer to the ASEAN Coordinating Council (ACC) which comprises the foreign ministers of ASEAN members. The ASEAN Coordinating Council may direct the parties to resolve the conflict through goods offices, mediation, conciliation or arbitration (The DSMP, 2010: art. 9(1)). Further, the parties may request the Chairman of ASEAN or the Secretary-General of ASEAN provides good offices, mediation or conciliation which is similar to the scheme under the TAC and the Vientiane Protocol. It could be stated that before referring the dispute to the ASEAN Coordinating Council either consultation or arbitration will not arise without mutual consent of the parties (The DSMP, 2010: art. 10(1)). Where the ASEAN Coordinating Council is unable to reach a decision within 45 days or extending additional time by a period of not more than 30 days or it cannot design how the dispute to be resolved there will be an unsolved dispute. Non-compliance with the finding of dispute settlement and an unsolved dispute may refer to the ASEAN Summit (The DSMP, 2010: art. 9(2), (3), (4)).

3. The weakness of ASEAN dispute settlement mechanism

Insofar the utilisation of ASEAN dispute settlement mechanism is not explicitly emerge on the record. Thus, this section will seek the reason for some light over the weakness of the regional dispute settlement procedure.

3.1 The Treaty of Amity and Cooperation

There are three weaknesses in the scheme that set up in the Treaty of Amity and Cooperation in Southeast Asia (TAC). Firstly, the dispute settlement process as in Article 14 and 15; which are direct negotiations between parties, good offices, mediation or conciliation through High Council, do not apply without the consent of disputing parties (The Treaty of Amity and Cooperation in Southeast Asia, 1976: art. 16). In other words, one party can block the use of the dispute settlement procedure. Although the TAC is not preclude the other High Contracting Parties not to the dispute from offering all possible assistances to settle the dispute, but Article 16 allows parties to the dispute to dispose

such offers of assistance. This voluntary mode of the dispute settlement mechanism will effect reliance upon itself.

Additionally, the provision of Article 13 stated that "The High Contracting Parties... shall refrain from the threat or use of force and shall at all times settle such dispute among themselves through friendly negotiations". It is taken into account as the peaceful settlement of disputes and protecting public loss of face between parties but the mechanism per se is failure. The TAC apparently has been abandoned by the following cases. The dispute between Indonesia and Malaysia over the island of Sipadan and Ligitan in 1998; the Pedra Branca case between Malaysia and Singapore in 2003 which disputes over Pedra Branca and Pulau Batu Putch; and the Preah Vihear case between Cambodia and Thailand in 2011 (Judgment I.C.J. Report, 2002: p. 625; Judgment I.C.J. Reports, 2008: p. 12; and Judgment I.C.J. Report, 2010: p. 281). All of these cases brought boundary dispute to the International Court of Justice (ICJ) because the first case Malaysia refused Indonesia to enter into friendly negotiation as well as a refusal of Thailand in the last case, but case in 2003 had proven negotiation was unsuccessful (Walter, 2012: pp. 28-29). Interestingly, the disputing parties of the Pedra Branca case submitted the dispute to ICJ by explicitly referring to the TAC in the mean of the spirit of friendly relation will be adopted to their dispute settlement. Referring to the TAC before the International Court of Justice could be stated that the amicable settlement of ASEAN Way is needed; however, the procedure of ASEAN Way is not committed by court. Thus, it is undeniable that the proceeding of any cases before ICJ because of its trustworthiness. Even though, the judgment of the ICJ binds the parties but the judgment per se could not be enforced if there has not been complied.

The second weakness is the wariness about interference by non-ASEAN member states. The TAC procedure allows countries other than ASEAN to represent as observers at meeting of the High Council even the TAC in 2010 amends that the non-ASEAN member state will be a part of the meeting if it is directly involved in a dispute (Third Protocol Amending the Treaty of Amity and Cooperation in Southeast Asia, 2012: art. 12). The last weakness is that there is no explicit provision for the recourse of arbitration or

adjudication by court or tribunal. Good offices, mediation, inquiry and conciliation that provide in the treaty are non-legal modes of dispute settlement. This would be a reason of having recourse to ICJ of those three cases.

It could be remarked that the foregoing weaknesses may be overlooked if all ASEAN members are truly sincere to resolve conflicts under the treaty which we committed. So far ten countries completely enter into one community as such ASEAN there has good opportunity for Thailand and Cambodia adjusts conflict through amity and the ASEAN Way under the TAC for mutual benefits. The advantage is not fall on either one or the other but it will strengthen security of the region. In the other word, we should discard the nationalism and go forward to the regionalism.

3.2 The Vientiane Protocol

As for the 2004 ASEAN Protocol on the Enhanced Dispute Settlement Mechanism (EDSM), despite the fact that it is a clear procedure to settle the disputes from the method of amicable settlement between the parties, creating an informal method such good offices, mediation and conciliation, establishing a formal mode such an appropriate body until an appeal level; however, it is significantly unsuccessful. This is because it has not emerged the number of recourse to the EDSM insofar (Kawashima, 2011: p. 10).

The pattern of the panels and appellate body of the EDSM is almost identical to the dispute settlement mechanism of World Trade Organization (WTO); for example, Article 12 of the EDSM establishes appellate body which comprises 7 persons, 3 whom serve on any on case as the same on Article 7 of Dispute Settlement Understanding of WTO. However, the case on economic matter among the members in the community refers to the mechanism of WTO instead of the EDSM. The example cases were Philippines against Thailand over violation of the AFTA in 2008 and Vietnam against Indonesia in 2015 (WTO Dispute Settlement DS371, 2008: p.1; WTO Dispute Settlement DS490, 2015: p.1). Some reason of non-correspondent to the EDSM, which is also found in other regional agreements, is that the ASEAN dispute settlement mechanism is limited. This is because regional dispute settlement agreement is claim at the bilateral or plurilateral level while

the WTO mechanism is multilateral level (Chase, Yanovich, CrawFord, and Ugaz, 2013: p.15).

The panels in ASEAN are strictly instructed to follow the working procedures as provided in the Protocol, whereas the WTO panels are also instructed to follow the working procedure in the Appendix 3 of the WTO agreement and nothing precludes the panel to develop their own working process (The WTO Dispute Settlement Understanding, 1994: art. 12). Moreover, the panel under the EDSM has to submit its report to SEOM within 60 days or maximum of 70 days in case of time extension. (The Protocol to the ASEAN Charter on Dispute Settlement Mechanism, 2010: art. 8(2)) Some argues that it is unexceptional quick and illogical (Bossche and Vergano, 2008: p. 66, cited in Koesnaidi et al. ,2014: p. 20). On the other hand, the WTO panel shall submit a final report to parties within 6 months (The WTO Dispute Settlement Understanding, 1994: art. 12(8)). Fixing timeframe is explicit good to complaining party allowing to the next step of the adjudication process but the stringent timeframe would lead to silence of utilisation of the EDSM. The short timeframe will affect to the consideration that lacks of deliberation in all aspects, as a result the dispute resolution mechanism would not be trustable and reliable. One of the reasons in which parties to the dispute utilising WTO is the less familiarity with the regional law since the EDSM enter into force 2001; however, the WTO dispute settlement mechanism established at the end of 1995 (Koesnaidi et al. , 2014: p. 73). Further, WTO provides legal service and advice on WTO consistency of domestic or trading partner's measures as well as legal support in dispute settlement (Kawashima, 2011: p. 13). The one more persuasive explanation of all reasons is that the EDSM is not mandate to resort to ASEAN dispute settlement mechanism; besides, it broadly opens to the disputing parties having recourse to any other legal instruments to which the disputing states are parties (The ASEAN Charter, 2007: art. 28).

3.3 The Protocol to ASEAN Charter

Even though, the ASEAN dispute settlement mechanism has a progressive development by creating a quasi-judicial mode as arbitration on the 2010 Protocol to the ASEAN Charter on Dispute Settlement Mechanism (DSMP), but the arbitrary process is not a

court. The Protocol applies any disputes which concern the interpretation or application of the ASEAN Charter and the matters which are out the ambit of the 1976 Treaty of Amity and Cooperation in Southeast Asia and the 2010 ASEAN Protocol on Enhanced disputes Settlement Mechanism. The disputes shall be settled through consultation, arbitration, and the ASEAN Coordinating Council (ACC) respectively. Some scholar opines that the arbitration would be a scarce occurrence because it must have a mutual consent of either parties, or otherwise initiating by the ACC (Walter, 2012: p. 21). It might be allowed if there would have a consensus decision of the ACC. As aforesaid section the ASEAN Coordinating Council will decide that which settlement mechanism should apply to the dispute that comprises good offices, mediation, conciliation and arbitration. This is pursuant to Article 9 of the DSMP. It is noteworthy that the ASEAN Coordinating Council consists of foreign minister of all member states which will assemble twice a year including having consensus solution of the council's meeting is difficulty. Thus, if the dispute arose before the council it would tend to be settled by political grounds (Walter, 2012: p.22).

Unsolved dispute and non-compliance finally shall be referred to the ASEAN Summit which comprises leader of member states. It is notified through the ACC. The committee in the summit which exactly consists of the leader of disputing states, including the report and recommendation which are concluded by the ACC to the ASEAN Summit; as a result, it will be political and not legal in nature inevitably. Consequently, the settlement of dispute will fall off a basis of law.

4. Conclusion

A significant achievement of ASEAN in establishing dispute settlement mechanisms in all fields of the regional cooperation as the outcomes of the Treaty of Amity and Cooperation in 1976 which covers on the political and security problems, the Protocol on Enhanced Dispute Settlements Mechanism in 2004 which shall solve economic issues, and the Protocol to the ASEAN Charter on Dispute Settlement Mechanism in 2010 which applies to other matters. The dispute settlement mechanism is a key component in the realisation of a rules-based community. However, it is not a scale to indicate that the disputes will be settled peacefully and amicable as stipulated in the ASEAN Charter while

it is not begin the utilisation of the provision of provided protocols. It thus cannot enunciate the achievement on the commitment of the ASEAN dispute settlement mechanism until the signatories either abandon or have less recourse of other international legal instruments. The reasons of non-use of those protocols are the trustworthiness in panel, limited time-frame for concluding report of the panel, political issue that may have influence to the solution until it does not have court of justice of ASEAN, but we can settle the disputes by applying the existing mechanisms as long as ASEAN member states are sincere to be the one community as we have agreed. Therefore, it is a challenging task of the ASEAN dispute settlement mechanisms to create trustworthiness and reliance to member states utilising in-house mechanisms rather than others.

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