The Transformation of ASEAN as a Third-Party Mediator in Intraregional Disputes of Southeast Asia

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Introduction

In the aftermath of the Cold War, regional conflicts and disputes still continue to attract the attention of many people in the world. Ethnic, religious, territorial, nationalist and resource tensions have arisen, and these fundamental changes in association with the redistribution of power need to be managed in a more effective way. It is manifest that mediation or intermediary intervention has become more frequent than ever before.

Nowadays some actors in the global community serve as intermediaries to form a coalition in multilateral negotiations in which they themselves are included, and others play a role as the third-party that is not directly involved in bilateral or multilateral negotiations. Regardless of the position (either “within” or “in between” the parties concerned), a increasingly growing number of actors in the international system have felt justified in their intervention in these conflicts, disputes or negotiations, which was not common and attractive before the Cold War.

In Southeast Asia a number of the post-Cold War regional conflicts were often intervened or resolved by the third party. Examples include, first, in 1964 the United States (U.S.) succeeded in bringing Indonesia, Malaysia, and the Philippines to the negotiating table in Bangkok in order to resolve the dispute over the sovereignty of Sabah and Sarawak, which made concrete contribution to the normalization of trilateral relations. Second, in the Indo-China war (1946-1954), France, the U.S., Britain, the Soviet Union, the People’s Republic of China (PRC) convened in Geneva to mediate between the nationalist forces of the Communist Viet Minh under the leadership of Ho Chi Minh and the U.S.-supported party led by Ngo Dinh Diem. Third, the Vietnamese invasion of Cambodia in 1978 and the ensuing fall of Phnom Penh and armed, blood combats among the major four military factions led to multiparty mediation mainly involving the United Nations (U.N.), Australia, Indonesia, Japan, and Thailand.1

Fourth, the South China Sea sovereignty dispute and overlapping claims have drawn great attention of the Association of Southeast Asian Nations (ASEAN) and extra-regional major powers that rely heavily on the South China Sea for domestic economic development or military strategic planning, which resulted in the mediation efforts such as the Canada-funded Workshop on Managing Potential Conflicts in the

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1 The major four military factions are: People's Revolutionary Party of Kampuchea (PPC), Khmer People's National Liberation Front (KPNLF), United National Front for an Independent, Neutral, Peaceful, and Co-operative Cambodia (FUNCINPEC), as well as Party of Democratic Kampuchea (PDK, formerly known as Khmer Rouge).
South China Sea, the 1992 ASEAN Declarations on the South China Sea, and the 2002 Declaration on the Conduct of the Parties in the South China Sea. Last, the PRC intervened in the Thai-Cambodian verbal dispute over the Angkor Wat in 2003 by meeting with Thai and Cambodia ambassadors to PRC respectively in the hope that this dispute could be resolved calmly.

Why has ASEAN, the only regional governmental organization established on August 8, 1967, not seemed to play a significant role in some regional disputes and conflicts, but per its member states’ request ASEAN sometimes has intervened as a third party mediator in other disputes and conflicts? What causes ASEAN to be capable of serving as a mediator? What kind of mediation has ASEAN been exerting? What is the possible role of ASEAN in mediating intraregional disputes – that is, will the interest of ASEAN in mediating intraregional disputes in Southeast Asia continue, increase, or decrease – in the near future? These are the questions to be addressed in this paper. Before entering the details, it is imperative to explore what international mediation stands for, what kinds of international mediation are currently employed by actors in the international system, and how to bring about success outcomes in international mediations.

International Mediation: Definition, Types, and the Ways to Succeed

The section will discuss briefly what international mediation is, what types of international mediation have been undertaken, and how international mediation can be successful as it evolves.

Mediation is an important element of third party interventions, and much has been written that describes mediation processes, analyzes mediation consequences and outcomes, as well as underlines key characteristics and roles of both disputants and mediators that have an impact on these consequences and outcomes. Broadly defined, mediation can be viewed as assistance to two or more interacting parties to a

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2 The annual Workshop on Managing Potential Conflicts in the South China Sea, beginning in 1990 in Bali, Indonesia, was originally put into practice via Hasjim Djalal’s idea that discussing confidence building and cooperation rather was better than debating sovereignty and jurisdiction. Djalal’s idea was be able to be materialized by getting the financial assistance from the Canadian International Development Agency (CIDA) and by acquiring support from the Indonesian government for hosting the workshop meetings.

dispute by third parties with incentives but perhaps no authority to create a final agreement. To better explain what mediation is and is not, Jacob Bercovitch and Allison Houston provide a thorough definition:

[Mediation is] an reactive process of conflict management whereby parties seek the assistance of, or accept an offer of help from, an individual, group, or organization to change their behavior, settle their conflict, or resolve their problem without resorting to physical force or invoking the authority of the law (Bercovitch and Houston, 1996: 13).

Mediation appears to be best achieved when both of the parties to a dispute request it and when a stalemate or a possible stalemate exists (Bercovitch, 1992: 4, 8; Princen, 1992: 9-10; Bercovitch and Houston, 1996: 28; Starkey, Boyer and Wilkenfeld, 1999: 32). Its form can be binding and non-binding: Binding mediation takes place when an agreed third party is requested to make decisions after consultations with the parties directly involved in a dispute, while non-binding mediation is a process where an agreed third party plays the role of “honest broker” without enforcing and rules or making any decisions for the parties to a dispute (Burton, 1990: 191-192). Its form can be formal and informal, too. The former is “based on established and accepted rules and procedures” to resolve a dispute through the agreement facilitated by the mediator and created by the parties directly involved, and the latter is nothing but a third-party approach to the resolution of conflict vaguely associated with such measures as fact finding (inquisitorial and adversarial interventions) and problem-solving advocacy (by providing impetus) that are of help to achieve a voluntary settlement (Lewicki, Saunders, and Minton, 1997: 204-205, 210-211).

Besides, the form of mediation can be either “principal mediator” involvement or “neutral mediator” involvement. The former refers to an intermediary with bargaining capability but only indirect interests in disputed issues – e.g., the U.S. in the Falklands/Malvinas conflict of 1982, and the latter means an intermediary with no bargaining capability and no interests in the disputes issues – e.g., Pope John Paul II and Peru in the Falklands/Malvinas conflict (Princen, 1992: 20). Despite various forms of mediation, mediation in general is aimed at facilitating “concession-making without loss of face by the parties, and thereby promote more rapid and effective conflict resolution than would otherwise occur” (Rubin, 1980: 380).

To make it a success, mediation needs the following prerequisites: a) the motivation of disputants to settle or resolve the conflict in question, b) the opportunity
of mediators to get involved, and c) mediator skill (Rubin, 1992: 251-253). Chester A. Crocker, Fen Osler Hampson, and Pamela Aall discern the two most common paradigms of mediation – the structuralist and the social-psychological – and identify several key factors contributing to successful mediations. In the former paradigm, which is similar to a rational choice approach, “ripeness” of the moment where a mutually hurting stalemate exists as well as the mediator ability to exercise leverage in the process of mediation appear very much critical. In the latter paradigm, identifying the underlying needs that greatly affect each disputant’s perception of the conflict and thereby are of help for breaking impasses, creating a channel of dialogue and communication between and among the parties and other influential actors in the conflict, developing new norms and moral precedents of mediation, and employing such measures as consultation and problem solving to change perceptions and attitudes among disputing parties are some of the major ways to direct the parties in conflict to mutually acceptable approaches to conflict resolution (Chester, Hampson, and Aall, 1999: 20-24). In James A. Wall, Jr., John B. Stark, and Rhetta L. Standifer’s study on mediation, they view expected benefits that help overcome stalemates – consistent with the arguments of the structuralist paradigm – and norms which are usually embedded in nation-states’ culture – part of the contentions made by the social-psychological paradigm – as key intertwining determinants that shape successful mediations (Wall, Stark, and Standifer, 2001: 371-373). Bercovitch echoes the social-psychological paradigm noted above by arguing that a successful mediation can be based on “the awareness of cultural differences and the creation of shared norms” (Bercovitch, 1996b: 7).

In his essay on the relationship between mediation and preventative diplomacy, Bercovitch uses state polities, party identities, the power factor, timing, issue-areas, and the setting (environment) of mediation to examine successes and failures in 241 international conflicts between 1945 and 1990. He find out mediation is most likely to succeed when the parties in the dispute have legitimate identities, when power disparities between adversaries are minimal, when the outset of mediation is early (but no earlier than the parties’ perceptions and positions have unveiled), when the issues in question are related to the struggle for resources or are ethnic and ideological in nature, as well as when mediated interventions occur on the mediator’s territory or on neutral territory. Yet, he maintains that state polities do not appear to influence the willingness of the disputing parties to accept third party mediation (Bercovitch, 1996a).

In a nutshell, numerous factors or variables may account for why mediations
succeed or fail, and they can be tri-dimensional. The first dimension is concerned with the characteristics of the disputants, in which motivation and timing (ripeness) to accept mediation, norms that already exist within or between disputants, expected benefits, disputants’ legitimate identity, power disparities, the nature of issues, and so on are involved. The second dimension deals with the mediator itself. Hence, mediator skills – such as using knowledge or superior status to carry on consultation and problem solving techniques to change perceptions and attitudes among disputing parties, establishing a network of dialogue and communication, and exercising power or influence by offering better payoffs – and the awareness of cultural, religious, and ideological differences for the creation of shared norms are of great importance. The relationship between the disputants and mediators are in fact reciprocal and mutually influenced. The last dimension is the environment. An appropriate location – mostly referring to a site with no “home court advantage” for either disputing parties – can influence the outcome of mediation to a great extent.

Based on the definition, forms, and sets of factors contributing to effective international mediation, this paper will, first, make some observations of the major causes for the possible transformation of ASEAN as a mediator for intraregional disputes, and then discuss in brief ASEAN’s modes of operation in terms of carrying on mediation. What has to be addressed beforehand is that the first and third dimensions of factors will be largely ignored. At last, the question of whether ASEAN’s mediation behavior is a disputable fact in the region of Southeast Asia will be answered.

Examining the Transformation of ASEAN as a Mediator for Regional Disputes

For regional organizations, there are at least four core criteria to conduct measures of conflict resolution in an effective way: 1) legitimacy, 2) enforcement, 3) resources, and 4) cooperation with the U.N. and major powers (Nguyen, 2002: 465-468). They are more or less managed by these organizations and viewed as major causes to better equip ASEAN with necessary tools of mediation.

The legitimacy of ASEAN as a third party mediator is a key to the intervention of ASEAN in disputes of Southeast Asia. Therefore, an important question that should be addressed here is: What kind of modus operandi brings sufficient and necessary justification to ASEAN being a mediator for intraregional disputes? One may find this question a little bit bizarre because the original objectives of ASEAN were not supposed to have too much to do with mediated intervention or conflict resolution.
In the 1967 ASEAN Declaration (Bangkok Declaration), the major purposes of this organization are as follows:

1. To accelerate the economic growth, social progress and cultural development in the region through joint endeavors in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of South-East Asian Nations;
2. To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter;
3. To promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields;
4. To provide assistance to each other in the form of training and research facilities in the educational, professional, technical and administrative spheres;
5. To collaborate more effectively for the greater utilization of their agriculture and industries, the expansion of their trade, including the study of the problems of international commodity trade, the improvement of their transportation and communications facilities and the raising of the living standards of their peoples;
6. To promote South-East Asian studies;
7. To maintain close and beneficial cooperation with existing international and regional organizations with similar aims and purposes, and explore all avenues for even closer cooperation among themselves.

It is evident that ASEAN is aimed at maintaining regional peace and stability through “adherence to the principles of the United Nations Charter,” and Article 33(1) of the U.N. Charter just requests the parties to any dispute likely to imperil international peace and stability to, to start with “a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.” Consequently, all member states of ASEAN – who are also member states of the U.N. – must abide by the ASEAN Declaration that grants ASEAN legitimacy for potential mediations and implies the possibility of ASEAN as a mediator in interstate conflicts in Southeast Asia.

ASEAN’s legitimacy is further reinforced in an exceptional legally binding document of ASEAN, the 1976 Treaty of Amity and Cooperation in Southeast Asia.
The TAC, adherent to the spirit and modes of peaceful settlement in Article 33(1) of the U.N. Charter, calls for mutual respect for the independence, sovereignty, equality, territorial integrity, national identity, non-interference, peaceful settlement of disputes, renunciation of the threat or use of force, and effective cooperation among ASEAN member states. To achieve these goals, the signatories agree to establish a High Council consisting of a representative at ministerial level from each of them. Furthermore, Article 15 of the TAC stipulates that “the High Council shall take cognizance of the dispute or the situation and shall recommend to the parties in dispute appropriate means of settlement such as good offices, mediation, inquiry or conciliation. The High Council may however offer its good offices, or upon agreement of the parties in dispute, constitute itself into a committee of mediation, inquiry or conciliation.” All these lead to the conclusion that ASEAN does have the legitimacy to carry on mediations if deemed necessary. 

Additionally, the “ASEAN Troika” gives support to the consolidation of ASEAN’s legitimacy in the issue of third party mediation in Southeast Asia. The idea of the “ASEAN Troika” was put forward by Thai Prime Minister Chuan Leekpai at the 3rd ASEAN Informal Summit in Manila in November 1999 that the “ASEAN Troika” should be constituted as an ad hoc body at the ministerial level to address more efficiently and cooperate more strongly on issues affecting regional peace and stability. Its terms of reference were adopted at the 33rd ASEAN Ministerial Meeting (AMM), July 2000 in Bangkok. The “ASEAN Troika” shall be composed of the Foreign Ministers of the present, past and future chairs of the ASEAN Standing Committee (ASC), which rotates in accordance with the ASC Chairmanship. According to Article 2(3) of the “ASEAN Troika, “ASEAN Troika shall carry out its work in accordance with the principles enshrined in the ASEAN treaties and agreements,” including the TAC and the principles of consensus decision-making and non-interference. As a result, Article 3(2) indicates that the “ASEAN Troika” is not a decision-making body but an instrument representing ASEAN “beyond the issues assigned by the ASEAN Foreign Ministers” and shall “refrain from addressing issues that constitute the internal affairs of ASEAN member countries.”

*Enforcement* power has much to do with military, economic, and verbal coercion,

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4 Mely Caballero-Anthony examines the merit of and limitations to the TAC, arguing that the TAC as the formal mechanism for conflict resolution receives the intentional flexibility and caveats in conflict management given by ASEAN member states and that bilateral or multilateral disputes of ASEAN member states have been left to the parties involved to be resolved or managed without settling them through the High Council specified in the TAC (Caballero-Anthony, 1998: 49-50).

5 Yet, Article 15 gives a leeway to the disputing parties to withdraw from the composition of the High Council if the parties do not agree to participate (Haacke, 2003: 50).
but it is just what ASEAN is lacking but does not want to perform. ASEAN does not favor enforcement power involving the language of threat, probably the least severe coercive diplomacy in world politics, because it does not fit in with the operating norms, principles, rules, and procedures of ASEAN itself.

ASEAN with unique history and diverse cultures and ethnic groups has its own set of norms, principles, rules and procedures that are best known as “ASEAN Way.” The “ASEAN Way,” viewed as the cultural-specific decision-making process and international socialization within ASEAN, has multifaceted meanings in practice. First, it refers to consultation and consensus in an incremental way that help avoid public confrontation and regime fragmentation (Quigley, 1997: 4; Caballero-Anthony, 1998: 57-59). Second, it stands for the commitment to solidarity and mutual respect that allow grievance and objection to be aired peacefully (Chalmers, 1996: 22; Soesastro and Sukma, 1999: 17-18). Third, it means informality and minimal institutionalization since the inauguration of ASEAN (Soesastro and Sukma, 1999: 5; Acharya, 2001: 65-66). Fourth, it is conceived of as the agreement on the peaceful resolution of disputes in accordance with justices and commonly recognized international laws (Antolik, 1990: 6). Last, it denotes the principle of non-intervention in domestic affairs, which appears to be “honored more rhetorically than in practice since ASEAN does intervene in special circumstances” such as the Vietnamese invasion of Cambodia in 1978 (Quigley, 1997: 4).

The “ASEAN Way” has its charms when member states call for organizational solidarity and cohesion, especially when the integrity of state sovereignty may be infringed (Narine, 1997; Katsumata, 2003, 2004). Although it can bring about internal political and decision-making constraints within ASEAN (Huang, 2000: 44-46) or may be thought of as out-of-dated or vanishing mechanisms for ASEAN (Moller, 1998), it can be used to serve as an intermediary in Southeast Asian interstate disputes. In order not to be considered a regional organization evolving coercive diplomacy or enforcement measures, ASEAN adopts confidence building and preventive diplomacy as a focal point in intraregional discussions in Southeast Asia. It has not yet become very evident that the interconnected areas of confidence building, preventive diplomacy, and dispute mediation constitute the one crucial responsibility or mission to which ASEAN has devoted itself, but the involvement of ASEAN in the pacific settlement of the Cambodian case and the South China Sea sovereignty dispute suggests that ASEAN be transforming to adapt itself to new

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For a detailed description of the origin, development, and consequences of the “ASEAN Way,” see Acharya (2001: 28, 63-72, 170-172) and Haacke (2003: 3-7, 9-10, 16-51).
insecurity complexes and greater and more urgent needs to renunciate the use or threat of use of force.

Not only can resources as a determinant of successful mediation be judged by money and personnel needed to perform mediation or other kinds of conflict resolution, but they can also be analyzed on the conceptual basis comprising legitimacy, coercion, reward, referent, expertise, and information (Bercovitch, 1992: 19-21; Rubin, 1992: 254-256). The first two have been discussed earlier. Reward resources hinge on the mediator’s ability to provide the disputants substantial benefits. Referent resources build on the degree of mutual understanding or reciprocal relationships between the parties to a dispute and the mediator(s). Expertise resources reply on the disputants’ belief that a mediator with related experience and training, as well as high social reputation and status, has superior knowledge and capacity to act, thereby leading to the disputants’ compliance with a mediator’s appeal. Resources of information depends on the mediator’s ability to find out and then convey valuable information, defined by the disputing parties, to influence the willingness and decision-making process of these parties and finally to induce behavior change from confrontation to compromise.

For ASEAN, in addition to legitimacy resources, referent and expertise resources seem to be exerted more often in regional mediations or other similar occasions. A regional organization and third party mediator, ASEAN weighs with all Southeast Asian countries because it is similar to them in some way or because it may be believed to have their national interests at heart. This is in effect the incontestable referent power ASEAN enjoys in the management of or involvement in intraregional disputes. With regard to expertise resources ASEAN possesses, the fact that the decision-making of ASEAN has always been elite-led (Acharya, 2001: 64, 131) attests the necessity and effectiveness of informal intervention by key political figures of Southeast Asia. More specifically, high-level meetings of ASEAN – for instance, heads of government summits and ministerial meetings – may call on concerned parties to exercise self-restraint by issuing joint statements or by acting as a go-between at the meetings. In addition, the success of prominent figures such as former Indonesian President Soeharto mediating between Malaysia and the Philippines over Sabah and former Thai Foreign Minister Thanat Khoman mediating to improve Indonesia-Malaysia relations is just indicative of the significance of expertise power within the framework of ASEAN.

The weaker part of ASEAN in this regard might be the reward resources, for ASEAN does not have plenty of capability to proffer financial or some other concrete
benefits to its member states that follow the mediation of ASEAN.

Cooperation with the U.N. and major state/nonstate actors is getting more and more popular for regional organizations because by doing so can they expand the resource pool, legitimate their actions, increase their enforcement power and credibility (Nguyen, 2002: 468). Moreover, cooperating with the U.N. and major actors can help regional organizations, those in the developing regions in particular, acquire valued information and know-how as to conflict management and resolution. In Southeast Asia, ASEAN has changed its unenthusiastic attitude toward security issues and worked with the U.N. to hold a conference on conflict prevention, conflict resolution and peace building on the annual basis since 2001.

What needs to be noted is that at times intraregional disputes of Southeast Asia or domestic disputes of individual ASEAN member states are mediated by the U.N. or external powers without the consent of that specific state and the consensus of ASEAN as a whole. This is exemplified by the war between North Vietnam and South Vietnam (in which the U.N. and countries such as Canada, France, Italy, Spain, and Vatican acted to play an intermediary role), the Vietnamese invasion of Cambodia (in which the U.N., Australia, Indonesia, Japan, Thailand, etc., intervened one way or another), the independence movement of East Timor (in which the U.N., Australia, etc. were involved), and the seizures of National League for Democracy leader Aung San Suu Kyi of Myanmar (in which the U.N., the U.S., the European Union, Japan, and so forth intervened either collectively or individually).

Now I will move on to discuss the modus operandi of ASEAN in the field of mediation. Before that, it is of great use to understand the distinct features of ASEAN’s styles of negotiations. They include:

1. A disposition to favour summit meetings, especially through the 1960s;
2. A recourse to musyawarah [consultation] principles and concepts in the conduct of high level conferences;
3. A preference for concealed and often “unofficial” preliminary transactions by special agents prior to formal ministerial conferences;
4. A preference for ad hoc rather than institutionalized practices;
5. An avoidance of judicial or arbitration machinery for the settlement of disputes;\(^7\)

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\(^7\) This feature now meets a challenge where some ASEAN countries have begun to consider or even have used judicial or arbitration machinery for the settlement of bilateral disputes. For example, in May 2003, Malaysia and Singapore both agreed to have the International Court of Justice arbitrate the
6. Readiness to accept mediation or good offices from friendly third parties in the region; and

7. A tendency of at least three ASEAN members to use the recall of an envoy or down-grading of a mission as a diplomatic practice (Boyce, 1973: 175).

These features, basically in line with the “ASEAN Way,” have a crucial implication for ASEAN’s mediation *modus operandi*. That is, ASEAN’s preference for the elite-led decision-making process and *ad hoc* practices, as well as willingness to accept mediation or good offices from friendly third parties in Southeast Asia, does not yield any obvious and positive effect for ASEAN to act as a mediator in most of the cases mentioned in this paper. Despite a growing call in Southeast Asia for the adjustment of the non-intervention principle or for the amendment to the U.N. Charter to legalize humanitarian intervention, ASEAN appears to remain its “ASEAN Way” to deal with its domestic and regional affairs, both leaving cooperation with the U.N. and major powers in mediation a poorly institutionalized and functioned mechanism and reducing the effectiveness of the newly designed ASEAN High Council.

Although most of the major causes may possibly facilitate the role of mediation played by ASEAN, ASEAN’s modes of operation in respect to mediation does not seem to work well. As noted earlier, the ASEAN Declaration in fact does not have a clear clue as to whether and when ASEAN should intervene in intraregional disputes, and the ASEAN High Council has never fulfilled its mission because no parties in dispute really called for it. Besides, ASEAN rejected the call of the UN for the “ASEAN Troika” mediation to resolve the rising political conflict in Myanmar and create a suitable atmosphere for constructive political dialogue between the military regime and the pro-democracy opposition, notwithstanding the “ASEAN Troika” is conceived of as a specific tool of conflict resolution in Southeast Asia.

Another question that might interest the readers is: what kind of mediation has ASEAN been exercising? ASEAN’s history shows that only informal, personal style of mediation can work better. In addition, because of the sensitivity of the ASEAN member states in not being viewed as infringing on other partners’ domestic affairs, the most common way to mediate, loosely defined, might be general statements issued

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by other ASEAN member states that have no direct interest in domestic or bilateral disputes (Caballero-Anthony, 1998: 62).

In fact, the worries that ASEAN has about being a third party mediator in Southeast Asia are nothing but other regional organizations’ concerns illustrated by Amoo and Zartman (1992: 131-132): for instance, it is the interest and leverage of the member states, not of the organization, which may affect and determine the process and result of mediation; the question of whether to intervene is more sensitive than the question of how to intervene; it is endorsement other than mediation that seems to be favored by the member states; and such principles as uti possidetis juris (frontier inviolability), non-interference, and sovereign equality prevent regional organizations from functioning well in the field of mediation. It seems that, of so many regional organizations, only the Organization for Security and Cooperation in Europe (OSCE) may be able to carry out the mission of intermediary intervention without being worried too much about these concerns.9

This is not, however, to argue that it is less likely for regional organizations, including ASEAN as well, to conduct mediation in an effective way. As a matter of fact, mediation can be more frequent and more effective when conducted within the organization, not by the organization. More specifically, through regular or ad hoc meetings can a platform of communication and dialogue be established, with state representatives acting on their own as mediators (Amoo and Zartman, 1992: 133). Furthermore, regional organizations appear to offer better opportunities of successful mediations than international organizations such as the U.N. and the World Trade Organization (WTO) do, provided that the nature or complexity of the dispute and the mediation environment are not taken into account (Bercovitch and Houston, 1996: 27).

The Future of ASEAN Mediation – Fact or Fad?

Based on the above-mentioned analyses, it is clear that ASEAN with a unique way of decision-making and negotiation is a neutral mediator and can carry on non-binding mediation in regional conflict resolution. ASEAN can conduct both formal and informal mediation – that is, resolve a dispute either via established and accepted rules of the game or via inquisitorial intervention, adversarial intervention,

9 The OSCE is a regional organization with “effective and just governance based on the rule of law, along with respect for the rights of individuals and of persons belonging to minority groups,” and such a unique feature makes it relatively successful in conflict resolution and post-conflict reconciliation. See Hopmann (2003).
and the presentation of impetus.

Of Rubin’s three clusters of variables that influence the outcome of mediation, this paper does not discern the motivations of disputants to settle their conflicts because of their nature of complexity. Only norms that exist within or between disputing parties of ASEAN are touched. However, this paper has somewhat done a preliminary study on the opportunity of ASEAN to get involved in regional mediation and the skills or qualifications (largely from the institutional perspective) of ASEAN to act in intermediary behavior. It is a pity that the cultural, religious, and ideological differences for the creation of shared norms are not within the scope of this paper. They are actually also significant if one wants to know in detail why some mediations succeed and others failed.

Given the fact that ASEAN has had a couple of mechanisms that are of help for the practice of mediation in intraregional disputes and that ASEAN has been designed to act as a neutral intermediary working on mediation in a non-binding, informal way, has ASEAN really been transforming to intervene in regional affairs to a greater extent? Apparently the answer is negative. As mentioned above, collective regional mediation may not prove acceptable in some cases involving sensitive bilateral affairs. Moreover, the flexible “ASEAN Way” is a shield for those who are concerned with national integrity and state sovereignty, thereby further hindering the readiness of ASEAN to exercise various kinds of mediation to maintain regional peace and stability.

Both because of the fear of the loss of national sovereignty and security and because of the reluctance to allow foreign intervention of domestic insurgences or other internal affairs in the name of humanitarianism, the principle of non-intervention has been one of the dogmas for many Southeast Asian countries. Although the latest developments have suggested that the principle of non-intervention is being challenged slowly, and although the current effort made by ASEAN member states and their partners in the ASEAN Regional Forum (ARF) is aimed at settling interstate disputes before they turn into armed conflicts, what seems paradoxical is that such an intervention of a third party to carry out mediation, negotiation, etc. that are deemed indispensable to resolve disputes in a timely and pacific manner may result in the infringement on what ASEAN states care about most – sovereign and territorial integrity. Therefore, it is not appropriate to assert that ASEAN has been progressively transformed to a regional organization that can effectively mediate bilateral disputes in Southeast Asia, notwithstanding ASEAN’s recent institutional design – for example, the creation of the “ASEAN Troika” and the
ASEAN Security Community – and multilateral agreements and declarations look fascinating. ASEAN is undergoing a seeming transformation from non-intervention to active mediation. Or to put it another way, such an adjustment of ASEAN may simply be a fad concurrent with the rising trend of conflict management and resolution in contemporary international relations.

In the near future, the interest of some ASEAN states in mediating intraregional disputes may increase. Nonetheless, it is convincing that the insistence of some other ASEAN states on the “ASEAN Way” – the principle of non-intervention in particular, as well as the lack of enforcement power and certain important resources (for instance, reward resources), will make ASEAN less capable of mediating bilateral or multilateral conflicts among its member states than some would have expected.
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