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Dispute Resolution Mechanisms in ASEAN Multimodal Transport Agreements

Ivan Harris Tanyag

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Ivan Harris Tanyag
University of the Philippines, Diliman[1]

Abstract

The use of arbitration in disputes arising from multimodal transportation of carriage has emerged as an important mechanism for resolving complex legal disputes across various modes of transport. After the European Union's (EU) implementation of comprehensive regulations governing multimodal transport, there has been a significant shift towards arbitration as a preferred method for dispute resolution in other parts of the globe. In Southeast Asia, the 2004 and 2019 ASEAN Protocol on Enhanced Dispute Settlement Mechanism provide the framework for the promotion of amicable settlements of economic disputes and preservation of commercial relationships among member states. With the variation of institutional environment in the region, some countries encounter difficulties aligning their national laws with international conventions, leading to a patchwork of regulatory environments that can complicate cross-border transactions. In addition to the complexity, the ASEAN spirit of cooperation and mutual benefit continues to influence and shape its policy-making procedure. In this paper, I examine the objectives of the alternative dispute resolution (ADR) framework within the context of contracts of carriage in the ASEAN Multimodal Transport Agreements (AMTA). Contracts of carriage are fundamental in multimodal transport as they define the responsibilities, rights, and liabilities of the parties involved, including the carrier and the shipper. The coexistence of multiple legal frameworks and conventions gives rise to legal pluralism, which may lead to conflicts of law that hinder seamless transport operations throughout the region. The paper also explores the implications of a changing rules-based order in ASEAN Law, as member states increasingly prioritize regional legal integration and harmonization. This shift underscores the importance of a cohesive ADR system that can adapt to evolving legal norms and practices. A unified approach to ADR in the region not only enhances legal certainty and reduce transaction costs, but also promotes a stable and predictable business environment, thereby contributing to the goal of enhancing the connectivity within the region.

Keywords: ASEAN, dispute resolution, harmonization, multimodal transport, rules-based order

[1] School of Urban and Regional Planning, University of the Philippines Diliman, E. Jacinto St., Diliman, Quezon City, 1101 Philippines, itanyag@up.edu.ph.

I. Introduction

The Association of Southeast Asian Nations (ASEAN) was established on August 8, 1967, in Bangkok, Thailand, with the signing of the ASEAN Declaration (also known as the Bangkok Declaration) by its founding fathers—Indonesia, Malaysia, Philippines, Singapore, and Thailand. Its main objective was to deter the spread of communism in Southeast Asia during the Cold War by fostering regional cooperation and promoting economic growth among its member states. Since then, its membership has expanded to include Brunei Darussalam (1984), Vietnam (1995), Laos (1997), Myanmar (1997), and Cambodia (1999), which reflects its growing influence and relevance in the region. It has also served as a platform for political dialogue, conflict resolution, and the promotion of peace and stability by hosting regular meetings and summits where member states and its external partners can discuss pressing regional issues. These platforms include the ASEAN Plus One mechanisms, the ASEAN Regional Forum (ARF), and the East Asia Summit (EAS). The organization is known for its consensus-based decision-making process, which emphasizes extensive consultation and mutual agreement among member-states. This principle ensures that decisions are made collaboratively and reflect the collective interests of the group as a whole. However, the "ASEAN Way" has proven its limitations in resolving conflicts and addressing critical issues that require swift and decisive action. The consensus-based approach can lead to prolonged discussions and a lack of timely responses to urgent matters, such as territorial disputes in the South China Sea (Narine 1997; De Castro 2020; Hu 2023) and humanitarian crises in member states like Myanmar (Yamakage 2005; Tobing 2018).

In 2015, the organization launched the ASEAN Community, which is built on three pillars: the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC), and the ASEAN Socio-Cultural Community (ASCC). These pillars aim to promote peace and stability, economic growth, and social progress among member states. The APSC focuses on enhancing regional peace and security through diplomatic collaboration and conflict resolution mechanisms. The AEC aims to create a highly integrated and cohesive economy, by facilitating the seamless movement of goods, services, investment, capital, and skilled labour within ASEAN in order to enhance ASEAN's trade and production networks, as well as to establish a more unified market for its firms and consumers (ASEAN Economic Community Blueprint 2015. Meanwhile, the ASCC seeks to build a community that is people-oriented and socially responsible, with the goal of improving the quality of life for all citizens in the region. All three blueprints for these pillars are designed to work in synergy, ensuring that progress in one area complements advancements in the others (Tan 2022). But as McGillivray, Feeny, and Iamsiraroj (2013: 27) noted, these pillars face significant challenges in achieving uniform progress across all member states due to the prevailing development gap in the region.

ASEAN Connectivity Masterplan

One of the first attempts to improve the connection between ASEAN member states was the adoption of the Master Plan on ASEAN Connectivity (MPAC) in 2010. Some of the MPAC's key elements include the development of physical infrastructure, enhancement of institutional connectivity through policy and regulatory harmonization, and promotion of people-to-people connectivity. The MPAC was initiated in response to the growing recognition that enhanced connectivity is essential for ASEAN's regional integration and competitiveness in the global economy (Das 2013). In 2016, ASEAN leaders adopted the updated MPAC 2025 to build upon the original framework. MPAC 2025 focuses on five strategic areas, namely sustainable infrastructure, digital innovation, seamless logistics, regulatory excellence, and people mobility (Sermcheep 2024). Previous studies have found that the implementation of the MPAC brought some benefits to the region; notably, the improved physical infrastructure like roads, railways, ports, and airports, (Zen et al. 2019) and the enhancement of cultural understanding and cooperation through education exchanges, tourism promotion, and workforce mobility programs (Pagovski 2015; Moska et al. 2024). As of writing, there have been setbacks in meeting the goals identified in the MPAC 2010 and 2025. Among them is the cancellation of the Singapore-Kuala Lumpur High-Speed Line (Liao and Saori 2021), the failure

to change the current trade practices (Jones 2016), and the coronavirus pandemic (Karim, Mursitama, and Arnakim 2022). Isono and Kumagai (2016) pointed out that the prioritized projects under the MPAC are fragmented, which hampers the member states' ability to fully realize the intended benefits of these initiatives. This fragmentation not only increases the operational costs and logistical challenges faced by shipping companies, but also disrupts the smooth movement of goods and services across the region (Isono and Persyn 2010).

It is of relevance to this paper that the MPAC envisions a network of roads, railways, ports, and airports designed to improve transport efficiency and reduce costs associated with moving goods across borders. Its objectives are rooted in the vision of an interconnected ASEAN, spanning its three community pillars (Political-Security Community, Economic Community, and Socio-Cultural Community) across its member states. Within this overarching framework, the ASEAN Transport Strategic Plan (2016-2025) plays a critical role in operationalizing MPAC's objectives by laying the groundwork for key infrastructure projects in the region. It aligns these initiatives with broader connectivity goals to ensure consistency and sustainability.

ASEAN Framework Agreement on Multimodal Transport

Subsequently, during the 11th ASEAN Transport Ministers Meeting (ATMM) in Vientiane, multimodal transport systems were identified as pivotal for integrating these infrastructure projects, leading to the adoption of the implementation framework of the ASEAN Framework Agreement on Multimodal Transport (AFAMT). This agreement establishes procedures for documentation, liability, and dispute resolution in logistics operations. Furthermore, the AFAMT aims to harmonize regulatory frameworks across the region by assigning the liabilities and responsibilities of all registered multimodal transport operators (MTOs) and logistic service providers.

II. Multimodal transport laws and regulations

Multimodal transport is defined as the movement of one or more types of transport modes—such as road, rail, sea, or air—within a single transport chain, often governed by a single contract or logistical arrangement (Kramarz and Przybylska 2021). This is different from intermodal transport, which refers to the use of multiple transport modes but involves separate contracts or arrangements for each segment of the journey (Gronalt, Schultze, and Posset 2019). Both concepts have emerged as a result of the increasing trade in urban areas around the globe. With this in mind, there have been initiatives from the international community to standardize and streamline these practices to enhance efficiency and coordination. The result of these undertakings has been the adoption of several international and regional treaties and agreements aimed at harmonizing and facilitating multimodal and intermodal transport practices.

2.1. International treaties

The legal framework governing multimodal transportation operations has evolved, especially concerning the harmonization of liability rules, and the contractual framework across different modes of transportation. One of the first attempts to establish a unified liability regime was the Bills of Lading, or the Hague Rules (1924), which outlines the responsibilities and liabilities for a common carrier transported by sea. The rules also define the exonerations and limitations of liability for carriers under specific circumstances, such as acts of God. This was later revised with the Hague-Visby Rules in 1968, which introduced amendments to address some of the practical difficulties and ambiguities encountered under the original Hague Rules. These revisions aimed to provide clearer guidelines on issues such as package limitations and carrier obligations (Chandler 1984). Notably, the Hague-Visby Rules introduced the concept of a "unit of account" based on Special Drawing Rights (SDR) as defined by the International Monetary Fund (IMF), replacing the traditional gold value standard of liability in the Hague Rules. This change modernizes and stabilizes

the liability calculation, by taking into consideration fluctuations in currency values. The SDR is calculated based on a basket of major international currencies such as the US Dollar, Japanese Yen, and Euro, providing a more reliable and consistent unit of measure.

Similar agreements were formulated for road and air logistic transport. In 1956, the Convention on the Contract for the International Carriage of Goods by Road (CMR) was established, standardizing liability rules for international road transport. It introduced uniformity in the handling of contracts, responsibilities, and liabilities of carriers, promoting greater efficiency in cross-border road freight operations (Blasche 1975). The CMR mandates that all carriers must issue a consignment note detailing the conditions of carriage, which will serve as evidence of the contract and provides essential information about the goods being transported. This note includes particulars such as the nature, quantity, and packaging of the goods, as well as any special instructions or requirements (Baytan 2011). Additionally, the CMR also imposes strict liability on carriers for total or partial loss of goods, as well as for damage occurring during transport, unless the carrier can prove that such loss or damage arose from circumstances beyond their control, such as force majeure or inherent vice of the goods.

In terms of air freight services, the Warsaw Convention of 1929, formally known as the Convention for the Unification of Certain Rules Relating to International Carriage by Air, introduced the concept of "limited liability" for all registered air carriers, holding them liable up to a certain degree for damages arising from accidents during international flights. It also established principle of jurisdiction for legal actions related to international air carriage, allowing lawsuits to be filed either in the passenger's residence or the destination of the passenger's flight. This ensures that potential litigants are able to seek redress in a manner that is accessible and equitable. It also streamlines legal proceedings and provides clarity on where claims can be pursued. The reluctance of some countries like the United States to ratify the convention due to its outdated limits has led to the adoption of the Montreal Convention in 1999.

The International Air Transport Association (IATA) has also initiated a number of initiatives in securing standardized rules and procedures for international air carriage, such as the IATA Intercarrier Agreement or the Multilateral Interline Traffic Agreement (MITA), which defines the rules and responsibilities of airlines regarding the acceptance, carriage, and delivery of passengers, baggage, and cargo across different carriers (Martin 1996). One caveat of these legal arrangements is that all interested air carriers must be parties to the convention. Table 1 shows a summary of treaties and agreements that have been adopted to regulate freight services and establish uniform liability rules in multimodal transport operations. This table does not include current and future initiatives that are in place as global logistics and supply chain management continue to evolve.

Table 1. List of international treaties and agreements on multimodal transportation operations

Treaty/Agreement	Full Title	Year	Key Provisions	Number of Parties /Signatories
Convention for the Unification of Certain Rules of Law Relating to Bills of Lading	Hague Rules	1924	Regulates the liability of carriers, issues of bills of lading, and documentation in international shipping.	63
Convention for the Unification of Certain Rules Relating to International Carriage by Air	Warsaw Convention	1929	Introduced limited liability for air carriers; principles of jurisdiction for legal actions; compensation limits for passengers.	152

Convention on the Contract for the International Carriage of Goods by Road	CMR Convention	1956	Sets the rules for liability, documentation, and claims in international road transport of goods.	67
Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air	Hague Protocol	1955	Amended the Warsaw Convention, increased liability limits, introduced new rules on documentation and claims.	137
Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading	Hague-Visby Rules	1968	Amended the original Hague Rules, increased carrier liability limits, addressed issues of cargo damage and loss.	18
United Nations Convention on the Carriage of Goods by Sea (COGSA)	Hamburg Rules	1978	Modernized and extended the Hague-Visby Rules, introduced more favorable liability terms for cargo and shipping owners.	63
Convention for the Unification of Certain Rules for International Carriage by Air	Montreal Convention	1999	Replaced the Warsaw Convention, introduced unlimited liability for passenger injury, standardized compensation for delays, and modernized documentation rules.	139
United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea	Rotterdam Rules	2008	Comprehensive regulation covering sea, land, and air transport under a single framework, emphasizing electronic documentation and carrier liability.	24

2.1.1. Criticisms

Since the adoption of the first treaty on multimodal transport by the international community, there have been criticisms on the theoretical underpinnings and practical implementations of such agreements. Critics argued that these treaties do not meet the current needs of the logistics sector, given the rapidly evolving urban environments around the globe. Part of this development is the use of advanced shipping technologies aimed to effectively reduce its environmental impact and improve the efficiency of cargo handling. Moreover, these frameworks struggled to keep up with emerging trends in marine transportation such as real-time tracking, data security, and the integration of autonomous vehicles (AV) and drones in the supply chain (Mahafzah and Mohammad 2019). Similar to other international agreements made in the past, countries in the Global South have been disproportionately affected by these limitations, as the existing treaties lack provisions responding to the specific infrastructure and economic challenges that developing countries face. This creates an imbalance in the global trade system, where developed countries reap the benefits of advanced logistics technologies while developing countries continue to grapple with outdated

and inadequate marine transport infrastructure. To express their dissent over the process, some countries have opted out of these international arrangements, further complicating the international trade and logistics operations (Ehlermann and Ehring 2005).

2.1.2. Failed attempts

Continuing the discussion of the international law regime, a number of international organizations such as the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Commission on International Trade Law (UNCITRAL) attempted to address some of the criticisms regarding its preferential treatment of developed nations and its impact on developing countries. Both organizations have attempted to establish guidelines to better modernize international trade laws by improving trade facilitation and customs support. These include the United Nations Convention on International Multimodal Transport of Goods (MTC), which harmonizes international rules governing multimodal transport, and the UNCITRAL Model Law on International Commercial Arbitration (1985, rev. 2006). The MTC establishes a uniform liability regime for MTO, holding them accountable for loss, damage, or delay of goods throughout the entire transport chain unless they can prove otherwise. However, their liability may be reduced proportionately based on the degree of fault attributable to the shipper (Article 18). The amount of limitation is calculated based on the SDR of the contracting state using a method of valuation (Article 31) similar to the Hague-Visby Rules. Nevertheless, this rule does not apply to MTOs who acted with intention to cause damage to the carriages in question. MTOs may also negotiate the terms and conditions of its contractual arrangement prior to its shipment of goods as it deems fit (Article 5).

A separate round of discussions was held in 1992 to address some of the shortcomings and issues raised in the ICC Rules 1975 and MTC 1980. The UNCTAD/ICC Rules for Multimodal Transport Documents uses the principle of presumed fault, whereby the MTO is presumed to be at fault for any loss, damage, or delay to the goods, unless it can prove that it took all the necessary measures to avoid such incident (Singsuwan 2011). Its liability however was limited to 2 SDR per kilogram of gross weight of the goods lost or damaged, unless a higher limit was declared by the consignor and agreed upon by the MTO. Due to the unwillingness of most convention parties to adopt these rules, the UNCTAD and the UNCITRAL has decided to scale back its efforts to push for a uniform liability regime on multimodal transport.

Previous literature on the matter have argued that there has been an issue of implementation and compliance among contracting parties, as it would require substantial evidence to prove that there has been an intention from the MTO to willfully damage or destroy the goods (Damar 2011). Moreover, some transportation clusters such as air carriers have already established their own set of protocols governing their operations. The introduction of a new multimodal transport framework poses potential conflict with existing agreements, which may lead to legal ambiguities and increased litigation in courts (Briant 1996). Both the UNCTAD and UNCITRAL received significant demands from developing countries due to the potential economic impact and the imbalance of power during the negotiation of these agreements. Similar to the World Trade Organization (WTO), Global South countries often find themselves with weaker bargaining positions compared to their Western counterparts, and there was an apprehension that the MTC might favor large multinational MTOs especially during dispute settlement proceedings (Horlick and Fennell 2011). Long and Zhou (2016) also emphasized the importance of cargo insurance in multimodal transport, as not all MTOs can fully offer comprehensive coverage for cargo loss or damage, as required by international law. As the insurance sector in many developing countries is not as mature or well-developed as in industrialized nations, shippers may find it hard to avail themselves of suitable insurance products for their needs.

2.2. Regional treaties

Due to the lack of a universally accepted uniform liability regime, a number of regional organizations have developed their own set of rules governing multimodal transport operations tailored to their economic needs. One of the earliest regional attempts to harmonize multimodal transport of goods was undertaken by the European Union (EU), when its judicial body, the European Court of Justice (ECJ) decided in *EC Commission v France* that the general rules of the Treaty of Rome were still valid to any modes of transportation (Greaves 1992). By 1992, the European Council (EC) adopted a directive aimed to simplify procedures for combined transport to reduce its reliance on road transport and promote the utilization of other modes such as rail, inland waterway, and sea transport. It also implemented measures to liberalize access to combined transport services by exempting certain types of intermodal transport from road cabotage restrictions.

As of writing, the EU has made some changes in the directive by allowing some member states (i.e., Denmark, Finland, Hungary, and Sweden) to derogate from its provisions to better control cabotage quotas for road legs that do not cross borders. This move was driven by the need to protect domestic transport markets while encouraging the shift towards more sustainable, multimodal solutions. The European Commission continues to monitor these derogations, requiring member states to review their measures at least every five years to ensure their alignment with broader EU transport objectives (Hojnik 2021; UIC 2022). In 2023, the Greening Freight Package was adopted by the commission to enhance the sustainability of freight transport across Europe. The package aims to reduce greenhouse gas emissions in line with the EU's Green Deal targets, while focusing on incentivizing modal shifts from road to rail and inland waterways. The commission is also looking to revise its Combined Transport Directive (CTD) by integrating digital shipping technologies such as blockchain and artificial intelligence (AI) in the legal regime.

Apart from the EU, other regional blocs such as the Andean Community, the Latin American Integration Association (ALADI), and the Southern Common Market (MERCOSUR) have introduced their own respective frameworks aimed at facilitating trade and economic integration through multimodal transport agreements. A common factor behind the support on multimodal transport operations in Latin and South American countries is its vast geographic diversity and its uneven distribution of infrastructure, which necessitate a more integrated approach to logistics (Barbero 2010). Its governments also view MTAs as a strategic tool to further enhance regional competitiveness and increase employment in the logistics sector. This is particularly critical for countries like Colombia and Peru, which heavily rely on exports of commodities such as coffee and palm oil (Cubillos, Soltész, and Vasa 2021). The need to efficiently connect production sites to international markets has driven these nations to actively participate in regional frameworks aimed at harmonizing standards and streamlining customs procedures to support multimodal transport initiatives. In contrast, other regions such as the Middle East have yet to introduce comprehensive multimodal transport frameworks, despite their strategic location as a global crossroads for trade (Hoeks 2009, 8).

III. ASEAN Framework Agreement on Multimodal Transport

Leaders in the ASEAN region have followed suit in enhancing its multimodal transportation operations by adopting the ASEAN Framework Agreement on Multimodal Transport (AFAMT) in 2005. Under the AFAMT, MTOs are required to register under their respective national authorities to ensure its compliance with standardized operational and safety protocols. Member countries are required to notify the ASEAN Secretariat of their list of registered MTOs to ensure transparency and accountability within the system (Article 32.3).

Similar to the MTC 1980, the AFAMT offers flexibility in issuing multimodal transport documents (MTDs), which serve as proof of the contract of carriage and outline the MTO's liability for the goods. These contracts must include several key details: the names and addresses of the consignor and consignee, the party designated for delivery, the general nature of the goods, the packing method, the number of packages, and their distinctive marks and numbers (Article 5.1). MTDs can be issued in either negotiable or non-negotiable forms, depending on the consignor's preference. The negotiable MTDs allow the transfer of ownership of the goods through endorsement and delivery, making it particularly useful in regional trade where goods may change hands multiple times before reaching their final destination (Article 4.1). Conversely, non-negotiable MTDs transfer ownership through mere delivery. To ensure consistency and reliability, MTOs must keep detailed records of all issued MTDs and ensure they contain all required information (Article 6.1). This practice helps maintain the uniformity of multimodal transport documentation in the region.

The AFAMT also specifies the liability of MTOs concerning the goods they handle. MTOs are responsible for any loss or damage to the goods that occurs from the time they take possession of the goods until delivery, as well as for any delays in delivery. The extent of this liability is outlined in the MTD and subject to the limitations set forth in the AFAMT. For example, the liability of the MTO is generally limited to 666.67 SDR per package or unit, or 2.00 SDR per kilogram of gross weight for goods that are lost or damaged (Article 14). If the contract does not include sea carriage, the liability limit is reduced to 8.33 SDR per kilogram or 1.25 million SDR per claim, whichever is higher (Article 16). These limitations are designed to balance the MTO's responsibilities with the practical realities of international shipping.

3.1. Legal harmonization

According to the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), five ASEAN countries have already enacted national laws governing multimodal transport operations (see Table 2). Other member states are at various stages of legislative development and consultation. For example, in the Philippines, MTOs are currently regulated by several executive agencies, including the Department of Trade and Industry (DTI) and the Civil Aeronautics Board (CAB). In 2022, the Department of Transportation (DoTr) drafted an executive order to establish an Office for Multimodal Transport and Logistics which would oversee and coordinate all aspects of multimodal transport and logistics within the country (DoTr, 2022). In contrast, Myanmar has yet to implement the regulations for its Multimodal Transport Law, which was only enacted in 2021 (UNESCAP, n.d.). Meanwhile, Brunei and Cambodia are in the early stages of developing their legislative frameworks for multimodal transport operations.

Table 2. ASEAN member states which adopted national laws or regulations on multimodal transport

Country	National Law	Implementation Status	Scope
Indonesia	Government Regulation No. 8 of 2011 on Multimodal Transport	Fully implemented	International and national carriage
Lao People's Democratic Republic	Law on Multimodal Transport, No. 28/NA 2012	Fully implemented	International carriage
Myanmar	The Pyidaungsu Hluttaw Law No. 3 of 2014	Partially implemented	International carriage
Singapore	Multimodal Transport Act, No. 2 of 2021	Fully implemented	International carriage

Thailand	The Multimodal Transport Act, B.E. 2548 (2005)	Fully implemented	International carriage
Viet Nam	Decree on Multimodal Transport No. 87/2009/ND-CP	Fully implemented	International and national carriage

Source: UNESCAP (n.d.).

3.2. Conditions and limitations

Under the AFAMT, there are specific conditions under which a MTO may be exempt from liability in entirety. These exemptions typically apply in situations beyond the MTO's control, such as acts of nature (*force majeure*), inherent defects in the goods, or actions by the consignor or consignee that contribute to the loss or damage (Article 12). However, it is important to note that the MTO must demonstrate due diligence if goods are lost, damaged, or delayed during transport. Due diligence requires the MTO to show that they took all reasonable precautions to prevent such issues. Additionally, under existing international conventions and national laws, the MTO's liability can be further defined by specific terms and conditions outlined in the contract of carriage or freight agreement, which may include limitations on liability or indemnification clauses. These contracts specify the extent of the MTO's responsibilities and the circumstances under which they may be liable. For both parties—the MTO and the shipper—it is crucial to clearly understand and agree upon these terms to prevent disputes in the unlikely event of loss or damage.

The AFAMT is closely linked to several other regional transport facilitation frameworks, such as the ASEAN Framework Agreement on the Facilitation of Goods in Transit (AFAFGIT) and the ASEAN Framework Agreement on the Facilitation of Inter-State Transport (AFAFIST). These agreements are designed to enhance the efficiency, safety, and security of goods transport across ASEAN Member States (AMS). The AFAFGIT provides essential guidelines for the smooth transit of goods across national borders within ASEAN. It aims to reduce transit times, lower transportation costs, and simplify customs procedures. A key element of the AFAFGIT is the ASEAN Customs Declaration Document, which standardizes the information required for goods in transit and promotes the use of electronic data interchange systems to facilitate the exchange of transit data between customs authorities. On the other hand, the AFAFIST focuses on issues such as mutual recognition of transport licenses, harmonization of safety standards, and standardization of vehicle specifications (Umezaki 2019). It addresses the need for consistency in these critical areas to ensure smooth inter-state transport operations. The ratification of these frameworks has occurred at different times however, due to varying administrative and legislative processes in each AMS. Together, these agreements work in tandem with the AFAMT to create a more integrated and efficient regional transport network.

3.3. Alternative dispute resolution

One notable feature of the AFAMT is the establishment of a robust alternative dispute resolution (ADR) mechanism. This mechanism provides a fair and impartial process for resolving conflicts that may arise between member states or stakeholders, such as consignors and shippers, within the framework. International multimodal transport agreements, including the MTC 1980 and the Warsaw Convention, have laid foundational principles for resolving disputes related to multimodal transport operations. Some of the more common methods for dispute resolution under these agreements include arbitration, mediation, and negotiation. Arbitration in particular is a widely used method in multimodal transport disputes, offering a neutral forum where parties can present their cases before an impartial tribunal. This tribunal typically comprises of arbitrators selected either through mutual agreement between the parties or appointed by an arbitral institution (Franck, 2005). The arbitration process begins with the parties agreeing on a set of rules or procedures, often based on established frameworks such as the UNCITRAL Arbitration Rules (2021) or

industry-specific bodies like the International Air Transport Association (IATA) or the International Maritime Organization (IMO) (Stipanowich, 2010). In practice, arbitration in multimodal transport disputes frequently addresses issues such as delays in delivery, damage to goods, and the liability of multimodal carriers. The ADR mechanism under the AFAMT aims to ensure that disputes are managed efficiently and equitably by providing a structured and neutral means of resolving conflicts throughout the region.

In cases where arbitration rules overlap, the selection of applicable laws is guided by the principles of conflict of laws. This approach ensures that the tribunal applies the most relevant legal principles to the dispute, considering factors such as the place of arbitration, the governing law of the contract, and relevant international conventions or treaties. For example, in international multimodal transport disputes, the choice of law often depends on whether the transport involves sea, air, road, rail, or a combination of these modes, each governed by specific international conventions or national laws (Kindred and Brooks, 1997; Hoeks, 2010). The enforcement of arbitral awards in such disputes is supported by international treaties like the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This convention requires that awards issued in one signatory state must be recognized and enforced in other signatory states, thereby promoting the finality and effectiveness of arbitration decisions globally (Sanders, 1959).

Chapter VIII of the AFAMT outlines specific provisions for resolving disputes in regional multimodal transport scenarios. It sets forth criteria for determining jurisdiction for plaintiffs seeking legal action. Plaintiffs have the option to file claims in courts that have jurisdiction and are located in areas pertinent to the dispute. These areas include the principal place of business or habitual residence of the defendant, the location where the multimodal transport contract was signed (if the defendant has a business presence there), the place where goods were taken in charge for transport, the place of delivery, or any other location specified in the transport contract (Article 25). Parties involved in a dispute can also agree in writing to refer the matter to arbitration. They may choose from designated locations such as the defendant's principal place of business, the place where the contract was signed, the location where the MTO is responsible for handling or delivering the goods, or any other mutually agreed-upon place specified in the arbitration clause or agreement. Arbitration proceedings must strictly adhere to the provisions of the AFAMT to ensure consistent handling of disputes across member states, regardless of their legal structure (Article 26).

3.4. Emerging issues and challenges

The issue with this setup lies in the agreement's provision allowing plaintiffs to choose the jurisdiction for their legal actions. This flexibility can lead to forum shopping, where plaintiffs strategically select a jurisdiction they believe will be more favorable to their case, based on factors such as legal precedents, judicial expertise, or procedural advantages (Norwood, 1995). Such strategic selection can create legal disputes over the most appropriate venue for resolving conflicts. Parties might exploit differences in legal standards and procedural rules across jurisdictions to achieve outcomes that deviate from the original intent of the multimodal transport contract. This undermines the predictability and uniformity that the AFAMT aims to provide, which is crucial for consistent resolution of disputes related to multimodal transport operations.

Another issue concerning the use of ADR mechanisms in regional disputes over multimodal transport operations is the complex and oftentimes fragmented legal framework governing dispute settlement and arbitration rules (Petersmann 2006; Storskrubb 2016). While each member state has its own national legislation addressing dispute resolution (see Table 3), there is a lack of harmonization across the region. For example, some AMS have arbitral frameworks that are heavily influenced by common law principles, which emphasize a more adversarial approach, procedural rigor, and extensive judicial oversight (Cheong, Phuoc, and Azam 2023). This is evident in countries like Singapore and Malaysia, where arbitration laws are modeled after the UNCITRAL Model Law on International Commercial Arbitration and the courts actively supervise and support the arbitral process. In contrast, countries with civil law traditions, such as

Indonesia and Thailand may have arbitration frameworks that reflect a more inquisitorial approach, with different procedural norms and expectations. In these countries, the judiciary's role in arbitration matters might be more limited, and procedural rules may prioritize written submissions over oral hearings. This lack of uniformity in arbitration practices complicates the resolution of disputes in multimodal transport operations across the region, as stakeholders may face varying procedural requirements and judicial attitudes depending on the countries involved.

Table 3. Primary arbitration and dispute resolution laws in ASEAN member states

Country	Law on Dispute Resolution
Brunei Darussalam	Arbitration Order 2009
Cambodia	Law on Commercial Arbitration 2006
Indonesia	Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution
Lao People's Democratic Republic	Law on Resolution of Economic Disputes 2005
Malaysia	Arbitration Act 2005
Myanmar	Arbitration Law 2016
Philippines	Republic Act No. 9285 (Alternative Dispute Resolution Act of 2004)
Singapore	International Arbitration Act (IAA) 1994
Thailand	Arbitration Act B.E. 2545 (2002)
Viet Nam	Law on Commercial Arbitration 2010

The legal frameworks governing arbitration among AMS are notably diverse, leading to significant differences not only in procedural aspects but also in the fundamental principles of ADR. These differences cover areas such as the confidentiality of arbitral proceedings, the choice of substantive law applicable to arbitration disputes, the enforceability of arbitration agreements, the procedures for addressing breaches , the jurisdiction and powers of arbitral tribunals, the appointment and challenge mechanisms for arbitrators, and the extent of arbitrator liability, among others (Franck, 2020) (Table 4). These factors underscore the heterogenous legal approaches to arbitration within ASEAN, reflecting the individual preferences of each state in dispute resolution. Key to these differences are the varying degrees of legislative maturity (Sim 2014), alignment with international arbitration standards (Wu 2009), and the maturity of arbitration practices within each AMS.

Table 4. Detailed examination of arbitration laws and practices across ASEAN member states

Country	Arbitral Institution	Confidentiality	Use of Electronic Arbitration	Principle of Separability	Liability
Brunei Darussalam	Brunei Darussalam Arbitration Center	Yes	Yes	Yes	Yes
Cambodia	National Commercial Arbitration Centre	Yes	Yes	Yes, Art. 24 of the Arbitration Law	Yes
Indonesia	Indonesian National Board of Arbitration	Yes	Yes	Yes	Yes

Lao People's Democratic Republic	Lao National Chamber of Commerce and Industry	Yes	Yes	No	Yes
Malaysia	Malaysian Institute of Arbitrators	Yes	Yes	Yes, Sec. 18(2) of the Arbitration Act	Yes
Myanmar	Myanmar Arbitration Centre	Yes	Yes, if the information is accessible	Yes, Sec. 18 of the Arbitration Law	Yes
Philippines	Philippine Dispute Resolution Center, Inc.	Yes	Yes	Yes, Koppel, Inc. v. Makati Rotary Club Foundation, Inc., (2013) G.R. No. 198075	Yes
Singapore	Singapore International Arbitration Centre	Yes	Yes, if the information is accessible	Yes, Art. 16 of the UNCITRAL Model Law	Yes
Thailand	Thai Arbitration Institute	Yes	Yes	Yes, Sec. 24 of the Arbitration Act	Yes
Viet Nam	Vietnam International Arbitration Centre	Yes	Yes	Yes	Yes

IV. Case examples

In this section, we examine two cases that illustrate how dispute resolution mechanisms have been tested and enforced within the ASEAN region. These cases provide insight into the practical application of various arbitration frameworks and highlight the strengths and limitations of dispute resolution processes in a regional context. To better explore these dynamics thoroughly, we employ the case study method, which offers a detailed examination of complex issues within their real-life context. One significant advantage of using the case study method is its capacity to highlight the nuanced interactions between legal principles and their practical application (VanWynsberghe and Khan 2007). Case studies enable us to identify patterns and trends that may not be apparent through other qualitative research methods (Hammersley and Foster 2000), offering valuable insights into the effectiveness of various arbitration mechanisms. It also enhances our ability to draw practical lessons from past experiences by analyzing specific instances of dispute resolution (Škudienė 2012). In this way, we can identify best practices, potential pitfalls, and areas for improvement within the region's arbitration frameworks (Ellram 1996; Turner and Danks 2014).

4.1. Equatorial Marine Fuel Management Services v. Bunga Melati 5 (Singapore)

The determination of the applicable law in multimodal transport, as outlined in the ASEAN Framework Agreement on Multimodal Transport, was examined in the case of *Equatorial Marine Fuel Management Services Pte Ltd v. Owner of the Vessel(s) "Bunga Melati 5"* [2016] SGCA 20. The Singapore Court of Appeal (SCA) was tasked with deciding whether Singapore law or Malaysian law governed the contract for the supply of bunkers to the vessel "Bunga Melati 5." This dispute arose when the Equatorial Marine Fuel Management Services Pte Ltd (EMF), a Singaporean company, supplied bunkers to the vessel owned by MISC Berhad, a publicly listed company in Malaysia, and payment was not made. The issue centered on the interpretation of the contract and the determination of which jurisdiction's law applied. The decision of the SCA hinged on analyzing the contractual terms and the relevant conflict of laws principles to ascertain the applicable legal regime, illustrating the complexities involved in cross-border transactions, especially when multiple legal jurisdictions are involved in multimodal transport operations.

The Court deliberated extensively on whether the MISC had knowingly allowed its registered vendor, Market Asia Link Sdn Bhd (MAL), to misrepresent itself as MISC's agent in dealings with bunker suppliers, specifically EMF. EMF argued that MISC was aware of MAL's registration as a bunker vendor and the confusion it caused among suppliers regarding agency, despite MISC's denials. The Court examined several pieces of evidence, including the circumstances surrounding MAL's appointment as a registered vendor. EMF asserted that MAL's financial standing and its relationship with MISC were questionable, raising concerns about MISC's intentions. However, the SCA found no evidence of collusion or any deliberate attempt by MISC to mislead suppliers through MAL's appointment. It also upheld an earlier ruling that MAL's designation as a registered bunker vendor did not, in itself, create a relationship between MAL and MISC. Consequently, MISC could not be held liable for MAL's actions in the absence of explicit agency.

Second, EMF pointed to communications in which MAL initially described itself as a broker in bunker confirmations sent to MISC. EMF argued that this demonstrated MISC's awareness of MAL's misrepresentation to suppliers. However, the Court accepted MISC's explanation that these terms were used erroneously and later corrected, with MAL being properly described as a trader in subsequent communications. This correction undermined EMF's claim that MISC knowingly permitted MAL to misrepresent its authority to third parties. EMF also cited instances where bunker suppliers invoiced MISC directly, suggesting that suppliers believed MAL was acting as MISC's agent. The Court, however, viewed these incidents as isolated administrative errors rather than evidence of an established agency relationship.

Finally, EMF argued that MISC's responses—or lack thereof—to payment demands from suppliers indicated MISC's awareness of MAL's alleged agency. Nonetheless, the Court found that EMF failed to provide sufficient evidence to prove that MISC knowingly allowed MAL to represent itself as MISC's agent in its dealings with bunker suppliers. It emphasized that procedural mistakes in business transactions do not inherently create an agency relationship under multimodal transport law. Moreover, the concept of apparent authority between MISC and EMF was unclear, complicating EMF's attempt to demonstrate that MISC explicitly authorized MAL to act on its behalf in the multimodal transport transactions. As a result, the Court ruled that EMF had not established a basis for holding MISC liable for MAL's actions as an agent.

4.2. Mabuhay Holdings Corporation v. Sembcorp Logistics Limited (The Philippines)

It is also important to recognize the interplay between national laws and regional or international instruments governing multimodal transport, which can further complicate the ADR process. For instance, the Hague Rules, which seek to establish uniform legal standards for the international carriage of goods by sea, have not been universally adopted across all jurisdictions. This lack of uniformity can create significant legal uncertainties, especially in disputes involving cross-border multimodal transport operations. In such

cases, parties may face challenges in determining the applicable law, identifying the competent jurisdiction, and selecting the appropriate procedural rules for arbitration, depending on the nature of the dispute.

A fitting example is the case of *Mabuhay Holdings Corporation v. Sembcorp Logistics Limited* (G.R. No. L-212734, December 5, 2018). In this case, the petitioner, Mabuhay Holdings Corporation, sought arbitration before the International Court of Arbitration of the ICC after both the petitioner and Infrastructure Development & Holdings, Inc. (IDHI) failed to fulfill their financial obligations under a joint venture agreement. The agreement outlined the relationship between the parties and included provisions ensuring Sembcorp Industries, a Singaporean state-owned energy and urban solutions company, a guaranteed return on its equity investment in Water Jet Shipping Corporation (WJSC) and Water Jet Netherlands Antilles, N.V. (WJNA). Despite Sembcorp fulfilling its investment obligations, Mabuhay and IDHI contested their joint liability for the guaranteed return, prompting Sembcorp to initiate arbitration proceedings as stipulated under Article 19 of the agreement. The Court ultimately ruled in favor of Sembcorp, compelling Mabuhay to pay half of the guaranteed return, along with interest and arbitration costs. However, the Regional Trial Court (RTC) of Makati City initially refused to enforce the final arbitral award, citing concerns over the arbitration's jurisdiction and the expertise of the arbitrator. This decision was subsequently upheld by the Court of Appeals (CA) when Mabuhay filed for reconsideration.

The Supreme Court of the Philippines, however, ruled in favor of enforcing the arbitral award, overturning the RTC's decision. The Court emphasized that its role is not to reassess the merits of the arbitral award, but rather to conduct a limited review based on specific grounds for refusing enforcement. These grounds, as narrowly defined under the New York Convention, include instances where the enforcement of the award would violate public policy or where there are issues related to the arbitral tribunal's authority. While the Supreme Court has not yet provided a comprehensive definition of public policy within the context of arbitration, it relied on the principles established in *Gabriel v. Monte De Piedad*, G.R. No. L-47806 (1941), to clarify the concept. In doing so, the Court reaffirmed that public policy grounds for refusing enforcement must be interpreted restrictively to avoid undermining the finality and binding effect of arbitral awards:

> "…At any rate, courts should not rashly extend the rule which holds that a contract is void as against public policy. The term "public policy" is vague and uncertain in meaning, floating and changeable in connotation. It may be said, however, that, in general, a contract which is neither prohibited by law nor condemned by judicial decision, nor contrary to public morals, contravenes no public policy. In the absence of express legislation or constitutional prohibition, a court, in order to declare a contract void as against public policy, must find that the contract as to the consideration or thing to be done, has a tendency to injure the public, is against the public good, or contravenes some established interests of society, or is inconsistent with sound policy and good morals, or tends clearly to undermine the security of individual rights, whether of personal liability or of private property ."

Although the case referenced does not directly pertain to the multimodal transport of goods, the ruling underscores the court's commitment to upholding international arbitration agreements by enforcing arbitral awards. It is important to clarify that while the New York Convention facilitates the recognition and enforcement of foreign arbitral awards, it does not impose substantive limits on the monetary value of such awards. Instead, the Convention mandates that all signatory states recognize arbitral awards as binding and enforce them, subject to limited exceptions. Jurisdictional variations may arise concerning procedural matters, including the assessment of the award's enforceability, but these variations do not inherently restrict the nature or value of the disputes arbitrated under the Convention (Choi 1995). Consequently, the enforceability of arbitral awards may be influenced by the legal frameworks of the jurisdiction where enforcement is sought, particularly with respect to procedural safeguards and public policy considerations.

V. Discussion and conclusion

The cases discussed above illustrate how dispute resolution of multimodal transport operations issues in Southeast Asia are different from the approaches taken by regional counterparts, particularly in EU. In contrast to ASEAN, the EU's regulatory environment for multimodal transport is characterized by a high degree of integration and standardization, exemplified by its Intermodal Transport Guidelines and the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR), both of which are strictly enforced across its member states. One reason behind this difference in policy implementation is the presence or the lack of institutional regulatory frameworks that would effectively enforce these rules for good. In the case of ASEAN, the absence of a permanent and centralized adjudicatory body such as the European Court of Justice (ECJ) in the EU often results in a more fragmented and less predictable dispute resolution process. Although there have been plans to establish a regional institution similar to the ECJ in ASEAN, these initiatives have yet to be fully realized or implemented.

Differences in legal norms and procedures in member states further complicate the implementation of the AFAMT. As of writing, the ATMM, through the ASEAN Transit Transport Coordinating Board (ATTCB) and the ASEAN Transport Facilitation Working Group, has not yet achieved the objectives outlined in the AFAMT's implementation framework. Among the key elements listed in its Regional Action Plan are the harmonization of customs procedures, standardization of transport documents, and the establishment of seamless cross-border transport operations. Member states such as Brunei and Malaysia are encouraged to formulate and enact their respective national multimodal transport laws to align with the AFAMT's regional goals (ASEAN 2019). However, the lack of comprehensive and uniform regulations across ASEAN member states impedes the progress of these initiatives. Moreover, it is important to highlight the unresolved matters at the national level, which include the national registration requirements for MTOs; procedural and administrative matters related to the registration, renewal, or cancellation of certificates; and the term of the registration and penalties for infractions related to multimodal operations (Timchenko 2022).

This paper explored how some countries in the ASEAN region used its dispute resolution mechanism in resolving cases pertaining to multimodal transport operations. Traditionally, resolving disputes between parties of international carriage has been done physically in the court. This has been changed however after some countries have begun deploying online proceedings to fast-track the complaint resolution (Cortés 2017). Despite these innovations in the current regional legal regime, most countries in the region are still in the process of aligning their ADR mechanisms to the AFAMT and related laws. This slow transition may encourage foreign investors to pursue forum shopping or seek recourse through bilateral or international agreements to safeguard their interests. This loophole not only burdens the judicial systems of countries with cases that could otherwise be resolved through more harmonized regional mechanisms but also erodes the integrity of the arbitration process. Moreover, in jurisdictions with weak institutions, even well-crafted laws may fail to deliver the intended outcomes. This inadequacy can lead to inconsistent application of legal principles and uncertainty in dispute resolution.

Building a truly responsive ASEAN economic community requires a two-fold task of strengthening arbitral institutions in the region and training for those involved in dispute resolution. With the presence of a rapidly growing and dynamic regional economy, the effectiveness and credibility of arbitral institutions have become vital. The pro-arbitration and pro-enforcement policy of the Philippines, as shown in *Mabuhay Holding v. Sembcorp Logistics,* serves as a potential model for alternative dispute resolution in the region. This case highlights the importance of arbitral institutions in fostering a robust legal framework for resolving disputes efficiently and impartially. Strengthening these institutions involves not only enhancing their institutional capacities but also ensuring that they operate with a high level of transparency and adhere to internationally recognized standards. Similarly, comprehensive specialized training programs are

essential to build a cadre of skilled professionals who can effectively manage and resolve disputes. Such training should encompass not only the technical aspects of arbitration but also the broader legal, cultural, and economic contexts that influence dispute resolution in the region. Moreover, to quote Ng et al. (2020), "for arbitration to flourish, it is of paramount importance for national courts to create laws which are fair and just, even if it means that party autonomy has to temporarily take a backseat."

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