

Integration through Law: The ASEAN Way in a Comparative Context

*A Research Project on the Role of Law and the Rule of Law
in Asian Legal Integration*

Mission Statement

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This Mission Statement sets out the overall orientation of a wide ranging and major Research Project which will be one of the activities of the newly created Centre for International Law (CIL) at NUS.

I. Premise, Principal Objectives and Method

The Preamble to the ASEAN Charter concludes with a single decision: “We, the Peoples of the Member States of the Association of South East Asian Nations ... [h]ereby decide to establish, through this Charter, the legal and institutional framework for ASEAN.”

For the first time in its history of over four decades, the Legal and the Institutional were brought to the forefront of ASEAN discourse.

At the center of the research project will be the legal and institutional dimensions of ASEAN. To our knowledge, there has not to date been sustained research which has attempted to deal in a comprehensive manner with all principal *legal* issues involved in the complex reality which the Association represents.

At one level the primary and self-evident justification for this Research Project is the simple fact that the ASEAN Charter itself placed the legal and institutional at its core – as, arguably, its principal ‘added value’ to ASEAN’s prior incarnations.

However, there are deeper additional reasons. Comparative experience suggests that the success of achieving some of the more ambitious objectives outlined in Article 1 of the Charter will depend in no small measure on the effectiveness of legal principles, legal rules and legal institutions. This is particularly true as regards the success of establishing “...an ASEAN Community comprising the ASEAN Security Community, the ASEAN Economic Community and the ASEAN Socio-Cultural Community as provided for in the Bali Declaration of ASEAN Concord II.”¹ Article 2(2)(n) stipulates the commitment of ASEAN Member States to act in accordance with the principle of “... adherence to multilateral trade rules and ASEAN’s rules-based regimes for effective implementation of economic commitments and progressive reduction towards elimination of all barriers to regional economic integration...” Henceforth, rules of law and the Rule of Law will become a major feature in the future of ASEAN.

The proposed Integration Through Law (ITL) project will, thus, explore conceptually and pragmatically both the potential and the limitations of law in the ongoing ASEAN experience.

Areas of legal exploration will include but not be limited to:

- The substantive legal principles and substantive rules of the various ASEAN communities
- The procedural legal principles and rules governing institutional structures and decision making processes;
- Implementation, Enforcement and Dispute Settlement.

The inquiry will attempt to locate the appropriate province of the law in this experience *i.e.* not only the role of law but also the areas which are and should remain outside the reach of legal institutionalization with due sensitivity to ASEAN and Asian particularism and political and cultural identities. The project will not be normative – it will not advocate. It will offer reflection, discuss the pros and cons, and in this way enrich public awareness, deepen understanding of different options and in that respect contribute indirectly to policy making.

This decisive development of ASEAN has been accompanied by a growing Asian interest in various legal and institutional forms of transnational economic and political cooperation notably the various voices discussing and showing an interest in an East Asia Integration project. The number of Free Trade

¹ ASEAN Charter, Preamble.

Agreements (FTAs) and Regional Trade Agreements (RTAs) have increased from 6 in 1991 to 166 this year with a further 62 in various stages of negotiations.

The project will attempt to assess these developments with a view towards evaluating their impact on ASEAN's objectives, but more importantly by constituting an important conceptual and policy toolkit for more broad Asian thinking and planning of different legal and institutional models of economic and political regional integration.

Methodologically, the project will be comparative in its orientation. Comparative Law is one of the few real-life laboratories which we have to assess, understand the operation of different legal and institutional models designed to tackle similar objectives and problems. One should not need to put one's own hand in the fire to learn that it burns.

Comparative Law is in part about Divergence: It is a potent tool and means to understand one's own uniqueness. One understands better the uniqueness of Apples by comparing them to Oranges. You understand better the specialness of a Toyota by comparing it to a Ford.

Comparative Law is also about Convergence: It is a potent tool and means to understand how what are seemingly different phenomena are part of a broader trend, an insight which may enhance both self understanding and policy potentialities.

II. Scope, Intended Audiences

1. Academic, Intellectual and Conceptual

The proposed Project will be a marquee activity of the CIL@NUS. ITL is designed to make a signal contribution to scholarship.

There is a rich theory of federalism which covers many countries around the world. There is an equally rich theory of European integration, which has been associated with the advent Union. There is also considerable learning on Free Trade Areas and the like.

To date, the study of the legal aspects of ASEAN specifically and other forms of Asian legal integration has been derivative of, and dependent on, theoretical and conceptual insight which were developed in different contexts. One principal objective of ITL will be to put in place the building blocks for an authentic body of ASEAN and Asian integration theory developed in and with a sensitivity to the particularities and peculiarities of the Region and Continent. A theory and

conceptual framework of Asian legal integration will signal the coming of age of research of and in the region itself.

2. Policy Making

As stated, ITL is not designed to be a “Policy Bible” for the officers of ASEAN and the policy makers in its Member States. Policy making should be left to Policy Makers. The correct role of academia in the policy making process, and the role that ITL plans to play is to provide the policy makers with a hugely rich set of models, options and analyses which will enhance the policy making process. As the research project moves ahead it will produce a stream of Working Papers on myriad issues within its overall objectives which, it is hoped will be useful for the various policy making communities. It will conclude with a series of major publications which would constitute an ongoing source and resource for future policy debates and decision making.

3. Service to the Legal Communities of ASEAN and beyond

Where appropriate, under the auspices of the ITL project, authoritative texts, authored by the finest scholars will be prepared on the various “rules based regimes” which are part of ASEAN. Knowledge of the law is, obviously, a precondition for successful implementation thereof.

4. Education

A major effort of ITL will be the preparation of Legal Teaching Resources in the form of Course Packs, model courses of the Law of ASEAN, teacher and practitioner training Seminars and other activities designed to facilitate the acquisition in the relevant constituencies of the legal skills and knowledge necessary for a successful accomplishment of ASEAN's objectives, and, extending beyond ASEAN to equip lawyers and policy makers in the Region with the necessary toolkits to assess, evaluate, choose and operate from the vast number of models or Regional Trade Agreements.

5. Networking

ITL will not be only an inward looking project. In addition to scholars from within ASEAN and Asia it will involve scholars from all over the world – wherever there is a comparative experience which may enhance understanding of the options available to ASEAN and Asia. However, just as important as this intellectual traffic from outside towards ASEAN and Asia, will be the intellectual traffic from inside ASEAN and Asia towards the rest of the world.

A goal of the project will be to put ASEAN and Asian legal integration on the research and policy making agendas of the principal Research institutions and Think Tanks in Europe, the Americas and elsewhere. ITL will be designed to create a worldwide network of ASEAN and Asian centric scholars and thinkers.

III. Project Design

Once approved in principle, Phase I of the project will consist of a mapping of the existing research terrain and *acquis*, and a period of wide consultation among policy makers, lawyers and academics in the region with a view to a sharper definition of specific research objectives and policy concerns resulting in a comprehensive Project Blueprint.

In Phase II, the Project directorate will identify the potential contributors from the Region and elsewhere, select research teams, brief them and set in place various research activities. Teams may involve both academic and policy makers. In principle it is expected that each team will be invited to a design exercise at NUS early on so that one can ensure a veritable meeting of minds and effective comparative collaboration where appropriate.

Phase III will evaluate through a series of workshops and conferences the preliminary drafts of the various teams. These will be staggered depending on the specific schedule of each research topic and research team. This phase will involve an initial confrontation between the researchers and policy makers 'in the field'.

The Final Phase will consist of presentation of the final results in a major international conference. It will be followed by the publication process of the books representing those contributions of lasting value.

Throughout the research project there will be parallel activities to further the education objectives of ITL.

IV. Management of the Project

A Consultative Committee consisting notably of persons of relevant experience in the evolution of ASEAN will accompany the Project in all its phases.

The Project will be directed by Joseph Weiler who holds a joint appointment at NYU School of Law and the National University of Singapore. Michael Ewing-Chow from NUS will serve as Co-Director.

They will be joined by an Executive Director and we will be inviting applications for the post soon.

V. Conclusion

We expect that “Integration through Law: The ASEAN Way in a Comparative Context” will become the focal point of discussion of models of cooperation and integration throughout Asia and will constitute a very important legal resource on ASEAN worldwide.