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# THE DEVELOPMENT OF THE RULE OF LAW IN ASEAN

An interdisciplinary work that comparatively studies rule of law practices and the relationship between the rule of law and regional integration, a topic largely explored in European integration. By looking at the function of the rule of law in ASEAN rather than what it 'means' measured on normative conception, this book situates the rule of law in broader institutional and political processes in the member states and in regional relations to show the motivations of member states in adopting a peculiar type of regional architecture. It asks whether forging the rule of law in the region can help build it internally for member states. The book revisits discourses on the 'spill-over' of economic integration, the impact of globalization in reshaping the state, and generating new tools of the rule of law. It makes a comprehensive comparison – the European Union, Africa Union and MERCOSUR – showing the uneven pathways to rule of law in various contexts.

IMELDA DEINLA is a Research Fellow at the School of Regulation and Global Governance (RegNet) at the College of Asia and the Pacific, Australian National University (ANU). She is the inaugural Project Director of the Philippines Project at the ANU, which focuses on research and policy engagement on Philippine politics, economics and trade. Her research interests are law and society, legal pluralism, conflict and peacebuilding.

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# THE DEVELOPMENT OF THE RULE OF LAW IN ASEAN

## The State and Regional Integration

IMELDA DEINLA
*Australian National University, Canberra*

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I have always been intrigued by the paradox of the rule of law, first as a legal practitioner and later as a development worker and academic. Over the years I was writing this book, there has been little consensus on the 'meaning' of the rule of law. It has grown however into a huge international enterprise deploying professionals, academics and the many innovations on the technologies of law all over the world. I hope that this work focused on ASEAN can contribute in better understanding of the many misunderstandings – or confusion – about the rule of law.

This book was written over the course of more than five years, first as a doctoral dissertation at the University of New South Wales (UNSW) and later during my work as an early career academic at the Australian National University (ANU). I would not have had the stamina and the inspiration to carry through this work to completion without the kind help, advice and criticisms from colleagues in the academe and people I have met in the course of my professional journey. My deepest gratitude to my mentors and colleagues at ANU, UNSW and UP for reading countless drafts and for providing thoughtful suggestions and encouragement: Professor Veronica Taylor, Professor Adam Czarnota, Professor John Braithwaite, Professor Andrew Tan, Professor Paul Redmond, Dr Girlie Abbu, Dr Emma Larking, Dr Bjoern Dressel, Dr Dao Pornsakol Coorey, Professor Hilary Charlesworth, Professor Martin Krygier, Professor Hal Hill, Kristina Simion and Professor Merlin Magallona.

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# ABBREVIATIONS

| | |
|---|---|
| ACA | ASEAN Cosmetics Association |
| ACC | ASEAN Coordinating Council |
| ACC | ASEAN Cosmetics Committee |
| ACCSQ | ASEAN Consultative Committee on Standards and Quality |
| ACD | ASEAN Cosmetics Directive |
| ACHPR | African Court on Human and Peoples Rights |
| ACIA | ASEAN Comprehensive Investment Agreement |
| ACJHR | African Court of Justice and Human Rights |
| ACMF | ASEAN Capital Markets Forum |
| ACTIP | ASEAN Convention Against Trafficking of Persons, Especially Women and Children |
| AEC | ASEAN Economic Community |
| AEC | African Economic Community |
| AEM | ASEAN Economic Ministers Meeting |
| AICHR | ASEAN Intergovernmental Commission on Human Rights |
| AIA Council | ASEAN Investment Area Council |
| AFAS | ASEAN Framework Agreement on Services |
| AFTA | ASEAN Free Trade Area |
| AFC | Asian Financial Crisis |
| AFMM | ASEAN Foreign Ministers Meeting |
| AGS | ASEAN Governance Scorecard |
| AMM | ASEAN Ministerial Meeting |



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| | |
|---|---|
| APEC | Asia-Pacific Economic Cooperation |
| APSA | African Peace and Security Architecture |
| APSC | ASEAN Political and Security Community |
| APRIS II | ASEAN-EU Program for Regional Integration and Support – Phase II |
| APT | ASEAN Plus Three |
| ASA | Association of South-East Asia |
| ASCC | ASEAN Socio-Cultural Community |
| ASEAN | Association of Southeast Asian Nations |
| ASEAN PTA | ASEAN Preferential Trading Area |
| ASW | ASEAN Single Window |
| AU | African Union |
| BOC | Bureau of Customs |
| BPP | Brunei People's Party |
| CCA | Community & Corporate Affairs |
| CCRR | Center for Cosmetics Regulation and Research |
| CEE | Central and Eastern European |
| CFSP | Common foreign and security policy |
| CLMV | Cambodia, Laos, Myanmar, Vietnam |
| Charter | ASEAN Charter |
| COMESA | Common Market for Eastern and Southern Africa |
| CoR | Committee of Regions |
| CORPER | Committee of permanent representatives |
| CMTA | Customs Modernization and Tariff Act |
| CPP | Cambodian People's Party |
| CPV | Communist Party of Vietnam |
| DOH | Department of Health |
| DRBs | Domestic ranking bodies |
| DSP | WTO Dispute Settlement Body |

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| | |
|---|---|
| EAC | East African Development Community |
| EAFTA | East Asia Free Trade Area |
| EC | European Community |
| ECB | European Central Bank |
| ECCJ | ECOWAS Community Court of Justice |
| ECJ | European Court of Justice |
| ECOWAS | Economic Community of West African States |
| EC Treaty | European Community Treaty |
| ESC | Economic and Social Committee |
| ECSC | European Coal and Steel Community |
| EEC | European Economic Community |
| EIPR | Egyptian Initiative for Personal Rights |
| EMU | Economic and Monetary Union |
| EPG | Eminent Persons Group |
| EU | European Union |
| FDA | Food and Drug Administration |
| FDI | Foreign Direct Investment |
| FSJ | Freedom, Security and Justice |
| GIZ | German Cooperation Agency |
| GMA | Greater Mekong Area |
| HAS | Health Sciences Authority |
| HLTF | High Level Task Force |
| ICJ | International Court of Justice |
| IIAs | Inter-Institutional Agreements |
| ICSID | International Centre for Settlement of Investment Disputes |
| IGCs | Intergovernmental Conferences |
| LSAD | Legal Services and Agreements Division |
| MERCOSUR | Mercado Común del Sur |

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| | |
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| MRAs | Mutual Recognition Arrangements |
| NAFTA | North American Free Trade Area |
| NEP | New Economic Policy |
| NGO | Non-Governmental Organisation |
| NTB | Non-Trade Barrier |
| OAU | Organization of African Unity |
| OMC | Open Method of Coordination |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| PACER | Pacific Islands Agreement on Closer Economic Relations |
| PICTA | Pacific Island Countries Trade Agreement |
| PLCs | Publicly Listed Companies |
| PSC | Peace and Security Council |
| PTR | Permanent Tribunal of Review |
| REC | Regional Economic Community |
| RECs | Regional Economic Communities |
| RoO | Rules of Origin |
| SAARC | South Asian Association of Regional Cooperation |
| SADC | Southern African Development Community |
| SADCC | Southern African Development Co-ordination Conference |
| SEOM | Senior Economic Officers Meeting |
| SSA | Special Service Agreement |
| TAC | ASEAN Treaty of Amity and Cooperation |
| TAC | Treaty of Amity and Cooperation |
| TEC | Treaty Establishing the European Community |
| TEU | Consolidated Version of the Treaty on the Functioning of the EU |
| ToR | Terms of Reference |
| UMNO | United Malays National Organization |

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|---|---|
| VAP | Vientiane Action Program |
| WG | Working Groups |
| WTO | World Trade Organization |
| ZOPFAN | Zone of Peace, Freedom and Neutrality |

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