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978-1-107-50388-5 - Asean as an Actor in International Fora: Reality,  
Potential and Constraints

Paruedee Nguitragool and Jürgen Rüländ

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## ASEAN AS AN ACTOR IN INTERNATIONAL FORA

*ASEAN as an Actor in International Fora* addresses a blind spot in ASEAN research and in comparative regionalism studies by assessing why, how, when and to what extent ASEAN member governments achieve a collective presence in global fora. Written for academic researchers and practitioners working in areas such as international relations, political science and international law, it examines ASEAN's negotiating behavior with a novel four-point cohesion typology. The authors argue that ASEAN's "cognitive prior" and its repository of cooperation norms have affected ASEAN's negotiation capacities, formats, strategies and cohesion in international fora. Using two case studies – one on ASEAN's cohesion in the WTO agricultural negotiations and one on UN negotiations on forced labor in Myanmar – they examine ASEAN's collective actions at different stages of negotiation, in different issue areas and in different negotiating fora. The book concludes by providing recommendations for strengthening ASEAN's international negotiation capacities.

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## INTEGRATION THROUGH LAW

The Role of Law and the Rule of Law in ASEAN Integration

*General Editors*

J. H. H. Weiler, European University Institute

Tan Hsien-Li, National University of Singapore

Michael Ewing-Chow, National University of Singapore

The Association of Southeast Asian Nations (ASEAN), comprising the ten member states of Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam, has undertaken intensified integration into the ASEAN Community through the Rule of Law and Institutions in its 2007 Charter. This innovative book series evaluates the community-building processes of ASEAN to date and offers a conceptual and policy toolkit for broader Asian thinking and planning of different legal and institutional models of economic and political regional integration in the region. Participating scholars have been divided up into six separate thematic strands. The books combine a mix of Asian and Western scholars.

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#### GENERAL EDITORS' PREFACE

This monograph is published within the context of a wide-ranging research project entitled, *Integration Through Law: The Role of Law and the Rule of Law in ASEAN Integration (ITL)*, undertaken by the Centre for International Law at the National University of Singapore and directed by J. H. H. Weiler, Michael Ewing-Chow and Tan Hsien-Li.

The Preamble to the ASEAN Charter concludes with a single decision: “We, the Peoples of the Member States of the Association of Southeast 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.

The gravitas of the medium, a Charter: the substantive ambition of its content, the creation of three interlocking Communities, and the turn to law and institutions as instruments for realization provide ample justification for this wide-ranging project, to which this monograph is one contribution, examining ASEAN in a comparative context.

That same substantive and, indeed, political ambition means that any single study, illuminating as it may be, will cover but a fraction of the phenomena. Our *modus operandi* in this project was to create teams of researchers from Asia and elsewhere who would contribute individual monographs within an overall framework which we had designed. The

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project framework, involving several thematic clusters within each monograph, is thus determined by the framework and the place of each monograph within it.

As regards the specific content, however, the authors were free, indeed encouraged, to define their own understanding of the problem and their own methodology and reach their own conclusions. The thematic structure of the entire project may be found at the end of this Preface.

The project as a whole, and each monograph within it, display several methodological sensibilities.

First, law, in our view, can only be understood and evaluated when situated in its political and economic context. Thus, the first studies in the overall project design are intended to provide the political, economic, cultural and historical context against which one must understand ASEAN and are written by specialists in these respective disciplines. This context, to a greater or lesser degree, also informs the sensibility of each monograph. There are no “black letter law” studies to be found in this project and, indeed, even in the most technical of areas we encouraged our authors to make their writing accessible to readers of diverse disciplines.

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

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provided for in the Bali Declaration of ASEAN Concord II". 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." The ASEAN Member States therefore envisage that rules of law and the Rule of Law will become a major feature in the future of ASEAN.

Although, as seen, the Charter understands itself as providing an institutional and legal framework for ASEAN, the question of the "role of law and the rule of law" is not advocacy but a genuine enquiry in the various substantive areas of the project as 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.

One should not expect a mechanical application of this scheme in each study; rather, a sensibility that refuses to content itself with legal enactments as such and looks to a "living" notion of law and institutions is ubiquitous in all the studies. Likewise, the project is sensitive to "non Law." It variously attempts to locate the appropriate province of the law in this experience. That is, not only the role of law, but also the areas that are and should remain outside the reach of legal institutionalization with due sensitivity to ASEAN and Asian particularism and political and cultural identities.

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The project, and the monographs of which it is made, are not normatively thick. They do not advocate. They are designed, for the most part, to 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 policymaking.

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 Agreements (FTAs) and Regional Trade Agreements (RTAs) has increased from six in 1991 to 166 in 2013, with a further 62 in various stages of negotiations.

Methodologically, the project and many of the monographs are comparative in their orientation. Comparative law is one of the few real-life laboratories that we have in which to assess and 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 scorches. With that in mind a couple of monographs offer both conceptual reflection and pragmatic "tool boxing" on some of the key elements featuring in all regional integration systems.

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.

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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.

Although many studies in the project could have almost immediate policy implications, as would the project as a whole, this is not its only or even principal purpose. 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 and these monographs will be to put in place the building blocks for an authentic body of ASEAN and Asian integration theory developed in, and with 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.

Although the monographs form part of an overarching project, we asked our authors to write each as a “standalone” – not assuming that their readers would have consulted any of the other titles. Indeed, the project is rich and few will read all monographs. We encourage readers to pick and

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choose from the various monographs and design their own menu. There is, on occasion, some overlap in providing, for example, background information on ASEAN in different studies. That is not only inevitable but desirable in a project of this amplitude.

The world is increasingly witnessing a phenomenon of interlocking regional organization where the experience of one feeds on the others. In some way, the intellectual, disciplinary and comparative sensibility of this project is a microcosm of the world it describes.

The range of topics covered in this series comprises:

The General Architecture and Aspirations of ASEAN

The Governance and Management of ASEAN: Instruments,  
Institutions, Monitoring, Compliance and Dispute  
Resolution

Legal Regimes in ASEAN

The ASEAN Economic Community

ASEAN and the World

The Substantive Law of ASEAN



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This book, which explores thus far largely uncharted waters of the meanwhile voluminous research on the Association of Southeast Asian Nations (ASEAN), could not have been completed without the great support of many institutions and individuals. Foremost of those to whom we owe great gratitude is the Centre for International Law (CIL) of the National University of Singapore. The study is part of a large and pioneering research project entitled “Integration through Law” (ITL) conducted by the Centre, in which about seventy scholars have been involved. At the center of the project is the comprehensive study of all principal legal issues associated with the process of regional integration in Southeast Asia, including the pertinent institutional context to which our study contributes. The project leaders, Professor J. H. H. Weiler (European University Institute, Florence), Professor Michael Ewing-Chow and Dr. Tan Hsien-Li, have not only provided us with the highly valued opportunity to participate in this challenging endeavor; we also greatly benefited from their excellent guidance and the inspiring research atmosphere they created. All this is greatly appreciated as well as the Centre’s financial and institutional support, which enabled us to carry out fieldwork in Europe and Southeast Asia.

We received excellent feedback in two workshops in Singapore and Jakarta at different stages of the project.

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The workshops brought together an impressive array of leading scholars of regionalism and numerous high-caliber government practitioners from all over the ASEAN region. In particular, we would like to thank Professor Pascal Vennesson, Mr. Peter Govindasamy, Mr. Termsak Chalermphanupap and many other – unnamed – participants of the Integration through Law project for their thoughtful comments and suggestions on the first, then still incomplete, draft version of this book. We would likewise thank two anonymous reviewers of the completed manuscript for their meticulous reading of the text, their encouragement, but also their candid critique of some of our conceptual choices. We took their advice very seriously and we sincerely hope that the revised manuscript comes as close as possible to their high-quality standards. The University of Freiburg's Southeast Asia program, sponsored by the German Federal University of Education and Research (BMBF), was an invaluable pool of expertise from which we greatly benefited through innumerable informal conversations and discussions.

Without the help of our interviewees in Singapore, Jakarta, Bangkok, Manila, New York, Geneva, Brussels and Berlin it would have been impossible for us to understand how ASEAN members interact inside and outside the negotiation rooms of global forums. We greatly appreciate that they shared with us their precious time, information, knowledge and experience. In addition, we would like warmly to express our sincere thanks to our able research assistants at the Department of Political Science and the Southeast Asian Studies program of the University of Freiburg, namely Jan-Simon Dörflinger, Felix Idelberger, Vanessa Guinan-Bank,

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In Singapore Renee Chan Lai Sang has eased our administrative and logistical burdens with great competence, reliability and efficiency. Last but not least we thank Alec Crutchley for his careful proofreading of the final versions of this manuscript. Yet, while we are very grateful for all the great support we have received, any errors that remain are the sole responsibility of the authors.

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## ABBREVIATIONS

3G	Global Governance Group
ABAC	ASEAN Business Advisory Council
ABC	ASEAN Business Club
ACD	Asian Cooperation Dialogue
ACFTA	ASEAN–China Free Trade Area
ACSC	ASEAN Civil Society Conference
ACT	Accountability, Coherence and Transparence
ADM	Asian Developing Member
AECF	Asia–Europe Cooperation Framework
AFL–CIO	American Federation of Labor and Congress of Industrial Organizations
AFTA	ASEAN Free Trade Area
AFTINET	Australian Fair Trade and Investment Network
AIPMC	ASEAN Inter-Parliamentary Myanmar Caucus
ALMM	ASEAN Labor Ministers Meeting
AMAF	ASEAN Ministers on Agriculture and Forestry
AMF	Asian Monetary Fund
AMM	ASEAN Ministerial Meeting
AMRO	ASEAN+3 Monetary Research Office
APA	ASEAN People’s Assembly
APEC	Asia-Pacific Economic Cooperation
APF	ASEAN People’s Forum

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APN	Asia-Pacific Network
APRIS	ASEAN Project for Regional Integration Support
APT	ASEAN Plus Three
ARF	ASEAN Regional Forum
ASA	Association of Southeast Asia
ASEAN	Association of Southeast Asian Nations
ASEAN-5	ASEAN founding members (Indonesia, Malaysia, the Philippines, Singapore and Thailand)
ASEAN-CCI	ASEAN Chamber of Commerce and Industries
ASEM	Asia–Europe Meeting
AUN	ASEAN University Network
BDF	Bali Democracy Forum
BIMSTEC	Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
BRICS	Brazil, Russia, India, China, South Africa
CAP	Common Agricultural Policy
CAS	Comparative Area Studies
CIL	Centre for International Law
CINAPS	Centre for Indonesian National Policy Studies
CLMV	Cambodia, Laos, Myanmar and Vietnam
CMI	Chiang Mai Initiative
CMIM	Chiang Mai Initiative (Multilateralized)
CPR	Committee of Permanent Representatives
CSIS	Center for Strategic and International Studies
D8	Developing 8

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DNPI	Dewan Nasional Perubahan Iklim (National Council on Climate Change)
EAEG	East Asian Economic Group
EAS	East Asian Summit
EC	European Community
ECOSOC	Economic and Social Council
ECOWAS	Economic Community of West African States
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EPG	Eminent Persons Group
ERIA	Economic Research Institute for ASEAN and East Asia
EU	European Union
FAO	Food and Agriculture Organization
FLACSO	Facultad Latinoamericana de Ciencias Sociales (Latin American Faculty of Social Sciences)
FLC	Forced Labor Convention
FOSS	Forum of Small States
FSB	Financial Stability Board
FTA	Free Trade Agreement
G7/8	Group of 7/8
G15	Group of 15
G20	Group of 20
G33	Group of 33
G77	Group of 77
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GMM	Global Movement of Moderates
GSP	Generalized System of Preferences

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HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome
HLT	[International Labor Organization]High-Level Team
HLTF	High-Level Task Force
ICTSD	International Centre for Trade and Sustainable Development
ICWA	Indonesian Council of World Affairs
IFI	international financial institution
IFPRI	International Food Policy Research Institute
ILC	International Labor Conference
ILO	International Labor Organization
IMF	International Monetary Fund
IPU	Inter-Parliamentary Union
ISEAS	Institute of Southeast Asian Studies
ISIS	Institutes of International and Strategic Studies
ITD	Italian–Thai Development Public Company Limited
ITL	Integration through Law
JIM	Jakarta Informal Meeting
KFG	Kolleg-Forschergruppe
KNLA	Karen National Liberation Army
LDC	least-developed country
LFS	labor force survey
LIPI	Lembaga Ilmu Pengetahuan Indonesia (Indonesian Institute of Sciences)
MAI	Multilateral Agreement on Investment
Maphilindo	Malaya, the Philippines and Indonesia
MDG	Millennium Development Goal

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## LIST OF ABBREVIATIONS

Mercosur	Mercado Común del Sur (Common Market of the South)
MTID	Markets, Trade and Institutions Division
NAFTA	North American Free Trade Agreement
NAM	Non-Alignment Movement
NePAD	New Partnership for Africa's Development
NGO	non-governmental organization
NIEO	New International Economic Order
NLD	National League for Democracy
NPR	nominal protection rate
NTU	Nanyang Technological University
OECD	Organisation for Economic Co-operation and Development
OIC	Organization of Islamic Cooperation
P5	Five Permanent Members of the UN Security Council (USA, Russia, China, France and United Kingdom)
PECC	Pacific Economic Cooperation Council
R2P	Responsibility to Protect
RAM	recently acceded member
RM	Malaysian ringgit
RSIS	Rajaratnam School of International Studies
S5	Small Five Group
SAARC	South Asian Association for Regional Cooperation
SADC	Southern African Development Community
SAPA	Solidarity for Asian People's Advocacy
SARS	severe acute respiratory syndrome
SCO	Shanghai Cooperation Organization



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## LIST OF ABBREVIATIONS

SDT	special and differential treatment (for Developing Countries)
SEANWFZ	Southeast Asian Nuclear-Weapon-Free Zone
SIIA	Singapore Institute of International Affairs
SOM	Senior Officials' Meeting
SP	special product
SPDC	State Peace and Development Council
SSM	special safeguard mechanism
SVE	small, vulnerable economy
TAC	Treaty of Amity and Cooperation [in Southeast Asia]
TF-WAR	Task Force on Agreement on Agriculture (Re)negotiations
UN	United Nations
UNBISNET	United Nations Bibliographic Information System
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Program
UNGA	United Nations General Assembly
UNPA	United Nations Parliamentary Assembly
UNSC	United Nations Security Council
USDP	Union Solidarity and Development Party
WHO	World Health Organization
WTO	World Trade Organization
ZOPFAN	Zone of Peace, Freedom and Neutrality