

THE ROLE OF THE PUBLIC BUREAUCRACY IN POLICY IMPLEMENTATION IN FIVE ASEAN COUNTRIES

This pioneering book addresses an important gap in the literature by comparing the role of the public bureaucracies in policy implementation in Indonesia, Malaysia, the Philippines, Singapore and Vietnam. It highlights the importance of the policy context, especially the commitment of the government in allocating the necessary resources and the support of the implementers, as well as the public bureaucracy's effectiveness, as the critical factors responsible for effective policy implementation. The comparative analysis shows that the public bureaucracies in Singapore and Malaysia are more effective in policy implementation than their counterparts in Indonesia, the Philippines and Vietnam because of their favourable policy contexts and higher level of organizational effectiveness. The focus on policy context and the public bureaucracy's role in the policy-making process and its implementation of two ASEAN policies will be of interest to policy-makers, civil servants, scholars and students concerned with enhancing policy implementation in the ASEAN countries.

JON S. T. QUAH is a retired Professor of Political Science at the National University of Singapore and an Anti-Corruption Consultant based in Singapore. He was a Vice-President of the Asian Association for Public Administration (2010–2012) and co-editor of the *Asian Journal of Political Science*. He has published extensively on corruption and public administration in Asian countries.

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

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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THE ROLE OF THE PUBLIC
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Edited by

JON S. T. QUAH



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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 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.

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The 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 provided for in the

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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 choose from the various monographs and design

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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

PREFACE

This book is one of the products of the ‘Integration Through Law: The ASEAN Way in a Comparative Context’ Project or the ASEAN Integration Through Law (ITL) Project sponsored by the Centre for International Law (CIL) at the National University of Singapore (NUS). The ASEAN ITL Project is directed by Professor J. H. H. Weiler, President of the European University Institute in Florence, Italy and Professor of Law at NUS, with the assistance of Dr Tan Hsien-Li, Senior CIL Research Fellow, as the Executive Director.

I was invited by Professor Weiler on 30 June 2011 to be the principal investigator for the Governance and Management Research Group’s project on the role of the public bureaucracy in policy implementation in the Association of Southeast Asian Nations (ASEAN) countries. The ASEAN was formed on 8 August 1967 by the five member states of Indonesia, Malaysia, the Philippines, Singapore and Thailand. The number of member states has gradually increased to ten from 1984 to 1999 with the addition of Brunei Darussalam in January 1984, Vietnam in July 1995, Lao People’s Democratic Republic and Myanmar in July 1997 and Cambodia in April 1999. As resource and time constraints did not permit the group to conduct research on all the ten member countries, the decision was made after consulting the project leaders to focus on the role of the public bureaucracy in policy

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implementation in Indonesia, Malaysia, the Philippines, Singapore and Vietnam.

I would like to thank all the contributors for accepting my invitation to write the chapters in this book and for attending the two research workshops in Singapore on 14 October 2011 and 17–18 July 2012. Two important decisions were made at the first research workshop in October 2011. First, all the authors agreed to use the six variables identified by Van Meter and Van Horn to analyse the public bureaucracy's role in policy implementation in the five ASEAN countries.

The second important decision made at the October 2011 workshop was to illustrate the public bureaucracy's role in implementing ASEAN policies in the five countries by focusing on two case studies. Three criteria were used to select the two case studies of ASEAN policies: (1) an 'effective' policy should be selected to understand why it has been successfully implemented; (2) an 'ineffective' policy should be selected to understand why it has encountered problems in implementation; and (3) the two policies selected should be similar for the five countries so as to facilitate comparison and to help identify the reasons for success or failure in implementing these policies.

Before the October 2011 research workshop, I had consulted some officials at the ASEAN Secretariat in Jakarta to seek their views on which ASEAN policies could be selected as examples of effective and ineffective implementation. I discussed the suggestions of these officials with the authors at the October 2011 workshop and the group decided, after further consultation with the ASEAN Secretariat officials, to focus on the ASEAN Cosmetic Directive

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(ACD) as an example of an effective policy and the ASEAN Ministerial Meeting on Transactional Crime/Senior Officials Meeting on Transactional Crime (AMMTC/SOMTC) as an example of a policy which has encountered problems in implementation.

The second drafts of the five country studies were presented at the second research workshop in July 2012 in Singapore. At the Internal Plenary for the ASEAN ITL Project held in Singapore on 22 August 2012, four presentations were made by members of the group. Jon Quah presented his paper which provided a comparative overview of the public bureaucracy's role in policy implementation in the five ASEAN countries. David Seth Jones presented his country report on Singapore, and was followed by Vicente Chua Reyes, Jr, who presented the Philippines country report. The group concluded its progress report with Giulio Napolitano's presentation on the problem of asymmetric compliance in policy implementation in the European Union (EU) countries and its relevance for the five ASEAN countries.

All the contributors would like to thank Professor J. H. H. Weiler and Dr Tan Hsien-Li for supporting the publication of this book by Cambridge University Press, and for their constructive feedback on the earlier drafts of the various chapters. As the editor, I am grateful to the contributors for their cooperation in submitting their draft chapters to me on time and for making the necessary revisions according to the feedback provided on these chapters. In this regard, I wish to thank David Seth Jones and Giulio Napolitano for their kind assistance in reviewing the earlier drafts of the country chapters.

PREFACE

On behalf of the contributors, I would like to record my appreciation to Ms Geraldine Ng, CIL's Senior Manager for Events and Programmes, for making the excellent arrangements that facilitated discussion among the participants and ensured the success of the two workshops in Singapore in October 2011 and July 2012. All the contributors would also like to thank Ms Renee Chan, CIL's Finance Manager, for her kind assistance in facilitating the reimbursement of their travel expenses and honoraria.

My fellow contributors and I are most grateful to the ASEAN ITL Project's Executive Director, Dr Tan Hsien-Li, for her continuous support and understanding during the past three and a half years. She has always replied promptly to our queries and requests by email, whether from Florence, New York or Singapore, with the requested information or relevant advice.

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