'Every significant advance in the promotion and protection of human rights has required a vision of what ought to be as well as a realistic assessment of what is actually possible. This book provides an excellent example of just such a combination. With clear writing, careful organisation, thorough research, candid assessment of the challenges, and thoughtful analyses of the possibilities, the authors provide an excellent and stimulating discussion about whether and how ASEAN countries can take human rights seriously.'

Paul Gordon Lauren

Regents Professor Emeritus and Distinguished Mansfield Fellow, University of Montana

'The evolution and situations of human rights in the ASEAN community have become increasingly complex since the adoption of the Charter in 2007. Charting and analysing the “human rights journey” of ASEAN, this comprehensive volume helps make the landscape more accessible to human rights lawyers, activists and general readers alike.'

Dr Seree Nonthasoot

Representative of Thailand to the ASEAN Intergovernmental Commission on Human Rights (AICHR)

'Human rights feature prominently in recent ASEAN instruments. Despite this, much needs to be done in ASEAN to protect human rights effectively, and the authors draw upon their considerable legal expertise to argue how this may be achieved. Informative, focused and wide ranging in its efforts to show the distinctive character of human rights in the ASEAN context, how they emerged and came into operation, and the challenges that remain to be overcome, this is an invaluable volume that makes a major contribution to the growing literature on this vital topic.'

Tony Anghie

Professor of Law, National University of Singapore and University of Utah
CAN ASEAN TAKE HUMAN RIGHTS SERIOUSLY?

The adoption of the ASEAN Charter in 2007 represented a watershed moment in the organisation’s history – for the first time ASEAN member states explicitly included principles of human rights and democracy in a binding regional agreement. Since then, developments in the region have included the creation of the ASEAN Intergovernmental Commission on Human Rights in 2009 and the adoption of the ASEAN Human Rights Declaration in 2012. Despite these advances, many commentators ask whether ASEAN can take human rights seriously. The authors explore this question by comprehensively examining ASEAN’s human rights mechanisms in the context of existing national and international human rights institutions. This book places these regional mechanisms and commitments to human rights within the framework of the political and legal development of ASEAN and its member states, and considers the way in which ASEAN could strengthen its new institutions to better promote and protect human rights.

ALISON DUXBURY is a Professor at Melbourne Law School, University of Melbourne, and a member of the International Advisory Commission of the Commonwealth Human Rights Initiative and the Council of the Australian and New Zealand Society of International Law. Alison’s major research interests are in the fields of international law, international institutional law and human rights law. Her previous publications with Cambridge include The Participation of States in International Organisations: The Role of Human Rights and Democracy (2011) and a co-edited book, Military Justice in the Modern Age (2016). Alison has been a Visiting Fellow at the Lauterpacht Centre for International Law in
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INTEGRATION THROUGH LAW

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

Series 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.

Centre for International Law, National University of Singapore (CIL-NUS)

The Centre for International Law (CIL) was established in 2009 at the National University of Singapore’s Bukit Timah Campus in response to the growing need for international law expertise and capacity-building in the Asia-Pacific region. CIL is a university-wide research centre that focuses on multidisciplinary research and works with other NUS or external centres of research and academic excellence. In particular, CIL collaborates very closely with the NUS Faculty of Law.
CAN ASEAN TAKE HUMAN RIGHTS SERIOUSLY?

ALISON DUXBURY
University of Melbourne

TAN HSIEN-LI
National University of Singapore
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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 . . . hereby 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
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 Bali Declaration of ASEAN Concord II’. Article 2(2)
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.
GENERAL EDITORS’ PREFACE

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
GENERAL EDITORS’ PREFACE

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 micro-cosm 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
ACKNOWLEDGEMENTS

This book is the result of many years of work and reflection on ASEAN and human rights. It is a part of the ‘Integration through Law: The ASEAN Way in a Comparative Context – The Role of Law and Rule of Law in Asian Legal Integration’ (ASEAN ITL) research project undertaken by the Centre for International Law at the National University of Singapore (CIL-NUS) in 2010.

Since the authors began researching and writing this book they have been assisted by experts in many quarters. The authors would like to thank their friends and colleagues from Australia, Singapore and across the region for their willingness to discuss ideas and answer questions about a diverse range of national law and international law issues raised in this book. The authors acknowledge with thanks the CIL-NUS project grant that made the meetings in Macau and Singapore with other ASEAN ITL scholars possible. The authors would also like to thank Mary Quinn, Anna Saunders and Henry Bantick for assistance with research, citations and formatting at various points in the publication process. Finally, the authors thank Melbourne Law School for a generous publication grant to assist with the final stages of editing the manuscript.

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Many primary sources from ASEAN institutions are cited in this book, including treaties, declarations, reports and statements by ASEAN officials. These documents, including documents of the ACWC and the ACMW, can be accessed at www.asean.org. AICHR documents, including reports, press releases and work plans, are located at www.aichr.org.
ABBREVIATIONS

ACHR American Convention on Human Rights
ACMW ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers
ACWC ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
ADF ASEAN Disability Forum
AEC ASEAN Economic Community
AHRD ASEAN Human Rights Declaration
AICHR ASEAN Intergovernmental Commission on Human Rights
ANNI Asian NGO Network on NHRIs
APF Asia Pacific Forum of National Human Rights Institutions
APSC ASEAN Political-Security Community
ASCC ASEAN Socio-Cultural Community
ASEAN Association of Southeast Asian Nations
ASEAN-ISIS ASEAN Institutes of Strategic and International Studies
AU African Union
CAN Andean Community
CARICOM Caribbean Community

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### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>CAT</td>
<td>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
</tr>
<tr>
<td>CIL</td>
<td>Centre for International Law, University of Singapore</td>
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<tr>
<td>CLMV states</td>
<td>Cambodia, Lao PDR, Myanmar, Vietnam</td>
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<td>COSINGO</td>
<td>Coalition of Singapore NGOs</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CRIN</td>
<td>Child Rights International Network</td>
</tr>
<tr>
<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
</tr>
<tr>
<td>CSCE</td>
<td>Conference on Security and Co-operation in Europe</td>
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<tr>
<td>CSO</td>
<td>Civil Society Organisation</td>
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<tr>
<td>DSMP</td>
<td>Protocol to the ASEAN Charter on Dispute Settlement Mechanisms</td>
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<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
</tr>
<tr>
<td>ECOWAS</td>
<td>Economic Community of West African States</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Court of Human Rights</td>
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<tr>
<td>EDSM</td>
<td>Enhanced Dispute Settlement Mechanism</td>
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<tr>
<td>EPG</td>
<td>Eminent Persons Group</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>FIDH</td>
<td>Fédération internationale des ligues des droits de l’Homme (International Federation for Human Rights)</td>
</tr>
<tr>
<td>HLTF</td>
<td>ASEAN High Level Task Force</td>
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<td>HRC</td>
<td>United Nations Human Rights Council</td>
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<table>
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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>IACHR</td>
<td>Inter-American Commission on Human Rights</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>ICERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<tr>
<td>ICPPED</td>
<td>International Convention for the Protection of All Persons from Enforced Disappearance</td>
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<tr>
<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<td>ISA</td>
<td>Internal Security Act</td>
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<tr>
<td>Komnas</td>
<td>Komisi Nasional Hak Asasi Manusia</td>
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<tr>
<td>HAM</td>
<td>(National Human Rights Commission of Indonesia)</td>
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<tr>
<td>Lao PDR</td>
<td>Lao People's Democratic Republic</td>
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<tr>
<td>MDGs</td>
<td>Millennium Development Goals</td>
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<tr>
<td>MERCOSUR</td>
<td>Southern Cone Common Market</td>
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<td>MNHRC</td>
<td>Myanmar National Human Rights Commission</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<tr>
<td>NHRI</td>
<td>National Human Rights Institution</td>
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<tr>
<td>OAS</td>
<td>Organization of American States</td>
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<tr>
<td>OAU</td>
<td>Organization of African Unity</td>
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<tr>
<td>ODA</td>
<td>Official Development Assistance</td>
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<tr>
<td>OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
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<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
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ABBREVIATIONS

OSJI Open Society Justice Initiative
PAP People’s Action Party (of Singapore)
PCHR Philippines Commission on Human Rights
PDHJ Provedoria dos Direitos Humanos e Justiça (Office of the Provedor (Ombudsman) for Human Rights and Justice of Timor-Leste)
SADC Southern African Development Community
SAPA Solidarity for Asian People’s Advocacy Task
TFAHR Force on ASEAN and Human Rights
SDGs Sustainable Development Goals
SEANF South East Asia National Human Rights Institutions Forum
SUHAKAM Suruhanjaya Hak Asasi Manusia Malaysia (Human Rights Commission of Malaysia)
TAC Treaty of Amity and Cooperation in Southeast Asia
THRC Thai Human Rights Commission
TOR Terms of Reference
UDHR Universal Declaration of Human Rights
UMNO United Malays National Organisation
UN United Nations
UNDP United Nations Development Programme
UNESCO United Nations Educational, Scientific and Cultural Organization
UNICEF United Nations Children’s Fund
UPR Universal Periodic Review of the Human Rights Council
USAID US Agency for International Development
VAP Vientiane Action Programme

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