

CENTRE FOR INTERNATIONAL LAW **CIL**

**CIL ASEAN CHARTER SERIES 2010:
*WORKSHOP ON IMPLEMENTING
LEGAL PERSONALITY
AND PRIVILEGES & IMMUNITIES***

16 AUGUST 2010, SINGAPORE

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Preface

The entry into force of the ASEAN Charter in December 2008 and the signing of the Agreement on Privileges and Immunities of ASEAN in October 2009 signified ASEAN's intention to take part in the international community as a rules-based international organisation with a full-fledged legal personality.

The negotiations for the Charter and the related Agreements have not been easy. And implementing them will be a much more difficult task.

The Centre for International Law (CIL) of the National University of Singapore (NUS) is honoured to contribute to the ongoing work of realizing the goals and aspirations of ASEAN. The Centre's aim is to assist ASEAN and ASEAN Member States in further understanding the legal implications of the ASEAN Charter and to recommend solutions that will enable the Charter's implementation at both the national and the regional level.

As part of this effort, CIL convened the first event in the CIL ASEAN Charter Series on 16 August 2010, which was the Regional Workshop on Implementing Legal Personality and Privileges & Immunities.

At this Workshop, CIL brought together a mix of ASEAN experts, Member State representatives, international law academics and practitioners to exchange ideas and identify issues on implementing ASEAN's legal personality and privileges and immunities.

We hope this report will be useful to ASEAN policy-makers, the ASEAN Secretariat and scholars studying ASEAN and regional integration.

Robert Beckman
Director
Centre for International Law (CIL)

25 August 2010

EXECUTIVE SUMMARY

1. The Centre for International Law at the National University of Singapore (“CIL”) organised the CIL ASEAN Charter Series 2010: Workshop on Implementing Legal Personality and Privileges & Immunities (“Workshop”) at the Grand Copthorne Waterfront Hotel, Singapore on the 16th of August 2010.
2. The Workshop brought together international law experts from academe and government as well as past and present officials of ASEAN Member States and the ASEAN Secretariat to discuss the issues arising from the implementation of the ASEAN Charter and the 2009 Agreement on Privileges and Immunities of ASEAN (“ASEAN P&I Agreement”). The objectives of the Workshop were as follows:
 - a. To provide a comparative backdrop to the issues by presenting international law principles and the practices of States and international organisations as they relate to ASEAN; and
 - b. To identify key legal and practical issues pertaining to the implementation of the ASEAN Charter and the ASEAN P&I Agreement requiring further research and discussion.
3. The Workshop consisted of four (4) sessions covering the following topics:
 - a. **International Law Principles and Practices: Regional Application.** The session surveyed the international law principles and practices with reference to the experience of the United Kingdom (UK) as an example of how a State treats international or regional organisations; and that of the Asian Development Bank (ADB) as an example of how an international organisation operates and relates with its Member States and its host country;
 - b. **ASEAN Charter Provisions on Legal Personality.** The session examined the legal implications of creating a legal personality for ASEAN from an academic viewpoint and from the present experience of the ASEAN Secretariat;
 - c. **Practical Issues in Implementing the ASEAN Charter Provisions on Legal Personality in ASEAN Member States.** The session discussed practical problems in implementing the Charter from the perspective of two former ASEAN Secretaries-General who provided insight and context to the issues and suggested ways to enhance the implementation of the Charter; and
 - d. **2009 ASEAN Privileges and Immunities.** The session provided the background on the key provisions of the ASEAN P&I Agreement, as intended by the drafters and the issues presently faced by the ASEAN Secretariat as regards privileges and immunities.
4. The Workshop was successful in initiating a wide-ranging discussion that revealed the complexity of the topics under discussion. The discussions covered several areas and

raised the following key issues that merit further study by the ASEAN Secretariat and CIL:

- a. **ASEAN's International Legal Personality.** Before the ASEAN Charter was drafted, opinion on whether ASEAN had a legal personality was divided. With the entry into force of the Charter, the express grant of legal personality in Article 3 should dispel all doubts as to ASEAN's intent to create an international organisation with legal personality that is distinctive and separate from its Member States. However, whether ASEAN will realise its legal personality under international law will depend on the political will and subsequent practice of ASEAN Member States. As such, ASEAN's legal status should be clarified in the domestic laws of ASEAN Member States so that ASEAN is duly recognised and can function as a legal person within each Member State. Likewise, for States and third parties to recognise ASEAN as an international organisation, it is imperative to show that ASEAN is recognised by its own Member States.

ASEAN Member States should clarify their intention, by their words and actions, the extent to which they will recognise and allow the exercise of ASEAN's separate international legal personality within the international community. If the Member States really intended ASEAN to have a separate legal personality then it would also be necessary for them to learn how to deal with their creation as separate from themselves. It is also critical that an ASEAN identity and mindset be encouraged and cultivated among the ASEAN Member States, to get them to think beyond national interests and to pursue ASEAN as a regional organisation. Furthermore, attention should now be focused on ASEAN's functionality or its operationalisation such as to what extent and in which functional areas ASEAN has exercised its legal personality. Thus, instead of constantly focusing on the big vision of an ASEAN community or its legal personality, it may be more practical for now to look at its functionality and identify the areas where ASEAN can effectively carry out its objectives like a single economic area, etc. It is also imperative that ASEAN will have a more capacious notion of international personality to achieve these objectives.

- b. **Domestic legislation to implement the ASEAN Charter and ASEAN P&I Agreement.** Although there is a need to clarify whether enactment of domestic legislation by ASEAN Member States is necessary to implement specific Charter provisions, the discussions at the Workshop showed that such legislation may be needed and required by the ASEAN Member States in particular areas, for example in the aspect of privileges and immunities. Thus, while waiting for the ratification and entry into force of the ASEAN P&I Agreement, the Member States are encouraged to study the instrument to have a better understanding of its scope and domestic application and to prepare the groundwork for the eventual domestic legislation and implementation. In the specific case of Permanent Missions to ASEAN, they should be able to enjoy privileges and immunities as soon as they start their mission duties. There is no need to wait for the ASEAN P&I Agreement to come into force because Art. 19 of the ASEAN Charter, which has already entered into force, provides that their immunities and privileges shall be governed by the *1961 Vienna Convention on*

Diplomatic Relations or in accordance with the national law of the ASEAN Member State concerned.

- c. **Host Country Agreement with Indonesia.** Negotiations are underway for a new host country agreement between ASEAN Secretariat and the Government of Indonesia, to replace the existing agreements.¹ A comprehensive new host country agreement should ideally clarify the status, privileges and immunities not only of ASEAN and the ASEAN Secretariat but also the permanent missions and ambassadors to ASEAN from Member States as well as from non-member States. It should also clarify and delineate the applicability of Indonesian law on ASEAN's operations.
- d. **External Relations.** In the conduct of relations with third parties such as non-member States or international organisations, there is a need to clarify whether the Secretary-General or ASEAN Secretariat may be given the mandate to negotiate and enter into binding agreements for and on behalf of all ten ASEAN Member States. If so, ASEAN should formalise such authorization and come up with operational guidelines on the conduct of external relations (in pursuit of ASEAN "common interests" and articulation of ASEAN's common policy positions) to guide the Secretary-General and the Secretariat.
- e. **Functions, Privileges and Immunities of the ASEAN Secretary-General.** Under the Charter, the Secretary-General (Sec-Gen) is given a number of general administrative, facilitative and representative functions. In the past, the ASEAN Member States allowed the Sec-Gen to exercise limited functions. It was suggested that in the future, the Sec-Gen should be entrusted with more functions and be given a wider mandate since he embodies ASEAN and must act to pursue ASEAN's objectives. It was also clarified that, unlike the UN Secretary-General who has personal immunity wherever he goes, under the ASEAN P&I Agreement, the ASEAN Sec-Gen does not enjoy personal immunity when he is in his home country. The Agreement has given him functional immunity in Article 4(3) and diplomatic immunity in Article 4(4). However, under Article 4(5), except for immunity from legal process for official words and acts (which is said to be the only immunity that will subsist once he leaves office), such privileges and immunities are not applicable in the granting Member State where he is a national or a permanent resident. This means that he may be liable for acts done outside his official capacity when he is in his home state, during and even after his term as Sec-Gen. Considering these provisions, it may also be concluded the Sec-Gen is not exempt from taxation in his home state.
- f. **Legal Personality of ASEAN Secretariat.** The ASEAN Secretariat has been accorded a degree of legal personality, particularly in the host country Indonesia, since its establishment. With the explicit reference to ASEAN's legal personality in

¹ The "host country agreements" for the ASEAN Secretariat are generally understood to include the *1979 Agreement between the Government of Indonesia and ASEAN relating to the Privileges and Immunities of the ASEAN Secretariat* signed on 20 January 1979 in Jakarta, Indonesia and the *1981 Agreement on the Use and Maintenance of the Premises of the ASEAN Secretariat* signed on 25 November 1981 in Jakarta, Indonesia.

- the Charter, it should also be clarified whether the Secretariat's legal personality may now be subsumed under the legal personality of ASEAN. It is thus necessary to clarify the legal status of the ASEAN Secretariat and its legal capacity not only vis-à-vis Indonesia but also under the domestic laws of the other nine ASEAN Member States.
- g. **Privileges and Immunities of the ASEAN Secretariat staff.** Based on the ASEAN P&I Agreement, privileges and immunities will only be granted to certain categories of ASEAN Secretariat staff designated by the Sec-Gen. Article 4 provides the list of privileges and immunities to be enjoyed by the Sec-Gen and staff. However, it should be noted that except for immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity, Article 4 (5) provides that these P&I shall not apply to nationals of or permanently residents in the granting Member States. Thus, in the aspect of income taxes for example, some staff may be taxed on their salaries while others are not, depending on the taxation laws and practices of each Member State with respect to their nationals and residents. Some ASEAN Member States even impose or plan to impose tax on their non-resident nationals working in the Secretariat. As such, there may be a need to rationalize arrangements so as not to disadvantage the staff concerned. Although there is no reporting mechanism for compliance and there are no sanctions when a Member State does not comply with the ASEAN P&I Agreement, the Secretariat may bring the issue before a relevant ASEAN forum should there be a need to highlight such non-compliance. A special travel document is no longer needed for inter-regional travel of Secretariat staff but ASEAN may need to negotiate and arrange for such a document to be recognised by non-member States to facilitate official travel outside the region.
- h. **Implementation of the ASEAN P&I Agreement.** ASEAN should also come up with a clear definition, criteria and procedures for officials and activities. Among others, there should be criteria with regard to “experts on a mission for ASEAN” as well as operational procedures for notification and identification of such experts. Since there are many ASEAN meetings, conferences and activities of the many different ASEAN organs, it should be clarified which “ASEAN official activities” would qualify under such category. A list of ASEAN official activities may need to be compiled for this purpose. As to “Officials of Member States” representing ASEAN in other Member States, there should be clear guidelines to govern when and in what circumstances such officials would be appointed by ASEAN. As a practical measure, ASEAN would also need to consider the modalities for notification.
- i. **Capacity-Building of the ASEAN Secretariat - Legal Services and Agreement Division.** Since the Secretariat is tasked to interpret the Charter and assist in the facilitation of all ASEAN documents, it will be necessary for its Legal Services and Agreement Division to be sufficiently provided with qualified personnel, assistance and resources for it to be able to perform its mandated function.

5. In view of the Workshop's discussions, the following recommendations may be considered by:

1. CIL

- a. To continue its study of ASEAN's legal personality and privileges and immunities, which should provide additional reference to the ASEAN Secretariat and ASEAN Member States. Its research should also cover the practice of major international organisations relating to legal personality and privileges and immunities, and include a bibliography of books and articles dealing with ASEAN's legal personality;
- b. To continue organising the ASEAN Charter Series or its equivalent to further regional discussions implementing the Charter, taking into account emerging issues and legal developments; and
- c. To discuss areas of collaboration with the ASEAN Secretariat, especially its Legal Services and Agreement Division, such as: (1) further enhancement of CIL's ASEAN Database; (2) a dedicated space in CIL and Secretariat's websites covering related legal developments in ASEAN and ASEAN Member States; (3) an online forum bringing together ASEAN legal experts to encourage more discussion on ASEAN law and policy; and (4) a database of ASEAN legal experts and their works, among others.
- d. To continue the Centre's ASEAN Integration through Law (ITL) major research project and to share its findings at appropriate fora.

2. ASEAN Secretariat

- a. To come up with reports and issue papers as well as propose strategies that will guide ASEAN Member States in the implementation of the Charter. This will include an evaluation of the progress made by ASEAN in operationalising its legal personality and complying with the Charter and related Agreements by the Member States;
- b. To hold continuing public awareness programmes/activities to educate ASEAN Member States and the general public of the legal implications of the ASEAN Charter and other ASEAN Agreements; and
- c. To provide an interactive platform so that ASEAN can continuously engage and consult with nationals of Member States and third parties (international non-governmental organisations, civil society, non-member states) on the implementation of the Charter and other ASEAN Agreements.

3. ASEAN and ASEAN Member States

- a. To facilitate the early entry into force and implementation of the ASEAN P&I Agreement;
- b. To come up with national-led education campaigns or activities that will inform their nationals of the implications of being part of ASEAN as well as to foster awareness and encourage identification with other Member States;
- c. To continue the study and preparation of domestic legislation, if needed, to implement the ASEAN Charter and the ASEAN P&I Agreement, as well as to identify issues and constraints in their implementation domestically and regionally, and come up with remedial measures;
- d. To give further meaning to the terms in the Charter such as “common positions” and “centrality” of ASEAN through joint declarations and resolutions;
- e. To come up with operational guidelines on the conduct of External Relations (Chapter XII of the Charter); and
- f. To study and consider the standardisation of tax treatments for nationals working in the ASEAN Secretariat.

I. General Organisation of the Workshop and Introductory Remarks

1. The Workshop featured four (4) sessions in a single day. Each session consisted of a presentation of issues by the panelists and an open forum discussion with the participants.
2. Ambassador Tommy Koh, Chairman of the CIL Governing Board, welcomed the workshop participants from the ASEAN Member States, ASEAN Secretariat and other observers. He also paid tribute to the late S. Tiwari and highlighted the esteemed lawyer's contributions to the development of ASEAN law and policy. Ambassador Koh shared Singapore's efforts to contribute to the enhancement of ASEAN studies through, firstly, the continuing work of two former ASEAN Secretaries-General in Singapore research institutions. Secondly, the work of Professor Simon Tay and Singapore Institute for International Affairs which facilitates the ASEAN think tank roundtable. Thirdly, the founding of CIL which takes up ASEAN law and policy as one of its core thematic areas and the CIL Project on ASEAN Integration through Law. Finally, the CIL project to prepare an unofficial commentary on the ASEAN Charter headed by Professor Walter Woon, Deputy Chairman of the CIL Governing Board. It is hoped that CIL will nurture the next generation of ASEAN scholars and will assist the ASEAN Secretariat in its important work in implementing the Charter.
3. His Excellency Bagas Hapsoro, Deputy Secretary General, Community and Corporate Affairs of the ASEAN Secretariat, praised CIL for promoting international law in the region and expressed ASEAN's appreciation to the many contributions made by Singapore and CIL. While the Secretariat has made enormous progress in its work, he appealed for assistance from CIL to enhance the ongoing deliberations on the dispute settlement mechanism, host country agreement, and guidelines on ASEAN declarations, among others. Through the workshop, he expressed his hope for an enhanced and mutually beneficial relationship with CIL, as he looks forward to more cooperative activities in the future.
4. Professor Robert Beckman, Director, CIL, thereafter explained the rationale for the workshop, which was to bring together resource persons and participants to discuss the ASEAN Charter and to identify certain areas that require further study.

II. Session 1: International Law Principles and Practice: Regional Applications

A. PRESENTATIONS:

1. The session discussed international law principles and practices using the experiences of the United Kingdom (UK) as an example of how a State treats international or regional organisations, and the Asian Development Bank (ADB), as an example of how an international organisation operates and relates with its Member States;
2. Ms. Jill Barrett² first provided a brief introduction to the work of her organisation, the British Institute of International and Comparative Law, and her experience in the British foreign service. She then discussed the operative international law principles and practices in implementing legal personality and explained the UK practice as to international organisations. The main points of the presentation are as follows:
 - a. The status of an organisation depends on the legal system under which it is being considered, whether domestic law or international law. It is easy to define personality in domestic law. While States are the main subjects of international law, defining the international legal personality of international organisations created by States under international law is generally difficult because of its inherent circularity. International legal personality is the ability to perform international acts, but those who can perform such acts need international legal personality. As such, there can be no single hard and fast definition. At best, an attempt at definition should look at existing trends and state practice.
 - b. The landmark 1949 International Court of Justice advisory opinion *Reparation for injuries suffered in the service of the United Nations (I.C.J. Reports 1949)* inferred the international legal personality of the United Nations on the basis of its functions, but clarified that such status did not imply sovereignty. Following this opinion, there was a trend for constitutive treaties of new international organisations to confer international legal personality.
 - c. As such, legal personality of international organisations cannot be said to have pre-determined content in international law. It depends on the extent of personality and capacities given to it by its members and acceptance by third parties or non-members (either express or implied). Recognising the status of an organisation as having international legal personality under international law is significant because it assures third parties that the organisation has the necessary resources to function, and is capable of honouring its obligations and binding its member countries. Likewise, it also enables the domestic laws of third parties to accord status to the organisation.
 - d. In certain cases, member States may also decide to grant international legal personality to organisations that appear to fall short of the conventional definitions of international organisations. Examples involving the UK include the Antarctic Treaty

² Senior Research Fellow, British Institute of International and Comparative Law (BIICL).

Secretariat and the Secretariat to the Treaty on Conservation of Albatrosses and Petrels.

- e. The UK is host to thirty (30) international organisations, which meet the criteria under UK's International Organisation Act 1968 and are recognized as international organisations under international law. Privileges and immunities are granted by the host State depending on the functional need of each organisation. Factors determining the grant of privileges to any organisation include its nature, scope, decision-making processes, financial matters, membership and recognition of its legal status by its members.
 - f. Practical and legal issues that the UK encounters in implementing privileges and immunities include: (1) the role of government departments and local authorities; (2) devolution; (3) European Union issues; (4) new taxes and charges; (5) abuse of privileges and immunities; and (6) disputes (e.g. charges).
3. Mr. Gerd Droesse³ discussed the practices of the ADB vis-à-vis its member States with respect to its legal personality and exercise of privileges and immunities. The main points of the presentation are as follows:
- a. International organisations have evolved by generations. After World War II, States were inclined to confer international legal personality to the first generation of international organisations. This trend decreased with the second and third generations. In the 1980s, instead of international organisations, States created more trust funds which have governing structures and were easier to establish. In this fourth generation, trust funds have no legal personality, and the staff is not generally covered by privileges and immunities. Instead, ad hoc arrangements were made for them. Seeing that the lack of legal personality constrained the effectiveness of these funds, new business models have emerged with a hybrid class of international organisations, which are established under local laws but come attached with privileges and immunities in international law.
 - b. He also discussed the sources of ADB's privileges and immunities, which include: the ADB Charter, Headquarters Agreement, Host Country Agreements with member countries with ADB offices, laws of ADB member countries to incorporate Charter provisions, general laws of ADB member countries regarding international organisations, Memoranda of Agreement, Technical Assistance Framework Agreements, Private Sector Framework Agreements, and customary law.
 - c. Generally, as provided in its Charter, the ADB enjoys functional immunity. But it is not immune from legal processes in three instances, when it: (1) borrows money; (2) guarantees obligations; and (3) buy and sells or underwrites the sales of securities. With these so-called private sector operations, non-sovereign counterparties may have legal and judicial recourse against ADB.

³ Lead Professional (Board Operations- Institution and Coordination) Office of the Secretary, Asian Development Bank.

- d. To facilitate effective legal protection (and temper the criticisms on their exercise of privileges and immunities), it may be necessary for international organisations to waive these immunities and recognise alternative settlement procedures. In ADB, a recent initiative allows for waiver of immunity from legal process to achieve effective legal remedies. Thus, ADB waives immunity for the limited purposes of enforcing an agreement to arbitrate, as well as in any proceedings resulting from such agreement, and in enforcing arbitral awards.

B. DISCUSSION

The key points raised in the ensuing discussion were as follows:

- a. Nationals who are staff of international organisations can either be covered by or exempt from income taxation. It would depend on the agreements pertaining to staff privileges and immunities and whether the granting state has reserved the right to impose taxes on its nationals. In ADB, exemptions are implemented through different procedures such as reimbursement, exemption from the outset, etc.
- b. Like with ADB, ASEAN may need a formal and express act or statement on the part of ASEAN Member States so that the privileges and immunities are recognized and granted by each Member State. This also follows the UK practice of recognizing international organisations under its domestic law.
- c. It should also be clarified whether ASEAN has also been given capacity to enter into agreements with non-member States. It is necessary to study the intent of the ASEAN Member States as well their existing practices in this regard.
- d. Recognition of international organisations by the UK would often at least require that members are composed substantially of States and not state officials or non-government entities.
- e. Arbitration is a recent ADB initiative that requires further study. Inasmuch as ADB accepts arbitration, it does not mean that ADB generally accepts a domestic court's jurisdiction. ADB only sees the advantage of arbitration because it offers greater opportunity for settlement of disputes, as well as an assurance of certainty and stability in the laws and processes followed by arbitral bodies.

III. Session 2: ASEAN Charter Provisions on Legal Personality

A. PRESENTATIONS:

1. The sessions discussed the legal implications of creating a legal personality for ASEAN from an academic viewpoint and from the present experience of the ASEAN Secretariat.
2. Prof Hikmahanto Juwana⁴, first explained the concept of legal personality as exercised by international organisations and went on to discuss ASEAN's status before and after the Charter as well as its status in relation to Indonesia, other ASEAN Member States and non-member States. The following are the salient points of the presentation:
 - a. In the years before the ASEAN Charter, views concerning ASEAN's legal personality were divided. Nevertheless, despite having no express grant of legal personality in a constitutive document, ASEAN had been acting in instances which impute some degree of legal personality. To the ASEAN Member States, at least, ASEAN was recognized as an international organisation with legal personality and capacity.
 - b. The ASEAN Charter affirmed the legal personality of ASEAN as an international organisation. This status is reinforced by the accreditation of Member State's Permanent Representatives to ASEAN and non-member State's Ambassadors to ASEAN. As such, it may be understood that ASEAN should be able to act separately from its member countries, such as entering into agreements with other organisations and States. However, as an international organisation, ASEAN at this time cannot enter into certain international agreements on behalf of the ASEAN Member States because, while each Member State should abide by the decisions of ASEAN, each retains its sovereign powers.
 - c. Prior to the Charter, the ASEAN Secretariat - and not ASEAN- maintained legal status in Indonesia which, as host country, signed agreements with the ASEAN Secretary-General pertaining to privileges and immunities and the premises.
 - d. After the ASEAN Charter, the ASEAN Secretariat cannot be seen as separate from ASEAN because it does not have its own legal personality or capacity. Thus, the capacity of the Secretariat to enter into agreements for ASEAN should be studied. Likewise, the host country agreements with Indonesia should be also revisited. The new host country agreement to be negotiated should also confer privileges and immunities on the Secretariat and the Permanent Missions to ASEAN.
 - e. When the ASEAN Charter and ASEAN P&I Agreement enter into force, the ASEAN Member States should also grant recognition to ASEAN under their domestic laws. While there is no obligation on the part of non-member States to recognize ASEAN, recognition may be inferred from an examination of the domestic laws and practices of non-member States.

⁴ Professor of International Law, University of Indonesia.

3. Dr. Termsak Chalermphanupap⁵ discussed the issues arising from legal personality of ASEAN. His main points are as follows:
 - a. Article 3 of the ASEAN Charter provided for the legal personality in a simple and brief formulation that was close to the recommendations of the Eminent Persons' Group on the ASEAN Charter. Further definition of ASEAN's legal personality in the domestic laws of ASEAN Member States was spelled out in the ASEAN P&I Agreement. Expert working groups are continuing the work to define ASEAN's legal capacities under international law.
 - b. Since ASEAN had already engaged with and entered into agreements with external parties, even before the Charter, it would be academic to look into recognition of its legal personality.
 - c. The key issues that ASEAN would have to deal under the Charter involve, among others:
 - i. Representation or defense of ASEAN's common interests (e.g. ASEAN's intellectual property; ASEAN Free Trade Agreement),
 - ii. Engagement with commercial activities (e.g. sale of tariff database), and
 - iii. Effect of opinions and interpretations made by the Secretariat on the Charter, etc.
 - d. The ASEAN Secretariat will need to build up its Legal Services and Agreements Division to enable it to respond to the increased work brought about by the implementation of the Charter, ASEAN's exercise of legal personality and dealing with many ASEAN agreements that have yet to be ratified by ASEAN Member States.

B. DISCUSSION

The discussion after the presentation included the following salient points:

- a. Although ASEAN already exercised the capacities of an international legal personality before the passage of the Charter, it was deemed necessary to expressly constitute its legal personality so that there would no longer be uncertainty about its status. It was also necessary to formalise its legal personality to enable it to fully engage with and enter into binding agreements with other States and organisations; to facilitate its fundraising activities; and to participate fully in UN activities with its observer status, etc.
- b. However, there is a need to clarify the legal status of ASEAN in the domestic laws of ASEAN Member States to enable it to function as a legal person within each Member State. If the Member States intended ASEAN to be an international organisation

⁵ Director, Political and Security Cooperation, ASEAN Secretariat.

recognised by other States and third parties, it is necessary, at least, to show that ASEAN is recognized primarily by its member countries.

- c. As shown in past practice before the Charter, there was a distinction with the instruments entered into by ASEAN with third parties. Whereas Memoranda of Understanding (MOUs) that formalised cooperation activities and other similar purposes were signed by the Secretary General, more substantive agreements were signed by representatives of all ASEAN Member States.
- d. By virtue of having its own legal personality, it should necessarily follow that ASEAN would have a separate personality from ASEAN Member States. But while this juridical concept of legal personality may be a logical conclusion in domestic corporate law, it may be different in international law, as there are also instances of international organisations that neither have separate international status from their member States nor even enjoy privileges and immunities as an international organisation. Thus, ASEAN Member States should clarify their intention, by their words and actions, the extent to which they wish ASEAN to have a separate international legal personality and act within the international community. If the Member States really intended ASEAN to have a separate legal personality then it would also be necessary for them to learn how to deal with their creation as separate from themselves.
- e. It is hoped that the legal debate on ASEAN would be settled within ten years. It should then be a full-fledged international organisation, enjoying its privileges and immunities. Although it is by nature an intergovernmental organisation, ASEAN should be more transparent and be able to open itself up more to the public in general and the private sector. Increasingly, ASEAN's policies, programmes and activities would have an impact on people's lives and businesses and, in exchange, there should be a mechanism to allow the people to monitor ASEAN and influence its policies. The potential of the dispute settlement mechanism to be used for this purpose should be legally explored.

IV. Session 3: Practical Issues in Implementing the Charter Provisions on Legal Personality in ASEAN Member States

A. PRESENTATIONS

1. The session discussed the practical issues in implementing the legal personality provisions of the Charter from the perspective of two former ASEAN Secretaries-General who provided insight and context to the issues and suggested ways to enhance the implementation of the Charter.
2. Ambassador Rodolfo Severino⁶ recalled the 2009 workshop at the Institute of Southeast Asian Studies on the nature, meaning and implications of the legal personality conferred by the Charter on ASEAN. The papers from the workshop have been compiled in the book entitled **Life After the Charter** and edited by the late S. Tiwari. He touched on the following points:
 - a. Although the discussion is focused on Article 3 of the Charter which provides for legal personality, the Charter is replete with other provisions that, by implication, confer legal personality on ASEAN.
 - b. It may be said that even before the Charter, ASEAN already exercised and enjoyed a semblance of legal personality. However, such exercise was kept to a limited degree by the ASEAN Member States.
 - c. The conferment of a legal personality in the Charter will not change the character of ASEAN overnight. It is too early to tell whether ASEAN has indeed a legal personality because it will depend on how the Member States will carry out the Charter provisions, how they will be used and later turn out in practice. It will be up to them to determine the extent to which they will recognise and allow the exercise of ASEAN's legal personality.
 - d. In evaluating whether ASEAN's legal personality is realised, one has to look at the following attributes of legal personality:
 - i. Who will be authorised to negotiate and sign international agreements on ASEAN's behalf?
 - ii. Will ASEAN now be more capable of taking common positions on G-20 and other international issues?
 - iii. Will ASEAN countries enact the necessary legislation to extend P&I to ASEAN officials and others engaged in ASEAN activities in their jurisdictions? Is such legislation necessary in addition to agreement?
 - iv. Will the ASEAN P&I Agreement be applied to non-ASEAN diplomatic missions accredited to ASEAN?

⁶ Director, ASEAN Studies Centre, Institute of Southeast Asian Studies.

- v. Will non-ASEAN States accede to the ASEAN P&I Agreement?
3. Ambassador Ong Keng Yong⁷ highlighted the need for a change of mindsets on the part of officials of ASEAN Member States, to think as a united ASEAN rather than as individual Member States with different national interests. His talk focused on the following key points:
- a. There is now an ASEAN in legal, political or diplomatic terms, as evidenced by its Charter. However, in practice, ASEAN must overcome the challenge to move beyond its past informal arrangements.
 - b. The way to realise ASEAN and its legal personality is to make people understand the special personality of ASEAN and to see themselves as part of ASEAN. In the process, they will also understand the status of ASEAN officials and give them the necessary privileges and immunities.
 - c. In the realisation of ASEAN's identity, two important yet intangible terms need to be defined and understood by the Member States: the "common interest" of ASEAN and the "centrality" of ASEAN. If ASEAN is truly seen as one legal person, there must be realization of a "common interest" apart from national interests and Member States should make sure to protect and not hurt this "common interest". Another concept that needs to be internalized is the "centrality" of ASEAN. ASEAN Member States should put ASEAN in the centre of all its activities (by involving it, consulting it, promoting it, etc.).
 - d. The Charter did not introduce any punitive measures for errant Member States. However, it may be necessary to discuss compliance mechanisms and remedies to ensure that the goals and objectives of ASEAN are being pursued, consistent with ASEAN being a rules-based organisation.
 - e. As a rules-based organisation, ASEAN should also strive to rationalise the activities of its twenty-nine (29) sectoral bodies and accept that the interest of ASEAN as one legal person is primary, cutting across and going beyond all sectoral and national interests.

B. DISCUSSION

In the discussion that resulted after the presentations, the following key points were raised:

- a. Creation of an international legal personality may be seen as a Janus complex, where States create international organisations with international legal personality and yet, at the same time, resist the exercise of such legal personality for fear of losing a part of their sovereign powers. This may be an issue in ASEAN with its notion of an organisation with one vision, one identity, one caring and sharing community vis-a-vis the principles of sovereignty and non-interference that have been faithfully upheld by member States. ASEAN Member States have to realise that

⁷ Director, Institute of Policy Studies, Lee Kuan Yew School of Public Policy, NUS.

- the legal implications of their creation should not be sacrificed at the expense of political considerations.
- b. The conferment of a legal personality in the Charter is significant because it clears any doubt as to ASEAN's legal status. The lack of personality or legal status can no longer be used as an excuse for not being able to undertake certain acts and commit to certain decisions.
 - c. ASEAN's international legal personality may be seen as a matter of potentiality – it can be limited or plenary - depending on the acts and capacities that ASEAN exercises and will exercise. While the declaration that ASEAN has international legal personality is important, what is more significant is the exercise of such personality.
 - d. Thus, the discussion should no longer be focused on ASEAN's legal personality. What is more important is ASEAN's functionality or operationalisation, such as to what extent and in which functional areas ASEAN has exercised its legal personality. Thus, instead of constantly focusing on the big vision of an ASEAN community or its legal personality, it may be more practical for now to look at its functionality and identify the areas where ASEAN can effectively carry out its objectives like a single economic area, etc. It is also imperative that ASEAN will have a more capacious notion of international personality to achieve these objectives.
 - e. Likewise, since the Sec-Gen embodies the ASEAN identity (and legal personality), it is necessary that he is trusted and be given a greater measure of independence and role to play. While the mandate of the Sec-Gen has been enlarged by successive Sec-Gens starting in the 1990s, with the entry into force of the ASEAN Charter, he will need a wider mandate from the ASEAN Member States to pursue ASEAN's objectives. Likewise, the Member States should believe that the Sec-Gen represents ASEAN common interests and not any national interest.
 - f. Generally, ASEAN agreements with third parties are signed by all ten ASEAN Member States. The Sec-Gen only signs MOUs, upon special authority of the Member States. With the advent of the Charter, the Member States may decide whether to formalise its authorisation to the Sec-Gen to negotiate and/or sign agreements binding upon all ten Member States.

V. Session 4: 2009 ASEAN Privileges and Immunities Agreement

A. PRESENTATIONS

1. The session examined the 2009 Privileges and Immunities Agreement of ASEAN with two resource persons who were involved in the drafting of the document. It was signed in October 2009 and to date, only two countries: the Philippines and Singapore have ratified the Agreement.
2. Dr. Termsak Chalermphanupap⁸ discussed the practical issues in implementing the ASEAN P&I Agreement after the Charter entered into force in December 2009, as follows:
 - a. The ASEAN P&I Agreement does not exempt nationals and permanent residents of the granting state from income taxes. As such, Indonesia may impose an income tax on its nationals working in the Secretariat. Myanmar has been imposing income taxes on their nationals since 2006. Likewise, Vietnam and Laos have been considering taxing their nationals as well. Such disparity in income tax regimes on nationals should be resolved to ensure that ASEC staff will not be disadvantaged by different tax arrangements.
 - b. The ASEAN P&I Agreement does not cover Ambassadors and Permanent Missions to ASEAN sent by non-member States and relevant intergovernmental organisations. Though some enjoy diplomatic status as they are also concurrently accredited to Indonesia, there should be greater consistency in the status and treatment of Ambassadors and permanent missions to ASEAN.
 - c. The legal status of the ASEAN Secretariat also needs to be clarified. The ASEAN Secretariat was established in 1976 with the Headquarters in Jakarta. It is presently negotiating a new Host Country Agreement with Indonesia to supersede the 1979 and 1981 agreements. There is also a need to resolve how the Secretariat can have legal status in the other nine Member States.
 - d. The ASEAN Secretariat should have legal recourse against ASEAN Member States that do not comply with the ASEAN P&I Agreement in granting P&I to the Secretariat and its officials.
3. Mrs. Rena Lee⁹ provided background information on the ASEAN P&I Agreement and pointed out areas that require further study by ASEAN to prepare for the Agreement's operationalisation.
 - a. The Agreement has not yet entered into force as it needs the ratification of all ten (10) ASEAN Member States.

⁸ Director, Political and Security Cooperation, ASEAN Secretariat.

⁹ Deputy Senior State Counsel, International Affairs Division, Attorney-General's Chambers, Singapore.

- b. Two main sources of documents were used in the drafting, namely, the 2007 ASEAN Charter and the *1946 Convention on the Privileges and Immunities of the United Nations*. The latter instrument provided a reference for the structure of the 2009 ASEAN P&I Agreement as well as the substantive privileges and immunities granted in various categories.
- c. The ASEAN P&I Agreement provides for functional immunities for ASEAN; the Sec-Gen and staff; and “officials of the member states participating in official ASEAN activities or representing ASEAN in the member states”. Diplomatic immunities were given to the Sec-Gen, his deputies and their families and the “permanent representatives and officials on ASEAN duties”.
- d. Categories such as “experts on mission for ASEAN”, “permanent missions” and “staff of the permanent missions” are not provided for in the ASEAN Charter. However, the drafters deemed it necessary to include such categories to make the ASEAN P&I Agreement complete.
- e. As to “experts on a mission for ASEAN”, ASEAN should come up with a clear definition and criteria for such experts. What was envisaged are technical specialists, often appointed for limited duration to work on ASEAN projects in a specific Member State. ASEAN will also need to establish operational procedures for notification and identification of experts. As the list of P&I enumerated in Article 5 of the Agreement is neither mandatory nor exhaustive, ASEAN Member States may grant P&I for experts on a case-to-case basis.
- f. “Officials of Member States” are defined in Article 1.5 to cover persons appointed by ASEAN Member States to act in official capacity and participate in official ASEAN activities. They may either be official/diplomatic passport holders or individuals officially notified to the receiving state. In case of non-holders of official/diplomatic passports, Article 1.5 (b) specifies that receiving States may deny the grant of P&I in accordance with the Charter and relevant principles of international law. Since there are many ASEAN meetings, conferences and activities of the many different ASEAN organs, it should be clarified which “ASEAN official activities” would qualify under such category. A list of ASEAN official activities may be compiled for this purpose. As to “Officials of Member States” representing ASEAN in other Member States, there should be clear guidelines to govern when and in what circumstances such officials would be appointed by ASEAN. As a practical measure, ASEAN would also need to consider the modalities for notification.
- g. As Article 4 stipulates that P&I will only be granted to certain categories of the ASEAN Secretariat staff designated by the Sec-Gen, the relevant staff categories will need to be identified.
- h. Pending the Agreement’s entry into force, ASEAN should consider these implementation issues. This will provide clarity on its scope and application to ASEAN Member States which are considering the necessary domestic legislation for

the implementation of ASEAN P&I Agreement. Such clarity may also provide a greater push towards the ratification and entry into force of the Agreement.

- i. The importance of the P&I Agreement is reflected in the recommendations of the Eminent Persons Group on the ASEAN Charter, which made it clear that P&I should be considered as an essential element of ASEAN's legal personality.

B. DISCUSSION

In the discussion that ensued, the following key points were raised:

- a. Although there is no legal obligation to do so, pending the entry into force of the ASEAN P&I Agreement, the Member States which ratified it may already implement and grant such privileges and immunities. However, depending on particular domestic requirements, there may be a need for implementing domestic legislation to do so.
- b. The absence of a reporting mechanism, to monitor a Member State's compliance with the ASEAN P&I Agreement, does not preclude the Secretariat from raising any breach or non-compliance to the relevant ASEAN forum. It was also suggested that a mission to ASEAN may also report on any violations and bring this up with ASEAN and the relevant host country.
- c. The ASEAN P&I Agreement granted the ASEAN Sec-Gen functional immunity in Article 4(3) and diplomatic immunity in Article 4(4). However, with Article 4(5) of the Agreement, it may be concluded that the ASEAN Sec-Gen does not enjoy immunity in his home country, except for immunity from legal process for official words and acts (which is said to be the only immunity that will subsist once he leaves office). This means that, he may be liable for acts done outside his official capacity, when he is in his home state, during and even after his term as Secretary-General. The drafters of the 2009 ASEAN P&I Agreement based Article 4(5) on bilateral diplomatic practice and the view that this is the only immunity that is essential to the Sec-Gen. It was noted that this immunity is unlike the personal immunity of the UN Secretary-General, and that the model of bilateral diplomatic immunities may not be directly applicable to officials of an international organisation. Considering such provisions, it may also be said that ASEAN has decided that the Sec-Gen is not exempt from taxation in his home state.
- g. Based on the ASEAN P&I Agreement, privileges and immunities will only be granted to certain categories of ASEAN Secretariat staff designated by the Sec-Gen. Art. 4 provides the list of privileges and immunities to be enjoyed by the Sec-Gen and some classified staff. However, it should be noted that except for immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity, Art. 4 (5) provides that these privileges and immunities shall not apply to nationals of or permanently residents in the granting Member States. Thus, in the aspect of income taxes for example, some staff may be taxed on their salaries while others are not, depending on the taxation laws and practices of each Member

State with respect to their nationals and residents. Some ASEAN Member States even impose or plan to impose tax on their non-resident nationals working in the Secretariat. As such, there may be a need to rationalize arrangements so as not to disadvantage the staff concerned.

- h. In implementing the ASEAN P&I Agreement, there is a need to look at existing state practices. A host country may decide to give more privileges and immunities compared to those in the *1946 Convention on the Privileges and Immunities of the UN* (e.g. Thailand to UNESCAP). It may not give similar or uniform privileges to international organisations (e.g. Switzerland to WTO and UN). One should also look into relevant domestic laws such as local labor laws which may apply in the claim for or against privileges and immunities (e.g. In Indonesia, ASEAN Secretariat staff is given a 13th month pay as a bonus in accordance with Indonesian labor laws).
- i. There is currently no special travel document for ASEAN officials but there are existing agreements to facilitate their travel within ASEAN. However, arrangements for official travel outside the ASEAN region may be difficult to implement and will need to be studied some more.
- j. The new Host Country Agreement with Indonesia should be a broader agreement encompassing premises as well as P&I provisions, and not just a limited bilateral P&I agreement between the Secretariat and Indonesia.
- k. Pending the entry into force of the ASEAN P&I Agreement, it may be said that the existing host country agreements covering the ASEAN Secretariat continue to apply. As for Permanent Missions to ASEAN, which are missions of Member States to ASEAN that are based in Jakarta and consisting of Permanent Representatives and officials on ASEAN duties, they should be able to enjoy privileges and immunities as soon as they start their mission duties. There is no need to wait for the ASEAN P&I Agreement to come into force because Art. 19 of the ASEAN Charter, which already entered into force, provides that their immunities and privileges shall be governed by the *1961 Vienna Convention on Diplomatic Relations* or in accordance with the national law of the ASEAN Member State concerned.

VI. Recommendations

In view of the Workshop's discussions, the following recommendations may be considered by:

1. CIL

- a. To continue its study of ASEAN's legal personality and privileges and immunities, which should provide additional reference to the ASEAN Secretariat and ASEAN Member States. Its research should also cover the practice of major international organisations relating to legal personality and privileges and immunities, and include a bibliography of books and articles dealing with ASEAN's legal personality;
- b. To continue organising the ASEAN Charter Series or its equivalent to further regional discussions implementing the Charter, taking into account emerging issues and legal developments; and
- c. To discuss areas of collaboration with the ASEAN Secretariat, especially its Legal Services and Agreement Division, such as: (1) further enhancement of CIL's ASEAN Database; (2) a dedicated space in CIL and Secretariat's websites covering related legal developments in ASEAN and ASEAN Member States; (3) an online forum bringing together ASEAN legal experts to encourage more discussion on ASEAN law and policy; and (4) a database of ASEAN legal experts and their works, among others.
- d. To continue the Centre's ASEAN Integration through Law (ITL) major research project and to share its findings at appropriate fora.

2. ASEAN Secretariat

- a. To come up with reports and issue papers as well as propose strategies that will guide ASEAN Member States in the implementation of the Charter. This will include an evaluation of the progress made by ASEAN in operationalising its legal personality and complying with the Charter and related Agreements by the Member States;
- b. To hold continuing public awareness programmes/activities to educate ASEAN Member States and the general public of the legal implications of the ASEAN Charter and other ASEAN Agreements; and
- c. To provide an interactive platform so that ASEAN can continuously engage and consult with nationals of Member States and third parties (international non-governmental organisations, civil society, non-member states) on the implementation of the Charter and other ASEAN Agreements.

3. ASEAN and ASEAN Member States

- a. To facilitate the early entry into force and implementation of the ASEAN P&I Agreement;
- b. To come up with national-led education campaigns or activities that will inform their nationals of the implications of being part of ASEAN as well as to foster awareness and encourage identification with other Member States;
- c. To continue the study and preparation of domestic legislation, if needed, to implement the ASEAN Charter and the ASEAN P&I Agreement, as well as to identify issues and constraints in their implementation domestically and regionally, and come up with remedial measures;
- d. To give further meaning to the terms in the Charter such as “common positions” and “centrality” of ASEAN through joint declarations and resolutions;
- e. To come up with operational guidelines on the conduct of External Relations (Chapter XII of the Charter); and
- f. To study and consider the standardisation of tax treatments for nationals working in the ASEAN Secretariat.

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ANNEXES

A. Workshop Programme

CENTRE FOR INTERNATIONAL LAW (CIL)

Title: CIL ASEAN Charter Series 2010:
Workshop on Implementing Legal Personality and Privileges & Immunities.

Date/Venue: Workshop on 16 August 2010 (Monday)/Grand Copthorne Waterfront Hotel.

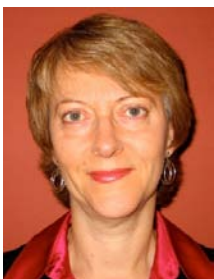
Dress Code: Workshop (Lounge Suit)

PROGRAMME

9.00am	Registration		
9.30am	Welcome Remarks by Prof Tommy Koh, Chairman, Governing Board, CIL		
9.45am	SESSION 1 International Law Principles and Practices: Regional Applications	<i>Chair: Prof Robert C. Beckman, Director, CIL</i>	
		<table> <tr> <td>Ms. Jill BARRETT Senior Research Fellow British Institute of International and Comparative Law (BIICL)</td> <td>Mr. Gerd DROESSE Lead Professional (Board Operations- Institution and Coordination) Office of The Secretary Asian Development Bank</td> </tr> </table>	Ms. Jill BARRETT Senior Research Fellow British Institute of International and Comparative Law (BIICL)
Ms. Jill BARRETT Senior Research Fellow British Institute of International and Comparative Law (BIICL)	Mr. Gerd DROESSE Lead Professional (Board Operations- Institution and Coordination) Office of The Secretary Asian Development Bank		
11.15	Coffee Break		
9.45am	SESSION 2 ASEAN Charter Provisions on Legal Personality	<i>Chair: Prof Simon Chesterman, CIL Associate</i>	
		<table> <tr> <td>Prof Hikmahanto JUWANA Professor International Law University of Indonesia</td> <td>Dr. Termsak CHALERPALANUPAP Director Political and Security Cooperation ASEAN Secretariat</td> </tr> </table>	Prof Hikmahanto JUWANA Professor International Law University of Indonesia
Prof Hikmahanto JUWANA Professor International Law University of Indonesia	Dr. Termsak CHALERPALANUPAP Director Political and Security Cooperation ASEAN Secretariat		
1.00pm	Lunch		
9.45am	SESSION 3 Practical issues in implementing ASEAN Charter Provisions on Legal Personality in ASEAN Member States	<i>Chair: Prof Joseph WEILLER Director, CIL ASEAN ITL Research Project</i>	
		<table> <tr> <td>Mr ONG Keng Yong Director, Institute of Policy Studies Lee Kuan Yew School of Public Policy</td> <td>Mr. Rodolfo SEVERINO Head ASEAN Studies Centre Institute of Southeast Asian Studies</td> </tr> </table>	Mr ONG Keng Yong Director, Institute of Policy Studies Lee Kuan Yew School of Public Policy
Mr ONG Keng Yong Director, Institute of Policy Studies Lee Kuan Yew School of Public Policy	Mr. Rodolfo SEVERINO Head ASEAN Studies Centre Institute of Southeast Asian Studies		
4.00pm	Coffee Break		
4.15pm	SESSION 4 2009 ASEAN Privileges and Immunities Agreement	<i>Chair: Prof Michael EWING-CHOW Co-Director, CIL ASEAN ITL Research Project</i>	
		<table> <tr> <td>Dr. Termsak CHALERPALANUPAP Director Political and Security Cooperation ASEAN Secretariat</td> <td>Mrs RENA LEE Deputy Senior State Counsel International Affairs Division Attorney-General's Chambers Singapore</td> </tr> </table>	Dr. Termsak CHALERPALANUPAP Director Political and Security Cooperation ASEAN Secretariat
Dr. Termsak CHALERPALANUPAP Director Political and Security Cooperation ASEAN Secretariat	Mrs RENA LEE Deputy Senior State Counsel International Affairs Division Attorney-General's Chambers Singapore		
5.45pm	Closing Remarks		
6.00pm	<i>End of Workshop</i>		

B. Speaker and Moderator Profiles

Speaker Profile



Ms Jill BARRETT joined the British Institute of International & Comparative Law as Senior Research Fellow in Public International Law in August 2010, bringing twenty years' experience as a Foreign Office lawyer/diplomat advising on legal aspects of foreign policy, negotiating international agreements and representing the United Kingdom abroad. Her FCO responsibilities included advising on public international law, EU and UK law on various subjects, such as Treaties, International Organisations, Environment & Energy, Polar Regions, Overseas Territories, Devolution/Foreign Affairs, South America, Africa, China, Taiwan, Hong Kong and Law of the Sea. She acted as Deputy Agent for the UK in the Ireland v UK Mox Plant Cases under UNCLOS and the OSPAR Convention and was a member of UK delegations to a wide range of international organisations and conferences, such as the Antarctic Treaty Consultative Meeting, Commission on the Conservation of Antarctic Living Marine Resources, London Convention (on pollution of the Marine Environment), Sixth (Legal) Committee of the UN General Assembly, UN Security Council, Optional Protocol to the Convention on the Elimination of Discrimination Against Women, UN Commission on Environment and Development, UN Framework Convention on Climate Change, Sino-British Joint Liaison Group on Hong Kong. Ms Barrett was previously Lecturer in Law at the School of Oriental & African Studies, University of London and at the University of Durham.



Dr Termsak CHALERMPALANUPAP is Director of Political and Security Cooperation at the ASEAN Secretariat, the Association of Southeast Asian Nations (ASEAN) where he supports the office on matters relating to political and security cooperation in ASEAN. Before this, he served ASEAN as assistant director for economic research and external relations, and also worked at The Nation, an independent English-language daily in Bangkok, as a reporter, chief reporter, news editor and editorial page editor. Dr ChalermPALANUPAP obtained a Ph.D. and an M.A. in political science from the University of New Orleans, Louisiana, USA in 1982 and 1986, respectively.



Mr Gerd DROESSE studied law and history in Wurzburg and Lausanne and international relations at the Bologna Center of the Johns Hopkins University; as a junior lawyer, he was assigned to the High Court of Hamburg. Mr. Droesse holds the qualification for an appointment as a judge, which comprises in Germany all other legal qualifications. From 1983 until 1995 Mr. Droesse was employed by the Food and Agriculture Organization of the United Nations. As the legal adviser of the Director of Personnel of FAO, he was responsible for the representation of FAO in internal grievance procedures and issues regarding personnel policies. In June 1995, he joined the Asian Development Bank and was assigned to the Office of the General Counsel. As Principal Counsel and Head of the Special Practice Group: Institutional and Administrative he dealt with many complex administrative, institutional and personnel matters of ADB. Moreover, he was the legal adviser of the Audit Committee of ADB and the focal point for resource mobilization matters (e.g. replenishments of the Asian Development Fund). From October 2006 through October 2009, Mr. Droesse was assigned as Legal Adviser to the ADB Institute in Tokyo. In this capacity, he was responsible for the general institutional and administrative matters of the Institute and performed functions of Secretary. Currently Mr. Droesse holds the position of Lead Professional (Board Operations -Institution and Coordination) in the Office of The

Secretary of ADB with responsibility for the implementation of special projects involving governance and institutional matters and knowledge products.



Professor Hikmahanto JUWANA is Professor of International Law in the Faculty of Law of the University of Indonesia, and a scholar of and advisor in economic and public international law to the Indonesian government. He studied law at the University of Indonesia (S.H. 1987), Keio University-Japan (LL.M. 1992) and the University of Nottingham-UK (Ph.D. 1997). While in private legal practice 1987–97, he also taught at several Indonesian universities. Since that time, while teaching fulltime at the University of Indonesia Faculty of Law he has simultaneously served the Republic of Indonesia as the Senior Legal Adviser to the Coordinating Minister for Economic Affairs, member of the Council of Experts at the Ministry of Justice and Human Rights, and adviser on specific matters to the Ministry of Foreign Affairs. In the specific area of armed conflict law, he was expert witness on command responsibility in the domestic war crimes trials relating to alleged human rights abuses arising out of East Timorese independence. He is a frequent public commentator on economic and public international law including human rights in the Indonesian and Southeast Asian media, and has published scholarly work in those same areas in English and Indonesian.



Rena LEE is a Deputy Senior State Counsel with the International Affairs Division of the Attorney-General's Chambers. She graduated from the National University of Singapore in 1992 and joined the Ministry of Defence thereafter. In 2008, Rena joined the Singapore Legal Service and has been with the Attorney-General's Chambers since then. In her time in the Attorney-General's Chambers, she has been involved in different areas of international law. She was part of the delegation representing Singapore during the climate change negotiations in Copenhagen last year. She has also been actively involved in the work of the High Level Legal Experts Group which was tasked with the drafting of the 2009 Agreement on the Privileges and Immunities of ASEAN.



Mr ONG Keng Yong is Director of the Institute of Policy Studies (IPS) in the Lee Kuan Yew School of Public Policy at the National University of Singapore. He is concurrently Ambassador-At-Large in the Singapore Ministry of Foreign Affairs (MFA) and Singapore's Non-Resident Ambassador to Iran. He was Secretary-General of ASEAN (Association of Southeast Asian Nations) from January 2003 to January 2008. He started his diplomatic career in the MFA from June 1979 and was posted to the Singapore Embassies in Saudi Arabia, Malaysia and the United States of America. He was Singapore's Ambassador to India and Nepal from 1996 to 1998. From September 1998 to December 2002, he was Press Secretary to the then Prime Minister of Singapore, Mr Goh Chok Tong. At the same time, Mr Ong held senior appointments in the Ministry of Information, Communications and the Arts, and the People's Association in Singapore.



Mr Rodolfo C. SEVERINO, a Visiting Senior Research Fellow at the Institute of Southeast Asian Studies, a former ASEAN Secretary-General and former Philippine diplomat, is the first head of the ASEAN Studies Centre. He has completed several books on ASEAN, including *Southeast Asia in Search of an ASEAN Community*. Before assuming the position of ASEAN Secretary-General, Severino was Undersecretary of Foreign Affairs of the Philippines. He was Ambassador to Malaysia from 1989 to 1992. He twice served as ASEAN Senior Official for the Philippines.

Moderator Profile



Robert C BECKMAN is the Director of the Centre for International Law (CIL), a university-wide research centre at the National University of Singapore (NUS) which was established in 2009. In addition to serving as Director of the Centre, he also heads its ocean law and policy programme and the CIL Documents Database Project. Prof Beckman received his J.D. from the University of Wisconsin and his LL.M. from Harvard Law School. He is an Associate Professor at the NUS Faculty of Law, where he has taught for more than 30 years. He currently teaches Ocean Law & Policy in Asia, Public International Law and International Regulation of Shipping. He is an expert on the issues of law of the sea in Southeast Asia, including piracy and maritime security. He served for several years as a regional resource person in the workshops on Managing Potential Conflicts in the South China Sea. He has represented Singapore in various CSCAP meeting on maritime security, and has worked for many years on the legal and policy issues relating to the Straits of Malacca and Singapore. Prof Beckman lectures in the summer programme at the Rhodes Academy of Oceans Law & Policy in Rhodes, Greece. He is also an Adjunct Senior Fellow in the Maritime Security Programme at the S Rajaratnam School of International Studies (RSIS), Nanyang Technological University (NTU).



Professor Simon CHESTERMAN is Vice Dean and Professor at the National University of Singapore Faculty of Law, and Global Professor and Director of the New York University School of Law Singapore Programme. Educated in Melbourne, Beijing, Amsterdam, and Oxford, his previous positions include Senior Associate at the International Peace Academy and Director of UN Relations at Crisis Group in New York. Other experience includes working for the UN Office for the Coordination of Humanitarian Affairs in Yugoslavia and interning at the International Criminal Tribunal for Rwanda. His areas of expertise include international law and institutions, state-building, and the regulation and oversight of intelligence services. He is a member of the editorial boards of various leading journals and the author or editor of eleven books, including *Private Security, Public Order: The Outsourcing of Public Functions and Its Limits* (Oxford, 2009) and *Law and Practice of the United Nations* (Oxford, 2008).



Michael EWING-CHOW is an Associate Professor at the Faculty of Law, National University of Singapore (NUS) where he teaches world trade law and corporate law. He has a LLB (First Class Honors) from NUS and a LLM from Harvard. After graduation, he worked in the corporate department of Allen & Gledhill before returning as an academic to NUS. He then obtained a post graduate scholarship to Harvard Law School. Upon his return, he started the first World Trade Law course at NUS and became involved in negotiations for Singapore's early Free Trade Agreements. He has been a consultant to the Singapore Ministry of Trade and Industry, Ministry of Foreign Affairs and Ministry of Finance as well as the World Bank, the Asian Development Bank and the WTO. Michael has also been involved in the building of trade law capacity of government officials in Asia and Latin America. He has also assisted the Singapore Company Law Reform and Frameworks Committee which was tasked in 2001 with a major overhaul of corporate law in Singapore and in 2008 was appointed to a Working Group of the Steering Committee for the review of the Singapore Companies Act. He has published widely on FTAs, investment law and company law. Michael also volunteers with various local NGOs and co-founded aidha (www.aidha.org), an NGO which provides financial education and microfinance opportunities for domestic migrant workers and for which he was awarded a Social Entrepreneur of the Year Award in 2007. He was also awarded the Teaching Excellence Award in 2007 and the Inspiring Mentor Award in 2009. In 2009, he was a Emile Noel Fellow at the Jean Monet Centre at NYU and was appointed Head, Trade/Investment Law and Policy of CIL.



Professor Joseph WEILER is University Professor, Joseph Straus Professor of Law and European Union Jean Monnet Chair at NYU School of Law. He serves as Director of The Straus Institute for the Advanced Study of Law & Justice, The Tikvah Center for Law & Jewish Civilization, and The Jean Monnet Center for International and Regional Economic Law and Justice. He is also Director of the J.S.D. Program at the Law School. He was previously Professor of Law at the Michigan Law School and then the Manley Hudson Professor of Law and the Jean Monnet Chair at Harvard Law School. He is a Fellow of the American Academy of Arts and Sciences. He is the Editor-in-Chief of *The European Journal of International Law* and the *International Journal of Constitutional Law*. His recent publications include *Un'Europa Cristiana* (translated into nine languages), *The Constitution of Europe* (translated into seven languages), and a novella, *Der Fall Steinmann*.