

International and ASEAN Law in the ASEAN 10 National Jurisdictions:

The Reception of International Law in the Legal System of Thailand

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This paper outlines the various ways by which international laws may (receive force/be enforced) within the domestic legal system of Thailand. It is part of the broad-ranged project *Integration through Law: the ASEAN Way in a Comparative Context*, studying the Association of South East Asian Nations (ASEAN). Understanding how the Thai legal system operates; especially, the constitution which varies from each government under the Constitutional monarchy system ruled by the King Bhumibol Adulyadej, the ways it accords domestic effect to the international law is important in order to appreciate the extent to which the vision proclaimed in the 2007 ASEAN Charter, of forming an integrated South East Asian political community, may indeed find support on the part of Thailand.

This document embarks on a brief introduction to the political and judicial system of the Kingdom of Thailand. It subsequently discusses the status of customary international law to be executed and to conclude inside the domestic Thai laws together with procedures, ratification clusters and implementing international treaties to combine with the Thai legal system. The research concludes by reviewing three case studies which were examined in the context of each ASEAN Member State, throughout the series of papers reporting on the different legal systems. This additionally comprises of Thai courts that are major empowered to interpret any forms of treaty (there are 5 categories in the 2007 Constitution) conclusion and ratification and internal government documents. It is clearly seen that the Thai B.E. 2550 (2007) Constitution has changed the concept of the constitutional context from the previous one in 1997 (which the high court struck on an issue of construing treaties; the court must austere construe without an intervention from politicians). The 2007 constitution addresses the procedures of concluding an international treaty; it, nonetheless, shows the ways by which treaties may get domestic effect and it does clarify the domestic effect of the customary international law or of general principles of law. There are few Thai court decisions addressing about international obligations that Thailand has abided by the international law in the decisions that do discuss and it says slight principles guiding its application to the domestic law. Moreover, due to frequent constitutional changes which are as same as the government, it is difficult to take confidence on the Constitution's text to actually reflect the day to day governance of the country.

It is also noteworthy to learn that the trend of ASEAN Economic Community emerging is crawling and that Thailand will indeed be able to meet its international obligations, as indicated by the Section 190 of Thai constitution B.E. 2550 (2007); the procedures required prior authorization of the National Assembly for the conclusion of treaties. This is further evidenced by the Council of Ministers' practice of preparing a draft law before concluding a treaty so as to facilitate its implementation. In this regard, if the ASEAN Charter is to succeed in its vision of creating a unified integrated community throughout South East Asia, corporations and individuals will have to take on leading roles in demanding this integration from their governments. At this stage, it requires courts to be receptive to claims based on international law, to have the professional skills and knowledge to discuss and construe before applying it as well as to be politically secure in doing so. However, this will not be the first time Thai courts will employ international law, but the doctrinal basis for doing so is scarce and unsteady. The Thai high courts, the Supreme Court of Justice, the Supreme Administrative Court and the Constitutional Court will have to develop a doctrine of how to bring international law into Thai domestic law and provide guidance to the lower courts respectively.

This paper will therefore lay down the existing information and relevant legal sources, using a variety of sources including the Constitution, relevant legislation and court decisions together with Western academic work and Thai governmental websites in the hope of facilitating understanding and encouraging further investigation and academic discussion of the Thai legal system and its receptiveness to international law.