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Centre for International Law
ASEAN Law and Policy
Curriculum and Training Programme

Monitoring Compliance by the ASEAN Secretariat, National State Administrators, and Private Actors—Modes and Codes of Best Practices

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MONITORING COMPLIANCE BY THE ASEAN SECRETARIAT, NATIONAL STATE ADMINISTRATORS, AND PRIVATE ACTORS — MODES AND CODES OF BEST PRACTICES

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1. OUTLINE

An important tension in ASEAN's development as an international organisation is whether the 'ASEAN Way' – defined by consultation and consensus, rather than enforceable obligations – is consistent with the goal of making it a community governed by law. A key step towards that goal is measuring compliance with the obligations negotiated under ASEAN auspices. This module examines the changing attitudes towards compliance in ASEAN, as well as the practice and possibilities of monitoring member state compliance.

2. OBJECTIVES

Students who complete the course will develop an understanding of compliance in international law and the role of monitoring as a tool of compliance. With regard to ASEAN in particular, students will understand the changing role of compliance in ASEAN and the evolving monitoring mechanisms that have been used over time. Students will also become familiar with the various possibilities available for the future, including who does the monitoring, how data are collected, when monitoring should take place, what powers monitors should have, and the role of transparency.

3. READING MATERIALS

The main text is

Simon Chesterman, *From Community to Compliance? The Evolution of Monitoring Obligations in ASEAN* (Cambridge: Cambridge University Press, 2015), 180pp.

<https://doi.org/10.1017/CBO9781316162248>

Further readings are indicated under specific topics below.

4. TOPICS

4.1. The 'ASEAN Way' and the Rule of Law

What is the 'ASEAN Way'? Is it compatible with the rule of law? Why, or why not? What barriers, if any, hinder ASEAN's development as a rules-based organization? How important is compliance, anyway?

Required reading:

Chesterman, *From Community to Compliance*, pp. 1-12.

Further reading:

Paul Davidson, 'The ASEAN Way and Role of Law in ASEAN Economic Cooperation' (2004) 8 *Singapore Y.B. Int'l L.* 165.

Logan Masilamani and Jimmy Peterson, 'The "ASEAN Way": The Structural Underpinnings of Constructive Engagement', *Foreign Policy Journal*, 15 October 2014.

Kal Raustiala and Anne-Marie Slaughter, 'International Law, International Relations and Compliance', in Walter Carlsnaes, Walter Risse and Beth A. Simmons (eds.), *Handbook of International Relations* (London: Sage, 2002), 538.

4.2. The Evolution of Monitoring in ASEAN

How has monitoring been used in ASEAN? For what purposes? How effectively? Are some purposes more legitimate than others? Are some more effective than others?

Required reading:

Chesterman, *From Community to Compliance*, pp. 59-78.

Further reading:

Vinod K. Aggarwal and Jonathan T. Chow, 'The Perils of Consensus: How ASEAN's Meta-Regime Undermines Economic and Environmental Cooperation', *Review of International Political Economy*, 17(2) (2010), 262.

Alan Khee-Jin Tan, 'The ASEAN Agreement on Transboundary Haze Pollution: Prospects for Compliance and Effectiveness in Post-Suharto Indonesia', *New York University Environmental Law Journal*, 13(3) (2005), 647.

Michael Ewing-Chow and Edrick Gao, 'The Asian Economic Community: ASEAN - A Building or Stumbling Block for China and India Economic Cooperation?', in Muthucumaraswamy Sornarajah and Wang Jiangyu (eds.), *China, India and the International Economic Order* (Cambridge: Cambridge University Press, 2010), 387.

4.3. A Monitoring Toolkit

What are the possibilities for future monitoring of compliance in ASEAN? Who should do it? How should data be collected? When? What powers should monitors be given? How important is transparency? Will more effective monitoring strengthen ASEAN as a rules-based organization? Will it be consistent with the 'ASEAN way'?

Required reading:

Chesterman, *From Community to Compliance*, pp. 79-99.

Further reading:

Mathew D. McCubbins and Thomas Schwartz, 'Congressional Oversight Overlooked: Police Patrols versus Fire Alarms', *American Journal of Political Science*, 28 (1984), 165.

Brian Z. Tamanaha, 'The Lessons of Law-and-Development Studies', *American Journal of International Law*, 89 (1995), 470.

Laurence R. Helfer, 'The Law and Politics of International Delegation: Monitoring Compliance with Unratified Treaties – The ILO Experience', *Law and Contemporary Problems*, 71 (2008), 193.

Philippe de Lombaerde, Antoni Estevadeordal and Kati Suominen (eds.), *Governing Regional Integration for Development: Monitoring Experiences, Methods and Prospects* (Aldershot: Ashgate, 2008).