CIL

CENTRE FOR INTERNATIONAL LAW
National University of Singapore

ASEAN Law Academy
15 – 23 August 2019

Summary of Discussions

Contents

Day 1: Enhancing the Administration of ASEAN

Opening Remarks

1. The ASEAN Law Academy commenced with opening remarks from Professor Lucy Reed, Director of the Centre for International Law (CIL), followed by a welcome and address from the Academy Co-Directors, Professor Joseph Weiler of New York University and the National University of Singapore, and Assistant Professor Tan Hsien-Li of the National University of Singapore.

2. Professor Lucy Reed opened the Academy by emphasizing the importance of regional cooperation given the current global political landscape as well as the attractiveness of ASEAN Member State markets. She spoke of how CIL is a firm proponent of ASEAN integration and regional development, producing work for both academic scholarship and practical legal and political capacity-building. Notably, CIL has done so through the ASEAN Integration Through Law project and book series, in addition to the ASEAN Law Academy, which has doubled in participant numbers since its first iteration last year. Finally, she wished participants a successful Academy.

3. Professor Weiler encouraged participants to step forward in the practicums throughout the Academy, which are based on examples on the ground. He noted that the scope of the Academy had expanded this year to include three specialisation tracks following feedback from participants last year, and hoped that participants would contribute their feedback freely. Dr Tan highlighted that participants should be flexible and creative in their work, in order to complete the tasks that they may be presented with. She then introduced the teachers of the various modules.

Organising the Public Bureaucracy to Ensure Effective Implementation and Compliance with ASEAN Commitments (I) by Professor Jon Quah

4. Professor Jon Quah, an Anti-Corruption Consultant from Singapore, began by highlighting the importance of identifying the best practices for organising the ASEAN public bureaucracies to ensure compliance with their ASEAN commitments. In order to do so, there is a need to define the concept of policy implementation. Professor Quah posited that Van Horn and Van Meter's definition is the most suitable and outlined two key areas: (1) the focus on public and private individuals and groups, and (2) the identification of policy context. By referring to Gordon Chase's 1979 article, there are 44 obstacles which arise from 15 different factors, which can be further divided into three main categories:

    a. Operational demands on the government;
    b. Nature and availability of resources; and
    c. Need to share authority.

5. Out of these three categories, Professor Quah emphasised the importance of the second and third categories. Factors that fall under the nature and availability of resources include supplies and

technical equipment, space, personnel and money. There are also seven types of agencies included in the types of authority that need to be shared, such as the press, private sector and elected politicians.

6. Referring to Van Meter and Van Horn's model of policy implementation, there are six key variables to consider: policy standards and objectives; resources; inter-organizational communication and enforcement activities; nature of implementing agencies; disposition of implementers; and socio-economic policy contexts. Professor Quah provided a summary of policy contexts of the ASEAN countries by ranking the countries in terms of land area, population size, GDP/capita, Corruption Perceptions Index, government effectiveness, rule of law and governance. To better contextualise the theory, Professor Quah assessed the differences in the implementation of the ASEAN Cosmetic Derivative (ACD) and ASEAN initiatives to combat transnational crime. He posited that the implementation of ACD is effective due to a clear aim and the presence of implementing agencies in all ten member-states that facilitated better coordination. In contrast, the implementation of the transnational crime measures is ineffective as its aims are too wide and complex to implement in each member state, resulting in difficulties of coordination among the agencies. Professor Quah prioritized political will as the key factor in effective policy implementation. A combination of necessary legal powers, high budget and qualified personnel will determine if there is a strong dose of political will. In addition, there should also be an effective public bureaucracy with the use of e-government, as well as minimal corruption and red tape.

7. There were questions raised by Mr Garry Pratama (Lecturer and Researcher, Faculty of Law, Universitas Padjajaran, Indonesia) regarding the policy implementation in the Indonesian context. He highlighted the ineffectiveness of the variety of policy programs that target the diverse Indonesian community. Mr Pratama wondered if there is a way to localize Professor Quah's strategies to the Indonesian context as rampant corruption seems to be a part of the country's development process. As corruption was often seen as a coping mechanism to survive, Professor Quah proposed to look at the root cause, such as the low salaries of workers and low probabilities of detection and punishment. In order to reduce corruption, policies should be implemented to make corruption high-risk and low-reward. Mr Pratama also enquired if there is a framework that could allow better coordination between institutions to ensure effective policy implementation. Professor Quah explained that there is competition among institutions for recognition, especially when there are limited resources. Other factors such as civil society, the differences in horizontal and vertical level of authority, the wide archipelago and the relationship between the anti-corruption agency and the police all play a part in the process. Ultimately, the budget allocation and attitude of leaders will determine the effectiveness of coordination between agencies.

8. An inquiry about the levels of political will of ASEAN Member States was raised by Dr June Wang (Senior Lecturer and Associate Dean (International), Western Sydney University, Australia). In response, Professor Quah answered that it is dependent on the leadership and policies of the countries. He raised the example of the responses toward the Hong Kong extradition bill and how the

government did not properly foresee the consequences. Changes in government and priorities of the regime will inevitably result in instability and problems.

9. Mr Dewo Baskoro (Researcher, Centre for International Law Studies, Faculty of Law, Universitas Indonesia) asked about the possibility to improve the current Indonesian system while retaining certain cultural aspects such as the tradition of patronage, instead of reforming it to create a Western-like system. Professor Quah brought up the concept of "pockets of effectiveness" and mentioned the need of leadership for change to happen and continue. He believes in the unfairness of patronage and that there is a price to pay if selection by patronage continues to be used in the system. Dr Usharani Balasingam (Senior Lecturer, University of Malaya) questioned if there is any legislative action to fight corruption. Professor Quah also mentioned that corrupt systems tend to punish whistle-blowers; hence, officials need to be tough to fight it. He provided a Singaporean example, whereby the former President of the National Trades Union Congress was sentenced to five years jail in 2015, although he escaped to Thailand in 1979 when he was accused of corruption.

10. Dr Intan Soeparna (Lecturer, Universitas Airlangga, Indonesia) asked about the process of implementation and compliance with the ASEAN commitments. There was discussion of whether there is a way to ensure inclusion of civil society and marginalized groups. Professor Quah pointed out that provision of channels is important for stakeholders and NGOs to provide feedback on policy impacts but understands that it is not a simple process. Ms Thara Kunarti Wahab (Legal Officer, ASEAN Secretariat) highlighted The differences between implementing an international law and a domestic agreement were highlighted, especially with different levels of implementation in each country. Professor Quah explained that integration should be done accordingly, and compromise should be reached due to presence of various circumstances, committees and laws. He also agreed that translation and expertise issues are huge problems that affect the implementation process.

Organising the Public Bureaucracy to Ensure Effective Implementation and Compliance with ASEAN Commitments (II)

Briefing on the ASEAN Framework Agreement on the Facilitation of Cross Border Transport of Passengers by Road Vehicles (ASEAN CBTP) by Ms Sendy Hermawati, Legal Services and Agreements Division, ASEAN Secretariat

11. Ms Sendy Hermawati, a Senior Officer at the Treaty Division of the ASEAN Secretariat, gave a briefing on the ASEAN Framework Agreement on the Facilitation of Cross Border Transport of Passengers by Road Vehicles (CBTP). While the 2017 agreement had so far only been ratified by Thailand, it is still considered one of the most advanced and forward-looking agreements on land transportation. Under Article 2 of the CBTP, there are five main principles: consistency, simplicity, transparency, efficiency and mutual assistance. Transparency was highlighted as the most important element as parties had

to make publicly available laws and regulations including modifications and amendments. This would aid in cooperation and implementation processes.

12. Ms Hermawati also stressed important elements in the CBTP, such as the following:

    a. ASEAN member-states have designated cross border transport routes as agreed upon in Schedule 1 and such routes can be modified, with mutual agreement of the immediate neighbouring Contracting Parties;
    b. Technical and safety standards must also comply with the standards of the Contracting Parties. Currently, some Member States, like Singapore and Malaysia, are discussing the technical requirements of road vehicles;
    c. Due to insurance requirements, the ASEAN Scheme of Compulsory Motor Vehicles has to be established and harmonized; and
    d. Other key requirements of CBTP include immigration and health inspections.

13. The role of the ASEAN Secretariat was also explained by Ms Hermawati. Some of its duties include maintaining Schedule 1, points of entry and exit as well as laws, regulations and technical requirements of road vehicles. The depository of the CBTP and its Annexes is the Secretary-General of ASEAN. These duties are also listed in the articles of the CBTP.

Day 2: Enhancing the Administration of ASEAN & the ASEAN Economic Community (AEC)

Organising the Public Bureaucracy to Ensure Effective Implementation and Compliance with ASEAN Commitments (III)

Briefing on the ASEAN Framework Agreement on the Facilitation of Cross Border Transport of Passengers by Road Vehicles (ASEAN CBTP) by Mr Poon Joe Fai, Land Transport Authority

1. Dr Poon Joe Fai, Director, Policy, Land Transport Authority, Singapore kick-started the second day with his presentation titled 'Some thoughts along the Cross Border Transport of Passengers (CBTP)' journey. Dr Poon's sharing focused on two aspects: the negotiations and preparations to operate the CBTP. In particular, Dr Poon stressed that since Singapore has not yet embarked on preparations to operationalize the CBTP, his thoughts on operationalizing the CBTP ("Agreement") would be based on his experience in operationalizing other ASEAN agreements. As a side note, Dr Poon also highlighted that since the CBTP was signed in October 2017, only Thailand had ratified the agreement to date.

2. Dr Poon begun by stressing that the essence of the Agreement was captured by the Article 5 on the facilitation of entry and transit of buses among ASEAN Member States. This, he emphasized, represented a departure from many of the prevailing policies of the Member States. Therefore, senior officials were tasked to negotiate the CBTP with the end goal of facilitating the entry and transit of buses to promote trade, movement of people and tourism.

3. The question that the negotiators grappled with initially was what 'ideal facilitation' would look like. The negotiators decided that they would set their benchmark as what they envisioned to be the ideal end state of negotiation. Additionally, they cast their sights upon the EU, which had what Dr Poon referred to as a liberal cross border transport policy allowing operators with a valid 'community licence' issued by its Member State free access to the entire EU road transport market including cabotage. Finally, the negotiation teams also decided that the most prudent way to go about their negotiations would be to take incremental steps in search of a framework that acknowledges and accommodates the different national circumstances and levels of readiness across ASEAN to facilitate cross border bus operations, beginning from the present state of transport.

4. Briefly summarising the results of negotiation on the Grant of Rights in the Agreement, Dr Poon shared that the negotiators had focused on the issues of no cabotage (the transport of goods or passengers between two places in the same country by a transport operator from another country), scheduled buses, and most contentious of all, non-scheduled buses. Dr Poon noted that the negotiations determined that there would be, for a start, a limit of 500 non-scheduled buses per ASEAN Member State ("AMS") to operate through designated points of entry and exit and along designated cross

border transport routes. The cap of 500 as well as the text was modelled after the articles of the 1998 ASEAN Framework Agreement on Facilitation of Goods in Transit.

5. Using a graphical illustration of the Grant of Rights, Dr Poon simplified the rights and prohibitions. To recognise domestic concerns of AMS in bus journeys passing through three countries, the negotiation teams decided all AMS involved in a single journey would have a say as to which passengers may be picked up and dropped off in the different countries. Acknowledging that these controls may sound onerous, Dr Poon emphasized that they cater to the domestic concerns of each AMS, and also allow for flexibility for AMS to choose the pace at which they choose to implement the CBTP.

6. Dr Poon then moved onto the implementation considerations behind the CBTP, the first of which was a mechanism of approval for the Grant of Rights. The key question here was how AMS should operationalize bilateral communications. This mechanism of approval could be done on a trip-by-trip basis or under a blanket approval. A main factor for consideration lay in the administrative feasibility of the methods. Secondly, there was the question of the clashing of regimes between the existing system of vehicle entry permits issued by host countries, for instance the ASEAN Public Service Vehicle permit regime in Singapore, and cross-border permits as envisioned in the CBTP. Could the CBTP be implemented on top of or in parallel with current permit regimes? While one option would be to replace current systems with the CBTP, the number of foreign vehicles entering an AMS would likely far exceed the cap of 500 placed on permits issued under the CBTP. Therefore, it is likely that AMS will have to run two parallel systems. Finally, Dr Poon covered the consideration of method used to allocate CBTP permits, a decision which will ultimately fall on the competent authority of each AMS to make. In anticipation of the fact that CBTP permits would be highly sought after, the only question to ask is, which method of allocating such permits would be the most equitable and efficient? Dr Poon contemplated three possibilities: a criteria-based method requiring a scheme for evaluating applications, balloting, and auctioning. He further added that in Singapore, for instance, we might choose ultimately to go with auctioning for economic efficiency, but noted that such a method might not be the best way as it might drive the cost of obtaining such permits up, drawing a comparison with the Certificate of Entitlement system used for determining car ownership in Singapore.

7. The session then moved into its Question and Answer segment. Ms Farah Syazwani Mokhtar (Senior Manager, Securities Commission Malaysia) referred to the graphical example summary used in the Grant of Rights discussion and asked why, in a three country bus journey (from hypothetical countries A to B to C), the third and final country C should have oversight of passengers boarding at the departure country A and alighting at the second country B. Dr Poon responded that the underlying rationale was that the trip is intended to bring tourists from A to C, thus benefiting C. The same journey is not intended to be a cover for interstate transport between A and B. Giving C oversight over who may alight at B was therefore a safeguard requested by AMS so they can have a full say on who travels between A and C. If it sounded rather restrictive, it was intended to be.

8. Following up on her question, Ms Farah asked if all journeys must involve three or more countries. Dr Poon confirmed that a bus journey can involve only two countries, and that was in fact how negotiators envisioned most journeys to be. He further clarified that the terms used are host, transit and home country. The CBTP caters for journeys between only two countries, i.e. home and host countries. However, the scheme is simultaneously flexible enough to accommodate multiple transit countries. The only remaining doubt being how long a single bus driver can drive.

9. Dr Usharani Balasingam (Senior Lecturer, University of Malaya, Malaysia) then asked why there is a need to cap the number of buses at 500. Dr Poon clarified that indeed 500 buses sounds very conservative and does not seem big enough a number to facilitate ASEAN as an economic entity promoting trade linkages. However, 500 is a number that AMS are comfortable with for a start bearing in mind the concerns AMS might have about 500 buses entering their countries. This cap of 500 was taken from the Framework Agreement to Facilitate Goods in Transit (AFAFGIT) signed in 1998, the original number of which was 60 at the signing of the agreement. Senior transport officials then increased that cap to 500 over the years. Dr Poon similarly assured that the CBTP has provisions which provide a mechanism for AMS to change the cap on the number of buses.

10. Mr Garry Pratama (Lecturer and Researcher, Faculty of Law, Universitas Padjajaran, Indonesia) then asked for Dr Poon's opinion on the implementation of the principle of transparency enshrined in Article 2 of the Agreement, where AMS are obliged to ensure that all information concerning the regulation of the CBTP is readily available to ASEAN countries. Dr Poon responded that such implementation would rightly entail that whenever any agreement is reached under the CBTP, the information thereof will have to be copied to the ASEAN Secretariat, at which point all new information would be disseminated to all AMS.

11. Carlo Vistan (Assistant Professor and Director, Office of Legal Aid, University of the Philippines College of Law) asked if the matter of foreign-operated bus stations, or giving other AMS the right to establish bus stations, was discussed. He speculated that there would be situations in which buses break down in transit or host countries and asked what would happen in passengers stranded in another AMS. Dr Poon responded that the CBTP does not envision foreign-operated bus stations. Nevertheless, the CBTP does provide that AMS involved are asked to give assistance to the passengers where possible. In the scenario where buses break down and passengers are stranded, Dr Poon was of the personal opinion that such a matter is one that should be left to the industry to resolve. He further stressed that it is most likely that when the tour agencies are establishing a presence in another country, they will have local partners and alternative arrangements in the event of breakdown. With 500 bus permits in circulation, they can also send another bus with such a permit to pick up stranded passengers.

<u>Practicum and Conclusion</u>

12. The session than moved on to presentations by respective table groupings on the practicum assignment where they had role-played a domestic inter-agency implementation committee on the CBTP.

13. In conclusion of the segment on Organising the Public Bureaucracy to Ensure Effective Implementation and Compliance with ASEAN Commitments, Professor Jon Quah highlighted two important points for note: the importance of learning from past experiences, past mistakes and between AMS, and that where the heavy lifting falls on particular state agencies to implement ASEAN agreements, governments must provide the resources such that effective realisation of obligations does not become an administrative burden to any one state agency.

Overview of AEC Progress and Evaluating AEC Blueprint 2025 by Dr Chia Siow Yue

1. Dr Chia Siow Yue of the Singapore Institute of International Affairs gave her presentation titled 'Overview of AEC Progress and Evaluating the AEC Blueprint 2025', the objective of which was to prepare ASEAN Law Academy participants to understand the economic imperatives and content of the ASEAN economic integration process and to also evaluate the outcomes and challenges of such integration.

2. Dr Chia shared that she and her colleagues initially took a very critical perspective of ASEAN as an economic entity when talks of economic integration in ASEAN first emerged. Her view however has changed over the years having witnessed for herself ASEAN's successes and diversity. On ASEAN's successes, Dr Chia highlighted that ASEAN Member States have outperformed global growth since the group's inception in 1965 and enlargement since mid-1990. Moreover, ASEAN has been the most regionally integrated grouping in the developing world. It is a dynamic region, with a model of what Dr Chia referred to as 'open regionalism'. It is for this reason that many in the international stage regard ASEAN as a model for regional integration. That being said, Dr Chia also emphasised that individual countries within ASEAN have a serious problem of distribution and poverty. Therefore, regionally and nationally, ASEAN needs to make concerted effort for development, that is, to develop programmes for delivering regional public goods and mitigate regional public "bads". Dr Chia then gave the example of the public good of regional security, under which individual ASEAN countries can focus on economic development.

3. Moving on to diversity, Dr Chia noted that ASEAN is the most diverse regional entity. Some of these diversities include resource wealth, cultures, geographic dispersion, and linguistic background. Nevertheless, these diversities may act either in favour of or against ASEAN as an economic entity. The disadvantages arise when some countries hope to progress at the same pace but others choose to protect instead of compete. Finally, Dr Chia acknowledged that diversity in cultures meant that there is also no shared ASEAN language, giving rise to the use of English as a foreign but common language for official business. Nevertheless, specialisation in export and manufacturing after the 1980s has helped to side step the problem of competition, capitalising on ASEAN diversity, giving rise to the ASEAN production network, which is part of the greater East Asia production network. Thus, Dr Chia concluded, what was once ASEAN's disadvantage 40 years ago has turned into an advantage.

4. Narrowing in on the topic of Economic Integration, Dr Chia broke down its constituent stages. At the outset, she also noted that when ASEAN was first created, there was use of the term 'Economic Community' to describe one of ASEAN's many functions, but that the term carried different meaning depending on which countries or agencies were using it, thus resulting in confusion as to the ultimate aim of economic integration in ASEAN.

5. The first stage of economic integration, shared Dr Chia, is commonly acknowledged to be the Preferential Trading Area whereby countries agree to reduce or eliminate tariff barriers on selected goods imported from each other. Following that is the stage of Free Trade Agreements (FTA) through which countries agree to remove barriers to trade on all goods among themselves and also liberalise trade in services and investments – the stage that ASEAN is currently at. While relatively less complex and easy to navigate, Dr Chia opined that these agreements come with their own suite of problems. Next is that of Custom Unions (CU), whereby countries in addition to removing trade barriers among themselves, also adopt a common external tariff versus the rest of the world. In CUs, every country has to surrender some of their commercial sovereignty. Then there are Common Markets, which allow the free movement of labour capital, Monetary Unions and Economic Unions. Dr Chia opined that the Common Market is physically impossible, let alone socially and politically difficult given the different demographics across ASEAN. Nevertheless, she noted that ASEAN has free movement of skilled labour.

6. Having explored the different stages of economic integration, Dr Chia then contemplated the options of FTAs and CUs. Noting that while countries often face many difficulties with common commercial policy in a CUs, she also highlighted that there are also many different rules of origin (RoO) in Free Trade Agreements. First, RoO enforcement can be costly and time-consuming. In addition, there will inevitably be what is known as the 'Spaghetti Bowl' effect, as well as an 'erosion of tariff preferences', which reduces the gains to previous signatories of bilateral trade agreements. Dr Chia then opined that the best option would of course be if the whole world goes tariff-free, but given that different countries are at different stages of development, it was likely that countries consider themselves in need of different trade policies.

7. Dr Chia then continued to explore the scope and content of FTAs, including (a) trade in goods; (b) trade in services; (c) liberalisation, facilitation and protection of investment – while ASEAN as an entity has previously aimed to implement all three elements, investment promotion as an integrated regional entity has been quite aspirational up till now, and thus Dr Chia expressed hope that ASEAN soon see more integration in this respect; (d) other provisions including the movement of natural persons, intellectual property protection, competition policy, government procurement, labour and environment; (e) consultation and dispute settlement mechanisms; (f) provisions for periodic review; (g) transparent administration of laws and regulations.

8. Dr Chia further highlighted that because ASEAN countries are WTO members, they are subject to WTO Rules, including:

    a. Article XXIV of General Agreement on Tariffs and Trade, containing rules for trade in goods
    b. Article V of General Agreement on Trade in Services, containing rules for trade in services, the constituent modes of which include (1) cross border supply, (2) consumptions abroad, (3) commercial presence of commercial entities, (4) movement of natural persons.

Nevertheless, the Enabling Clause in the WTO allows developing economies to negotiate among themselves under more flexible provisions in terms of sectors covered as well as in tariff reduction or elimination.

9. Shifting her focus to economic integration via the means of Global Value Chains (GVC) and Global Production Networks (GPN), Dr Chia explained that the fragmentation of production at different locations according to comparative advantage through GVCs and GPNs gave a specialisation in tasks and not products. Countries therefore trade in value instead of gross products, the main benefit being that there is a specialisation in sub-components, and that every country that aspires to industrialise has the opportunity to do so without needing the whole suite of technological back-up. Using the Smile Curve to further demonstrate her point, Dr Chia elaborated that different values, both in type and in quantity, are added across a commodity chain:

    a. Upstream Conceptualisation – i.e. R&D, branding and design – have the most value-add;
    b. Fabrication and Manufacturing at the centre of the curve with least value add
    c. Downstream Logistics – i.e. distribution, marketing and sales-service – with equivalent value-add as Upstream Conceptualisation.

10. As ASEAN cannot survive as its own GVC and GPN, Dr Chia emphasised the need for ASEAN to be integrated with greater East Asia and India, giving the example of how a supply system works through auto-assembly in ASEAN.

11. A Malaysian participant raised a query as to how ASEAN ought to promote itself as a single investment destination. She responded that because intra-ASEAN Foreign Direct Investment (FDI) is growing faster than extra-ASEAN FDI today, investment, intra ASEAN competition presents less of a problem today. Leveraging on ASEAN's diversity, Dr Chia opined that investment can be made into different ASEAN countries based on cost structure – while there need not be the same investment techniques, Dr Chia was insistent that investment laws must be present, so that the business environment remains friendly to local investors to prevent capital flight, while also attractive for foreign investment because there are genuine cost advantages. Dr Chia thus concluded that it is unadvisable for frequent revisions to national investment regulations based on the state of the economy as predictability is highly valued by investors.

12. Mr Drossos Stamboulakis (Lecturer, University of the Sunshine Coast Law School, Australia) asked Dr Chia to elaborate on the potential negative externalities of supply chain differentiation, e.g. arbitrage in favour of certain countries and risk of being stuck in lower value-adding segments of a value chain. Dr Chia rephrased the question to be an investigation into how a country can move up a value chain, stating that it is much harder to scale the upstream segment of the Smile Curve although various regional brands such as Gojek and AirAsia have proven successful. This is because establishing a brand is very difficult, as is associating a brand with quality. For instance, Japanese products 40 years ago would have been considered copies of their European equivalents, and Korean electronics 20 years

ago were not trusted. It has been through decades of work that trust between consumer and producer has been built – thus the answer is to persist. On the risks of moving past the supply chain toward lower cost and regulations, such as environmental degradation, Dr Chia responded simply that this was a matter of governance, as many countries have successfully prevented investments into 'dirty' industries and countered negative consequences by enforcing rules.

13. Dr Chia then continued the lecture with a brief overview of the progression of ASEAN economic integration prior to the AEC. ASEAN's economic agenda became prominent in 1977 with the PTAs during the industrial projects era. However, the PTAs were a disaster from Dr Chia's perspective, with innumerable ASEAN meetings and resources expended on negotiations. It was with the introduction of AEC 2015 in 2007, created in the wake of our weakened ability to attract FDI in the aftermath of the Asian Financial Crisis, that heralded a new era. For the same reason, Dr Chia credited ASEAN with its decision not to turn inward-looking, but instead to further open ASEAN Member States to the world.

14. Considering firstly the Intra-ASEAN Share of 25% as a key performance indicator (KPI), Dr Chia shared that it was only natural that given that every Member State is less dependent on ASEAN than it is on the rest of the world in terms of trade, each Member State's priorities would naturally lie with the rest of the world. For this reason, Dr Chia opined that it is difficult to get ASEAN economic integration going. On a more positive note, ASEAN has recognised that a uniform market allows ASEAN not to compete amongst member states but with the rest of the world. Nevertheless, the growth rates of global and ASEAN markets are not reflected in the Intra-ASEAN Share and for that reason, this indicator is not a good KPI.

15. Dr Chia then considered the FTA utilisation as a KPI, noting that again the outlook is not positive, although for reasons such as the fact that products exported within ASEAN are not subject to tariffs, and that custom procedures are idiosyncratic. Ultimately, however, Dr Chia emphasised that as a fact, the AEC Blueprint was not fully implemented by end 2015 – tariffs were 96% implemented for products in the 1992 Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area, with problematic areas including services liberalisation, trade facilitation and free flow of skilled labour. Further, there was the issue of uneven distribution of benefits and costs of liberalisation.

16. Moving then onto economic integration under the AEC Blueprint 2025, Dr Chia noted that several factors were not included: (a) progression to a CU or EU-style Single Market, (b) government procurement provisions, and (c) free movement of low-skilled labour provisions. On the other hand, there was a focus on sustainable development, innovation and IT developments, as well as improved monitoring and evaluation. Furthermore, significant progress had been made in the following areas:

    a. ASEAN-wide self-certification system;
    b. ASEAN Seamless Trade Facilitation Indicators;
    c. ASEAN Trade in Services Agreement;

d. ASEAN Declaration on Innovation;
e. ASEAN Regional Guidelines on food security and nutrition policies; and
f. ASEAN institutional framework on access to Finance for MSMEs.

17. Dr Chia anticipated that challenges facing ASEAN would include geopolitical shifts and conflicts, especially in relation to the fall-out between USA and China on the South China Sea. Further, anti-globalisation and protectionism trends as well as financial shocks within the developed world would require ASEAN Member States to stand collectively against disadvantageous trade measures. In addition, Member States would have to continually undertake structural reforms, and educate ASEAN citizens not only to seek employment in the 4th Industrial revolution but also to compete with the world in light of competitive challenges from more advanced economies in East Asia.

18. Finally, Dr Chia concluded that a suite of opportunities is in store for ASEAN should it capitalise on its identity as one of the most dynamic regions of the world with a generally youthful demographic – ASEAN must see the multiple disruptions in GVCs and GPNs across the globe, as investment, production and trade opportunities for ASEAN. In her closing question, Dr Chia asked how countries are going to prepare their economies to take advantage of such opportunities. Participants representing each Member State expressed general optimism about participating in the AEC and undergoing economic development, elaborating in brief detail about the particular circumstances faced in their countries.

Days 3 and 4: Parallel Specialisations

Group 1: AFTA and ROO by Mr Stefano Inama

Types of Rules of Origin

1. Mr Stefano Inama, a Chief and trade lawyer at the United Nations Conference for Trade and Development (UNCTAD) begun his presentation by introducing the types of rules of origin (ROO). The ROO of goods is the criteria to determine the nationality of the goods, which affects the conditions under which they enter the market. Preferential rules of origin are associated with duty-free or reduced tariff or most-favoured nation rates, while there are also non-preferential rules of origin. The rules of origin can vary by country and by product, and it may be difficult to determine the origin of a product. Mr Inama illustrated this by giving the example of an iPhone, of which origin is the last place in which the product was substantially transformed into a new and distinct article of commerce based on a change in name, character, or use, and the example of a shirt, of which origin depends on where the materials were made.

2. There is a worldwide tendency to not use value-added costs in the calculation, though some countries still use it. Mr Inama explained it may be difficult to calculate the origin of the materials based on its costs, as only some costs may contribute directly to the making of the product, and hence are allowable valued-added costs. Furthermore, if the rules are too stringent, for example through requesting too high a percentage of value-added costs, there is a risk of low utilisation of the rules of origin to obtain trade preferences. The utilisation rate is the percentage of value of dutiable imports being granted preferential duty rates among the value of dutiable imports covered by the preferential arrangement. The utilisation rates of ATIGA are low.

Trade Policy Objectives

3. Mr Inama delved into how rules of origin are linked to trade policy objectives. Rules of origin avoid deflection of trade and tariff circumvention. Rules of origin also ensure that regional inputs are preferred over third country inputs. Trade creation and trade diversion effects determine the negotiations on rules of origin. For example, US/Mexican yarn may be less efficient than Chinese yarn, but the preferential rules of origin require the producer to use US/Mexican yarn, so that US/Mexican yarn will be preferred over Chinese yarn.

4. Mr Dao Gia Phuc (Lecturer, University of Economics and Law, Vietnam National University) asked if environmental and labour standards would be considered under US rules of origin. Mr Inama replied that normally, the rules of origin are linked with manufacturing and industrial processes. The rules are not linked to minimum wages, though Trump has introduced a new element into the US-Mexico-Canada Agreement (USMCA) to require that workers in the garment factory be paid a certain wage.

Negotiation History

5. Mr Inama described how countries have attempted to harmonise the rules of origin between countries for decades without success. In the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) of 1974 and 2000, the categories of wholly obtained products and substantially transformed products were identified. There are three ways to determine whether substantial transformation has taken place, as listed in the Kyoto Convention 1974:

    a. By a change in tariff heading in a specified nomenclature, with lists of exceptions;
    b. By a list of manufacturing or processing operations; and
    c. By the ad valorem percentage rule.

6. However, in the 2000 Kyoto Convention, the manufacturing and processing operations method of determination does not appear. This could be due to the creation of the World Trade Organisation (WTO) in 1994 and North American Free Trade Agreement (NAFTA) in 1998 resulting in the increase of trade and Global Value Chains. The WTO Agreement on Rules of Origin group set out to negotiate a set of harmonised non-preferential rules of origin, and not preferential rules of origin, by 1998. However, even with this limited scope for work, they were unable to come to a conclusion even in 2007. The 2005 WTO Ministerial decision to grant duty-free and quota-free (DFQF) treatment to Least Developed Countries (LDCs) had called for simple and transparent rules of origin. Proposals were put forward by LDCs at the WTO, resulting in the December 2015 Nairobi Ministerial Declaration on preferential rules of origin for LDCs.

Basic Concepts

7. Mr Inama explained some basic concepts contained in rules of origin. For wholly obtained products, there are no non-originating inputs. For non-wholly obtained products, the rules of origin may contain cumulation or value tolerance. Cumulation makes it easier to comply with rules of origin as goods from the region instead of from one particular country can be counted. There is diagonal cumulation, where Country A must have contributed 40% value-added costs for Country B to be considered as having 40% value-added costs. There is also full cumulation, where Country A's contribution to 20% of value-added costs can be cumulated with Country B's contribution of 20% value-added costs to make it Country B's contribution of 40% value-added costs.

8. Regarding intermediate materials, Mr Inama gave the example of a piston. If the ingot has been transformed into a piston, then the ingot's originating materials would not be considered in the calculation. Value tolerance refers to the permissible use of non-originating materials – it may be expressed as percentage of value or as percentage of weight. The origin of a product is confirmed by the certificate of origin (CO), which has to be stamped and signed by certifying authorities. However, there may be inconsistencies in decision-making by different officers. Currently, there is a tendency

to move to electronic COs. In addition, the exporter can request for the CO in the ASEAN Single Window. This will be operational soon, though it is unclear when.

Drafting Rules of Origin

9. Mr Inama depicted the experiences, methodologies and tools one can draw reference from to draft the form and substance of rules of origin. There is no golden standard for drafting the rules of origin, though there are two schools of thought for drafting: one is the NAFTA school, and the other is the EU school. The former is very precise and is written with tariff classifications, while the latter is less precise though it uses plain language and is hence easier for the private sector. The differences can be seen in the TPP (NAFTA school) and the EU-Vietnam FTA (EU school).

Form of Rules

10. The form of the rules of origin have to be technically sound and clearly spelt out. The rules of origin can be (1) across-the-board criteria, (2) across-the-board criteria with selected product-specific or (3) product-specific only, at the chapter or heading level. For ATIGA, the 40% originating material rule is redundant as companies will seek to comply with the change in classification alternative criterion instead.

11. These are some trends and techniques that address the form of rules of origin:

    a. There is a move to product-specific rules of origin across the board. But how specific are they?
    b. There is a move away from value-added calculation by addition, to a value of material calculation.
    c. FTAs increasingly adopt a CTC-North American style approach in drafting product-specific rules of origin (PSROs). Are we sure this is the best way?
    d. The alternative rules for the same product should be a viable and effective alternative.

Substance

12. The substance of the rules of origin should be appropriately restrictive and reflect actual manufacturing capacity. Otherwise, there will be inefficient trade deflection.

13. These are some trends and techniques that address the substance of rules of origin:

    a. It is possible to detect trends. An analysis on the import sensitivities of partners is needed.
    b. There is a difference between North-North and South-South FTAs. South-South FTAs are most protectionist as stringent rules of origin are expected to create industries and favour regional integration.
    c. We need to develop techniques to measure FTAs. As many countries are entering FTAs, there is a need to monitor their utilisation.

d. We need to consider how to draft the substance of rules of origin and whether there is any tool we can use to help us. We could use:
    i. A text-based comparative analysis; and
    ii. An input-output matrix approach to match trade flows.

ASEAN Rules of Origin

14. Mr Inama used the Rules of Origin for the Common Effective Preferential Tariff (CEPT) to show how there can be a lack of clarity in the rules. In those Rules, there is no definition of numerator and denomination for calculation of 40% of originating materials under Rule 3 for Not Wholly Obtained Products. In contrast, ATIGA is much clearer. It uses the ASEAN Value Content or the Regional Value Content (RVC) formula.

15. However, Mr Inama concluded his presentation by outlining the problems with ASEAN rules of origin and possible ways forward:

    a. The requirement of 40% regional content is not reflecting the fragmentation of production or the single production base. ASEAN could lower the threshold of 40% in consultation with industries and prospective investors.
    b. As some parts of the rules of origin may be confusing and imprecise, the overall legal drafting of the rules can be improved in line with best practices and tested methodologies contained in other FTAs with dialogue partners.
    c. The system of certification and verification of CO could also be overhauled by introducing self-certification.
    d. Compliance tools should be further elaborated upon.

Practicum

16. Participants role-played as high-income, middle-income and low-income countries, in order to agree among different groups of countries the ideal solutions for various issues and come up with a text. They were to present the text to the other teams and have another phase to discuss what other teams have said. Mr Inama acted as the Secretariat while the groups discussed a final negotiated text that examined the following issues:

    a. Whether product-specific rules of origin can be more predictable;
    b. How to make the certification system work;
    c. The knowledge about the ASEAN Single Window in various countries and whether it is feasible.

17. Mr Inama commented that in ASEAN and RCEP, there is always cumulation but there is no differentiation in treatment for LDCs. In contrast, in the EU Generalized System of Preferences scheme,

and Canada, there are lower thresholds for LDCs, because their industry is less developed than that of other countries. For them, it may be more difficult to comply.

Group 2: ASEAN Investment Law by Professor Jürgen Kurtz and Professor Sungjoon Cho

Types of Foreign Investment

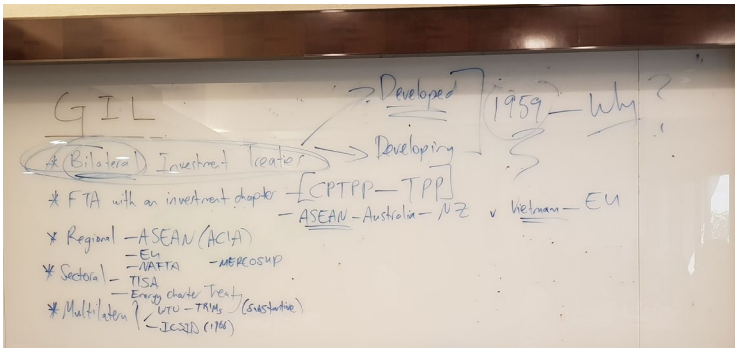
1. This parallel session was conducted by Professor Jürgen Kurtz of the European University Institute and Professor Sungjoon Cho of the Chicago-Kent College of Law in the Illinois Institute of Technology. The course aimed to explain global investment law and how ASEAN regulates investments.

2. Professor Kurtz problematized the concept of a single notion of "Foreign Direct Investment". He highlighted that investments differ in terms of motivations in the movement of capital from one country to another; and while foreign direct investments tend to be long-term and difficult to pull out, foreign indirect investments (portfolio investments) are more liquid.

3. There are three main motivations for companies to invest abroad:

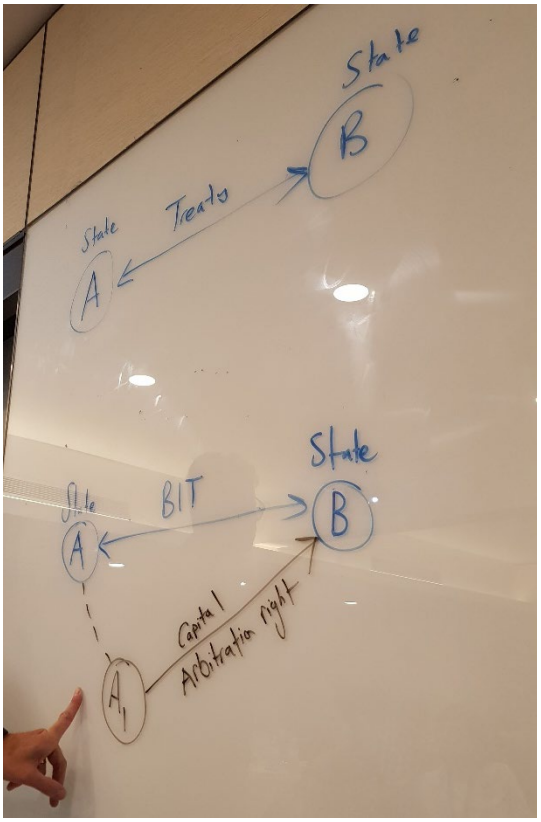
    a. Efficiency-seeking foreign investments can be illustrated by Global Value Chains (GVC), which are regionally placed with unique structures and organic domestic spillovers. The state also benefits from employment opportunities and long-term development benefits without displacement issues. State investment incentives tend to target this category of investment;
    b. Resource-seeking foreign investments are more long-term, with high upfront capital costs. From an investor's perspective, these investments are sticky as they tend to be geographically fixed and there is a risk of shifts in power balance with the state. However, the state may benefit from technology transfers, infrastructure development and taxes from the companies; and
    c. Market-seeking foreign investments are sought after by investors who seek to establish operations in another country by reducing costs of transport. However, there is a risk of displacing domestic production, which may trigger internal resistance and discrimination. Professor Cho also raised the issue of selecting the economic sectors that should be opened up to competition, which is a big challenge for transitioning economies.

4. From the state's perspective, benefits might include technology transfer, infrastructure development, tax receipts, employment, and consumer benefits from choice and competition. These included the domestic spill-over benefits from global value chains. Potential costs included the risk that domestic industries might be wiped out, and loss of jobs. States should consider how much efficiency loss they would be prepared to accept in order to protect jobs. Yet investment treaties tend to disregard the type of investments and hence, there is a similar level of protection of all investment treaties, despite such differences.



<u>The Evolution of Investment Agreements</u>

5. There are currently more than 3,000 investment agreements worldwide, that can be categorized into five different categories: bilateral investment treaties (BITs), FTAs with investment chapters, regional instruments, multilateral instruments and sectoral treaties. Professor Kurtz proceeded by addressing the asymmetrical bargaining power and pro-investor language that is present in earlier BITs. The 1959 Germany-Pakistan investment treaty was the first modern BIT. This historical period was important as the 1960s signified the period of decolonisation and indigenization of economies. Economic structures were rearranged and there was a spread of large-scale expropriation, industrialisation and transfer of economic assets to the state. The context of expropriation shaped the pro-investor approach of early treaties, which ultimately shaped the DNA of investment law. This hugely contested time period resulted in developing states pushing for a more South-defined customary international law. As a result, BITs increased as substitutes for the declining protection of customary international law.

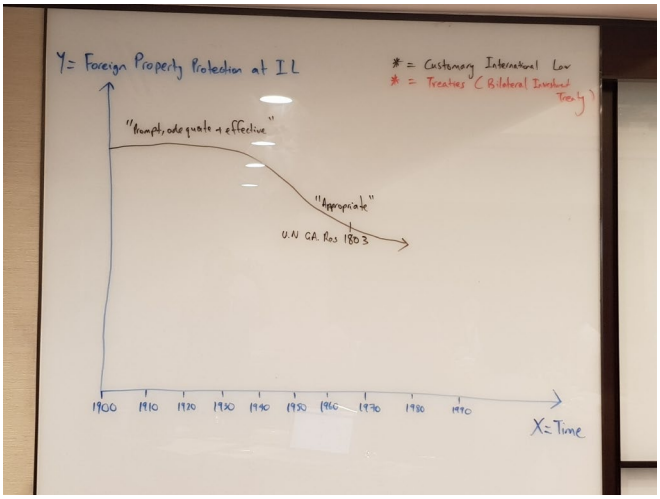


6. The 1990s marked the second historical period of liberalisation and export-oriented approaches, such as the *Đổi Mới* in Vietnam. Developing countries in this period tended to overestimate the benefits of entering into treaties but did not properly measure the costs. Despite a different time period and shifts in attitude, provisions from the 1950s treaties were recycled and used in the 1990s.

7. The development of investment agreements was illustrated through a comparison between the 1991 US-Argentina BIT and 1997 Germany-Philippines BIT. The former exemplified the earlier pro-investor

phase of investment agreements, typically concluded between capital-exporting Western European states to resource-rich former colonies. "Investment" was broadly defined, as were provisions for national treatment and most-favoured nation treatment. Dispute settlement provisions provided for investor-state arbitration. There were also no clear terms regarding environmental protection, health goals or protection of the consumers.

8. In contrast, the Germany-Philippines BIT (invoked in *Fraport v Philippines*) included more specific scoping provisions. "Investment" was defined more specifically, viz Art 1.1 'the term "investment" shall mean any kind of asset *accepted in accordance with the respective laws and regulations of either Contracting State*…'. Professor Kurtz emphasised that such small points of language make a huge difference for possible legal defences. He also illustrated that this time period saw distinctive provisions in Southeast Asian BITs. Subsequently, a rising number of claims against host countries including Vietnam and Indonesia forced states to reconsider sovereignty and investor arbitration costs associated with these treaties. As a result, many states changed their treaty practices by either refining the treaty language or withdrawing from treaties.



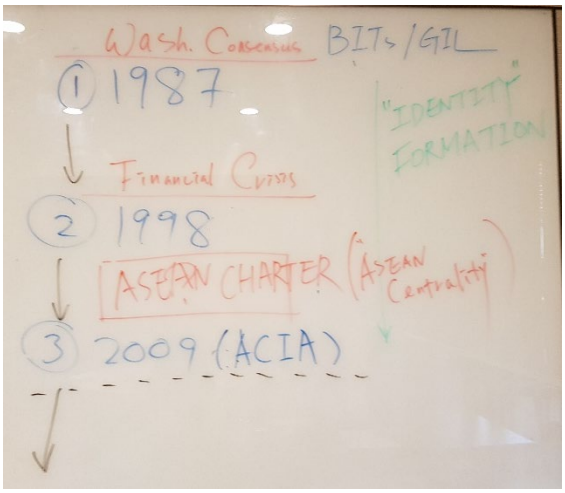
9. Professor Kurtz noted that a current development in BITs was the European Union's (EU) move away from arbitration towards a judicial model, exemplified by the 2019 EU-Viet Nam Investment Protection Agreement.

10. Questions were raised by Ms Trang Anh Mac (LL.M. Candidate, University of Paris XII Est-Creteil) and Associate Professor Chotika Wittayawarakul (Chulalongkorn University) regarding tribunals' handling of cases involving corruption by host state institutions. Since BITs are usually one-sided, states usually do not have the right to sue the investor. In response, Professor Kurtz explained that a change in the language of treaties is possible. Inserting a two-way umbrella clause can allow for a counterclaim. However, it appeared that tribunals to date have been reluctant to consider evidence on corruption.

<u>The Evolution of ASEAN Investment Agreements</u>

11. Professor Kurtz and Cho highlighted three distinct time periods for ASEAN investment treaties: 1987, 1998 and 2009.

12. The 1987 ASEAN Agreement for Promotion and Protection of Investments was ASEAN's first attempt to create shared principles for investment. Art 2 has a restrictive scope, and the obligation of national treatment was missing in this treaty. This results in a right to discriminate at the expense of companies from other ASEAN countries. This period was also a period of revolutions, with high political pressure, a weak level of regional community and uneven levels of democratisation.



13. Against the backdrop of the Asian Financial Crisis, ASEAN concluded the ambitious and innovative 1998 Framework Agreement on the ASEAN Investment Area (AIA). Provisions of note:

    a. Coverage excludes portfolio investments.
    b. Opening of industries and investments to all ASEAN member states.
    c. Art 13: General Exceptions adopts language from the WTO but tweaks it to consider the balancing of investments with other policy goals.
    d. Art 14: Emergency Safeguard Measures is an entirely innovative new measure, as influenced by then-Malaysian Prime Minister Mahathir Mohamad's capital controls response to the Asian Financial Crisis. This Article gave states the flexibility to deal with portfolio investments. Ms Farah Syazwani Mokhtar (Senior Manager, Securities Commission Malaysia) noted that Malaysia still fights for this clause in all its agreements.

14. The 2009 ASEAN Comprehensive Investment Agreement (ACIA) is a key treaty that shaped later treaties with more details and sophistication. Compared to previous agreements, the articles in ACIA had a shift in objectives and targeted a particular type of foreign investment. Provisions of note:

    a. Art 1(d) highlights regional integration.
    b. Art 24(c) acknowledges the comparative advantages of ASEAN Member States, focusing on production networks and a regional value chain. This reflects an emphasis on ASEAN Centrality in ASEAN's approach to investment.
    c. Art 13 allows for greater flexibility in capital controls and more nuanced safeguard measures.
    d. Section B reinstates investor-state arbitration.

15. However, there have been less than five ISA cases so far. To explain this, Professor Cho brought up the culture of the ASEAN Way to discuss behind closed doors, but added that public bureaucracy, networks and human agency were also important factors.

16. Professor Kurtz then proceeded to discuss how ASEAN, as a collective, deals with extra-ASEAN treaties. As ASEAN is not a customs union, Member States are able to negotiate treaties individually, unlike the EU. Hence, they are able to exercise their own sovereignty and negotiate their own trade agreements. With input from Dr Trinh Hai Yen (Vice Dean, Diplomatic Academy of Viet Nam), the 90-page EU-Viet Nam Free Trade Agreement was described as Viet Nam's most carefully negotiated treaty negotiated over nine years. Professor Kurtz pointed out that 66 of 90 pages were focused on dispute resolution and the investment tribunal system being advocated by the EU. This was a sharp break from arbitration, designed to overcome weaknesses in arbitration system. However, the tribunal system would also be more hierarchical and expensive.

17. While individual ASEAN countries have no problem giving favourable terms to external parties, Professor Kurtz highlighted that they are more reluctant to do so for other ASEAN countries because of trade volumes and market access commitments.

18. Addressing the question of how to make ACIA work, Professor Cho emphasized the importance of improving the quality of government officials across the region, and the development of a common bureaucratic culture through regular meetings, which would make cooperation easier. It would also be beneficial to cultivate closer public-private relationships, to give a greater voice to ASEAN SMEs who comprise over 90% of ASEAN domestic markets but currently account for less than 50% of trade volumes. He invited officials present to play a part in implementing ACIA.

Practicum

19. Professors Kurtz and Cho introduced the practicum, which involved an investment by an ASEAN-incorporated steel producer in another ASEAN state. The construction and operation of the steel plant had led to displacement of indigenous communities and environmental damage, leading the host country to remove fiscal incentives, and impose compensation and a requirement for a costlier steel production process. Groups were assigned to present the view of advisors to (A) the state or (B) the Investor. (C) groups considered the option of bringing the dispute to ICSID as opposed to ACIA.

20. Professor Kurtz outlined that key themes of the practicum were:

    - Transitions. ASEAN is a region characterised by political changes such as messy processes of democratization and economic transitions. Institutionally, member states are engaged in law reforms and a range of governance challenges that all developing countries face. How much risk should be borne by foreign investor in these circumstances? What type of risks should the investor be protected from in the treaties?

- Diversity. There is significant cultural and ethnic diversity across the region. Some groups are seeking political autonomy. There are also variances in constitutional structures. Conflicting signals from various ministries trigger a sizable number of claims.

- Development challenges. The states' end goal is to channel investment for development purposes. How do you maximize developmental gains from investments? How to maximize positive spillovers and manage negative consequences? What are implications if your development model is predicated on high level of foreign investment?

- Role of Law and legal devices. At both the domestic and international levels. Participants are asked to consider what the instruments were designed to do. Are BITs about signalling the openness of the country to foreign investment and how effective was that signal? How will disputes impact the signalling effect, and do these objectives apply to a state's underlying economic fundamentals?

21. Summing up the practicum discussions, Professor Kurtz said that the real world challenge was whether it made sense for ASEAN Member States to have both ACIA and BITs in place, because it opened them up to more risk. The practicum had been structured with participants roleplaying advisors (and not hearings) to understand strength and weakness of case. Firms working for investors tended to overstate the case, while developing states tended to overstate weaknesses in claim. This approach could help you to identify boundaries for negotiation and a settlement. In this case, the incentives were to settle. Professor Cho added that every legal means is self-escalating.

Group 3: ASEAN Foreign Relations and Regional Trade Agreements

ASEAN as an Actor/Negotiator in International Fora by Dr Paruedee Nguitragool

1. Dr Parudee Nguitragool (Head of School of International Affairs, Faculty of Political Science and Public Administration, Chiang Mai University, Thailand) introduced the book which the lecture is based on. The book is of same name and was published in 2015. When this project was started almost a decade ago, it was noted that there is a strong desire of ASEAN members to remain relevant in this day and age. This was highlighted in Article 41 of the ASEAN Charter. However, it is unclear how ASEAN can operate in global fora, and what factors would shape ASEAN's behavior in global fora.

<u>Political Aspects of ASEAN's Foreign Relations</u>

2. Dr Nguitragool outlined five different strategies in international negotiations. The first strategy is leadership. For instance, the EU presidency emphasises certain issues that the EU should focus on. Nowadays, there are also NGOs that are increasingly important in international politics.

3. The second strategy is framing, which is a powerful rhetorical weapon. In this way, framing can influence the way we perceive issues. There are two examples to illustrate this point:

    a. For instance, the issue of separatists. In South East Asia, this problem is rather common. One of the issues of separatism is how we define them. Are they freedom fighters? Terrorists? Or are they something else? The way one frames their identity would always have certain connotations, either positive or negative.
    b. Another example is deforestation. Forests are *lungs of the world*, and this framing is very powerful in steering international negotiations.

4. The third strategy is coalition building. This is quite common, especially for smaller states because this helps them to increase their bargaining power. States also try to build alliances with other states, for instances through the Forum of Small States (FOSS), G77, and the Cairns Group.

5. The fourth strategy is forum shopping, which is the technique of picking and choosing. States participate in a number of fora, and they tend to choose a forum that gives them opportunities to speak. If they fail in one forum, they might try another forum to try the same arguments again.

6. The last strategy is image projection and creation of soft power. In international negotiation, lawyers want to project an image of knowledgeable and professional negotiators which will in some way boost their legitimacy during negotiation.

7. Apart from these five strategies, ASEAN Member States have also created a typology of actor cohesion. Here, Dr Nguitragool and her team identified four different types of cohesion, ranging from the

highest level of cohesion to the lowest: bloc, quasi-bloc, caucus and "bowling alone". In the case of "bowling alone", the regional identity is very low; the sense of trust is also very low or even non-existent; the degree of power sensitivity is very high, and defection from collective action is frequent.

Bloc	Quasi-bloc	Caucus	Bowling alone

8. At the same time, it is well-known that ASEAN also strives to foster shared value or the sense of "we-ness". However, in reality, ASEAN states often fall into quasi-bloc or caucus.

Historical Aspects of ASEAN

9. The historical context of ASEAN is heavily influenced by the Hindu-Brahmanic and Sinic power-sensitive statecraft. The key idea of these two theories is the notion that the only way to provide for its citizens is to conquer its neighbours. ASEAN cooperation is influenced by realist cognitive remnants — it is state-centric rather than people-centric, which emphasizes national sovereignty.

10. Actorness is often understood as capacity in international politics, the ability to negotiate successfully in international fora. During the 1980s, ASEAN was quite successful during the Vietnamese occupation of Cambodia from 1978-1990. This shows that domestic and regional negotiation capacities also influence the actorness of states in ASEAN. In terms of national negotiation capacities, all ASEAN Member States have established New York and Geneva missions. Media, NGOs and governments all support these missions.

11. At the same time, our regional negotiation capacities are rather limited. The ASEAN Secretariat is quite limited in staffing and budget, and this affects its negotiation capacities. In contrast, the EU's budget is around 165 billion euros, whereas ASEAN's budget is 20 million dollars annually. The ASEAN Secretariat is thus quite reliant on its donor states. Besides, ASEAN also has weak capacity due to a lack of corporate lawyers, academics, civil society representatives or private consultants.

12. ASEAN has preparatory meetings prior to international negotiations like G20 contact groups. Another example of collaboration is the ASEAN University Network founded in 1995, which aims to promote collaborative study. There is also the ASEAN-Institute of Strategic and International Studies (ASEAN-ISIS). Another example is the ASEAN Chambers of Commerce and Industry which functions as a transmission belt, conveying government messages to the private sector. Nonetheless, ASEAN's regional NGO network has very limited policy input, and the superficial dialogue between ASEAN governments and NGOs only occurs in the form of Summit addresses and ceremonies.

Application of Typology of Actor Cohesion in Various Areas

13. Voting and decision-making in global forums: The voting process follows the majority rule in the United Nations General Assembly (UNGA), which is one state, one vote. ASEAN has a comparatively high degree of unity in front of the UNGA as a quasi-bloc. The decisions that usually result in split votes include questions on Palestine, on which Brunei, Malaysia and Indonesia tend to vote differently from other ASEAN member states.

UNGA	**Military and diplomatic**		**Human rights**		**Economic**	
	Joint	Split	Joint	Split	Joint	Split
57th	40	13	28	8	2	-
58th	39	9	33	11	4	1
59th	39	12	30	11	2	-
60th	42	9	29	13	3	-
61st	50	13	32	13	2	-
62nd	38	3	31	13	5	2
63rd	44	10	26	10	3	1
64th	32	8	29	21	5	2
65th	38	6	26	8	2	-
66th	30	8	26	13	3	3
67th	43	11	25	9	4	1

14. Compliance: ASEAN Member States often appear as complainants in front of the WTO Dispute Settlement tribunal and less often as defendants. In terms of trade, ASEAN states have a relatively high level of compliance. However, in areas of human rights, the level of compliance is not as high in ASEAN region. Dr Termsak Chalermpalanupap (Lead Researcher, ASEAN Studies Centre, ISEAS-Yusof Ishak Institute) commented that Thailand appears as the complainant for 14 cases and third party for 90 cases. Thailand is very active in trading and trading dispute resolution, and it is usually the complainant, which indicates a high level of compliance from Thailand.

15. Competing for executive and leadership positions: In this context, however, ASEAN resembles that of a caucus rather than a quasi-bloc. For example, Indonesia desires permanent membership to the United Nations Security Council (UNSC) in 2004, and its justification for this aspiration is its successful democratization of Muslim countries, though other non-Muslim Member States are not entirely comfortable with this notion. As a result, we see a lower level of cohesion.

16. Coalition-building: ASEAN also appears as caucus in this respect. For instance, Singapore launched FOSS in 1992, and now there are 107 members in FOSS. Another example is when Singapore and Austria formed the group of “landlocked” countries in United Nations Convention on the Law of the

Sea (UNCLOS) negotiations, countries like Indonesia and Malaysia, which are not landlocked countries, were not enthusiastic with such groups.

17. Image projection and creation of soft power: ASEAN Member States are quite consistent on this front, appearing more like a quasi-bloc or even as a bloc. ASEAN Member States want to be seen as cooperative neighbours within the region by other parts of the world.

Discussion on ASEAN Objectives/Policy Priorities in Global Fora

18. The participants engaged in a discussion activity on the following questions:

    a. What would be the objectives/policy priorities ASEAN should pursue in global fora like the UNGA?
    b. What are the themes that ASEAN should raise in global fora?

19. The participants were split up into five discussion groups, which came up with objectives and themes such as:

    a. Sustained development, environment, human rights (e.g. refugee and human trafficking);
    b. Skilled labour movement within the region, China and UNCLOS issues, and e-commerce and ICT;
    c. ASEAN security, the US' motive to open up the Pacific, the Belt and Road initiative, regular cooperation should be strengthened, free trade in the region;
    d. Respect for international order, because there are other big players who do not necessarily respect international order, and this has impacts on ASEAN;
    e. Climate change policy and the elimination of unilateral actions with regard to trade;
    f. Connectivity and cohesion; and
    g. Cyber-security, multilateralism in the global order.

20. Several major themes addressed by ASEAN members in the UNGA include: development, trading, non-conventional security, human rights, collective action and UN reform. Dr Termsak Chalermpalanupap noted that the UN wants to be closer to ASEAN because ASEAN can possibly share some burden of UN. Every year, the ASEAN Secretariat visits the UN headquarters, and every year the UN secretariat attends meetings with ASEAN. Every year, there are joint statements between ASEAN and the UN. ASEAN still has no commitment as a group to do major things, but ASEAN needs that commitment to develop ASEAN as a common platform. There are plans for that by 2022. For issues like global warming, ASEAN has no joint decision or plan to tackle them. Likewise, for many Middle East issues, the ASEAN does not do much. There is a lacuna where ASEAN is stuck in-between.

21. Professor Nguitragool commented that cyber security is indeed a big issue. Most ASEAN Member States are developing countries and are rather vulnerable to cyber-attack. They need to catch up with technology.

Practicum: Election of UNSC Non-Permanent Members

22. The scenario for this practicum is that each year, the UNGA elects five non-permanent members (out of ten in total for a two-year term) of the UNSC. The ten non-permanent seats are distributed on a regional basis as follows:

    a. Five for African and Asian countries;
    b. One for Eastern countries;
    c. Two for Latin American and Caribbean countries;
    d. Two for Western European and other countries.

23. Rule 83 of the Procedure states that non-permanent members of the UNSC are elected by the UNGA by a two-thirds majority. Every ASEAN member would like to be elected as a non-permanent member. India was elected in the previous year and is still holding a non-permanent seat. ASEAN candidacy would run against Japan and Jordan, which have decided to run for the seat. Delegations discussed among themselves the objectives and strategies for their country, including the decision to file a candidacy (or not). Participants prepared their country's concept/vision, and objectives in the UN and UNSC.

24. The caveat in voting is that ASEAN members usually take turns. The country wanting to apply for membership at the UNSC would have to inform the ASEAN senior officials at the Senior Officials Meeting (SOM). If there is no conflict, the senior officials would take note and endorse. If there is a conflict, there would be political consultations.

Case Study: ASEAN and GATT/WTO Negotiations on Agricultural Products

25. In the 1980s, developed countries agreed to negotiate with developing countries on tariffs on agricultural products, but only under the rubric of "tropical products". ASEAN identified areas of common interest among its Member States, which include issues like tropical products, agriculture, dispute settlement and so on. However, within ASEAN itself, Member States desired slightly different goals. But ASEAN did not want to be marginalised, so they decided to support each other to increase their bargaining power. Here we see the need to demonstrate ASEAN solidarity. As a result, in subsequent rounds in Uruguay, ASEAN acted as a quasi-bloc and negotiated rather successfully with the developed states. ASEAN's voice as a bloc was heard by the rest of the world.

26. On the question of strategies that ASEAN should use when it comes to lobbying, participants discussed the ideas below:

a. Coalition-building through fora like FOSS. ASEAN should lobby the five permanent members in the UNSC because they are actually the most important players. ASEAN can also lobby the G77 developing states, and the Non-Alignment movement, ASEAN+, G20;
b. Using international media. Leveraging on the system of country coordinators in ASEAN external relations - Singapore's role is very important because Singapore is coordinating with the EU; as such, it is vital what kind of messages Singapore transmits to the EU. It must be borne in mind that whoever is corresponding is representing ASEAN as a whole; and
c. Using framing and soft power to make messages from ASEAN more convincing to the rest of the world.

Conclusion

27. There is no automatic link between progress in regional integration and increasing cohesion of regional organisations in global fora. There is a split in positions between the Philippines and Indonesia, which were more supportive of the G33 stance, against Thailand, which was leaning more toward the Cairns group. However, it is undeniable that pursuing national interests only in this day and age may cause states to run the risk of bowling alone.

28. Dr Termsak Chalermpalanupap commented that he worked in ASEAN Secretariat from 1993 to 2012. ASEAN has been strengthening fiscally over the years. As the budget is equally shared by member states, the Secretariat's budget depends on the least-willing member's contribution. The most generous donors to ASEAN are the Japanese and the Chinese. However, when Japan wanted to apply for permanent seat in the UNSC, only Singapore showed support as opposed to the whole of ASEAN. As a result, Japan was frustrated.

29. Another issue was whether to change the ASEAN Secretariat into a commission, which commands more power. However, there was objection from Member States. 'Commission' connotes empowerment; whereas 'Secretariat' connotes more administrative work. Ms Kayjal Dasan (CIL volunteer, Singapore) commented that sometimes it is hard to measure the level of cooperation among states or to track the increase of cooperation among the states. This is because states tend to disagree on what indicators to use to measure the level of cooperation, and such disagreements may impede the development of ASEAN.

ASEAN External Trade Agreements by Ms Natalie Morris-Sharma

1. Ms Natalie Y. Morris-Sharma (Director, International Legal Division, Ministry of Law, Singapore) introduced her lecture as being based on the book titled '*From Treaty-Making to Treaty-Breaking*' (CUP 2015). Her starting point would be ASEAN centrality, followed by how external treaties are negotiated, what the future is for these treaties, and finally the pros and cons for different models.

ASEAN Centrality

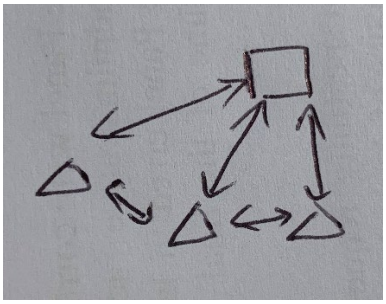
2. There are two dimensions to ASEAN centrality: external and internal. The external aspect refers to when non-ASEAN Member States come and negotiate with ASEAN, accepting ASEAN rules. ASEAN also serves as the gatekeeper for who can and cannot negotiate with ASEAN. The internal dimension is that Member States must give importance to ASEAN if they want to be true to ASEAN "centrality". ASEAN still needs to add more economic strength, increase political security, and to inform and educate the ASEAN people, especially the next generation. The external dimension may not be as important because non-Member States may just pay lip service to ASEAN's rules, so the internal dimension is more important because ASEAN need to build the community in the long run.

3. There seems to be a lack of a formal definition of ASEAN centrality, but the general idea is its drive to bring more economic development in the region as a whole bloc. However, when we discuss ASEAN centrality, are we referring to ASEAN as a region or an organisation? Dr Termsak Chalermpalanupap answered that this refers to ASEAN as an organisation. But the important point to bear in mind that its geographical notion as a region is also important. Ms Morris-Sharma replied that based on treaty language, it is not clear whether we are talking about ASEAN in a regional or organisational sense. This is a very literal interpretation. More attention should be paid to how ASEAN is referred to in international treaties, is it referring to ASEAN individual Member States or as a bloc?

4. ASEAN has been conferred separate legal personality under international law, as seen from Article 3 of the ASEAN Charter. However, in other Articles, ASEAN's driving force in Article 41(3) is referred to, which gives an impression of ASEAN as a whole bloc rather than an independent legal entity. Also, procedurally, in particular, Rule 4 of the 2011 Rules of Procedure for the Conclusion of International Agreements by ASEAN implies that based on Article 41(4) of the ASEAN Charter, ASEAN can enter into international treaties on its own, but a common position has to be achieved first.

5. Mrs Norismahfazidah Binti Haji Ismail (Legal Counsel, Attorney General's Chambers, Brunei) asked whether the lecturer could give an example where ASEAN is acting in its independent capacity. Ms Morris-Sharma replied that there are such instances, though not in the context of FTAs. She has cited in her book the ASEAN-EC Research Centre agreement, of which ASEAN is a party, but it is not clear whether the obligation is owed by ASEAN as a whole or ASEAN Member States individually.

6. The way in which FTAs are currently concluded is that ASEAN Member States are individually affected by external agreements. For instance, in the ASEAN-Australia-New Zealand FTA (2009), obligations are owed to each and every party to the agreement. However, in the EU context, the EU appears as a whole bloc and the FTA appears bilateral, as between the EU on the one end and the external party on the other end. The objective of these agreements, as we can tell from the preamble of the ASEAN-Australia-New Zealand FTA, is to drive regional economic integration. It is to broaden economic links in the region. As a tool, this Model No. 1 (as illustrated below) is very effective because when ASEAN Member States are negotiating with an external partner, ASEAN members have to critically assess their current positions and what they can offer to these external parties, and in this process, they become more aware of their advantages and disadvantages. This has promoted ASEAN centrality:

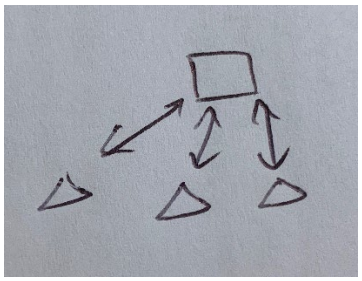


Model 1

(The box represents the external dialogue partner, and triangles represent ASEAN Member States.)

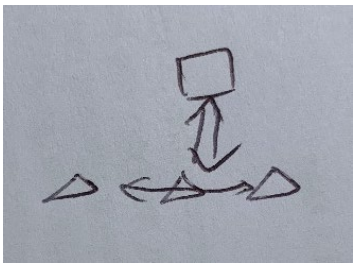
However, Model No. 1 has its shortcomings. It is not entirely clear whether this model drives economic integration, or merely responds to external demands. Also, the dispute settlement does not arise bilaterally between ASEAN and external parties, it also arises within ASEAN Member States. Is this for or against ASEAN centrality?

Model No. 2 is not a model we see in the ASEAN context. Regional centrality is most likely being promoted in this model, because the ASEAN Member States are still negotiating as a group, and concessions are given to external partners:



Model 2

Model No. 3 is the ASEAN-China Maritime Agreement, where ASEAN Member States appear as a single entity. There is one single set of rights and obligations:



Model 3

7. ASEAN can enter into agreements on its own terms, though this is not really done in the context of FTAs. Under international law, third parties have to sign onto the agreements to be bound by them. If there are other functions conferred on ASEAN, it may be right for the representatives of ASEAN to ask the ASEAN Secretariat to perform the formal functions like the EU Commission.

ASEAN – X Formula

8. One question is whether this formula serves ASEAN centrality or not. This is how the ASEAN-X formula works: for instance, there are 6 ASEAN Member States who are not parties to the ASEAN-Australia-New Zealand agreement, so this is ASEAN-6. Ms Morris-Sharma asked the participants to imagine that they are now in the implementation stage, and the decision for these 6 members not to implement is also reached by consensus among ASEAN members. Ms Morris-Sharma asked for the participants' thoughts on agreeing that not all states would be implementing the treaty at the same time.

9. Some response from the participants is that this ASEAN-X formula provides flexibility, because not all Member States are in a position to come in and implement the agreements at the same time. On the question of whether this would undermine ASEAN centrality because the notion of cohesion is somehow compromised, Dr Termsak Chalermpalanupap clarified that there must be an ASEAN consensus to undertake any activity, but some ASEAN Member States may not be able to participate at the moment or at all. For example, if the agreement is about coastal protection, Laos would not have to do anything because it is landlocked; yet, it can still come along. The consensus of not implementing a treaty at the same time or at all thus enhances cohesion among ASEAN states.

10. Ms Morris-Sharma explained that there are some other angles that can be used to think about whether ASEAN centrality or cohesion would be affected: Firstly, what is the X? Is there a threshold to be the X? What if it is ASEAN minus 9? As such, there should be a threshold to strike the balance. Another aspect is to have partial application of the agreement. The third aspect is the exceptional, meaning some conditions are met. This deals with formalities of the agreement. There are three tools to use:

a. Firstly, a preceding agreement can be used as a basis to negotiate with external partners;
b. Secondly, there can be a scheduling of commitments, e.g. after x number of years, which states would need to implement;
c. Thirdly, the obligation can be made as a best endeavour obligation.

11. In conclusion, ASEAN is at a crossroads where it has some experience from the past, but can also experiment with new ways to negotiate agreements. Dr Termsak Chalermpalanupap inquired whether the X in ASEAN-X formula could include ASEAN as a Member State? There is still resistance in recognising ASEAN as an actor in international law. In contrast, the EU is in a very different position. The world has seen how supra-national agreements can actually trigger a Member State to leave. How far can the line of integration be pushed, both in theory and in real life? As to the question on where the resistance to ASEAN being an international law player in drafting treaties comes from, sometimes the resistance comes from within the ASEAN. For instance, when the ASEAN FTA was underway, Singapore went ahead and negotiated with the US for an FTA alone without joining the other ASEAN states. Thus, there is some form of resistance coming from the region itself.

Practicum

12. In the scenario for the practicum, ASHENG is a regional group of states that was established in 2010, following the ASEAN model. Its Member States are Aktaia, Sao, Halie, Eudore, Neso, and Galatea. Laomedeia is a state from a region further afield. Laomedeia is one of ASHENG's dialogue partners. There are eight delegations participating in this meeting to negotiate one part of the prospective ASHENG-Laomedeia Free Trade Agreement. The Halie delegation is the ASHENG Chair for this meeting. Negotiations for the other parts of the FTA are taking place concurrently in parallel meetings. The eight delegations are: Aktaia, Eudore, Halie, Galatea, Neso, Sao, Laomedeia and the ASHENG Secretariat.

13. As there is a high-level meeting between the leaders of ASHENG and Laomedeia in a month's time, the purpose of ASHENG-Laomedeia meeting is to agree on text that seeks to afford national treatment to traders from other countries, in respect of the right to participate in the development of technical regulations by central government bodies. The ASHENG Secretariat is providing support for the meeting.

14. The current draft text is as follows:

"Article 31- National Treatment:

1. Each party shall afford traders from *[**comment: subject to be negotiated**],* the right to participate in the development of technical regulations by its central government bodies, on terms no less favourable than those accorded to its own persons.
2. *[**Comment: any exceptions to para 1 to be negotiated**]."*

15. In the FTA, the parties to the agreement have already been defined as follows, but participants may vary this definition as they see fit:

    a. ASHENG comprises Aktaia, Sao, Halie, Eudore, Neso, and Galatea, and whose members are referred to in this Agreement collectively as the ASHENG Member States and individually as an ASHENG Member State;
    b. Newer ASHENG Member States means Eudore, Neso, and Galatea;
    c. Parties means the ASHENG Member States and Laomedeia collectively; and
    d. Party means an ASHENG Member State or Laomedeia.

16. The ASHENG delegations would first meet to determine their negotiation position. Thereafter, they would meet with Laomedeia. If need be, the ASHENG delegations may request time to confer amongst themselves, before responding to Laomedeia.

17. This exercise showed that negotiation is built on the foundation of sharing and dialogue. Based on states' engagement with their counterparts, the results may be very different.

'What Happens when ASEAN Goes Wrong' by Professor Damian Chalmers

1. In this lecture, Professor Damian Chalmers (Co-Director (Research) for the ASEAN Law and Policy Programme, Centre for International Law) explained the reasons for the lack of utilisation of ASEAN Dispute Settlement Mechanisms. The reasons may be that these mechanisms are for state-to-state and not individual dispute settlement, a lack of confidence within the region and political sensitivities.

ASEAN Comprehensive Investment Agreement Dispute Settlement Mechanism

2. The ASEAN Comprehensive Investment Agreement Dispute Settlement Mechanism modality is an extremely lengthy and difficult process with an uncertain outcome. It takes 180 days, following the occurrence of a dispute, for a disputing AMS to request for consultations, 75 days to constitute the panel, and 120 days to pass before the enforcement of the award. This process would damage long-term business plans and hence the take-up rate is low.

3. Professor Chalmers hypothesizes that this mechanism was purposefully designed in this manner to allow for maximum amount of time for consultation. This is to give the investors bargaining power to use arbitration as a backstop (i.e. a threat at the end of the day). This encapsulates the ASEAN Way, to manage tri-partite relations between States, Investors and Host Countries. This is to ensure that the issue is resolved at the beginning of the consultation, and not at the end.

2010 Protocol to the ASEAN Charter on Dispute Settlement Mechanisms

4. States can either request for arbitration or refer the matter to ASEAN Coordinating Council (ACC) under this Protocol in Article 8 and 9. Arbitration results in a winner-takes-all situation, which States may not want. The ACC does not appeal to countries, as countries without a stake in the dispute will be making decisions about domestic issues and bilateral issues which do not concern them.

5. These concerns make the methods of good offices, mediation and conciliation mentioned in Article 7 more palatable, as this makes countries cognizant that if they do not resolve issues through consultations, then arbitrations and/or ACC dispute settlement mechanisms will kick in as a more punitive measure.

2004 ASEAN Protocol on the Enhanced Dispute Settlement Mechanism

6. The Philippines did not utilize this mechanism in the *Thai Cigarette* WTO case because the Philippines would want to blow up the issue internationally and hence would go to the WTO, to ensure that the sanctions come from China and the US. It is also harder for Thailand to ignore a WTO ruling, as compared to an ASEAN ruling. It would appear that the WTO system would be more effective as a forum for litigating trade disputes.

7. Dr Termsak Chalermpalanupap (ISEAS-Yusof Ishak Institute) shared that the ASEAN Secretariat does not have the capacity to staff the EDSM as neutral third parties are required to service the cases. Furthermore, the ASEAN Secretariat only has $300,000 to service the EDSM, which can practically only service a limited number of cases.

8. Prof Chalmers hypothesised that ASEAN has insulated its disputes to allow its cooperation to proliferate through free trade agreements, the Charter and other areas, without being corroded by bilateral issues. ASEAN trade disputes are litigated at the WTO and ASEAN Territorial disputes are litigated at the ICJ. Therefore, cooperation continues within ASEAN without bilateral disputes corroding its cooperation in other tracks. However, ASEAN cooperation may be affected by the potentially decreasing strength of the WTO dispute resolution mechanism and the growing investment from China in the region.

Practicum

9. The participants discussed a hypothetical scenario of fires and haze pollution, and the avenues for redress for various stakeholders under the ASEAN Agreement on Transboundary Haze Pollution. The results of their discussion are as follows.

10. Under the Agreement, all state parties have the task of monitoring and information sharing. If the State has not taken action and there is a dispute, the 2010 Protocol to the ASEAN Charter on Dispute Settlement Mechanisms is an option. However, there are obligations in the Haze Agreement to resolve disputes as well. As such, it is arguable whether the 2010 Protocol will apply or not. However, some of the participants believe that the ACC may be a more useful option and there can be Consultation at the Foreign Ministers' level. Yet, this will portray the issue as a multilateral one, maximizing States' leverage but holding States back from politicizing the issue. States will not dig into issues of sovereignty.

11. For Whiteandshiny and Another User, there is no guarantee that States will take up these claims on behalf of these companies though they can try to persuade States to use diplomatic channels to resolve their claims. The ACIA is not applicable to taxes. For a class-action lawsuit, an argument can be made for indirect expropriation due to the dramatic effect on the share price, so as to be equivalent to a takeover.

12. RubbishUniversity Press took the position that State A can make the argument that their domestic citizens' health is being impacted, through diplomatic channels.

13. For States B and C, Professor Chalmers mentioned that there are various fora that B and C might be able to use. They may go for consultations as soon as possible, with the threat of arbitration later on. The fact that there are two states going for arbitration will also help the case.

14. In conclusion, participants learnt that:

    a. There are few avenues for redress for companies within ASEAN; and
    b. There is a gap between the rhetoric of investor protection and free trade and the reality of this on the ground.

15. Dr Termsak Chalermpalanupap (ISEAS-Yusof Ishak Institute) asked about what kind of redress companies can seek for non-compliance. Professor Chalmers answered that in the EU, there are challenges through the courts and there is a high level of protection for investors. The ASEAN Secretariat was looking at implementing investor protection through the WTO mechanism as compared to arbitration, but whether this is followed up on remains to be seen. ASEAN rewards companies with close relations to governments. This will allow them to be able to push for dispute settlement mechanisms which are politically difficult. BITs become gap-fillers on unclear issues and where dispute settlement mechanisms cannot be utilised due to political realities.

Day 5: Compliance and Monitoring by Professor Simon Chesterman

1. Professor Simon Chesterman, Dean of the Law Faculty at the National University of Singapore, kick-started Day 5 with his lecture on Compliance and Monitoring, the objective of which was to help participants understand (1) compliance in international law and the role of monitoring, (2) the changing role of compliance in ASEAN, and finally with the use of a simulation, (3) the possibilities in compliance and monitoring in ASEAN in the future.

2. Setting the stage for understanding compliance and monitoring, Professor Chesterman explained that unlike the vertical arrangement of a sovereign enforcing the law for all subjects to domestic law, international law is arranged in a fashion where there is, in theory, sovereign equality. Accordingly, the only laws that bind states are those they agree to, with the implication also that in the case of violation of international law, it is not always clear that there will be enforcement. The key question in the study of international law, beyond whether the law has any content, is whether the law has any bite. Professor Chesterman's answer to the latter question is that it depends on whether there is any interest in compliance with international law.

3. One of the charges levelled not only against ASEAN but other international legal regimes and organisations is whether they ask enough of their Member States. Professor Chesterman shared that it is usually easier to conclude broad agreements if there are shallow compliance obligations and expectations. Based on his experience working in the UN and then subsequently in Singapore where in the latter, sovereignty is less taken for granted and declarations of human rights are not accepted blindly, Professor Chesterman made the curious observation that while arguably, stability in the region has been guaranteed by international law, Asian states tend to be the least likely to accept international legal regimes, e.g. compulsory jurisdiction of the ICJ, WTO, and ICSID. In the same vein, ASEAN states have benefited from a world regulated by law but are much less likely to be signatories of international treaties as shown by a study led by Professor Chesterman – Asian countries house 60% of the world's population, but are much less likely to be represented in international legal institutions.

4. Professor Chesterman began by acknowledging the existence of an ASEAN Way, and asking the participants to consider if such an ASEAN Way were compatible with the rule of law. Elaborating further on the ASEAN Way which is characterised as defined by the practices of *musjawarah* (consultation) and *mufukat* (consensus), he distilled that the ASEAN objective of establishing a regional organisation is not formal compliance *per se* but achieving collectively the goals of peaceful development *etc*. He then sought a definition for rule of law from the participants, who provided a multitude of answers, some defining the elements of rule of law as comprising regulations of rights and obligation, others defining rule of law as the supremacy of the law, and yet others defining international rule of law as society and institutions being governed by a common set of rules, the end goal of which is an ordered global society. Professor Chesterman then expounded on how the rule of law, in its various conceptions – *Rechtstaat, 法制, État de droit* – is tied very much to the identity of a single state. Indeed, rule of law as developed in the common law was used to determine whether a

monarch is subject to the law. There is therefore understandable wariness amongst sovereign states on the submission to international law and compliance with international obligations.

5. Compliance, according to Professor Chesterman, is essentially moving beyond the form of laws. If states can measure compliance, they can try and track improvements. Such would be the justification for monitoring – be it of institutions, processes or practices – that is, gathering and sharing information about whether or to what extent, for instance, an ASEAN obligation has been (a) complied with, in the sense of substantive compliance, or (b) implemented in the sense of formal compliance.

6. What would be, then, the value of compliance and monitoring? Professor Chesterman shared that generally speaking, where there is a regime and a possibility of monitoring, monitoring would be for the interest of knowing whether said regimes are whether it is successful or not. Following from that result, states can then take actions penalising non-compliance. ASEAN itself estimated in 2008 that only 30% of the agreements signed in its first four decades saw meaningful follow-through. Nevertheless, there are good reasons, too, not to partake in monitoring. In practice, ASEAN countries do not take to standing in judgment of fellow ASEAN Member States. Quoting former ASEAN Secretary-General Rodolfo Severino, Professor Chesterman noted that historically, ASEAN has not been a supranational entity acting independently of its members, and had neither power of enforcement nor a judicial system. Similarly, today, ASEAN still experiences limitations on its ability to monitor compliance in terms of capacity as well as political will. The reasons for this include reluctance on AMS' part to sign agreements that grant monitoring and reporting powers capable of publishing information that reflect badly on ASEAN states.

7. Highlighting the manifold purposes of monitoring, Professor Chesterman utilised the example of human trafficking to demonstrate five ways in which ASEAN has approached monitoring:

    a. Compliance *stricto sensu* i.e. compliance to the sense of the word;
    b. Formal implementation i.e. where the regime provides for adoption of law monitoring determines if those laws are being adopted;
    c. Interpretation;
    d. Facilitation; and
    e. Symbolism i.e. gathering information because it seems like a necessary thing to do in the process of adopting a treaty or demonstrating that something is important.

8. As to how countries determine their method(s) of monitoring, Professor Chesterman pointed to the important question of which characterisations of regulation – clear and effective, or broad and legitimate – international organisations and laws seek to effect. The latter characterisation which is commonly ASEAN's choice, he stated, necessarily results in narrower rule and oversight. Nevertheless, there has been significant change in the ASEAN practice of monitoring, firstly with the increase in the monitoring and reporting obligations, as well as formalised compliance-focused monitoring particularly in the economic context.

9. Dr Termsak Chalermpalanupap shared at this juncture that alongside the upward trajectory of more intrusive monitoring practices with economic obligations paving the way, the ASEAN Secretariat has been granted, over the years, an increasingly robust monitoring role. In addition, there are purely monitoring organisations such as the Economic Research Institute on ASEAN and East Asia (ERIA). These agencies keep close track of which agreements have been ratified by AMS. For this reason, Member States are also wary of what the Secretariat may publish in its reports and often ask for an advance copy of such reports, resulting at times in an informal censorship, as well as tensions between the Secretariat and AMS.

10. After tea, Professor Chesterman moved onto to speak about the possibilities of future monitoring of compliance in ASEAN. At the outset, he recognised that it might not be the 'ASEAN Way' for the ASEAN Secretary General to be constantly criticizing AMS who do not fulfil their obligations. In support of this point, he raised the example of Member States of other international organisations which have, in retaliation against criticisms, resorted to deferring payment obligations and being absent at official meetings. Participants then brainstormed parties and the mechanisms through which monitoring can take place in ASEAN, producing the following list:

    a. The ASEAN Secretariat;
    b. Independent regional mechanism / independent institutions outside of secretariat, e.g. NGOs, Think tanks, Wikileaks;
    c. Regional political mechanism;
    d. Self-monitoring: Member States themselves;
    e. Peer monitoring: Member States monitoring each other;
    f. Civil Society including industries, political parties, and academia);
    g. International organizations such as bodies outside the ASEAN regime, e.g. UN;
    h. Media;
    i. Private enterprises; and
    j. Individuals.

11. In furtherance of questioning whether ASEAN can itself be an effective monitor, Professor Chesterman explored whether ASEAN has an independent legal personality. He noted that interestingly, ASEAN virtually never enters into agreements in its own right whereas other international organisations such as the EU do. Whereas in the ASEAN Charter there is an explicit statement saying ASEAN has international legal personality, the extent to which it does is unclear since ASEAN as an entity cannot and does not bind Member States. Agreeing with his observation, Dr Termsak Chalermpalanupap shared that ASEAN's legal personality is further elaborated in the 2009 Agreement on the Privileges and Immunities of ASEAN. The expression of ASEAN's legal personality has been traditionally more focused on the recognition of domestic laws in that ASEAN can in theory sue and be sued *etc.*, but its international legal personality is much less defined.

12. Finally, Professor Chesterman covered the various methods of data collection for compliance monitoring, e.g. vertical (intrusive) vs horizontal (self-reporting), and powers which monitors can capitalise on, e.g. technical capacity and coercive powers. Ultimately, he noted, that transparency in monitoring is a key factor in encouraging and ensuring compliance since a strong practice of confidentiality can build confidence amongst Member States and also increase the legitimacy of an international regime.

13. In response, Mr Vann Yuvaktep (Curriculum Coordinator and Lecturer in Law, Royal University of Law and Economics, Cambodia) queried who would monitor the monitoring apparatus/mechanism, pointing out that governments often refuse to accept reports, especially unfavourable ones, published by agencies other than their own. He further queried if there would be more accuracy in reports generated by self-assessment or peer monitoring mechanisms. Professor Chesterman replied that it is in tackling questions like these that confidentiality proves useful in building confidence amongst Member States. As it is understandable that states within ASEAN are wary of taking on self-monitoring and reporting obligations, it is important to consider the benefits and implications of a strictly confidential collection of monitoring data by a non-Member State entity – the former includes more accurate self-reporting, if any, of Member States failure to comply with obligations, while the latter include a lack of formal consequences in non-compliance.

Practicum

14. The practicum was based on a hypothetical proposal to amend Article 24 of the ASEAN Convention Against Trafficking in Persons. Especially Women and Children (ACTIP) to include a provision for active monitoring of state compliance above and beyond the provisions of the existing article. Groups were assigned to represent ASEAN Member States, the ASEAN Secretariat, the UNHCHR, the United States Ambassador and NGO Hagar International in simulating the negotiation of the amendment to ACTIP. Groups were asked to make opening statements, and then engage in a round of informal negotiations to try and convince other delegations of their position.

15. Making his concluding remarks, Professor Chesterman noted that states generally agree to amendments for the introduction of compliance monitoring where they are in line with their broader national interests. However, they generally remain wary of such amendments otherwise. He noted however that unlike simulations of the same nature he has conducted in classrooms, participants have demonstrated the ability to produce solutions that were in essence non-monitoring in nature but nonetheless aimed at realising the objective of ACTIP in reducing human trafficking. Professor Chesterman then finally highlighted a growing acceptance of monitoring in international legal regimes, predicting that with the growing sophistication of ASEAN treaties, the presence of monitoring provisions will also increase.

Day 6: Compliance, Enforcement and Dispute Settlement by Professor Joseph Weiler

1. Professor Joseph Weiler (University Professor, New York University and Academy Co-Director) started off the session by acknowledging ASEAN's "massive non-compliance" problem. This problem is seemingly contradicted by the fact that ASEAN Member States have yet to invoke any of ASEAN's dispute settlement mechanisms. It suggested that ASEAN did not have any disputes as there were no problems of Member States breaching their obligations. However, this is not the case. There are "dozens of examples" of non-compliance throughout the organisation's history.

2. The lack of disputes raised within ASEAN can be attributed to a general lack of awareness of ASEAN law among the various stakeholders and the legal community. With this lack of awareness, no stakeholder nor lawyer would think to argue that their respective government was in breach of its international obligations. This lack of awareness is also rampant among government officials, as it is not within their administrative culture to check if the regulations they introduce are ASEAN-compliant. Overall, ASEAN has a problem of "benign non-compliance", in which Member States do not intentionally breach their obligations, but rather, neglect to ensure that their laws and policies were ASEAN-compliant.

3. Professor Weiler then illustrated how the solution to this problem would not lie in the inter-state dispute settlement mechanisms established by ASEAN. After all, it would be easy for governments to defy the rulings of international courts and tribunals. Instead, the solution to ASEAN's non-compliance problem would lie in the use of domestic legal systems to enforce ASEAN law. Professor Weiler noted that generally, when a State breaches an international obligation, individuals harmed by that breach can seek relief through the domestic courts. As such, when an ASEAN Member State implements legislation that conflicts with its ASEAN obligations, private applicants could launch a challenge to that legislation through the domestic courts.

4. However, in order for such challenges to succeed, a number of conditions would need to be fulfilled. First, the treaty in question would need to be validly in force. Second, the obligation in question would need to be self-executing. Third, the State must not have lodged a reservation which prohibited domestic enforcement of the obligation. Fourth, the court must have jurisdiction to hear the case and the individual must have legal standing. Fifth, the domestic legal system must constitutionally recognise that applicants can rely on treaty obligations. Sixth, the domestic legal system must recognise that international legal obligations are not trumped by the offending law in question.

5. Professor Weiler said that it was not very common for all of these conditions to be met. As such, it would be easier for individuals to pursue judicial review of administrative actions that contravene ASEAN law. Most legal systems recognised some form of judicial review. Further, under the "Charming

Betsy" Doctrine, courts could interpret national measures in a manner that would make them compliant with the State's international obligations. Courts could therefore strike down administrative acts that were *ultra vires* or unreasonable. Given that much of ASEAN non-compliance fell within the universe of administrative practice and law, the most effective way to improve compliance would be through the domestic legal systems of ASEAN Member States.

Practicum/Mock Trial Exercise

6. Participants were divided into teams and assigned to be the representatives of the various parties involved in three mock scenarios set within the Singapore context. The scenarios were designed to test how ASEAN regional laws, namely the 2009 ASEAN Comprehensive Investment Agreement (ACIA) and the 2009 ASEAN Trade in Goods Agreement (ATIGA), could be adjudicated before the national courts of Member States through the judicial review of administrative decisions.

7. The teams were given some time to formulate their arguments, before presenting them in plenary to the other participants. During the discussions, Professor Weiler challenged the participants to devise arguments that proved/disproved the claim that the administrative act in question was *ultra vires* or unreasonable. For the applicants, one argument that could be made was that it was unreasonable for the administrator to act in a manner that would bring his country into violation of its international agreements. Professor Weiler also highlighted how the parties should first frame their position in a manner that would endear the court to rule in their favour, before launching into their legal arguments.

8. After the exercise, Professor Weiler said that the arguments presented had yet to be mooted before the courts of ASEAN Member States. However, it would be possible to use the judicial review route and the parameters of ASEAN to argue for the reasonableness/unreasonableness of administrative decisions. Professor Weiler noted how these scenarios were used in a moot at the ASEAN Law Conference 2018. He underscored that the panel of sitting judges from Singapore, Thailand and the Philippines had all agreed on the record that the administrative law arguments put forth could prevail in their domestic courts. We are now at the moment in history where there needs to be someone to take the first step and make this sort of argument in a domestic court. With just a handful of such cases, administrators would know they have to ensure their actions are ASEAN-compliant. As such, the culture of administration would change, and over time, the level of ASEAN compliance would improve.

9. Wrapping up the exercise, Professor Weiler briefly touched upon the ASEAN Protocol on Enhanced Dispute Settlement Mechanism 2004. Describing the Protocol as "very straight forward", Professor Weiler said that the only interesting thing about the Protocol is the fact that it had yet to be used. This was while ASEAN Member States were clearly not against such dispute settlement mechanisms, given that some of them had resorted to the WTO dispute settlement process to settle their trade disputes. Dr Intan Innayatun Soeparna (Lecturer, Airlangga University, Indonesia) suggested that one reason

why dispute settlement mechanism in the Protocol was not used is that the Protocol itself contained a provision (i.e. Article 1(3)) that allowed ASEAN Member States to choose other forums to resolve their disputes. Thanking the participant for her insights, Professor Weiler then suggested that another possible reason is that ASEAN Member States did not want to seek dispute settlement in the same forum where they were seeking cooperation with each other.

Day 6: Interview with Chief Justice Sundaresh Menon

1. Chief Justice (CJ) Sundaresh Menon was interviewed by Professor Weiler in front of the participants. Opening the interview, Professor Weiler asked CJ Menon to tell the audience more about himself, starting with his childhood. In response, CJ Menon described how the story of his family's journey from India to Singapore as well as his upbringing during Singapore's early years had shaped his outlook on life and commitment to the rule of law. He explained how his parents had migrated from India to Singapore in the 1950s, and noted that his father had arrived in Singapore with only an extra set of clothes in his suitcase. In the initial years, his family was very poor, but over time, they were able to progress to a point where they were modestly comfortable. CJ Menon explained how he was deeply influenced by this, as he saw how the rule of law and equal opportunity in Singapore had provided a framework that allowed someone in his father's position to not only progress, but thrive, in society. He then recounted how his initial ambition was to live the "glamourous" life of a pilot, but then turned to law on account of his severe astigmatism. He said that he was drawn to the legal profession as he understood lawyers to be people who fought to make things right for others, which was immensely inspiring.

2. Professor Weiler then asked if there are any figures in the world of law that had served as his role model over the years. CJ Menon replied that Atticus Finch in *To Kill a Mockingbird* had left an impression on him – it was "lawyering for the sake of doing right". He was also deeply affected by former Chief Minister David Marshall, who had given a talk at the National University of Singapore where he underscored how lawyers should see law as a profession, not a business. David Marshall's exhortation that lawyers should never "let gold dust into your veins" inspired CJ Menon. He said that his one regret in his 25 years in practice was that he had not done more pro bono criminal justice work. As a commercial disputes lawyer, he had felt like he did not know enough criminal law to take on such cases. However, now as a judge doing criminal cases, he recognises that a good heart and a good mind are ample to really help people.

3. Noting that Singapore is one of the more successful multicultural societies, Professor Weiler then asked if CJ Menon had ever faced discrimination in Singapore on account of being Indian. CJ Menon replied that he had never encountered any disadvantage on account of his race. He genuinely believed that Singapore's policies and government were entirely race-blind. While it would be artificial to imagine that Singapore was utopia, he had personally never felt uncomfortable or disadvantaged by his race.

4. Shifting the conversation to ASEAN, Professor Weiler asked for CJ Menon's views on ASEAN and its transition to a rules-based system. Explaining that a rules-based system is ultimately aimed at establishing the rule of law, CJ Menon said that the rule of law is fundamental as it would be the enabling feature of ASEAN's development and progress. Singapore's absolute commitment to the rule of law over the years, as well as its determination to eradicate corruption and establish a proper

government, are the keys to attracting foreign investment into Singapore and therefore, the keys to its development story. CJ Menon believed that this message of the rule of law's role in economic development could be transmitted to other government leaders in the region. ASEAN's transition to a rules-based framework would ensure that the rule of law "did not remain at the level of dialogue", but penetrated to the ground in a good, positive way.

5. On a practical level, however, ASEAN's movement to a rules-based organisation is a journey that has to take place at a pace that is realistic and reasonable. ASEAN is a region with tremendous diversity, and it would therefore be unwise to force the pace of this journey. Noting how the fast pace of constitutional change in the USSR had shocked the system in a manner that eventually undid the union, CJ Menon emphasised that ASEAN needs to be given time to make a successful practical transition to a rules-based system.

6. Professor Weiler then asked CJ Menon to elaborate further on his focus on convergence within ASEAN. CJ Menon said that he cares about the convergence of ASEAN's legal systems because of the increasing interconnectedness of our world today. While it makes sense for each country to have its own political system, there is very little reason for there to be substantial deviations in the area of commercial law. It is unsatisfactory for companies that operated regionally to encounter different regulations each time they go to a different country. Convergence had been successfully achieved through top-down mechanisms, for example in the field of commercial arbitration. In that field, the United Nations Commission on International Trade Law (UNCITRAL) had managed to promote arbitration as a cross-border mechanism for resolving disputes. The problem with top-down measures however, is that countries' decisions to enter international treaties could be waylaid by other political priorities.

7. CJ Menon then said that he has been involved in the establishment of the ASEAN Business Law Institute (ABLI) which brought together scholars from across Asia to develop common principles of law. The ABLI has thus far been working on the issues of the enforcement of money judgments, the rules of movement of data across borders, and principles for corporate restructuring in Asia. The ABLI's aim was to develop statements of principles that identified areas of commonality and areas of divergence, so as to help businesses and companies drive common ground.

8. Agreeing that the legal community could help ASEAN move toward the "promised land" of a rules-based system, Professor Weiler asked for CJ Menon's thoughts on legal education. CJ Menon replied that there needs to be a re-examination of how legal education was approached – not just in terms of what is taught substantively, but in terms of what kind of skills and values law students should have. Singapore's legal education needs much more emphasis on multi-disciplinary and soft skills training, as well as more collaboration between practice and law school. Additionally, it would be useful to have more mid-career professionals convert to law. Lawyers of the future need to have familiarity with technology in order to understand how technology could reshape practice. CJ Menon then emphasised that legal education should not overlook the danger of lawyers ceasing to think of

themselves as a profession. Lawyers are a group of people pursuing a learned art in the pursuit of public service. With the emergence of alternate legal structures and different players entering the field, there is a danger that the practice of law will become too industrialised. If the legal profession lost its defining characteristic, i.e. the commitment of doing work for public service, then society would be much poorer.

9. CJ Menon then noted that he personally thought that it would be a hugely beneficial step to turn law into a graduate degree. He recalled how he had encountered many young lawyers that had informed him that they had pursued a law degree because their parents had told them to do so. This is unsatisfactory, as the tough demands of practice required lawyers to feel that law was a calling. By converting law into a graduate degree, Singapore would be able to significantly address the big problem of attrition within the legal field. Law school places are a limited resource, and it is important to train enough lawyers that would stay the course for 30-40 years.

10. Returning to the topic of lawyers in ASEAN, CJ Menon said that he is currently the President of the ASEAN Law Association (ALA), which is in serious discussions with the ASEAN Secretariat to determine how the ALA could contribute to the ASEAN project. Preliminarily, the thinking was that the ALA would be able to help diagnose the level of implementation of ASEAN's key instruments, determine the obstacles to implementation, and then train the local authorities to help implement these instruments.

11. On that point, Professor Weiler then recalled that the ALA had organised the ASEAN Law Conference 2018, in which the mock trial scenarios discussed by the participants earlier in the day had been an actual moot problem. Professor Weiler asked if CJ Menon believed that it would be realistic to pursue enforcement of ASEAN law through domestic courts. CJ Menon recalled that the moot was judged by three lawyers – himself, the Chief Justice of the Philippines as well as a judge from Thailand. Despite them coming from different legal systems, they all came to the same conclusion with almost the same reasoning, i.e. that it would be possible to reasonably interpret domestic law obligations that would be consistent with ASEAN law. Even with its dualist system, Singapore has the principle whereby domestic laws had to be interpreted as far as possible in a manner consistent with its international obligations. It is true that courts could not tell the government to pass legislation, but the courts could give existing legislation a reasonable interpretation that would advance compliance with ASEAN law.

12. During the question and answer session, Dr Termsak Chalermpalanupap asked whether CJ Menon foresaw the use of robots and artificial intelligence (AI) in court in the near future. CJ Menon replied that he thought that it would be likely for robots to be used in the court room in his lifetime. He did not think that we would reach a stage where issues of human mercy or deep constitutional questions would be dealt exclusively by robots. Nevertheless, given the explosion of knowledge, it is likely for lawyers to use robots to inform their submissions to court. Additionally, for certain simpler cases, apps would likely be used to put across arguments at the fraction of a lawyer's cost. CJ Menon then noted that every year, there are as many as 1 billion legal issues that did not see resolution because people could not afford legal representation. AI could play a role with such cases.

13. Mr Dewo Baskoro (Researcher, Center for International Law Studies, Universitas Indonesia) asked for CJ Menon's views on the extent to which the courts in Indonesia could play a role in advancing development. CJ Menon said that judges are not the vanguard leaders of any kind of socio-economic revolution; in fact, judges are the most conservative people in society. Nevertheless, judges have the tremendous ability to enforce rights in accordance with the law. This would go a long way to attracting investment, which would bring development and prosperity.

14. Noting how the legal education agenda in the Philippines is set by the bar examiners, Professor Sedfrey Martinez Candelaria (Chief of the Research, Publications and Linkages Office, Supreme Court Philippine Judicial Academy & Former Dean, Ateneo de Manila University School of Law) asked for CJ Menon's views on how academia could set the agenda in law schools so as to focus more on topics that were discussed in the Academy. CJ Menon replied that in Singapore, law schools have much academic freedom. Such freedom is critical, but problems could arise when academics use that freedom to teach what they would like and not what needs to be taught. On that point, there is a pressing need to teach more comparative law and develop awareness of ASEAN legal systems. Ultimately, the law school deans have the responsibility to strike a balance between professors who seek to innovate and explore the bounds of knowledge, and those that are not interested in going out of their patch.

15. Mrs Nukila Evanty (Research and Teaching Faculty, University of Mahendratta Bali, Indonesia) asked CJ Menon about his career goals, as well as his views on the biggest challenge for law in Singapore. CJ Menon said that his goal was to retire safely and peacefully without messing things up. As for the biggest challenge for law in Singapore, CJ Menon noted that the courts play an immense role in preserving order, peace and stability in society. Societies faced pressure when "the human heart was unhappy". When that happened, people looked for outlets, and the courts were vital in providing a trustworthy and honest outlet that satisfied most people and kept stability in society. Singapore is undergoing a period of drastic change, and that pace of change would cause a lot of tension in society. CJ Menon therefore felt that his biggest challenge is to ensure that the courts remained the voice of trust, legitimacy and authority. He noted that the region is similarly undergoing much change. It would be important for the whole of ASEAN to embrace the belief that the rule of law is foundational to the ASEAN community, and make its rules-based commitment a reality.

16. Commenting that this was the first time he had heard someone say that law is ultimately aimed at satisfying the human heart, Professor Weiler thanked CJ Menon for his time and wrapped up the interview.

Day 7: Educator Programme – Pedagogy Workshop

Teaching Methodologies/Setting Exams/Formats of Assessment/Class Participation & Research Methodologies by Professor Joseph Weiler

1. Professor Joseph Weiler opened up the session by tracing the trajectory of the Academy and addressing technology as a double-edged sword. While technology has allowed for more efficient and conducive research, it has also resulted in stressful quantitative measures for productivity and quality. For instance, many researchers now look at various grant offerings and conduct research that will appeal to the sponsor, instead of following their own passion and interest. Topics are also selected based on what is likely to generate a lot of citations. This obsession with quantitative measures has resulted in what Professor Weiler described as "loss of sovereignty over one's own intellect".

2. In response to scholars operating under such quantitative pressures, Professor Weiler provided this advice: to define for oneself an ambitious and profound research project for an article. This project should also be steadily worked on, without rushing in order to prevent producing a sub-par work. In addition to coming up with a conceptual topic, the five-year rule – whether the article will still be relevant in a five years – should also be applied. He cited his own example of publishing an article of 9,000 words that took 11 drafts over a year. (The article "Je suis Achbita!" was circulated to participants.) However, Professor Weiler advised the participants to be cautious about writing for an edited book as the chance of it being read is pretty low. There also has to be a strategy to valorise the work done; it has to be good and should be marketed in as many forums as possible.

3. Paper presentation is another topic that was addressed. Professor Weiler addressed the common scenario as a "lose-lose-lose situation" because presenters tend to over-run their time, which in turn affects the other presenters and consequentially, no one is able to provide an impactful presentation to the audience. He likened a paper presentation to how a lawyer would present his brief in court. The paper presentation should only address the most important factors within a strict time limit. The use of PowerPoint was criticized and seen as counterproductive. Professor Weiler opined that it decreases the quality of the presentation as it is hard to translate complex ideas into bullet points on the screen. Instead, he advised for a presenter to only present three main ideas within the allocated 15 minutes.

4. Professor Weiler then proceeded to discuss what makes a good research question. Firstly, it has to be something that the field does not know. In order to do so, one should be familiar enough with the field to know what has not been addressed. There also has to be a guarantee of consequentiality. The results should be important and provide a meaningful contribution to the field. In addition, there needs to be a conscious distinction between two types of legal scholarship: law books and books about the law. The former involves explaining and commenting on the law. The latter, however, involves a deeper critical analysis or reflection about the law. A feminist jurisprudence piece is an

example of the latter – it begins by stating the law and then argues about the extent to which the law is gendered and whether there is a different impact on men and women. In order to build new critical perspectives, scholars should constantly upgrade themselves and attempt to learn new methodological tools and disciplines so as to be able to produce more writing about the law.

5. In conclusion, Professor Weiler summarized four main points:

    a. Every scholar should have their own ambitious project;
    b. One should valorize their project through workshops and forums;
    c. Use professional methods instead of PowerPoint; and
    d. Remember to criteria for a good research question and project.

Briefing on Teaching and Researching International Law (TRILA) by Mr Eugenio Gomez-Chico on behalf of Professor Tony Anghie

1. Mr Eugenio Gomez-Chico, a Research Associate from the Centre of International Law, gave a short introduction about the Teaching and Researching International Law (TRILA) project. This project officially started in 2017, with the aim to increase capacity in two areas:

    a. Encouraging a better understanding of an Asian perspective of international law; and
    b. Encouraging academics from the region to write and teach while empowering them to get better positions in international law scholarship in Asia.

2. When teaching and researching international law, some challenges include trying to make it relevant for students, sourcing for materials, creation of syllabus and course outline and how to effectively write, research and publish. The "TRILA on the Road" pilot projects were organised in Cambodia, Sri Lanka and Myanmar, which revealed some country-specific challenges. The objectives of these projects include:

    a. Exploring in depth in a local context the issues discussed in the 2018 conference;
    b. Maximising local participation in addressing specific challenges; and
    c. Providing guidance and assistance to young scholars.

3. A question was raised by one of the participants about whether Asian law schools still use Western textbooks and whether there is a textbook with more Asian cases. In response, Mr Eugenio answered that most schools still use typical textbooks such as Shaw's, but Hamid's textbook has attempted to provide a more Asian-centric focus on some issues. Some schools in China and Thailand do use translated versions of Western textbooks. However, to date, there is still no Asian casebook or textbook that has been published, although Mr Eugenio brought up that his colleague at the Centre for International Law, Mr Amiel Valdez, is working on it.

Teaching Methodologies by Professor Thio Li-Ann

1. Professor Thio Li-ann, Provost Chair Professor, Faculty of Law, National University of Singapore, first introduced her exposure to law as a student and teacher. She recalled her undergraduate experience at Oxford as very doctrinal, where international law (IL) was an elective subject, taught heuristically and with a very Anglo-American exposure. Professor Thio elaborated that international law is constantly in flux and it is important to teach IL in context. She posits that it is not a teacher's job to teach their students what to think, but how to think. One has to have a broad conception of IL. Law can be seen as three things: an expectation, an obligation and an aspiration. In order to bring multiple perspectives into the classroom, Professor Thio explained that her students will first be asked a tough question – how does one differentiate international law from international politics? She referenced Professor Weiler's five typologies to analyse IL:

    a. IL as a tool of the protagonists. One will appeal to the law because they believe law is obligatory and should appeal to its authority. The perspectives toward the authority of the law can be further broken down into three schools of thought:
        i. Formalism, which focuses on finding the right law;
        ii. Pragmatism, which focuses on how rules can be used; and
        iii. Cultural activism, which focuses on which certain group benefits and if there is a common language that everyone uses;
    b. Elements such as objective justice, natural law and just law;
    c. IL as a tool of language by which states communicate with each other;
    d. IL as an institutional structure and a useful tool to study international organisations; and
    e. IL allowing inclusion of various groups.

2. Professor Thio raised issues of sensitivity when teaching international law fairly, with the involvement of politics and religions, especially since religion is very important in Southeast Asia. If the origins of IL are indeed international, it should benefit everyone. For example, the Treaty of Westphalia was seen as the founding instrument of IL, with three key elements: territorial integrity, sovereign equality and political independence. Professor Thio concurred that this treaty can even be seen as the first human rights treaty. However, she mentioned that IL in its foundation was exclusive – it excluded Asia and Africa. To address this point, Professor Thio singled out the 1948 Universal Declaration of Human Rights (UDHR) as the only document that included the word "universal". She also highlighted the Asian and Latin-American contribution to the document of human rights.

3. Many questions were raised by the participants regarding IL, such as whether states can accept UDHR as universal when each nation has different duties and expectations, such as Islamic states. In response, Professor Thio commented that this is a debate between two types of universalism, instead of universalism against cultural relativism. Even within religions, they are not monolithic and have different interpretations. When religious views differ from IL, which one trumps the other? If every state has agreed to the 1948 UDHR as a norm, at what point do we agree that the norm has changed?

Is IL still being preyed upon by other powerful states? These are some questions Professor Thio posed while discussing this topic.

4. A participant quipped that IL is a tool "for the weak to escape hell and for the strong to show us to heaven". With a rising selective revisionist power like China, another participant questioned the role of IL in the current political climate. Prof Thio questioned the nature of IL and discussed if IL is a law of coexistence, where states work alongside one another; a law of cooperation, which is built on trade and contracts; or a law of community, where states have shared moral values. The foundation of IL has essentially been built upon the asymmetrical relationship of states.

5. The question of human rights was also popular. A participant asked Professor Thio's view of the future of the ASEAN Human Rights Declaration? Professor Thio was sceptical about having numerous human rights declarations when they may not make a huge difference on the ground. She mentioned that the right to development – which includes participation of everyone and equitable distribution of wealth – gives states an excuse to do nothing. Development should be made measurable and have clear priorities. Another participant raised the issue of including controversial issues such as LGBT rights into IL, especially with the mix of culture and religion. Professor Thio suggested that democracy should be given some weight – when there is an internal ongoing debate, it should be left to constitutional law instead of IL.

Teaching ASEAN Law and Policy by Assistant Professor Tan Hsien-Li

1. Dr Tan Hsien-Li, the sole professor teaching ASEAN Law and Policy in the National University of Singapore and Co-Director of the Academy, began the session by first gathering feedback from participants about what is needed in their respective faculties to teach ASEAN Law and Policy. There was a lively response from many participants. Several institutions shared about their existing ASEAN courses, including Airlangga University and Chulalongkorn University, while others mentioned that ASEAN modules are incorporated into courses on Public International Law, Human Rights, Regional and International Organisations, International Relations, International Economic Law, and courses in the Political Science and Economics faculties.

2. Some of the challenges and needs raised include:

    a. Lack of reference books and legal literature in their other languages, such as Bahasa Indonesia;
    b. Lack of cases;
    c. Lack of clarity on the concept of the legal personality of ASEAN;
    d. Difficulties of manpower, resources and proficient professors;
    e. Problem of attracting students if ASEAN Law is offered as an elective course, but also problem of stimulating interest especially if it is offered as a compulsory module;
    f. The perception of students that ASEAN Law was not relevant to their future jobs;
    g. Justifying the study of policy in the law faculty; and
    h. Bureaucratic obstacles and administrative procedures.

3. Dr Tan highlighted that while ASEAN does have hard law, it also relies a lot on soft law that is translated into policies, and then trickled down and permeated into the lives of ASEAN citizens. With booming economies in the region, there are increasingly more international law firms that are interested in ASEAN law. She explained that the national domestic advantage will be lost if opportunities are not grabbed now.

4. With regard to designing of modules, technicalities such as duration, class size, pre-requisites and assessment should be considered. Teachers should also teach in the way they are most comfortable in, and in areas where their expertise lies. Dr Tan explained that there is a need to manage expectations from the first lesson. This can be done through the overview and learning outcomes, where she provided contextual understanding. Dr Tan's preference of pedagogical method is the Socratic method. She emphasised teaching students to form good legal arguments and ensuring they can substantiate the arguments. Leveraging on the proper use of knowledge is the key and thus, Dr Tan circulates good essays for the students to learn from.

5. Dr Tan shared her syllabus for the ASEAN Law and Policy course, an elective module at the National University of Singapore. Her syllabus aimed to provide a framework of how ASEAN law and policy works. As ASEAN has always been a political creature, the first half of Professor Tan's module revolves

framing the legal and institutional issues. Key instruments, such as the ASEAN Trade in Goods Agreement (ATIGA) and ASEAN Comprehensive Investment Agreement (ACIA), serve as the foundation for teaching ASEAN economic law. In terms of class preparation, it is crucial to teach students how to read their assigned readings properly. They should be able to know the essence of their materials and then read compulsory readings with the newly obtained lens. One of the participants raised a question regarding the kind of system to adopt if there is a very large cohort. In that case, Professor Tan advised to use an adjunct if possible, and to break the session into a two-hour lecture and a two-hour tutorial. This would allow better connection with the students and ensures it will not be too taxing on the teacher.