

ASEAN Law and Policy

Notes for Teachers

This course is designed as an introduction to ASEAN Law and Policy to equip students with the fundamental concepts, working knowledge, and skills necessary to navigate the complex world of ASEAN integration. Employing a cross-disciplinary approach, it may be taught at the senior year(s) of undergraduate studies or as a post-graduate module for the disciplines of law and the social sciences.

For more higher-level courses and specialist knowledge on ASEAN Law and Policy, please refer to the annual NUS Centre for International Law's **ASEAN Law Academy – Advanced Programme**, an intensive masters- level course for policymakers, academics, and practitioners.

While this syllabus and materials are free for use, we kindly request you acknowledge any use to “ASEAN Law Academy, Centre for International Law (NUS)”

Overview

The Association of Southeast Asian Nations (ASEAN) is not only important to its ten member states – Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam – it is also a multilateral arrangement other countries seek to engage with, whether for security or economy. ASEAN has facilitated the region's peace and security and, increasingly, its economic significance vis-à-vis Asian powers (e.g. China, India, and Japan) and other global powers (e.g. the US and the EU).

After cooperating for 40 years under an ostensibly informal status and flexible modality, eschewing an overt reliance on the law, the ten members adopted the ASEAN Charter to radically transform the organisation into a tri-pillared (political-security, economic, and socio-cultural) Community based on the rule of law and rule of institutions. Members' objectives via this Charter-based transformation into a rules-based system are manifold: a meaningful presence in the international community, wield significant leadership in the regional order vis-à-vis external players, a trade bloc that plugs into global supply chains, and equitable development for ASEAN citizens. The ASEAN Community was established at the end of 2015, and its next phase of rules-based growth mapped out in a new roadmap stretching to 2025.

This course examines the new discourse of ASEAN law and policy. and its intersection with national and international law and politics, the management of power relations, and the metamorphosis of ASEAN into a contemporary international (regional) organisation. It deals primarily with Law (of course) but is also attentive to the Non-Law and Quasi-Law aspects inherent in ASEAN's character as an international person, its values and principles, and its

operational modalities, processes, and institutions.

Learning outcomes

With the ever-increasing reach and impact of ASEAN – and this will intensify given the pressures of the COVID-19 pandemic and bipolarity in international politics – basic knowledge of ASEAN law and policy will be helpful to those in the public and private sectors within and without the region.

Knowledge

Students will get a good grounding in ASEAN Law and Policy (and the core essentials of public international law). More importantly, as this course straddles the realm of international law and international relations, students will understand:

1. How international and regional events, powers, politics, and strategic relations impact upon and shape ASEAN's Laws and Institutions;
2. How Law is important in ASEAN, and where Non-Law or Quasi-Law is even more important;
3. How various actors – states, public institutions, private corporations, civil society, and individuals – can effect regional and state-level changes in ASEAN.

Skills

As law is also profession- and practice-oriented, this course is geared towards honing practical capabilities. Students will learn:

1. How to spot legal issues
2. How to write substantive legal arguments concisely yet comprehensively
3. Intellectual dexterity
4. Creative yet logical problem-solving

This course will also provide students a glimpse into the varied opportunities that might appeal to them involving ASEAN law and policy: international law, diplomacy and foreign affairs, trade, security, strategic, and economic development.

Teaching style

The nature of ASEAN Law and Policy is wide-ranging and comprehensive, requiring considerations from law, politics, and governance, especially since geopolitical changes occur frequently. (There is no stopping how the world wants to act! Thus, ASEAN must be prospective and reactive.)

Hence, this is a rigorous course that demands mental dexterity, adequate preparation, and the willingness to come to class to discuss openly. The seminars employ Socratic methods centred around discussion questions. Everyone's input will enrich our learning experience as

there is no monopoly on ideas and strategies – I will help shape your input into legally-sound and logical arguments. (There should be NO expectation of a single straight answer in class – generally those who engage in international law and international relations negotiations as such will be rather surprised...)

While those who have studied international law might have a slight edge, the course is structured such that the playing field is levelled. Participants who have read and thought about the materials provided for each lesson (capped at a manageable number of pages) and engage in the class benefit the most.

Due to the pandemic, classes will be held virtually. The modality is as follows:

- A. Short Video of about 20 min (viewed at own time)**
- B. Seminar reading list with questions (readings to be done at own pace; seminar questions should be an approximately 30 min exercise)**
- C. Virtual classroom discussion (1.5h max)**

Assessment mode

Class participation [20%]

Mid-term essay of 2-2.5k words [30%]

End of term 6 hr take-home exam [50%]

	Topic
	Part 1: Overview and General Concepts
Week 1	<ul style="list-style-type: none"> • Overview of Course • Introduction to the principles, concepts, and institutions of ASEAN • ASEAN, the Political Creature (1967–2007)
Week 2	<ul style="list-style-type: none"> • ASEAN, the Legal Creature (2007–)
	Part 2: The Rule of Law and Institutions in ASEAN
Week 3	<ul style="list-style-type: none"> • The Rule of Law in ASEAN and the Making of ASEAN Instruments
Week 4	<ul style="list-style-type: none"> • The Rule of Institutions in ASEAN – Regional Governance at Multiple Levels
Week 5 & 6	<ul style="list-style-type: none"> • Securing Compliance with ASEAN Law (1) and (2) <ul style="list-style-type: none"> ○ Compliance ○ Dispute Settlement Mechanisms ○ Monitoring Mechanisms
[Optional]	<ul style="list-style-type: none"> • ASEAN Law in National Regimes
	Part 3: Substantive ASEAN Law
Week 7	<ul style="list-style-type: none"> • ASEAN and Security (1 – Rights) (Pillars 1 and 3: Political-Security and Socio-Cultural)
Week 8	<ul style="list-style-type: none"> • ASEAN and Security (2 – Security) (Pillars 1 and 3: Political-Security and Socio-Cultural)
Week 9	<ul style="list-style-type: none"> • ASEAN Economic Community-Building (1) (Pillar 2: Economic)
Week 10	<ul style="list-style-type: none"> • ASEAN Economic Community-Building (2) (Pillar 2: Economic)
Week 11	<ul style="list-style-type: none"> • ASEAN External Relations (1) – Legal Personality, Centrality, and the Driver’s Seat • ASEAN External Relations (2) – External Trade Relations

Annex: List of topics and provisional reading list

[Note: The materials below will be excerpted to make a reasonable reading list (circa 30 pages) for each class. As geopolitical situations can be quite fluid, the fact-patterns from news sources will also change accordingly.]

Part 1: Overview and General Concepts

1.1 Overview of Course

1.2 Introduction to principles, concepts, and institutions necessary to understanding regional law and regional organisations (and international law and international organisations more generally) vis-à-vis ASEAN

1.3 ASEAN, the Political Creature (1967–2007)

- The history and evolution of ASEAN (1st 2 phases of development)
- The raison d'être of ASEAN and its morphing purposes
- The ASEAN Way – norms, values, and principles (diplomatic/political/non-legalistic), Westphalian mindset, absolute sovereignty
- The institutions of ASEAN and their development
- The modus operandi of ASEAN

Reading list:

History of ASEAN <http://asean.org/asean/about-asean/history>

Shaun Narine, Forty years of ASEAN: A Historical Review, 21(4) Pacific Review (2008) 411-29.

Helen E. S. Nesadurai, ASEAN and regional governance after the Cold War: from regional order to regional community? 22(1) Pacific Review (2009) 91-118 (only pp. 91-99)

At 50, ASEAN is a neighbourhood, not yet community, Jakarta Post (reprinted in the Straits Times, 29 July 2017)

Barry Desker, Is ASEAN a Community?, RSIS Commentary No.145, 2 August 2017

ASEAN instruments and documents (from CIL treaties database www.cil.nus.edu.sg or www.asean.org):

Bangkok Declaration (1967)

Treaty of Amity and Cooperation (1976)

1976 Agreement on the Establishment of the ASEAN Secretariat (1976)

Bali Concord I (1976)

Bali Concord II (2003)

Further reading:

Philippe Sands and Pierre Klein, *Bowett's Law of International Institutions* (6th ed.) (Sweet and Maxwell, 2009), Ch.5 (Regional Organisations, Introduction).

James Crawford, *Brownlie's Principles of Public International Law* (8th ed.) (OUP, 2012), Ch. 15 (International Organizations) and Ch.16 (Law of Treaties), esp. pp. 192-9, 367-75.

Chin Kin Wah, Introduction: ASEAN — Facing the Fifth Decade, 29(3) *Contemporary Southeast Asia* (2007) 395-405.

2. ASEAN, the Legal Creature (2007–)

- Rationale for transformation
- What ASEAN wants to achieve in its 3rd phase of development (integration, tri-pillared Community)
- New concepts, norms and principles – ROLI and HR&D

- New institutions and competences – Summit, AMM, ACC, SG, Sectoral Groups.

Reading list:

Report of the Eminent Persons Group (EPG) on the ASEAN Charter (2007)

Walter Woon, *The ASEAN Charter: A Commentary* (Singapore: NUS Press, 2016), pp. 40-78.

ASEAN instruments and documents (from CIL treaties database or www.asean.org):

ASEAN Charter (2007)

ASEAN Political Security Community Blueprint (2009)

ASEAN Economic Community Blueprint (2007)

ASEAN Socio-Cultural Community Blueprint (2009)

Further reading:

Jean-Claude Piris and Walter Woon, *Towards a rules-based community: an ASEAN legal service* (CUP, 2015), Ch. 1.

Robert Beckman, Leonardo Bernard, Hao Duy Phan, Tan Hsien-Li, and Ranyta Yusran, *Promoting Compliance* (Cambridge: Cambridge University Press, Feb 2016), Ch. 1.

Amitav Acharya, *Constructing a security community in Southeast Asia: ASEAN and the problem of regional order* (Routledge, 2009), Ch. 2.

Rodolfo Severino, *ASEAN* (ISEAS, 2008).

Part 2: The Rule of Law and Institutions in ASEAN

3. Law-making in ASEAN

- Brief discussion on the definitions and components of the Rule of Law and how ASEAN measures up (Fuller's 8 principle; clarity, applicability, formality, procedure, rules, system, enforcement, etc.)
- Issues in ASEAN Law and how it is made
 - Hard law, soft law, rules of an indeterminate nature, purely political documents
 - Nomenclature vs. text, language, and content
 - Sources and influences in ASEAN law-making
 - Status of ASEAN instruments pre- and post- 2007 (Does the Charter codify everything?)
 - Constituent instruments and their corresponding action plans
 - Instrumental differentiation according to community/sectoral area. Why?
 - External agreements (to be studied in later seminar)
- Improving law-making in ASEAN
 - Best treaty-making practices (Realistic targets, timelines, classification, post-accession procedures, coming into effect, etc.)

Reading list:

Colleen Murphy, Lon Fuller and the Moral Value of the Rule of Law, 24 *Law and Philosophy* (2005) 239-62. Read only pp. 239-43.

Kenneth Abbott and Duncan Snidal, Hard and Soft Law in International Governance, 54(3) *IO* (2000) 421-56.

Christine Chinkin, The Challenge of Soft Law: Development and Change in International Law, 38(4) *ICLQ* (1989) 850-66, esp. 850-3, 855-6, 859-62.

Anthony Aust, *Modern Treaty Law and Practice* (3rd ed.), Chs. 2 and 9, esp. 16-29, 162-3, 168-9.

Further reading:

LL Fuller, *The Morality of Law* (Yale UP, 1964)

HLA Hart, *The Concept of Law* (OUP, 1994) – to be excerpted.

Jan Klabbers, *The concept of treaty in international law* (Kluwer, 1996), Ch. 1 (overview) and Ch. 5 (Soft law).

Jean d'Aspremont and Tanja Aalberts, *Which Future for the Scholarly Concept of Soft International Law?* (Editors' Introductory Remarks to Symposium), 25(2) *Leiden Journal of International Law* (2012) 309-312.

Christopher Marcoux and Johannes Urpelainen, *Non-compliance by Design: Moribund Hard Law in International Institutions*, 8 *Review of International Organizations* (2013) 163-91.

ASEAN instruments and documents (from CIL treaties database or www.asean.org):

ASEAN Vision 2020 (1997)

Hanoi Plan of Action (1998)

Bali Concord II (2003)

Vientiane Action Programme (2004)

ASEAN Charter (2007)

Roadmap (2009) comprising Political-Security, Economic, and Socio-Cultural Community Blueprints

IAI Framework (2009)

4. Regional Governance and Institutions in ASEAN

- The governance modality – ASEAN as an international/regional organisation vs. ASEAN as an aggregation of member states
- Organisational efficacy or institutional mimesis
- Decision-making in ASEAN – consensus, ASEAN minus X (economic matters)
- The institutions and agencies in ASEAN carrying out the laws and policies, especially the ASEAN legal department in treaty interpretation and clarification
- The legal role and powers of the ASEAN Secretary-General and the Secretariat vs. those of the Committee of Permanent Representatives and the Member States

Reading list:

David Martin Jones and Michael LR Smith, *Making Process, Not Progress: ASEAN and the Evolving East Asian Regional Order*, 32(1) *International Security* (2007) 148-84.

Anja Jetschke, *Institutionalizing ASEAN: celebrating Europe through network governance*, 22(3) *Cambridge Review of International Affairs* (2009) 407-26.

Jean-Claude Piris and Walter Woon, *Towards a rules-based community: an ASEAN legal service* (CUP, 2015), Ch.3.

Further reading:

Anja Jetschke and Philomena Murray, *Diffusing Regional Integration: The EU and Southeast Asia*, 35(1) *West European Politics* (2012) 174-91.

ASEAN instruments and documents:

Bangkok Declaration (1967)

Agreement on the Establishment of the ASEAN Secretariat (1976)

ASEAN Charter (2007)

ASEAN and ASEC structures (PDF)

ASEAN webpage (PDF)

5. Securing Compliance with ASEAN Law

- Why do states obey international law? Why would ASEAN states obey regional law?
- ASEAN's dilemma – ensuring compliance for both hard and soft law
- ASEAN's ideal solution – dispute settlement and monitoring mechanisms
- Dispute settlement mechanisms
 - Functions of dispute settlement mechanisms – can they truly compel compliance?
 - Specific provision in instrument or general provision in ASEAN Charter
 - Activation of dispute settlement procedures and processes towards resolution (state-to-state modalities – what about private parties/individuals?)
 - How and why dispute settlement modalities tend to vary according to the Community pillar (E.g. security, economic, socio- cultural matters)
 - Effectiveness and Improvements
- ASEAN monitoring mechanisms
 - Specific provision in instrument or general provision in ASEAN Charter
 - Monitoring procedures and processes, including self-monitoring (e.g. AEC Scorecard)
 - Hierarchy of powers among those who have oversight
 - Effectiveness and Improvements

Reading list:

Harold Hong-ju Koh, *Why Do Nations Obey International Law?* 106 *Yale Law Journal* (1997) 2599-659.

Robert Beckman et al., *Promoting Compliance: The Role of Dispute Settlement and Monitoring Mechanisms in ASEAN Instruments* (CUP, Feb 2016), Chs. 1, 2, and 3.

Further reading:

Simon Chesterman, *From Community to Compliance? The Evolution of Monitoring Obligations in ASEAN* (CUP, 2015).

Eric Posner, *Do States Have a Moral Obligation to Obey International Law?* 55(5) *Stanford Law Review* (2003) 1901-19.

Andrew Guzman, *A Compliance-Based Theory of International Law*, 90(6) *California Law Review* (2002) 1823-87.

Joel Trachtman, *International Law and Domestic Political Coalitions: The Grand Theory of Compliance with International Law*, 11(1) *Chicago Journal of International Law* (2010)

Kal Raustiala, *Compliance and Effectiveness in International Regulatory Cooperation*, 32 *Case Western Reserve Journal of International Law* (2000) 387-440.

Jonas Tallberg, *Paths to Compliance: Enforcement, Management, and the European Union*, 56(3) *IO* (2002) 609.

Jean-Claude Piris and Walter Woon, *Towards a rules-based community: an ASEAN legal service* (CUP, 2015), 66-106.

Christopher Marcoux and Johannes Urpelainen, *Non-compliance by design: Moribund hard law in international institutions*, 8 *Review of International Organisations* (2013) 163-91.

George W. Downs and Michael A. Jones, *Reputation, Compliance, and International Law*, 31(1) *Journal of Legal Studies* (2002) 95-114.

ASEAN instruments and documents (from CIL treaties database or www.asean.org):

Treaty of Amity and Cooperation (1976)

ASEAN Protocol on Enhanced Dispute Settlement Mechanism (2004)

ASEAN Charter (2007)

Protocol to the ASEAN Charter on Dispute Settlement Mechanisms (2010)

6. ASEAN Law in National Regimes

- Implementation of international and regional law in national regimes
- Monism (direct effect) and Dualism (ratification, transformation, incorporation)
- Case studies of three ASEAN member states with regard to different types of ASEAN law – incumbent reality and future potential
 - Singapore (dualist – all ASEAN laws)
 - Indonesia (ostensibly hybrid; the role of judicial creativity)
 - Cambodia (direct effect for human rights treaties)
- The impact of ASEAN law in national regimes – when having the law is not good enough and necessitates other considerations
 - Domestic rule of law and good governance
 - Properly functioning civil institutions
 - Human and financial resources

Reading list:

Anthony Aust, *Modern Treaty Law and Practice* (3rd ed.), Ch. 10.
Eugene Tan and Eunice Lim, *The Effect of Treaties in Singapore's Domestic Law* (2013, unpublished)
Kuong Teilee, *Cambodian Constitutional Provisions on Treaties: A Story of Constitutional Evolution Beyond Rhetoric*, 1 *Cambodian Yearbook on Comparative Legal Studies* (Harvard-Yenching Institute Working Paper Series 2010) 1.
Sari Aziz and Ranyta Yusran, *CIL Research Project on International Maritime Crimes* (Country Report – Indonesia), CIL Working Paper (2010/10).

Further reading:

Anne Peters, *Supremacy Lost: International Law Meets Domestic Constitutional Law*, 3(3) *ICL Journal* (2009) 170.
Eyal Benvenisti and George W. Downs, *National Courts, Domestic Democracy, and the Evolution of International Law*, 20(1) *EJIL* (2009) 59.
Anne-Marie Slaughter and William Burke-White, *The Future of International Law is Domestic (or, the European Way of Law)*, 47(2) *Harvard ILJ* (2006) 327.
Walter Mattli and Anne-Marie Slaughter, *Revisiting the European Court of Justice*, 52(1) *IO* (1998) 177.
Walter Mattli and Anne-Marie Slaughter, *The role of national courts in the process of European Integration*, in Slaughter, Stone Sweet and Weiler (eds) *The European Court and National Courts-Doctrine and Jurisprudence* (Hart, 1998)

Part 3: Substantive Legal Areas

7. ASEAN and Security (1) (Pillars 1 and 3: Political-Security and Socio-Cultural)

- The development of a 'Caring and Sharing' and 'People-centred' ASEAN
- Why human rights and democracy are included as part of ASEAN's legal transformation – influences from individual member states and civil society stakeholders vs. the eventual claw-back
- Human rights in ASEAN – only in the Political-Security and Socio-Cultural Communities and not the Economic Community?
- The ASEAN human rights system (to be illustrated with case-studies):
 - Primary (and overarching) regional mechanism ASEAN Intergovernmental Commission on Human Rights (AICHR)
 - Special Regimes – ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC); ASEAN Committee on the Implementation of

the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW)

- Powers and competences; guiding instruments and how international law has shaped them; promotion and protection of rights; competition and overlaps among regimes; exhaustion of remedies and potential of individual recourse
- Interplay between national, regional, and international protections

Reading list:

Tan Hsien-Li, *The ASEAN Intergovernmental Commission on Human Rights: Institutionalising Human Rights in Southeast Asia* (CUP, 2011), Ch. 4.

Yuval Ginbar, *Human rights in ASEAN – Setting sail or treading water?* 10(3) HRLR (2010) 504.

Gerard Clarke, *The evolving ASEAN HR system: The ASEAN Human Rights Declaration of 2012*, 11(1) Northwestern JIHR (2012) 1.

Catherine Renshaw, *The ASEAN Human Rights Declaration 2012*, 13(3) HRLR (2013) 557.

Suzannah Linton, *ASEAN States, Their Reservations to Human Rights Treaties and the Proposed ASEAN Commission on Women and Children*, 30(2) HRQ (2008) 436.

Further reading:

Thio Li-ann, *Implementing Human Rights in ASEAN Countries: "Promises to keep and miles to go before I sleep"*, 2 Yale Hum. Rts. & Dev. L.J. (1999) 1

Avery Poole, *"The World is Outraged": Legitimacy in the Making of the ASEAN Human Rights Body*, 37(3) Contemporary Southeast Asia (2015) 355.

André Asplund, *ASEAN Intergovernmental Commission on Human Rights: civil society organizations' limited influence on ASEAN*, 7(2) Journal of Asian Public Policy (2014) 191.

Nicholas Doyle, *The ASEAN human rights declaration and the implications of recent Southeast Asian initiatives in human rights institution-building and standard-setting*, 63(1) ICLQ (2014) 67.

ASEAN instruments and documents (from CIL treaties database or www.asean.org):

ASEAN Charter (2007)

ASEAN Political-Security Community Blueprint (2009)

ASEAN Socio-Cultural Community Blueprint (2009)

Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights (2009)

ASEAN Human Rights Declaration (2012)

Terms of Reference of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (2009)

ASEAN Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children (2013)

ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007)

ASEAN Convention Against Trafficking in Persons (2015)

8. ASEAN and Security (2) (Pillars 1 and 3: Political-Security and Socio-Cultural)

- Evolution of ASEAN as a security community to the Political-Security Community – has anything changed?
- Norms – non-interference, amicable relations, peaceful resolution of conflict
- Modalities – culture of abstinence, consultation, confidence-building measures
- Institutions and Balance of Powers – the ASEAN Regional Forum and external powers
- Where does Law fit in? Treaty of Amity and Cooperation, Bali Concord II, ASEAN Charter
- Military Security (i.e. when the Use of Force or the threat thereof is involved) – intra-regional conflicts (e.g. Temple of Preah Vihear); conflicts with an external dimension (e.g. South China Sea)

- Human Security – Humanitarian intervention and disaster management (e.g. Aceh, Cyclone Nargis, treatment of ethnic minorities and Rohingya in Myanmar)

Reading list:

Hitoshi Nasu, Revisiting the Principle of Non-Intervention: A Structural Principle of International Law or a Political Obstacle to Regional Security in Asia?, 3(1) AsianJIL (2013) 25.
Lee Jones, ASEAN's unchanged melody? The theory and practice of non-interference in SE Asia, 23(4) Pacific Review (2010) 479.
Karin Loevy, The Legal Politics of Jurisdiction: Understanding ASEAN's Role in Myanmar's Disaster, Cyclone Nargis (2008), 5(1) AsianJIL (2015) 55.
David Jones and Nicole Jenne, Weak states' regionalism: ASEAN and the limits of security cooperation in Pacific Asia, Int Relat Asia Pac (2015)doi: 10.1093/irap/lcv015. First published online: July 28, 2015
Carlyle Thayer, ASEAN, China, and the Code of Conduct in the South China Sea, 33(2) SAIS Review (2013) 73.
Hitoshi Nasu and Donald Rothwell, Re-evaluating the Role of International Law in Territorial and Maritime Disputes in East Asia, 4(1) AsianJIL (2014) 55.

Further reading

Evelyn Goh, Institutions and the great power bargain in East Asia: ASEAN's limited 'brokerage' role, IRAP (2011) 373.
Evelyn Goh, The modes of China's influence, 54(5) Asian Survey (2014) 825.
Evelyn Goh, How Japan matters in the evolving East Asian security order, 87(4) International Affairs (2011) 887
Catherine Jones, Great powers, ASEAN, and security: reason for optimism? 28(2) Pacific Review (2015) 259.
Rizal Sukma, The ASEAN political and security community (APSC): opportunities and constraints for the R2P in Southeast Asia, 25(1) Pacific Review (2012) 135.
Amitav Acharya, Constructing a security community in Southeast Asia: ASEAN and the problem of regional order (Routledge, 2009), Chs. 2 and 4.

9. ASEAN Economic Community-Building (Pillar 2: Economic)

- The rise of ASEAN economic cooperation – a way of confidence-building, improving relations, and keeping the peace
- The movement towards intensifying intraregional economic relationships through the Rule of Law and Institutions
- The region's dependence on international trade and foreign direct investment – are bilateral and external multilateral arrangements more favoured than ASEAN intraregional arrangements?
- Status and effect of pre-Charter ASEAN economic instruments
- ASEAN Economic Community – what it seeks to achieve (single market and production base) and how it goes about doing so (ASEAN Charter and the AEC Blueprint)
- Post-Charter (and refreshed pre-Charter) economic instruments and institutions – ASEAN Trade in Goods Agreement (2010), ASEAN Comprehensive Investment Agreement (2012), ASEAN Framework Agreement on Services (1995), ASEAN Protocol on Enhanced Dispute Settlement (EDSM)
- Is the ASEAN Community-building propelled by (flexible-political) cooperation or (legal) integration? How likely is it to be attained? What more should be done?

Reading list:

Chia Siow Yue and Michael G. Plummer, ASEAN economic cooperation and integration: progress, challenges and future directions (CUP, 2015), Ch. 5.
Stefano Inama and Edmund W. Sim, The foundation of the ASEAN Economic Community: an institutional and legal profile (CUP, 2015), Chs 1-3.

ASEAN instruments and documents (from CIL treaties database or www.asean.org):

ASEAN Charter (2007)
ASEAN Economic Community Blueprint (2007)
AEC Scorecard (2012)
ASEAN Trade in Goods Agreement (2010)
ASEAN Comprehensive Investment Agreement (2012)
ASEAN Framework Agreement on Services (1995)
ASEAN Protocol on Enhanced Dispute Settlement (EDSM) (2004)

Part 4: ASEAN in the International Order

10. ASEAN in its External Legal Relations

- ASEAN Centrality – scope, principles, and objectives of ASEAN’s external powers
- Charter procedures facilitating and improving ASEAN Centrality
- Implications of ASEAN’s legal personality on its relations with other global actors, especially ASEAN Dialogue Partners
- The Typology, Trends, and Legal Quality of ASEAN external instruments – (1) ASEAN member state agreements, (2) ASEAN ‘alone’ agreements, and (3) ASEAN mixed agreements
- ASEAN preferential trade agreements (PTAs) – status and leverage of ASEAN vis-à-vis external partners – who benefits? Substantive coverage and depth of PTAs, dispute settlement avenues

Reading list:

Lee Jones, Still in the “Drivers’ Seat”, But for How Long? ASEAN’s Capacity for Leadership in East-Asian International Relations, 29(3) *Journal of Current Southeast Asian Affairs* (2010) 95.
Simon Chesterman, Does ASEAN exist? The Association of Southeast Asian Nations as an international legal person, 12 *SYBIL* (2008) 199.
Marise Cremona et al., ASEAN's External Agreements: Law, Practice and the Quest for Collective Action (CUP, 2015), pp. 23-32, 51-7, Chs. 4-5 .

Further reading:

Alice Ba, Is China leading? China, Southeast Asia and East Asian regionalism, 66(2) *Political Science* (2014) 143.
Chen Zhida, ASEAN and Its Problematic Treaty-Making Practice: Can International Organizations Conclude Treaties "on Behalf of" Their Member States? 4(2) *AsianJIL* (2014) 391-419.
Daniel Seah, Problems Concerning the International Law-Making Practice of ASEAN: A Reply to Chen Zhida, DOI: <http://dx.doi.org.libproxy1.nus.edu.sg/10.1017/S2044251315000016>, 29 pages.
Published online: 22 May 2015
Pieter Jan Kuijper et al., From Treaty-Making to Treaty-Breaking: Models for ASEAN External Trade Agreements (CUP, 2015), Ch. 3.
Yoshifumi Fukunaga, ASEAN's Leadership in the Regional Comprehensive Economic Partnership, 2(1) *Asia & the Pacific Policy Studies* (2015) 103.
Peter Petri and Michael Plummer, ASEAN Centrality and the ASEAN-US Economic Relationship, 69 *Policy Studies* (2014) 1.

Jens-Uwe Wunderlich, Comparing regional organisations in global multilateral institutions: ASEAN, the EU and the UN, 10(2) Asia Europe Journal (2012) 127.

ASEAN instruments and documents (from CIL treaties database or www.asean.org):

Report of the Eminent Persons Group (EPG) on the ASEAN Charter (2007)

Rules of Procedure for Conclusion of International Agreements by ASEAN (2011)

ASEAN Agreement on Privileges and Immunities (2009)

11. [EXTRA TOPIC] ASEAN the international/regional organisation in comparative context

- ASEAN aspires to be an upstanding international legal person. How does it differ from 2 major international organisations? Examination of influences from the UN and EU in terms of laws and institutions upon ASEAN (e.g. Charter, Community, etc.)
- Comparative analysis of the institutional structure and powers of ASEAN relative to the UN and EU
- Comparative analysis of ASEAN's legal regime and its powers relative to the UN and EU – Is there the rule of law in ASEAN? How is it different from or similar to the rule of law in the UN and EU? Is it a hybridised system?
- The Rule of Law (and not the rule of might) – the extent to which these regimes are able to regulate (and prevail over) unequal power relations. Is ASEAN an effective regulator of intra- and extra-regional powers?

Reading list:

Damian Chalmers, Gareth Davies, Giorgio Monti, European Union Law: Cases and Materials (3rd ed.) (CUP, 2014), Chs. on EU Institutional Law.

Simon Chesterman, Thomas Franck, and David Malone, Law and Practice of the United Nations: Documents and Commentary (OUP, 2008), Chs. 1-4 (to be excerpted).
