

ASEAN Law and Policy

Seminar 4

Regional Governance and Institutions in ASEAN

This week in “Regional Governance and Institutions in ASEAN”, we shall examine more deeply the themes we touched on in Seminar 2 (ASEAN, the Legal Creature). We shall cover 3 main parts:

1. The Governance and Powers of ASEAN
 - ASEAN as an international/regional organisation vs. ASEAN as an aggregation of member states
 - The organs of ASEAN
 - Decision-making in ASEAN – consensus, ASEAN minus X (economic matters)
 - The governance modalities – Executive & Bureaucracy – and where the powers lie – are there tensions?
2. The challenge to the rule of institutions
 - Organisational efficacy or institutional mimesis
 - 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
3. The challenge to the rule of law
 - Improving the institutions and agencies in ASEAN carrying out the laws and policies, especially the ASEAN legal department in treaty interpretation and clarification

Reading list:

Anja Jetschke and Philomena Murray, Diffusing Regional Integration: The EU and Southeast Asia, 35(1) West European Politics (2012) 174-91. ONLY 181-88.

CPR Handbook (Aug 2017), pp. 5, 7, 17-20.

Jean-Claude Piris and Walter Woon, Towards a rules-based community: an ASEAN legal service (CUP, 2015), Ch1 (excerpts of pp. 48-64), Ch.3 (skim 122-32, CONCENTRATE on pp.133-67).

ASEAN ITL Policy Recommendations (2015), Policy Areas 4 and 6 (pp.15-16, 21-2).

ASEAN instruments and documents (in the ASEAN instruments folder):

Bangkok Declaration (1967)

Agreement on the Establishment of the ASEAN Secretariat (1976)

ASEAN Charter (2007), ONLY Ch. IV (Organs) and Ch. VII (Decision-making) provisions.

ASEC structure (table) <http://www.asean.org/wp-content/uploads/2012/05/ASEAN-Secretariat-Organizational-Structure-effective-1-January-2016.png>

ASEC structure (list) <http://asean.org/asean/asean-structure/organisational-structure-2/>

Further reading:

Deepak Nair, A Strong Secretariat, a Strong ASEAN? A Re-evaluation, ISEAS Perspective, No.8 (2016).

Walter Woon, The ASEAN Charter: A Commentary (Singapore: NUS Press, 2016), pp. 85-143, 157-60, 207-11.

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

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

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.

1. Compare the Bangkok Declaration (1967) and the Agreement on the Establishment of the ASEAN Secretariat (1976) with the ASEAN Charter (2007) ONLY Ch. IV and Ch. VII provisions. Look also at the ASEC structure.
 - a. What are the differences between the executive organs of ASEAN pre- and post-Charter?
 - b. Review the provisions of Chapter IV in the Charter and highlight the strongest powers you think each organ has. Please consider also whether these powers strengthen the institutional role ASEAN aspires towards or does it maintain ASEAN's flexible political modality.
 - c. Does the development of internal institutions and bodies in ASEAN's executive structure denote a change to becoming stronger institutionally? I.e. That ASEAN as a unit, as an organisation, will actively seek to fulfil its stated goals? Why? Why not?
 - d. How successful has ASEAN been in regional governance? Why? What are the reasons why ASEAN has managed its governance and institutional structures in this manner?
 - e. Why do you think ASEAN members have enshrined the decision-making powers in ASEAN as Consensus and ASEAN-X? Who holds the power?
 2. Keeping in mind that ASEAN wants to achieve all its Community goals as stated in the Charter, which organs do you think should be strengthened and with what powers? How important is the ASEAN Secretary-General and the ASEAN Secretariat's role in ensuring the Charter goals are realised? What changes would you recommend?
 3. Now take a hard look at the organisational structure of ASEC – where do you find the legal services department? Is this congruent with the ASEAN Charter ambitions? Is this good or bad for the ASEC governance structure and ASEAN as an organisation?
 4. There have been many comparisons between ASEAN and the EU. Yet ASEAN denies ever wanting to be like the EU.
 - a. What is your opinion, do you think ASEAN is trying to be like the EU? Why? In what way?
 - b. Pushing this query further, do you think that despite ASEAN's vehement denials, there may be a subconscious or even conscious decision to emulate the EU?
 5. If ASEAN wishes to achieve its Charter goals, a strengthened legal and institutional regime is necessary. What institutional or power changes would you recommend to the executive and bureaucratic structures of ASEAN?
 6. Weaving the rule of law and institutions throughout an organisation necessitates an able legal service. What are the tasks that the legal services of the EU and other international organisations do? What structure of an ASEAN Legal Service would you recommend? What functions should it have?
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