

ASEAN Law and Policy

Seminar 11

ASEAN in its External Legal Relations – Legal Personality, Centrality, External Trade

- 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

- Simon Chesterman, Does ASEAN exist? The Association of Southeast Asian Nations as an international legal person, 12 SYBIL (2008) 199.
- Amitav Acharya, The Myth of ASEAN Centrality, 39 (2) Contemporary Southeast Asia: A Journal of International and Strategic Affairs (2017) 273-279.
- Pieter Jan Kuijper et al., From Treaty-Making to Treaty-Breaking: Models for ASEAN External Trade Agreements (CUP, 2015), Ch. 3.
- Is there an EU-ASEAN trade deal on the horizon?: <https://www.aseantoday.com/2019/12/is-there-an-eu-asean-trade-deal-on-the-horizon/>
- ASEAN’s Strategy Towards Its Dialogue Partners and ASEAN Plus Three Process, by S. Pushpanathan (2003) ONLY paragraphs 3-4, 8-9, 11-13, 16, 22, 24, and 26-28 https://asean.org/?static_post=asean-s-strategy-towards-its-dialogue-partners-and-asean-plus-three-process-by-s-pushpanathan
- Tan Hsien-Li, A collective ASEAN response to COVID-19 <https://www.eastasiaforum.org/2020/07/16/a-collective-asean-response-to-covid-19/>
- ASEAN Plus Three Economic Ministers’ Joint Statement on Mitigating The Economic Impact of the COVID-19 Pandemic <https://asean.org/storage/2020/06/29052020-ASEAN-Plus-Three-Economic-Ministers-Statement-on-COVID-19-FINAL.pdf>
- ASEAN Plus Three Plan of Action on Mitigating the Economic Impact of the COVID-19 Pandemic <https://asean.org/storage/2020/08/ASEAN-Plus-Three-Plan-of-Action-on-COVID19-FINAL.pdf>

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)
- (Optional) ASEAN’s Plans of Action (POA) with other countries:
 - ASEAN-EU 2018-2022 POA <https://asean.org/storage/2017/08/ASEAN-EU-POA-2018-2022-Final.pdf>
 - ASEAN-China POA for ASEAN-China Strategic Partnership for Peace and Prosperity <https://www.asean.org/wp-content/uploads/images/2015/November/27th-summit/ASEAN-China%20POA%20%202016-2020.pdf>

Further reading:

General, Legal Personality and Treaty-Making

- Hao Duy Phan, The Association of Southeast Asian Nations: International Legal Personality and Its Treaty-Making Power, 13(2) IOLR (2016) 273-307. ONLY 281-307

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

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- Marise Cremona et al., ASEAN's External Agreements: Law, Practice and the Quest for Collective Action (CUP, 2015), pp. 23-57, 86-100, 102-133.
- Hiro Katsumata and Shingo Nagata, ASEAN and the BRI: The Utility of Equidistant Diplomacy with China and the US (2019 Asian Journal of Peacebuilding Vol. 7 No. 2: 333-348) ONLY 336-345
- Alice Ba, Is China leading? China, Southeast Asia and East Asian regionalism, 66(2) Political Science (2014) 143.

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- Yoshifumi Fukunaga, ASEAN's Leadership in the Regional Comprehensive Economic Partnership, 2(1) Asia & the Pacific Policy Studies (2015) 103.
- Chien-Huei Wu, ASEAN at the Crossroads: Trap and Track between CPTPP and RCEP (2020), Journal of International Economic Law, 23, 97–117
- Peter Petri and Michael Plummer, ASEAN Centrality and the ASEAN-US Economic Relationship, 69 Policy Studies (2014) 1.

ASEAN in its External Legal Relations

1. In this seminar we shall be examining how ASEAN deals with the world outside of itself. Please read the EPG Report (2007), paras. 37, 39, 50-53 and the ASEAN Charter (2007), Chapter XII (External Relations), especially Art. 41. What are the key concerns and concepts that ASEAN raises regarding its external relations role and functions?
2. (Read Acharya) What is ASEAN Centrality? What is the significance of ASEAN Centrality in ASEAN's external relations? Has it been effective in disputes such as the South China Sea Dispute? What are some instances where ASEAN Centrality could and could not be seen?"
3. (Read Chesterman) If ASEAN wants to act as a collective entity in the international arena, it should be more than merely the sum of its parts. ASEAN as a holistic unit needs legal personality:
 - a. What is international legal personality?
 - b. Does ASEAN possess legal personality formally, pre- and post-Charter?
 - c. To what extent is ASEAN's legal personality meaningful?
 - d. What is the scope of ASEAN's powers if it has legal personality? What acts can it do? Has it done so in that capacity? Why? Why not?
4. (Refer to lecture slides, esp. slide 14) Having understood ASEAN as legal person, we go on to dissect how it acts vis-à-vis external parties in legal relations

- a. What are the different modalities ASEAN employs when operating with external parties? Explain briefly the characteristics of each.
- b. Which is the most popular modality? Why?
- c. What are the ambiguities or potential problems in how ASEAN conducts its external legal relations across the various sectors?
- d. What could be wider indicators of ASEAN collectivity?

ASEAN in its External Trade Relations

5. (Read Kuijper et al. – exclude the part on “demi-common agreements”) Understanding that ASEAN’s economic relations with the world is a key strategy to building the ASEAN Community, we now turn to look specifically at ASEAN’s external trade agreements.
 - a. What are the foreseeable problems in ASEAN external trade agreements?
 - b. What are the characteristics of the external trade agreements ASEAN has with its different trading partners?
 - c. What are the factors explaining the substantive reach of ASEAN external trade agreements and their role in economic integration? (This should be a lengthy and detailed answer. Break everything down into the core concepts, and maybe some detail in terms of 1-2 examples.)
 - d. What are the pros and cons of the ASEAN-X mechanism in ASEAN’s external trade agreements? What are the examples of where has it been helpful and unhelpful? Should ASEAN continue to make external agreements with the current ASEAN-X mechanism or should there be some changes to it?
 - e. What are the different models of improvement? How do they suit different situations? What would give ASEAN the best advantage?

6. (Read Pushpanathan and the ASEAN + 3 Economic Ministers Joint Statement) What are the key differences between ASEAN’s approach to external trade relations in the past, and its approach now, after the COVID-19 pandemic? Justify your answer with reference to the readings and instruments above.