

ASEAN Law and Policy

Seminar 7

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

- Evolution of ASEAN as a security community to the Political-Security Community – has anything changed?
- To what extent is ASEAN effective as a security community for its own purposes – in the pre- and post-Charter era?
- Norms and modalities stemming from the ASEAN Way – non-interference, peaceful resolution of conflict, confidence-building measures, negotiation
- Institutions and Balance of Powers – the ASEAN Regional Forum and external powers, ASEAN Centrality
- Where does Law fit in? Treaty of Amity and Cooperation, Bali Concord II, ASEAN Charter
- Managing Conflicts
 - conflicts with external dimensions (e.g. South China Sea)
 - intra-regional conflicts (e.g. Haze, Temple of Preah Vihear)

Modalities, Power, Laws, and Institutions:

- 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. ONLY 32-43.
- Lee Jones, ASEAN's unchanged melody? The theory and practice of non-interference in SE Asia, 23(4) Pacific Review (2010) 479. ONLY 491-7.
- 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. ONLY 11-26.

South China Sea

- Infographic: Summary of the parties involved and their territorial claims in the dispute: <https://blogs.thomsonreuters.com/answerson/south-china-sea-territorial-disputes-graphic-day/>
- Permanent Court of Arbitration's Official Press Release for the SCS Arbitration ONLY 8-11: <https://docs.pca-cpa.org/2016/07/PH-CN-20160712-Press-Release-No-11-English.pdf>
- Toward a CoC <http://news.abs-cbn.com/focus/08/10/17/the-road-to-an-asean-china-code-of-conduct-in-the-south-china-sea>
- Saving the China-ASEAN South China Sea Code of Conduct, <https://thediplomat.com/2019/06/saving-the-china-asean-south-china-sea-code-of-conduct/>
- Chairman's Statement of the 36th ASEAN Summit: *Cohesive And Responsive ASEAN*, ONLY [64]-[65], <https://asean.org/storage/2020/06/Chairman-Statement-of-the-36th-ASEAN-Summit-FINAL.pdf>
- 2002 Declaration on the Conduct of Parties in the South China Sea

COVID-19

- Simon Chesterman, Covid-19 and the global legal disorder <https://www.straitstimes.com/opinion/covid-19-and-the-global-legal-disorder>
- From SARs to COVID-19: Reflections on ASEAN's collective response to public health crises <https://www.businesstimes.com.sg/asean-business/from-sars-to-covid-19-reflections-on-asean%E2%80%99s-collective-response-to-public-health>
- Hoang Thi Ha, Covid-19 challenges ASEAN to act as one <https://www.straitstimes.com/opinion/covid-19-challenges-asean-to-act-as-one>

- Joint Statement by the ASEAN Defence Ministers on Defence Cooperation Against Disease Outbreaks <https://asean.org/storage/2020/02/Joint-Statement-on-Disease-Outbreak-final-version.pdf>
- The Joint Media Statement for the 52nd ASEAN Economic Ministers' (AEM) Meeting <https://asean.org/storage/2020/08/Joint-Media-Statement-of-52nd-AEM-FINAL.pdf>

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

- Treaty of Amity and Cooperation (1976)
- ASEAN Charter (2007)
- ASEAN Political-Security Community Blueprint (2009)
- ASEAN Socio-Cultural Community Blueprint (2009)
- [Optional] ASEAN Agreement on Transboundary Haze Pollution (2002)
 - Roadmap on ASEAN Cooperation Towards Transboundary Haze Pollution Control with Means of Implementation (2016-2020)
 - Singapore Transboundary Haze Agreement Act (2014) – *example of domestic legislation adopted pursuant to treaty ratification*

Further reading

General

- Hitoshi Nasu, Rob McLaughlin, Donald R. Rothwell, See Seng Tan, *The Legal Authority of ASEAN as a Security Institution*, Chapter 1 - ASEAN as a Security Institution: Its Legal, Normative and Institutional Framework (Cambridge University Press, 2019).
- 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.
- Bama Andika Putra, Darwis, Burhanuddin, ASEAN Political-Security Community: Challenges of establishing regional security in the Southeast Asia. (2019) *Journal of International Studies*, 12(1), 33-49.
- 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.

South China Sea

- History of the SCS dispute <https://www.lawfareblog.com/south-china-sea-dispute-brief-history>
- [2002 DECLARATION ON THE CONDUCT OF PARTIES IN THE SOUTH CHINA SEA](#)
- SCS arbitration (ASIL) <https://www.asil.org/insights/volume/20/issue/17/south-china-sea-arbitration>
- Analysis of the 2016 arbitration outcome - Tribunal Issues Landmark Ruling in South China Sea Arbitration: <https://www.lawfareblog.com/tribunal-issues-landmark-ruling-south-china-sea-arbitration>
- [Hao Duy Phan, Why a ruling that cannot be enforced still matters, Straits Times, 16 July 2016](#)

- Oegroseno, Arif. (2017). State Practices in Southeast Asia: Possible Collaboration amongst Claimants in the South China Sea Dispute. *The International Journal of Marine and Coastal Law*. 32. 364-372.
- What Beijing really wants from South China Sea code of conduct, <https://asia.nikkei.com/Spotlight/Comment/What-Beijing-really-wants-from-South-China-Sea-code-of-conduct>
- European nations 'determined to stay relevant' in Asia-Pacific, <https://www.scmp.com/news/china/diplomacy/article/3027256/european-nations-determined-stay-relevant-asia-pacific-south>
- Vietnam Steps Up to Take ASEAN Leadership Role <https://foreignpolicy.com/2020/07/31/vietnam-asean-leadership-role-south-china-sea-diplomacy/>
- Carlyle Thayer, ASEAN, China, and the Code of Conduct in the South China Sea, 33(2) SAIS Review (2013) 73.

COVID-19

- Hanoi Plan of Action on Strengthening ASEAN Economic Cooperation and Supply Chain Connectivity in Response to the Covid-19 Pandemic <https://asean.org/storage/2020/06/Hanoi-POA.pdf>

Cyclone Nargis:

- Karin Loevy, The Legal Politics of Jurisdiction: Understanding ASEAN's Role in Myanmar's Disaster, Cyclone Nargis (2008), 5(1) AsianJIL (2015) 55.

Haze

- Laely Nurhidayah, Shawkat Alam, Zada Lipman, The Influence of International Law upon ASEAN Approaches in Addressing Transboundary Haze Pollution in Southeast Asia (2015)
- Shawkat Alam & Laely Nurhidayah, The international law on transboundary haze pollution: What can we learn from the Southeast Asia region?
- Janice Lee, et al, Toward clearer skies: Challenges in regulating transboundary haze in Southeast Asia (2015)
- Apichai Suchindah, Transboundary Haze Pollution Problem in Southeast Asia: Reframing ASEAN's Response, ERIA DP-2015-82 (Dec 2015)
- ASEAN and Haze: <http://haze.asean.org/asean-agreement-on-transboundary-haze-pollution-2/>
- Asean adopts haze-free roadmap <https://www.straitstimes.com/asia/se-asia/asean-adopts-haze-free-road-map>
- Can (and should) Malaysia sue Indonesia over transboundary haze? <https://sg.news.yahoo.com/malaysia-sue-indonesia-over-transboundary-011128426.html>
 - See also: Malaysia walks away from law to tackle firms over forest fires <https://www.todayonline.com/world/malaysia-walks-away-law-tackle-firms-over-forest-fires-0>
- Indonesian President Joko Widodo orders crackdown on arsonists amid worsening haze crisis <https://www.straitstimes.com/asia/se-asia/indonesian-president-joko-orders-crackdown-on-arsonists-amid-worsening-haze-crisis>

Note before attempting the questions:

- **This Seminar looks at Security Issues in ASEAN. The readings can be a bit descriptive and verbose at times, skip over the minutiae and concentrate on the important concepts.**
- **Highlight these concepts and gear your reading according to these.**
- **Also, keep in mind Security and Its Relationship with Law and Power. Is Law or Power more important in Regional Security? Justify your opinions with evidence.**

1. Non-intervention and Non-interference
 - a. (Read Nasu) What is the genesis of the principle of non-intervention in the international order, Asia, and ASEAN? Is the emphasis on non-intervention as Law or an exertion of Political Power? What is your opinion on this, please justify. (Just synthesise and summarise the main thread, no need for much detail.)
 - b. (Read Lee Jones 2010) What is Jones' take on ASEAN's principle and practice of non-interference? How does it compare with Nasu's writing?
 - c. Can you identify instances where ASEAN followed and did not follow the principle of non-intervention or non-interference? What were the motivations behind the actions of member states in each of these instances? Was it regional or individual state interests?
 2. What do Jones and Jenne say about Weak States' Regionalism vis-à-vis ASEAN?
 3. Analyse the SCS and COVID-19 literature and issues in light of the interplay of Law and Power. How does ASEAN deal with intraregional security issues? With law or with politics? Is this dependent on the situation? Or just a projection of the ASEAN Way?
 - a. What is the significance of ASEAN centrality in their resolution of security issues such as SCS and COVID-19? Is there a difference between how it deals with purely intraregional issues and issues involving external players? (Or How does ASEAN centrality come into play when resolving security issues such as SCS?)
 4. ASEAN's political-community is evolving as its attitudes towards external partners and security issues change over the years.
 - a. Compare the approaches taken by ASEAN for the SCS conflict and the COVID-19 pandemic as threats to national security.
 - b. Think about Chesterman's article, where he observes a lack of trust in traditional global leaders following the pandemic, and comment on what this means for ASEAN.
 5. There is much talk about activating ASEAN dispute settlement clauses to resolve conflicts. Scan the following instruments and highlight the clauses which could be used to overcome the SCS conflict, giving your reasons:
 - a. Treaty of Amity and Cooperation (1976)
 - b. ASEAN Charter (2007)
 - c. ASEAN Political-Security Community Blueprint (2009)
 - d. ASEAN Socio-Cultural Community Blueprint (2009)
- [Optional] For those with an interest in ASEAN Haze Prevention and Management, please examine:
- e. ASEAN Agreement on Transboundary Haze Pollution (2002)