



IMPLICATIONS OF THE ASEAN CHARTER ON LEGAL EDUCATION IN ASEAN

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Legal Education in Brunei Darussalam

Previously in Brunei Darussalam, the only available form of legal education has been in the field of *Shariah* (Islamic religious laws) at the *Universiti Brunei Darussalam (UBD)*. However, from 2004 to 2006, His Majesty the Sultan of Brunei Darussalam expressed through a series of royal addresses, or *titah*, that the time was right for Brunei Darussalam to establish a second university in the country, and in particular a university to cater for Islamic Higher Education². Sultan Sharif Ali Islamic University; or *UNISSA* (an acronym of its Malay title, *Universiti Islam Sultan Sharif Ali*) is Brunei Darussalam's second university and was established on the 1st of January 2007.

UNISSA introduced its Bachelor of Laws (LL.B) degree in 2008, and its first intake of students began their first year (of a four year course) in August that same year. *UNISSA*'s Bachelor of Laws is the first of its kind in Brunei Darussalam, and means that students will now be able to pursue a legal education locally. Historically, Bruneian students have had to travel abroad to obtain their law degrees, traditionally from the UK, Malaysia and Australia.

The introduction of a "local" law degree is clearly beneficial as Brunei Darussalam will now be able to produce its own lawyers, and those studying for the *UNISSA* LL.B will have the privilege of a legal education that is tailored to Brunei Darussalam's environment and future requirements. The LL.B course itself is comprised of the "traditional" law subjects; part of every LL.B program, namely; Constitutional and Administrative Law, Criminal Law, Law of Contract, Law of Torts, Land Law, and the *UNISSA* LL.B will also include *Shariah* subjects. This will hopefully lead to the further development of the legal fraternity in Brunei Darussalam, with increased numbers of qualified persons, especially those with a legal education that should be more suited to Brunei Darussalam's needs. However, as is

¹ The views expressed in this paper are purely those of the author's alone and are not necessarily those of the Attorney General's Chambers, Brunei Darussalam.

² University Brunei Darussalam 16th Convocation (18 September 2004), Brunei Darussalam's 21st National Day (23 February 2005), University Brunei Darussalam 17th Convocation (6 September 2005), University Brunei Darussalam 18th Convocation (4 September 2006)



clearly the case with *UNISSA*, Brunei Darussalam's legal education system is very much in its early stages, with a long way to go in its development, but there is no shortage of support from the legal community in Brunei Darussalam. At the opening ceremony of Brunei Darussalam's Legal Year 2008, Dato Seri Paduka Hj Kifrawi, the former Attorney-General and current Chief Justice, remarked that "*UNISSA local lawyers should be recruited to work for the Attorney General's Chambers, Government Ministries and also for the court*³". At the same ceremony, the President of the Law Society of Brunei Darussalam, Mr. Muhammad Zainidi bin Abdul Hamid, also voiced his support for the *UNISSA* Bachelor of Laws degree course.

The ASEAN Charter

The ASEAN Charter came into force in December 2008, after being fully ratified by all ten ASEAN Member States. The ASEAN Charter is in essence ASEAN's Constitution and amongst other things, sets out the guiding principles governing how ASEAN will conduct its affairs, confers legal personality upon ASEAN as a legal entity in its own right, establishes the organs through which ASEAN will act, and institutes a formal structure for decision-making.

Article 1(5) of the ASEAN Charter states that one of the purposes of ASEAN is:

"To create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is free flow of goods, services and investment; facilitated movement of business persons, professionals, talents and labour; and freer flow of capital;"

Article 1(10) of the ASEAN Charter further states that one of the other purposes of ASEAN is:

"To develop human resources through closer cooperation in education and life-long learning, and in science and technology, for the empowerment of the peoples of ASEAN and for the strengthening of the ASEAN Community;"

On the basis of these two purposes alone, one can see the immediate implications of the ASEAN Charter on legal education, that as we try to "*facilitate movement of business persons, professionals, talents and labour*"; it would make it more feasible and more of a reality if legally educated persons from the ASEAN Member States had knowledge of the various legal systems in the other ASEAN Member States.

³ Opening of the Legal Year 2008, Tuesday, 18 March 2008, Bandar Seri Begawan



Therefore, if not already in place, it seems natural that there should be an “ASEAN”-oriented subject or module introduced to the law courses offered by the various law schools in each individual Member State. This “ASEAN” module could not only provide an introduction to the different legal systems in each ASEAN Member State but could also offer an overview of the ASEAN Charter itself and its development, as it seems necessary that all lawyers in the ASEAN region should have a basic understanding of the ASEAN Charter itself.

As we are all aware however, there is a very diverse range of legal systems within ASEAN, and to know and learn about each legal system in great depth would be impractical. Therefore realistically speaking, as a start, these “ASEAN” modules would not need to be in such great detail, and could start off with a general overview of the individual legal systems, but perhaps pay closer attention to the more relevant subjects or areas of law that lawyers intending to practise in a different ASEAN country would need to know, such as criminal law and the laws of contract and tort. This cause could also be aided by making the most of the ASEAN University Network, to help facilitate cooperation between the legal education institutions such as student exchange programmes that could also consist of practical visits to the legally-relevant agencies and institutions in each Member State, for example the courts, police, prisons, etc. It would also be very useful if the law schools could arrange for visiting lecturers from other ASEAN Member States to lecture on their areas of expertise in their home countries.

There should be an encouraged sharing of resources, to enable accessibility and to ensure that legal students can easily obtain the necessary materials they need, particularly with regards to legal materials such as the various laws and legislations, case law, legal texts, articles, etc. This would of course be extremely useful not just for the “ASEAN” module itself, but could benefit the legal education systems in ASEAN as a whole. There could also be interaction between the ASEAN students and those in the legal profession in other ASEAN countries, and attachment programmes at foreign law firms could also be part of the ASEAN module. This would provide invaluable experience for the students as they could experience first-hand the legal professions other ASEAN countries.

“Law of ASEAN”

With the ASEAN Charter fully ratified by all Member States, there is a likely possibility that in time a so-called “Law of ASEAN” could be drafted, much like the Law of the European Union (EU). However, even though ASEAN may have the same ambitions for a single market, as the EU, ASEAN is still very different. The ASEAN Charter does



seek to integrate the ASEAN Member States more closely but it does not have the intention to create a Southeast Asian version of the European Union. The EU is much more tightly integrated, both politically and economically, than ASEAN will be. The ASEAN Charter may promote a single market and a unified ASEAN identity, but it still stresses the diversity of the region. The ASEAN Charter also further emphasizes ASEAN's fundamental principles of sovereignty and non-interference, the Preamble of the Charter itself mentions respect for *“the principles of sovereignty, equality, territorial integrity, non-interference, consensus and unity in diversity”*. While the principles in Article 2(2) make further provisions:

(a) *“respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States”*;

(e) *“non-interference in the internal affairs of ASEAN Member States”*

(f) *“respect for the right of every Member State to lead its national existence free from external interference...”*.

However, as ASEAN eventually succeeds in its objectives of its Member States becoming more unified and showing solidarity as one, especially as it moves towards a genuine single market, it seems inevitable that the fundamental principle of “non-interference” will need to be reviewed, as ASEAN becomes more closely integrated, more and more issues will result in transboundary and regional implications. It would be wise to believe that through its Charter, ASEAN will need to strengthen its balancing of its principles of sovereignty against its principles of *“peace, security and stability”*. The Prime Minister of Singapore, Mr. Lee Hsien Loong reiterated this when he said:

“The Charter recognizes that with growing interdependence, ASEAN will have to adjust its traditional non-intervention approach in areas where the common interest dictates closer cooperation. National interests will increasingly have to be balanced with regional and international interests... Non-intervention cannot mean no action or indifference.”

This change in the ASEAN approach could further pave the way for this “Law of ASEAN” and will have further implications on the legal education systems in ASEAN, just as the Law of the EU has done in the EU, where for example, many law schools in the UK have made the Law of the EU a mandatory subject for its students. The “Law of ASEAN” could follow the EU system, whereby the Law of the EU acts as a unique legal system operating alongside the laws of Member States of the EU, it also has direct effect within the legal



systems of its Member States, and overrides national law in many areas, especially in areas covered by the single market; the EU is not a federal government⁴. More interestingly if the “Law of ASEAN” were to follow the Law of the EU, then how would the fundamental principles of the Law of the EU be applied in ASEAN, particularly the principle of “supremacy”, can ASEAN truly enforce a Law that would be supranational in nature?, one that obviously goes against ASEAN's own fundamental principles of sovereignty, if it were to follow the EU then the “Law of ASEAN” would also have a “direct effect” within the legal systems of its Member States, and may override national laws in many different areas. Further following in the EU's footsteps could also see the establishment of an “ASEAN Court of Justice” to handle cases on the “Law of ASEAN”; however this seems very unlikely unless ASEAN can somehow agree to a “Law of ASEAN”.

The issue of human rights is also an ever-increasingly important subject in legal education, with top law schools in the EU offering several modules on human rights. It should be noted that the ASEAN Charter now contains several references related to Human Rights, particularly Article 14(1) requiring ASEAN to establish “*an ASEAN human rights body*”. The ASEAN human rights body is expected to be launched at the 15th ASEAN Summit to be held this year. Its role and functions are set out in the Terms of Reference of the ASEAN Charter, and include among its main purposes to enhance public awareness on human rights, engage with other associated ASEAN bodies including civil society, obtaining and sharing of information between Member States on promotion and protection of human rights as well as consultations with relevant national and regional institutions and agencies⁵. Importantly, befitting the current times and situation, it needs to be seen just how the issue of human rights in ASEAN, will be dealt with in light of the ASEAN Charter and its human rights body.

Conclusion

It is clear that the ASEAN Charter will have a greater impact on ASEAN unification, and thus affect legal education in the ASEAN region. Political, economic and social integration amongst the Member States should see an increasing consolidation of its various legal systems. With this inevitable development in ASEAN, a new approach from the many institutions providing legal studies will be necessary. In the future it may no longer be

⁴ The European Court of Justice in case 26/62 Van Gend en Loos v. Nederlandse Administratie der Belastingen established that “the European Economic Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only the Member States but also their nationals”.

⁵ “HRH Attends Discussions on Human Rights, ASEAN Charter”, article in the Brunei Times, Monday, 20 July 2009



sufficient for law students to merely be knowledgeable in the laws of their own country but may very well need to be experts in other ASEAN countries' laws as well, notably as ASEAN seeks to achieve a single market which would also include a freedom of movement per se for professionals including those from the legal sector, this would also be in line with several Member States relevant Free Trade Area objectives under the World Trade Organisation.

This is conceivably where ASEAN could learn much from the EU legal profession. This would obviously need to be backed up by a cohesive legal education system between the countries, accompanied by countries proactively moving away from the trend of protectionism, and more towards liberalisation of their professional services industry. Within the ASEAN region itself, Brunei Darussalam has a very open approach to its legal profession industry; one merely has to satisfy the requirements of the Legal Profession Act (Cap. 132)⁶ to be called to the Brunei Darussalam Bar and practise before its Civil Courts system, there is no requirement that practising lawyers need to be Brunei Darussalam nationality.

“A law faculty must not teach law, but must train lawyers, they must become technicians able to solve social and human problems by the legal route and they must be agents of peaceful change”⁷.

As the legal profession is very much intertwined with society and its problems, as society changes, it therefore needs to change and adapt with the times, however, it seems that for now the true extent of the implications of the ASEAN Charter on legal education are dependent on not just how the ASEAN Charter is put into practise and its provisions implemented, but also how it affects not only the individual legal systems of ASEAN Member States, but also whether ASEAN will eventually follow in the European Union's footsteps and have its own legal system. Whichever path ASEAN and its Charter takes, it is inevitable that changes will need to be made to the legal systems within ASEAN and with it, the legal education system.

⁶ Sections 3, 4, 7(1) and 18(1) of the Legal Profession Act of Brunei Darussalam (Cap. 132)

⁷ “The Consequences of European Unification for Legal Education in the Member States” by Marcel Storme