



IMPLICATIONS OF THE ASEAN CHARTER ON LEGAL EDUCATION IN ASEAN

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Introduction

The ASEAN Charter was signed by the leaders of the 10 member countries on 20th November 2007 in Singapore. It establishes a broad legal and institutional framework for ASEAN¹. The reasons for the Charter include the need to strengthen existing bonds to realize an ASEAN Community that is politically cohesive, economically integrated and socially responsible; and to intensify community building through enhanced regional cooperation and integration².

Understandably, the Charter aims at setting broad principles and the specifics will no doubt be a work-in-progress for many years. In the context of legal education, Human Rights and Dispute Resolution are the areas that the Charter is likely to have the most immediate impact. Article 14(1) of the Charter states that “ASEAN shall establish an ASEAN human rights body” to promote and protect human rights and fundamental freedoms. This body, to be named the ASEAN Inter-Governmental Commission of Human Rights, is expected to be launched in October 2009³. With the establishment of the Commission of Human Rights, it can be reasonably expected that courses on human rights in ASEAN law schools will have to incorporate the work of this body particularly if it will not be mere window dressing as has been promised.

Article 22(2) of the Charter states that ASEAN shall maintain and establish dispute settlement mechanisms in all fields of ASEAN cooperation. Article 24(1) provides that disputes relating to specific ASEAN instruments shall be settled through the mechanisms and procedures provided for in such instruments. Article 25 further provides that where not otherwise specifically provided, appropriate dispute settlement mechanisms, including arbitration, shall be established for disputes which concern the interpretation or application of this Charter and other ASEAN instruments. Dispute resolution issues at the ASEAN

¹ Preamble to ASEAN Charter

² Ibid

³ See <http://news.asiaone.com/News/AsiaOne%2BNews/Malaysia/Story/A1Story20090720-155813.html>.



level may therefore be fruitful topics within courses dealing with specific areas where ASEAN cooperation is relevant, or in general dispute resolution courses.

Implications of the ASEAN Charter

The implications of the Charter on legal education in ASEAN go beyond these areas though. If ASEAN moves towards greater economic and social cooperation and integration, and the idea of an ASEAN Community becomes a greater reality, it is likely that law will have played a key role in facilitating this. Arguably the Charter is the first step towards a greater role for law in a grouping that has relied significantly on consensus and informal consultation.

If the role of law is enhanced within a more closely integrated ASEAN, it must follow that the law schools in ASEAN must have 'ASEAN Law' as a significant part of their curriculum. The exact nature of how the curriculum of ASEAN law schools will develop will to a large extent depend on how ASEAN evolves as a legal person⁴. Even so, different law schools will have different points of emphasis. Nevertheless, in such a scenario many law schools are likely to place some importance on understanding the legal systems of other ASEAN countries, and understanding the civil law system better if the law school is in a common law jurisdiction (and vice-versa if the law school is from a civil law country). In addition, in specific areas of law such as trade ASEAN rules may become very important. Indeed if a substantial body of ASEAN law does emerge over time a course in 'ASEAN Law' may well be one of the most important courses offered by law schools as is the case for 'European Union Law' for members of the European Union.

If an ASEAN Community becomes a reality, it may be important for law students to have some understanding of the different legal systems in ASEAN. One way to do this could be to develop a new course or to expand on existing legal systems courses that focus on the legal system of the particular jurisdiction that the law school is in. Thus in the NUS Singapore Legal Systems course, in the section on the Judiciary there could be some discussion of how some of the other ASEAN judiciaries are differently organized after the students are taught about the Singapore judicial structure. The advantage of such an approach is that there is better contextualization of the overseas systems – the local system provides a point of context within which to view the differences and similarities of other systems.

⁴ Article 3 states: "ASEAN, as an inter - governmental organisation, is hereby conferred legal personality."



An understanding of the different legal traditions that underlie other ASEAN countries is likely to be more important in a more integrated ASEAN. This is because the rules are likely to be influenced both by common law and civil law concepts. To understand the rules better some understanding of civil law will be important to common lawyers and vice-versa. In addition, with greater integration the number of cross-border transactions within ASEAN will also improve and lawyers in every jurisdiction must be better able to assist their clients in such transactions. While this will often take place with the assistance of lawyers from other ASEAN jurisdictions, lawyers will be able to facilitate these transactions if they have a working knowledge of the law in other jurisdictions. Much of this will take place because they have been involved in previous transactions but law schools can play an important role in helping their students to develop the broad and flexible mindset that will be necessary for a more transnational legal practice.

In specialized areas of law such as trade and dispute resolution there may eventually emerge distinct and substantial rules developed by ASEAN. When this happens there can be little doubt that ASEAN law in these areas will be important if courses in these areas are offered within ASEAN law schools. It is not hard to foresee that a course on International Trade Law would not only cover the multilateral trading system established under the World Trade Organization but also the regional trading rules established by ASEAN and the relationship between these different regimes.

If ASEAN develops over time into a significant legal entity a course on ASEAN Law could become a staple of law schools as it is in many European law schools. In Cambridge University for example, its European Union Law course covers the following areas⁵:

1. *Constitutional issues:*

The objectives, structure and legal character of the European Union in the light of the existing Treaties and with reference to the Treaty of Lisbon.

The interplay between the political institutions (European Council, Council, Commission and European Parliament) in the EC's legislative process, and the issues this raises for the democratic legitimacy for the European Community; forms of EC legislation.

The organising principles of the legal order: primacy and direct effect; the attribution of powers, subsidiarity, proportionality; flexibility; general principles of law.

⁵ See <http://www.law.cam.ac.uk/faculty-resources/courses-and-subjects/tripos/papers/european-union-law-tripos/18>.



Protection of fundamental rights, with particular reference to the EU Charter of Fundamental Rights.

2. Remedies:

Proceedings before the Court of Justice: references for preliminary rulings; actions for annulment; actions for damages against a Community institution and enforcement actions against Member States (outline only).

Remedies in national courts: the extent of Member States' procedural autonomy; Factortame (No. I) and its aftermath; Francovich and its aftermath.

3. The internal market:

Free movement of goods: the customs union and the common market; customs duties and charges having equivalent effect; discriminatory internal taxation; quantitative restrictions and measures having equivalent effect; the effect of the Keck line of case law; justifications for national restrictions on freedom of movement (not including intellectual property rights).

Free movement of persons: free movement of workers; freedom of establishment (not including mutual recognition of qualifications, directives or company law); freedom to provide services; citizenship of the Union.

Conclusion

The ASEAN adventure is moving to a new phase. Much is still uncertain and the idea of an ASEAN community will evolve over many years through negotiations between the member states. What is clear is that legal education must and will evolve to meet the demands of such evolution. One of the fundamental objectives of law schools is to educate future members of the legal profession and this role must take account of the future developments in ASEAN.