

# LEGAL EDUCATION IN ASEAN IN THE 21<sup>ST</sup> CENTURY

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## INTRODUCTION

Globalisation of law and justice is an unavoidable reality of the 21<sup>st</sup> century. Legal education in the ASEAN countries will now have to rise to the challenges posed by these changes. The challenges are at once both local and global. In their wake they would certainly bring about standardisation, and hopefully, an overall lifting of standards. This paper sets out the ways in which legal education in the ASEAN region can be strategised to prepare students to meet some of the challenges of globalisation and yet remain rooted to their local needs. The future lies in a combined effort at collaboration, innovation and adaptation to meet the challenges of our time.<sup>2</sup>

Traditionally when a paper writer is invited to write a paper for the ASEAN General Assembly Workshop, he is required to write it from the perspective of his own country, but the nature of the topic calls for a wider ASEAN approach and perhaps even a comparative one. I have, however, struck a middle path and while concentrating on the position in my own country, Malaysia, have also at times attempted to find common ground with the common law countries of ASEAN and have sometimes, where

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<sup>2</sup> Prof. Sir David Williams, *What Makes Cambridge a Great University?*, Public Lecture on 18 September 2006 at Sunway University College, Subang Jaya, Malaysia.

necessary or useful, made reference to the civil law countries of ASEAN. In broad terms, Malaysia, Singapore and Brunei belong to the common law family while the rest of the countries of ASEAN adhere more closely to the civil law tradition. Suggestions made on collaboration, innovation and adaptation of ASEAN universities, however, for the most part, have common application to legal education in all the countries of ASEAN.

## **HISTORICAL PERSPECTIVE**

In Malaysia, prior to 1956, when a Department of Law was established in the University of Malaya, then in Singapore, the only way in which a person could become legally qualified was to go to England, read law at one of the Inns of Court there and be first called to the English Bar or be enrolled as a solicitor in England. He could also qualify after a period of articleship in one of the local law firms but this was not popular for various reasons. Persons from Sabah and Sarawak, two of the constituent states of Malaysia, could also qualify by obtaining law degrees in Australia and New Zealand.

Legal education in Malaysia began in 1972 when the University of Malaya established a Faculty of Law. Prior to 1965, the University of Malaya had two campuses, one in Singapore and the other in Kuala Lumpur. After 1965, the University of Malaya in Singapore was renamed the University of Singapore and subsequently the National University of Singapore.<sup>3</sup>

Law faculties in the present form in other ASEAN universities do not also have long histories. In Indonesia, the Faculty of Law was established in the University of Indonesia in 1950. The oldest law school in Vietnam is in Hanoi University which was established shortly after the country was re-united in 1975.<sup>4</sup> The University of the

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<sup>3</sup> *Legal Education in Asia*, Asian Law Journal of Comparative Law, Article 9, Vol. 1, Issue 1, 2006.

<sup>4</sup> Ibid.

Philippines law faculty was established in 1911.

At present there are only five public universities that offer law programmes in Malaysia.<sup>5</sup> Apart from the public universities, private colleges also offer law programmes either on a twinning basis with foreign universities, mostly from England or Australia, or conduct external programmes designed by local universities or colleges. The law faculties in public universities are currently autonomous and enjoy the privilege of having their own law programmes and curriculum. The Ministry of Higher Education, the Qualifying Board under the Legal Profession Act 1976, and the Bar Council of Malaysia play a minimal role as co-ordinating bodies particularly in the selection of core subjects. The faculties are otherwise autonomous and have the freedom to plan their own curriculum and lay down their own methods of delivering the course.

The syllabi in the undergraduate course in most law schools contain four components:-

- (i) compulsory traditional core subjects
- (ii) optional subjects, both law and non-law
- (iii) compulsory Malay language course, or English language course, or both
- (iv) Islamic law course, compulsory for all Muslims.

The International Islamic University has a heavy Syariah law content in the four-year law course in addition to the core and other elective subjects that the other universities offer.

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<sup>5</sup> University of Malaya, National University of Malaysia, International Islamic University, Universiti Teknologi MARA and Universiti Utara Malaysia. The Multimedia University, a private university, also offers a law course.

Undergraduate law courses in public universities in Malaysia take four years. The professional part of the course is usually incorporated into the fourth year. Students who study overseas or in private universities in Malaysia usually attend a three-year course and on completion have to pass the Certificate of Legal Practice examination conducted by the Qualifying Board to be considered a qualified person to practice law under the Legal Profession Act 1976.

The Universiti Teknologi MARA in Malaysia has an innovative one year hands-on professional training course in lieu of the Certificate of Legal Practice examination. This is modelled on the Leo Cassons course and the College of Law programme in Sydney, Australia.

The law programme in the University of Malaya and the National University of Singapore, particularly in their choice of compulsory core subjects, are broadly similar, not surprisingly as they have developed from common origins. Likewise in Indonesia, there is a national component of subjects which is the same throughout the country and a local component which is determined by the individual school.

In the common law countries mentioned above and also in some of the civil law countries, there are Masters Programmes for periods ranging from one to three years offering a variety of subjects. In civil law jurisdictions, the period of the course is longer. In Chulalongkorn University in Thailand, the period of the course is four years.<sup>6</sup> There are also joint degrees, incorporating a non-law subject, offered in some universities and the duration of the course is five years. In all the universities there are doctoral programmes by research of varying duration and on specialised subjects to meet national needs. Very little has been done to promote research through these courses to enhance overall ASEAN needs.

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<sup>6</sup> *Legal Education in Asia*, Asian Law Journal of Comparative Law, Article 9, Vol. 1, Issue 1, 2006.

## CURRICULUM RESPONSE

Subjects taught in both the public and private law schools relate mostly to domestic laws. Subjects and courses of global concern like ASEAN Legal Studies, World Trading System, Public and Private International Law are still offered as optional courses in all public law schools. Attempts to understand the various legal systems in ASEAN is slow.<sup>7</sup> Little or no opportunities are open to students wishing to specialise in the legal systems of other countries within ASEAN. In Malaysia for instance, none of the public law schools have made a serious attempt to introduce ASEAN Legal System as a compulsory law course in its law curriculum.

The best curriculum response to globalisation is the introduction of specialised courses such as International Trade Law, International Finance Law, Comparative Law, International Dispute Resolution, International Human Rights Law and Private International Law. Globalisation calls for the need to prepare the lawyers of ASEAN countries for complex transactions for raising capital, locally and internationally, regulating the flow of capital and securing investors' guarantees. Courses like Mergers and Acquisitions, Project Finance, Credit Transactions or Corporate Rehabilitation will have to be introduced.<sup>8</sup>

Some of the ASEAN universities have already introduced ASEAN Legal Studies but it remains an optional subject. That may only serve the purpose of introducing the systems of laws of the ASEAN countries. One of the ways to expand into an ASEAN perspective is to offer courses that focus specifically on a particular law of another jurisdiction, not only within ASEAN but also of the larger economies outside the region.

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<sup>7</sup> Dr. Rahmat Mohamed, *Cross Border Legal Practice in ASEAN under WHO*, 8<sup>th</sup> ASEAN Law Association General Assembly and Workshop, 29 November 2003, Singapore.

<sup>8</sup> Dean Raul C. Pangalangan, *Challenges to Legal Education in a Changing Landscape – Philippines*, 8<sup>th</sup> ASEAN Law Association General Assembly and Workshop, 29 November 2003, Singapore.

A further approach is to foster a wider understanding of comparative approaches and different view points to law through a course in Comparative Law. Students could be taught, through what has come to be called the pervasive method, within individual courses, the different approaches and views that are taken by other jurisdictions to a particular legal problem.<sup>9</sup> This method could be facilitated by the inclusion of foreign academics in the teaching of existing traditional courses.

There is a pressing need for the law faculties in the ASEAN region to review and revamp their curriculum to ensure that their graduates are exposed to global standards of International Law, Trade Law and Financial dealings so that they will become equipped to meet the challenges of the competition ahead. If they are well equipped for the task they can also themselves venture abroad with specialised legal knowledge that they have acquired in their local law schools and help to globalise their practice of the law. The real challenge of the faculty is to find the time and space for the new subjects in already over crowded courses.

## **TEACHING STRATEGIES**

In Malaysia and Singapore, the most common method of instruction is the lecture followed by tutorials. This method is used where the number of students taking the course is large. This lecture method is often used for compulsory subjects. Tutorials are used for the lecturer and the students to have a discussion on the lecture topic. At both mass lectures and tutorials, the lecturer will sometimes use the modified Socratic Method, or the case method, where the lecturer guides the students in the analysis of cases. The seminar method is generally used for the teaching of optional subjects. The students prepare the given topic before the class begins and most of the time in class is

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<sup>9</sup> Tan Cheng Han, *Challenges to Legal Education in a Changing Landscape – Singapore*, 8<sup>th</sup> ASEAN Law Association General Assembly and Workshop, 29 November 2003, Singapore.

devoted to presentations by students followed by a discussion of the topic in question.<sup>10</sup>

The traditional lecture method is also the most commonly used method of teaching in Indonesia and Vietnam.<sup>11</sup> A large portion of the teaching in law schools of the Philippines is also done through lectures.

Mock trials and moots are well established in most law schools in Malaysia, as no doubt also in all the common law countries, as a useful learning activity, either as part of the curriculum or on an extra-curricular basis both at the undergraduate and professional levels. There is wide participation in moot competitions among law students in the region not only at faculty level but also national and international levels. Client Counselling Competitions are relative newcomers to the scene in Malaysia. All law faculties also arrange attachments of students with law firms or legal aid clinics during the semester holidays. Mention has to be made here of the requirement to do pupillage in a law firm under a senior lawyer before a person is called to the Bar, and the several Continuing Legal Education programmes conducted by the universities and the Bar Council.

There has to be, however, a greater awareness among law teachers in the region of the need for greater professionalism in teaching particularly in experiential learning. There is too much black letter taught at the academic stage at our law schools. The range of teaching methods open to us go beyond lectures, tutorials and seminars. They should be broadened to encompass Role Plays, Simulations, Case Studies, Small Group Discussions, Debates, Taking a Stand, Buzz Groups, Pyramiding, Brainstorming, Symposia, Group Projects and Project Papers.

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<sup>10</sup> Chee Yoke Ling, *Legal Education in ASEAN Universities, A Critical Approach*, Friedrich-Naumann-Stiftung, 1986.

<sup>11</sup> *Legal Education in Asia*, Asian Law Journal of Comparative Law, Article 9, Vol. 1, Issue 1, 2006.

Special training has to be provided for lecturers in teaching skills. A model to be emulated is the programme on Clinical Legal Education Teaching Methods conducted regularly at the Pannasastra University in Cambodia under the aegis of the Open Society Justice Institute. The aim of the training is to familiarise participants with innovative and interactive law teaching methodology used in Clinical Education programmes as well as street law methods. The current partner universities in the programme are Pannasastra University, Ateneo De Manila University, University of Malaya, International Islamic University and the Universiti Teknologi MARA of Malaysia. Trainers are drawn from all the participating universities. Plans are afoot to widen the network of universities taking part in the programme. This is a fine example of what can be done if the universities of the region work together on specific legal education projects.<sup>12</sup>

### **COLLABORATION, INNOVATION, ADAPTATION**

It is perhaps a dream to hope that all the laws of ASEAN will be the same even by the end of the 21<sup>st</sup> century but at least they should be made to be not so much in disharmony so as to impede political, cultural and commercial relations, or peace and co-operation among ASEAN nations.

Due to the diversity of legal traditions in the ASEAN region and the challenges ahead, it is imperative that a conscious effort be made by universities in the region to foster greater engagement with each other through collaboration, innovation and adaptation.

The ASEAN Law Association is perhaps the proper body to initiate annual meetings of all the deans of the leading law faculties of ASEAN on a formal basis to chart a course for co-operation among the universities. This could be done under the

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<sup>12</sup> Professor Bruce A. Lasky, *Clinical Legal Education and the Role of the Bar Council*, 13<sup>th</sup> Malaysian Law Conference, Kuala Lumpur, 16-18 November 2005.

auspices of the ASEAN Law Association. The deans should be directly involved as they are in positions of control in the universities and could directly bring about changes on a multi-lateral or bilateral basis. The Standing Committees on Legal Education of the ASEAN Law Association have not made much progress in this regard over the years.

Co-operation could take the form of collaborative research on legal issues of interest to their respective countries and to ASEAN in general. There could be exchange of professors and scholars through the practice of visiting and adjunct faculty. The exchange of graduate students should be encouraged. They should be encouraged to pursue graduate studies and research in ASEAN law in the universities of other ASEAN countries to bring about greater understanding of the laws of ASEAN and perhaps in the process to effect greater harmonization of the laws of ASEAN through adoption or adaptation of each other's laws. Such work on a wider Asian basis is already being carried out through the Asian Law Institute established in 2003. There is also the ongoing good work of the Academy of ASEAN Law and Jurisprudence of the University of the Philippines mandated to conduct studies in the field of Comparative Law and Jurisprudence, to assist in the harmonization of the national laws of the ASEAN countries, and to produce an understanding of ASEAN in the light of other regions' experiences. To this must be added the ASEAN studies programmes on law conducted by the ASEAN University Network and the Asia-Europe Institute at the University of Malaya. These resources have to be co-ordinated, publicised and fully tapped.

The co-ordination of these various activities and resources could perhaps be better managed with the setting up of an ASEAN University. This has been talked about since 1986.<sup>13</sup> It could perhaps be established on a modest scale with emphasis on law, economics and external relations. The university could start as a consortium of existing programmes in various leading universities of the region. At least that would make for a quick start.

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<sup>13</sup> Purification-Valera-Quisumbing, *ASEAN Legal Co-operation: Quest and Challenges*, ASEAN Law and Society, Vol. 1 No. 1, 1986.

Collaboration need not be confined to the study of ASEAN laws. Mention has already been made about collaboration in the learning of teaching skills in Pannasastra University in Cambodia. I look forward to any of the universities in the Philippines, where law faculties are pioneers in Clinical Education, offering courses in training teachers for clinical education in the ASEAN region, visiting programmes on Legal Aid, or on the teaching of Street Law.

Advancement in technology should be taken advantage of to conduct joint teaching programmes and across jurisdictions with wider use of computers, e-mail, video-tapes, video conferencing and databases. With improvements in technology, students could engage in cross-border learning and obtain credits for ASEAN subjects offered in the various universities of the ASEAN region.

Universities should build up an ASEAN collection of books and legal materials through exchange programmes of each other's publications. There is also a possibility of co-operation in the production of text books. For instance, some thought could be given to producing a compendium of ASEAN Business Laws aimed at businessmen.

## **BUILDINGS AND EQUIPMENT**

The quality of lecture rooms and facilities in the ASEAN universities vary greatly. It is difficult to set common standards. But an effort has to be made to meet the best international standards. The shape and size of today's lecture room is changing. Lecture rooms have gone electronic. They look more like high-tech studios. The Indonesians got it right when they called their law lecture rooms' *laboratorium hukum*. Unless these facilities are improved, one cannot expect lecturers to meet international best practices in the teaching of law. The very change in the shape and facilities in the lecture rooms for the

better will inspire the mindset of the teachers to rise to new standards.<sup>14</sup> The limiting factor, of course, is finance.

Building standards, equipment, administration and governance of law schools could perhaps reach a measure of standardisation through monitoring by some international organisations like the International Standards Organisation (ISO).

## **LANGUAGE**

The primary language for communication among lawyers in ASEAN is English. This does not pose a problem for Malaysia, Singapore, Brunei and the Philippines. Thailand is attempting to overcome the problem by offering some of their courses in English. In Chulalongkorn University, for instance, the Masters course in Business Law is conducted in English. Some of their undergraduate courses are now also conducted in English. As globalisation touches Indonesia, more of their lawyers speak English now than ever before. However, in view of their large population, it might be a while yet before some of their lawyers also speak English at a level for the practise of law. As an interim measure, translations of legal materials could be organised through the setting up of Language Bureaus for the purpose of translating into both English and Bahasa Indonesia, and perhaps also other languages. The learning of English in all ASEAN countries should be reinforced to meet the challenges of globalisation.

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<sup>14</sup> *Legal Education in Asia*, Asian Law Journal of Comparative Law, Article 9, Vol. 1, Issue 1, 2006.

## **CONCLUSION**

Globalisation presents not only challenges but also opportunities. We have to face these challenges and seize the opportunities to forge a sense of common destiny, both politically and economically. ASEAN legal educators have to join hands to collaborate, innovate and adapt to meet the challenges and seize the opportunities of the 21<sup>st</sup> century. We cannot continue to use 20<sup>th</sup> century methods to meet 21<sup>st</sup> century needs.