

Pace University

DigitalCommons@Pace

Pace Law Faculty Publications

School of Law

1-1-2002

Strengthening Sustainable Development in Regional Inter-Governmental Governance: Lessons from the 'ASEAN Way'

Nicholas A. Robinson

Elisabeth Haub School of Law at Pace University

Follow this and additional works at: <https://digitalcommons.pace.edu/lawfaculty>



Part of the [Environmental Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Nicholas A. Robinson & Koh Kheng-Lian, Strengthening Sustainable Development in Regional Inter-Governmental Governance: Lessons from the 'ASEAN Way', 6 Sing. J. Int'l & Comp. L. 640 (2002), <http://digitalcommons.pace.edu/lawfaculty/371/>.

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Law Faculty Publications by an authorized administrator of DigitalCommons@Pace. For more information, please contact dheller2@law.pace.edu.

Strengthening Sustainable Development in Regional Inter-Governmental Governance: Lessons from the 'ASEAN Way'

*Koh Kheng-Lian**

*Nicholas A. Robinson***

"The existing frameworks for regional inter-governmental governance should be fully utilised as part of the international governance structure. Greater use should be made of regional, inter-governmental and other organisations to promote coordinated sustainable development initiatives for that region."

Joint Statement of Environment Ministers of ASEAN to the World Summit on Sustainable Development, 4 June 2002, Bali, Indonesia, in *Report of the 12th Meeting of the ASEAN Working Group on Nature Conservation and Biodiversity (AWGNCB)*, 17-18 June 2002, Yangon, Annex 12, at para. 21

[ASEAN is the acronym for the Association of South East Asian Nations]

I. INTRODUCTION

Sustainable development, worldwide, cannot be attained unless each country undertakes common but differentiated actions to implement the recommendations made in Agenda 21. These undertakings can be encouraged through strengthened international support networks, such as international cooperation to provide information on whether patterns and climatic conditions or to fashion new, collaborative financing systems for implementing needed actions. However, work at the international level is remote from each country's specific problems or their

* PhD, LL.M. (Singapore), LL.B. (Malaya), *Diplome de Hautes Etudes Internationales* (University of Geneva), Advocate & Solicitor (Singapore). Formerly Professor and currently Professorial Fellow, Faculty of Law, National University of Singapore; Director, Asia-Pacific Centre for Environmental Law, and IUCN Commission on Environmental Law Regional Vice-Chair for South and East Asia.

** J.D. Columbia University; A.B. Brown University; Member of the Bars of the State of New York and the US Supreme Court; Gilbert & Sarah Kerlin Distinguished Professor of Environmental Law, Pace University (New York), and Chair, IUCN Commission on Environmental Law.

remediation. Countries also need regional support, where networks are closer to actual problems and can understand them realistically.

Moreover, most transboundary issues appear first regionally, as pollution in a shared river basin or the loss of habitat across the range of a species migrating across two or more States. A single country alone cannot cope effectively with shared environmental problems. Therefore, regional systems of environmental management are essential to securing agreements for, and implementation of, specific action programs.¹

Integration of national actions for sustainable development within a geographic region can be advanced through such measures as harmonization of standards, joint implementation of agreed upon environmental management systems to enhance effectiveness and efficiency, or shared capacity building projects. None of this happens without an institutional framework to facilitate it.² Examples of regional cooperation vary. The European Community, as a regional economic integration union, has evolved an elaborate system of environmental law. On specific issues, other more limited examples of regional environmental governance can be identified. Between Canada and the United States the Great Lake Water Quality Agreement has coordinated provincial, state and federal water pollution controls across a vast watershed. Such efforts exist for, the Lower River Mekong Basin for Lao, Cambodia, Thailand, Vietnam, and the Zambesi River Basin in southern Africa or for many regional seas, such as the Mediterranean or Caribbean. Nowhere is the emergence of regional environmental governance better illustrated than in South East Asia. This region presents perhaps the most promising pattern for inter-state cooperation on sustainable development through the Association of South East Asian Nations (ASEAN).

¹ Lee A. Kimball, "International Environmental Governance: A Regional Emphasis on Structured Linkages among Conventions and Intergovernmental Organizations," *Transnational Law Exchange* (April, 1999).

² "Institutions," as we have described them in this article, should be understood to include programmes, plans of action and cooperative networks that determine the course of environmental decision-making at various levels. These institutions operate in each level and across them, that is both intra- and inter- ASEAN as well as ASEAN *vis à vis* other countries in the region and international organizations like the United Nations. Establishing a new specialized intergovernmental agency or adopting a new international agreement does not always measure environmental governance for sustainable development.

ASEAN has rapidly matured.³ ASEAN was founded with the 1967 Bangkok Declaration in order to encourage stable relations among its original member states, i.e. Indonesia, Malaysia, Singapore, Thailand and the Philippines, and to resist destabilizing influences from the war in Viet Nam. The means to stability was to promote economic, social and cultural cooperation in the spirit of equality and partnership. A formal treaty system was not required. As the Viet Nam war ended, ASEAN held its first Summit Meeting in Bali (1976), followed by the 1977 Summit in Kuala Lumpur, where cooperation on regional industrializations was launched. In this first phase of cooperation, national ASEAN secretariats carried on the projects. From 1977 to 1992, ASEAN worked with an administrative regional secretariat, based in Indonesia. ASEAN participated actively in the process to define sustainable development in Agenda 21, and since 1992 ASEAN has elaborated ever more sophisticated measures for coordination of policy, and expanded its membership to include among its members Cambodia, Laos, Myanmar (Burma), and Viet Nam. Since the four new members have substantial needs in building their capacity for environmental protection specifically, and sustainable development more broadly, ASEAN has begun to include a capacity-building dimension to its cooperation.⁴

II. THE "ASEAN WAY"

Cooperation to build toward stable relations came to be known as the "ASEAN Way." ASEAN's regional collaboration emphasizes three norms: (1) non-interference or non-intervention in each

³ Ambassador Tommy T.B. Koh, who chaired the UN Conference on Environment and Development and its preparatory negotiations, which led to the adoption of *Agenda 21*, remarked on the success of ASEAN's maturing systems as follows: "The dream of a united Europe has been shared by Europeans for more than 300 years. That dream is still not completely realized. Viewed in this light, the progress that has been achieved by ASEAN in the last seven years has been quite remarkable. Although ASEAN was formed primarily for the purpose of promoting economic and cultural cooperation among the member nations, the two outstanding achievements of ASEAN to date have been the forging of a sense of community among the five member nations and in what I will call confidence-building." Tommy Koh, *The Quest for World Order* (Singapore: Institute of Policy Studies and Times Academic Press, 1998), at 253.

⁴ Simon S.C. Tay, Jesus P. Estanislao, Hadi Soesastro, *Reinventing ASEAN* (Singapore: ISEAS, Seng Lee Press, 2001); ASEAN Environmental Education Action Plan, 2000-2005, see *infra*.

others' domestic affairs, as underscored in the United Nations Charter, Article 2(7), (2) the use of consensus planning and cooperative programs and a preference for national implementation rather than reliance on a strong region-wide agency or bureaucracy. There are only two ASEAN hard law agreements in ASEAN's 35 years of history (see *infra*), and these have yet to be ratified. ASEAN has set a goal of closer cohesion and economic integration through building a recognized ASEAN community through adopting in 1997 its Vision 2020. In contrast to practices in Oceania reflecting the experience of the British Commonwealth,⁵ in ASEAN disputes tend to be settled by conciliation and consultation, not by formal judicial types of dispute resolutions.

ASEAN's origins in 1967⁶ did not include environmental management as an express concern. The then ASEAN members attended the United Nations Conference on the Human Environment in Stockholm, in 1972, and thereafter ASEAN began to include environment as a theme among its complex system of regional consultations to promote cooperation in areas of economic, social, technical and scientific development. ASEAN's accomplishments are not easily cited, since ASEAN has emphasized programmatic cooperation rather than adoption of formal, easily cited legal instruments requiring environmental protection. However, it would be a mistake to suggest that ASEAN's quiet cooperation is somehow less effective than western sponsored treaty arrangements. In fact, when ASEAN is compared to the Asia-Pacific Economic Cooperation (APEC) forum,⁷ ASEAN appears to have sustained a regional system for collaboration while APEC has a hard time keeping up a dialogue. ASEAN's measured accomplishments may be discerned from a description of its systems for regional environmental governance.

Environmental governance has been defined by Miranda Schreurs as "the interactions among formal and informal institutions and the actors within society that influence how

⁵ See James Cameron and Ross Ramsay, "Transnational Environmental Disputes", 1 *Asia Pacific Journal of Environmental Law* 5 (1996), at 29.

⁶ The ASEAN Declaration (Bangkok Declaration), Bangkok, 8 August 1967, ASEAN Document Series 1967-88 (3rd ed, ASEAN Secretariat, Jakarta), at 27-28, also reproduced as Annex 1 to Koh Kheng-Lian, (compiler), *Selected ASEAN Documents on the Environment*, Issue 1, July 1996 (Singapore: APCEL), at Annexes, iii-iv.

⁷ Simon S.C. Tay and Daniel C. Esty, eds., *Asian Dragons and Green Trade* (Singapore: APCEL, Times Academic Press, 1997).

environmental problems are identified and framed.”⁸ To this definition, we would add “and are implemented.” Examining environmental governance necessarily involves examination of not only “institutions”, which is the organizational structures and framework of ASEAN, but also requires study of the decision-making practices and programmes of the organization.⁹ Some of ASEAN’s institutions for environmental governance can be illustrated with reference to how ASEAN addresses biodiversity conservation and transfrontier air pollution from forest fires. ASEAN’s “rules and practices,” its programs and plans of action, can be illuminated by the need for actual implementation of its programs, as in the case of the “Haze.” The “ASEAN Way” faces new challenges as it knits together programs across the 10 South East Asian countries, yet the very fact that its participants see ASEAN’s Way as a defined approach, distinct from the more formalistic parliamentary decision-making systems of European or North America, is the best evidence for the proposition that that ASEAN bears close study by those who would understand how to foster governance for sustainability internationally.

III. ASEAN’S GENERAL GOVERNANCE FRAMEWORK IN ENVIRONMENTAL COOPERATION

The current organizational framework of ASEAN in environmental management and cooperation can be described with reference to its institutional architecture (see Appendix I which presents an overview of this system).¹⁰ These institutional

⁸ Miranda A. Schreurs, “An Analytic Framework for a Comparative Study of Environmental Governance in Asia,” in IGES *Environmental Governance (1999), Country Reports on Environmental Governance in Four Asian Countries* (Japan: Shoman, IGES).

⁹ The two terms “Organizations” and “Institutions” are sometimes used interchangeably but for the purpose of this article a distinction will be made between “Organization” and “Institutions”. The distinction is made in the publication in 1998 of the IDGEC scientific committee (appointed by the IHDP scientific committee) - *Institutional Dimensions of Global Change*, O. Young (ed.), with the assistance of the IDGEC Scientific Planning Committee, 1998): “Organizations” are “Material entities possessing offices, personnel, ...”. On the other hand, “institutions” constitute “the rules of the game that structure their roles and guide their interactions with one another”, while organizations are players.

¹⁰ See Donna Craig, Nicholas A. Robinson, Koh Kheng Lian, eds., *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources*, Chapter 16, “Regional Environmental Law Cooperation: ASEAN and Others,” vol. II, at 277 (Manila: Asian Development Bank, 2002).

arrangements facilitate cooperation among the ASEAN member States, and collectively by ASEAN as a grouping with States or groupings of States outside of South East Asia. Several such groupings have been formally acknowledged within ASEAN as "ASEAN Dialogue Partners." Among these "Partners," meetings are held and views exchanged, and even some cooperative studies or aid projects are undertaken.

ASEAN heads of government meet every three years.¹¹ These meetings provide a stimulus for the intermediate meetings to assess needs, arrive at agreements, and provide a set of proposed decisions for adoption by consensus at the ministerial and summit levels. One landmark meeting was held in Bangkok in 1984, which led to the Bangkok Declaration on the ASEAN Environment, 29 November 1984.¹² These meetings can also prepare for ASEAN's regional participation in international governance deliberations. For instance, at the Singapore Summit in 1992, ASEAN's Heads of Government met in Singapore just before the United Nations Environment and Development meeting in Rio de Janeiro, 1992.¹³ At this meeting it was agreed that regional cooperation be enhanced. In promoting regional cooperation towards sustainable development some policy guidelines were laid down pertaining to pollution, biodiversity, climate change, forests and related environmental matters.

Every three years, well before the meeting of heads of state, ASEAN holds its Ministerial Meeting on the Environment (AMME), in order to ensure that decisions of the Heads of Government are implemented and also to promote ASEAN cooperation. Apart from these formal meetings, AMME may have informal meetings, for instance to discuss the "Haze," or the international air pollution resulting from forest fires in Indonesia.

¹¹ Comprising Presidents or Prime Ministers of ASEAN's member States, the Meeting of the Heads of Government takes place once in three years. It is a focal point providing a target deadline for decision-making in between meetings. Environmental matters may feature in the agenda of such meetings.

¹² See Koh Kheng-Lian (compiler), *Selected ASEAN Documents on the Environment*, *op. cit.*, *supra* note 6, at 18-21 (1996). This consensus Declaration of policy followed on the earlier Manila Declaration on ASEAN Environment, Manila, 30 April 1981, *ASEAN Document Series* 1967-88 (3rd ed, ASEAN Secretariat, Jakarta,) at 400-401, reproduced in Koh, *ibid.*, at 4-5.

¹³ See the Singapore Resolution on Environment and Development and its Annex, the ASEAN Common Stand on UNCED, reproduced in ASEAN Strategic Plan of Action on the Environment (including Ministerial Resolutions), ASEAN Secretariat, Jakarta, 1994 at 65-68; reproduced in Koh, *op. cit.*, *supra* note 6, at 70-76.

One of the meetings in which a Resolution was passed included the harmonization of environmental quality standards for ambient air and river quality to be attained by the year 2010.¹⁴

The actual work for the ministerial meetings is conducted in a series of working sessions under the authority of the ASEAN Senior Officials on the Environment (ASOEN).¹⁵ Since 1998, three working groups have provided the functional basis for ASEAN's regional environmental decision-making, on (a) Nature Conservation and Biodiversity, (b) Coastal and Marine Environment, and (c) on Multilateral Environmental Agreements. Together with a Technical Taskforce on "Haze," these Working Groups are considered ASOEN's Subsidiary Bodies.¹⁶ Their mandate is to produce collaboration in over four dimensions:

- Recommend policy guidelines and provide the catalytic impetus towards the implementation of the principles of sustainable development to ASEAN Governments and relevant ASEAN committees;
- Monitor the state of ASEAN's natural resources and the quality of the ASEAN environment;
- Promote ASEAN cooperation on regional environmental matters, focusing on land-based pollution, urban and rural pollution and others;
- Promote cooperation with other government agencies, the private/business sectors, professional associations, NGOs and other organizations.

¹⁴ See Bandar Seri Begawan Resolution on Environment and Development, Bandar Seri Begawan 26 April 1994, reproduced in ASEAN Strategic Plan of Action (including Ministerial Resolutions), ASEAN Secretariat, Jakarta, 1994, at 63-65, and reproduced in Koh, *op. cit.*, *supra* note 6, at 78-79.

¹⁵ The predecessor of ASOEN is the ASEAN Expert Group on the Environment (AEGE), established in 1977 and replaced by ASOEN in 1989. It meets annually to consider the reports of its various ASEAN Working Groups. There were originally six Working Groups, namely, ASEAN Seas and Marine Environment, Environmental Economics, Nature Conservation, Environmental Management, Transboundary Pollution and Environmental Information, Public Awareness and Education. In addition, there is a special institution set up in 1995 to make operational and implement the measures recommended in the ASEAN Cooperation Plan on Transboundary Pollution, 1995 relating to atmospheric pollution.

¹⁶ As mentioned above, there are three current Working Groups out of the initial number of six.

All these ASEAN undertakings are facilitated by the ASEAN Secretariat. The Secretariat is based in Jakarta and the Environment Unit of the Functional Cooperation Bureau deals with both administrative and substantive matters pertaining to environmental cooperation. In each country a National Focal Point is assigned to work on ASEAN's undertakings. Generally a ministry that deals with the specified environmental matters is linked up to the appropriate ASEAN institutional arrangements. (See Appendix I.)

ASEAN has prepared two "State of the Environment" reports, one in 1997 and one in 2000. The latter, known as SoER2 and available online,¹⁷ outlines both ASEAN's environment accomplishments and the challenges yet to be met to achieve ASEAN's "Vision 2020." SoER2 provides a common baseline within ASEAN for understanding the region's environmental governance needs, such as cooperative development of the Mekong River Basin, cross-border deforestation and wildlife trade, and exploitation of marine resources. SoER2 links international information standards, such as from the United Nations Environment Programme (UNEP) or multilateral environmental agreement secretariats, to the conditions within ASEAN. Environmental governance issues can be illustrated by ASEAN's collaboration of biodiversity and air pollution from forest fires, known as "haze." (See *infra*.)

IV. ASEAN ENVIRONMENTAL GOVERNANCE AND COOPERATION IN BIODIVERSITY

ASEAN is one of the mega-rich regions for biological diversity. These resources require sound conservation management, and unsustainable practices of timber operations and conversion of forest to plantation agriculture uses have adverse impact on biodiversity across the region. Biodiversity conservation has become a significant interest of ASEAN States.¹⁸ This is an area in which ASEAN has made headway in recent years in strengthening environmental governance in order to develop its work programme and cooperation in the area of biodiversity. The Convention on Biological Diversity and Agenda 21 (Chapter 15 on

¹⁷ See ASEAN website at <http://www.aseansec.org>.

¹⁸ See Koh Kheng-Lian, "Ecosystem Management Approach to Biodiversity Conservation: The Role of ASEAN," First ASEAN Environment Forum, 20-24 September 1999 (Hanoi, Viet Nam); reprinted in Craig, Robinson and Koh, *op.cit.*, *supra* note 10.

Conservation of Biological Diversity) - both the outputs of Rio 1992 - provided the catalyst to ASEAN's renewed interest and some new initiatives in this area. In order to gather and share information and shape an ASEAN approach to biodiversity, environmental governance in this area has been strengthened. First, the former ASEAN Working Group on Nature Conservation was renamed the ASEAN Working Group on Nature Conservation and Biodiversity (AWGNCB) to reflect the importance of biodiversity as mapped out in Rio.¹⁹ Then in 1998, the European Community sponsored the establishment of the ASEAN Regional Centre for Biodiversity Conservation (ARCBC). ARCBC has become a significant interest of ASEAN States. The two biodiversity institutions with focal points in the member states have done much in recent years to advance its objectives and have taken into consideration developments at the global level.

ARCBC serves as the main focal point for networking and institutional linkage among ASEAN member countries and between ASEAN and the European Union (EU) partner organizations to enhance the capacity of ASEAN in promoting biodiversity conservation.²⁰ The Philippines' Department of Environment and Natural Resources (DENR) is the Project's Executing Agency. ARCBC is designed to provide a collaborative process designed to intensify biodiversity conservation through improved cooperation in a comprehensive regional context.²¹

¹⁹ The Philippines is the host country.

²⁰ Further references about ARCBC's work are available from its Internet web site at <http://www.arcbc.org.ph>.

²¹ By setting up a network of institutional links among ASEAN countries and between ASEAN and EU partner organizations, the ARCBC is responsible to:

- Establish an intra-ASEAN and ASEAN/EU network of institutional links;
- Foster collaborative partnership between ASEAN and European institutions in the field of training, research and information management; Assess and improve the flow of information;
- Analyze, document and disseminate information on regional biodiversity conservation;
- Establish and maintain an appropriate database and information referral system;
- Assist institutions and stakeholders in policy analysis;
- Formulate proposals to coordinate regional initiatives on biodiversity conservation;
- Intensify awareness and participation of institutions and other stakeholders on regional biodiversity issues; and
- Assist in improving curricula on biodiversity issues; and Assist in improving curricula on biodiversity conservation.

The practical work of the Centre is carried out through four programme undertakings: (1) Networking and Institution Building establishes a regional network via the National Biodiversity Reference Units (NBRUs) connecting scientific knowledge and promoting information exchange and synergies on biodiversity. It will likewise develop and implement an exchange program for professors and researchers among ASEAN institutions, design and implement thematic workshops and propose policy for biodiversity conservation. Seven ASEAN States have established NBRUs;²² (2) Training and Extension will conduct training needs assessment of institutions and human resources in order to design training and education programs for biodiversity conservation; (3) Research and Development will set up guidelines to define research priorities, organize conference to finalize the regional research agenda, identify research institutions, and provide funds for applied biodiversity research activities; and (4) Database and Information Management Systems create, share and maintain electronic repositories for ASEAN and link to other international databases.

Across the region, ARCBC and AWGNCB are creating the management systems for biological conservation as a foundation for sustaining the region's rich natural biological resources. Beyond contributing to good regional governance, the process prepares the ASEAN members for their participation in the conference of the parties of the global Convention on Biological Diversity.

As a consequence of ASEAN's focus on biodiversity, it has launched several initiatives that are truly innovative in terms of international cooperation. These include the following:²³

A. ASEAN Heritage Parks/Sites

The ASEAN Declaration on Heritage Parks and Reserves, 1984 has as its objectives the maintenance of ecological processes and life support systems, preservation of genetic diversity, sustainable utilisation, educational, research, recreational and tourism

²² National Biodiversity Reference Units have been established in the following ASEAN States: Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Viet Nam.

²³ See Koh Kheng-Lian, "Regional Biodiversity Collaboration – The ASEAN Approach", paper presented at the IUCN/IGES/ADB Symposium: "The 'Second Generation' of Environmental Laws", 11 November 2002, Tokyo (to be published in proceedings of the symposium).

values. The criteria contain elements that provide for scope of human activities in, for example, "sustainable utilisation" and "tourism values". The Declaration was adopted in 1984 and it was only in December 2001 that AWGNCB finalised the criteria and guidelines for determining ASEAN Heritage Parks (AHP) under the Declaration.²⁴ Some of the ASEAN Heritage Parks and Reserves which have recently been identified in the Preliminary List are coastal mangrove/swamp systems, inland swamp/riverine systems and freshwater lake systems. In the case of coastal mangroves/swamps, the following have been included: Lorentz (Indonesia), Mekong Delta (Vietnam), Irrawady Delta (Myanmar) and Bintuni Bay. Under freshwater lakes systems, the following have been recommended: Danau Sentarum (Indonesia), Tonle Sap (Cambodia) and Danau Bian (Indonesia).²⁵

These are representative ecosystems which are intended to form part of the ASEAN Heritage Parks.

B. *Transboundary Protected Areas and "Peace Parks"*

The International Union for the Conservation of Nature and Natural Areas (IUCN) and the World Commission on Protected Areas (WCPA) point out that the benefits beyond conservation in Transboundary Protected Areas (TPAs) and "Peace Parks" depend on an ecosystem management approach (ESM).²⁶ (For ESM approach, see *infra*):

"There is ...growing recognition that effective biodiversity conservation depends on an ecosystem management approach that integrates protected area management into wider land- and water- use planning. Ecosystems and species do not recognise political borders, which were usually defined for historical and geo-political reasons, without reference to ecological functions or processes. Protected areas that are established and managed across borders - Transboundary Protected Areas - can therefore provide an important tool for coordinated conservation of ecological units and corridors.

The benefits of transboundary protected areas can go well beyond biodiversity conservation. Such areas can also play a major role in promoting cooperation and confidence building between countries and within regions."²⁷

²⁴ *Report of the 12th Meeting of the ASEAN Working Group on Nature Conservation and Biodiversity*, 17 -18 June, Yangon, at 37-38.

²⁵ *Ibid*, at 43-45.

²⁶ <http://wcpa.iucn.org/theme/parks/parks.html> - accessed on 6 November 2002.

²⁷ <http://wcpa.iucn.org/theme/parks/parks.html> - accessed 31 October 2002.

“Peace Parks” are defined as:²⁸

“ ... transboundary protected areas managed through legal or other effective means, which are dedicated both to the conservation of biological and cultural diversity and the promotion of peace and cooperation. Peace and cooperation encompass building trust, understanding and reconciliation between nations, the prevention of conflict, and the fostering of cooperation between and among countries, communities, agencies and other stakeholders.”

(i) *TPA Initiative between ASEAN and South Korea*

Realising the benefits of Transboundary Protected Areas (TPAs), the AWGNCB has included an initiative with South Korea on the “ASEAN-Korea Environmental Cooperation Project (AKECOP) - Restoration of Degraded Forest Ecosystems in South East Asia Tropical Regions”. The project has three components: research, education and training, and conferences and workshops. An international Conference on Restoration of Degraded Forest Ecosystem in South East Asia and the Fifth Steering Committee Meeting were held in Seoul, from 22 - 23 April 2002. The focus on restoration of degraded forest ecosystems will enhance regional cooperation activities in sustainable forest management. This will also promote “Parks for Peace” and confidence building between countries and within regions.

The AKECOP project will foster exchanges and facilitate cooperative activities including scientific research and monitoring, and specialist training. It will advance the IUCN Parks for Peace Program which WCPA has taken a lead role in gathering and accessing experiences on the development and application of this concept. The TPAs in South East Asia could over time join the Global Partnership for Peace. The Fifth World Parks Congress, will be held from 8-17 September 2003, in Durban which will advance this concept further. This project is significant in that it is the first project between ASEAN and a non-ASEAN member state in the area of biodiversity conservation. It demonstrates a big step forward in ASEAN cooperation with a non-ASEAN state.²⁹

²⁸ *Ibid.*

²⁹ *Supra* note 24, Annex 10.

(ii) *Establishment of Peace Parks and Trans-Border Sites within ASEAN Member States*

- Peace Parks under ASEAN Heritage Parks and Reserves and Preliminary List³⁰

ASEAN has recently included in its Preliminary List of ASEAN Heritage Parks the following Peace Parks:

- Spratly Islands (Malaysia, Vietnam, Brunei Darussalam and the Philippines)
 - Annam Mountains (Vietnam and Laos)
 - Lanjak Entimau /Bentuang (Indonesia, Malaysia)
 - Turtle Islands (Malaysia and the Philippines)
 - Tristane Park (Laos, Cambodia and Vietnam)
- Cluster and Trans-Border Natural World Heritage

Some of the benefits accruing from clustering are to accommodate social, political and economic interests, by coordinating cooperation among different agencies and stakeholders and joint data collection. ASEAN is cooperating with many organisations such as World Heritage Centre, WCPA East Asia, WWF to prepare and identify sites within the ASEAN region that are ready to be proposed as cluster and trans-border Natural World Heritage sites and prepare necessary follow up actions. A “cluster” does not necessarily possess a similar ecosystem but to connect separate conservation units often with different management systems and these may cross national boundaries. Some potential sites have been identified and they are both within a country as well as cutting across two or more countries. An example of both cluster and trans-borders are the Annamite Range Moist Forests (Vietnam, Laos and Thailand).

- Marine Turtles Conservation: Trans-Border

There is an on-going project of management of transboundary parks and protected areas, both on a bilateral as well as on an intra-ASEAN level. An example of bilateral transboundary

³⁰ *Ibid* at 45.

protected area is the Philippines-Sabah (Malaysia) Bilateral Agreement on the Turtle Islands Heritage Protected Area (TIHPA) dated 31 May 1996. The Turtle Islands Park of Sabah in Malaysia was gazetted as a national park on 1 October 1997, and is the first transfrontier protected area for marine turtles in the world. Among the activities is the establishment of a centralised database and information network. At an intra-ASEAN level, the Memorandum of Understanding on ASEAN Sea Turtle Conservation and Protection, 1997 provides an example of multilateral efforts to ensure long-term survival of sea turtles in the region.

Over the last few years, after the establishment of ARCBC, the AWGNCB has become very active in the area of biodiversity and has been forward looking in its approach. This is clear from the range of items discussed at the recent 12th AWGNCB meeting held from 12-18 June 2002, in Yangon. The meeting considered some of the important issues that have come before the global community, such as the “ecosystem approach”, the importance of wetlands and the alignment of ASEAN Heritage Parks to other international instruments like the World Heritage Convention. Studies such as “Sustainability Factors in Protected Area Management” in the “Results of Case Studies done in the Framework of the National Integrated Protected Areas Programme” were presented at the 12th meeting of the AWGNCB in June 2002 in Yangon.

In their joint statement to the WSSD, dated 4 June 2002, made in Bali, ASEAN recalled its Vision 2020 which calls for the sustainability of its natural resources and the high quality of life of its peoples. Some of the key points shared by member states, and which will further the cause of the “beyond parks” approach are the recognition of the role of civil societies (para 9), measures to protect the poor (para 12), speedy implementation of CBD (para 6). The AWGNCB at its 12th meeting in June 2002 had taken cognisance of the work of the CBD COPs including the issue on “ecosystem approach” that is being undertaken by SBSTA.

ARCBC and AWGNCB are now on the ‘loop’ of what is being done both at the global and national levels on management of parks, reserves and protected areas. In this connection, in paragraph 12 of the ‘Joint Statement’ of ASEAN to WSSD, it called for “the strengthening of the sustainable development governance and institutional frameworks ... The existing frameworks for regional inter-governmental governance should be fully utilised as part of the international governance structure.

Greater use should be made use of regional, inter-governmental and other organisations to promote coordinated sustainable development initiatives for the region.”³¹

V. GOVERNANCE STRUCTURE OF ASEAN ENVIRONMENTAL COOPERATION ON “HAZE”

In contrast to the ASEAN-wide work on biodiversity, ASEAN’s focus on the transboundary air pollution in the region concerns a sub-set of ASEAN oldest members. The pollution of air from burning biomass South East Asia has become a periodic environmental crisis, with adverse economic and health impacts.³² In dry periods, resulting from the El Niño climate oscillations, the practice of using fire for clearing forest areas to plant palm plantations and other agricultural products, gets out of control. The practice is largely prohibited by statute in Indonesia, but enforcement of these rules is problematic because of a lack of community education, inadequate capacity in the environmental law enforcement administration across the nation, and corruption. Once fires burn out of control, there has been a very limited capacity to extinguish them, and in the dry weather the smoke becomes a transnational pall, known regionally as “haze.” Breathing the air in some cities in the region, in and beyond Indonesia, becomes a hazard to health, as ambient air quality standards are breached.³³

The Haze is a sub-regional issue within ASEAN, involving its original member States. It was handled, therefore, by a Task Force rather than through the ASEAN-wide working group format. The format took some time to evolve. Forest fire management and abatement of air pollution resulting from these forest fires, requires cooperation between Indonesia, Malaysia, Singapore, Brunei, the Philippines, and others. ASEAN held an informal ministerial meeting on the Environment in Kuching, Sarawak, Malaysia on 21 October 1994 to discuss the

³¹ ASEAN Joint Statement of the Environment Ministers of ASEAN to the WSSD (4 June 2002, Bali), *supra* note 24, Annex 12.

³² See, e.g. Gerald Tan, *Asean Economic Development and Co-operation* (Singapore: Times Academic Press, 1996).

³³ Simon S.C. Tay, “The South-east Asian Forest Fires and Sustainable Development: What Should be Done?” 3 *Asia Pacific Journal of Environmental Law* 205 (1998).

transboundary air pollution.³⁴ Conceptually, the Ministers agreed to cooperate "to manage natural resources and control transboundary pollution within ASEAN region as 'one ecosystem,' and referenced the need to work together on "destruction of coral reefs, illegal fishing, haze pollution, etc."³⁵ As a result of this meeting, a formal ASEAN Meeting on the Management of Transboundary Pollution was held in Kuala Lumpur in June of 1994. This meeting adopted the ASEAN Cooperation Plan on Transboundary Pollution, covering atmospheric pollution, movement of hazardous wastes and ship borne pollution.³⁶ "Programme Area 1" under this Plan covers atmospheric pollution.³⁷ Among the other regional institutions that have assisted ASEAN in implementing its objectives, the Asian Development Bank has been extremely important. ASEAN's cooperative network spawned an important subset of institutional relationships to build a system to avert or contain and combat forest fires.

Despite ASEAN's fairly comprehensive organizational framework for engaging players in global change in the context of sustainability, since the ASEAN States are not fully integrated in the sense of the European Union, progress has been slow to effectively avert recurrence of the "Haze". Political difficulties within Indonesia make normal political and administrative implementation measures more difficult.

Cooperation to cope with the Indonesian conditions producing the Haze has demonstrated both the strengths and limitations of ASEAN's capacity to solve the problems brought about by the haze.³⁸ The United States of America, and European Union have provided technical assistance, for instance satellite images managed by the United States National Atmospheric and Space

³⁴ See "Informal ASEAN Ministerial Meeting on the Environment." Press Release, Singapore Ministry of the Environment, Public Affairs Department, 22 October 1994; reproduced in Koh, *op.cit.*, *supra* note 6, at 82-83.

³⁵ *Ibid*, Koh at 83.

³⁶ ASEAN Cooperation Plan on Transboundary Pollution, Kuala Lumpur, June 1995, (published by the ASEAN Environment Resource Centre, Jakarta, ASEAN Secretariat (Nov. 1995), reproduced in Koh, *op. cit.*, *supra* note 6, at 222-248.

³⁷ *Ibid*, Koh at 235-236.

³⁸ See the articles by Simon S.C. Tay, "South East Asian Forest Fires: Haze Over ASEAN and International Environmental Law," 7 RECIEL 198 (1998); Simon S.C. Tay, "The South East Asian Fires and Sustainable Development: What Should Be Done About Haze?" *Indonesian Quarterly* xxvi (2), pp 99-117; Alan K.J. Tan, "Forest Fires of Indonesia: State Responsibility and International Liability", Vol. 48, Int'l & Comp. Law Quarterly, at 826-855 (1999).

Administration, track fires in real time and provide crucial information for combating forest fires. The ASEAN Ministers requested the Asian Development Bank (ADB) to finance the ASEAN Regional Haze Action Plan (RHAP). The RHAP was designed by ASEAN Haze task force and has three main objectives: (1) to prevent land and forest fires through better management policies and enforcement; (2) to establish operational mechanisms to monitor land and forest fires; and (3) To strengthen regional land and forest fire-fighting capability and other mitigating measures.

Implementation of the RHAP has the support of some 26 international organizations. Much remains to be accomplished in implementation of the RHAP. Once the Plan was in design, the ADB responded by providing an ADB-Regional Technical Assistance grant for strengthening ASEAN's capacity to prevent and mitigate transboundary atmospheric pollution. ADB and ASEAN arranged cooperation and assistance with many international and regional organizations as well.³⁹ The United Nations Environment Programme (UNEP), through its regional office in Bangkok, has provided technical assistance to ASEAN Member States in the drafting of an agreement on transboundary

³⁹ These include, for instance,

- Australian Agency for International Development (AusAID)
- Canadian International Development Agency (CIDA)
- European Community (EC)
- GTZ (Gesellschaft fuer Technische Zusammenarbeit (German Government Agency for Technical Cooperation)
- Hanns Seidel Foundation
- International Union for the Conservation of Nature (IUCN)
- Impacts Centre for South East Asia (IC-SEA)
- Japan International Cooperation Agency (JICA)
- Singapore Environment Council (SEC)
- South East Asia Fire Monitoring Centre
- United Nations Environment Programme (UNEP)
- UN-FAO/ECE/ILO Team of Specialists on Forest Fire
- UNDP Asia Pacific Development Information Programme (APDIP)
- US Agency for International Development (USAID)
- US Center for Disease Control and Prevention (CDC)
- US Environmental Protection Agency (EPA)
- US Forest Service
- US National Oceanic and Atmospheric Administration (NOAA)
- WALHI (an NGO umbrella organization that coordinates work with a large number of NGOs operating out of Indonesia)
- World Bank
- World Health Organization (WHO)
- World Meteorological Organization (WMO)
- World Wide Fund for Nature (WWF)

cooperation to combat forest fires. Toward that end, ASEAN's senior environmental officials have been meeting regularly to deal with the Haze.

Initial skepticisms by many ASEAN watchers predict that ASEAN's traditions would not favour hard law treaty obligations. For example, the 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources (IUCN) remains to be ratified by enough States to enter into force.⁴⁰ ASEAN's reluctance to adopt legal obligations has also prompted Australian commentators to observe - that "while there has been considerable movement to implement international environmental conventions in the ASEAN region, the potential achievement of wide-ranging reforms is yet to be fulfilled."⁴¹

The above skepticisms have recently been proven wrong. ASEAN members have demonstrated the ability to bind themselves to a hard law approach, given the enormity of a problem such as the Haze which has wrecked havoc in economic terms, and also in other areas such as biodiversity and the ecosystem. On 10 June 2002, ASEAN member states adopted the ASEAN Agreement on Transboundary Haze Pollution.⁴² Under the Agreement, each state agrees to undertake individual and joint action to assess the origin, causes, nature and extent of land and/or forest fires and the resulting haze. They also undertake to prevent and control the sources of such land and/or forest fires and the resulting haze by applying environmentally sound policies, practices and technologies and to strengthen national and regional capabilities and cooperation in assessment, prevention, mitigation and management of land and/or forest fires and the resulting haze.

Article 7 of the Agreement requires each Party to take appropriate measures to monitor all fire prone areas, all land and/or forest fires, the environmental conditions conducive to such land and/or forest fires, and haze pollution arising from such land and/or forest fires.

Parties must also develop strategies and identify, manage and control risks to human health and also national emergency

⁴⁰ See Ben Boer, Ross Ramsay, and Donald R. Rothwell, *International Environmental Law in the Asia Pacific*, "The ASEAN Region", Chapter 12 (Kluwer Law International, 1998), at 227-229.

⁴¹ *Ibid* at 241.

⁴² The Agreement can be found at http://www.fire.uni-freiburg.de/se_asia/projects/ASEAN-Agreement.pdf.

response by developing legislative, administrative and financial resources to mobilize equipment, materials and human resources.

An ASEAN Co-ordinating Centre for Transboundary Haze Pollution Control is established under Article 5 to monitor, assess, prevent and to put in place national emergency plans. Each Party must designate one or more bodies to function as National Monitoring Centres, to undertake monitoring and to communicate to the Centre. In the event of emergency, each Party must initiate immediate action to control or to put out the fires. (See Appendix II.)

However, what is not being addressed by the Agreement are the underlying trade issues. Direct private investment, without environmental controls, is one of the root causes for the forest fires. Capital investment flows require some regional controls on these direct investments that induce the use of fire to clear forest for the palm plantations or timber operations. ASEAN's consensual approach is not intrusive of domestic affairs, yet if ASEAN cannot address this underlying cause, where the environmental harm is well documented and blatant, one may wonder how the environment could be protected in the face of an expansion of free trade, as the ASEAN Free Trade Area (AFTA) negotiations contemplate? Indeed, over recent months with expansion and anticipated expansion of trade, negotiations for an ASEAN-China, ASEAN-Japan free trade area are expected to commence soon.⁴³ Singapore, one of the ASEAN countries, has also entered into a number of bilateral Free Trade Agreements (FTAs) with, for example Japan, New Zealand and Australia. An FTA with the United States is in the pipeline (see *infra*). On 1 January 2003 the European Free Trade Association (EFTA comprising Switzerland, Liechtenstein, Norway and Iceland) – Singapore FTA entered into force. It is opportune to consider the environmental implications of these FTAs.

⁴³ See Lee Kim Chew, "Slow and not-so-easygoing Asean talks with China", *The Straits Times*, 9 October 2002; Ignatius Low, "PM Goh Chok Tong, 5-point plan for Asean", *The Straits Times*, 10 October 2002; Noel Rosales, "Five steps to move Asean forward", *The Straits Times*, 10 October 2002; "Talks on ASEAN-China free trade area to start next year", *The Straits Times*, 31 October 2002; "Japan signs economic deal with ASEAN", *The Straits Times*, 6 Nov 2002; "Asia gets onto bandwagon of regionalism", where Razeen Sally notes: "Traces of the 'new regionalism' can be found everywhere. Singapore pioneered this approach. ASEAN is talking to several third countries, to date, only a proposed ASEAN-China FTA has got off the starting blocks. Similar initiatives are afoot in North-east Asia. Both political and economic factors lie behind this ...", *The Straits Times*, 28 January 2003.

VI. REFLECTIONS ON ASEAN'S CONTRIBUTIONS TO ENVIRONMENTAL GOVERNANCE

What can we learn from the ASEAN record of regional environmental governance? First, it is remarkably resilient at bringing diverse cultures and political traditions together to shape a common policy, within the region and for the region internationally. Second, it does so by respecting each country's internal procedures, and building the capacity within each nation to meet agreed program objectives. Third, ASEAN's emphasis on consensus and capacity building is ill equipped to deal with urgent issues, such as the Haze. This has led some ASEAN commentators to call for a stronger emphasis on implementation of policy and establishment of needed reforms within States. ASEAN shares these shortcomings about implementing environmental reforms with most other regions. The recommendations in Agenda 21 require substantially more implementation everywhere.

Notwithstanding the evident need within ASEAN countries to devote greater attention to implementation of shared policies, it is fair to observe that ASEAN has been remarkably successful in shaping a common regional environmental policy framework. As an example of regional environmental governance, this is a significant accomplishment. It is instructive to highlight the means by which ASEAN has established a common regional environmental policy and program system of cooperation.

ASEAN's regional cooperation has been accomplished through negotiating and implementing a set of ASEAN Action Plans. Principal among these are the ASEAN Subregional Environment Programme in 1978-1992 (ASEPs I, II and III).⁴⁴ These initial

⁴⁴ Some twenty five years ago, in 1977, the UN Economic and Social Council for Asia and the Pacific (ESCAP) and the newly established UNEP facilitated ASEAN's identification of environmental issues for ASEAN's first-tier members. Many, if not all of these issues are still valid concerns for the second-tier members. In 1977, UNEP commissioned its regional advisory team to visit the ASEAN countries to confer with governmental authorities resulting in a draft ASEAN sub-regional environment programme (ASEP). This draft programme identified thirty-two possible collaboration activities covering the whole gamut of environmental issues in the region. This led to what was become the ASEAN subregional environment programmes, which comprised three phases (I, II and III) from 1978 to 1992. Initially, it covered six programmes, with an additional one in phase II. These programmes were: (1) Environmental Management; (2) Nature Conservation and Terrestrial Ecosystems; (3) Marine Environment; (4) Industry and Environment; (5) Environment Education and Training; (6) Information; (7) Remote Sensing.

plans were refined into the ASEAN Strategic Plan of Action (ASPAC) 1994–1998, which took into consideration the relevant aspects for ASEAN in Agenda 21.⁴⁵ From here, the Hanoi Plan of Action 1999–2004 was evolved. As a strategic plan, the ASPAC has a long-term and continuing impact. The Plan highlights how ASEAN's environmental policy-making process works effectively in the interaction of international and regional levels.

*Role for Harmonisation of Strategic Planning
for Regional and National Levels*

The Strategic Plan of Action on the Environment (ASPAC), 1994–1998 reflected the relevant chapters of Agenda 21, which ASEAN recognized provided a blueprint of environmental action plan for the 21st century.⁴⁶ Agenda 21 provided useful focus for framing

The ASEPs heralded the beginning of ASEAN cooperation in environmental management, inspired no doubt by the stimulus given to sub-regional cooperation by the United Nations Conference on Human Environment held in 1972, and also the catalytic support of UNEP. By the end of the third phase of the ASEPs in 1992 saw the United Nations Conference on environment and development (UNCED) in Rio de Janeiro, 1992, which encouraged the focus in integration of environmental and economic concerns into the combined focus of sustainable development. ASEP III has anticipated the need for this integration. "In ASEP I and II, 37% of all projects were completed within the planning cycle and 14% were not completed. For ASEP III, the goal is to implement at least 90% of all projects and to complete at least 60% within the Planning cycle, 1988–92." Learning from the difficulties of the first three ASEAN sub-regional environmental programmes, ASEAN has moved into its next era of regional activity with a clearer in sight and more realistic expectations about the need to implement ASEAN decisions in each of the member States. The challenge of understanding sustainable development may still be comprehending the elephant, but the hope is otherwise as ASEAN moved to frame its *ASEAN Strategic Action Plan on the Environment*.

⁴⁵ *Agenda 21* was adopted by consensus at the UN Conference on Environment and Development, and adopted subsequently by the UN General Assembly. See UN Doc. A/CONF. 151/26 (vols. 1–III) (1992), and UNGA Resolution 47/190 (1992), reprinted in N.A. Robinson (ed), *Agenda 21: Earth's Action Plan* (Oceana Publications, NY, 1993).

⁴⁶ ASEAN considered primarily sections I, III and IV of *Agenda 21* to be relevant to its work. In particular, the following chapters were given weight:

- Ch 2: International Cooperation
- Ch 4: Changing Consumption Patterns
- Ch 6: Protection and Promoting Human Health
- Ch 7: Promoting Sustainable Human Settlements Development
- Ch 8: Integrating Environment and Development in Decision Making
- Ch 9: Protecting the Atmosphere
- Ch 19: Managing Land Sustainability
- Ch 11: Combating Deforestation

ASEAN's regional agenda. Since ASEAN member States had closely participated in the drafting of Agenda 21, and the Chairman of UNCED was Ambassador Tommy Koh of Singapore, this should not be surprising. ASEAN's leadership was central to shaping global leadership.

ASEAN's contribution to global environmental governance at UNCED bears recalling, for it shows how the collaborative process of the ASEAN Way can bear fruit. Before the start of UNCED in Rio de Janeiro in 1992, ASEAN was desirous of contributing its "common views" both at the 4th UNCED Preparatory Committee Meeting held in March 1992 in New York and at the Rio Conference 1992. The ASEAN member States met in Singapore and on 18 February 1992 ASEAN adopted the Singapore Resolution on Environment and Development.⁴⁷ The preamble to this resolution states that "sustainable development, especially the management of the environment, requires close cooperation among and between the member countries of ASEAN in particular and global cooperation in general, and that ASEAN should strengthen such cooperation." Addressing development and global environmental issues, the following items were covered in the Singapore Resolution:

- Adopt a common stand on combating climate change; implementation of the Montreal Protocol; protection of the ecosystems of oceans and seas from pollution; protection of fresh water resources; sustainable management of all forests; conservation of biological diversity; support for Basel Convention on the Control of Transboundary Wastes and their Disposal; support for prior informed consent system.
- Actively take part in international efforts to protect the global environment;
- Emphasize the importance of developed countries to provide adequate, new and additional financial

-
- Ch 12: Combating Desertification and Drought
 - Ch 15: Conservation of Biodiversity
 - Ch 17: Protecting and Managing the Oceans
 - Ch 18: Protecting and Managing Freshwater Resources
 - Ch 20: Environmentally Sound Management of Hazardous Wastes
 - Ch 21: Management of Solid Wastes

⁴⁷ Koh, *op. cit.*, *supra* note 6, at 69-76.

resources to developing countries;

- Stress the need for developed countries to assist developing countries by transferring and providing access to environmentally sound technologies;
- Support the call for the developed countries to maintain an international environment which is supportive of economic growth and development;
- Explore the desirability of having flag states to contribute to and help ensure safe navigation for the protection of the marine environment; and
- Promote greater cooperation among and between developing countries in the field of environment and development, through information exchange and the sharing of experience and expertise.

These objectives all became a part of Agenda 21, and in a reiterative process the recommendations of Agenda 21 provided a more refined set of guidelines for ASEAN's more strategic environmental planning. ASPAE can be considered an updated and refined version of the ASEPs. Although it took into consideration the emerging trends at global, regional and national levels, it exists on a continuum starting with the ASEPs. ASPAE was formulated in 1994 after UNCED at the fourth ASOEN meeting in July 1993 in Bangkok. In addition to responding to Agenda 21, ASPAE took into consideration the priority issues in the region including the new ASEAN trade regime of the ASEAN Free Trade Area (AFTA) established in January 1992.

Since UNCED had demonstrated that environmental issues cut across sectors requiring comprehensive solutions, when ASEAN responded to each of the Chapters of Agenda 21 to which it ascribed importance, it consciously sought to give effect to relevant recommendations in agreeing upon sustainable programmes at all levels of intergovernmental cooperation, and in relations with the private sector, NGOs and other interest groups and regional and international bodies. ASPAE had as its objectives the following:

- Respond to specific recommendations of Agenda 21 requiring priority action among the member States of ASEAN;
- Introduce policy measures and promote institutional (which ASEAN understood to mean “organizational and programmatic,” as understood in this paper) development that encourage the integration of environmental factors in all developmental processes both at the national and regional levels;
- Establish long term goals on environmental quality and work towards harmonized environmental quality standards for the ASEAN region;
- Harmonises policy directions and enhance operational and technical cooperation on environmental matters, and undertake joint actions to address common environmental problems; and
- Study the implications of Asia Free Trade Agreement (AFTA) on the environmental policies.

In order to realise these objectives, ASEAN formulated ten strategies for ASPAE: (1) Strategy 1: support the development of a regional framework for integrating environment and development concerns in the decision making process; (2) Strategy 2: promote government – private sector interactions that lead towards the development of policies that mutually support the trust of each other; (3) Strategy 3: strengthen the knowledge and information database on environmental matters; (4) Strategy 4: strengthen institutional and legal capacities to implement international agreements on environment; (5) Strategy 5: establish a regional framework on biological diversity conservation and sustainable utilization of its components; (6) Strategy 6: Promote the protection and management of coastal zones and marine resources; (7) Strategy 7: promote environmentally sound management of toxic chemicals and hazardous wastes and control of transboundary movements of hazardous wastes; (8) Strategy 8: develop a system for the promotion of environmentally sound technologies; (9) Strategy 9: promote regional activities that strengthen the role of major groups in sustainable development; (10) Strategy 10: Strengthen

the coordinative mechanism for the implementation and management of regional environment programmes.

Implementation of each of these ten strategies requires the active participation of the individual ASEAN member countries. Indeed, it is at this national level that action is needed for implementation of all regional and global governance programmes and plans of action, such as the recommendations in Agenda 21. Unlike the EU, with its central decisions by the Council of Ministers and Parliament, in ASEAN the roles undertaken by each ASEAN Member State assumes greater significance. They must both agree on the common measures, and then decide how to implement them, and contribute to doing so in ways that are differentiated according to their situations. These roles have varied to a greater or lesser extent, as the states are not homogenous and reflect different levels of development. Increasingly, ASEAN States are willing to shoulder greater responsibilities to make ASEAN more effective. This is evident in the Philippines' decision to host the ASEAN Regional Center for Biodiversity established in 1988 or in the pledge by Singapore at the recent ASEAN environment ministers' meeting on 17 January 2002 in Beijing⁴⁸ to expand its undertakings over a range of ASEAN programs.⁴⁹ International assistance for the less

⁴⁸ See <http://search.yahoo.com/bin/search>, accessed 19 January 2002. ASEM consists of 26 Governments from Asia and Europe. Its first meeting was held on 1-2 March 1996.

⁴⁹ Singapore's Environment Minister Lim Swee Say noted as follows: "Singapore subscribes to regional collaboration and international cooperation At the regional level, Singapore is working closely with our ASEAN colleagues on such issues as waste management and smoke haze. In the global arena, Singapore is an active collaborator with fellow developing countries. ... We launched the Singapore Technical Assistance Programme for Sustainable Development in 1997, and the Small Island Developing States Technical Assistance Programme in 1999." Regarding the role of ASEM as a platform for Asia-Europe collaboration towards sustainable development, Minister Lim continued: "Speaking as a member country of ASEM, we believe Europe and Asia have, between us, an immense capacity to complement each other in addressing sustainable development challenges. ... Last but not least, Europe and Asia can jointly step up our efforts in capacity building. We need to increase our investments in the developments of human resources, and share our facilities and expertise among institutions and organizations so as to upgrade the skills, knowledge and proficiency levels of people across ASEM member countries. ... I am confident that with our collective will and efforts, ASEM can be developed into an effective platform for environmental co-operation across Asia and Europe, thereby helping to make the world we live in more sustainable for a long time to come."

developed States within ASEAN also will enhance implementation of ASEAN agreed environmental objectives.⁵⁰

The challenge for future environmental governance within the ASEAN region is clear from the policies that have already been agreed to. These are outlined in the panel accompanying this chapter. Among the prerequisites for good governance must be sound environmental policies. ASEAN has recognized that such policies must be internally consistent with nations and across all nations comprising ASEAN. In order to accomplish this, ASEAN fosters a system of building consensus on policy issues through its various "institutional" regimes described above.⁵¹ A common policy framework now awaits capacity building so that each ASEAN State may be equipped to implement the policies.

ASEAN Policy Decisions for Sustainability

ASEAN's policy imperatives are set out at various times in soft law instruments. Among the main soft law instruments setting out policy guidelines are set forth below:

- Manila Declaration on the ASEAN Environment of 1981⁵² would ensure, as far as practicable, that environmental considerations are taken into account in development efforts, both ongoing and future. The Declaration encourages the enactment and enforcements of environmental protection measures in the ASEAN countries.

⁵⁰ Some of these are ASEAN Dialogue Partners such as the United States, Australia, Canada, Japan, New Zealand, UNEP, UNDP, all of whom have assisted ASEAN in its projects and have provided some technical assistance. Others such as ESCAP, WWF, IUCN, Biotrop, WHO, or UNESCO have contributed to ASEAN's environmental programmes and have also acted as a catalyst to a number of ASEAN projects, such as conducting workshops, seminars and training or the drafting of environmental instruments.

⁵¹ These include the ASEAN sub-regional environmental programmes, 1978-1992 (ASEP) the ASEAN Strategic Plan of Action, 1994-1998 (ASPAP) and, following these, the Hanoi Plan of Action, 1999-2004.

⁵² Manila Declaration on the ASEAN Environment, 30 April 1981, Manila, reprinted in ASEAN Document Series (3rd Ed, ASEAN Secretariat, Jakarta) at 400-401; reprinted in Koh, *op. cit.*, *supra* note 6, at 4-5.

- Jakarta Resolution on Sustainable Development, 1987,⁵³ integrates environmental considerations into the broader context of social and economic development. With the Bruntland Commission's report in 1976, *Our Common Future*,⁵⁴ the term "sustainable development" was brought to the fore of public consciousness. ASEAN consultations took note of the call for greater concern for environmental dimensions of development.

The commitment of ASEAN to promote regional cooperation to achieve sustainable development was reiterated in the preamble to this resolution. It recognized both that the development processes in ASEAN must be accelerated to meet the growing needs and to provide a quality of life, and that these processes can only be sustained if the natural resources are sustained. It stressed on the utilization of natural resources to meet the needs of the present and future generation, and called for an integrated approach. The preamble underlined that the ASEAN members were intensely aware that international and regional cooperation be heightened and that it was the duty of states to develop sustainable development in terms of the Stockholm Declaration and other environmental law treaties.

Other policy guidelines laid down by ASEAN have been used in the formulation of the various ASEAN programmes and plans of action. Thus, for example, before formulating ASPAE, the ASEAN senior officials on the environment at its fourth meeting in Bangkok, in July 1993, reviewed past policies, some of which were still legitimate. The policy guidelines contained in a number of ASEAN soft law instruments were in fact reflected in Phase 1 of ASEP way back in 1978 before some of the policy guidelines were formulated.⁵⁵ These and other ASEAN instruments on policy imperatives for a sustainability transition in environmental and development focused on incorporating environmental factors in economic evaluations. The sum total of these various policies may

⁵³ Jakarta Resolution on Sustainable Development, 30 October 1987, printed in ASEAN Strategic Plan of Action on the Environment (including Ministerial Resolutions, 1994, ASEAN Secretariat, Jakarta, at 71-73; reprinted in Koh, *op. cit.*, *supra* note 6, at 52-53.

⁵⁴ UN World Commission on Environment and Development, *Our Common Future* (UK: Oxford University Press, 1987).

⁵⁵ These were those in the Manila Declaration on the ASEAN environment 1981, Bangkok Declaration on the ASEAN environment, 1984, Jakarta Resolution on Sustainable Development, October 1987 (above), the Kuala Lumpur Accord on Environment and Development, 1990.

be summarized thus:

- There should be an integrated approach to implement an ASEAN development strategy, to harmonise environmental quality standards as well as transboundary pollution prevention and abatement practices.
- Policy guidelines are to be adopted for the following areas:
 - (i) Environment management - e.g. use of environmental impact assessments (EIAs), and of optimal land use plans, town and country planning or zoning plans;
 - (ii) Nature conservation - e.g. develop new practicable approaches for preserving forests wildlife, and ecological systems; monitoring the quality of environment and natural resources to enable compilation of ASEAN state of the environment reports;
 - (iii) Marine conservation - e.g. develop practicable methods for management of pollution discharges;
 - (iv) Industry - e.g. ensure reasonable control of waste discharges from the earliest stages of project formulation; use of recycling of waste; develop suitable systems for control of toxic and hazardous waste;
 - (v) Education and training - e.g. enhance public awareness; introduce subject in schools and universities; provide technical training environmental information systems; develop comprehensive environmental system to facilitate decision making; establish monitoring programmes for surveillance of sensitive environmental resources; promote use of remote sensing to establish data base; with respect to wider involvement in environmental management; promote cooperation between governments, NGOs, universities, business communities within ASEAN;
 - (vi) Environmental Legislation - e.g. develop appropriate legislation to support the proper management in the development of the environment;
 - (vii) Enhanced ASEAN joint action - e.g. closer

- cooperation of the then ASEAN countries to act in unison in incorporating environmental factors in economic evaluations to provide a better foundation for natural resource management;
- (viii) International cooperation – e.g. establish cooperation with developed and other developing countries and international agencies for transfer of technology and share experiences in the management of the environment.

When ASEAN's environmental policies are compared to the regional environmental needs set forth in ASEAN State of the Environment Report, 2 (SoER2), it is evident that ASEAN has established a substantial agenda of capacity building for the implementation of its agreed environmental norms. Rather than being distressed at the tasks ahead, or being critical of the "soft law" approach that characterizes the ASEAN agenda, it may be that ASEAN's consensus-building process has created the soundest possible foundation for the implementation to come. The very flexibility of the "ASEAN Way" may, in fact, help ASEAN to realize these objectives over time.

The gap between the rhetoric of sustainable development and the implementation of policies and guidelines to do so is recognized in the developed world of Europe and the USA, as well as in other developing regions. This gap is hardly unique to the ASEAN region. Agenda 21 noted that development could not be sustained unless sectoralism, or "turf" competition among ministries, was minimized and more integrated systems were framed to ensure that environment and economics integrated. A Canadian scholar of Asian governance system, Douglas M. Johnson, has observed as follows:⁵⁶

"Following the Brundtland blueprint, Agenda 21 seems to place unprecedented strain on systems of national government, all of which are structured around the idea of sectoral mandates and responsibilities. Even those more-or-less unitary South East Asian systems that are spared the further complications of power-sharing inherent in federal or quasi-federal structures have generally been unable to prevent a huge gap opening up between promise and delivery

⁵⁶ Douglas M. Johnston, "Environmental Law as 'Sacred Text': Western Values and South East Asian Prospects," in G.A. Ferguson and D.M. Johnston (eds), *Asia-Pacific Trends in Legal Development: Sectoral and Cross-Sectoral Studies* (Vancouver: University of British Columbia Press, 2000).

in the field of environmental legislation. If the goal of inter-agency consultation (or coordination) was the corrective called for by Stockholm, the goal of 'integration' is the cure prescribed by Rio. It may be, ironically, that the least bureaucratic systems of South East Asia have a better chance of being structured around the Rio concept of integration than the most developed systems of the region have of being restructured to that end."

ASEAN's well-established framework of environmental policy, now harmonized across the States of the region, needs increasingly to be advanced into shared patterns of implementation. ASEAN's future focus must be to build more action into the ASEAN Action Plans, and then to ensure that all ASEAN member States advance in a measured way to attain the shared objectives. ASEAN's current "Hanoi Action Plan" moves in this direction.⁵⁷ The Hanoi Action Plan continues the "institutional" process under ASPAE for environmental governance within ASEAN and moves a step further by imposing time frames for implementation of some action plans. Based upon its agreement on regional environmental policy, ASEAN can better facilitate its members' participation in multilateral environmental decision-making.

It is in ASEAN's strategic environmental plan that the effectiveness of its consensus-building approach can be best seen - for both international policy formulation and on its regional level. ASEAN's environmental governance has always been informed by international cooperation, for instance by United Nations Law of the Sea Conference (Marine Pollution)⁵⁸ or the Stockholm

⁵⁷ The ASEAN planning process to integrate the work of its member States continued with the adoption of the Hanoi Plan of Action. It clearly deals with concerns that were in the earlier programmes and plans of action. For instance, seven themes on biodiversity conservation are provided for, continuing Strategy 5 of the ASPAE on biodiversity.⁵⁷ The Hanoi Plan has set specific targets for existing plans and programmes, for example: (1) implement the ASEAN Cooperation Plan on Transboundary Pollution, namely the Regional Haze Action Plan by 2001; (2) establish the ASEAN Regional Research and Training Centre for Land and Forest Fire Management by 2004; (3) strengthen the ARCBC networks and implement research activities by 2001; (4) implement an ASEAN Water Conservation Programme by 2001; (5) establish a regional centre to promote environmentally sound technologies by 2004; (6) develop a framework for integrated protected and management of coastal zones by 2001; (7) formulate and adopt an ASEAN Protocol on access to genetic resources by year 2004; and (8) strengthen institutional and legal capacities to implement *Agenda 21* and other international environmental agreements by 2001.

⁵⁸ UN Convention on the Law of the Sea (Montego Bay), UN Doc A/CONF. 62/122, 21 I.L.M. 1261 (1982); see in particular Part XI.

Declaration 1972, and Stockholm Conference Action Plan.⁵⁹ The subsequent establishment of UNEP added the ingredient of an institutional catalyst to induce reforms, which facilitated the establishment of environmental units in the then ASEAN member states immediately after the 1972 Stockholm Conference on the Human Environment. These national environmental focal points became the national focal points for the ASEAN organizational structure for the management of the environment.

The policy consensus reflected in the Strategic Plan (ASPAE) has produced practical results for environmental governance, as is illustrated by the adoption of the Memorandum of Understanding on ASEAN Sea Turtle Conservation and Protection, 1997 (MOU) (http://www.unep-wcmc.org/cms/pdf/Turtles_IndOcean_inf7.PDF). The background to this MOU is interesting as it shows ASEAN's response to global issues pertaining to shrimp turtle.

In early 1997, the United States embargoed import of shrimps from a number of ASEAN member countries because shrimp trawlers of these countries did not use the Turtle Excluder Device (TED). In September 1997 the ASEAN member states signed, a Memorandum of Understanding on ASEAN Sea Turtle Conservation and Protection as a result of the United States embargo. The objectives of the MOU are to promote the protection, conservation, replenishing and recovery of sea turtles and of their habitats based on the best available scientific evidence, taking into account the environmental, socio-economic and cultural characteristics of individual ASEAN member countries. The areas of application of the MOU included the land territories and the maritime areas over which the participating ASEAN countries exercise sovereignty, sovereign rights or jurisdiction in accordance with international law as reflected in the United Nations Convention on the Law of the Sea.

Under the MOU, Malaysia was designated as the coordinator and is required to report directly to the ASEAN Working Group on Fisheries (ASWGF). Each ASEAN country must nominate experts to form the Technical Expert Working Group to prepare an ASEAN program and work plan on sea turtle conservation and protection for the endorsement of the of the Senior Officers Meeting of the ASEAN Ministers of Agriculture and Forestry (SOM-AMAF). Close cooperation is also sought with the South East Asian Fisheries Development Centre (SEAFDEC) in such

⁵⁹ UN Doc A/CONF. 48/14/ Rev 1 (1973).

conservation. Linkages are also forged with other countries in the region.

The MOU sets forth the definitions of “sea turtle” and “sea turtle habitats” and the mechanism of cooperation considering its long experiences and strong efforts of sea turtle conservation, Malaysia has been designated as the regional coordinator to lead a group of technical experts, ie, the ASWGF. The ASWGF, at its meeting in December 1997 in Jakarta, prepared an ASEAN programme and work plan on Sea Turtle Conservation and Protection which was approved at its sixth meeting in March 1998 in Bandar Seri Begawan, Brunei Darussalam and endorsed by its 20th meeting held in September 1998 in Hanoi, Vietnam.

The sea turtle MOU is a good indicator of how ASEAN’s environmental consensus can affect policy on economic sectors. This will be of value for advancing the effectiveness of the ASEAN Free Trade Area (AFTA),⁶⁰ which is in the process of establishing its tariff and other agreements.⁶¹ Because ASEAN’s environmental policies are mature, they can be integrated into the newer regional trade relations from the outset, avoiding the possibility of conflict between the environment and trade regimes.⁶² It may be that bilateral trade agreements, either sub-

⁶⁰ AFTA’s principal elements may be summarized as follows: AFTA was established by the ASEAN heads of government. The ASEAN economic ministers signed the agreement on the Common Effective Preferential Tariff (CEPT) Scheme for AFTA. AFTA covers trade in capital goods and processed agricultural products. Pursuant to AFTA, a Common Effective Preferential Tariff (CEPT) system was established in which tariff reduction was to be undertaken in two programmes: 1) The Fast Track Programme which envisaged tariff reduction to 0-5 per cent within 7-10 years; 2) The Normal Track Programme which targets reductions to 0-5 per cent within 10-15 years. The original deadline for this was to be achieved by 2008. As a result of the economic recession and a part of a strategy to promote ASEAN’s attractiveness and competitiveness, the deadline was extended forward to 2002. Indonesia, the Philippines, Malaysia, Singapore and Thailand meet in Jakarta to discuss this issue.

⁶¹ See *The Straits Times*, 1 January 2002.

⁶² ASEAN’s policies increasingly seek to lay down specific guidelines to address anthropogenic causes of regional and global environmental change, and these guidelines will represent a new dimension with growing trade. However, from the viewpoint of environmental sustainability, trade in some commodities can induce significant pollution and natural resource depletion. Among these commodities are chemicals, fertilizers, plastics, cement, paper and pulp, leather and rubber goods, copper cathodes and wooden and rattan furniture. ASEAN policy makers have yet to find solutions to deal with environmental issues within the free trade that AFTA will facilitate. ASEAN planning procedures need to consider how best to apply environmental planning and assessment techniques, environmental standards and use of low-and non-

regionally within ASEAN, or internationally, can also further the harmonious integration of the environment and trading regimes.⁶³ Similarly, it is unclear yet how ASEAN's Free Trade Area will mesh with the wider regional trade arrangements.

In the context of the wider East Asia region, Prime Minister Goh Chok Tong has envisioned extending trade ties into North East Asia - China, Japan and Korea - to discuss an East Asia free trade area. Indeed, the first round of a "New Age Economic Partnership Agreement" is now under way with Japan.⁶⁴ Since AFTA has not worked out the specifics on environmental implications, it is perhaps best to approach the East Asia Economic Caucus from the viewpoint of "ASEAN Plus 3" (Japan, China and Korea), as envisaged by Prime Minister Goh of Singapore. At the 20th Singapore Lecture,⁶⁵ the Prime Minister of Japan Junichiro Koizumi, said that Japan, China, Korea, Australia, New Zealand should "evolve into a new East Asian Community". This would be a significant development and could extend to environmental matters, as indeed there are environmental implications to trade.⁶⁶

If a plethora of bilateral Free Trade Agreements by ASEAN countries with other countries emerge, the question then may be: will the ASEAN AFTA itself be marginalized or will any bilateral

waste manufacturing technologies.

⁶³ Singapore, one of the ASEAN countries, is currently in the process of negotiating free trade agreements with, *inter alia*, the United States, Mexico and Japan. One of the conditions for a successful conclusion of such a Free Trade Agreement is the inclusion of an environmental provision. How would such provisions affect Singapore's position vis-à-vis AFTA? An example of the sort of environmental provisions that could feature in ASEAN bilateral agreements would be Article 5 of the Free Trade Agreement between the United States of America and Jordan, dated 24 October 2000, which includes environmental provisions. This Free Trade Agreement may provide a guide for negotiating the environmental provisions of the USA-Singapore Free Trade Agreement. The provisions include the following: (1) Parties to strive not to derogate from environmental law as an encouragement for trade with the other party; (2) Parties to ensure that its laws provide for high levels of environmental protection and to continue to improve its laws; (3) Parties to effectively enforce its law; (4) Parties to exercise bona fide decisions regarding allocation of resources.

⁶⁴ See Chua Lee Hoong, "Japan signs economic deal with ASEAN", *The Straits Times*, 6 Nov 2002.

⁶⁵ This lecture on 14 January 2002 followed the landmark signing on 13 January 2002 of the bilateral free trade and economic cooperation between Japan and Singapore.

⁶⁶ See in *The Straits Times*, 15 January 2002, the article: "Wanted: An East Asian Community."

Free Trade Agreement by an ASEAN member state reflect the ASEAN AFTA (assuming that a set of guiding principles on environmental implications are in place)? Furthermore, what "institutional" role could ASEAN play in any expanded Free Trade Agreements? Other similar questions remain to be answered by experience and time: Will AFTA become "ASEAN Plus 3" or in what way can ASEAN influence bilateral Free Trade Agreements? The challenge may well involve an interface between the various Free Trade Agreements to effect a synergy or to complement the ASEAN AFTA, or will ASEAN's interest be countervailing and impede a party's domain in a bilateral situation? Alternatively, would ASEAN's role be marginalized? These may soon be pressing questions for ASEAN to consider as there is a recent acceleration of AFTA following the financial and economic crises in 1997.

These issues are being considered in the wider trade discussions under APEC. At their Fourth Ministerial Meeting in Bangkok in September of 1992, the APEC Ministers established an "Eminent Persons Group" to "enunciate a vision for trade in the Asia-Pacific Region." The Group's 1993 report has recommended APEC review the progress of each of the subregional arrangements within the APEC region, including AFTA.⁶⁷ In their 1994 report, they stressed that Free Trade Area expansion should proceed on "the principle of decision-making on the basis of consensus, implementation on the basis of flexibility" and further recommended "cooperation on environmental issues, as begun by the APEC Environmental Ministers at their meeting in Vancouver in March 1994."⁶⁸ Daniel C. Esty has observed, in the context of APEC, that "Trade and Environment" disputes increasingly appear as flash points that divide nations, creating tensions that could cause some countries to renege on commitments to an open market."⁶⁹ He notes that if APEC is to thrive, "it must move quickly to broaden its programme of Asia Pacific integration beyond the economic realm. One clear area of opportunity is the environmental domain."⁷⁰ He notes that this

⁶⁷ See 1993 Report of Eminent Persons Group, Annex VII to Tommy T.B. Koh, *The United States and Asia: Conflict and Co-operation* (Singapore: Times Academic Press, 1995), at 45, recommendation #13.

⁶⁸ See 1994 Report of Eminent Persons Group, Annex VIII, to Tommy T.B. Koh, *op. cit.*, *ibid.*, at 48-50.

⁶⁹ Daniel C. Esty, "Sustaining the Asia Pacific Miracle", 3 *Asia Pacific Journal of Environmental Law* 307, at 309 (1998).

⁷⁰ *Ibid.*, at 319.

would not conflict with AFTA and ASEAN, "insofar as ASEAN has announced numerous resolutions on environmental issues, but none of them have any binding character on member states."⁷¹

Esty may be right about APEC's need to address environmental issues to avert disputes between environmental and trade policies, but insofar as ASEAN has institutionalized its environmental policy resolutions by action plans, they have a practical force and would be observed whether or not they are technically binding under international law. Simply because the ASEAN Way is to build the relationships first, and then confirm them by legal norms does not mean that the resolutions do not reflect a wide consensus. Were APEC to focus on environment and trade issues, it would do well to do so within the consensus that ASEAN already embraces, or it would put APEC future decisions at some risk.

VII. EMERGING REGIONAL ENVIRONMENTAL GOVERNANCE

This discussion of ASEAN's emerging regional environmental governance has highlighted both its strengths and its limitations. In the ten years since the UN Conference on Environment and Development, ASEAN has done much to both embrace all south East Asian nations into one region, and to unite them both as a common ecosystem. The political cooperation and economic negotiations toward more liberalized trade relations, will be facilitated by having first established a sound and common environmental policy framework.

ASEAN's challenge today is how to devote more attention to measure how this policy is translated into cooperative actions. ASEAN's Environmental Education Action Plan 2000-2005⁷² is an example of this focus on implementation.⁷³ One significant indicator of progress on implementation of policy would be to implement the ASEAN Transboundary Haze Pollution

⁷¹ *Ibid*, at footnote 47, at 319.

⁷² ASEAN Environmental Education Action Plan, 2000-2005, available at: http://www.aseansec.org/function/as_env_edu.htm.

⁷³ It implements strategic recommendation #9 of the ASPAE. It aims to mobilize both informal and formal education efforts to build public participation for resolving environmental problems, and moving toward sustainable development. Target Area 3 focuses on capacity building; the Plan would develop human resources among teachers, teacher trainers and school administrators, as well as community and religious leaders, NGOs, and media in each ASEAN country. Doing so is a necessary building block.

Agreement. Another may be the updating and acceptance of the forward-looking ASEAN Agreement on the Conservation of Nature and Natural Resources (1985). The Agreement, however, has not been ratified by sufficient States to enter into effect, and, of course has not yet been implemented.⁷⁴ However, it is interesting to note that after 17 years of lying dormant, the Agreement is on the current Agenda AWGNCB. As for the recent ASEAN Agreement on Transboundary Haze Pollution, 2002, there seems to be a good chance of its being ratified by member states. At the 7th Informal Meeting of the Ministers on the Environment held from 20-22 November 2002 in Vientiane (Lao PDR), Brunei, Malaysia and Singapore announced that they will be ratifying it soon. The member states expressed the hope that by 3 March 2003 it would be ratified by at least six member states so that it can enter into force for the launching of the ASEAN Environment Year 2003. Of course, commitment to combat forest fires still remains at the national level. The conservation of nature activity in support of the Convention on Biological Diversity proceeds quietly and well, so there is evidence that the region can work within "hard law" institutional frameworks. Perhaps ASEAN may need to take seriously bringing its treaty cooperation on environment into its regional relationships if implementation is to be given higher priority.

While some among ASEAN's member States lack the national resources to commit to implementation of ASEAN policy as a high priority, others have the capacity but have not yet mobilized

⁷⁴ In 1985 the six core ASEAN states (Indonesia, Malaysia, the Philippines, Singapore, Thailand and Brunei Darussalam) cooperated by signing the ASEAN Agreement on the Conservation of Nature and Natural Resources. The crux of the agreement is to integrate the management of nature and natural resources into environmental development planning. National and regional strategies are required to achieve these goals as also cooperation at the international level. However, over seventeen years have passed and the Agreement has still not entered into force - only three of the six signatory countries have ratified it namely, Indonesia, Philippines and Thailand. Singapore, Brunei and Malaysia have not ratified it. There appear to be at least some main barriers to ratification. First, the implementing agencies contemplated under the Agreement would straddle a number of institutions and, hence, difficulties in management may be encountered unless various agencies established. Much depends on the political will to set up such an institutional mechanism. Second, there is also a need to build capacity in order to effectively implement the provisions of the agreement, as many of the provisions call for innovative techniques and mechanisms. Third, in a federal system as in Malaysia, the states making up the Federation should agree to the ratification, at least *de facto* to make it effective. These barriers, however, are not insurmountable.

national resources to give priority to implementation of environmental governance. ASEAN's region-wide environment report, SoER2, provides a common perspective on the needs. ASEAN's Action Plan on Environmental Education also may succeed in building the public understanding of the need to do so. The increasing immediacy of environmental problems in the area will also produce public demands for more effective governmental action. For instance, the Environmental Education Action Plan explains the underlying environmental education concerns.⁷⁵

The recognized "ASEAN Way," with its non-interventionist approach, has served it well on building stable relations, agreeing upon general policy, and fostering capacity building measures. However, arresting environmental degradation patterns also requires affirmative action, which by definition must intervene – albeit in agreed ways based on scientific knowledge. ASEAN needs to build a kind of regional "cooperation team" which it could deploy in crises throughout the region to avert or contain environmental catastrophes. This is done for oil spills at sea, and it should be done for terrestrial environmental problems as well.

ASEAN should use its rich history of cooperation among States to build such joint environmental cooperation action teams. This would enhance respect for sovereignty, not undermine it; it can be argued that the inability to avert an environmental disaster is a greater loss of sovereign authority than cooperation in agreed programs to control the harm. ASEAN's deferential approach to other's domestic affairs can inadvertently lead to violations of Principle 21, in which all States acknowledge that each must act so as not to harm the environment of each other.⁷⁶

⁷⁵ ASEAN Environmental Education Action Plan, *op. cit.*, *supra* note 72, at 5: "Because of the great geographic, geologic, climatic as well as cultural differences among the ASEAN countries, the environmental problems that beset them also differ greatly. Thus, a number of countries with coastal communities are troubled by environmental problems such as marine pollution, degradation of coastal resources (i.e., coral reefs and mangrove areas), coastal erosion and sea-level rise. But many face common problems of pollution (a unique problem of transboundary pollution from the haze emanating from Indonesia and affecting Brunei Darussalam, Singapore and Malaysia); depletion or degradation of natural resources such as rapid consumption of fossil fuels, deforestation, wildlife depletion or loss of biodiversity and soil erosion; rapid growth of population with the accompanying land use changes brought about by increasing need for more living space, food and other amenities; and health and nutrition problems."

⁷⁶ The ASEAN Way clearly works in some areas of integration of ASEAN (such as in policy formulation or in the harmonization of air and water quality). However, as the "Haze" from Indonesia fires demonstrates, the ASEAN Way

Diplomats, political leaders, and scholars alike have urged ASEAN to re-examine the meaning of its non-interventionist norm.⁷⁷ The 'soft' way has prevented proposals for adopting practical measures to cope with regional problems. For instance, ASEAN could agree to establish product eco-labeling for Indonesia palm oil or timber sale items in order to begin to address the direct capital investment that is a cause of the forest fires in Indonesia or the deforestation there and elsewhere. Such an eco-labelling measure would allow informed market decisions to deter the illegal process of setting fires to clear land for investment.

The mutual respect and strength of ASEAN lies in its consensus approach, which should preclude the political system of one country acting so as to militate against the overall common will of a subregion such as ASEAN. Where this does not happen, as when vested interests have become entrenched and resist implementing recommended domestic reforms, then the ASEAN Way can and should foster some innovative policy making and new forms of cooperation. This is easiest before such political or economic opposition forms, and ASEAN excels in this context, even for difficult issues. For instance, the Working Group on Nature Conservation and Biodiversity has drafted an ASEAN Framework Agreement on Access to Biological and Genetic Resources (24 February 2000) which may be effective in shaping a common approach among the ASEAN countries, administrations and parliaments or may be the basis for a new regional hard law instrument.

Beyond the need to reconsider how consensus and non-intervention may accommodate regional environmental policies, there are other general barriers to regional cooperation in the

may be ineffective. Some have argued out that sanctions should be meted out by the ASEAN community against palm oil companies that are responsible for the fires. Instead, the ASEAN countries approached Indonesia behind closed doors and were diplomatic in their dealings, saving 'face' for their neighbour. Since the ASEAN region has had to endure intermittent warfare for fifty years, this deference is understandable; nonetheless, ASEAN member States will need to differentiate between hostile meddling in each other's affairs, and securing environmental justice across the region. Neither the States whose nationals invest in Indonesian palm oil plantations or timber operations, nor Indonesia whose resources are damaged, should tolerate the injury to other ASEAN States from the "Haze." Principle 21 alone obliges action to protect that States being polluted.

⁷⁷ Simon S.C. Tay, Jesus P. Estanislao, Hadi Soesastro, *Reinventing ASEAN* (Singapore: ISEAS, Seng Lee Press, 2001).

area of environment, such as the lack of political will, lack of expertise, lack of information and data, inadequate institutional support and insufficient funds.⁷⁸ All these factors have generally led to ASEAN pursuing a "reactive" kind of cooperation, as in the Indonesian "haze," rather than a proactive cooperation. Nonetheless, progress can be identified in a number of areas, such as the formulation of policies on sustainable development, declarations, common stands, resolutions, plans of action and programmes. Policy consensus may not be enough, since the implementation of certain plans and programmes has not always been effective, and usually has been rather slow.⁷⁹ As Ambassador Tommy Koh has observed, "ASEAN's corporate

⁷⁸ These separate barriers can combine to retard effective action. Another example demonstrating barriers to cooperation is the implementation of ASEAN's agreements for harmonization of environmental standards and databases. In the first ASEAN state of the environment report (1997), natural resource depletion and environmental degradation were noted as problem areas, sharing the same types of environmental management problems as the rest of the world. The ASEAN report noted that a major challenge facing ASEAN is to harmonise the national environmental standards and databases. The difficulty of achieving this is because member states are at different levels of development and this makes it difficult, for example, to harmonise air and water quality standards. Moreover, there are varying differences in development objectives and environmental strategies and goals among the member states. Nonetheless, steps are being taken to work toward such harmonization. The target date set to achieve ambient air quality below 100-pollutant standards index (PSI) is 2010 with focus on urban and industrialized areas. The same date is also set to achieve water quality standards for four classes of rivers based on their utility. ASEAN's non-intervention norm is not the only barrier to attaining greater effectiveness in regional environmental governance. For instance, the following appear to be some of the barriers to ASEAN cooperation: (1) "ASEAN Way" is too blindly one of non-interventionism; (2) lack of political will; (3) lack of expertise; (4) lack of information and data; (5) inadequate institutional support; (6) lack of funds; (7) concerns over compromising national sovereignty; and (8) lack of an ASEAN monitoring/surveillance mechanism; (9) inadequate organizational support. It is also necessary to strengthen the ASEAN secretariat. This was a recommendation of ASPAE in Strategy 10: strengthen the coordinative mechanism for the implementation and management of regional environmental programmes. It needs to be treated as a higher priority.

⁷⁹ For example, the ASEAN Plan of Action on Transboundary Pollution, which was adopted by the ASEAN states in July 1995, following the occurrence of the Indonesian haze in 1994, was not implemented at the time when the worst-ever Indonesian haze occurred in 1997. Only when the haze caused some US\$4 billion damage to Indonesia, Malaysia and Singapore in terms of economy, healthcare, did there appear a political will among the ASEAN countries to meet regularly and to work out a detailed implementation plan at the national levels and for Sumatra and Kalimantan, two of the worst affected areas, and at a regional ASEAN level.

culture prevented Indonesia's neighbors from engaging her in a free and candid exchange of views."⁸⁰ Others in the region have arrived at similar conclusions.⁸¹

VIII. CONCLUSION

In conclusion, while regional environmental governance through the "ASEAN Way" can teach much about intra-regional cooperation on policy formulation and capacity building, more effective systems for environmental governance need to define active implementation procedures as well. Shared resources management of the Mekong River will require strengthening such regional mechanisms for sub-regional cooperation. ASEAN would do well to strengthen its current environmental organizational structure by putting in place effective mechanisms both at the sub-regional as well as at the national level to facilitate implementation of its policies. Doing so would make for more effective operation and coordination at the implementing and monitoring level. The crisis of the Haze may accelerate the evolution of ASEAN from a regional body capable of arriving at an environmental policy consensus, to one capable of implementing that consensus.

The ASEAN region envisions itself as "one ecosystem," a sort of bio-rich tropical biome and waters, lands and forests in the East Asian seas. As this vision becomes more widely shared, ASEAN's collaborative systems of regional environmental governance in turn need to function on an ecosystem wide basis. ASEAN's progress to date bodes well for its success in effectively managing cooperation for sustainable development. The need to strengthen environmental governance at the national, sub-regional and regional levels with ASEAN mirrors comparable needs in every region of the Earth. As ASEAN succeeds, its model offers insights that can lead to similar success elsewhere.

⁸⁰ Quoted in *The Straits Times*, 10 July 1998, at 48.

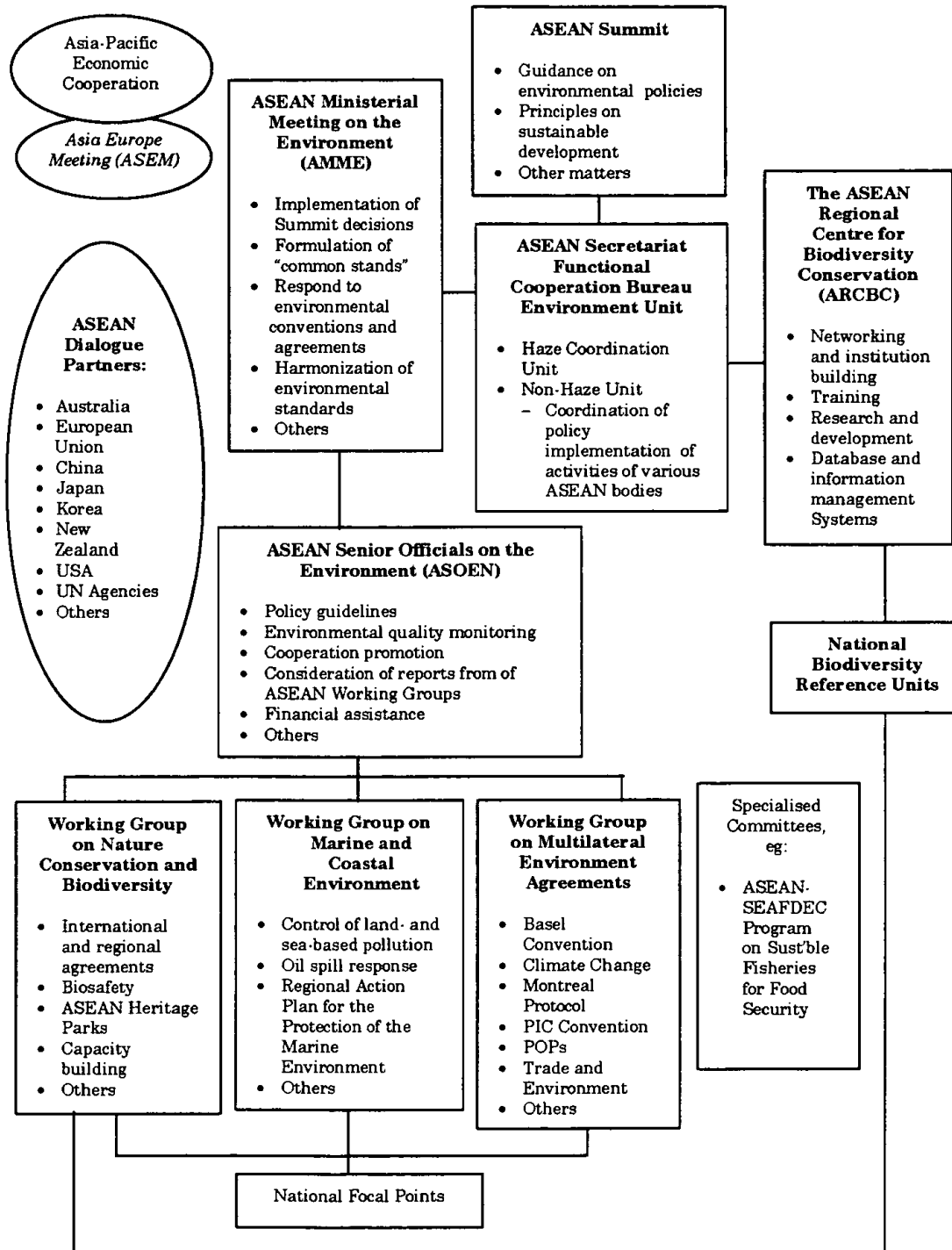
⁸¹ For instance, at the foreign ministers meeting of the ASEAN countries held in Manila, between 20-24 July 1998, Thailand urged ASEAN to adopt the principle of "flexible engagement". The Thai foreign Minister Surin Pitsuwan said: "perhaps it is time that ASEAN's cherished principle of non-intervention is modified to allow ASEAN to play a constructive role in preventing or resolving domestic issues with regional implications." However, this proposal was only supported by the Philippines; the rest preferred the "ASEAN Way".

POSTSCRIPT

Singapore ratified the ASEAN Agreement on Transboundary Haze Pollution on 13 January 2003. The Agreement will enter into force 60 days after ratification by 6 ASEAN countries, <http://www.sgnews.gov.sg>.

Singapore has also completed and signed an FTA with the United States; see *The Straits Times*, 17 January 2003, "Singapore closes free-trade deal with US".

ASEAN'S GENERAL GOVERNANCE FRAMEWORK IN ENVIRONMENTAL COOPERATION



SEAFDEC: South East Asian Fisheries Development Center – <http://www.seafdec.org.ph>

APPENDIX II

**GOVERNANCE STRUCTURE FOR ASEAN AGREEMENT
ON TRANSBOUNDARY HAZE POLLUTION 2002**