

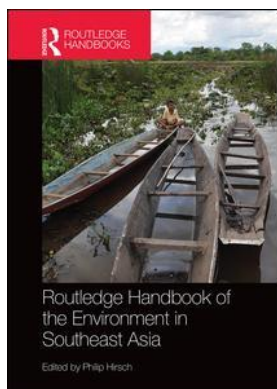
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PART 4

Regional and country studies in environment

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THE ROLE OF ASEAN IN SHAPING REGIONAL ENVIRONMENTAL PROTECTION

Koh Kheng-Lian and Md. Saiful Karim

Introduction

This chapter¹ seeks to demonstrate that since 1978, when environment was first put on the programme of work of the Association of Southeast Asian Nations (ASEAN), it has been shaping the environmental agenda in an ‘evolutionary’ way. More recently, ASEAN has accelerated its efforts to deal with ‘new problems’ (for example, food and water security, pandemics) and emerging transboundary environmental issues, such as the impact of climate change, that are confronting not only ASEAN but the world. The role of ASEAN in shaping environmental protection as part of global environmental governance includes facilitating the implementation of multilateral environmental agreements such as the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC) and the Millennium Development Goals (MDGs), apart from its own programmes. A recent publication, comprising over 2,000 pages of selected documents in two volumes, shows that ASEAN has been very active in fashioning regional environmental governance, which includes policies, plans, programmes, strategies, roadmaps and hard law instruments (Koh, 2009; 2012a).

The question of implementation of these environmental policy instruments is a different matter and requires the political will of ASEAN member states, as well as funding and the capacity of member states to translate the organization’s documents into national policies, laws and plans of action. The implementation of international and regional environmental law is quite a challenging task for many developing and least-developed countries in Asia, including some ASEAN countries, due to lack of funding, international assistance and technology transfer (Karim, 2009; 2010a; 2010b). Many critics of ASEAN overlook these points when they repeat ad nauseam that ASEAN falls short in the implementation of its declared goals. While this remark may be justified at times – including in the environmental context – we need to evaluate on a case-by-case basis and revisit at different periods to see whether progress has been made. Also, there needs to be a comprehensive study of the implementation of ASEAN environmental instruments in all member countries in order to assess the extent of implementation.

At the outset, it is useful to observe that there has been no lack of misunderstanding – even ignorance – of the work of ASEAN. This ignorance is partly due to the unavailability of all

ASEAN environmental instruments on the ASEAN website. Before the publication of the abovementioned volumes of ASEAN documents (Koh, 2009; 2012a), a researcher would have found it extremely difficult to obtain the documents in convenient form.

This chapter argues that ASEAN's roles in environmental governance have proceeded very gradually, but that as the grouping has become stronger and more confident it has been able to take a more assertive stance. There are two main elements of this proposition. The first is that there is an inherent tension between an environmental role for ASEAN on transboundary matters and its culture of non-interference in the sovereign affairs of its member states. Negotiating between these has set the limits of what ASEAN can achieve. The second element is that ASEAN proceeds at a pace that is most comfortable to all, and that is why it adopts what is known as the 'ASEAN way'. The ASEAN way is intended to promote trust among its members so as to enable effective cooperation.

The ASEAN way and the ASEAN Charter

ASEAN was established in 1967 by its founding members – Indonesia, Malaysia, the Philippines, Singapore and Thailand – through the adoption of the ASEAN Declaration in Bangkok (ASEAN, 1967). The organization now consists of ten member states – namely, Brunei, Cambodia, Indonesia, Laos, Myanmar, Malaysia, the Philippines, Singapore, Thailand and Vietnam. It has a combined area of approximately 4.47 million square kilometres and a population of 580 million (UNEP, 2009). One of the most ecologically rich areas in the world, the ASEAN region hosts some of the planet's most diverse and unique ecosystems. Despite occupying only 3 per cent of the global land area, the region includes some of the world's mega-biodiverse countries. The region is facing a growing number of new and emerging environmental threats, including biodiversity loss, climate change and transboundary pollution.

In the first four decades of its existence, ASEAN operated as an informal association of nations (ASEAN, 1967) without having a legally binding constitutional document. The ASEAN Charter was adopted in 2007 and entered into force on 15 December 2008. The Charter era, together with the development of an ASEAN Community by 2015, has renewed a commitment towards ASEAN among its members. How does this help to further shape ASEAN's role in the protection of the environment?

The fact remains that decision-making in ASEAN has been by consensus or *musyawarah*, commonly known as the ASEAN way. This can be explained not only by the absence of a central bureaucracy, but also by historical reasons – for example, in the agreement among the ASEAN member states envisioned by the Bali Concord II, which recognizes the 'fundamental importance of adhering to the principle of non-interference and consensus in ASEAN cooperation'. This principle is, of course, recognized in international law but need not be applied to the hilt. *Musyawarah dan mufakat* is a Malay custom of decision-making through consultation and consensus (Narine, 2002). The ASEAN way emphasized three basic norms: first, non-interference in other states' affairs; second, consensus and non-binding plans, avoiding treaties and legalistic rules; third, using national institutions and actions, rather than creating a strong central bureaucracy (Koh and Robinson, 2002). This approach has been criticized because it is slow and lacks legal backing, but it did serve a purpose of engendering trust among its members to bring about cooperation. In such a diverse region with regard to history, political systems, language, culture and religion – even less homogenous than the European Community – and, to top it all, where the member countries have had *confrontasi* (confrontation) (Severino, 2005), territorial claims and other contentious issues, 'unity in diversity' is not a given, even today.

The ASEAN way may be calibrated by the recent adoption of the non-traditional security approach under Pillar 1 (Political-Security Community Blueprint) (Koh, 2012b).

The ASEAN Charter introduced a refined and expanded governance system. However, perhaps the greatest stumbling block to effective decision-making is the longstanding practice of the very rigid application of the principles of sovereignty and non-interference that have been embedded in the ASEAN Charter. With this in mind, a key question is whether the winds have been changing the pathway to a more flexible approach found in non-traditional security for transboundary environmental issues? Will an ASEAN Community open the door to more enhanced cooperation on common regional interests over purely national ones?

As environment itself is so dynamic and needs constant updating and new technologies to bring about solutions, we need to evaluate the role of ASEAN and its efficacy from the viewpoint of the progressive development of its environmental agenda in tandem with new scientific discoveries and explanations, new knowledge, innovations and new disasters. In the evaluation, we need to examine why some areas have or have not progressed. It cannot be gainsaid that the political will of ASEAN member states is crucial in implementation at both the regional and national levels. Implementation is a complex question and it also appears that there has been a great deal of misunderstanding as to the exact role that ASEAN can or cannot play. It cannot be overemphasized that we need to examine the role of ASEAN from two- or three-tier levels – regional, national and global – since it constitutes part of the global environmental system, as well as that of its member countries. The ‘whole-of-the-ASEAN approach’, as well as the ‘whole-of-the-world’ approach, should be taken into account when considering how ASEAN has shaped regional environmental protection. Our analysis will be conducted within these remarks and limitations.

The evolution of the ASEAN environmental protection regime can be divided into two phases: the pre-ASEAN Charter and post-ASEAN Charter eras. The two phases are a continuum, but the second phase forges ahead of new and emerging challenges and a restructured ASEAN organizational framework to meet them. Table 19.1 illustrates developments in ASEAN in parallel to key global environmental milestones.

Table 19.1 Developments in ASEAN in parallel to key global environmental milestones

<i>Decade</i>	<i>Global environmental milestones</i>	<i>Developments in ASEAN</i>
1970s	United Nations Conference on the Human Environment, 1972	ASEAN Sub-regional Environment Programme (ASEP I), 1978–1982
1980s	Report of the World Commission on Environment and Development: Our Common Future, 1987	Manila Declaration, 1981, the first regional instrument on the environment in ASEAN ASEAN Sub-regional Environment Programme (ASEP II), 1983–1987 Bangkok Declaration on the ASEAN Environment, 1984 ASEAN Sub-regional Environment Programme (ASEP III), 1988–1992 ASEAN Declaration on Heritage Parks and Reserves, 1984 Agreement on the Conservation of Nature and Natural Resources, 1985 Jakarta Resolution on Sustainable Development, 1987

(continued)

Table 19.1 (Continued)

<i>Decade</i>	<i>Global environmental milestones</i>	<i>Developments in ASEAN</i>
1990s	Rio Conference on Environment and Development, 1992	Kuala Lumpur Accord on Environment and Development, 1990 Singapore Resolution on Environment and Development, 1992 Bandar Seri Begawan Resolution on Environment and Development, 1994 Jakarta Declaration on Environment and Development, 1997 Regional Haze Action Plan, 1977 ASEAN Strategic Plan of Action on the Environment, 1994–1998 ASEAN Cooperation Plan on Transboundary Pollution, 1995 ASEAN Strategic Plan of Action on the Environment, 1999–2004 Hanoi Plan of Action, 1999–2004 ASEAN Cooperative Plan on Transboundary Pollution, 1995 ASEAN Regional Haze Action Plan, 1997 ASEAN Plan of Action for Energy Cooperation, 1999–2004 Yangon Resolution on Sustainable Development, 2003 ASEAN Hanoi Plan of Action, 1999–2004
2000s and beyond	World Summit on Sustainable Development, 2002 United Nations Conference on Sustainable Development, 2012	ASEAN Declaration on Heritage Parks, 2003 ASEAN Vientiane Action Programme, 2004–2010 ASEAN Agreement on Transboundary Haze Pollution, 2004 ASEAN Strategic Plan of Action on Water Resources Management, 2005 Agreement on the Establishment of the ASEAN Centre for Biodiversity, 2005 ASEAN Regional Action Plan on Trade in Wild Fauna and Flora, 2005–2010 Cebu Resolution on Sustainable Development, 2006 Singapore Declaration on Climate Change, Energy and the Environment, 2007 ASEAN Declaration on Environmental Sustainability, 2007 Singapore Declaration on Climate Change, Energy and the Environment, 2007 ASEAN Declaration on Environmental Sustainability, 2007 ASEAN Declaration on the 13th session of the Conference of the Parties to the UNFCCC and the 3rd session of the CMP to the Kyoto Protocol, 2007 ASEAN Declaration on Environmental Sustainability, 2007 Ministerial Statement of the Inaugural EAS Environment Ministers Meeting, 2008

Table 19.1 (Continued)

Decade	Global environmental milestones	Developments in ASEAN
		ASEAN Environmental Education Action Plan, 2008–2012
		ASEAN Joint Statement on Climate Change to COP-15 to the UNFCCC and CMP-5 to the Kyoto Protocol, 2009
		Singapore Resolution on Environmental Sustainability and Climate Change, 2009
		China ASEAN Strategy on Environmental Protection Cooperation, 2009–2015
		ASEAN Leaders' Statement on Joint Response to Climate Change, 2010
		ASEAN Leaders' Statement on Climate Change to COP-17 to the UNFCCC and CMP-7 to the Kyoto Protocol, 2011
		Bangkok Resolution on ASEAN Environmental Cooperation, 2012
		New Delhi ASEAN–India Ministerial Statement on Biodiversity, 2012
		Joint Statement of ASEAN Environment Ministers for the 11th Meeting of the Conference of the Parties to the Convention on Biological Diversity, 2012
		ASEAN Environmental Education Action Plan, 2014–2018

Pre-ASEAN Charter era

ASEAN's environmental agenda started in 1978 (just about a decade after its establishment in 1967), not long after the modern era of international environmental protection at the Stockholm Conference on the Human Environment in 1972 (United Nations, 1972). As we trace ASEAN's environmentally sustainable development journey over some 35 years, we see a pattern from cooperation, through soft harmonization, at times morphing into hard integration but more often towards soft integration.

Emergence of ASEAN environmental protection regime

When ASEAN was established in 1967 the word 'environment' did not appear in the ASEAN Declaration, as the formation of ASEAN was mainly for political (security) and economic reasons. The turning point was in 1976, after the Stockholm United Nations Conference on the Human Environment (United Nations, 1972), when the United Nations Economic and Social Commission for Asia and the Pacific sent a team to the five founding ASEAN member states (Indonesia, Malaysia, the Philippines, Singapore and Thailand) to determine the environmental issues confronting them. On the data collected, the ASEAN Experts Group on the Environment, in collaboration with the United Nations Environment Programme, drafted the ASEAN Sub-regional Environment Programme (ASEP I) in 1978, which was subsequently updated to ASEP II and ASEP III.

The ASEPs (Phases I–III, 1978–1992) consisted of the following: environmental management, including environmental impact assessment; nature conservation and terrestrial ecosystems;

marine environment; industry and environment; environmental education and training; and environmental information. The next stage was to update the ASEPs in the ASEAN Strategic Plan of Action on the Environment (ASP AE), 1994–1998, comprising ten strategies that responded to the recommendations of Agenda 21 requiring priority action. This demonstrates that ASEAN considered itself part of the global environmental governance system. The objectives of ASP AE included the notion of environment and development ('integration of environmental factors in development processes'), in line with the theme of the Rio Conference on Environment and Development (United Nations, 1992) (Koh, 2007).

Then ASEAN adopted the ASEAN Hanoi Plan of Action 1999–2004 (AHPA) (Koh, 2009) and the ASEAN Vientiane Action Programme 2004–2010 (VAP). The AHPA and VAP covered the priority environmental issues in ASEAN and can be considered a continuum from ASEPs up to the year 2010, with refinements at different stages. As for the AHPA, it focused on a number of factors aimed at bringing about ASEAN's progress on regional cooperation/integration. These included strengthening coordination among member countries, laying down completion dates for urgent issues such as the Indonesia Haze, and identifying crucial environmental issues (Habito *et al.*, 2004). In the 2003 Declaration of ASEAN Concord II (Bali Concord II), heads of ASEAN member states decided that an ASEAN Community shall be established and that there will be three communities, namely ASEAN Security Community (ASC), ASEAN Economic Community (AEC) and ASEAN Socio-Cultural Community (ASCC) (ASEAN, 2003a). All these go towards the attainment of the ASEAN Vision 2020. Environment has been included under the framework of ASCC, as well as, indirectly, the ASC and AEC. The VAP was replaced by the ASCC Blueprint (together with the other community blueprints) when it came into force in 2009, soon after the ASEAN Charter.

Further shaping of ASEAN environment: influence of global environmental awareness

This era saw a number of policy formation initiatives, including sustainable development, re-affirmation of the need for rapid economic growth and recognition of the complex relation between trade and environment. The remarkable feature is the persistent presence of the environment in the ASEAN agenda, notwithstanding that it has not, as yet, occupied priority in the regional political discourses.

The 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 ASP AE, 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 had in fact been reflected in Phase I of ASEP as far back as 1978. These and other ASEAN instruments on policy imperatives for a sustainability transition in environment and development focused on incorporating environmental factors into economic evaluations. There were numerous soft law instruments, but many of them were recurrent themes. They dealt with the six priority areas, including nature conservation and biodiversity, marine environment, industry and the environment, and environmental education. Subsequently, other emerging issues – such as water, sustainable cities, climate change and cultural heritage – were added.

In the early 1980s, the main emphasis, as stated in the Manila Declaration of 1981, the first regional instrument on the environment in ASEAN, was on strengthening regional cooperation and collaboration for ensuring the protection of the environment and the sustainability of natural resources for sustaining continued development (ASEAN, 1981).

In 1985, in the Agreement on the Conservation of Nature and Natural Resources, ASEAN was well ahead even of the 1987 Brundtland report, *Our Common Future*, which defined 'sustainable development' (World Commission on Environment and Development, 1987). ASEAN incorporated the 'fundamental principle' of sustainable development to adopt in conservation and development (Koh, 2005). This was unsurprising, as technical assistance was provided by the International Union for Conservation of Nature (IUCN) Environmental Law Centre in Bonn, and a number of the drafters were in the Brundtland Commission. Unfortunately, the Agreement was too far ahead of its time to be ratified by its then member states (see below) (Koh, 2005).

In the 1987 Jakarta Resolution on Sustainable Development, ASEAN countries stated that it is imperative for the people of ASEAN to continue and accelerate their development processes, and that development processes can only be sustained if the availability of natural resources is similarly sustained. The concept of sustainable development continued to shape other instruments. An illustration is the Kuala Lumpur Accord on Environment and Development, which was issued by the ASEAN Ministers of the Environment meeting for the Ministers of the Environment on 19 June 1990. This was a very important meeting, as ASEAN developed a 'common ASEAN position' to be presented to the Ministerial Level Conference on the Environment for the Pacific, which was to be presented to the United Nations Conference on Environment and Development, in Rio de Janeiro in 1992 (United Nations, 1992). In the Accord, ASEAN 'affirmed its commitment to the pursuit of sustainable development'. Also, ASEAN agreed to take steps for environmental management, including the formulation of an ASEAN strategy for sustainable development and a corresponding action programme, the harmonization of environmental quality standards, the harmonization of transboundary pollution prevention and abatement practices and the promotion of the use of clean technologies. It also agreed to take concrete steps pertaining to natural resource management (ASEAN, 1990).

Just before the Rio conference, the Singapore Resolution on Environment and Development (18 February 1992) recognized that sustainable development, especially the management of the environment, required close regional and global cooperation. It also affirmed the need for harmonization of policy directions and stepped up operational and technical cooperation on transboundary environmental matters (ASEAN, 1992).

These various policies were mainly focused on an integrated approach to implement an ASEAN development strategy to harmonize environmental quality standards, as well as transboundary pollution prevention and abatement practices (Koh and Robinson, 2002). Policy guidelines are mainly targeted at environmental management, nature conservation, marine conservation, education and training, environmental legislation, enhanced ASEAN joint action and international cooperation (Koh and Robinson, 2002).

As stated earlier, ASEAN responded to the Rio conference in the ASPAE of 1994–1998. It had as one of its objectives a response to specific recommendations of Agenda 21 requiring priority action. An example is the 1994 Bandar Seri Begawan Resolution on Environment and Development, which highlighted the importance of the implications of the ASEAN Free Trade Area on the environment, recognizing the importance of integrating sound trade policies with sound environmental policies following the signature of the Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area in Singapore on 28 January 1992 (ASEAN, 1994).

However, the absence of any legally binding commitment at the regional level for the protection of the environment was a serious obstacle in promoting intra-regional cooperation on trade and investment that potentially undermines the environmental protection of the region (Dosch, 2010). Despite recent initiatives for introducing a legal framework for trade liberalization, 'the

protection of the environment and the sustainable use of resources regularly take a backseat in the industrialization process' (Dosch, 2010). Similarly, free trade agreements between ASEAN and other countries also do not have provision for environmental protection. For example, because of the ASEAN China Free Trade Agreement (ACFTA), the trade in natural resource-based products between some ASEAN countries and China is increasing, creating serious concern over environmental pollution and the depletion of natural resources (Vutha and Jalilian, 2008). The problem is further intensified by the absence of clear provisions concerning environmental protection in the ACFTA (Vutha and Jalilian, 2008).

Ten years on, in 2002, the World Summit on Sustainable Development (WSSD) was held in Johannesburg (United Nations, 2002). After WSSD, ASEAN further shaped its environmental agenda. In the Yangon Resolution on Sustainable Development, ASEAN affirmed the Johannesburg Plan of Implementation of WSSD, which provided an effective framework for international and regional cooperation based on the principle of common but differentiated responsibilities. It also recognized that ASEAN Vision 2020, the Hanoi Plan of Action and its succeeding plans of action provide the regional framework for ASEAN in response to emerging needs and international developments. It identified ten priority areas, including global environmental issues; land and forest fires and transboundary haze pollution; coastal and marine environment; sustainable forest management; sustainable management of natural parks and protected areas; freshwater resources; public awareness and environmental education; promotion of environmentally sound technologies and cleaner production; urban environmental management and governance; and sustainable development monitoring and reporting, along with database harmonization (ASEAN, 2003b). This was a refinement and continuum of the ASPAE.

Some other significant developments occurred in this phase. For example, in 2003, under the Declaration of the ASEAN Heritage Parks (AHPs), all ASEAN member states agreed to designate at least one ASEAN Heritage Park in each country to facilitate the implementation of the Convention on Biological Diversity, the Convention concerning the Protection of the World Cultural and Natural Heritage and the Ramsar Convention on Wetlands of International Importance, especially as waterfowl habitat (Koh and Karim, 2012). The number of AHPs has increased from the original 11 in 1984 to some 33 today and they form part of the world protected areas. In 2004, ASEAN issued the ASEAN Statement on CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora), highlighting six key areas of cooperation (ASEAN, 2004). Subsequently, the ASEAN Regional Action Plan on Trade in Wild Fauna and Flora 2005–2010 was launched at the Special Meeting of the ASEAN Ministers Responsible for the Implementation of CITES in Bangkok on 1 December 2005 (ASEAN 2005). Pursuant to this Plan, the ASEAN-Wildlife Law Enforcement Network (ASEAN-WEN) was established to promote networking among enforcement authorities in ASEAN and non-ASEAN regions to combat illegal trade in wildlife (Koh and Karim, 2012).

Global climate change is another critical issue in the ASEAN environmental regime. The 2006 Cebu Resolution on Sustainable Development expressed concern over the impact of climate change on ecosystems that require mitigation and adaptation measures to minimize the impacts particularly from flood, drought, landslide and other water-related hazards (ASEAN, 2006). The 2007 ASEAN Declaration on Environmental Sustainability determined that ASEAN should complement and support the efforts of global and regional organizations to tackle environmental issues related to climate change. It also recognized the importance of sustainable forest management in ASEAN, which will contribute significantly to the international efforts to promote environmental sustainability and to mitigate the effects of climate change as well as transboundary environmental pollution (ASEAN, 2007a). Again in the 2007 Singapore Declaration on Climate Change, Energy and the Environment, ASEAN and some extra-regional

states participating in the East Asia Summit agreed upon a detailed policy deliberation on the issue of climate change. In 2009, the Singapore Resolution on Environmental Sustainability and Climate Change elaborated a broad policy framework for climate change (ASEAN, 2009). These policy deliberations have been followed by regular submission of ASEAN joint declarations in subsequent conferences of parties of the UNFCCC. Climate change is beginning to take precedence in ASEAN and it can also be considered as a non-traditional security issue (Koh, 2012b).

Apart from these policy instruments and programmes, ASEAN also adopted two legally binding agreements: the 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources and the 2004 ASEAN Agreement on Transboundary Haze Pollution (ATHP). The following part briefly discusses these two legal instruments and complexities in their practical implementation. Discussion on these legal instruments may also be helpful in identifying the approach of ASEAN nations in establishing a rule-based regional environmental protection regime.

The ASEAN Agreement on the Conservation of Nature and Natural Resources and the ASEAN Agreement on Transboundary Haze Pollution

Although, at first glance, the two hard law instruments are different, considering them together reveals certain commonalities. The subject matter of the first is obviously natural resources. The second deals with the haze pollution caused by the clearing of forests and hence rich stretches of biodiversity being destroyed to make way for oil palm plantation, which is deemed to promote economic growth. The attitude towards these two instruments, particularly of Indonesia, brings to the fore the north-and-south divide about environment and development so forcefully articulated by the former Prime Minister of Malaysia, Mahathir Mohamad. However, Malaysia nonetheless ratified the ATHP as it was affected by the Indonesia haze.

Many wondered why the 1985 instrument has not entered into force even today, three decades on. There has been much speculation as to the reasons (see Koh, 2005; Tay, 2001). In brief, the ASEAN member states' delegates at the first meeting of the ASEAN Working Group on Environment (AWGE) in 1978 recommended the development of a legally binding regional agreement for the conservation of nature and natural resources. At the fifth meeting of AWGE in 1982, the meeting felt that the Convention would be difficult to implement and needed to be further studied by a Legal and Technical Experts Meeting. The Workshop of Legal and Technical Experts held in Manila on 3–5 November 1982 recommended and finalized the draft ASEAN Agreement on the Conservation of Nature and Natural Resources. The Environmental Law Centre and the Commission on Environmental Policy, Law and Administration of IUCN provided the technical assistance in designing and drafting the Agreement at the request of ASEAN member states (Koh, 2009). The main objectives of the Agreement were the conservation of wild flora, fauna and renewable resources through the protection of ecosystems, habitats and endangered species, and by ensuring sustainable use of harvested ones. In this Agreement, sustainable development was adopted as a goal, several ambitious joint and individual actions were envisaged and wide-ranging policy targets were provided (Koh, 2009).

The Agreement was adopted in 1983 at a meeting of ASEAN and it was signed by all six ASEAN member states of the time (Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand) on 9 July 1985. However, to date only three of the six signatory member states – Indonesia, the Philippines and Thailand – have ratified it; Singapore, Malaysia and Brunei are yet to ratify the Agreement. Despite widespread recognition of the Agreement, it is therefore yet to come into force. None of the non-ratifying countries gave any official reasons as to why

they have not ratified the Agreement, although they were asked to present a report as to the reasons for non-ratification. There may be a number of reasons behind this decision, one of which is that it was drafted by an external agency and not the ASEAN members themselves; hence, there was no 'ownership' of the document (Koh, 2005). The Agreement may be treated as an over-ambitious attempt inspired by international environmental players (Tay, 2001). Lack of capacity – technical knowledge and the expertise for implementation – may be another reason, as scientific research is needed to carry out various studies under the Agreement. It has also been claimed that in drafting the Agreement, international experts did not pay proper attention to either the ASEAN way or the ASEAN response to international and Western approaches to environmental protection (Tay, 2001).

Despite ASEAN acceptance of the environment as an issue in response to global environmental awareness, ASEAN states took a cautious approach in considering their national policies towards rapid growth and development and they responded to the global environmental protection movement with some reservations. ASEAN states generally opposed the anti-tropical-deforestation campaign and have considered it as eco-imperialism instigated by Western nations (Nguitrageol, 2010). Because of these reservations on the part of ASEAN politicians, despite serious institutional efforts for formation of an environmental regime, the environment has not achieved the status of a material issue within ASEAN regionalism discourses. In the first phase of development, the environment was always subsumed under the priority agenda of rapid economic development. Nevertheless, this phase can be treated as the first step for environmental regionalism and awareness in ASEAN. ASEAN's approach to the environment during this phase mainly concerned institutional development, marked by an increasing proliferation of dispersed activities and meetings in different fields (Nguitrageol, 2010). The ASEAN way promotes the soft law approach, and the development of environmental law not only in ASEAN but globally is inclined to soft laws for good reasons, as the dynamic and multidisciplinary nature (law, science, policy, economics and so on) of the environment requires constant amendments. Even a hard law instrument, such as the Convention on Biological Diversity, has soft law provisions that serve as guides and not legal rules.

During this phase the Indonesian haze occupied a great deal of attention because of its transboundary impact, which affected other parts of ASEAN – particularly Singapore and Malaysia (Koh, 2008; 2012d; Karim, 2008; Elliott, 2012; Nguitrageol, 2010). Since the early 1990s, forest fire has become a regular phenomenon in Indonesia, resulting in serious air pollution or haze in the region. In 1997–1998, some of the ASEAN countries suffered an unprecedented health and environmental catastrophe. This anthropogenic disaster also raised a question mark about the credibility and effectiveness of the ASEAN regional grouping (Karim, 2008). Between 1992 and 1997, ASEAN initiated a number of regional initiatives for combating forest fire and haze, including the establishment of a Haze Technical Task Force in 1995 to implement the 1995 ASEAN Co-operation Plan on Transboundary Pollution. But these initiatives clearly failed, and the ASEAN region faced a major haze incident in 1997–1998 (Karim, 2008). In the 1997 Jakarta Declaration on Environment and Development, the ASEAN ministers for the environment admitted that global economic growth and environmental challenges compelled ASEAN to seriously take into account the ecological impact on the national, regional and global economic growth. They also agreed to cooperate and render assistance, wherever available, to prevent and control all domestic sources of pollution and activities that could contribute towards transboundary pollution (ASEAN, 1997). At the ASEAN Ministerial Meeting on Haze held in Singapore on 22–23 December 1997, they adopted the Regional Haze Action Plan. However, none of these non-binding legal instruments was able to create any meaningful change (Karim, 2008).

The Indonesian haze provides an interesting example for analysing the limits and promise of regional environmental governance in ASEAN. Indonesia's persistent stand to resist assistance from ASEAN and other ASEAN states has been seen as a blot on ASEAN cooperation. Various reasons – many of which have been noted elsewhere (Koh, 2012d; Tay, 2001; Karim, 2008) – have been mooted for Jakarta's inaction, including the fact that the haze never reached the capital, Jakarta.

The haze problem should not be isolated from the broader issue of rampant deforestation. In the 1980s and the early 1990s, when international NGOs advocated for the conservation of forest, ASEAN nations seriously criticized them, considering this eco-imperialism. When ASEAN faced the serious problem of haze in the late 1990s, there was no strong regional framework for combating deforestation. Rather, deforestation had been perceived by regional policymakers as an unavoidable consequence of rapid growth and development.

In contrast to ASEAN's slow attempt to deal with haze in the early 1980s, until it got out of hand (coupled with Indonesia's non-cooperation), it acted with alacrity in dealing with zoonotic diseases. Since the outbreak of the two zoonotic diseases, within a short space of time – 2003–2005 – ASEAN formulated no less than 12 instruments and held numerous meetings, not only among its members but also with relevant international organizations and other countries, to solve the problem. The process is ongoing. The first occurrence of avian flu occurred in Hong Kong in 1997, when six of the 18 infected persons died. It led to the culling of the entire population of poultry. Avian flu occurred again in Hong Kong in February 2003 and affected other parts of Asia – namely, Cambodia, China, Indonesia, Japan, Laos, Malaysia, Pakistan, South Korea, Taiwan, Thailand and Vietnam (some of these countries are ASEAN members). Avian flu spread from Asia to the Middle East, Europe, Central Asia, Russia and Africa, and there was recurrence. At 12 April 2006, avian flu was known to have infected 192 people worldwide since 2003, killing 109 of them. The world was at risk of a pandemic. As the disease is transboundary, no one country can by itself effectively tackle the problem of public health, and cooperation is needed not only at the regional level but also globally.

It is clear why ASEAN acted with such alacrity – it has much to lose in terms of human and animal health and its economic impact. ASEAN collaborated not only with China, South Korea and Japan – ASEAN+3 – but also with international organizations such as the United Nations, the World Health Organization, the Food and Agriculture Organization of the United Nations and the World Organization for Animal Health to draft legal frameworks to put in place legal and administrative systems that seek to integrate the interface between animal and human health.

The main goals of the ASEAN cooperation are to prevent and contain avian flu; to reduce the risk to human and animal health and to strengthen regional networks' capacity for surveillance and response at the regional and national levels in epidemiological surveillance, early warning and response; and to prepare for a pandemic.

ASEAN Charter and beyond

The ASEAN Charter provides ASEAN with a legal personality, gives it more teeth and mechanisms for encouraging and strengthening compliance in all areas, including the environment, and enhances the development of ASEAN environmental law (Severino, 2005). The Charter has radically restructured the organizational framework in order to fulfil the ASEAN Vision 2020 of an integrated ASEAN, captured by the Preamble 'One Vision, One Identity and One Caring and Sharing Society'. In the context of environmental protection, the Preamble states: 'Resolved to

ensure sustainable development for the benefit of present and future generations and to place the well-being, livelihood and welfare of the peoples at the centre of the ASEAN community building process.’

One of the purposes of the ASEAN Charter is the promotion of sustainable development so as to ensure the sustainability of the region’s natural resources, the preservation of its cultural heritage and the high quality of life of its peoples.

Institutional restructuring to meet new and emerging environmental challenges

The post-Charter period took a leap forward in developing an ASEAN Community pursuant to ASEAN Vision 2020. The former organizational structure of ASEAN was largely restructured under the Charter. This is of significance, as there are new entities such as the ASEAN Coordinating Council, the ASEAN Foundation and the ASEAN Human Rights Body. These structures are aligned to the three pillars of political security, economic and socio-cultural affairs, and make for more effective cooperation and coordination of ASEAN’s environmental law, policy and governance. Also, the establishment of the ASEAN Intergovernmental Commission on Human Rights regime will advance the people-oriented approach, much in line with community-building.

The major restructuring of the governance was the establishment of the ASEAN Coordinating Council, which coordinates the three ASEAN Community Councils, each of which deals with mutually reinforcing the three pillars to enhance policy coherence, efficiency and cooperation. As a region, ASEAN has to increase its participatory role in shaping international issues as well as its own. ASEAN had reached its 40th anniversary and was at a critical turning point. To move forward – to remain in the driving seat in regional cooperation – it had to have a legal framework and a sophisticated governance system, including a strong reporting system and an effective Secretariat with monitoring powers, among other things. It had to address the growing challenges and opportunities of regional integration and Asia’s widening links with the rest of the world (ASEAN, 2007b).

Over the years, ASEAN has established an institutional framework for environmental cooperation. The organizational structure for environmental cooperation consists of the ASEAN Summit (ASEAN heads of state/government), the ASEAN Socio Cultural Community Council, the ASEAN Ministerial Meeting on Environment, the Secretary General of ASEAN, ASEAN Senior Officials on the Environment (ASOEN) and the ASEAN Secretariat (ASCC Department). The ASEAN Secretariat has an Environment Unit. Apart from the main environmental units, there are also specific centres dealing with specific issues, such as the ASEAN Coordinating Centre for Transboundary Haze Pollution Control, the ASEAN Centre for Energy, the ASEAN Centre for Biodiversity, the ASEAN Centre for Disaster Management and the ASEAN Coordinating Centre for Humanitarian Assistance. Moreover, ASEAN has other mechanisms, such as ASEAN+3, the ASEAN Regional Forum, the East Asia Summit and its Dialogue Partners (for example, the European Union, Australia, Canada, India and the United States) to strengthen its role in shaping regional as well as global environmental governance, in light of the interconnectedness of environmental issues. These organizations provide technical assistance and financial support, facilitate the exchange of information, conceptualize projects and cooperate in and address regional and global challenges. Some of these were established before the adoption of the ASEAN Charter.

Prior to the ASEAN Charter, the roles of the ASEAN Secretariat and the Secretary-General were limited. For example, the Secretary-General had no powers to monitor. The Charter has

vested the Secretary-General, together with two Deputy Secretaries-General, with more powers and the office is expected to play a greater role in stepping up regional integration and international collaboration and cooperation. One weakness of the Charter is that the recommendation of the Eminent Persons Group for a calibration of decision-making was not accepted. The ASEAN way is retained (Article 20), but Article 2(g) speaks of 'enhanced consultations on matters seriously affecting the common interest of ASEAN'. This sounds like the 'flexible engagement' or 'enhanced interaction' earlier mentioned. Article 5(2) also calls upon member states to take measures and enact internal legislation to implement the provisions of the Charter effectively and to comply with all obligations of membership. Ambassador Tommy Koh (one of the drafters of the Charter) and others said that the ASEAN way 'will be supplemented by a new culture of adherence to rules' (Koh *et al.*, 2007). The strengthening of environmental governance under the ASEAN Charter will enable ASEAN to meet future environmental challenges as outlined in the 13th ASEAN Summit, which adopted the ASEAN Plus Three Cooperation Work Plan (2007–2017). The Work Plan calls for closer cooperation in the area of environment and sustainable development, including with regard to transboundary pollution, biodiversity and water resources (ASEAN, 2007c).

One of the recent developments that ASEAN has shaped is the securitization of transnational/transboundary challenges, including transboundary environmental issues. It adopts comprehensive security through the non-traditional security approach under Pillar 1 (Political-Security Community Blueprint) (Koh, 2012b). However, how this is being played out in the ASEAN way – and whether it will make an inroad – is yet to be seen (Koh, 2012b).

Many of the above programmes are being continued through the various ASEAN working groups. Reports are mixed – some areas are slow, while others are more progressive. ASEAN has recently issued common stands on REDD and REDD+ (Koh, 2012c), and is actively playing a role in the UNFCCC negotiation process. Other areas that are active include ASEAN-WEN, as illegal trade in endangered species has burgeoned into syndicated multimillion-dollar businesses. This trade has also threatened the security of the state, as it may be associated with drug trafficking and other organized crime (Koh and Karim, 2012).

Roadmap for an ASEAN Community (2009–2015) and environmental protection

The Roadmap consists of five instruments, all of which are mutually reinforcing:

- the Cha-am Hua Hin Declaration on the Roadmap for the ASEAN Community (2009–2015);
- the ASEAN Political-Security Community Blueprint (Pillar 1);
- the ASEAN Economic Community (AEC) Blueprint (Pillar 2);
- the ASEAN Socio-Cultural Community (ASCC) Blueprint (Pillar 3); and
- the Initiative for ASEAN Integration (IAI) Strategic Framework and IAI Work Plan 2.

The main thrusts of ASEAN's environmental strategies are contained in section II.D of the ASCC Blueprint. It identifies 11 important issues, including combating transboundary environmental pollution, combating transboundary movement of hazardous wastes, capacity-building, enhancing public awareness, strengthening law enforcement, promoting environmentally sustainable practices and the implementation of the ASEAN Agreement on Transboundary Haze Pollution as its strategic objective to achieve the ASCC. Other aspects on environment are also found in the other pillars.

There was a proposal from the ASEAN Civil Society Organisation (CSO) to create a fourth pillar on the environment instead of having it subsumed under Pillar 3, as it is now. However, ASEAN member states preferred the present arrangement, having regard to the fact that all three pillars are mutually reinforcing. Environmental activists prefer a separation in a fourth pillar, arguing that the environment deserves special attention because of the emerging challenges of climate change and other environmental disasters (ASEAN Peoples Forum, 2011; Solidarity for Asian Peoples' Advocacies, 2011). However, policymakers are still not in favour of this approach, arguing that it may open a 'Pandora's Box' for ASEAN – and giving a perfect opportunity for other activists, such as those in the human rights arena, to raise similar claims (Solidarity for Asian Peoples' Advocacies, 2011). Despite growing awareness and importance, the environment is yet to become a priority issue in its own right in the policy agenda of ASEAN.

The shadow of ASEAN nations' historical reservations regarding the global environmental movement still haunts ASEAN policymakers. However, by saying this, we are not claiming in this chapter that incorporating the environment as the fourth pillar in the ASEAN Charter or establishing the ASEAN Environment Community is a panacea. The most important issue is considering the environment as ASEAN's own issue, rather than considering it as something imposed by external or extra-regional actors. As discussed earlier, this attitude of ASEAN member nations significantly limits its ability to combat regional transboundary environmental problems such as the Indonesian haze because when the Indonesian haze emerged as a major environmental issue in the late 1990s, the environmental conservation movement or anti-tropical-deforestation movement was facing a serious attack from regional leaders and hence lacked legitimacy.

Construction of dams and energy

ASEAN, together with the rest of the world, is committed to the UNFCCC and the Kyoto Protocol as the core mechanism for addressing climate change, as demonstrated in the Singapore Declaration on Climate Change, Energy and the Environment. However, rapid economic development, while contributing to sustainable development and poverty eradication, poses new challenges in dealing with greater energy consumption. To this end, dams for hydropower have been and are being constructed, particularly in the Lower Mekong River. Even though some of the dams have raised questions as to the environmental impacts on the Mekong River – a shared water basin among some of the ASEAN member countries – construction continues, albeit with some modifications that are inadequate to deal with the negative impacts. The recent construction by Lao PDR of the Xayaburi dam, a hydroelectric dam on the Lower Mekong River in Northern Laos, was met with complaints from downstream Cambodia and Vietnam, but construction has continued (International Rivers, 2013).

The way forward

Poverty and underdevelopment in parts of ASEAN may be responsible for environmental degradation in the region. The relationship between poverty and environmental degradation is now well documented in international policy documents (World Commission on Environment and Development, 1987). The poor are both victims and committers of environmental pollution. They often destroy natural resources to ensure their own survival and there is a vicious circle of underdevelopment, poverty and environmental degradation. One should

not anticipate that people will conserve rainforests while they are going hungry (Alam and Karim, 2011). ASEAN policies reflect this reality. The 2011 ASEAN Roadmap for the Attainment of the Millennium Development Goals (MDGs), which mirrors ASEAN's commitment to building a caring and sharing ASEAN Community by 2015, synergizes with the ASCC. The Roadmap seeks to establish monitoring and evaluation, and to create networks for the attainment of the MDGs. It identifies the key areas of collective action and integration of the MDGs regionally. The Roadmap programme urged that ASEAN shall ensure that this Roadmap and the corresponding Action Plans of the ASCC Blueprint can realistically be funded. It also identified that one entry point to commence this enhanced development cooperation could be the environment goals of the MDGs, as all ASEAN member states are dealing with environmental issues such as climate change, carbon dioxide emissions and forest cover. The Roadmap also highlighted that the environment is a shared public good (ASEAN, 2011).

ASEAN has recently reaffirmed its environmental commitments in the 2012 Bangkok Resolution on ASEAN Environmental Cooperation, adopted in the 12th ASEAN Ministerial Meeting on the Environment. The Resolution stated that ASEAN would further strengthen its regional cooperation on natural resources and environment for sustainable development and regional integration and the realization of the ASCC. The ministers also agreed to, among other things, continue efforts to establish a balance among economic growth, social development and environmental sustainability; strengthen ASEAN's commitments for the attainment of the MDGs; accelerate the implementation of the outcomes from the Rio+20 United Nations Conference on Sustainable Development (United Nations, 2012); contribute actively towards the agreed outcome under the UNFCCC; and continue to work closely with dialogue partners to address existing and emerging global environmental issues. The meeting also adopted the ASEAN Action Plan on Joint Response to Climate Change, which aims to implement the ASEAN Leaders Statement on Joint Response to Climate Change adopted at the 16th ASEAN Summit in April 2010 in Hanoi.

Other commitments include the Joint Statement of ASEAN Environment Ministers for the Eleventh Meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD COP-11) in October 2012, highlighting ASEAN's position towards a positive and equitable outcome at CBD COP-11. It urged parties to the CBD to develop domestic legislative, administrative and policy measures on access and benefit sharing in contributing to the conservation and sustainable use of biological diversity, poverty eradication and environmental sustainability following the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity. The ministers reviewed national, sub-regional and regional activities to address land and forest fires in the region and their associated transboundary haze pollution. They welcomed the significant progress in the implementation of the Work Programme of the ASEAN Agreement on Transboundary Haze Pollution, including concrete on-the-ground activities; the progress in the development of the ASEAN-wide Fire Danger Rating System; the implementation of the ASEAN Peatland Management Strategy (2006–2020); and the implementation of Strategic Review on Sub-Regional Ministerial Steering Committee (MSC) on Transboundary Haze Pollution programmes. However, they expressed serious concern regarding the report of the ASEAN Specialised Meteorological Centre, which showed a significant increase in forest fire hotspots in the region in 2012.

The ministers noted progress in the implementation of the project on Rehabilitation and Sustainable Use of Peatland Forests in Southeast Asia (funded by the Global Environment

Facility) and the SEApeat Project (funded by the European Union), including the various activities conducted at the pilot sites in Indonesia, Malaysia, the Philippines and Vietnam. They encouraged international and regional collaborative partnerships to support this project, which seeks to address climate change and biodiversity loss through mitigation of land and forest fires. Other progress was noted in the completion of the ASEAN Environmentally Sustainable Cities Model Cities (Year 1).

Another issue that has not been elaborately discussed in this chapter is the role of ASEAN in environmental issues involving ASEAN states and neighbouring states. For example, ASEAN countries have a number of conflicting and unresolved issues with China. In 2009, the Ministry of Environmental Protection of China and ASEAN member states jointly developed the China ASEAN Strategy on Environmental Protection Cooperation 2009–2015.

Conclusion

ASEAN continues to be committed to, and is actively working for, the development of a regional environmental governance system as part of the global system. However, some of the more forward-looking approaches – such as the non-traditional security approach, the whole-of-ASEAN approach and the whole-of-the-world approach – required in dealing with new and emerging challenges, such as zoonotic diseases, disaster management and transboundary environmental challenges, have not been fully tested and need to be further refined and developed. But much of the law and architecture are in place and can take off.

ASEAN also requires the political will of its member states to work in tandem with the regional level of ASEAN in order to implement ASEAN's initiatives. The environment is yet to be fully recognized as a material issue under an independent pillar, rather than subsumed under the ASEAN Socio-Cultural Community. Be that as it may, there is a need to develop ASEAN's environmental governance alongside its political, security, social and economic governance. ASEAN also needs to narrow the development divide between its upper-middle-income members and the CLMV countries (Cambodia, Lao PDR, Myanmar and Vietnam) to ensure environmental sustainability (Initiative for ASEAN Integration (IAI) Strategic Framework and IAI Work Plan 2 (2009–2015)). ASEAN and its member states must take a proactive approach in light of new norms and emerging environmental issues such as climate change, sea-level rise and food and water security. The evolutionary approach of the ASEAN way is outdated in most areas.

ASEAN has put in place numerous environmental instruments that can 'take off' and be implemented by member states, given the political will, funding and technical and organizational capacity. However, for effective regional environmental governance, ASEAN needs to be more cohesive and the ASEAN Community of 2015 and beyond requires enhanced cooperation, harmonization and integration.

Note

- 1 Some information in this chapter has been taken from our previously published paper: see Koh and Karim, 2012.

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