

Helena VARKKEY

Department of International and Strategic Studies
Universiti Malaya

ASEAN AS A 'THIN' COMMUNITY: THE CASE AGAINST ADOPTING THE EU ACID RAIN FRAMEWORK FOR TRANSBOUNDARY HAZE MANAGEMENT IN SOUTHEAST ASIA¹

Transboundary haze is a recurring problem in Southeast Asia. Academic discussion has focused largely on the failure of ASEAN to promote effective regional cooperation on the issue. On the other hand, EU action in the 1980s had been successful in mitigating acid rain at the regional level. The two cases are similar - both are anthropogenic pollution problems that originated in particular states in the region, but which effects were felt more severely in neighbouring states. Furthermore, both regions have institutionalised organisations in which all concerned states are members. Therefore, scholars have often looked towards the European experience with acid rain as a potential framework for effective ASEAN action over the haze. However, this paper argues that this strategy is misguided. This is because, unlike the 'thick' EU community with pooled sovereignty and sufficient clout to influence regional outcomes, ASEAN is a 'thin' community which was designed to advance the individual national interests of its member states. Therefore, ASEAN-level haze mitigation programmes cannot be expected to be effective in the same way that acid rain programmes have been in Europe. Thus, this article suggests that haze abatement in Southeast Asia should not depend solely, or even mainly, on regional action.

Keywords: ASEAN, European Union, community, transboundary pollution, acid rain, haze, environmental cooperation, regional cooperation

Introduction

Scholarship on the Association of Southeast Asian Nations (ASEAN) and Southeast Asia has unsurprisingly encouraged comparative analysis with other regional organizations, most often with the European Union (EU). Both ASEAN and the EU seem to have substantial similarities: a preference for consensus-based outcomes, a love for informal arrangements, durable expectations for mutual consultation and responsiveness, and non-instrumental

¹ The author would like to sincerely thank the anonymous reviewer for his/her constructive comments and suggestions.

reasons in trying to accommodate each other². Therefore, it is understandable that the literature has seen arguments that ASEAN is developing, or should develop, ‘in the footsteps’ of the EU³. For instance, Adler⁴ states that Southeast Asia is in the process of developing a ‘tightly coupled security community’ like the EU. EU agencies themselves see enough workable similarities to actively promote and encourage the adoption of regional integration norms in Southeast Asia that refer back to EU’s own integration experience⁵. However, the employment of the European experience as an archetype for Southeast Asia is a problematic aspect of the discourse of regionalism in Southeast Asia⁶.

This is especially so in the case of transboundary pollution in the region. In the scholarship on transboundary haze in Southeast Asia, the European experience on acid rain is often held up as a parallel example, and the EU’s more successful efforts, like the Convention on Long Range Transboundary Air Pollution (CLRTAP) within the Clean Air for Europe (CAFE) programme are often seen as a benchmark for ASEAN action over the haze. The physical parallels of the European transboundary acid rain problem and the regional haze in Southeast Asia are immediately apparent. Here were two anthropogenic pollution problems that originate in particular states in the region, but which effects were felt more severely in neighbouring states. These physical similarities, and Europe’s success in abating acid rain, has led to the suggestions that the framework should be extended to Southeast Asia in addressing the haze issue⁷, especially since ASEAN has to date been unable to effectively mitigate the regional haze. European scholars like Brachtl⁸ even helpfully note that since developing countries (like most ASEAN countries) are less likely than their industrialized counterparts to be able to deal effectively with transboundary pollution, and are also more likely to suffer from the ill effects of polluting emissions, they should be encouraged to adopt hence the adoption of existing successful models.

This paper aims to refute these claims and argues that the successes and failures of transboundary haze management in Southeast Asia do not depend solely, or even mainly, on regional action. This paper’s argument is: ASEAN cannot be held to blame for the persistence of the haze because ASEAN was not designed to be a ‘thick’ community with pooled sovereignty, and thus

2 Lewis, J. 2009. ‘The Impact of Institutional Environment on Negotiation Styles in EU Decision Making.’ Dublin: UCD Dublin European Institute.

3 Nair, “Regionalism in the Asia Pacific/East Asia”, pp. 110-142

4 Adler, E. 1997. ‘Imagined (Security) Communities: Cognitive regions in International Relations.’ *Journal of International Studies*, 26, 249.

5 Murray, P. 2010. ‘The European Union as an integration entrepreneur in East Asia - Yardstick or cautionary tale?’ Paper presented at Australian Political Studies Association Conference. 27-29 September.

6 Nair, “Regionalism in the Asia Pacific/East Asia”, pp. 110-142

7 Eaton & Radojevic, “Forest Fires and Regional Haze in Southeast Asia”, p. 336

8 Brachtl, “Capitalising on the Success of the Long-Range Transboundary Air Pollution (LRTAP) Regime to Address Global Transboundary Air Pollution”, p. 3

sufficient clout, to influence national outcomes on the haze. Therefore, this paper argues that scholarly comparisons and suggestions for the ASEAN haze regime to evolve in the spirit of the European model for acid rain abatement, while not wrong, would be insufficient in conclusively mitigating the haze issue in the region. Within the EU, as a thick community, regional level directives are easily and willingly absorbed into national practice. On the other hand, ASEAN is *by design* a thin community. Therefore, regional level directives can be tainted by dominant national interests. By its very nature, ASEAN is not designed to be able to conclusively solve regional problems like the haze, regardless of weak or strong mechanisms.

This paper is divided into two main sections. The first section discusses the concepts of thick and thin community in the literature, and details the comparative scholarship of these two regions to show that unlike the 'thick' EU community, ASEAN was explicitly designed as a 'thin' community with limitations on collective action. The second half of this paper discusses acid rain and its management within the EU, and how scholars have tried to export this model as suggestions for the transboundary haze problem in ASEAN. It then argues that given the nature of the ASEAN 'thin' community, scholarly focus on regional solutions for haze are misguided.

Thick and thin community

Ferdinand Tonnies⁹, one of the earliest social philosophers to engage with the idea of community, introduced the terms *Gemeinschaft* and *Gesellschaft* to describe the motives that explain the existence of all kinds of collectives, or cause their persistence. He calls all kinds of collectives in which natural will predominates as *Gemeinschaft*, and all those which are formed and fundamentally conditioned by rational will as *Gesellschaft*. The social collective has the characteristics of *Gemeinschaft* in so far as the members think of such a grouping as a gift of nature or created by a supernatural will. The example given here is the Indian caste system. *Gesellschaft* in turn develops out of the needs, interests, desires and decisions of persons who previously worked cooperatively together and are acting and dealing one with another. The collective here is seen as a means and tool to be used in bettering the members' conditions. Tonnies does, however, note that motives can fluctuate so that a collective can now be of one category, then of another.

Herbert¹⁰ updates Tonnies' *Gemeinschaft* and *Gesellschaft* concepts by referring to 'thick' and 'thin' community. Thick community, roughly correlating with *Gemeinschaft*, is a repository of values to sustain a group's moral fabric which provide meaning and direction for community members (community

9 Tonnies, F. 1955. 'Gemeinschaft und Gesellschaft.' In C. P. Loomis (Ed.) *Community and Association*: 3-29. London: Routledge & K. Paul.

10 Herbert, S. 1997. *Citizens, Cops and Power*. Chicago: The University of Chicago Press.

as recovered). Here, the goal of community action is to acknowledge those extant values and reinforce them. In a thick community, there is a universe of possibilities in inherent communal politics (community as discovered), where community members come together to create an inclusive and open-ended politics by exploring a range of political avenues in a capacious and respectful fashion. It is through deliberation that members of the community can come to discover or create a common good. Thin community, correlating to *Gesellschaft*, is seen as much looser and more occasional confederations of like-minded individuals who are capable of coming and going from a range of such possible confederations. Therefore, communities sometimes come together, sometimes not. Such communities have fewer claims on the moral and political grounding of members. Such a community would structure politics in the most general way possible, by avoiding the endorsement of a particular moral schema. This will yield procedures that are widely acceptable and commodious and that rely upon publicly defensible reasons for their perpetuation. In short, *Gesellschaft* omits the notion of a common identity¹¹.

While these references to community do not necessarily refer to communities of states, these categorizations can, and have been used to describe regional state groupings. Palmujoki¹² contextualizes these definitions within the regionalism literature in terms of old and new; old regionalism is characterized by the tendency towards integration, federalism, and diminishing national sovereignty while new regionalism is driven by nationalism and interdependence¹³. Quite obviously, the regions of interest to this paper, the EU and ASEAN fit into different categorizations. The EU can be considered a thick community in the spirit of old regionalism, while ASEAN is very much a thin community¹⁴ along the lines of new regionalism, as is discussed in the following sections.

EU's 'thick' community

In Europe, EU institutions play a more important role in controlling the union and its development¹⁵. A central characteristic of European integration is that the concepts of 'formal sovereignty' and federalism have burst their original legal boundaries to become ideological tools in the definition of identity and belonging; as a result it has become a more inward-looking community. The coherence of European regionalism has been a pragmatic outcome of specific

11 Adler, "Imagined (Security) Communities", p. 249

12 Pallemerts, "The Politics of Acid Rain Control in Europe", p. 3

13 Sutherland, C. 2005. 'Another nation-building bloc? Integrating nationalist ideology into the EU and ASEAN.' *Asia Europe Journal*, 3, 141-57.

14 Warleigh-Lack, A. 2009. 'The EU in Comparative Perspective: Comparing the EU and NAFTA.' Paper presented at 3rd EUCE Conference. 26-28 April 2009, Emmerson, D. 2005. 'Will the Real ASEAN Please Stand Up? Security Community, and Democracy in Southeast Asia.' Paper presented at Southeast Asian Forum.

15 Sutherland, "Another nation-building bloc?", pp. 141-157, Nair, "Regionalism in the Asia Pacific/East Asia", pp. 110-142

historical experiences, one where the role of the Second World War and the Cold War was decisive. This has been complemented by the current dynamics of globalization that has further created rationales for deeper inward-looking institutionalization.

Thick community-building as seen in the EU refers to the social construction and institutionalization by means of shared normative structures, facilitate the channeling of material resources in the direction of shared transnational goals, promote political, economic, and social transactions, and play a role in fostering the development of transnational identities and the 'we feeling'. Multilateral communication in this context helps thicken the social environment, building a sense of regional interests, through the close identification of regional good with the good of individual states¹⁶. The resulting organization should matter to its members emotionally, in shared identification with and loyalty to the organization, expressed in a clear and evident sense of community¹⁷.

The EU calls for the development of a strategic culture, which fosters early, rapid, and when necessary, robust intervention. National policy choices are shaped by collective strategic cultures, which are themselves the result of long and diverse historical experiences. EU decisions on institutions, policies and capabilities are based on growing ideological and cognitive homogeneity, connected to the aspirations of Europeans to accomplish political union¹⁸. Member states of the EU in fact voiced that being part of the European Union has actually made them realize that the European approach is better than what was considered as 'national interest'. Hence, the EU's institutional contexts have different combinations of insulation, scope, interaction intensity, and informal norms that support cooperative styles of negotiation by design. For example, in-camera (private) settings in the EU are specifically designed to build 'thick' trust and diffuse reciprocity to promote deliberation based on community rules¹⁹. These elements are markedly different in nature from the ASEAN type of community, as discussed below.

ASEAN's 'thin' community

In contrast to the EU, ASEAN cooperation remains (elite and) state-led²⁰. ASEAN's circumstances have led it to concentrate on regional benefits to members' 'external sovereignty'; a stronger international profile as part of a

16 Narine, "ASEAN and the management of regional security", p. 209

17 Emmerson, "Will the Real ASEAN Please Stand Up?", p. 15

18 Christoph, O. M. 2005. 'Convergence Towards a European Strategic Culture? A Constructivist Framework for Explaining Changing Norms.' 11, 523.

19 Lewis, "The Impact of Institutional Environment on Negotiation Styles in EU Decision Making", p. 6-21

20 Sutherland, "Another nation-building bloc?", pp. 141-157, Nair, "Regionalism in the Asia Pacific/East Asia", pp. 110-142

larger regional grouping, and the boost to national self-confidence this brings²¹. Therefore, a state and sovereignty-centered regionalism, steered by regional elites, emerged in the Southeast Asian context because it served pragmatic ends in the face of decolonization and nation-building, and remained viable in pursuing functional tasks²². Adler²³ notes that many contemporary multilateral institutional activities that ASEAN often engages in, like trade and economic regimes, are only indirectly linked to community-building. Instead, they respond to the instrumental logic of self-interested states that coordinate their policies on the basis of consensual principles of conduct; thus constructing a thin version of community.

The 'ASEAN Way' is premised on the principle of non-interference and often leads to the thinnest of lowest-common-denominator outcomes. Subscribing to this 'ASEAN Way' shields national governments from having to commit to addressing joint tasks that governments either find too demanding administratively, politically difficult if these went against dominant national interests, or not sufficiently important given a set of national priorities. In this way, ASEAN is expected to enable member states to pursue its national interests with minimal resistance, while ensuring that the regional atmosphere is healthy and supportive of this.

As a result, Lewis²⁴ notes that the underlying purpose and resulting institutional design of the two regional groupings is completely different. Therefore, scholars like Narine²⁵ argue that notions of a 'thickening' ASEAN community are premature. While scholars and policymakers often refer to Europe as a benchmark, some acknowledge that Europe's way is not directly transferrable to Southeast Asia; thus it is not relevant to the ASEAN experience²⁶. Contextual differences, such as ASEAN's ten-year time lag behind the EU, its relative lack of supranational authority, and lasting memories of colonialism further complicate such analysis²⁷. In these ways, many regard the EU as too particularistic and 'advanced' to constitute a useful comparator with ASEAN. Murray quotes Wheatley²⁸ pointing out that Southeast Asia 'is not about to set up an Asia Monetary Fund or sacrifice its sacrosanct principle of non-interference to create the institutional basis for anything that looks like a fledgling European Community'. Thus, the increasing use of decision-making by qualified majority voting would not easily find place in ASEAN.

21 Sutherland, "Another nation-building bloc?", pp. 141-157

22 Nair, "Regionalism in the Asia Pacific/East Asia", pp. 110-142

23 Adler, "Imagined (Security) Communities", p. 249

24 Lewis, "The Impact of Institutional Environment on Negotiation Styles in EU Decision Making", p. 6-21

25 Narine, "ASEAN and the management of regional security", p. 209

26 Sutherland, "Another nation-building bloc?", pp. 141-157

27 Sutherland, C. 2005. 'Another nation-building bloc? Integrating nationalist ideology into the EU and ASEAN.' *Asia Europe Journal*, 3, 141-57. Murray, "The European Union as an integration entrepreneur in East Asia", p. 12

28 Murray, "The European Union as an integration entrepreneur in East Asia", p. 12

An even looser version of a thin community is the 'imitation' community. This term was coined by Oakenshott²⁹ in the context of 'imitation states', to describe the incomplete nation building of many newly formed countries in the post-colonial world. Along these lines, Kedourie³⁰ argues that leaders of imitation states labour under strong feelings of insecurity generated by their lack of legitimacy. As the product of fake elections or military coups, their power does not rest on the loyalty of whom they rule. Jones and Smith³¹ propose that this concept can be translated to the regional community level. They argue that imitation states also produce 'imitation communities' that are essentially rhetorical and institutional shells that give form but no substance to domestic or regional arrangements.

Jones and Smith propose that ASEAN is not only a thin community, but it is a thin imitation community, made up of imitation states. As proof of this, they argue that ASEAN suffers from a gap between rhetorical aspiration and regional reality. For example, it is committed to regional neutrality and yet this non-aligned neutralism requires the semi-detached presence of the United States. They quote Leifer³² arguing that there is 'a general, if unstated, recognition that the community has neither the sense of common interest nor the resources to shape the future pattern of regional order'. This, however, won warm endorsement from ASEAN's ruling elite because this discourse of multilateralism was useful to sustain the fiction of a harmonious regional community that obscured attention from both existing tensions among ASEAN states and the internal divisions within the states. Furthermore, ASEAN imitation states are not under democratic pressure to justify their recognition of integration's benefits to its public, unlike the EU³³. ASEAN possesses all the paraphernalia that regional organizations require: media-attended ministerial meetings, a secretariat and a troika. Yet, it can make no decisions and enforce no rules. Based on this, ASEAN is then an imitation community; a convenient front for the needs of its members³⁴. This section will expound the notions of community-building used in ASEAN literature, and express how these can only be considered 'imitation communities', or thin forms of community at best.

It has been argued that the ASEAN Way, which many scholars credit for ASEAN's successes, is not conducive for thick community-building. This ASEAN Way process enables members to retain a degree of domestic policy

29 Jones, D. M. & Smith, M. L. R. 2006. *ASEAN and East Asian International Relations*. Glos: Edward Elgar.

30 Ibid.

31 Ibid.

32 Jones, D. M. & Smith, M. L. R. 2006. *ASEAN and East Asian International Relations*. Glos: Edward Elgar.

33 Sutherland, "Another nation-building bloc?", pp. 141-157

34 Jones & Smith, "ASEAN and East Asian International Relations", , pp. 56-72

autonomy³⁵ while maintaining an illusion of unity³⁶. The non-interference clause has enabled governments to exclude any issue deemed to be politically sensitive from ever being discussed at the regional level³⁷. And, if ASEAN cannot reach a consensus on a difficult issue, then no organizational stand is taken, and members agree to disagree, while enabling the organization to remain unified³⁸. In addition, the 'ASEAN minus x' principle enables individual member states to go further and faster individually without upsetting consensus³⁹. ASEAN also has no central institutions to uphold compliance or any credible mechanisms for settling disputes in an objective and binding manner⁴⁰. Deep, or 'thick' integration, coercive rules, and any serious erosion of the non-interference principle have been viewed as potentially divisive for the organization⁴¹. Therefore, while ASEAN leaders often credit the organization with maintaining peace in the region, ASEAN can be said to have contributed much more to *conflict avoidance* among its members than *conflict resolution*⁴².

Based on these observations, many scholars argue that Southeast Asian states are mostly motivated by narrow understandings of their self-interest; hence ASEAN remains an institution driven by the individual interests of its members⁴³. In most cases, the nations' self-interest reinforces a mutual stake in regional stability⁴⁴, but the developing economic and security interests of the individual ASEAN states could likely undermine the organization's functional coherence⁴⁵. Given each member's domestic concerns with religious, ethnic and other sectarian fault lines, none is expected to be his 'brother's keeper'⁴⁶. ASEAN states will not put considerations of ASEAN unity before their own concrete interests, and the support of the member states for the organisation remains dependent on the utility of the organization for its members⁴⁷.

35 Nesadurai, "The Association of Southeast Asian Nations", p. 555

36 Narine, "ASEAN and the management of regional security", p. 202

37 Nesadurai, "The Association of Southeast Asian Nations", p. 555

38 Narine, "ASEAN and the management of regional security", p. 202

39 Smith, "ASEAN's Ninth Summit", p. 426

40 Severino, R. C., Hew, D., Suryadinata, L., Hsu, L. & Moeller, J. O. 2005. *Framing the ASEAN Charter*. Singapore: ISEAS.

41 Ferguson, R. J. 2004. 'ASEAN Concord II: Policy Prospects for Participant Regional "Development".' *Contemporary Southeast Asia*, 26, 393. Emmerson, "Challenging ASEAN", p. 432

42 Denoon, D. B. H. & Colbert, E. 1998. 'Challenges for the Association of Southeast Asian Nations (ASEAN).' *Pacific Affairs*, 71:4, 505, Beeson, M. 2002. 'Southeast Asia and the politics of vulnerability.' *Third World Quarterly*, 23:3, 549.

43 Narine, "ASEAN and the management of regional security", p. 214, Buszynski, "ASEAN's new challenges", p. 555

44 Khoo, H. S. 2000. 'ASEAN as a "neighbourhood watch group".' *Contemporary South-east Asia*, 22:2, 279.

45 Narine, "ASEAN and the management of regional security", p. 202

46 Khoo, "ASEAN as a "neighbourhood watch group", p. 280

47 Narine, "ASEAN and the management of regional security", p. 202

Acid rain mitigation in Europe

The second part of this article focuses on the experiences of the EU and ASEAN in managing transboundary pollution issues respectively, beginning with acid rain in the EU. In the 1960s, scientists demonstrated the interrelationship between sulphur emissions in continental Europe and the acidification of Scandinavian lakes. Acid rain was found to have harmful effects on ecosystems, infrastructure and human health.

In response to these acute problems, European policy-makers established a regional platform to abate air pollution in Europe, with the United Nations Economic Commission for Europe (UN-ECE) serving as the secretariat. As a result, the 1979 CLRTAP was signed early on by all the 34 European governments, Eastern as well as Western, and the European Economic Community (EEC)⁴⁸. Even though the CLRTAP was presided over by a UN body, the EEC acquired jurisdiction over air pollution control policy when it became a party to the convention alongside its member states⁴⁹. The CLRTAP was the first international legally binding instrument to deal with problems of air pollution on a broad regional basis⁵⁰. It is regarded by some as a successful example of what can be achieved through intergovernmental cooperation on transboundary environmental issues⁵¹, and has been successful in achieving more than 60% reduction in the emissions of sulfur, nitrogen oxides, volatile organic compounds, heavy metals, and persistent organic pollutants⁵².

When the CLRTAP was created, only two of its 30 members thought acid rain was a problem⁵³. However, the broad participation from a European-wide scientific community in developing the critical loads levels of pollution standards, with each scientist identifying himself as a 'European' scientist and not from a particular state, diminished concerns that certain states' interests would be at stake. This led to a common acceptance of the scientific results used for further abatement policies⁵⁴. Further, with the EEC's leadership, negotiations for the CLRTAP moved quickly from individually assigning blame to collective problem solving⁵⁵. The focus was to shift the nature of the public debate away from determining who the 'bad guys' were, towards

48 Johannessen, T. 2009. 'Clean air policy under the UNECE Convention on long-range transboundary air pollution: how are monitoring results "translated" to policy action.' *iForest*, 2, 49-50, Pallemmaerts, M. 1988. 'Law: The Politics of Acid Rain Control in Europe.' *Environment*, 30:2, 42.

49 Pallemmaerts, "Law", p. 43

50 Eaton, P. & Radojevic, R. 2001. *Forest Fires and Regional Haze in Southeast Asia*. New York: Nova Science Publishers, Inc.

51 Sliggers, J. 2004. *Clearing the air: 25 Years of the Convention on Long-Range Transboundary Air Pollution*. United Nations Publications.

52 Eaton & Radojevic, "Forest Fires and Regional Haze in Southeast Asia", p. 336

53 Levy, M. A. 1992. 'Acid Rain in Europe.' *Environment*, 34:4, 16.

54 Johannessen, "Clean air policy under the UNECE Convention on long-range transboundary air pollution", pp. 49-50

55 Hordijk, L. 1998. 'The Lessons of Transboundary Pollution in Europe.' Paper presented at OECD Megascience Forum 4-6 March 1998.

determining how vulnerable each party was to acid rain; therefore focusing on environmental impacts rather than causes⁵⁶. The second sulfur protocol under the CLRTAP was in fact the first international agreement which has an effects-based approach⁵⁷.

When the EEC evolved into the EU, the CLRTAP ran parallel with, and was later integrated into, the EU's new CAFE programme to integrate air pollution policies, that was launched in 1998⁵⁸. The program's aims were to develop a long-term, strategic and integrated policy to protect against the effects of air pollution on human health and the environment⁵⁹, by integrating member states' policy objectives, harmonising activities, and sharing problem and solution frames⁶⁰. The expansion of the EU and the internalisation of the European Community idea as part of the identity of member states caused two complimentary effects on European air pollution policies. First, the stronger top-down component characteristic of the supranational EU was able to dictate policy to the laggards⁶¹. Environmental directives before 1987 generally required unanimity, but the 1987 Single European Act allowed limited use of qualified majority decisions for environmental policymaking⁶². Second, and more significantly, many EU member countries began to overlook their national interests in favour of community perception⁶³.

Firstly, the integration of the CLRTAP policies into CAFE changed the ways in which certain policies were implemented. Earlier, with the CLRTAP, all initiatives and decisions were taken by the countries themselves. But when absorbed into CAFE, instead of the member states, the European Commission took the initiative to carry out CLRTAP initiatives. The main role of the commission within the EU system is to set agendas and initiate policy. It also plays a central role in supervising the follow-up of EU legislation, including CAFE⁶⁴. For example, monitoring and inventory efforts within the CLRTAP were also on a voluntary basis, but within CAFE, all members are supposed to participate and to deliver by a set date. The CLRTAP worked on consensus, but within CAFE the commission takes the decisions, and the final policy proposal is the responsibility of the commission⁶⁵.

56 Levy, M. A. 1995. 'International Co-operation to Combat Acid Rain.' In H. O. Bergesen, G. Parmann & T. O. B (Eds.) *Green Globe Yearbook of International Co-operation on Environment and Development 1995*: 59-68. Oxford: Oxford University Press.

57 Johannessen, "Clean air policy under the UNECE Convention on long-range transboundary air pollution", pp. 49-50

58 Wettestad, J. 2002. 'Clearing the air: Europe tackles transboundary pollution.' *Environment*, 44:2, 32. Eaton & Radojevic, "Forest Fires and Regional Haze in Southeast Asia", p. 336

59 Wettestad, "Clearing the air", p. 32

60 Tuinstra, W. 2008. 'European air pollution assessments: co-production of science and policy.' 8, 35.

61 Grennfelt, P. & Hov, O. 2005. 'Regional Air Pollution at a Turning Point.' 34, 2.

62 Wettestad, "Clearing the air", pp. 38-39

63 Levy, "Acid Rain in Europe", p. 43

64 Wettestad, "Clearing the air", pp. 38-39

65 Tuinstra, "European air pollution assessments", p. 35

Secondly, the increasing importance that member states placed on a unified European identity meant that states became more conscious of the social and environmental consequences of not acting within the prescribed norms of the community. Therefore, even though the soft-law provisions of the CLRTAP and CAFE were considered too general and weak (they were vague and subject to so many qualifications that they do not impose on contracting parties any specific obligations with respect to air pollution policies), they still managed to serve a vital role in magnifying pressure on recalcitrant states, in keeping the consensus-building activities high on governments' agendas, and in assisting domestic environmental allies. The process can be called 'tote-board diplomacy', where a collective standard (such as the 30% reductions in sulfur dioxide emissions) is held up publicly and countries are subject to collective pressure to meet those standards⁶⁶. Even though there was no actual punishment set for non-compliance, this collective pressure was sufficient and in fact, several countries began to set even more ambitious reduction targets at the national level⁶⁷.

Often lowest-common-denominator agreements are criticised because they do no more than codify the status quo. However, conditions in Europe enabled these agreements to actually advance the status quo⁶⁸, and provided proof that not all 'toothless agreements' are destined to remain so⁶⁹. With over two decades of implementation of the CLRTAP, its secretariat has developed various strategies to monitor compliance of its members, and to exact compliance from erring members. This included setting up an assembly of signatory parties to meet annually to review the implementation of the agreement, thus providing the institutional basis for a process of regime strengthening. The powerful normative idea of a unified European community combined with the EU's integrated policy-making machinery has resulted in significant successes in the matter. The process observed in this case of regional pollution management exhibits both the strategic use of the normative environment, and also coercion by policy-makers. While the EU's supranational nature allowed hard law policies to be imposed upon countries in the larger interest of the community, the Europeanization norms were useful in pressuring countries to voluntarily implement soft law provisions.

Haze mitigation efforts in ASEAN

Like acid rain in the EU, transboundary haze is a serious environmental problem in Southeast Asia. Unlike acid rain, haze persists to this day. 'Haze'

66 Levy, "Acid Rain in Europe", p. 43

67 Pallemarts, "Law", p. 42, Eaton & Radojevic, "Forest Fires and Regional Haze in Southeast Asia", p. 336

68 Levy, "Acid Rain in Europe", p. 43

69 Brachtl, M. V. 2004. 'Capitalizing on the Success of the Long-Range Transboundary Air Pollution (LRTAP) Regime to Address Global Transboundary Air Pollution.' 14. Program of Negotiation at Harvard Law School.

is a term used in the Southeast Asian region to refer to ‘sufficient smoke, dust, moisture, and vapour suspended in air to impair visibility’. Haze pollution is transboundary when ‘its density and extent is so great at the source that it remains at measureable levels after crossing into another country’s airspace’⁷⁰. The Southeast Asian haze is now commonly understood to be mainly caused by smoke from grass, forest and peat fires⁷¹, mainly from Indonesia, and to a lesser extent, Malaysia. It affects the health of some 75 million people and the economy of six Southeast Asian nations; Indonesia, Malaysia, Singapore, Brunei Darussalam, Thailand, and the Philippines⁷². Transboundary haze has been an annual recurring problem in Southeast Asia since the 1980s. The region experienced its worst bout with the haze from 1997 to 1998, and another serious episode descended upon the region in 2006⁷³. The haze is the region’s first, and most publicly-identifiable regional environmental crisis⁷⁴, with many governments declaring repeated ‘emergencies’ during serious haze episodes⁷⁵. This section details the efforts undertaken by ASEAN to curb haze in the region.

ASEAN regional-level action over the haze began in 1985, with the adoption of the Agreement on the Conservation of Nature and Natural Resources, which made specific reference to air pollution and ‘transfrontier environmental effects’. This was followed over the years by other agreements with references to transboundary pollution, like the 1990 Kuala Lumpur Accord on Environment and Development and the 1992 Singapore Resolution on Environment and Development⁷⁶. Indeed, the 1992 Singapore Declaration identified such transboundary pollution as a major environmental concern. In the same year, ASEAN environmental ministers agreed to harmonize policy directions and establish operational and technical cooperation, with special reference to haze⁷⁷. The first Workshop on Transboundary Pollution and Haze

70 ASEAN Secretariat 2008. ‘Information on Fire and Haze.’ In E. Division (Ed.) *HazeOnline*. Jakarta: ASEAN Secretariat.

71 Cotton, J. 1999. ‘The “haze” over Southeast Asia: Challenging the ASEAN mode of regional engagement.’ *Pacific Affairs*, 72:3, 331-51.

72 Mayer, J. 2006. ‘Transboundary Perspectives on Managing Indonesia’s Fires.’ *The Journal of Environment & Development*, 15:2, 202-33.

73 Suwarsono, Roswiniarti, O., Noviar, H., Albar, I., Phonekeo, C. J. S. B. V. & Song, Y. 2007. ‘Influence of climate variation and vegetation greenness on fire occurrence: A case study in Central Kalimantan province.’ Jakarta: Indonesian National Institute of Aeronautics and Space and Geoinformatics Center - Asian Institute of Technology, Saleh, K. 2006. ‘Haze fund on hold until ratification.’ *Jakarta Post*. Jakarta.

74 Elliott, L. 2003. ‘ASEAN and environmental cooperation: norms, interests and identity.’ *The Pacific Review*, 16:1, 29-52’, Severino, R. F. 1999. ‘Fighting the Haze: A Regional and Global Responsibility.’ *Final Regional Workshop of the Regional Technical Assistance Project on Strengthening ASEAN’s Capacity to Prevent and Mitigate Transboundary Atmospheric Pollution*: 3. Jakarta: ASEAN Secretariat.

75 Mayer, “Transboundary Perspectives on Managing Indonesia’s Fires”, pp. 202-233

76 ASEAN Secretariat 1995. ‘ASEAN Meeting on the Management of Transboundary Pollution.’ Kuala Lumpur.

77 Tay, S. 2008. ‘Blowing Smoke: Regional cooperation, Indonesian Democracy, and the

in ASEAN Countries was held in Balikpapan, Indonesia in September 1992, specifically addressing the haze as an individual problem in the region⁷⁸. The first informal ASEAN Ministerial Meeting on the Environment in Kuching, Sarawak in 1994 marked the beginnings of a more visible effort by the ASEAN member countries to address recurring haze problem. Here the ministers agreed to enhance cooperation to manage natural resources and control transboundary pollution within ASEAN, develop an early warning and response system, and to improve the capacity of member countries in these areas⁷⁹.

In 1995, as a follow up to this meeting, the ASEAN Senior Officials on the Environment established a Haze Technical Task Force (HTTF) with the objective of putting into operation the measures included in the 1995 ASEAN Cooperation Plan on Transboundary Pollution⁸⁰. The plan set out the broad policies and strategies to deal with atmospheric and other forms of transboundary pollution. It outlined the efforts to be made at both national and regional levels to deal with the haze⁸¹. The Ministers also agreed to develop a common air-quality index and a regional fire-danger rating system⁸². This proposal was subsequently adopted by ASEAN⁸³. Member states also agreed to share knowledge and technology on the prevention and mitigation of forest fires, and to establish a mechanism for cooperation in combating forest fires⁸⁴. This plan, however, was much less formal or binding than comparable documents in other regions such as Europe for curbing transboundary harm⁸⁵. It was largely a listing of general actions that governments *ought* to take to prevent and mitigate forest fires⁸⁶. The absence of specific operational directives rendered the plan ineffective, and member countries were again thrown into crisis-management mode with the advent of the most serious haze problem of the region in 1997⁸⁷.

The ASEAN Ministerial Meeting on Haze in 1997 formulated a Regional Haze Action Plan (RHAP) under the HTTF to provide further

haze.' In D. K. Emmerson (Ed.) *Hard Choices*. Singapore: ISEAS.

78 ASEAN Secretariat 1995. 'ASEAN Meeting on the Management of Transboundary Pollution.' Kuala Lumpur.

79 Yahaya, N. 2000. 'Transboundary Air Pollution: Haze Pollution in Southeast Asia and its Significance.' *Journal of Diplomacy and Foreign Relations*, 2:2, 41-50.

80 Severino, R. C. 2006. *Southeast Asia in Search of an ASEAN Community: Insights from the former ASEAN Secretary-General*. Singapore: ISEAS.

81 Tay, S. S. C. 1998. 'South East Asian forest fires: haze over ASEAN and international environmental law.' *Reciel*, 7:2, 202-08.

82 Tay, S. S. C. 2002. 'Fires and Haze in Southeast Asia.' In P. J. Noda (Ed.) *Cross-Sectoral Partnerships in Enhancing Human Security*: 53-80. Tokyo: Japan Center for International Exchange.

83 *The Straits Times* 1995. 'Haze alert for ASEAN countries tried successfully.' *The Straits Times*. Singapore..

84 Tay. 'South East Asian forest fires' pp. 202-28

85 Tay. 'Blowing Smoke' pp. 53-80

86 Severino. 'Southeast Asia in Search of an ASEAN Community'

87 Tay. 'Blowing Smoke' pp. 53-80

commitments and details to the Cooperation plan⁸⁸. It was a soft-law, non-binding instrument which stood on three pillars: the spirit of voluntarism, the no-fault finding rule, and the offer of assistance based on expertise and capability⁸⁹. The plan was divided into three parts. The first required member states to draw up national plans based on the regional plan. The second sought to strengthen the monitoring and anticipation of forest fires and increased pollution levels through the ASEAN Specialized Meteorological Center (ASMC). The third focused upon the enhancement of fire fighting capability⁹⁰. It also established an ASEAN Policy on Zero Burning. These guidelines for zero burning, however, were not meant to be prescriptive and controlled burning continued to be allowed for 'specific situations'⁹¹. The primary emphasis of the RHAP continued to be on national plans and capabilities⁹². The RHAP exemplified a 'soft law' approach and was also not a legally binding agreement⁹³. It was left to the governments concerned to decide what was to be included in their national plans, with the freedom to bypass or equivocate on matters raised in the RHAP⁹⁴. There were no mechanisms under the plan for any member country to ensure that the other member countries fulfilled their obligations⁹⁵. As a result, the RHAP generated a massive amount of information on the haze⁹⁶ but not much else.

The RHAP, however, did establish a procedure by which fire fighting resources could be pooled for regional fire-fighting operations⁹⁷. Furthermore, it solidified the breakdown in haze mitigation roles at the ASEAN level according to the country's expertise: Malaysia for prevention, Singapore for monitoring and Indonesia for firefighting⁹⁸. The RHAP also enlisted the Asian Development Bank (ADB) as a consultant in support of implementation⁹⁹.

88 Evans, J. W. 2001. 'Fire, Smoke and Haze: The ASEAN Response Strategy.' In S. T. Qadri (Ed.) 6. Philippines: Asian Development Bank. Yahaya. 'Transboundary Air Pollution' pp. 41-50

89 Florano, E. R. 2004. 'Regional Environmental Cooperation without Tears or Fear: The Case of the Asean Regional Haze Action Plan.' Paper presented at International Environmental Governance Conference. 15 & 16 March 2004.

90 Jones, D. S. 2006. 'ASEAN and transboundary haze pollution in Southeast Asia.' *Asia Europa Journal*, 4:3.

91 ASEAN Secretariat 2003. 'Guidelines for the Implementation of the ASEAN Policy on Zero Burning.' Jakarta: ASEAN.

92 Tay. 'South East Asian forest fires' pp. 202-28

93 Tay. 'Blowing Smoke' pp. 53-80

94 Jones, D. S. 2006. 'ASEAN and transboundary haze pollution in Southeast Asia.' *Asia Europa Journal*, 4:3.

95 Parliament of Singapore 1998. 'ASEAN Region Haze Action Plan (Fulfillment of Obligations) (1998-01-15).' Singapore.

96 Severino. "Fighting the Haze"

97 Tay. 'Blowing Smoke' pp. 53-80

98 Woon, S. L. 2002. 'Monitoring and remote sensing in ASEAN: ASMC's role, capacities and activities in relation to ASEAN's regional haze action plan.' Paper presented at World Land & Forest Fire Hazards. Yahaya. 'Transboundary Air Pollution' pp. 41-50

99 Tay. 'Blowing Smoke' pp. 53-80

A USD 1 million grant was provided by the ADB to ASEAN as Regional Technical Assistance (RETA) for strengthening ASEAN's capacity in preventing and mitigating the transboundary pollution¹⁰⁰. The project brought in two international consultants, and the project's staff was later permanently institutionalised into the ASEAN secretariat. One of the activities developed from the RETA is the ASEAN HazeOnline website (<http://www.haze-online.or.id>) which has improved the availability of timely meteorological information and details¹⁰¹.

In 1998, the ASEAN Summit in Vietnam issued the Hanoi Plan of Action that called for the full implementation of the RHAP by 2001. That year, the HTTF agreed to establish two Sub-Regional Fire-Fighting Arrangements (SRFA) for Borneo and the Sumatra/Riau provinces in Indonesia under the RHAP to facilitate the movement of resources from one member country to the other¹⁰². To complement the SRFA, a SRFA Legal Group was established in 2000 to examine the legal and enforcement issues related to curbing forest fires¹⁰³. On top of these plans and agreements, other ASEAN initiatives on the haze include detailed operational procedures for monitoring, assessment and joint emergency response; the formation of a regional network made up of national focal points; an inventory of fire-fighting resources and training mechanisms; simulation exercises for joint emergency response between countries; demonstration sites for the benefit of farmers, smallholders and shifting cultivators; and an ASEAN Peatland Management Initiative. The current stage of ASEAN cooperation over the haze stands at the implementation of the ASEAN Agreement on Transboundary Haze Pollution (ATHP), which was brought into force in 2003¹⁰⁴. This agreement has been ratified by all ASEAN member states save Indonesia¹⁰⁵, where the agreement continues to face barriers to ratification at the parliamentary level.

Discussion: Applying the CLRTAP/CAFE model to ASEAN?

The frequency and visibility of ASEAN haze mitigation projects, seemingly without any permanent effects on the haze situation, has led many scholars to argue that ASEAN as a regional organization that is supposed to promote and foster cooperation of its member states towards the common good, has failed in this endeavour. Because of this, many scholars have pointed towards the successes of acid rain mitigation in Europe, and suggested that the

100 Chang, L. L. & Rajan, R. S. 2001. 'Regional Versus Multilateral Solutions to Transboundary Environmental Problems: Insights from the Southeast Asian Haze.' *Transboundary Environmental Problems in Asia*, 655-70.

101 Chang & Rajan. 'Regional Versus Multilateral Solutions to Transboundary Environmental Problems' pp. 655-70

102 Ibid.

103 Jones. 'ASEAN and transboundary haze pollution in Southeast Asia'

104 ASEAN Secretariat 2004. '4: Transnational Issues.' *ASEAN Annual Report*. ASEAN.

105 ASEAN Secretariat. 'ASEAN Meeting on the Management of Transboundary Pollution'

European model be applied to improve the haze mitigation initiatives under ASEAN. However, this paper argues against this, stating that due to the very different nature of the EU and ASEAN communities, these suggestions are not feasible. This argument is elaborated in the following sections.

First, this section discusses the various arguments by ASEAN scholars that encourage the application of Europe's acid rain model to haze issues in ASEAN. Karim¹⁰⁶ describes the CLRTAP as an encouraging example for ASEAN and haze issues, as ASEAN nations can learn from the experience of the Convention. He points out the *modus operandi* with the acid rain framework where, in order to bring all the necessary players to the table, the CLRTAP initially kicked off with somewhat soft legal commitments. However, in the long run, the EU successfully established an effective legal framework for transboundary pollution management. He thus argues that in this way, ASEAN should be able to develop an effective legal framework within the ATHP as well. He argues that as the provisions of the ATHP are more or less similar to the CLRTAP, there is hope for the ATHP if it further continues down Europe's path. Simon Tay¹⁰⁷ agrees with this too. He states that since the CLRTAP and its protocols have been effective, treaties like the ATHP which also emphasize collective action without liability or setting specific limits have no excuse for being ineffective. Florano¹⁰⁸ even notes that haze management should be even easier in ASEAN because compared to acid deposition in Europe whose pollutants easily mix together while being transported by air, the exact location of fires or 'hotspots' and 'smoke plumes' could be easily detected through technology available at the ASMC.

Florano¹⁰⁹, Syarif¹¹⁰ and Takahashi¹¹¹ provide specific examples where the ASEAN mechanism can be adopted along the lines of the EU model. In 2003, Florano examined the contents of the 1997 ASEAN Regional Haze Action Plan (RHAP) and compared it with the CLRTAP. Using Pamela Chasek's 'Strength Index', it was discovered that both agreements shared soft-law characteristics. For example, there are no provisions that allow the secretariats to monitor state compliance, there are no mechanisms to deal with non-compliance, the

106 Karim, M. S. 2008. 'Future of the Haze Agreement: Is the Glass Half Empty or Half Full?' *Environmental Policy and Law*, 38:6.

107 Tay, S. S. C. 2001. 'Fires, Haze and Acid Rain: The Social and Political Framework of Air Pollution in ASEAN and Asia.' Paper presented at Challenges of a Changing Earth: Proceedings of the Global Change Open Science Conference.

108 Florano, E. R. 2004. 'Regional Environmental Cooperation without Tears or Fear: The Case of the Asean Regional Haze Action Plan.' Paper presented at International Environmental Governance Conference. 15 & 16 March 2004.

109 Ibid, Florano, E. R. 2003. 'Assesment of the "Strengths" of the New ASEAN Agreement on Transboundary Haze Pollution.' *International Review for Environmental Strategies*, 4:1, 127-47.

110 Syarif, L. O. M. 2007. 'Regional arrangements for transboundary atmospheric pollution in ASEAN countries.' *Faculty of Law*. Sydney: University of Sydney.

111 Takahashi, W. 2004. 'Environmental Cooperation in Northeast Asia.' Japan: Institute for Global Environmental Strategies.

secretariats do not have authority to conduct field inspections, and there are no liability provisions against errant parties. Interestingly, Florano observes that the ATHP appears, in theory, to be stronger than the CLRTAP. This was because in contrast to the CLRTAP, the ATHP does not allow parties to make reservations to provisions in the Agreement, it can be amended through the Conference of Parties, it has procedural performance standard guidelines, and it has clearly identified possible financial sources and mechanisms. In turn, the ATHP obtained no scores in those indices that could have given its Secretariat the power to monitor or inspect the compliance of members and to mete out punishment to stubborn ones. However, the great strength of the CLRTAP is in its provisions for additional protocols. It made extensive use of the 'convention-multiple protocols' approach to flesh out the broader provisions of the Convention¹¹², including most of the weaknesses specified by Florano. While the ATHP allows for additional protocols and amendments, this has not been successfully implemented to date. This is largely because of ASEAN's consensus norm, which makes it extremely difficult for new protocols to be adopted. For all these reasons, Florano concludes that the ATHP can be branded as a 'blind and toothless paper tiger'¹¹³.

Syarif, in his 2007 doctoral thesis dedicates an entire chapter comparatively evaluating ASEAN haze management with air pollution policies in Europe. He proposes the EU model as a possible model for future ASEAN environmental cooperation, both generally and on haze issues in particular. He argues that the rule of law approach as used by Europe is necessary in addressing environmental issues like the haze. He identifies three success factors in the EU in creating a strong base for environmental regional cooperation: the willingness of member states' leaders to 'sacrifice' some of their national sovereignty for the sake of the community, the structure and decision-making process of the EU, and the existence of a supra-national body that can force member states to enforce community laws and policies. Syarif notes that progressive measures taken by EU on acid rain were partly due to the external pressure brought by the ratification of the CLRTAP, particularly from the UN-ECE. He also notes that the adoption of some hard-law instruments like official Directives on ambient air quality standards, something which is absent in ASEAN, was an important factor in acid rain mitigation there¹¹⁴. As discussed in the previous section, this is because it is more unlikely in ASEAN for countries to give up parts of their sovereignty.

Takahashi¹¹⁵ agrees with Syarif on the importance of official Directives to encourage member states to comply with the CLRTAP. He also points out that

112 Florano, "Regional Environmental Cooperation Without Tears or Fear", pp. 136-139

113 Florano, "Assessment of the "Strengths" of the New ASEAN Agreement on Transboundary Haze Pollution", pp. 127-147

114 Syarif, "Regional arrangements for transboundary atmospheric pollution in ASEAN Countries", , pp. 424-425

115 Takahashi, "Environmental Cooperation in Northeast Asia", p. 16

the EU's existing financial and technology transfer mechanisms have official and unofficial links with the CLRTAP, which made it easier for compliance as well. Additionally, he describes the contribution of the UN-ECE in facilitating and coordinating secretariat services to its member states with Convention matters. He notes that in comparison, ASEAN did not create a strong central bureaucracy and merely provided minimal and largely administrative support to its members through the ASEAN secretariat.

The suggestions coming from scholars about how ASEAN and its anti-haze regime could be improved along the lines of Europe's acid rain experience can be deduced into four broad proposals: (1) The ASEAN Secretariat should be shaped into a strong central bureaucracy with the powers to monitor or inspect the compliance of members and to mete out punishment to stubborn ones¹¹⁶. (2) ASEAN should adopt hard-law instruments like official Directives on ambient air quality standards to encourage member states to comply with the ATHP provisions¹¹⁷. (3) The ATHP should enforce its provisions for additional protocols to flesh out the broader provisions of the convention¹¹⁸. (4) ASEAN should adopt financial and technology transfer mechanisms that are officially tied to the ATHP, which will help states which do not have the capacity to comply with ATHP provisions¹¹⁹.

The first and second proposals have been partially adopted into ASEAN, but face difficulties in implementation given the organization's institutional design. For example, ASEAN does have a standing 'Panel of Experts' that are supposed to be immediately dispatched to burning areas when fire and haze events occur, to inspect the damage and recommend solutions. However, Indonesia has on several occasions blocked entry of these experts by invoking the norms of non-interference and sovereignty. In situations such as this, Indonesia is often accused of protecting the interests of big agribusiness players as they do not want the experts to see that fires are occurring on commercial agricultural land.

The third proposal is problematic as well. While the ATHP does allow for additional protocols, the consensus basis upon which ASEAN conducts itself has made it extremely difficult for new protocols to be adopted. For example, Indonesia has been making demands for protocols on illegal logging to be included in the ATHP as a condition for its ratification. However, Malaysia, whose interests will be implicated in an illegal logging protocol, insists that Indonesia should ratify the treaty first, before the protocol is included, as there is no guarantee of Indonesian ratification with or without the protocol. Episodes such as this have resulted in a stalemate over the universal adoption of the ATHP.

- 116 Florano, "Regional Environmental Cooperation Without Tears or Fear", pp. 136-139
117 Syarif, "Regional arrangements for transboundary atmospheric pollution in ASEAN countries", p. 425, Takahashi, "Environmental Cooperation in Northeast Asia", p. 16
118 Florano, "Regional Environmental Cooperation Without Tears or Fear", pp. 136-139
119 Takahashi, "Environmental Cooperation in Northeast Asia", p. 16

The fourth proposal has already been adopted under the AHP, but with less successful results. As part of the AHP, a Haze Fund was established as a financial assistance mechanism. However, this mechanism has suffered from the lowest-common-denominator problem where, due to the different levels of economic development in the region, contributions to the fund was set at an equal, but very low amount of USD50,000 per country. This a small amount, and does not even come close to the estimated projections needed by Indonesia for effective mitigation on the ground. Technology transfer mechanisms are also in place; however these programmes often run into problems on the ground. For example, Malaysia sponsored an air quality monitoring station to be constructed at a fire-prone area in Indonesia. Despite receiving approval from central authorities, the shipment was retained at the customs until a substantial bribe was paid for its release. This indicates governance problems on the ground.

Certain scholars have acknowledged these limitations, among others. For example, Syarif does acknowledge that the EU-based model that he proposed in his thesis may not reflect the current political reality of the ASEAN region. He also considers that it may not be fully applicable due to different environmental problems and levels of economic development¹²⁰. Some scholars further note that the acid rain addressed by the CLRTAP is caused by industrial emissions which can be controlled by abatement technologies, unlike the haze which has its roots in low-technology agriculture¹²¹. Others also admit that in a normative situation such as ASEAN where sanctions are difficult to apply, the success of the AHP (even an updated one along the lines of the CLRTAP) will still be largely dependent on individual country's (Indonesian) participation, not collective regional action¹²².

The above discussions shows that while both the EU and ASEAN approaches to transboundary pollution are in some ways similar, they also display important differences. Firstly, while in both cases a commission or secretariat has been assigned to oversee the implementation of mitigation activities, the effectiveness of these secretariats have differed widely. In the EU, once consensus was reached over the CLRTAP, all follow through were taken by the commission. This pooling of sovereignty at the commission level has made it easier to monitor compliance and implement policy. In contrast, in ASEAN, sovereignty remains with the states at all times and all decisions are still taken on a consensus basis, leaving the secretariat relatively powerless.

Secondly, despite both regional approaches consisting of largely soft-law, lowest-common-denominator agreements, these agreements were adhered to more closely by European states compared to Southeast Asian states. This

120 Syarif, "Regional arrangements for transboundary atmospheric pollution in ASEAN Countries", , pp. 424-425

121 Eaton & Radojevic, "Forest Fires and Regional Haze in Southeast Asia", p. 336

122 Karim, "Future of the Haze Agreement", p. 331, Eaton & Radojevic, "Forest Fires and Regional Haze in Southeast Asia", p. 336

can be attributed to the strong feeling of community among the European states, giving rise to collective pressure to adhere to standards and agreements in the larger interest of the community. In contrast, ASEAN agreements were largely not adhered to by member states, with states largely prioritizing their own national interests above the interests of the community. In this analysis, the differing views of sovereignty and national versus collective interests were an important factor in the success or failure of transboundary pollution initiatives in the EU and ASEAN.

Therefore, while good intentioned suggestions for improvements should not be dismissed, this paper rejects that mere changes at the ASEAN level along these suggested lines would be sufficient in conclusive haze abatement. As a result, unlike the EU initiatives that were successful in bringing acid rain levels down to manageable levels within a decade, haze continues to be a recurring problem in the Southeast Asian region. After a brief respite in 2008 due to favourable El Niño weather conditions that limited the travel of smoke, the haze returned to blanket the region in July 2009¹²³, October 2010¹²⁴, and July 2011¹²⁵, triggering drastic drops in air quality in certain areas in Indonesia, Malaysia and Singapore¹²⁶.

Conclusion

As this paper has made clear, ASEAN is by design a very different type of institution from the EU. The EU's successes in acid rain abatement can be accounted for by three region-specific factors: the willingness of member states' leaders to 'sacrifice' some of their national sovereignty for the sake of the community, the structure and decision-making process of the EU, and the existence of a supra-national body that can force member states to enforce community laws and policies¹²⁷. As detailed above, ASEAN by design does not possess these characteristics. Therefore, this paper argues that focus in the scholarship on regional-level solutions to the Southeast Asian haze, especially in the image of EU solutions for acid rain, has been misguided. From this analysis, it can be concluded that ASEAN can, and does, play a role in haze management, but only within its institutional limitations. The successes and failures of transboundary haze management in Southeast Asia do not depend solely, or even mainly, on regional action. Scholarship should focus on other avenues for possible solutions, like pressure from civil society grassroots and the international community, or business-focused approaches.

123 Then, S. 2009. 'Asean braces for the haze... yet again.' *The Star*. Kuala Lumpur.

124 Simamora, A. P. & Adamrah, M. 2010. 'Govt says haze from RI, blames traditional farmers.' *Jakarta Post*. Jakarta.

125 Kuty, R. R. 2011. 'Need to walk the talk.' *The Star*. Kuala Lumpur.

126 Lee, Y. P. & Chan, L. L. 2009. 'The haze is back.' *Ibid*, Then, S., Wong, J. & Chiew, H. 2009. 'Thick haze in many parts of Sarawak.' *The Star*. Kuala Lumpur.

127 Syarif, "Regional arrangements for transboundary atmospheric pollution in ASEAN countries", p. 425

However, in defence of ASEAN, its former Secretary-General, Rodolfo Severino¹²⁸ insisted that “ASEAN has to be measured against the purposes that it has set for itself and the limitation that it has imposed upon itself ... not against the wishes or expectations of others”. ASEAN was never intended to be a supranational body of functional integration in the same manner as the EU¹²⁹. It has been argued that as long as ASEAN remains a group of sovereign states, non-interference is the principle that best reflects this condition¹³⁰. The original charter of ASEAN spoke of economic and social cooperation¹³¹, which ASEAN has arguably helped develop. The process-based nature of ASEAN and its person-to-person dialogue have allowed a slow evolution of a regional agenda where no consensus had existed previously. The loose wordings of ASEAN documents can be viewed as having a ‘strategic ambiguity’ to encourage states to sign on, while allowing for a policy gap in which new means and tools can be created to meet the needs of the evolving ASEAN community¹³². ASEAN is useful in these ways, but less so in haze mitigation.

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- 128 Khoo, “ASEAN as a “neighbourhood watch group”, p. 280
- 129 Smith, “ASEAN’s Ninth Summit”, p. 426
- 130 Abdul Aziz, A. S. 2009. ‘The ASEAN Way - A hindrance or dynamism for an ASEAN Community 2015.’ *Asia-Europe Institute*. Kuala Lumpur: University of Malaya.
- 131 Smith, “ASEAN’s Ninth Summit”, p. 426
- 132 Ferguson, R. J. 2004. ‘ASEAN Concord II: Policy Prospects for Participant Regional “Development”.’ *Contemporary Southeast Asia*, 26, 393.

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