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**The Perils of Consensus:  
How ASEAN's Meta-Regime Undermines  
Economic and Environmental Cooperation**

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## ABSTRACT

The member states of the Association of Southeast Asian Nations (ASEAN) have been frequently criticized for adhering to a long-standing norm of strict non-interference in each other's domestic affairs, thereby hampering collective efforts to address regional problems. This paper presents an analytical model of international institutions that shows how underlying norms and principles—the meta-regime—govern the rules and procedures of specific international regimes. It then applies this model to ASEAN's trade and anti-haze regimes, demonstrating how ASEAN's underlying meta-regime has frustrated attempts to liberalize trade and reduce air pollution. While ASEAN's purview has extended well beyond its original security mandate and it has developed new rules and procedures to handle the new issues, its underlying norms and principles consistently limit its ability to handle regional problems. In the conclusion, we discuss how the ASEAN states might be able to foment cooperation in these issue areas without completely abandoning its foundational norms and principles.

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# **The Perils of Consensus: How ASEAN's Meta-Regime Undermines Economic and Environmental Cooperation**

## **I. INTRODUCTION**

Since its establishment in 1967, the Association of Southeast Asian Nations (ASEAN) has undergone a remarkable transformation. Originally conceived to address political and security issues on a regional basis, ASEAN's scope has evolved to include a broad range of economic, environmental and social issues, and its membership has grown to include all of the states in Southeast Asia.<sup>1</sup> Yet ASEAN's efforts to foster deeper integration have met with significant challenges. Two notable examples are its attempts to establish an ASEAN Economic Community (AEC) to address competition for investment from China and India, and its efforts to reduce the perennial haze from large-scale forest fires. On both of these critical issues, ASEAN has elicited only limited cooperation from its member states, resulting in halting progress.

Some scholars point to ASEAN's institutional norms—particularly the norm of non-interference—as a persistent obstacle to deeper regional cooperation (e.g. Acharya 2001, 2003; Haacke 2003; Jones and Smith, 2007; Ramcharan, 2000). While we agree that the norm of non-interference hinders regional integration and that it is unlikely to disappear—especially in security matters—we nevertheless argue that it may be possible to circumvent it in other issue areas by reconfiguring institutional arrangements. In this article, we present an institutional design model that demonstrates how shared norms—the foundation of international regimes—both give rise to and are shaped by regime structures and state-level decisions. We briefly describe how ASEAN's key norms developed in the context of Southeast Asia's security situation and then use our framework to analyze the evolution of the ASEAN Economic

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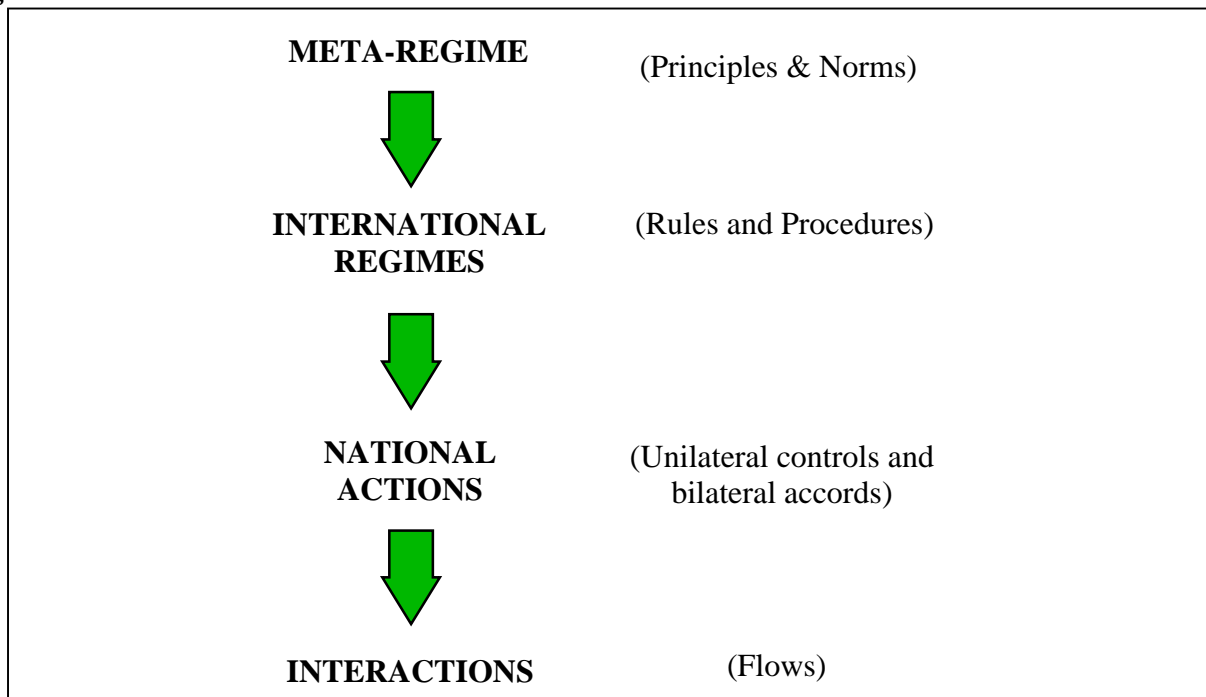
<sup>1</sup> ASEAN's original membership included Indonesia, Malaysia, the Philippines, Singapore and Thailand. Remaining members include Brunei Darussalam (1984), Vietnam (1995), Burma (1997) Laos (1997) and Cambodia (1999).

Community trade and the ASEAN anti-haze regime. In the conclusion, we consider how ASEAN might be able to strengthen both regimes while still protecting member states' sovereignty.

## II. AN ANATOMY OF GOVERNANCE STRUCTURES

Understanding the development of international governance structures and how they shape interactions requires us to understand how their individual components fit together and influence the particular character of the arrangement (see Figure 1).

**Figure 1: Governance Structures and their Effect on Interactions**



*Source: Aggarwal (1985)*

To concretize the discussion, we use this model to dissect the key components of the GATT/WTO. Starting at the bottom of the schematic, interactions refer to the trade flows of goods and services in the global economy. Directly above interactions are national actions. These can include unilateral measures or ad hoc bilateral accords, such as tariffs or environmental controls. The externalities of these actions can give rise to demand for new governance structures. For example, the spillover effects of protectionism in the 1930s generated pressure for

an international approach to manage individual national actions, leading to the creation of the GATT in 1947.

International regimes (the next level up in Figure 1) refer to sets of rules and procedures around which actors' expectations converge.<sup>2</sup> They can be defined in terms of their strength, nature, and scope. Strength refers to the stringency and specificity of the regime's multilateral rules and the degree to which such agreements are institutionalized. Nature can be understood as the general intent behind the regime. Scope consists of two parts: issue scope refers to the number of issues incorporated into the regime, while member scope refers to the number of actors who are parties to the regime. The GATT regime was quite strong and specific in its rules and procedures, but the WTO has increased this specificity and created even more stringent enforcement mechanisms. With some exceptions, it has been liberal in nature, and both its issue and membership scopes have dramatically expanded over time.

At the top of the schematic is the meta-regime, which consists of the principles and norms that guide the entire regime. The underlying meta-regime in the GATT/WTO has encouraged freer trade coupled with acknowledgment of the need to manage the disruptive effects of trade adjustment. Among the original GATT norms are most favored nation treatment, reciprocity and the right to safeguards against disruptive or unfair trade (Finlayson and Zacher, 1981).

We can think more systematically about the causal factors influencing the creation of each of the four elements described above. Figure 2 illustrates these in diagrammatic form

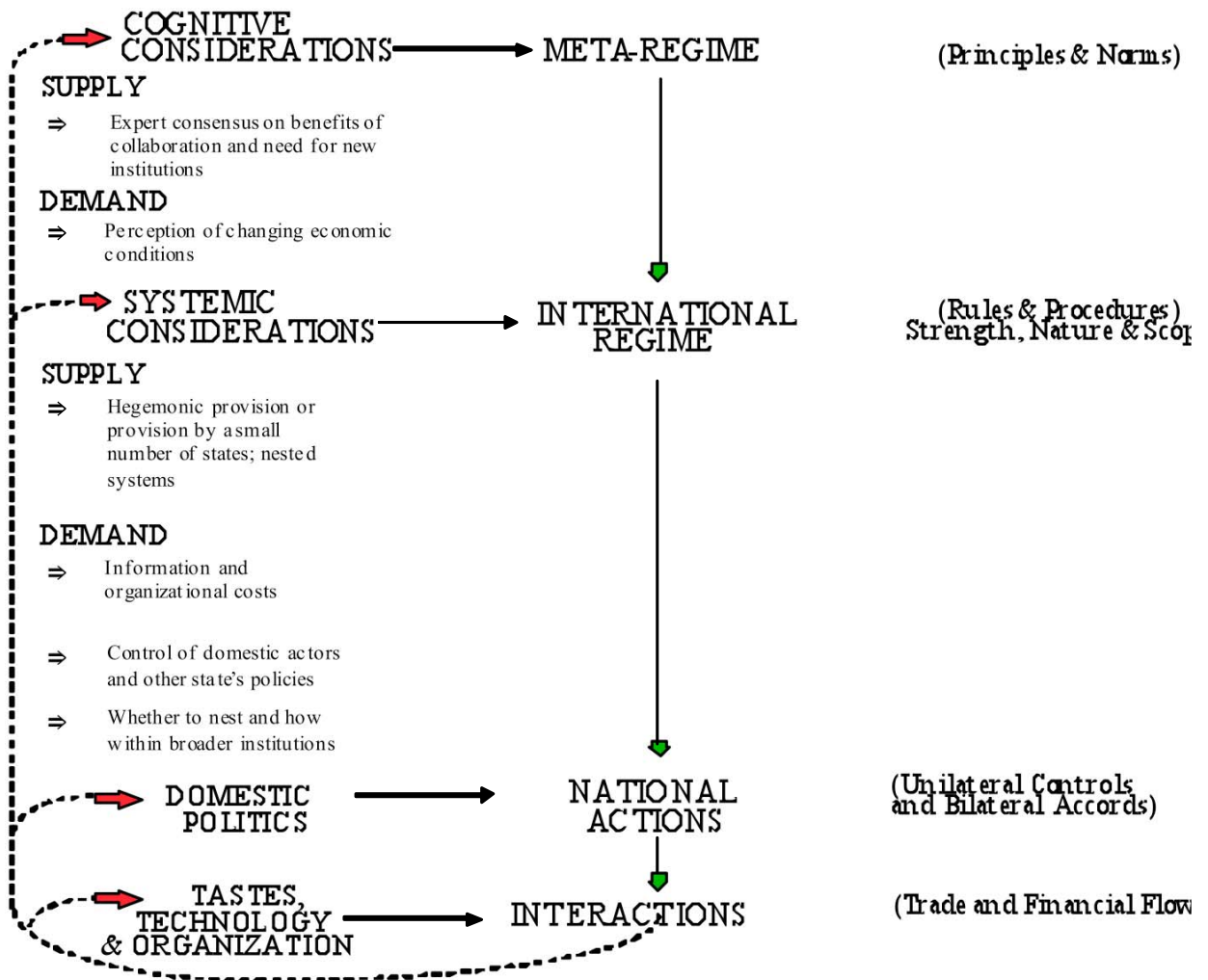
**Figure 2 here**

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<sup>2</sup> This definition of 'regime' differs from the classic formulation articulated by Krasner (1983). While Krasner defines regimes as 'sets of implicit and explicit principles, norms, rules and decision-making procedures around which actors' expectations converge', we follow Aggarwal's (1985) separation of principles and norms ('meta-regimes') and the concrete rules and procedures that instantiate them ('regimes').

Meta-regime demand is driven by policymakers who perceive the need for underlying norms and principles to address their own goals or to respond to pressures from interest groups. Meta-

**Figure 2: Causal Factors in the Formation of International Economic Institutions**



Source: Adapted from Aggarwal (1994)

regimes can be supplied by existing institutions or by the consensual knowledge of experts who may advise policymakers on an optimal course of action (Haas, 1980). Of course, as with current



debates over global warming, experts may not arrive at a consensus on the best course of action, thus inhibiting the formation of a coherent meta-regime and derivative regimes.

The creation and evolution of an international regime is a function of the meta-regime and a set of regime-specific supply and demand factors. Traditionally, regimes have been supplied by powerful actors—whether a single hegemon or a very small group of powerful states—with the capacity to coordinate international policies. Political actors generally demand regimes for three reasons. First, regimes reduce transaction costs, particularly the costs of providing information to participants and of negotiating and implementing individual accords (Keohane, 1984). Second, actors may wish to control the behavior of other international and domestic actors through rule-based systems rather than through direct coercion. In a domestic context, signing an international agreement may bolster politicians' ability to reject demands from interest groups. Finally, decision-makers may try to bring lower-level (i.e. more specific) arrangements into conformity with broader institutions. This “institutional nesting” discourages actors from participating in arrangements that might undermine broader accords because of their more significant concerns with these higher-level institutions (Aggarwal, 1985).

It is useful to consider the question of institutional fit in more detail. If institutions relevant to the issue area already exist, the question of institutional fit becomes central. We can define four types of connections among institutions: (1) nested links; (2) horizontal links; (3) overlap; and (4) complete independence. In the case of nested links, institutional arrangements are subsumed within broader accords. For example, the Multi-Fiber Arrangement was firmly embedded in the GATT and drew upon and modified its principles and norms to manage trade in textiles. Institutions can also be horizontally connected, providing a division of labor as with the IMF and World Bank, the former focusing on short-term balance of lending and the latter on

longer-term development loans. Institutions can also overlap, which can generate problems of coordination and determining who has authority. Efforts to create an Asian Monetary Fund (AMF) after the Asian financial crisis reflect the debate over institutional conflict that could have arisen from overlapping mandates. Finally, institutions may be independent, without any functional overlap. An example of independent institutions would be the North Atlantic Treaty Organization (NATO) and APEC. While the U.S. is a member of both, these institutions have different institutional missions, and thus do not create any conflict.

Whether or not states abide by the rules of a regime depends on the degree to which state decision-makers are insulated from interest group pressure as well as on the dominant ideology motivating the policymakers themselves. It is not hard to imagine that for their own reasons some states may attempt to evade regime restrictions or “free-ride”, thus reaping the public goods benefits of liberal international accords without actually having to comply with them.

Finally, at the level of interactions, changes in technology, organization, and tastes (among other significant factors) will also continue to influence the supply and demand for goods and services, frequently leading to the creation of new externalities, altered transaction costs, or new challenges to existing institutional structures. As indicated by the feedback loop in Figure 2, these interactions may once again drive changes in the basic causal factors that influence both governance structures and interactions.

Our analytical key interest lies in understanding how institutions evolve over time in response to both problems with existing institutions, secular trends, and new shocks.<sup>3</sup> In the following sections, we apply this framework to ASEAN and examine how national bargaining strategies have shaped the efforts to create new governance structures in trade and haze in

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<sup>3</sup> For a more detailed analysis of the dynamics of institutional change, see Aggarwal (1998).

response to changing trends and shocks. We begin by provide an overview of the meta-regime that circumscribes and conditions the arrangements established within ASEAN.

### **III. THE SECURITY ORIGINS OF ASEAN'S META-REGIME<sup>4</sup>**

Since its inception in 1967, ASEAN has espoused a set of norms as a framework for interaction among its member states. These substantive and procedural norms (Finlayson and Zacher, 1981), enshrined within various ASEAN documents and exhibited in regular interactions, include the substantive norms of respect for sovereignty, non-interference in other member states' domestic affairs, and peaceful dispute settlement. The procedural norms include a preference for informal elite-based diplomacy, decision-making by mutual consultation and consensus, and a preference for incrementalism. Undergirding these norms is a basic belief that regional cooperation will provide member states with enhanced political and economic benefits, both in the region and in the region's dealings in the broader international system.

As we note in Figure 2, the development of a meta-regime depends upon a supply of expert consensus and a demand for international institutions prompted by changing systemic conditions. The ASEAN meta-regime was initially supplied by a group of political elites whose common experiences in the Cold War convinced them of the need to manage political interactions and promote economic prosperity through a regional regime. At the same time, those very elites were partially responsible for generating the demand for ASEAN, as they developed common threat perceptions following Indonesian President Sukarno's Konfrontasi ("confrontation") campaign from 1963-1965. The campaign was designed to weaken the newly formed Malaysian Federation through military harassment and diplomatic offensives. It was driven by a vigorous nationalism that viewed the formation of the Malaysian Federation as

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<sup>4</sup>This section draws heavily on Chow (2003), pp. 14-23.

imperialist meddling by the British, and an Indonesian economy undergoing “stagflation”. Crucially, Sukarno also faced a precarious domestic political situation as he sought to check political rivalry between the military and the Indonesian Communist Party (PKI).<sup>5</sup> Konfrontasi began to unravel with a failed coup attempt on October 1, 1965 by a group calling itself the September 30<sup>th</sup> Movement. In response, the conservative Indonesian army, led by Major General Suharto, used the opportunity to conduct a massive purge of actual and suspected communists, whom they blamed for the coup. With the PKI decimated, Suharto was able to seize the presidency from Sukarno in March 1966 and quickly began to overturn the latter’s foreign policies, including renouncing Konfrontasi.

Konfrontasi demonstrated to the Southeast Asian states that domestic strife could have regional spillover effects and left them eager to avoid future interference in their domestic affairs, whether from within the region or without. In the 1967 Bangkok Declaration establishing ASEAN, the member states—then consisting of Indonesia, Malaysia, the Philippines, Singapore and Thailand—asserted that they would work together to enhance economic and security cooperation and set their own course as a region. Each of these states had its own reasons for agreeing to the ASEAN project. For Indonesia, joining ASEAN was an opportunity to rebuild trust within the region following Konfrontasi and take on a leadership role, though other states also regarded ASEAN as a way to channel Indonesia’s regional ambitions down a non-violent path (Acharya, 2001:49). Malaysia saw ASEAN as providing a measure of insurance against intra-regional conflict, a threat made more acute by Great Britain’s announcement in 1967 that it would begin to withdraw its military forces from Southeast Asia. For Chinese-majority Singapore, which had been expelled from the Malaysian Federation, the problem of British

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<sup>5</sup> For detailed information about the origins of Konfrontasi, see: Narine (2002), p. 10; Andaya and Andaya (2001), p. 286, and Mackie (1974), p. 89.

withdrawal was even more pressing as its size made it vulnerable to attack (Narine, 14). Hence, Singapore perceived ASEAN membership as a means to wield greater influence in the region and improve its tense relations with Malaysia. Thailand sought to join ASEAN to promote regional collective security, but soon faced a problem similar to Malaysia and Singapore's when its ally, the United States, announced in 1969 that it would begin to withdraw its troops from Southeast Asia under the Guam Doctrine. The Philippines believed that its membership in an indigenous regional organization would enable it to share more fully in Asian political and economic interactions by helping to offset its relationship with the United States.

During his opening speech to the Fourth ASEAN Ministerial Meeting in March 1971, Philippine Foreign Minister Carlos Romulo said that 'countries in the region had been helpless victims of world powers in their ideological power play' and that 'from this common misfortune grew an awakening to their common identity and community of interests.'<sup>6</sup> These ideas were enshrined in the 1971 Zone of Peace, Freedom and Neutrality Declaration and the 1976 Treaty of Amity and Cooperation, which together formed the cornerstone of ASEAN's norms of non-interference and respect for sovereignty.

ASEAN's organizational culture has exhibited a clear preference for informal diplomacy and personal elite relationships over rule-based interaction. From the beginning, ASEAN interactions were based at the ministerial level, initially involving the foreign ministers of the member states but over the next thirty years grew to include heads of state as well as ministers from other departments. This informal diplomacy has historically resulted in discussion, confidence-building measures, and non-binding declarations of intent rather than policies with the force or semblance of international law. Although these norms of interaction are consistent

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<sup>6</sup> Joint Communiqué of the Fourth ASEAN Ministerial Meeting. Manila, the Philippines, March 12-13, 1971. <http://www.aseansec.org/1234.htm>

with ASEAN's aversion to any external constraints on their sovereign control, they have also generated criticisms that ASEAN is little more than a 'talk shop'. On the other hand, the informality of the 'ASEAN Way' has arguably made ASEAN's member states more willing to discuss certain sensitive topics that might not otherwise be open for discussion.

Informal diplomacy exists hand-in-hand with the key procedural norm of decision-making by mutual consultation and consensus. Discussion in ASEAN is conducted via a process whereby each party articulates its viewpoints before a final decision is made. Decisions are not voted upon but rather made based on consensus. In the event of a deadlock, member states typically revert to bilateral negotiations. Thus, ASEAN's collective decisions have tended to reflect the lowest common denominator of interest, leading to incremental rather than radical change. Again, we can see how the ASEAN states' overriding concern with protecting their internal sovereignty has created a demand for these norms. Any issue that might impinge upon the interests of a member state is sufficient grounds for torpedoing a given proposal.

To summarize, the ASEAN meta-regime developed out of a consensus among elites that there was a need for a regional institution to manage security interactions and preserve national sovereignty in the Cold War environment. This was prompted by the shock of Konfrontasi as well as the realization that British (and later, American) troops were withdrawing from Southeast Asia, leaving regional states vulnerable to subversion and internecine conflict. By agreeing to a principle of strict non-interference in each other's sovereign affairs, the ASEAN member states sought to avoid a repeat of Konfrontasi. The paramount norm of sovereignty was reinforced by procedural norms of decision-making by mutual consultation and consensus, informality and incrementalism, all of which served to maximize member states' freedom to maneuver as they saw fit without interference from their neighbors. In the next sections we examine how this meta-

regime, which has undergirded virtually all of ASEAN's initiatives, has created obstacles to deeper regional integration.

#### **IV. ASEAN'S EVOLVING ECONOMIC COOPERATION**

Although ASEAN's founding documents discussed economic cooperation, it was only in the mid-1970s that it turned actively to promoting this goal. The first scheme, the ASEAN Industrial Projects, sought to foster regionally-based import substitution industrialization, but this effort made little headway (Ravenhill, 1995). In 1992, the ASEAN Free Trade Area (AFTA) came into being, soon followed by ASEAN Vision 2020 in Kuala Lumpur in 1997 and the Hanoi Plan of Action (HPA) in 1998, which sought to systematically implement the free trade area. In 2003, the Bali Concord II, created three "pillars" of ASEAN cooperation: an ASEAN Security Community (ASC), an ASEAN Socio-Cultural Community (ASCC), and an ASEAN Economic Community. At the Singapore Summit in November 2007, ASEAN leaders signed the Declaration on the AEC Blueprint in the context of a new ASEAN Charter, seeking to establish a single market, a production base, and a fully integrated region by 2015. This section considers some of the key economic and political driving forces for the evolution of economic cooperation in ASEAN, with a focus on the problems members faced in implementing economic liberalization.

##### **The ASEAN Free Trade Agreement**

With the end of the Cold War, ASEAN confronted the internal question of its own purpose and sought ways to move away from its previous emphasis on security issues. During this time ASEAN members also became increasingly concerned about the growing trend of regionalism in the rest of the world and the flow of foreign investment into China (Elliott and Ikemoto, 2004:4).

Moreover, it feared becoming isolated by the protectionist policies of other regional trade blocs while simultaneously facing pressures from the WTO and the IMF to speed up its own regional trade liberalization (Cuyvers et al., 2005:3). To this end, the ASEAN states agreed to the creation of AFTA in January 1992.

AFTA can be classified as being relatively weak in strength, liberal in nature and medium in terms of scope, though the 1995 services agreement broadened the latter. With respect to its nature, members sought to bring all intra-ASEAN tariff levels for non-sensitive goods down to the 0-5% range within 10 years from 1994. Members instituted a common effective preferential tariff (CEPT) that would make intra-ASEAN exports less expensive and bolster integration. Ultimately, the ASEAN states sought to use AFTA to eliminate all internal tariffs and create a single market, although some may contest this nomenclature (Lloyd, 2005). Yet in keeping with an elite-led model, the regime appears to have been created with relatively little private sector input except with regard to the exclusion of sectors and products (Ravenhill, 1995). The agreement called for different categories of liberalization: accelerated (with tariff reductions to 0-5% by January 1, 2000); normal track products (with tariff reductions to 20% by 1998 and 0-5% by 2003); and excluded items (general and temporary). In addition, it called for a ban on quantitative restrictions (such as quotas) on CEPT products and the complete removal of non-tariff barriers within 5 years of CEPT concessions.

The regime remained weak in three notable areas. First, Article 6 of the AFTA agreement allowed governments to make exceptions to the CEPT scheme and suspend the provisions if increased imports threatened “serious injury” to domestic producers, without clearly elaborating on its use. Second, although a ministerial-level AFTA council was created to supervise CEPT implementation, the Secretariat had a minor role. Finally, although members agreed to eliminate



non-tariff barriers within five years of implementing the tariff concessions, there was a dearth of plans for information gathering (particularly from the private sector) and implementation. In keeping with ASEAN norms of incrementalism, the AFTA agreement did not provide a specific timetable for tariff reduction, stating only that tariffs above 20% should be reduced to 20% within 5-8 years (later amended to 5 years from 1993), and then reduced again within 7 years (also amended to 5 years from 1993), while tariffs already below 20% were to be reduced at a schedule to be determined by the member states either singly or in groups.

Although the scope of the 1992 agreement was restricted to trade in goods, the inclusion of services liberalization has considerably widened its purview. The 1995 ASEAN Framework Agreement on Services (AFAS), committed its signatories to reduce tariffs on trade in services as well as other non-tariff barriers. The AFAS was envisioned to be a “GATS-plus” regime in which liberalization would exceed the standards set by the WTO General Agreement on Trade in Services (GATS). A cursory examination of the AFAS liberalization schedules reveals that the member states varied significantly in their levels of industry protection (Findlay, 2005: 186-87). Moreover, the regime remained weak, with liberalization proceeding at a pace comfortable to all members, rather than binding them to a set timetable.

In September 1995, the ASEAN economic ministers agreed to create a dispute settlement mechanism. This mechanism empowered the ASEAN Senior Economic Officials Meeting (SEOM) to set up ad hoc panels to review trade disputes and recommend settlement terms. Disputants could appeal the SEOM’s ruling to the ASEAN Economic Ministers Meeting (AEM). Failing that, they were to resort to bilateral negotiations that, if unsuccessful, would clear the way for the aggrieved party to petition the AEM to suspend concessions. While certainly a step toward stronger rule-based institutionalization, the original Protocol on Dispute Settlement

Mechanism was vaguely worded and relied on a potentially politicized body (the AEM) to settle appeals. This essentially voluntary mechanism also reflects ASEAN's norms on minimizing interference in other countries' affairs and the general weakness of the regime.

The impact of the AFTA regime on national actions and interactions was mixed. Taking into account the target dates for tariff reductions (and hence our use of 2000 data), it is worth noting that average tariffs among ASEAN members fell from 12.76% in 1993 to 4.43% in 2000.<sup>7</sup> In terms of the impact on trade, ASEAN intra-regional trade did increase from 21% in 1993 to 25% in 1997, at the onset of the Asian financial crisis. Still, many products that were to be liberalized remained on exclusion lists, and little progress took place with respect to service sector trade liberalization or the removal of non-tariff barriers. In short, while AFTA had some important effects, the lack of procedures in key sectors has undermined its potentially greater impact.

### **ASEAN Vision 2020 (1997) and the Hanoi Plan of Action (1998)**

The 1997 Asian financial crisis, in which ASEAN's member states ignored regional coordination in favor of unilateral actions, represented one of the most serious regional shocks that ASEAN faced and generated a consensus that ASEAN required greater institutionalization. It also stimulated debate on a possible reinterpretation of the norm of non-interference. In December 1997, the ASEAN states adopted ASEAN Vision 2020 which declared their intent to proceed with regional integration and liberalize trade in goods, services, investments and capital.

In 1998, ASEAN adopted the Hanoi Plan of Action as a six-year implementation program for ASEAN Vision 2020. Among the HPA's objectives were to liberalize and strengthen the

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<sup>7</sup>[http:// www.aseansec.org/peter\\_garrucho.htm](http://www.aseansec.org/peter_garrucho.htm)

financial sector, bring ASEAN capital markets into compliance with international standards, and facilitate trade through uniform customs and product standard regulations. It also sought to build up industrial cooperation, implement the Framework Agreement on the ASEAN Investment Area (AIA), encourage sustainable development, encourage private sector involvement and promote small and medium enterprises. The HPA was considerably more specific than AFTA and accelerated trade liberalization targets for the original six ASEAN members to 2002. In terms of our coding, the regime became somewhat stronger (still lacking a serious dispute settlement mechanism), continued with its overall liberal nature, and expanded further in issue scope.

Under the HPA, ASEAN-6 average tariff levels continued to fall to 1.87% by 2003 but intra-regional trade remained constant at about 22% after 1998. Observers noted that by early 2005, only 80% of the products traded in the ASEAN region were covered by the CEPT Inclusion List, with the other 20% falling under a variety of exceptions (Cuyvers *et al.*, 2005:5-8). However, since Most Favored Nation (MFN) rates under the WTO are in general only slightly higher than most of the CEPT rates, and since obtaining MFN certification carries far lower administrative costs, many firms have reportedly just paid MFN rates. Some estimates put the percentage of intra-ASEAN trade actually utilizing AFTA-CEPT rates as low as 5% (Reyes, 2004).

One positive interpretation of this low differential in tariff rates is that AFTA has fulfilled the ASEAN objective of creating “open regionalism” to a much larger extent than APEC taken as a whole. With relatively low tariffs, ASEAN can indeed be seen as a logical location for multinationals seeking to develop production networks with an external export focus. At the same time, however, the relatively low level of intraregional trade in ASEAN suggests that the issue scope of AFTA may be too narrow since most of the ‘actions’ (in this case, tariffs) covered

by AFTA are already constrained by a higher-level regime (the WTO), while those damaging ‘actions’ still occurring (e.g., sectoral protection for rice) fall under exception clauses.

### **From the ASEAN Economic Community to the ASEAN Charter**

Faced with growing concern about the economic rise of China and India, and the new turn to bilateral preferential trade agreements at the turn of the millennium, ASEAN members attempted to accelerate their integration (Ravenhill, 2008). These factors combined with the unsettled security environment marked by the Bali bombing of October 2002 to generate a strong impetus for deeper integration (Smith, 2004). Drawing on a McKinsey and Company report commissioned in May 2002 that sharply criticized ASEAN’s prior integration efforts (Schwartz and Villinger, 2004), in 2003 the Bali Concord II established the AEC to create a single market and production base for ASEAN with free movement of goods, services, investment, and skilled labor by the year 2020.<sup>8</sup>

The Vientiane Action Program (VAP) of November 2004 laid out plans for further liberalization in goods and services. Eleven priority sectors were designated for fast-track liberalization by 2010, including for example agro-based products, automotives, electronics, and several others. Under fast-track liberalization, ASEAN-6 states were to remove the CEPT for these sectors by January 1, 2007 (Cambodia, Laos, Burma and Vietnam have until January 1, 2012 to implement the liberalization measures). For those sectors not slated for fast-track liberalization, the VAP stipulates removal of all tariffs by 2010 (2015 for ASEAN-4 countries) and the establishment of protocols for removing non-tariff barriers. In terms of strength, the

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<sup>8</sup> Owing to space constraints, our focus in this section is primarily on trade, although progress has been made in changing the investment regime as well.

various framework agreements for sectoral integration are moderate to weak insofar as there are limited options for enforcing compliance by member states, the primary route being the ASEAN Enhanced Dispute Settlement Mechanism, which we discuss below. The nature of the regime for trade in goods is liberal, while its scope is broad, encompassing all sectors. Despite the apparent weakness of the regime, however, liberalization in goods has made substantial progress, with the ASEAN-6 countries having slashed tariffs on all of the goods on the inclusion list to 5 percent or lower as of 2003 (Abbugao, 2005).

Liberalization of trade in services under the VAP has proceeded much more slowly than liberalization of trade in goods. Although it calls for the creation of a ‘single market in services through progressive liberalization earlier than 2020’, the VAP also states that ‘trade in services will be liberalized at a pace comfortable to all Member Countries to enable the AEC to function as a single production base (2004: 13).’ It also explicitly calls for the use of multispeed subregional efforts, including the ‘ASEAN minus X’ formula, which allows for member states—with the consensus of other ASEAN states—to postpone accession to ASEAN agreements and ‘2 +X’ agreements which allow for 2 or more ASEAN states to establish sub-regional arrangements independent of ASEAN. These approaches potentially weaken ASEAN because there is no monitoring institution, thereby allowing member states to create as many of these sub-regional groupings as they wish. Sub-regional groupings can compensate for differences in economic development by allowing some countries to take the lead in trade liberalization, but there is currently not a robust mechanism to guarantee that less developed countries will not be left behind. Without adequate monitoring, these sub-regional groupings could increasingly become incompatible and insufficiently nested within the broader ASEAN effort.

Overall, however, there have been efforts to strengthen the economic regime through the 2004 Enhanced Dispute Settlement Mechanism, which creates procedures to handle multiple plaintiffs and interested third parties, as well as for the establishment of an independent appellate body. The new Protocol also added guidelines for suspending trade concessions and established firm timetables for parties to agree to a settlement before they could seek compensation. The new DSM represents a significant improvement over the previous mechanism in its attempt to depoliticize the process and its more consistent rule-based framework. Its structure strongly resembles the WTO's own mechanism in its progression from consultations to panels to SEOM rulings, appeals and compensation for non-compliance. While ASEAN itself cannot impose any sort of supra-national authority over the disputants, it can provide them with a mutually accepted framework within which member states can apply peer pressure to maintain compliance with trade agreements.

The ASEAN Charter was signed at the 13th ASEAN Summit in Singapore on November 20, 2007 but has yet to be ratified by all members. The ASEAN Charter creates a rule-based entity, calls for the creation of enforceable rules in finance, trade, and the environment, and called for creation of a regional human rights body. This agreement endorsed the January 2007 Cebu summit's call for liberalizing services sector in ASEAN by 2015 and accelerating the move to full liberalization through the AEC blueprint from 2015 from 2020.

With these new commitments, has ASEAN fundamentally changed? As with previous efforts, it would appear that the meta-regime remains firmly intact. In terms of strength, the regime remains relatively weak. Governments cannot be punished for violating human rights, non-interference remains the key norm, and the importance of respecting state sovereignty has been reiterated. Decision-making will remain based on consultation and consensus, rather than

any voting majority. And the ASEAN minus X formula is recognized, thus diminishing the constraining value of the regime. The liberal nature of ASEAN's economic regime still continues, and the scope has been broadened, in this case as noted, with the creation of a human rights body.

Although it is clearly too early to tell what the impact of the ASEAN Charter will be on further economic integration in ASEAN, one noteworthy trend is ASEAN member states' involvement in two different types of extra-regional trade agreements: ASEAN + X, which are established between ASEAN and an extra-regional state, and bilateral agreements with extra-regional states. ASEAN + X arrangements have been formed with China in 2002, Japan in 2003, India in 2003, and South Korea in 2005, and there are ongoing negotiations with Australia and New Zealand (ANZCERTA). Yet at the same time, individual members have moved forward on their own, negotiating nearly 60 agreements (Ravenhill, 2008), with Singapore in the lead. Rather than uniting the area economically, this approach emphasizes economic and power asymmetries that may seriously undermine ASEAN's integration efforts.<sup>9</sup>

### **Evaluating ASEAN's Economic Cooperation Efforts**

An examination of the economic cooperation in ASEAN can proceed at several levels. With respect to the impact on interactions and national controls, we have already seen that ASEAN members' tariff levels have declined steadily from the early 1990s to below 5%;<sup>10</sup> yet at the same time only 65% of the products in the Inclusion Lists of the ASEAN-6 had zero tariffs (Ravenhill, 2008). Moreover, as many analysts have noted, NTBs continue to hinder trade in the region. To what extent has ASEAN economic integration resulted from institutional factors, as opposed to

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<sup>9</sup> On the negotiation of bilateral agreements in the Asia Pacific, see Aggarwal and Urata (2006) and Dent (2006). On ASEAN + agreements, see Lim and Walls (2004).

<sup>10</sup> Overview ASEAN, <http://www.aseansec.org/64.htm>

market factors? Michael Plummer (2006) uses a standard gravity model to examine the underlying factors of trade relationships, finding in sum that “ASEAN as a group has been a statistically-significant determinant of international trade flows, including for ASEAN and EU trade.” He also finds some prime facie evidence that ASEAN’s process of economic integration was based on the coincidence of bolstered trade volumes following the initial protocols of formal integration, namely the commitment to AFTA in 1992.

Although ASEAN’s efforts look impressive with respect to removal of tariffs, intra-regional trade remains low compared to other regions. But in general, the East Asia group of 15 countries has a very high level of intra-regional trade, but no trade arrangement amongst themselves (Kawai, 2005). This illustrates what many have referred to as the difference between “regionalism” and “regionalization”, with the latter referring to trade trends, and the former indicating an institutional approach to the promotion of regionalism. Although intra-regional trade has not risen dramatically, ASEAN’s export performance has been very strong. One might question, then, the extent to which ASEAN’s industrial production structure is such that further deeper integration would indeed be of much help. Moreover, in this context of assessing ASEAN’s success or failure, one must examine the extent to which ASEAN’s integration efforts might have contributed to its outward export performance success. Unfortunately, assessing this is much more complicated, but the lack of significant ASEAN-wide integrated production by MNCs suggests that the integration in ASEAN has not contributed to this performance. Instead, this performance appears to be based on individual countries. It is worth noting that half of the FDI of the past ten years has gone to Singapore and the large investment in Singapore also parallels its share of export (about 40% of total ASEAN exports).<sup>11</sup> By contrast, the least developed economies of Cambodia, Burma, Lao PDR, and Vietnam received less than 10% of

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<sup>11</sup> Data on exports and FDI can be found in the ASEAN Statistical Yearbooks.



the total FDI inflows in this period. A key pillar of the ASEAN Economic Community is narrowing the development gap of the region, clearly not an easy goal to reach.

We now turn to the causal factors driving the evolution of economic cooperation in ASEAN. We have seen that going back to AFTA and its current successor the AEC, which incorporates additional agreements on investment and services that we have discussed, the regime has consistently become more liberal over time in nature and has clearly widened in scope. Yet at the same time, the regime has remained relatively weak, although recent efforts such as the ASEAN Charter suggest that ASEAN members have been trying to strengthen the regime.

Using the framework presented in Figure 2, how might we analyze the evolution of ASEAN's regime? In terms of the supply of the regime, it is clear that there is not a single hegemonic power. No country in ASEAN accounts for more than 32% of its GDP, and although Indonesia, Malaysia, Thailand, and Singapore account for about 80% of its total GDP (Ravenhill, 2008), these countries have not managed to develop into a "k" group that might collaborate to manage the ASEAN regime. In terms of the nested systems argument, although some see China and India as an economic threat, as John Ravenhill (2006) has noted, ASEAN countries have successfully become suppliers for the China assembly machine. Thus, as compared to the formation of the European Coal and Steel Community (ECSC), the forerunner to the EU, the causal logic is reversed. In the case of the ECSC, economic cooperation was seen as a means to decrease the likelihood of conflict among its member states. And with the Soviet Union as an external threat, this need to cooperate economically was driven by the "higher level" consideration of the Cold War context. By contrast, in the ASEAN case, security cooperation came first, and economic cooperation later.

In terms of the demand for an economic regime, on several dimensions this demand is low. For example, as noted earlier, the relatively low differential between external and internal tariffs, combined with the high transaction costs in using the CEPT, means that few firms have an incentive to utilize this arrangement. In terms of the interest in nesting either AFTA or AEC in the GATT/WTO, the high degree of consistency among the regimes, and the low degree of intra-regional trade among its members, reduces the need for the promotion of economic liberalization through an ASEAN-based regime as opposed to the GATT/WTO. Finally, in terms of “control” arguments, both international and domestic, there is not a strong demand for an ASEAN economic regime. In terms of controlling domestic actors, most of the ASEAN states have a strong export orientation as we have seen, and thus although selective protectionist pressures continue, the overall outward orientation reduces the demand of government officials to use a regime to control pressures from their domestic actors. And finally, in terms of international (regional) control, most ASEAN states have not imposed significant barriers against each other.

Given these supply and demand factors, the meta-regime in ASEAN’s cases looms large. As we argued in Section III, the norms that were developed as a result of ASEAN’s security origins directly undermine any effort to create a strong economic regime. These key norms include the substantive norms of respect for sovereignty and noninterference in other countries’ domestic affairs. While successful in a security context, these norms run counter to efforts to develop strong economic cooperation and an effective dispute settlement body. This problem is compounded further by the procedural norms of decision-making by mutual consultation and consensus (rather than majority rule or weighted voting). The procedural norm of elite-based diplomacy further creates problems for successful economic cooperation, as policymakers rather

than business interests have driven economic integration. Thus, the fear of China and India may be greater among political elites than firms who are happily supplying the China and India markets. In short, ASEAN's economic cooperation can be seen to be a victim of the success of its security meta-regime in preventing conflict among ASEAN states.

## **V. THE ASEAN ANTI-HAZE REGIME**

One of the most conspicuous tests of ASEAN's political will is the severe air pollution caused by the periodic burning of large forested areas in Indonesia and, to a far lesser extent, East Malaysia. The forest fires, which begin in the dry season between March and May and between August and October, produce thick smoke that drifts over neighboring countries where it mingles with the smog from urban centers. The result is a smothering haze that severely reduces visibility, posing a safety hazard to aircraft and ship operators as well as a severe risk to citizens' health. Between August and October of 1997, the haze problem in ASEAN reached crisis levels, as thousands of people were hospitalized for pollution-related ailments (Brauer and Hisham-Hashim, 1998). According to the Canada-based International Development Research Center, the region's total cost for dealing with the haze was conservatively estimated at nearly \$4.5 billion, more than the costs of the Exxon Valdez oil spill and the Bhopal chemical spill in India combined (Schweithelm *et al.*, 1999).

As a problem with significant human and economic costs that ignores national borders, the haze cannot be effectively controlled individually by states. Rather, it demands broader regional coordination to reduce its impact as well as the dissemination of early warning information and education about the hazards of common practices like slash-and-burn land clearance. Any regional accord must also consistently enforce regional standards at the national

and sub-national levels where ASEAN must rely its member states for implementation. Such a situation places contradictory pressures on ASEAN states. On the one hand, bringing a member state in line with institutional norms risks stretching the norm of non-interference in sovereign affairs, while on the other hand, the slow process of consensus-building means that policy solutions may take too long to materialize to be effective in addressing urgent problems. In other situations, the need for expediency has led ASEAN's member states to adopt bilateral or even unilateral policies, but adopting such an approach toward the haze problem risks creating incentives to free-ride as well as policies that work at cross-purposes. Although ASEAN responded with a set of interactions to build regional capacity in firefighting and prevention, regional cooperation has been hindered by weak enforcement at the domestic level.

### **Origins of the Anti-Haze Regime**

The haze that engulfed the region in 1997 and 1998 was not the first time that ASEAN faced the consequences of unchecked air pollution. For example, there were major incidences of haze in 1991 and 1994. However, the sheer economic, environmental and health damage from the 1997 forest fires and resultant haze significantly exceeded any pollution-related disaster experienced up to that point. The fires can be traced to two principal causes. First, subsistence and semi-subsistence farmers burned forested areas to clear land for agricultural use, but there is general agreement that the vast majority of fires were started by corporate interests in Indonesia in order to clear land for timber and palm oil plantations.<sup>12</sup>

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<sup>12</sup> For instance, Indonesian Environment Minister Sarwono Kusumaatmadja suggested that land clearing on behalf of corporate interests accounted for perhaps 80 percent of all the fires on Sumatra and Kalimantan during the 1997 haze crisis. See David Seth Jones, "Asean and Transboundary Haze Pollution in Southeast Asia," *Asia Europe Journal* 4 (2006): 433-34, Schweithelm, Jessup, and Glover, "Chapter 6: Conclusions and Policy Recommendations," 135-36.

Much of the blame for the haze fell on the Suharto regime, which generated extensive patron-client relationships with the forestry industry through the use of generous tax and investment incentives to logging companies. Loggers had no incentive to preserve trees and so resorted to crude slash-and-burn techniques.<sup>13</sup> At the national level, the wasteful practices of logging concessionaires were abetted by the insufficient capacity of the Indonesian government to enforce forestry regulations and monitor illegal logging. Between 1985 and 2006, Indonesia passed 23 laws granting the government various powers to fight forest fires, but in 2006, the country had only about 10,000 forest rangers to watch for fires, or one ranger for every 10,000 hectares of forest.<sup>14</sup> When cases against violators were brought to court, the defendants usually won. The combination of incentives rewarding rapid and short-sighted clearing of forested areas, the lack of credible monitoring capacity to prevent illegal logging and the unwillingness of the Indonesian judicial system to enforce laws meant that logging companies typically resorted to the cheapest and often most destructive methods of extraction and clearance, all of which ultimately resulted in massive forest fires and haze.

### **Pre-1997 Efforts to Control Haze**

Prior to the 1997 crisis, ASEAN had enfolded statements and agreements on haze into broader statements regarding transboundary pollution rather than treating it as a separate issue. In 1991, the onset of widespread forest fires in Indonesian Kalimantan prompted complaints about haze

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<sup>13</sup> For instance, government fees for concessionaires to remove trees were based on the number of trees felled rather than the number of trees on a particular piece of land, encouraging concessionaires to fell only the largest and most valuable trees to minimize payments. At the same time, the fees were levied at a flat rate that did not distinguish among different grades of trees, giving concessionaires no incentive to preserve specimens that would fetch a lower price on the market after taxes. Thus, minimizing the costs of extracting the most valuable trees became loggers' primary goal. Equally important was the lack of rewards for careful land management as the policy allowed leases to expire with no guarantee of renewal for adherence to conservation guidelines. See Mark Poffenberger, "Rethinking Indonesian Forest Policy: Beyond the Timber Barons," *Asian Survey* 37, no. 5 (1997): 457.

<sup>14</sup> Jones (2006), p. 443.

from Singapore and Malaysia. In December of 1992, ASEAN announced the formation of a joint committee to study the haze and set up a meteorological network for early warning.<sup>15</sup> The return of the haze in 1994 and 1995 again prompted complaints from Indonesia's neighbors, but the complaints seemed surprisingly muted and well contained within ASEAN's institutional framework, though this may have been due in part to the perception that the haze had not yet reached critical levels.<sup>16</sup>

During this period, ASEAN convened several ministerial meetings to discuss regional environmental issues. The First Informal ASEAN Ministerial Meeting on the Environment convened in Kuching, Malaysia on 21 October 1994. In the press statement following the meeting, ASEAN stated that its members had agreed 'to control transboundary pollution within [the] ASEAN region as "one eco-system", such as destruction of coral reefs, illegal fishing, haze pollution, etc., including developing [a] regional early warning and response system and enhancing the capacity of member countries.' The declaration that ASEAN constituted a single eco-system acknowledged at least in principle the notion that environmental problems could not be addressed solely within the confines of national governments.

In June 1995, ASEAN produced the ASEAN Cooperation Plan on Transboundary Pollution, which articulated several measures to improve regional cooperation on cross-border pollution. With regard to the haze, the plan recommended prohibitions on biomass burning during dry periods, information sharing and joint activities, and investment in alternative uses of

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<sup>15</sup> "ASEAN Experts Plan Panel to Deal with Haze Problem", The Straits Times, Singapore, 12/22/1992.

<sup>16</sup> For example, in an interview with the Straits Times in early October 1994, Abdullah Tarmugi, Singapore's Minister of State (Environment), said that 'although the haze appears bad in the sense that visibility is bad and so on, it is not hazardous.' When asked how bad the haze could get, he replied, 'We don't really know how much higher it can go, although the Malaysian level is quite high. I suppose the most horrendous case—I don't know whether it would reach that stage—is to ask people to stay indoors, to stop activities outside. But I don't think we will reach that stage.' Sumiko Tan, "Haze appears bad, but it's not really hazardous", The Straits Times, Singapore, 10/1/1994.

biomass.<sup>17</sup> In keeping with ASEAN's norms of informality, the ASEAN Cooperation Plan on Transboundary Pollution had no legally binding effect on member states. Moreover, although the plan did lay out a number of measures to build capacity, such as improved sharing of meteorological data and joint firefighting training, the plan did not include any mention of forest conservation as a measure to reduce the haze.<sup>18</sup>

The Cooperation Plan on Transboundary Pollution was significant in that it laid out specific steps for the ASEAN states to adopt, but it did not specify a timetable for implementation. The ASOEN was tasked with monitoring implementation and at its September 1995 meeting it established a Haze Technical Task Force (HTTF) that was intended to improve coordination through better haze and fire monitoring mechanisms and the dissemination of relevant meteorological data. dissemination and a variety of means, including the establishment of a haze alert and monitoring system and the designation of times and places most at risk for fires.<sup>19</sup>

Returning to the theoretical model of regime development in Figure 2, the initial demand for an anti-haze regime arose out of the ASEAN states' realization that a specific agreement could reduce the costs of coordinating regional monitoring, prevention and emergency response efforts. The scope of the resulting arrangement was fairly broad in proposing a range of prevention, education and capacity-building initiatives, with certain notable omissions in areas where fire prevention might directly interfere with economic development, such as in forest

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<sup>17</sup> "ASEAN Cooperation Plan on Transboundary Pollution," <http://www.aseansec.org/9803.htm>

<sup>18</sup> In terms of more specific measures to build capacity, the ASEAN states agreed to develop an information-sharing mechanism, expand the role of the ASEAN Specialized Meteorological Center to predict haze patterns, generate reporting and alerting procedures for relevant national agencies, develop a common air quality index and fire danger rating system, share technology and expertise in fire management, establish a mechanism for regional firefighting response, expand the role of the ASEAN Institute of Forest Management to include training of national-level personnel in forest firefighting, and continue to develop national and regional air pollution management capabilities. See James Cotton, "The 'Haze' over Southeast Asia: Challenging the Asean Mode of Regional Engagement," *Pacific Affairs* 72, no. 3 (1999): 343.

<sup>19</sup> ASEAN Cooperation Plan on Transboundary Pollution, Appendix. <http://www.aseansec.org/9803.htm>.

conservation. Yet the low perception of threat from haze and forest fires and the regime's adherence to ASEAN norms of informality, non-interference and consensus meant that the regime's provisions were non-binding, thus greatly weakening it. As a result, we would expect the regime to have a limited impact on national actions. This, in fact, is what happened as the impact of the 1997 and 1998 forest fires and haze far exceeded that of previous fires.

### **The 1997 Regional Haze Action Plan**

When analyzing ASEAN's response to the haze in the latter part of 1997, what is remarkable is the apparent dearth of regional initiatives. ASOEN did not convene until September and the joint communiqué scarcely mentioned the haze except for a single sentence expressing 'appreciation' for the Haze Technical Task Force.<sup>20</sup> It was not until late December 1997, well after the monsoon rains had washed out the haze from the atmosphere, that ASEAN convened its first-ever ministerial meeting on haze and adopted a Regional Haze Action Plan (RHAP).

As in the pre-1997 anti-haze regimes, the RHAP laid out a series of capacity-building measures to tackle the haze at a regional level. These were divided into three categories: preventive measures, regional monitoring mechanisms, and firefighting capabilities. Unlike the 1995 Cooperation Plan on Transboundary Pollution, though, the RHAP set a deadline for member states to develop national-level plans for haze prevention by March 1998. These national plans, according to RHAP, were to include restrictions on slash-and-burn practices during the dry season, efforts to safely dispose of combustible waste and plans for rapid firefighting response. At a regional level, the RHAP pledged to further strengthen regional early warning and monitoring systems and develop procedures for rapid regional mobilization of

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<sup>20</sup> Joint Press Release of the Eighth Meeting of the ASEAN Senior Officials on the Environment. September 8-10, 1997. <http://www.aseansec.org/9014.htm>



firefighting efforts.<sup>21</sup> According to the RHAP, national governments would wield primary responsibility for implementation. However, this posed a potential dilemma for ASEAN. Since implementation and enforcement were domestic issues, ASEAN could not openly single out a country for criticism of lax enforcement without violating its own norms of non-interference in sovereign affairs. Instead, it obliquely referenced lax enforcement regimes by acknowledging that ‘while some member countries have already developed their national policies and strategies, others are in the process of advancing them based on their own development needs, priorities and concerns.’<sup>22</sup>

Between December 1997 and August 1999, ASEAN convened a total of nine ministerial meetings on haze. These meetings produced a number of concrete results, including the development of a regional “zero-burning” policy that would be implemented at the national level, the construction of firebreaks and joint surveillance for early fire detection. Yet, for all of the RHAP’s calls for greater regional coordination and cooperation, its effectiveness hinged on the ability and willingness of member states to strictly enforce laws against slash-and-burn land clearance practices. Even after the ASEAN ministers’ declaration to impose a strict zero-burning policy in their own countries, fires continued. During the Eighth ASEAN Ministerial Meeting on Haze on August 26, 1999, barely four months after the adoption of the zero-burning policy, fires erupted in Indonesia and Malaysia. The joint press statement appeared to express some signs of impatience toward Indonesia, although it refrained from outright criticism.<sup>23</sup>

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<sup>21</sup> Ibid.

<sup>22</sup> ASEAN Regional Haze Action Plan, December 23, 1997. <http://www.aseansec.org/9059.htm>

<sup>23</sup> From the Joint Press Release of the Eighth ASEAN Ministerial Meeting on Haze, Singapore, 26 August 1999. <http://www.aseansec.org/1684.htm>. The Ministers expressed their deep concern that despite numerous Ministerial meetings and attention on the regional haze problem, fires have recently recurred in Sumatra, Borneo and some parts of Peninsula Malaysia, and only after a brief dry spell. These fires have caused the haze to spread to surrounding countries at the end of July 99. [...] The Meeting expressed appreciation for Indonesia's efforts in dealing with the fires in Sumatra and Kalimantan. The Ministers called for immediate actions to implement the zero-burning policy

Yet if the ASEAN states were frustrated with Indonesia's failure to rein in open burning, they were careful to avoid taking a hard line toward Jakarta. In an interview with the BBC, Simon Tay, the chair of the Singapore Institute for International Affairs and a member of the ASEAN Institute of Strategic and International Studies, stated that ASEAN would not place heavy pressure on Indonesia because of the latter's powerful role in Southeast Asia. Moreover, Tay blamed a lack of adequate infrastructure for enforcement in Indonesia rather than an unwillingness to combat the haze. 'I think that even if the Indonesian government in Jakarta had the goodwill to try and do something about [the forest fires and haze], it's very difficult for them because after years of corrupt and weak capacity at the local level, there is a limit to how far they can effectively enforce their own laws' (Tay, 2000).

In April 2000, Jakarta announced that it was going to file criminal charges against four large plantation firms for setting fires in the province of Riau. Yet in August, Indonesian Environmental Minister Sony Keraf complained to reporters that his office could do little to deal with violators and instead could only issue recommendations to others on how to enforce. He recounted an incident when he confronted the governor of West Kalimantan, Aspar Aswin, with satellite data showing that two plantation companies had burned forest to expand their holdings. The governor, he said, flatly rejected his findings and refused to take action against the companies (Jakarta Post, 2000).

### **The 2002 ASEAN Agreement on Transboundary Haze Pollution**

Despite the efforts of ASEAN to curb the slash-and-burn practices that generated forest fires, the haze persisted and returned each summer. In June 2002, at the World Conference on Land and

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that was previously adopted at the Sixth ASEAN Ministerial Meeting on Haze in April 99. The Ministers urged Indonesia to quickly implement the necessary by-laws and regulations to enforce the zero-burning policy.

Forest Fire Hazards in Kuala Lumpur, all ten of the ASEAN states signed the ASEAN Agreement on Transboundary Haze Pollution. Unlike the Regional Haze Action Plan, the ASEAN Agreement on Transboundary Haze Pollution would enter into force as a treaty upon the ratification of the governments of six of the ASEAN members, thus legally obligating them to fulfill its terms. The willingness on the part of the ASEAN states to bind themselves—even weakly—to a regional treaty marked a departure from the organization’s aversion to formal legalistic obligations. The Agreement required parties to take immediate steps to control fires and haze in their territories and to implement national legislation required to execute it.<sup>24</sup> It also established an ASEAN Coordinating Center for Transboundary Haze Pollution Control that would facilitate regional anti-haze efforts and resource distribution and serve as a central focal point for emergency response efforts. Also of note was the establishment of an ASEAN Transboundary Haze Pollution Control Fund that would provide monies needed for the implementation of the Agreement, though contributions to the Fund would be made on a purely voluntary basis.

A closer look at the Agreement, however, reveals the same weaknesses that rendered the Regional Haze Action Plan and the ASEAN Cooperation Plan on Transboundary Pollution ineffective in resolving the haze crisis. The most conspicuous shortcoming of the Agreement is the lack of any provision for enforcing compliance. For instance, there is no mention of sanctions for failure to implement the Agreement. Member states, it seems, are expected to carry out their obligations in good faith. A related problem is the vagueness of the obligations set forth in the Agreement. For example, Article 9, which lays out provisions for prevention, commits parties to develop and implement ‘legislative and other regulatory measures, as well as programs and

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<sup>24</sup> ASEAN Agreement on Transboundary Haze Pollution, June 10, 2002.  
[http://www.aseansec.org/images/agr\\_haze.pdf](http://www.aseansec.org/images/agr_haze.pdf)

strategies to promote zero burning policy to deal with land and/or forest fires resulting in transboundary haze pollution’ and to develop ‘other appropriate policies to curb activities that may lead to land and/or forest fires.’<sup>25</sup> What constitutes an appropriate policy is not explicitly stated. Indeed, without standards of expected behavior, it is impossible to enforce the terms of the Agreement. While a protocol to implement the terms of the Agreement would help to specify the procedures needed to coordinate efforts at a regional level, no such protocol has been put forth yet, even though Article 21 provides that ‘The Parties shall cooperate in the formation and adoption of protocols to this Agreement, prescribing agreed measures, procedures and standards for the implementation of this Agreement.’<sup>26</sup>

Alan Tan notes ‘where the surrounding political context is defined less by a demand by state parties for legally enforceable commitments, but more an expectation for moral force and action, prospects for compliance and effectiveness...are affected considerably’ (Tan, 2005). In the case of the Agreement on Transboundary Haze Pollution, its legally binding status amounted to little more than window dressing in the absence of any enforcement mechanism. Equally problematic was the fact that when the Agreement entered into force on November 25, 2003, Indonesia was conspicuously absent among the states that deposited their instruments of ratification with the ASEAN Secretariat, meaning that it was not bound by the Agreement.<sup>27</sup> Since Indonesia was the largest source of haze pollution by a wide margin, this was a significant blow to the Agreement’s effectiveness. The ASEAN Coordinating Center for Transboundary Haze Pollution Control, based in Jakarta, had only two staff members in August 2005, nearly two

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<sup>25</sup> ASEAN Agreement on Transboundary Haze Pollution, June 10, 2002.

[http://www.aseansec.org/images/agr\\_haze.pdf](http://www.aseansec.org/images/agr_haze.pdf)

<sup>26</sup> ASEAN Agreement on Transboundary Haze Pollution, June 10, 2002.

[http://www.aseansec.org/images/agr\\_haze.pdf](http://www.aseansec.org/images/agr_haze.pdf)

<sup>27</sup> The six parties that ratified the Agreement, thereby causing it to take effect, were Brunei, Malaysia, Myanmar, Singapore, Thailand and Vietnam.

years after the Agreement's entry into force. When asked why Indonesia had not ratified the Agreement, Foreign Ministry spokesman Yuri Thamrin replied, 'There is no delay in the ratification process. We are now in the administrative process to ratify it. Everything is in place. The related ministries are harmonizing the policy' (Ghani, 2005). As of March 2008, Indonesia still had not ratified the Agreement.

### **Evaluating ASEAN's Cooperation Efforts to Combat Haze**

Why has ASEAN relied on such weak instruments to address the serious problem of transboundary haze pollution? To return to our model, the answers to this question lie on both the demand and supply sides of the regime creation process. Actors demand regimes for three reasons: to reduce transaction and information costs, to control both domestic and international actors through rule-based systems versus direct coercion, and to bring more specific arrangements into conformity with broader ones so as to avoid conflicting institutional obligations. On the supply side, the providers of the regime are influenced by the need to ensure its conformity to broader-level principles and norms.

Where did the anti-haze regime fit with respect to these factors? The establishment of new mechanisms, including the regular meetings of the ASEAN Ministerial Meeting on Haze and the Haze Technical Task Force, helped to reduce the potential transaction costs of coordinating prevention and response efforts by increasing transparency and establishing working relationships among relevant officials and agencies. Under the 2002 Agreement, the establishment of an ASEAN Coordinating Center on Transboundary Haze Pollution Control would also help to reduce information costs by collecting national-level data in a single centralized location, assuming it possesses the necessary resources to carry out its functions.

What about controlling domestic and international actors? Here, the anti-haze regime was far less effective, in no small part because of the ASEAN states' need to balance this demand with their desire to root the regime within broader ASEAN norms of non-interference, decision-making by consensus, and the preservation of national sovereignty. The Regional Haze Action Plan ostensibly sought to lock domestic actors into a commitment to enforce regulations against open burning by adopting zero-burning policies. Likewise, the Agreement on Transboundary Haze Pollution sought to compel its signatories to implement and enforce legislation against burning. Yet none of the joint communiqués or other documents provided for enforcement mechanisms should the ASEAN states fail to keep their commitments, leading to a failure of the regime to significantly affect behavior at the level of national actions. This can be attributed in large part to strict adherence to ASEAN norms of informality and non-interference, which in turn can be caused by a member state's unwillingness to antagonize domestic interests by enforcing anti-haze legislation, particularly when such interests are tightly bound to a leader's political legitimacy. As a result, enforcement at the ASEAN level through sanctions could place leaders in a position where they would have to choose between damaging relations with other ASEAN states and damaging relations with powerful domestic interests. Such a situation would very much constitute a violation of non-interference.

## **VI. CONCLUSION**

Despite vigorous institutional efforts, ASEAN has made much more limited progress than one might have anticipated in the liberalization of trade and the control of haze. To more systematically investigate this evolution, we presented an analytical approach to distinguish among various aspects of governance, distinguishing principles and norms (the meta-regime)

from the rules and procedures of an arrangement (the regime). We also considered how regimes might influence national actions, both unilateral and bilateral accords, and how these in turn would likely affect international interactions. Yet while meta-regimes influence regimes, and these in turn affect national actions and interactions, we showed how each of these elements is also driven by political and economic causal factors. Thus, for example, and our central concern, regimes are a joint function of the meta-regime and supply and demand factors. The former include the presence or absence of a hegemon and the incentives of the hegemon within nested systems. On the demand side, we examined the role of lowering transaction costs, the interest of states in controlling international and domestic actors, and the concern for nesting new institutions in existing ones.

Although the issue areas of trade cooperation and haze control are very different, we have argued that ASEAN's inability to further cooperation has been rooted in its meta-regime of non-interference, sovereignty, incrementalism, informality and consensual decision-making. This meta-regime, which first emerged as a result of the Cold War security situation in Southeast Asia, has remained largely unchanged in the 40-plus years since ASEAN's establishment. Even as ASEAN's security situation has changed significantly and ASEAN itself has greatly expanded the range of issues that fall within its purview, it remains committed to a meta-regime that jealously protects sovereignty at the expense of deep multilateral integration. While the meta-regime may have served its members well on some dimensions of handling regional conflict, and while we have also seen demand and supply factors that might have strengthened the trade and anti-haze regimes, the consensus on non-interference nevertheless undermines efforts to address other key issues. On a more positive note, then, how might ASEAN overcome this hurdle?

With respect to trade cooperation, one could attempt to alter the current meta-regime directly. Principles and norms are, of course, not static, either in theory or in practice. In ASEAN's case, changes have taken place over the last 30 years, often in response to external or internal shocks. Today, ASEAN confronts an economic environment in which a new multilateral trade round may not materialize for some time, where China and India are absorbing large amounts of FDI, and where its members are pursuing independent bilateral free trade agreements. Could this constellation of factors be a greater stimulus to action than the 1997 Asian financial crisis? And if so, would ASEAN members adapt to the new context by transforming their approach to intramural cooperation? Currently, these factors do not seem sufficient to precipitate a dramatic transformation in the meta-regime, and thus this path appears unlikely.

A second approach would be to foster the development of a new economic regime within the existing meta-regime. According to this logic, pressure from businesses and other societal groups would alter the meta-regime by fostering a greater willingness to have stronger constraints on member states. But as we have seen, there is little business pressure to promote intra-regional trade. As Ravenhill (2008:[**page number here**]) succinctly puts it: '...the supply of intra-ASEAN trade liberalization has exceeded the demand from the business community for it.' With respect to one key demand factor—controlling the detrimental effects of domestic protectionism on other member states' economies—ASEAN has been unsuccessful. On this latter point, one cannot help but notice an apparent contradiction between ASEAN's allergy to formalized regional institutions on the one hand and the eagerness of ASEAN states to pursue WTO membership on the other. One is also struck by the dearth of criticism from ASEAN regarding the WTO's dispute settlement mechanism, the very specific rules on compensation in



the case of illegal restrictions on imports, or the myriad rules and procedures that characterize both the WTO and its predecessor, the GATT. If ASEAN states have no problem joining the WTO, then why are they so reluctant to establish less formal institutions at the regional level?

A third approach would be to establish a separate meta-regime for economic affairs and decouple it from the security meta-regime. For example, it is worth keeping in mind the theoretical distinction between the voluntary provision of regional public goods and the effort to cope with externalities. These two types of market failures should not be conflated. With respect to non-interference, surely one might believe that asking a neighboring country to stop restricting imports is not the same as coercing that country to change its party system. Thus, the notion of noninterference could be reserved for the security meta-regime but not apply to economic affairs.

Fourth and finally, one can be more radical and ask simply: if ASEAN stopped trying to promote regional economic integration and simply worked within the WTO system or, even a much less desirable option, let member states pursue bilateral trade liberalization, would ASEAN members really be worse off? On this score, we believe the jury is still out.

Turning to the anti-haze regime, we similarly consider four possible scenarios to strengthen it. One option is to do away with an ASEAN-based approach to combating the haze and nest the anti-haze regime within a broader multilateral regime. The problem with this approach is that there is no multilateral equivalent to the ASEAN Agreement on Transboundary Haze. The closest would be the Kyoto Protocol to the United Nations Framework Convention on Climate Change, to which all of the ASEAN states except Brunei are parties, but the nature of the Kyoto Protocol differs substantially from that of the ASEAN Agreement on Transboundary Haze as the former seeks to reduce greenhouse gas emissions while the latter focuses specifically on curbing forest fires, emphasizing firefighting and prevention capacity over emissions

reduction. In other words, if ASEAN were to give up a regional approach to the haze problem, there would be no other mechanism to fill the void except for unilateral and bilateral actions.

Another possible approach is to change the ASEAN meta-regime directly by altering the norm of non-interference. This would be very difficult for several reasons, but the most important one for our purposes is the fact that the meta-regime undergirds not just the anti-haze regime but all of the other ASEAN subregimes, including security, and serves to protect member states against perceived challenges to their sovereignty. The 1997 Asian financial crisis prompted sharp debate within ASEAN over non-interference and resulted in the proposal of ‘flexible engagement’, which would have allowed member states to criticize each other’s domestic policies if such policies were damaging to their interests or else had other regional effects. The ASEAN states overwhelmingly rejected ‘flexible engagement’ because of its potential for undermining national sovereignty (Haacke, 2005).<sup>28</sup> They did, however, agree to “enhanced interaction”, which allows members to comment on one another’s domestic policies whenever they have regional effects, but such criticism cannot be framed as originating from within the ASEAN framework (Narine, 2002). “Enhanced interaction” has been sorely tested by Burma’s continued detention of pro-democracy activist Aung San Suu Kyi, which has proven to be a major blemish on ASEAN’s public image. Some scholars have suggested that “enhanced interaction” may indicate a softening of non-interference,<sup>29</sup> but it is notable that the ASEAN governments did not publicly call on Burma to relinquish its 2006 rotating chairmanship of the Association, instead relying on quiet diplomacy and pressure from the United States and the European Union, which had threatened to boycott ASEAN meetings (Haacke, 2005:199-201).

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<sup>28</sup> See also Jurgen Haacke, ""Enhanced Interaction" with Myanmar and the Project of a Security Community: Is Asean Refining or Breaking with Its Diplomatic and Security Culture?" *Contemporary Southeast Asia* 27, no. 2 (2005): 189.

<sup>29</sup> See for instance, Katsumata (2004), pp. 237-54, Hind (2001) and Katanyuu (2006).

Put differently, there has been an effort to nest “enhanced interaction” within the existing norm of non-interference, thereby preserving it.

A third possibility is to indirectly change the meta-regime by forming a coalition to strengthen the anti-haze regime, possibly inducing spillover effects. While this is possible in theory, in practice, as we have argued, the meta-regime is the very thing inhibiting change in the anti-haze regime. Such a coalition would only be effective if its members were willing to place coordinated pressure on Jakarta to curb slash-and-burn clearing, causing the Indonesian government to risk angering domestic interest groups. The ASEAN states would likely be extremely circumspect about breaching non-interference because of the potential precedent it would set for interactions in other areas. While Indonesia’s neighbors undoubtedly desire the elimination of the haze problem, it is not at all the case that they want to do away with the norm of non-interference altogether, as the example of “flexible engagement” illustrates.

This leaves a fourth option, which is to establish a separate meta-regime for environmental matters that does not strictly adhere to non-interference, while simultaneously preserving the existing ASEAN meta-regime for security matters. By doing this, the ASEAN states would be reassured that non-interference and respect for sovereignty would govern sensitive interactions where open criticism could significantly infringe upon governments’ legitimacy. At the same time, it would allow for greater formality and more stringent enforcement in environmental cooperation. One significant problem would be determining issue scope, that is, where environmental matters end and fundamental matters of sovereignty and political stability begin, as the latter would fall within the purview of the non-interference norm. One could argue, for instance, that how the Indonesian government handles its concessions to palm oil interests is fundamentally a sovereign matter even though the result is often open

burning, which is clearly an environmental issue with regional externalities. Without a clear delineation between what is and is not covered by the separate environmental meta-regime, the ASEAN states would remain extremely concerned that the relaxation of non-interference in environmental issues would spill over into other areas. Nevertheless, if ASEAN is committed to addressing transboundary haze pollution as a body, this option suggests that it may not need to do away with the sacrosanct norm of non-interference.

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