

ASEAN Environmental Legal Integration: Sustainable Goals? BY **KOH KHENGLIAN**, **NICHOLAS A ROBINSON** AND **LYE LIN-HENG** [Cambridge: Cambridge University Press, 2016. xvii + 251 pp. Paperback: \$39.99]

ASEAN Environmental Legal Integration: Sustainable Goals? is a contribution to the *Integration Through Law: The Role and the Rule of Law in ASEAN Integration* series, a project undertaken by the Centre for International Law at the National University of Singapore. The Association of Southeast Asian Nations (“ASEAN”) was established in 1967 as a platform for five of the original ASEAN Member States (“AMSs”), Indonesia, Malaysia, Philippines, Thailand and Singapore, to promote cooperation towards peace, progress and prosperity in the region. In 2007, the AMSs, by now expanded to include Brunei, Cambodia, Laos, Myanmar and Vietnam, signed and ratified the *Charter of the Association of Southeast Asian Nations*, 20 November 2007 [*ASEAN Charter*], and created a formal legal and institutional framework for ASEAN. More recently, the AMSs have resolved in the ASEAN, *ASEAN Community Vision 2025* (2015) to strengthen the integration process to realise

an “ASEAN Community”, comprising the ASEAN Political-Security Community (“ASPC”), ASEAN Economic Community (“AEC”) and ASEAN Socio-Cultural Community (“ASCC”), guided by the purposes and principles of the *ASEAN Charter*, one of which is the promotion of sustainable development. The project is thus a timely enquiry as to the substantive principles and rules of the ASEAN Community; the principles and rules governing institutional structures and decision-making processes, as well as implementation, enforcement and dispute settlement.

The monograph is however also intended to be capable of being read as a standalone publication, and the authors have set out to answer the more specific question of how the AMSs employ environmental law as a means of advancing shared concepts of environmental sustainability. This is a pertinent question in its own right. As ASEAN strengthens its integration, there are concerns that environmental considerations should remain a priority and not be overlooked by economic priorities (see eg, IBON International, *ASEAN Community 2015: Integration for Whom?*, Policy Brief (2015)).

In a nutshell, the authors demonstrate through case studies that environmental law as employed is very much a ‘soft law’ affair in the spirit of the ‘ASEAN Way’, cooperating in different aspects of environmental sustainability at a pace determined by national priorities, and which is not perceived as an interference with domestic matters and a threat to national sovereignty. Surprisingly, much has been achieved in this way in the last few decades. However, the authors rightly warn that this approach to ASEAN environmental legal integration is not sustainable as it is inadequate in scale and pace to meet the greater and more urgent multifaceted threats posed by climate change. The authors suggest a more ambitious vision, and this will entail a change in the existing mindsets about national sovereignty and non-interference.

The monograph is divided into seven chapters. Chapter 1 gives an overview of ASEAN’s approaches towards cooperation on environmental sustainability, respectively amongst the AMSs and with their “dialogue partners”. It describes with some detail the ‘ASEAN Way’, now enshrined in art 20 of the *ASEAN Charter*, as the key approach towards internal cooperation and its positive impact. Chapter 2 explains how integration has influenced the national environmental legal frameworks of the AMSs and *vice versa*. It notes that state practice on environmental sustainability at the national level is uneven in different countries and in different sectors. This has made integration challenging. However, the AMSs’ state practice in environmental sustainability is being built up incrementally, by consensus, and over time.

In Chapter 3, the monograph turns its attention to ASEAN collaborative efforts and achievements in five key environmental areas—biodiversity conservation and natural and cultural heritage; freshwater resources and forests; fisheries and the marine environment; human settlements; and the atmosphere. The track record is a mixed one; ranging from relatively strong ASEAN intergovernmental cooperation in the selection, establishment and management of protected areas, to relatively low regional capacity and priority in protecting the coastal and marine environment, a mere basic framework in addressing freshwater water availability and deforestation, and the emergence of cooperative efforts in urban development and air quality. The conclusion is that while much has been accomplished in confidence building and in the capacity to act collectively, much more needs to be done to abate or reverse the unsustainable trends in environmental degradation.

Chapter 4 reviews the national environmental legislation of each AMS, particularly in addressing the key environmental areas highlighted in the earlier chapter. It notes that each AMS's national and subnational laws are partly driven by their individual historical and developmental legacies, and different developmental priorities as perceived by their respective governments. Each AMS has the basic legal framework to address national and international environmental issues, but has different institutional capacities and will to implement or enforce these laws or to align them with regional and international policies and programmes. What is needed is greater intra-ASEAN institutional harmonisation to facilitate cooperation between the respective agencies, their officials and their counterparts across the AMSs. ASEAN also needs to commit resources for capacity building. Nevertheless, ASEAN cooperation through hard law instruments and soft law policies and programmes have influenced the development of a national legislation to manage the environment. Examples of such cooperation include the *ASEAN Agreement on Transboundary Haze Pollution*, 10 June 2002; the *ASEAN Declaration on Heritage Parks*, 18 December 2003; the ASEAN Centre for Biodiversity; the ASEAN Wildlife Enforcement Network; and the *Memorandum of Understanding of ASEAN Sea Turtle Conservation*, 12 September 1997.

Intra-ASEAN cooperation and ASEAN cooperation with the international community in the areas of environmental sustainability are the subjects of Chapter 5. Seven case studies are selected to show ASEAN cooperation at work. Three are concerned with transnational challenges, namely avian influenza, transboundary haze pollution and international wildlife crime, three with disaster recovery, namely the impact of Cyclone Nargis in Myanmar, monsoon floods in Thailand and the impact of Typhoon Yolanda/Haiyan in the Philippines, and one on regional resource management in respect of freshwater. These studies highlight the swiftness and coordination with which ASEAN cooperation can take place when the collective will exists. They also show how political sensitivities can be a hindrance to cooperation. And that, where there is no clear benefit for all AMSs concerned to cooperate, such as in the case of regional water management, there is not much motivation to move forward to advance the interests of the region as a whole (see also, A Ibrahim Almuttaqi, "Why ASEAN Must Pay More Attention to the Mekong Delta" *The Jakarta Post* (10 June 2016) online: Jakarta Post <<http://www.thejakartapost.com/academia/2016/06/10/why-asean-must-pay-more-attention-to-the-mekong-delta.html>>).

Chapter 6 argues the case for the need for greater cooperation and integration to address the huge challenges of climate change to each AMS's development. Neither ASEAN nor the AMSs are currently adequately resourced for the task of mitigating or adapting to the effects of climate change disruption. ASEAN can help the AMSs to respond better by pooling their knowledge and resources and acting as a platform for cooperation with other regions. The recommendations for action are already out there; what is needed is a scaling up of ASEAN's capacity to adopt these recommendations, not least in the key environmental areas identified in Chapter 3. Whether this happens will determine whether ASEAN can become a focal point for the AMSs to address their common existential threats.

The monograph closes in Chapter 7 with a broad reflection on ASEAN's challenges going forward. Individual AMSs certainly have their own perceived national priorities, interests and sensitivities, and the ASEAN Way has enabled much cooperation

in a range of environmental sustainability issues to take place, albeit at an unevenly incremental pace that does not jeopardise these priorities and interests. But this comfortable pace may no longer be adequate in the face of greater and more urgent threats to ASEAN's sustainable development in the form of climate disruption. To get to a more integrated ASEAN, the people of ASEAN need to forge a stronger ASEAN identity and their leaders need to come to understand that their respective national interests are best furthered through regional collective action, and in particular that each AMS's individual environmental sustainability has far-reaching consequences for the security of all. Economically, more work needs to be done to narrow the development gap between AMSs and improve administrative capacity. Internally, each AMS must also do more to 'mainstream' environmental sustainability. Indeed, these are all daunting strategic imperatives.

One operational issue that the authors could have said more about in the monograph is that of the institutional limitations of ASEAN itself in facilitating integration. The authors have highlighted the emerging approach of recognising and addressing environmental threats as non-traditional security issues under the ASPC pillar, which command greater attention and resources commensurate with their urgency. They have also recommended the mainstreaming of environmental issues at the national level. Mainstreaming should also take place at the regional level. As Robinson and Koh have pointed out elsewhere (see Nicholas A Robinson & Koh Kheng-Lian, "Strengthening Sustainable Development in Regional Inter-Governmental Governance: Lessons from the 'ASEAN Way'" (2002) 6 *SJICL* 640), in cooperating to prevent and combat land and forest fires, the opportunity to address the underlying trade/investment issues—direct private investment without environment controls—was missed. As described in this monograph, ASEAN has since taken steps to work towards sustainable forest management under the more rule-based AEC pillar. Koh Kheng-Lian & Saiful Karim, "South East Asian Environmental Legal Governance" in Shawkat Alam *et al*, *Routledge Handbook of International Environmental Law* (2013), ch 26 have suggested the establishment of a fourth ASEAN pillar dedicated to the environment, and cross-cutting issues such as free trade agreements. In a similar vein, Simon H Olsen, Teoh Wei Chin Shom & Ikuho Miyazawa "ASEAN Community and the Sustainable Development Goals: Positioning Sustainability at the Heart of Regional Integration" in IGES, *Greening Integration in Asia: How Regional Integration Can Benefit People and the Environment* (2015), ch 4 have recommended that sustainability should not be merely consigned to a sub-element of the ASCC pillar. Cross-cutting environmental issues could be embedded and harmonised across all relevant blueprints, and operationally coordinated across pillars by a transcending working group or committee, with the support of an adequately staffed and resourced Secretariat.

ASEAN's advances in cooperating in environmental sustainability have been achieved almost exclusively through a series of soft law declarations, action plans and policy guidelines and are relatively remarkable. This, and how it continues to advance environmental sustainability in the face of greater and more urgent environmental challenges as it transitions from an informal cooperative regional network into a formal integrated regional institution, is worthy of study not least as a useful reference for regional environmental governance elsewhere. This monograph provides an insightful overview of the historical development, current status and a

possible future course of ASEAN environmental law. It is a welcome addition to that study.

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