

The ASEAN Way Out? Toward Cooperative Environmental Governance in Southeast Asia

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BRIAN DORMAN AND TYLER JAMES OLSEN, AUG 10 2019

Cooperation between Asian nations is hardly a recent phenomenon, but what has emerged in the last few decades has stimulated renewed analysis regarding both the theoretical foundations and practical functions of increasingly complex and overlapping institutions. As Southeast Asia incrementally integrates into a significant economic and political bloc, the scope, scale, and content of the interaction amongst Asian states, and with the wider world, must be continually reevaluated. As the recently concluded 34th ASEAN Summit indicated, a new regional order is evolving; one which still grapples with strategic security concerns, economic inclusion, and environmental management.

Unlike the intergovernmental organizations of the West which arguably have strong ideological foundations, political groupings in Asia might be more accurately described as opaque by degrees (Dosch, 2008). Gill and Green put it succinctly, 'The reality is that Asia's new multilateralism is still at a stage where it is best understood as an extension and intersection of national power and purpose rather than as an objective force in itself' (2009: 3).

Of Asia's political associations, the most important is perhaps ASEAN, a regional grouping of originally just five governments (since expanded to ten) including: *Brunei, Indonesia, Malaysia, the Philippines, Singapore, Thailand, Vietnam, Laos, Burma, and Cambodia*. ASEAN's Declaration states that its mission is to advance economic growth, community building, and security cooperation. ASEAN's Charter has also explicitly articulated fundamental principles that have 'collectively come to be known as 'the ASEAN Way'; these principles place extreme emphasis on national sovereignty and the commitment to non-intervention into the affairs of member countries' (The Economist, 2015).

While it is often said that ASEAN's long-standing policy of non-interference acts as an impediment to regional cooperation on transboundary environmental issues, and that therefore ASEAN is ill-equipped to control or mitigate ecological degradation within its political space (Jones, 2009; Aggarwal, & Chow, 2010; Molthof, 2012; The Economist, 2015; Collins, 2016; Nguyen, 2016), in this essay we argue that the institutional regime codified in the ASEAN Charter is in fact well-suited to respond to environmental challenges. Given its explicit commitments to interstate cooperation with respect to transboundary issues, and the concrete instances of regional cooperation towards environmental protection, the currently existing framework bears the latent potential of a rigorous cooperative strategy of environmental protection and ecosystem management.

Since ASEAN's formation in 1967, this once weak regional alliance—presumed to have few prospects for success and dominated by Western-backed autocrats who accomplished little of substance—has arguably matured into one of the most robust regional organizations in the developing world (Rigg, 1991; Severino, 2008; Lehmacher, 2016). But while its membership has grown, its objectives, general aims, and identity have evolved, and the degree of political, economic, and security cooperation has enlarged and deepened, ASEAN still faces many important challenges, including persistent regional ecological degradation (Lian & Robinson, 2002; Nguyen, 2004; Narine, 2008; Howes & Wyrwoll, 2012; Acharya, 2013). Both the popular media and the scholarly literature cast ASEAN's principle of non-interference as an obstacle to achieving tangible results in cooperatively attending to its numerous (and increasingly severe) transboundary environmental problems (Tay & Than, 2001; Lian & Robinson, 2002; Elliott, 2003; Aggarwal & Chow, 2010; Simon, 2013; The Bangkok Post, 2015). Insofar as ASEAN is determined by its

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commitment to the principle of non-interference there are certainly good grounds for such reservations. However, insofar as ASEAN is *also determined by* principles of action oriented around cooperation in the common pursuit of solutions to regional challenges, such reservations must be qualified.

Although the ASEAN Charter explicitly articulates a regime founded on principles of 'independence, sovereignty,' and 'non-interference in the internal affairs of ASEAN Member States,' it also includes norms that run counter to this desire to preserve strict national control over issues of domestic concern (ASEAN, 2008: 1-7). The preamble to the Charter, for instance, notes that Member States must be 'mindful of the existence of mutual interests and interdependence among the peoples' of ASEAN who are 'bound by geography... and a shared destiny;' that members must 'ensure sustainable development for the benefit of present and future generations;' that members be 'committed' to 'enhanced regional cooperation and integration;' and that the way forward to achieving shared goals is by 'adhering to the principles of democracy' (ibid.). Further, Article 1 of the Charter specifically references the importance of 'cooperatively,' 'inclusively,' and 'effectively' addressing 'transboundary' issues, 'sustainable development,' the 'protection of the region's environment,' and the 'quality of life' for all its citizens (ibid.). Given this dual commitment to state sovereignty and the principle of non-interference on the one hand, and to cooperation with respect to transboundary issues (including environmental challenges) on the other, ASEAN seems to be in an impossible position wherein the pursuit of each of these commitments seems to undermine the other. However, in practice, member states do not fully adhere to either of these imperatives.

Even when states give their best effort to abide by the principle of non-interference—and thus avoid meddling in the affairs of other states while simultaneously asserting their absolute sovereignty within the bounds of their territory—this principle can never be fully realized for at least two reasons: (1) given the ecological interrelations between the sovereign territories of states, actions performed on the territory of one state often have ecological consequences beyond that state's borders; (2) because this principle is *conceptually limited* to the realm of state sovereignty but *enacted* within the context of increasingly liberalized global markets dominated by increasingly powerful non-state actors, the principle of non-interference is routinely transgressed by *external, non-sovereign actors* that respect state sovereignty perhaps in word, but not necessarily in deed.

ASEAN's competing imperative of regional cooperation in the effort to tackle transboundary issues, including environmental protection and sustainable development, is oftentimes jettisoned as each state attempts to pursue their own economic self-interest; though, there are notable exceptions that could be built upon in an effort to better substantiate this cooperative norm. Straddling the tension between these two imperatives—of non-interference and regional cooperation—ASEAN's Charter provides the conceptual scaffolding for a variety of governance strategies, including that of a cooperative ecosystem management regime. While a strong commitment to the principle of non-interference would indeed undermine ASEAN's ability to combat the destruction of their shared environment, by recognizing the erosion of state sovereignty and the growth of non-sovereign power in the age of neoliberalism, as well as the transboundary nature of ecological degradation, member states could more firmly root their practices in the principles of regional cooperation, democracy, and inclusivity that are already codified in ASEAN's Charter. If its member states intersubjectively reoriented towards these values, embracing their collective identity as a regional grouping with a common destiny, and introduced modest democratic reforms, equitable environmental governance could be achieved under the ASEAN system.

Problematizing Sovereignty and the ASEAN Way

The principle of non-interference—articulated in ASEAN's Charter and cited by critics who insist that it blocks the emergence of a cooperative ecological management regime—is one of the central tenets of the concept of state sovereignty, which has been the defining idea of the modern interstate system (Ruggie, 1993). Philpott describes sovereignty as the 'supreme legitimate authority within a territory' (1995: 357). Within the interstate system that emerged from the Treaty of Westphalia, and since exported to the rest of the world by ambitious European powers, the notion of sovereignty indicates that within each state there is a single, sovereign authority, whether it be an individual, a committee, or a set of institutions delimited by a constitutional framework. According to the dominant neorealist framework, above and beyond these sovereign states in the interstate system there is no higher authority—neither spiritual nor political—that can legitimately impose its will (Keohane, 1986; Buzan, Jones & Little,

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1993). The international system is 'anarchic' (Waltz, 2010).

In the literature, sovereignty is described as consisting of two complementary components: 'internal' sovereignty, which indicates 'undisputed supremacy over the land's inhabitants'; and 'external' sovereignty, which indicates 'independence from unwanted intervention by an outside authority' (Philpott, 1995: 357). With respect to internal sovereignty, the sovereign is recognized by the inhabitants of the territory as legitimate (Hobbes, 2006); and the territory over which the sovereign presides is clearly delimited (Mann, 1993). While internal sovereignty refers to the authority of the sovereign within the territory, external sovereignty refers to the principle of non-interference, by which other states respect the integrity of the spatially delimited territory over which the sovereign reigns.

As highlighted by Forsberg (1996) and Elden (2010), the meaning of territory is left radically undetermined by traditional conceptions of sovereignty in international relations theory: territory is understood merely as a discrete portion of space over which the sovereign authority reigns supreme. In contrast to this traditional view of territory as a kind of container within which sovereign power unfolds (Taylor, 2003), Elden (2010) contends that the territory of the modern state is the scientifically differentiated space that is rationally analyzed in the strategy to survey and exploit the resources therein; including both natural and human resources. The territoriality of the sovereign state thus implies an exploitative relationship with the space controlled by the sovereign authority, leading to a variety of socially unjust and ecologically unsustainable practices (Tilly, 1990; Scott, 1998; Peet, Robbins & Watts, 2010). The principle of non-interference thus serves as a means to protect the internal exploitation of the territory from interference by external states. Insofar as a state engages in ecologically destructive practices, then, this principle serves as a considerable obstacle to cooperative efforts by regional organizations to preserve ecological integrity. This is the main thrust of the arguments that cast ASEAN (and its formal commitment to the principle of non-interference) as incapable of addressing regional environmental challenges.

As indicated by Tamaki (2006), however, this pervasive discourse conflates the representation of sovereignty as articulated in the ASEAN Charter with the reality on the ground, which betrays political structures that are not wholly ordered according to the principle of non-interference. On the one hand, the fact that ecosystems are not determined by the borders of nation-states (Ward, 1998), and that capital fluidly moves across those same borders (Wade, 1998; Singh, 2003), undermines the very possibility of non-interference from both an ecological perspective and a politico-economic perspective. First, because ecosystems extend beyond the borders of sovereign states, industrial activities that have an impact on the ecosystem as a whole necessarily interfere with the territorial integrity of external states. When the landlocked government of Laos builds a dam on the Mekong River, it positively interferes with regional fishing, farming, the watersheds and integrated hydrological systems (read: territories) of not just Laos, but of Thailand and Vietnam, for instance (Dudgeon, 2000; Wright, 2016). Second, given context of increasingly liberalized global markets, the actions of non-state actors such as financial institutions and transnational corporations routinely violate the principle of non-interference; but this is not recognized as such because these private actors attain *de jure* approval from the state necessary for the *appearance* of non-interference (Held, 1991; Evans, 1997; Brown, 2015). For example, the Indonesian state may well have approved KTS's (a large, foreign-owned logging company) contract for harvesting vast timber reserves, but this dissimulation of formal authorization masks unequal relations of power through which such approval was achieved (Bowles & Prickett, 2001; Bachelard, 2014).

Economic activity under the ASEAN framework reveals that states regularly violate the principle of non-interference. While this latter claim is perhaps more controversial, a number of scholars have indicated that although the 'ASEAN way,' and the enshrinement of the principle of non-interference, is the public face of member state interaction and diplomacy, a careful historical analysis reveals that this norm has been 'profoundly challenged' by repeated crises (Nguitrageol, 2011: 3), and that 'behind-the-scenes' (Ramcharan, 2000: 60), 'ASEAN states have frequently meddled in the internal affairs of other countries,' often when the 'fragile status quo' that supported entrenched power dynamics appeared at risk (Jones, 2009: 1-23; Haacke, 1999). Thus, this allegedly prohibitive obstacle to regional environmental management is in fact a principle that is neither possible to wholly achieve nor a consistent guide.

In light of these considerations, it may be argued that the evolution of the 'ASEAN way' represents little more than 'an entity under construction' which has emerged via the discursive process of 'negotiation and socialization between and among the ASEAN member states' (Tamaki, 2006: 2). That is to say, the ASEAN way is a continuously evolving

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set of relations between member states and cannot be conceptually identified with any strict principle, including the principle of non-interference. Tamaki (2006) argues that much of the extant literature on ASEAN commits just this error, oftentimes focusing on the principle of non-interference as a static concept that is then hypostatized as an unchanging, concrete reality. By 'conflating its [the ASEAN way's] mode of representation with its ontology' such authors commit an 'epistemic fallacy' and reify certain narrowly determined aspects of the ASEAN way while ignoring the concrete reality of the latter's constant evolution and in-built conceptual ambiguity (ibid.: 10-11). The pervasive presence of this epistemic fallacy—committed not only by academics but by diplomats and bureaucrats acting in their official capacity—has contributed to the 'intersubjective amplification' of an iterated sociolinguistic construct that, given its obvious ontological ambiguity, may, and indeed likely will, morph under the shifting conditions of the uncertain international environment (ibid.: 20-28). The idea of the ASEAN way, imbued with the conflicting values of non-interference and regional cooperation with respect to transboundary issues, is a 'nebulous concept' whose very ambiguity is generative of novel conceptions of governance and coordination (ibid.: 26-28).

As Elliott (2003) illustrates, even the regional identity that underpins 'ASEAN's normative attachment to the principle of non-interference' may be 'articulated as a collective, intersubjective' (but 'uneven') process of 'imagining... community,' which furthermore 'has direct relevance to the challenges of environmental degradation' in part because 'common experiences of environmental degradation provide evidence of shared vulnerabilities' (30-31). Thus, the predominant focus on the principle of non-interference could be displaced by an alternative vision and set of practices and institutions of governance as the concrete reality on the ground shifts, and state and civil society actors recognize their shared responsibility to maintain the integrity of their ecological inheritance for present and future generations.

Towards a Cooperative Environmental Governance Regime

Acknowledging the productive conceptual ambiguity of the 'ASEAN way,' it is instructive to begin to think about possible strategies of working towards regional ecosystem management regimes that would enlist the cooperation of states in the work of environmental protection. Such forms of governance would necessarily alter the predominance of the principle of non-interference in international relations, in theory and practice, and thereby bring about a more general change in the empirical reality of governance structures (Ward, 1998). Like the 'ASEAN way,' however, the notion of 'governance,' is also a socio-linguistic construction that has certain effects in the world based upon its emergence from a specific history, its reification in a particular form, and the discursive amplification of that reified form through its deployment by a variety of state and non-state actors.

The very notion of state 'governance' may be decentered by acknowledging that varying degrees of juridical administration and political control is indeed carried out discursively in multiform iterations by diverse agents and complex assemblages of performing subjects, not necessarily wedded to or coupled with the formal authority structures of the 'state' order (Ranciere, 1999; Lemke, 2002; Swyngedouw, 2005; Loftus, 2012). Governance is always already constituted by a complex network of state and non-state actors, discursive forces, unspoken norms, practices, and habits achieved partly by way of the sociolinguistic movement of culture operating across different structural fields – economic, institutional, social, or symbolic (Bourdieu 1977; 1990; Sørensen, 2002; Grenfell, 2008). Agents contributing to state, or regional governance, in almost any dimension, tend to be cross-pollinating in that praxis evolves and is transmitted through and between actors in a network (Latour, 2005). What is curious, is that despite non-uniform agential input into governing processes across the board, modes of domination and asymmetrical power relations endure (Foucault, 1980; Chomsky, 2013); and this is particularly true in environmental decision-making and outcomes (Banuri & Apffel Marglin, 1993; Boyce, 1994; Peet, Robbins & Watts, 2010). While formal decision-making procedures are dominated by economic and political elites, the actual unfolding of governance cannot be so neatly identified.

Elliott's analysis suggests that the top-down, 'elite-driven' (2003: 46) interests that once informed ASEAN's normative framework for dealing with environmental issues will increasingly emerge from the bottom-up—in the form of civil society networks and others (Aviel, 2008). Because ASEAN's institutional framework allows for normative flexibility, as indicated by the arguably contradictory standards set out in the Charter, the regional collective identity may evolve too, as it has over the years, to emphasize cooperation based upon the acknowledgement of shared

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responsibilities rather than the principle of non-interference. Indeed, according to some liberal institutionalists and constructivists, this development is well underway, albeit 'reluctantly' (Dosch, 2008: 1), despite the persistence of 'vertical modes of governance' (Elliott, 2011: 61) and the 'absence of strong and mature democratic institutions' (Rüland, 2009: 375).

Although ASEAN has arguably 'provid[ed] no space for citizens of civil society to have any input into ASEAN decision-making processes' and has 'not embraced the transformative effect that making the Association people-oriented would have' (Collins, 2008: 326-328), it is by now widely understood by most researchers, if not totally accepted more broadly (including by the World Bank (1994)), that incorporating deliberative, participatory mechanisms into the machinery of environmental governance 'enhances legitimacy and problem-solving capacity' (Klinke, 2012: 95), and in general is a far more equitable and more effective approach for 'developing and defending green values and environmental goals' (Lidskog & Elander, 2007: 89). In fact, bottom-up environmental regimes have appeared across all ASEAN states. Southeast Asian countries have been at the forefront of experimentation in the decentralization and devolution of forest governance, for example (Mahanty, 2006; Fisher, Prabhu & McDougall, 2007; Webb & Shivakoti, 2007). In Indonesia (Race & Sumirat, 2015), Laos (Hodgdon, 2010), Vietnam (Sunderlin & Huynh, 2005), the Philippines (Balooni, Pulhin & Inoue, 2008), and Cambodia (Marschke & Berkes, 2005), the widely popular adoption of community-based environmental management regimes have been noted for their successes, encouraged by the state, and funded by international financial institutions, non-governmental organizations (NGOs) and other international aid agencies. However, these participatory governance structures are most often deployed within the bounds of a single sovereign territory. There are, however, some instances of international ecosystem management regimes that do include participatory elements—for instance, ASEAN's Mekong Basin Development Cooperation (Roy et al., 2011). By drawing on experiences like this, and by promoting the institutionalization of participatory democratic processes into the ASEAN decision-making system itself, the principles laid out in the ASEAN Charter may not only come to be more fully realized, but the purported goals of environmental sustainability may also become manifest.

The challenge for ASEAN, then, in the pursuit of the construction of effective and equitable regional ecosystem management regimes, is two-fold: (1) utilize the conceptual ambiguity of the ASEAN Charter to leverage the principle of cooperation in transboundary issues; and (2), resist the bureaucratic inertia to manage the environment from a technocratic posture that excludes the important local knowledge of non-state actors. While the virtues of participatory governance structures in the management of ecosystems is well-documented and increasingly recognized, the desirability and feasibility of moving beyond traditional notions of sovereignty and non-interference is significantly less celebrated.

In light of the relative intransigence of reified notions of sovereignty in governance discourses, Ward (1998) offers a strategy for constructing international ecosystem management regimes within this discursive space, saturated as it is with 'sovereignty.' Ward suggests that relevant actors could do this by leveraging what she refers to as the 'conceptual unbundling' of the principle of sovereignty (81-82). She points to certain international situations wherein the 'authority' and the 'control' of sovereignty—i.e. the *authority* to establish the rules of conduct and the *control* over enforcement of those rules—have come apart from each other and have been conducted by differential assemblages of actors organized contrary to traditional principles of sovereignty (ibid.). One such instance is the 1982 United Nations Convention on the Law of the Sea (LOS), which was a complicated instance of an enclosure movement aimed at preventing unrestricted fishing from depleting the fisheries of the world's oceans. Because the various states involved did not want to forfeit access to diverse fisheries, the institutional arrangement emerging from the LOS modified traditional sovereignty where sovereignty was shared amongst many states, though, leaving primary enforcement authorization to the coastal states. While each coastal state was responsible for enforcement, and thus functionally possessed the 'control' aspect of sovereignty, the 'authority' actually was shared by a variety of states, thus eliminating the notion that there is a single sovereign state that is autonomous and has both authority and control of its territory (Ward, 1998).

Given the 'emergent' quality both of ASEAN's Charter and of the concrete institutional relations through which the Charter is embodied—which implies the contingency of current discourses and practices of governance—a two-fold strategy of discursively amplifying the cooperative imperatives in the Charter and simultaneously seeking to

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conceptually unbundle the notion of state sovereignty could be an effective path forward. This strategy mobilizes the conceptual ambiguity of the ASEAN Charter at two levels. First, at the level of the contradiction between sovereignty and cooperation: by emphasizing the latter, a normative framework already codified, recognized, and respected by all parties can be marshalled in the projection of alternative modes of governance. Second, at the level of the internal density of the concept of sovereignty itself: by acknowledging the difference between decision-making *authority* and enforcement *control*, the notion of sovereignty can be internally split. By assigning enforcement control to the sovereign state, the deeply entrenched impulse to maintain state sovereignty can be satiated while the decision-making authority is simultaneously peeled off of the concept of sovereignty and assimilated by the concept of transboundary cooperation. While leaving enforcement to states that may not adhere to the rules laid out in the new cooperative governance structures, this would be just one institutional evolution, which could itself be intersubjectively amplified through discursive processes of interaction; thereby laying the groundwork for further transformations towards more responsible environmental management regimes going forward.

Conclusions

How is it reconcilable that on the one hand the ASEAN Charter seems insistent that non-interference be safeguarded, but that on the other hand the Charter is committed to carrying out activities or advancing interests that would plainly conflict with such a principle? To answer this question this paper sought to undermine the inbuilt assumptions that the principle of non-interference can actually be achieved and that ASEAN member states actually adhere to it. The structural impossibility of fully achieving state sovereignty, taken in conjunction with the non-compliance of member states, helped lend credibility to Tamaki's (2006) contention as to the bankruptcy of the pervasive discourses attempting to 'identify' the essence of the 'ASEAN way' by appealing to one (or more) of its codified principles and then hypostatizing those principles as concrete substances. Against this essentializing inclination, Tamaki argues for the acknowledgment of the sheer contingency of current institutional arrangements, rooted as they are in the intersubjective construction of meaning achieved by an incalculable plurality of human relations.

Given the contingency of current discourses and institutions, as well as the dual-ambiguity inbuilt in the conceptual scaffolding of the ASEAN Charter, this paper argued for a strategy of conceptually unbundling the notion of sovereignty and assimilating its decision-making authority to a cooperative, international, participatory governance structure while leaving the control over enforcement to the traditional governance structures of the sovereign nation-state.

While this is one possible outcome—given the 'emergent' nature of governance institutions and their constant empirical evolution or transformation—it certainly is not the only possibility. Indeed, in 2015, ASEAN deepened economic integration amongst member states by formally establishing the ASEAN Economic Community (AEC). The idea behind improved regional cooperation was to unify Southeast Asia as a 'globally competitive single market and production base, with a free flow of goods, services, labour, investments and capital' (Lehmacher, 2016). Potentially sidelined in the discourse produced by the AEC are questions concerning how ASEAN intends to match potential gross domestic product growth with environmental protections and safeguards since ecological degradation tends to be linked with development schemes oriented towards private-sector capital accumulation (Stern, Common & Barbier, 1996; Harvey, 2009; Givens & Jorgenson, 2011; Carvalho, 2012).

While ASEAN's ability to balance economic concerns (production and consumption increases) with environmental protection is potentially undermined by increased economic integration, the increasingly severe ecological devastation—resulting from an increasingly singular vision of the world viewed through the lens of a neoliberal governmentality that appeals to the market alone as the site of veridiction—may nevertheless be curtailed by embracing an alternative vision of both our present possibilities and our future prospects. By acknowledging the transformative potential latent in the very institutions and discourses of the present, rather than succumbing to the immobility oftentimes effected by critique, ASEAN states may work towards the common construction of innovative institutional dynamics that transcend antiquated ideas that have outlasted their utility.

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