

‘Clearing the haze’: A historical perspective on ASEAN’s response to the Southeast Asian haze crisis

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Abstract

Transboundary air pollution is one of the most pressing environmental challenges faced by ASEAN today. Otherwise known as the haze, efforts towards its mitigation have allegedly been hampered by what is known as the 'ASEAN Way' of non-interventionist, informal diplomacy. In response to this criticism of the 'ASEAN Way', this thesis asks how does the 'ASEAN Way' impact ASEAN's ability to create an effective regional response to the haze crisis. This thesis argues this characterisation of the 'ASEAN Way' as an obstacle against an effective ASEAN response to the haze crisis is misplaced. By examining the organisation's founding documents, it explains how the historical geopolitical conditions of Southeast Asia during the formation of ASEAN culminated in a style of diplomacy which is epitomised in the 'ASEAN Way'. An analysis of ASEAN documents addressing the haze crisis is used to demonstrate how the ASEAN Way is specifically catered to priorities and objectives of ASEAN states to maximise the likelihood of regional cooperation in order to mitigate the haze. Thus, this thesis concludes that the ASEAN Way of diplomacy is an essential component of Southeast Asian regionalism which must be integrated in any effective response to the haze crisis.

Keywords: ASEAN, ASEAN Way, Southeast Asia, regionalism, environmental challenges, transboundary air pollution, haze crisis

Table of Contents

ABSTRACT	2
TABLE OF CONTENTS	3
LIST OF ABBREVIATIONS	3
INTRODUCTION	4
<i>Regional environmental governance in ASEAN.....</i>	6
<i>Southeast Asian Transboundary Air Pollution.....</i>	6
<i>Assessing the ASEAN Way.....</i>	7
<i>Methodology and structure.....</i>	9
CHAPTER 1: A HISTORICAL PERSPECTIVE ON THE ASEAN WAY	11
<i>Contextualising the ASEAN Way.....</i>	12
<i>ASEAN's antecedents</i>	12
<i>Historical context of the Bangkok Declaration.....</i>	14
<i>Balancing the 'region' and the 'nation' in the Bangkok Declaration.....</i>	17
<i>A regional code of conduct: The Treaty of Amity and Cooperation.....</i>	19
<i>In good neighbourliness and in good faith</i>	21
<i>Concluding remarks.....</i>	24
CHAPTER 2: CASE STUDY OF THE HAZE	25
<i>Justifying the haze crisis as a case study for ASEAN regional governance</i>	25
<i>2002 ASEAN Agreement on Transboundary Haze Pollution.....</i>	26
<i>Overview of criticisms.....</i>	27
CHAPTER 3: BUILDING A REGIONAL RESPONSE	31
<i>Regionalism on Southeast Asian terms</i>	32
<i>Progress through process.....</i>	34
<i>Paving the way for future collaboration</i>	37
CONCLUSION	39
BIBLIOGRAPHY	42
<i>Primary Sources</i>	42
<i>Secondary Sources.....</i>	43

List of Abbreviations

ASA – Association of Southeast Asia

ASEAN – Association of Southeast Asian Nations

ATHP – ASEAN Agreement on Transboundary Haze Pollution (2002)

CPTP – ASEAN Cooperation Plan on Transboundary Pollution (1995)

MAPHILINDO – A confederation between Malaysia, the Philippines, and Indonesia

RHAP – Regional Haze Action Plan (1997)

SEATO – Southeast Asia Treaty Organization

TAC – Treaty of Amity and Cooperation in Southeast Asia (1976)

Introduction

The study of environmental governance has traditionally been filtered through a global framework. However, there are arguments to be made in favour of seeking another unit

of analysis. Environmental governance specialists Jörg Balsiger and Stacy VanDeveer offer an alternative to this global approach by focusing on the 'region'. Using regions to formulate policies for environmental governance addresses the reality that not all states experience environmental change in the same manner or degree. Due to their geographical proximity, states in a region are also likely to face similar kinds of environmental challenges as well. Coupled with pre-existing foundations of cooperation on political or economic fronts, it is not unreasonable to assume neighbouring states are likely to achieve higher degrees of environmental cooperation.¹

It is also not too far-fetched to imagine a region finding unity on, or at least agreeing to cooperate in the name of, environmental protection. A basic definition of what constitutes a region generally centres along geographical lines. However, a region does not simply form because states are located close to each other. According to professor of international relations Bruce Russett, an essential factor in the successful formation of a region is a "degree of cultural similarity or at least compatibility for major politically relevant values" as well as economic interdependence.² However, this conceptualisation of the region still remains unsatisfactory, especially for those with more constructivist leanings.

By taking an ideational approach, Southeast Asian international relations scholar Amitav Acharya asserts that far from being a natural form of international cooperation, regions should be understood as "imagined concepts".³ From this perspective, regions are constructs which are deliberately made and reinforced by states in order to reap the benefits of regional interaction. Therefore, regions can be formed in the name of many ideas such as human rights, free trade, or collective security. This thesis utilises this constructivist perspective on regions by proposing that it is also possible for regions to cooperate on the basis of environmental protection and stewardship.⁴ With its continued struggle in forming a regional identity while facing environmental crises from haze to

¹ Jörg Balsiger and Miriam Prys, "Regional agreements in international environmental politics", *International Environmental Agreements: Politics, Law and Economics* 16 (2016): 2, 240.

² Bruce Russett, *International Regions and the International System: A Study in Political Ecology* (Chicago: Rand McNally, 1967), 10.

³ Amitav Acharya, "Ideas, norms, and regional orders", in *International Relations Theory and Regional Transformation*, ed. T.V. Paul (Cambridge: Cambridge University Press, 2012), 185.

⁴ *Ibid.*, 189.

tsunamis, there is perhaps no better region to analyse the confluence between regionality and environmental governance than Southeast Asia.

Regional environmental governance in ASEAN

Regional governance in Southeast Asia is expressed through the Association of Southeast Asian Nations (ASEAN), the region's intergovernmental institution. Since its formation, the operationalisation of ASEAN has garnered attention, both critical and positive, from scholars of regionalism. A key point of study is the 'ASEAN Way', an approach towards international relations which stresses informality, decision-making rooted in consensus and consultation, non-confrontational interaction, and above all, the supremacy of non-intervention in the domestic affairs of member states.⁵ As a result of the ASEAN Way, ASEAN is characterised by the low degree of integration among its members, with few legally-binding agreements and an overall lack of significant supranational power on the part of the organisation.⁶ However, despite ASEAN's limited institutional powers, it remains a player in Southeast Asian affairs. In the realm of environmental issues, ASEAN has encouraged the harmonisation of its members' environmental policies in a number of declarations. However, considering the transboundary nature of environmental challenges, many effective solutions require further regional cooperation among ASEAN states. The need for interstate collaboration is pertinent for the issue of transboundary air pollution, a crisis which has come to define the challenge of environmental governance in Southeast Asia.

Southeast Asian Transboundary Air Pollution

Although haze as a natural phenomenon is not exclusive to Southeast Asia, its increasing frequency and severity over the past 40 years has cemented it as a top

⁵ Mark Beeson, *Institutions of the Asia-Pacific: ASEAN, APEC and Beyond*, (New York: Routledge, 2009), 333.

⁶ *Ibid.*, 332.

environmental priority for the region.⁷ A severe form of air pollution, haze occurs when dry particles such as dust and smoke are suspended in the atmosphere, obscuring the clarity of the sky and causing harm to both human health and the environment. The primary culprits are plantation owners using unsustainable land-clearing practices to clear forests for palm oil or other crop production. Such activities are especially concentrated in the Indonesian islands of Sumatra and Kalimantan.⁸ Furthermore, considering the link between climate change and the haze, it has also predicted that recurring episodes of intense haze are to remain a persistent challenge for Southeast Asia in the future.⁹

As the negative externalities of the haze are felt by numerous ASEAN members, cooperation between states in the mitigation of the haze could be expected in the name of reducing cost or sharing policy experience.¹⁰ Yet, the wide range of actors in the haze crisis, shaped by different political and socio-economic pressures, has resulted in a deadlock between the involved parties. On one hand, since virtually all haze can be traced to Indonesia, it bears most responsibility in preventing the occurrence of the haze as other parties can only respond to the haze once it has spread to their territories. However, it is frequently argued by the Indonesian government that many of the plantation companies responsible for starting such forest fires are owned or financed by Malaysian and Singaporean shareholders.¹¹ In the fallout of bilateral interaction, the question remains of what role, if any, ASEAN plays in responding to the haze problem.

Assessing the ASEAN Way

In this thesis, the case study of ASEAN's role in the Southeast Asian anti-haze regime is used as a microcosm to understand the specificities of ASEAN in its role of regional environmental governance. As a regional institution, ASEAN has been criticised

⁷ Peter Eaton and Miroslav Radojevic, *Forest and Regional Haze in Southeast Asia*, (New York: Nova Science Publishers, 2001), 202.

⁸ James Cotton, "The 'Haze' over Southeast Asia: Challenging the ASEAN Mode of Regional Engagement," *Pacific Affairs* 72 (1999): 3, 332.

⁹ Henriette Litta, *Regimes in Southeast Asia: An Analysis of Environmental Cooperation*, (Wiesbaden: Verlag für Sozialwissenschaften, 2012), 90.

¹⁰ Lorraine Elliott, "ASEAN and Environmental Governance: Strategies of Regionalism in Southeast Asia", *Global Environmental Politics* 12 (2012): 3, 39.

¹¹ Litta, *Regimes in Southeast Asia*, 104.

for failing to provide a supranational framework to hold its members accountable for preventing the occurrence of the haze with the ASEAN Way to blame. Condemning the ASEAN Way as the reason for failures in achieving policy goals is not unique to environmental issues. In all realms of regional governance, the ASEAN Way has been criticised for allegedly limiting the effectiveness of the institution.

Tobias Nischalke claims that due to the ASEAN Way of non-confrontational decision-making, respecting the sensitivities of each individual member is equally important as effective policy outcome.¹² John Ravenhill uses non-interference to explain the unwillingness or inability of ASEAN to construct formal enforcement methods and legally binding agreements.¹³ However, proponents of ASEAN paint a different picture. Kei Koga suggests the desire for good neighbourliness and friendly relations which is fostered through the ASEAN Way leads to 'issue-linking', meaning states are willing to continue cooperating on certain topics even if they find themselves in conflict over other issues.¹⁴ According to Hiro Katasuma, the ASEAN Way is essential to this willingness for cooperation since through the practice of non-confrontation and consensus decision-making, mutual trust and respect is boosted among states that would otherwise be hostile.¹⁵

This thesis contributes to the study of why the ASEAN Way by taking a historical approach to the question "*How does the 'ASEAN Way' impact the Association of Southeast Asian Nation's ability to create an effective regional response to the Southeast Asian haze crisis?*". In doing so, it examines how the historical context of ASEAN's formation directly influences its approach towards regional governance. Historicising the ASEAN Way is crucial in conducting a proper assessment of ASEAN because it reveals that instead of being an obstacle towards regionalism in Southeast Asia, the ASEAN Way *is* Southeast Asian regionalism. In other words, the ASEAN Way is indicative of a style of

¹² Tobias Ingo Nischalke, "Insights from ASEAN's Foreign Policy Co-operation: The ASEAN Way, A Real Spirit or a Phantom?," *Contemporary Southeast Asia* 22 (2000): 1, 107.

¹³ John Ravenhill, "East Asian Regionalism: Much Ado About Nothing?," *Review of International Studies* 35 (2009): 1, 253.

¹⁴ Kei Koga, "The Normative Power of the ASEAN Way: Potentials, Limitations, and Implications for East Asian Regionalism," *Stanford Journal of East Asian Studies* 10 (2010): 1, 84.

¹⁵ Hiro Katsumata, "Reconstruction of Diplomatic Norms in Southeast Asia: The Case for Strict Adherence to the ASEAN Way," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 25 (2003): 1, 107.

regional governance shaped by Southeast Asian history to address the specific concerns and priorities of Southeast Asian affairs.

With regards to the haze crisis, this historical perspective is important in the development of a more effective regime to tackle the haze. Incomplete understandings of the ASEAN Way are used by both critics and sympathisers of ASEAN alike in the literature regarding ASEAN's response to the haze crisis. By historicising the ASEAN Way, this thesis does not intend to shield ASEAN from criticism, but to promote a more nuanced understanding of Southeast Asian regional governance in order to produce more appropriate policy recommendations. Therefore, with the historical reasons for the ASEAN Way in mind, criticisms and policy advice regarding the haze crisis can be reformulated to integrate the ASEAN Way rather than dismiss it.

Methodology and structure

By taking a historical approach to its research question, this thesis has two aims. Firstly, to explain that the ASEAN Way is not a 'failed' form of regionalism; instead, it is a localised interpretation of regionalism born from Southeast Asian history and is thus specifically suited for Southeast Asian relations. Secondly, to argue that the incorporation of the ASEAN Way is essential to design an effective anti-haze regime. To achieve the first goal, the history of ASEAN's formation must be considered. This is important because it shows how the historical conditions during this period led to a form of regionalism which catered to the realities faced by states in order to maximise the success of the Southeast Asian regionalism project. To show how the historical conditions of ASEAN's formation impacted the Southeast Asian interpretation of regionalism, this thesis analyses the organisation's founding document the 1967 ASEAN Declaration as well as the 1976 Treaty of Amity and Cooperation in Southeast Asia. The ASEAN Declaration is included in this selection because as a founding document, it reveals how ASEAN's founders envisioned regionalism in a Southeast Asian context. In analysing the ASEAN Declaration, this thesis traces how regional cooperation in Southeast Asia was constructed by its creators.

Subsequently, the Treaty of Amity and Cooperation in Southeast Asia (TAC) is selected because even though it was created almost a decade after ASEAN's formation, it is a formal codification of the ASEAN Way. By outlining the fundamental principles of ASEAN diplomacy and dictating how its signatories interact with one another, the TAC serves as ASEAN's 'code of conduct' and is therefore an indispensable source in understanding ASEAN regionalism. Akin to the ASEAN Declaration, the TAC is analysed to find evidence that the political relations between ASEAN states at the time of the document's creation also influenced a style of regionalism specific to Southeast Asia. This evidence is found by first identifying within the document key phrases and concepts associated with the ASEAN Way and then explaining the historical factors leading to their inclusion within the TAC.

The ASEAN Declaration and the TAC are used to establish the historical premise of the ASEAN Way. The next step is applying this understanding onto the case study of the Southeast Asian haze crisis. The purpose of using a contemporary case study is to demonstrate the continued relevancy of the ASEAN Way in dealing with Southeast Asian affairs by arguing that other forms of regionalism would not be accepted by ASEAN members. The first section of this case study will present a summary of the criticism against ASEAN's role in the anti-haze efforts. An overwhelming amount of criticism not only blames the ASEAN Way for the alleged 'failure' of the organisation to handle the haze crisis, but also demands that ASEAN should 'abandon' the ASEAN Way in favour of integrationist forms of regionalism. The scope of these criticisms is limited to the 2002 ASEAN Agreement on Transboundary Haze Pollution (ATHP), the most significant and only legal binding ASEAN document addressing the haze issue. In response to these criticisms, this thesis takes a historical approach towards the ATHP by placing it within the context of two previous ASEAN documents concerning the haze, the 1995 Cooperation Plan on Transboundary Pollution and the 1997 Regional Haze Action Plan.

From these three documents, it is shown how ASEAN has played an increasingly important role in shaping anti-haze efforts by encouraging the formation of a 'shared ASEAN ecosystem' in order to promote regional cooperation without overstepping on its members' national sovereignties. By acknowledging the importance of non-intervention in the ASEAN Way, the organisation has found region-specific paths towards cooperation

which are particularly catered for Southeast Asian states. Including the 1995 and 1997 document in this analysis of the haze crisis is necessary because it provides a more comprehensive understanding of how the ASEAN Way has shaped the organisation's continued and evolving role in the anti-haze regime. In conclusion, it is ultimately shown that the history of Southeast Asia has produced a style of regionalism that is most aptly suited for maximising regional cooperation in the region.

Chapter 1: A historical perspective on the ASEAN Way

The aim of Chapter 1 is to contextualise the ASEAN Way by explaining how the history of regionalism in Southeast Asia culminated in the formation of ASEAN, and thus the ASEAN Way. By historicising the ASEAN Way, it is shown how the historical circumstances of the organisation's creation directly led to the centrality of norms such as non-interference or informal decision-making in ASEAN style diplomacy.

Contextualising the ASEAN Way

The ASEAN Way refers to the style of diplomacy which has come to characterise interactions among members of ASEAN. The two principles most widely associated with the ASEAN Way are non-interference in each other's domestic policies and decision-making based on consultation and mutual consensus. However, it has been questioned whether these principles are distinct to ASEAN at all. The norm of non-interference between sovereign states long predates ASEAN; being the foundation of the Westphalian state system and enshrined in key international documents including the Charter of the United Nations.¹⁶ Furthermore, consensus as the basis of decision making is not unheard of in other international bodies. The United Nations General Assembly largely conducts its procedures using a simple-majority vote as does the Council of the European Union, albeit the latter does feature weighted voting.¹⁷ However, even though these norms did not originate in Southeast Asia and are not exclusively used by ASEAN, their practice should not be regarded as universally applicable. The history of Southeast Asian regional cooperation and the challenges faced by the members of ASEAN during the organisation's formation required ASEAN to tailor their conceptualisation of non-interference and consensus to meet the particularities of Southeast Asian political, cultural, and historical realities.

ASEAN's antecedents

ASEAN came into being via the ASEAN Declaration, also known as the Bangkok Declaration, on 8 August 1967. At first glance, with no mention of requirements for ratification, formation of supranational bodies, or dispute-settlement mechanisms if any of the Declaration's clauses be breached, the document appears to lack any substance.

¹⁶ Amitav Acharya, *Constructing a Security Community in Southeast Asia* (New York: Routledge, 2009 [2001]), 70.

¹⁷ Rodolfo Severino, *Southeast Asia in Search of an ASEAN Community* (Singapore: ISEAS Publishing, 2006), 35.

However, upon closer inspection of the historical context of the text, the merit of the Bangkok Declaration becomes apparent. When the five ministers from Indonesia, Malaysia, Philippines, Singapore, and Thailand convened in Bangkok in 1967 to hammer out the formation of ASEAN, they stood in the face of three failed attempts to create a regional Southeast Asian institution: SEATO (Southeast Asia Treaty Organisation), ASA (the Association of Southeast Asia), and MAPHILINDO (a confederation between Malaysia, Philippines, and Indonesia).

Formed in 1954, SEATO was the most short-lived out of the three because it was both formed by and primarily served the interest of non-Southeast Asian powers. Despite aiming to consolidate an American network of international anti-communist arrangements in the region, only two members were from Southeast Asia, the Philippines and Thailand. That both of these nations were firmly under the security umbrella of the United States during this period further bolstered the perception from other Southeast Asian nations that the interests of SEATO were not orientated towards the benefit of Southeast Asia than it was for external powers.¹⁸

Likewise, the main pitfall of ASA were allegations of the organisation being too closely affiliated with SEATO interests. The make-up of ASA's membership with the three most Western-oriented and anti-communist states in the region (the Philippines, Thailand, Malaysia) did not help dispel doubts from the rest of the region that ASA was an extension of SEATO.¹⁹ In the end, it was internal conflict between the Philippines and Malaysia based on territorial claims over North Borneo that spelled the end of ASA in 1963. This dispute over North Borneo was also the decisive factor in the fate of MAPHILINDO.

An acronym of its three members (Malaya, Philippines, Indonesia), the purpose of MAPHILINDO was to create a shared identity of peoples with Malay heritage.²⁰ However, one of the driving forces behind this collaboration was the interest of both President Sukarno of Indonesia and President Macapagal of the Philippines in preventing the formation of a Malaysian federation in light of the British exit in Malaya.²¹ Indonesia's

¹⁸ Shaun Narine, *Explaining ASEAN: Regionalism in Southeast Asia* (Boulder: Lynne Rinner Publishers, 2002), 10.

¹⁹ *Ibid.*, 11.

²⁰ Bernard K. Gordon, *The Dimensions of Conflict in Southeast Asia*, (New Jersey: Prentice-Hall, 1966), 187.

²¹ Amitav Acharya, *The Making of Southeast Asia* (Singapore: ISEAS Publishing 2012 [2001]), 75.

antagonism towards Malaysia reflected Sukarno's anti-imperialists views and concerns over his own country's internal stability. It was the perception at the time that Malaysia was an illegitimate neo-colonial state since it had not undergone a 'real' independence revolution against their British colonial masters. Furthermore, even though the eventual creation of Malaysia resulted in another anti-communist state, there were concerns within Indonesia that Malaysia's substantial Chinese population would further the spread of Communism in Southeast Asia.²²

Historical context of the Bangkok Declaration

Through this sketch of ASEAN's predecessors, it is obvious that one of the main points of contention in building a successful Southeast Asian institution is the question of interference, both within and outside of the region. The need to safeguard the sovereignty of their states and protect the region from outside interference remained on the minds of ASEAN's creators in 1967. At this point, Thailand and the Philippines were still situated under the United States' security umbrella in Asia. However, this did not mean the two states did not seek a different role for themselves in Southeast Asia. By joining ASEAN, the Philippines signalled to the region its interest in bolstering its Asian identity whereas Thailand envisioned a potential for ASEAN to develop into a collective security arrangement to replace its reliance on the United States.²³ Furthermore, Sukarno had also been ousted in a military coup, taking along with him his policy of *Konfrontasi* against Malaysia which had resulted in violent disputes since 1963. Under the leadership of Suharto, Indonesia resumed full diplomatic relations with Malaysia in 1967.²⁴ As a result of this policy shift, the other four states of ASEAN were eager to support Indonesia's efforts to repair its reputation among its neighbours as well as to consolidate Indonesia's role in a regional bloc.²⁵ However, even though the five nations were joined in their aspirations to form ASEAN, the process of developing the final Bangkok Declaration highlighted the struggles of regional cooperation.

²² M. C. Ricklefs, *A history of modern Indonesia since c. 1300* (Houndmills: Basingstoke 1993), 272.

²³ Narine, *Explaining ASEAN*, 15.

²⁴ Ricklefs, *A history of modern Indonesia since c. 1300.*, 290.

²⁵ Michael Leifer, *ASEAN and the security of South-East Asia* (New York: Routledge 2013 [1989]), 5.

The Bangkok Declaration is not a lengthy document, yet it reveals the concerns and aspirations for Southeast Asia envisioned by its founders.²⁶ The most repeated term in the document is 'cooperation'. The Declaration suggests the need for "economic growth, social progress and cultural development in the region" would be achieved through cooperation, collaboration and assistance in "economic, social, cultural, technical, scientific and administrative fields".²⁷ Notably, the document does not state a desire for explicit political or security cooperation; the ideals of regional peace and stability are only vaguely called for through "abiding respect for justice and the rule of law"²⁸. Furthermore, even though all of the five states were anti-communist, there is a lack of any mention towards strengthening anti-communist efforts or denouncing the presence of pro-communist sentiments in Southeast Asia.

The founders of ASEAN purposely did not frame the Bangkok Declaration as a political or security pact for multiple reasons. Firstly, the formation of a military alliance among the anti-communist states of Southeast Asia would only escalate rather than deter tensions in the region. As Shaun Narine notes, to create an alliance "implied antagonism towards some identifiable threat", which would not only add fuel to the already tumultuous relationship with other states such as Vietnam or Cambodia, but also violate the notion of "good neighbourliness" in the third paragraph of the Document's preamble.²⁹ Furthermore, the members of ASEAN were too weak in terms of military strength to form any credible alliance in the first place.³⁰ Lastly, there was the still persistent issue of a lack of consensus among the five countries. The challenge of creating a document spelling out the promises and obligations of a security alliance would require a far higher degree of trust and shared goals than was for offer.³¹

Alternatively, it is suggested that the reasoning behind the Document's emphasis on economic and cultural cooperation actually masked a desire to suppress the chances

²⁶ Association of Southeast Asian Nations, *The ASEAN Declaration (Bangkok Declaration)*, 8 August 1967. <https://asean.org/the-asean-declaration-bangkok-declaration-bangkok-8-august-1967/>.

²⁷ *The ASEAN Declaration*, Point 2.3.

²⁸ *The ASEAN Declaration*, Point 2.2.

²⁹ Narine, *Explaining ASEAN*, 15.

³⁰ Roger Irvine, "The Formative Years of ASEAN: 1967-1975," in *Understanding ASEAN*, ed. Alison Broinowski (New York: St. Martin's Press, 1982), 9.

³¹ Narine, *Explaining ASEAN*, 16.

of pro-communist uprisings.³² In this line of thinking, economic prosperity and the resulting social stability acted as bulwarks against the support of communism.³³ It should be reiterated that the nation-building process for any of these newly independent states did not come smoothly. As such, any opportunity to ensure internal political stability was welcomed. This notion is reflected in a statement from Singaporean foreign minister S. Rajaratnam's in which he states, "the essential basis for the attainment of both political and security goals lay in the pursuit of economic development".³⁴

Another feature of the Declaration worth focus is the last two paragraphs of the preamble. In particular, there were two components of Indonesia's original proposal for the fourth paragraph that drew controversy. The first was the usage of the term "subvert" to describe the actions of foreign bases in ASEAN states, while the second was the statement that "arrangements of collective defence should not be used to serve the interest of any of the big powers".³⁵ Considering that the Philippines, Malaysia, Singapore, and Thailand all maintained security arrangements with foreign powers, these elements were perceived as criticism of such policies.

However, despite their disapproval of Indonesia's outright condemnation of the presence of foreign powers in Southeast Asia, the four states accepted that security arrangements based on the strength of external parties were not sustainable long-term goals for an independent region. As such, a middle ground was reached in which ASEAN states are individually responsible to "ensure their stability and security from external interference".³⁶ By not specifying what constitutes external interference, the Declaration allows each state to determine the degree to which they interpret the term.³⁷ This freedom is also reflected in the assertion that foreign bases remain "only with the expressed concurrence of the countries concerned".³⁸ As such, even if a state continued its affiliation with a foreign power, their sovereignty remained intact as it would be of their own volition.

³² Jürgen Rüländ, "Southeast Asian regionalism and global governance: 'multilateral utility' or 'hedging utility'?", *Contemporary Southeast Asia* 33 (2011): 1, 83-112.

³³ Leifer, *ASEAN and the security of Southeast Asia*, 4.

³⁴ Sinnathamby Rajaratnam, quoted in: Irvine, "The Formative Years of ASEAN" (New York 1982), 28.

³⁵ Proposal by the Southeast Asian Association for Regional Cooperation, quoted in: Narine, *Explaining ASEAN* (Boulder 2002), 13.

³⁶ *The ASEAN Declaration*, fourth paragraph of the Preamble.

³⁷ Acharya, *Constructing a Security Community in Asia*, 57.

³⁸ *The ASEAN Declaration*, fifth paragraph of the Preamble.

Another point of contention was the statement that “all foreign bases are temporary” as, especially in the case of American and British bases in the Philippines and Malaysia respectively, their presence was not expected to diminish in the near future.³⁹ To explain why this statement, as well as other contentious proposals by the Indonesians, were successfully included in the final version of the Declaration, Michael Leifer reiterates that the desire of Malaysia, Singapore, Thailand and the Philippines to keep Indonesia on the discussion table led them to make concessions that may seem contrary to their national circumstances.⁴⁰

Balancing the ‘region’ and the ‘nation’ in the Bangkok Declaration

This next section of analysis on the Bangkok Declaration examines how the document addresses the apparent conflict between regionalism and nationalism in the ASEAN-building process. The most repeated terms in the Bangkok Declaration are ‘cooperation’ and ‘collaboration’, followed closely by phrases relating to a sense of similarity such as ‘common’, ‘shared’, and ‘mutual’. This first group of words refer to the dual actionable goal of the Declaration, in which the advancement of friendly Southeast Asian cooperation is meant to prevent the escalation of regional tensions and conflicts. Subsequently, the second group of words provides the basis on which this cooperation was to be founded upon, shared interests. By reiterating that its members are bound together by common histories and cultures, there is an intention on behalf of ASEAN’s founders to affirm that there is the existence of a Southeast Asian ‘region’. It is notable that the word ‘region’ itself also frequently appears in the document; the recurrence of these terms can be interpreted as the authors of the Declaration asserting not only to themselves but also other parties that ASEAN is a regional organisation rather than a mere coalition of states.

This emphasis on regionality and shared goals seems to counter one of the primary principles of the ASEAN Way, that of non-interference in the domestic affairs of its members. If the interests of the ASEAN members are as common as they are

³⁹ Leifer, *ASEAN and the security of Southeast Asia*, 5.

⁴⁰ *Ibid.*, 6.

portrayed in the Bangkok Declaration, why do attempts towards more centralised regional integration face fierce opposition? At first glance, this tension between the region and the nation may seem contradictory. However, a constructivist perspective on region-building would argue that since regions are imagined constructs, they fulfil whatever aims of those who build them have in mind.⁴¹ What then, motivated the founders of ASEAN to stress the existence of a Southeast Asian regional identity whilst safeguarding the national sovereignty of its members?

As mentioned before, the history of building a regional Southeast Asian organisation was significantly influenced by non-Southeast Asian actors. Therefore, to mark it against its predecessors, the continued emphasis on the shared characteristics and goals of ASEAN members can be interpreted as solidifying Southeast Asia as a coherent regional unit, thus anointing ASEAN with the authority to ‘speak’ on its behalf.⁴² Yet, the strengthening of a regional identity does not necessarily come at the cost of national identity. As Alice Ba explains, the ASEAN project was simultaneously nationalist and regionalist; securing the region from non-Southeast Asian manipulation provided space for the autonomous nation-building process desired by its members.⁴³ The concept of national sovereignty or autonomy stretches beyond mere self-governance, it is also the right of a state to “make choices without coercion or manipulation”.⁴⁴ With this definition in mind, the Declaration’s emphasis on protection against foreign interference extends to forces both outside and inside Southeast Asia. Therefore, the repeated references to commonality and mutual interests also serves the purpose of providing a premise for cooperation among states that, considering events prior to the Bangkok Declaration, have good reason to be wary of one another. Moving on from the Declaration, the next section conducts a similar analysis of another important ASEAN document in terms of identity- and region-building, the Treaty of Amity and Cooperation in Southeast Asia.

⁴¹ Bernard Debarbieux, “How Regional is Regional Environmental Governance?,” *Global Environmental Politics* 12 (2012): 3, 124.

⁴² Elliott, “ASEAN and Environmental Governance,” 52.

⁴³ Alice Ba, *(Re)Negotiating East and Southeast Asia* (Stanford: Stanford University Press 2009), 65.

⁴⁴ Richard Stubbs, “ASEAN Sceptics versus ASEAN Proponents: Evaluating Regional Institutions,” *The Pacific Review* 32 (2019): 6, 449.

A regional code of conduct: The Treaty of Amity and Cooperation

Signed on February 24, 1976 in Bali, the Treaty of Amity and Cooperation in Southeast Asia (TAC) marked two 'firsts' for ASEAN.⁴⁵ Firstly, the conference in which it was drafted was the first time that ASEAN heads of governments had convened. The convergence of the leaders of ASEAN nations signalled a renewed effort on behalf of the organisation to reaffirm the validity and relevance of Southeast Asian regional unity.⁴⁶ Secondly, the TAC was the first official treaty signed by ASEAN. For an organisation which places heavy emphasis on informal relations and an institutional attitude of 'looseness', the formality and decorum associated with passing a treaty should not be too quickly overlooked.⁴⁷

The TAC is generally regarded as ASEAN's code of conduct, in which signatories oblige themselves to uphold the most important regional norms and values held by ASEAN states. These explicitly include respect for sovereignty, freedom from external interference, non-interference in internal affairs, peaceful dispute-settling, and the renunciation of the use of force.⁴⁸ It is these last two principles which garner special attention in the document. As well as codifying the essential values of the ASEAN Way, the TAC also introduced the first ASEAN mechanism for the peaceful settlement among its signatories.⁴⁹ Comprising of "representatives at ministerial levels from each of the High Contracting Parties", the primary task of the High Council was to "take cognizance of the existence of disputes or situations likely to disturb regional peace and harmony".⁵⁰

It is important to note that the High Council has never convened despite there certainly being cause for its assembly in the forty-four years since the TAC's creation

⁴⁵ Association of Southeast Asian Nations, *Treaty of Amity and Cooperation in Southeast Asia*, 24 February 1976. <https://asean.org/treaty-amity-cooperation-southeast-asia-indonesia-24-february-1976/>.

⁴⁶ Ba, *(Re)Negotiating East and Southeast Asia*, 82.

⁴⁷ Acharya, *Constructing a Security Community in Southeast Asia*, 80.

⁴⁸ *Ibid.*, 70.

⁴⁹ Donald E. Weatherbee, *International Relations in Southeast Asia: The Struggle for Autonomy* (Maryland: Rowman and Littlefield, 2014), 121.

⁵⁰ *Treaty of Amity and Cooperation*, art. 14.

such as the territorial disputes between Malaysia and the Philippines over Sabah, as well as Malaysia and Indonesia over Ligitan and Sipadan.⁵¹ However, according to some ASEAN officials, this does not necessarily reflect a failure of the High Council or a lack of trust in the mechanism by the TAC's signatories. Instead, the absence of the convergence of the High Council is evidence of TAC parties upholding the value of settling disputes through informal means and thus negating the need to resort to such a dispute-settling body.⁵² Considering that the ASEAN Way has resulted in practices such as preference for informal negotiations and a wider pattern of slow institutionalism, it is worth examining the contents as well as the and context of the TAC to understand this emphasis on non-confrontational relations among its members.

During this period of the late 1970s, the most important event catalysing the formulation of the TAC was by far the emergence of communist Indochina, especially Vietnam, onto the stage of Southeast Asian affairs. As the original members of ASEAN were politically orientated against communism, the threat posed by the presence of communist states in Southeast Asia was interpreted as a matter of not only national but regional security. These concerns were not unfounded. The triumph in Vietnam served as inspiration for indigenous communist movements within the territories of ASEAN states, and furthermore both Vietnam and China had express willingness to support such movements as well. ⁵³ However, although the individual ASEAN states differed in the extent to which they perceived Vietnam as a threat, the message underpinning the TAC was a willingness to indicate to Indochina that peaceful coexistence between ASEAN Southeast Asia and communist Southeast Asia was not out of the question.⁵⁴ Furthermore, the symbolism of ASEAN heads of states meeting for the first time to produce the organisation's first formal treaty should also be noted as a high-level reaffirmation of ASEAN in the face of regional challenges. As such, when the ASEAN heads of states convened in Bali, there was a renewed sense of understanding, or

⁵¹ Mely Caballero-Anthony, "Mechanisms of Dispute Settlement: The ASEAN Experience," *Contemporary Southeast Asia* 20 (1998):1, 53.

⁵² Acharya, *Constructing a Security Community in Southeast Asia*, 70.

⁵³ Narine, *Explaining ASEAN*, 39.

⁵⁴ Weatherbee, *International Relations in Southeast Asia*, 78.

perhaps urgency, to consolidate an organisation which had so far been slow on its feet.⁵⁵ With that in mind the TAC, and in particular Chapter IV of the document which addresses the formation and responsibilities of the High Council, can be analysed to understand how the ASEAN Way has been translated into a framework for conflict resolution.

In good neighbourliness and in good faith

For a body that has never officially assembled, the High Council has certainly received significant criticism. The crux of these criticisms lies on the fact that the TAC does not specify any enforcement or compliance methods to ensure that the High Council holds any effective power or autonomy of its own. Article 15 states that “when deemed necessary, the High Council shall recommend appropriate measures for the prevention of a deterioration of [a] dispute or [a] situation”.⁵⁶ However, there is no guideline or specification as to what deems a case worthy of being brought to the High Council. More importantly, the powers of the High Council are not only limited to suggestions or strong recommendations at best, but the validity of the High Council’s decrees are only applied to a conflict if “all parties to the dispute agree to their application to that dispute”.⁵⁷ This is significant because the High Council is supposed to consist of ministerial representatives of each High Contracting Power. In this regard, there is nobody acting on the High Council who is speaking on behalf of ASEAN regional interests.

It may well be argued that regional peace and stability is a shared goal of both ASEAN as an organisation and its individual members. Nevertheless, in the case that these two interests are not aligned, the ability of the High Council to remain non-biased in its decrees is challenged. In light of these criticisms, the question that is raised is why create a dispute-settlement mechanism in the first place if its powers are guaranteed to be handicapped from its very inception? This assumption that a body such as the High Council is not effective or holds no power reflects a misunderstanding of how dispute-

⁵⁵ Chan Heng-Chee, “Southeast Asia 1976: The Handling of Contradictions,” in *Turning Points and Transitions: Selections from Southeast Asian Affairs 1974-2018*, ed. Daljit Singh and Malcolm Cook (Singapore: ISEAS-Yusof Ishak Institute, 2018), 33.

⁵⁶ *Treaty of Amity and Cooperation*, art. 15.

⁵⁷ *Ibid.*, art. 16.

settlement, and more largely the concept of conflict resolution as a whole is understood within an ASEAN context. As such, instead of being regarded as obstacles to 'proper' regional integration, the ambiguity and flexibility which marks the creation of the High Council is a result of a uniquely ASEAN style of managing conflict.⁵⁸

The most important reason in explaining the severe limitations on the agency of the High Council as a third-party mediator is the intense aversion of ASEAN states towards any kind of interference in their individual domestic affairs. All of the original ASEAN states, except for Thailand, had only just shaken off the shackles of Western colonialism around thirty years prior to the Bali Summit.⁵⁹ Therefore, granting an outside party the power to make judgements over highly contentious issues in a region characterised by rocky inter-state relationships was a step too far for ASEAN members to concede. Additionally, given that there was no obligation for the representatives of the High Council to be lawyers or have any legal training, the influence of the individual national interests of each High Contracting Party was inevitable. The overarching desire of the TAC politically consolidate ASEAN with the makings of a professionalised regional institution had to be tempered to member states which were fiercely protective of their relatively newly won independence and national sovereignty.

In this regard, placing restraints on the authoritative powers of the High Council is not only expected but may even be a pre-requisite for agreeing on the conceptualisation of such a body in the first place. It has been observed, both positively and negatively, that ASEAN "works on the principle of consensus as to what is attainable at the time".⁶⁰ This implies that ASEAN does not achieve a high-level of regionalism or regional integration due to a lack of trying on the part of the organisation, but because such goals are not realistic given the specific circumstances of the time. In the case of the TAC, the ASEAN heads of state sought to send a message, both to their own people and to communist Southeast Asia, that ASEAN was moving forward in establishing itself as a respectable regional institution. The reality of intra-ASEAN relations, that is with the territorial dispute between Malaysia and the Philippines remaining unsolved and an overall lingering sense

⁵⁸ Caballero-Anthony, "Mechanisms of Dispute Settlement," 50.

⁵⁹ Severino, *Southeast Asia in Search of an ASEAN Community*, 24.

⁶⁰ Irvine, "The Formative Years of ASEAN", 50.

of wariness between ASEAN states, meant that conditions for regionalism had to be created before regionalism could actually take place.

As with the Bangkok Declaration, the TAC is a symbolic assertion for the legitimacy of the ASEAN region. In Chapter II regarding amity, the Treaty specifically refers to the “traditional, cultural, and historical ties” between its signatories.⁶¹ The Treaty also reiterates a term used in the Bangkok Declaration which is also intended to boost a feeling of shared regional identity among ASEAN states: ‘good neighbourliness’. Although what constitutes as ‘good neighbourliness’ is not specified, Mely Caballero-Anthony’s framework of “diplomacy of accommodation” can be applied to understand the phrase as referring to the principles of restraint, respect, and responsibility in intra-ASEAN relations.⁶² Along with promoting ‘good neighbourliness’ is the promise that the High Contracting Parties “shall fulfil in good faith the obligations assumed under” the Treaty. This is coupled with the declaration in the fourth paragraph of the Preamble that states would do well to avoid “negative attitudes which might endanger or hinder cooperation”.⁶³ It is noteworthy that formal documents such as the TAC would refer to vague terms to hold its signatories accountable too. One explanation for the prevalence of flexible, ambiguous terms such as ‘good faith’ and ‘negative attitudes’ is that these are the lowest common denominators that all founders of the TAC could find consensus upon.

Although this type of decision-making is often portrayed in a negative light, it could be argued that given the highly nationalistic dispositions of ASEAN leadership during this period, these incremental movements towards building regional cooperation and goodwill would be more beneficial in the long run. Given the “nationalistic thought-process of the leadership of individual member countries”, any clearly defined efforts on the part of ASEAN to push states towards regional-building when the nation-building project was still undergoing would not be well-accepted.⁶⁴ At this stage, it was more important for ASEAN to find common ground and project a unified regional purpose, no matter how embryonic its form, than to push its members too quickly into deeper regional integration.

⁶¹ *Treaty of Amity and Cooperation*, art. 3.

⁶² Caballero-Anthony, “Mechanisms of Dispute,” 52.

⁶³ *Treaty of Amity and Cooperation*, fourth paragraph of the Preamble.

⁶⁴ Irvine, “The Formative Years of ASEAN,” 37.

Concluding remarks

In this chapter, the criticisms against both the Bangkok Declaration and the Treaty of Amity and Cooperation have been addressed by placing both these documents within their historical context. In doing so, the alleged limitations identified by critics of the ASEAN Way are understood to be reflections of the tumultuous political situation in Southeast Asia during the formation of ASEAN. The lack of enforcement and compliance measures, the supremacy of non-interference in the domestic affairs of members, and a hard aversion towards any concrete or legally binding obligations are all valid points of contention against the ability of ASEAN to act as an effective regional institution. However, criticism of these norms has to take into consideration the historical premise for why ASEAN is pre-disposed to them in the first place. To portray ASEAN as a weak or fundamentally ineffective regional institution because it does not mirror the same structures or procedures of other examples of regional integration is to do injustice to the very essence of regionalism itself. Practices, as well as the norms and values that influence them, are not created in a vacuum and to transplant them onto other regions can result in the misunderstanding and mischaracterisation of such institutions. With the historical context of the foundation of the ASEAN Way established, the case study of the Southeast Asian transboundary haze crisis will be examined to determine the extent to which the “ASEAN-Way” is embodied in ASEAN responses to modern regional challenges.

Chapter 2: Case Study of the Haze

Building on the establishment of the historical context of the ASEAN Way in the previous chapter, Chapter 2 introduces the Southeast Asian haze crisis as a case study on the complexities of regional governance. In this chapter, the criticisms received by the 2002 ASEAN Agreement on Transboundary Haze Pollution (ATHP) will be presented. The purpose of examining the criticism against the ATHP is to show how the ASEAN Way is portrayed by its detractors as the primary hindrance against mitigating the haze. This is important because the following chapter will present the counterargument that the ASEAN Way is not an obstacle, but rather a precondition, for the construction of an effective Southeast Asian anti-haze regime.

Justifying the haze crisis as a case study for ASEAN regional governance

The widespread impact of the haze on Southeast Asian societies and economies already warrants study on how the issue is being managed by the region. Yet, there are two other reasons why the haze is a relevant case study for the role of the ASEAN Way in Southeast Asian regional governance. Firstly, the haze constitutes what is known as a 'non-traditional security challenge'. In contrast to traditional understandings of security along military terms, non-traditional security threats encompass a broad range of challenges such as the effects of environmental degradation, infectious diseases, and

transnational crimes such as drug trafficking.⁶⁵ Features of non-traditional security threats which are pertinent to the haze include its transnational effects; the necessity of multilateral cooperation in its mitigation; and that the object of security is not only the state, but also the overall well-being of its people.⁶⁶

These forms of security challenges have resulted in the questioning of the validity of practices such as the ASEAN Way which, as shown in Chapter 1, were borne out of historical conditions which are less or even no longer applicable to today. The ASEAN Way is therefore portrayed as a relic of the past, coupled with urges for the organisation to abandon or at least adapt its practices for modern consumption. However, this thesis argues that for this case study, it is actually more likely for states to cling onto the ASEAN Way instead of dismissing it because of the central role that national sovereignty plays in the haze crisis. As such, instead of relegating the ASEAN Way to the past, it is useful to see how the ASEAN has evolved to managed sensitive issues such as interference while respecting the sensitivities of their members.

2002 ASEAN Agreement on Transboundary Haze Pollution

Any study on ASEAN's response to the haze crisis centres upon the 2002 ASEAN Agreement on Transboundary Haze Pollution.⁶⁷ The ATHP is a central text in ASEAN environmental governance due to its legally binding nature, a rarity from an institution generally adverse to such forms of documents.⁶⁸ The fact that the haze crisis has warranted the creation of a formal text such as the ATHP is testimony to its gravity and significance for Southeast Asia. The ATHP establishes that its parties "shall co-cooperate in developing and implementing measures to prevent and monitor transboundary haze pollution".⁶⁹ In doing so, the ATHP requires each party to not only construct and enforce national measures targeting prevention of man-made activities resulting in forest fires but

⁶⁵ Mely Caballero-Anthony, "Non-Traditional Security Challenges, Regional Governance, and the ASEAN Political-Security Community (APSC)," Asia Security Initiative Policy Series, September 2010: 7, 2.

⁶⁶ *Ibid.*

⁶⁷ Association of Southeast Asian Nations, *ASEAN Agreement on Transboundary Haze Pollution*, 10 June 2002. https://haze.asean.org/?wpfb_dl=32.

⁶⁸ David Seth Jones, 'ASEAN Initiatives to combat Haze pollution: An assessment of regional cooperation in public policy-making', *Asian Journal of Political Science* 12 (2004): 2, 67.

⁶⁹ *ASEAN Agreement on Transboundary Haze Pollution*, art. 4(1).

also actively share information regarding the haze with one another. To further this latter goal, the ATHP saw the creation of the ASEAN Co-ordinating Centre for Transboundary Haze Pollution Control (the Centre), tasked with facilitating co-operation and collaboration between the ATHP's signatories. At its core, the Centre was designed to serve as an information hub for parties to share with one another national information and data concerning the haze.

Despite advancements in providing a framework for parties to assist one another and highlighting strategies for technical cooperation, the ATHP is regularly criticised for falling short due to one reason: an adherence to the 'ASEAN-Way'. The ASEAN Way is accused of a number of shortcomings such as weak enforcement measures, a lack of formal dispute settlement mechanisms, or the absence of a fully integrated regional response. Regardless of their manner, the underlying current driving all these failures is largely blamed on the practice of the ASEAN Way.⁷⁰ According to critics of ASEAN's role in the Southeast Asian anti-haze regime, these aforementioned pitfalls of the ATHP are symptoms of the institution's reverence for non-interference, a core tenet of the ASEAN Way.

Overview of criticisms

As previously mentioned, the influence of the ASEAN Way is repeatedly depicted as the underlying reason for the failure of the anti-haze regime by critics of the ATHP and ASEAN alike. These complaints can be loosely categorised into two camps. Firstly, ASEAN's adherence to the principle of non-intervention prevents and disincentivises states from taking the most effective mitigation measures against the haze⁷¹; secondly, ASEAN as a regional institution plays a limited role in terms of building a regional response to the crisis.⁷² With regards to the first issue of non-intervention, the most

⁷⁰ Vinod K. Aggarwal and Jonathan T. Chow, 'The perils of consensus: How ASEAN's meta-regime undermines economic and environmental cooperation', *Review of International Political Economy* 17 (2010): 2, 282.

⁷¹ Helena Varkkey, "Regional cooperation, patronage and the ASEAN Agreement on transboundary haze pollution", *International Environmental Agreements: Politics, Law and Economics* 14 (2014): 1, 78.

⁷² Simon S. C. Tay, "South East Asian Forest Fires: Haze over ASEAN and International Environmental Law", *Review of European Community & International Environmental Law* 7 (1998): 2, 204.

common gripe from critics is the absence of enforcement or compliance measures to hold parties accountable to their obligations. In other words, due to the ASEAN Way of avoiding any forms of interference on the internal affairs of its members, even if it is in the name of protecting the environment, the ATHP severely lacks “genuine bite”.⁷³ Without the threat of sanctions or other forms of punishment should states fail to uphold the terms of the ATHP, the document’s enforceability as well as its overall value is frequently brought into question.⁷⁴ Additionally, the vague language of the document is noted as a method for states to minimise the extent of their commitment to the ATHP.⁷⁵ The proliferation of imprecise phrases such as the development of ‘appropriate’ measures to curtail forest fires or the exchange of ‘relevant’ information among members leaves ample room for states to define for themselves the limits of their obligations to avoid overtly concrete obligations.⁷⁶

Furthermore, the affirmation and guarantee of national sovereignty is a fundamental component of the ATHP. The document goes to great lengths in ensuring there is no possible interpretation of the ATHP in which ASEAN is seen as an intruding force in the domestic affairs of its signatories. This sentiment is observable in the eighth and ninth paragraphs of the Preamble, in which states agree to “strengthen international cooperation to develop national policies” as well as “to coordinate national action” to mitigate the haze.⁷⁷ By stressing the primacy of national action, the ATHP sends the message that despite the ATHP’s nature as a regionally founded document, the anti-haze regime works on the basis of individual national efforts. Multilateral collaboration, or cooperation done in the name of ASEAN, serves to bolster state actions and measures rather than replace them. Along the same lines, the guarantee of state sovereignty is repeatedly guaranteed in Article 12 and 13, which details the operational procedures for parties to request or receive assistance. It is explicitly stated that the party receiving

⁷³ Jones, ‘ASEAN Initiatives to combat Haze pollution,’ 68.

⁷⁴ Alan Khee-Jin Tan, “The ASEAN Agreement on Transboundary Haze Pollution: Prospects for Compliance and Effectiveness in Post-Suharto Indonesia,” *New York University Environmental Law Journal* 13 (2005): 3, 652.

⁷⁵ *ASEAN Agreement on Transboundary Haze Pollution*, art. 7 and art. 16.

⁷⁶ Daniel Heilmann, “After Indonesia’s Ratification: The ASEAN Agreement on Transboundary Haze Pollution and its Effectiveness as a Regional Environmental Governance Tool’, *Journal of Current Southeast Asian Affairs* 34 (2015): 3, 105.

⁷⁷ *ASEAN Agreement on Transboundary Haze Pollution*, eighth and ninth paragraphs of the Preamble.

assistance is in full control of all activity within its territory, from the first act of requesting for help to the overall direction and supervision of assistance.⁷⁸ Not only are other parties barred from providing assistance without a formal request for help, but even the offering of such assistance is specifically controlled by and made on the terms set out by the requesting party.⁷⁹

Another manifestation of the principle of non-intervention in the ATHP lies in what is perhaps the most prevalent critique of the document, in that it fails to provide any formal dispute settlement mechanism should disagreements arise amongst its signatories. In its place, the woefully brief Article 27 merely urges parties to settle disputes “amicably by consultation or negotiation”.⁸⁰ As noted by Laely Nurhidayah, this absence of a ‘liability regime’, meaning a legally-based framework in which states are held accountable, severely hampers the effectiveness of the ATHP.⁸¹ Without instruments to ensure accountability, the premise of the ATHP is not rooted in any guarantee of action on the part of its signatories and is instead underpinned by the voluntary compliance of its parties.⁸² As a result, the likelihood of states maximising their efforts to comply or implement measures put forth in the ATHP are significantly affected.

The second line of criticism regarding the influence of the ASEAN Way on the effectiveness of the ATHP in dealing with the haze is the limited role ASEAN as a regional institution plays in terms of building an integrated regional response to the crisis. This sentiment will be illustrated through the context of the ASEAN Co-ordinating Centre for Transboundary Haze Pollution Control, the body representing ASEAN as an institution within the anti-haze regime. Before considering the functions of the Centre, it is worth noting the way that the organisation has been framed by the creators of the ATHP. The inclusion of the word “Co-ordinating” within the title of the Centre is vital in assuaging possible fears from signatories that the Centre would be a policy-making hub or enforcement centre for ASEAN. Instead, the Centre is presented as an informational and

⁷⁸ *ASEAN Agreement on Transboundary Haze Pollution*, art. 12.

⁷⁹ Heilmann, “After Indonesia’s Ratification,” 106.

⁸⁰ *ASEAN Agreement on Transboundary Haze Pollution*, art. 17.

⁸¹ Laely Nurhidayah, Shawkat Alam and Zada Lipman, ‘The Influence of International Law upon ASEAN Approaches in Addressing Transboundary Haze Pollution in Southeast Asia’, *Contemporary Southeast Asia* 37 (2015): 2, 203.

⁸² Tan, “The ASEAN Agreement on Transboundary Haze Pollution,” 652.

administrative tool, serving as a nexus of information exchange.⁸³ By mandating that the Centre may only work “on the basis that the national authority will act first”, it is confirmed that the Centre lacks any institutional agency of its own to create or enforce environmental standards on a regional level. Instead, its purpose is to serve the *national* efforts of parties and create pathways for cooperation between *national* anti-haze efforts.

In light of this aim, the National Monitoring Centre of each party is obligated to communicate with the Centre relevant information or knowledge pertaining to the status of haze-related activities within their countries at “agreed regular intervals”.⁸⁴ Although the responsibility of states to correspond with the Centre could be interpreted as a form of very loose and informal accountability in line with the ASEAN Way, the effect is hampered by the limitations of what the Centre is permitted to do with the received information. The Centre is only bound to produce an “assessment of risks to human health or the environment” with the information they receive from National Monitoring Centres, with no obligation on the part of these National Centres to act upon any measures or recommendations put forth by the Centre.⁸⁵ Furthermore, there is no provision within the Article empowering the Centre to conduct its own research, validate the data received from national bodies, nor request for further information from parties.⁸⁶ All in all, due to the lack of any mechanism to ensure that states must provide the most relevant information or act accordingly to the Centre’s evaluations, the agency and power of the Centre is handicapped by the extent to which national parties engage with it.

Lastly, the most direct criticism of the ASEAN Way within the context of the ATHP is the demand for ASEAN to abandon it in its entirety. Vinod Aggarwal and Jonathan Chow urge the creation of a separate ASEAN branch to manage environmental issues which would be exempt from the principles of the ASEAN Way⁸⁷ whereas Nurhidayah goes as far as urging the complete dismissal of the ASEAN Way as a whole.⁸⁸ Regardless of whether the call is for greater integration between the environmental policies of ASEAN

⁸³ Tay, “South East Asian Forest Fires,” 204

⁸⁴ *ASEAN Agreement on Transboundary Haze Pollution*, art. 8(1).

⁸⁵ *Ibid.*, art. 8(1).

⁸⁶ Tan, “The ASEAN Agreement on Transboundary Haze Pollution,” 667.

⁸⁷ Aggarwal and Chow, “The Perils of Consensus,” 286.

⁸⁸ Laely Nurhidayah, Zada Lipman and Shawkat Alam, “Regional Environmental Governance: An Evaluation of the ASEAN Legal Framework for Addressing Transboundary Haze Pollution,” *Australian Journal of Asian Law* 15 (2014): 1,13.

members, creating a supranational body mandated with the authority to enforce parties to uphold the ATHP, or forming a formal dispute settlement mechanism, the recommendations put forth by critics of ASEAN are underpinned by the complete rejection of the ASEAN Way as it currently stands. As such, the ASEAN Way is portrayed as not only an existential obstacle to the effectiveness of the ATHP but on a wider note, the key reason for ASEAN's failure in responding to non-traditional security challenges.

However, the argument that the ASEAN Way is a purely negative force on ASEAN's role in the anti-haze regime does not explain why the ASEAN Way continues to exist. If the ASEAN Way only serves as a detriment to the overall mitigation of the haze, wouldn't its abolishment be in the national interest of the relevant states? The following chapter argues that the ASEAN Way persists in the ASEAN approach towards regional governance because it is a style of regionalism which is tailored towards creating the most optimal conditions for regional cooperation specifically among Southeast Asian states.

Chapter 3: Building a regional response

The aim of Chapter 3 is to defend the continued validity of the ASEAN Way in the organisation's response to the haze crisis. Firstly, it is argued that the criticisms presented in Chapter 2 against the influence of the ASEAN Way in the ATHP reflect a fundamental

misunderstanding of the purpose of the ASEAN Way. Secondly, the ATHP is placed in the context of the 1995 Cooperation Plan on Transboundary Pollution and the 1997 Regional Haze Action Plan. In doing so, ASEAN is shown to have an increasingly important role over time in mitigating the haze. This is due to how the organisation role in the anti-haze regime is shaped according to the ASEAN Way in order to maximise and facilitate cooperation among its members and in its efforts to create a shared perception of regional environmental stewardship.

Regionalism on Southeast Asian terms

The ASEAN Way is regularly depicted as the metaphorical chains preventing Southeast Asia and ASEAN from fully embracing 'regionalism'.⁸⁹ In this regard, 'regionalism' is only regarded as successful when it reflects Western interpretations of the term, with features such as a high level of integration among member states or supranational authorities mandated to ensure states uphold their regional commitments among others.⁹⁰ The danger of this conceptualisation of regionalism is that it assumes all regions operate under the same conditions and should behave in the same manner, thus falling into the trap of transposing Western values and procedural norms onto distinctly non-Western parts of the world.⁹¹ However, judging ASEAN on the criteria of non-Southeast Asian models of regionalism not only dismisses the uniqueness of Southeast Asian history which has come to shape it, but also dooms the institution to always be regarded failing to 'properly' regionalise. Instead, ASEAN as an institution created by Southeast Asian nations for the purpose of Southeast Asian regionalism needs to be understood in the context of Southeast Asian objectives, and not Western ones.⁹² By contextualising the criticisms put forth against the ATHP and the ASEAN Way, the following sections argue that the manifestation of the ASEAN Way in the document are

⁸⁹ Aggarwal and Chow, "The perils of consensus," 283.

⁹⁰ Nurhidayah, "Regional Environmental Governance," 14.

⁹¹ Amitav Acharya, *Whose Ideas Matter? Agency and Power in Asian Regionalism*, (New York: Cornell University Press 2009), 143

⁹² Timo Kivimäki, 'The Long Peace of ASEAN', *Journal of Peace Research* 38 (2001): 1, 432.

critical elements for the Southeast Asian anti-haze regime because it reflects and accommodates the objectives of ASEAN cooperation.

Balancing national sovereignty with regional cooperation by using a state-based framework

Despite what its critics may suggest, ASEAN does not mindlessly adhere to the ASEAN Way, driven by some unshakable dogma towards upholding state sovereignty. Rather, the principle of non-intervention and the guaranteed protection against intrusion in the domestic affairs of its members are arguably the most important factors contributing to the institution's inclusion in Southeast Asian affairs.⁹³ When states are fiercely protective of their national sovereignty, any form of multilateral let alone regional cooperation is viewed warily. As such, the continued participation of states within the ASEAN framework is founded by the institution's commitment towards non-confrontation, non-interference, and neutrality.⁹⁴ The ASEAN Way is therefore a requirement, not an obstacle, for cooperation among Southeast Asian nations. The absence of institutional formalism and total inoperability among members cannot be regarded as a failure on the part of ASEAN when this was never the intended form of Southeast Asian integration that the founders of ASEAN envisioned.⁹⁵

According to its critics, the usage of a state-based framework in the ATHP defies the overall aim of a regional response to the haze crisis. At first glance this assessment seems valid, yet upon closer inspection it becomes clear that this line of thought is based on a perception of regionalism that is inherently aimed towards integration. However, in a Southeast Asian context, the possibility for an effective regional response is actually increased when such cooperation is presented in the framework of national action. Firstly, given its members' well-known aversion towards any semblance of interference in their domestic policies, the imposition of regional environmental standards would be unrealistic. An essential characteristic of ASEAN as an institution is the heterogeneity of its members with regards to levels of economic development, political governance models

⁹³ Severino, *Southeast Asia in Search of an ASEAN Community*, 91.

⁹⁴ Ke Xian Ng, "Transboundary Haze Pollution in Southeast Asia: The Effectiveness of Three Forms of International Legal Solutions," *Journal of East Asia and International Law* 10 (2017: 1, 247.

⁹⁵ Kivimäki, "The Long Peace of ASEAN," 433.

and societal structures. Therefore, any regional framework has to accommodate the range of national priorities as well as capabilities of ASEAN members.⁹⁶ As such, the ATHP's focus on national instead of regional strategies and measures to mitigate the occurrence of the haze is not borne out of weak region-building efforts, but rather the acknowledgement that the varying capabilities of member states does not allow for the implementation of region-wide standards of environmental practices.

In this regard, the point of the ATHP is not to create overarching supranational institutions to enforce regionality upon ASEAN members.⁹⁷ Demands for ASEAN to implement enforcement measures or create a dispute settlement mechanism would only aggravate a region already famously preoccupied with maintaining autonomy and sovereignty. As such, considering the highly contentious nature of the haze crisis, in which a complex web of economic and political factors stands in the way of its complete mitigation, the convergence of otherwise hostile parties to collectively address the haze pollution is an achievement within itself. Therefore, from a long-term perspective to manage the haze from ASEAN, it is imperative to keep states on the discussion table in order to make progress, no matter how incremental. Although this approach of catering to the lowest common denominator may seem like giving states a loophole to shirk their obligations, it can be argued that the formulation of a more robust regionally orientated plan requires a pre-existing base of continued cooperation and collaboration. The following section will analyse the contents of previous ASEAN documents concerning the haze to trace ASEAN's evolving role in the anti-haze regime through time.

Progress through process

The 1995 Cooperation Plan on Transboundary Pollution (CPTP) is a landmark in ASEAN environmental documents because it introduced the notion of a shared ASEAN environment. As the first ASEAN document addressing the haze, the CPTP also laid the foundation of how national and regional responses towards the haze would be constructed, emphasising nation-based responses with regional efforts only providing

⁹⁶ Severino, *Southeast Asia in Search of an ASEAN Community*, 31.

⁹⁷ Shahar Hameiri and Lee Jones, *Governing Borderless Threats: Non-Traditional Security and the Politics of State Transformation*, (Cambridge: Cambridge University Press, 2015), 123.

complementary support. For example, the CPTP states the importance of assessing “local and regional haze incidents”, preventing haze on “national and regional levels”, and developing “national and regional” emergency response plans.⁹⁸ However, the subsequent strategies and suggested activities to mitigate the haze are almost exclusively framed in national terms.

The CPTP focuses on how states can shape their domestic policies to address the haze through the establishment of ‘National Focal Points’. However, these National Focal Points are also charged with forming a “regional information dissemination mechanism”.⁹⁹ The delegation of this task to National Focal Points instead of the ASEAN body addressing the haze, the ASEAN Specialised Meteorological Centre (ASMC), reveals the reluctance of states to give ASEAN overseeing powers with regards to environmental information. Furthermore, although the ASMC is “a focal point for co-ordinating the detection and monitoring” of the haze, the relationship between the ASMC and national meteorological services remain ambiguous.¹⁰⁰ Without stating how the ASMC is to obtain the relevant national data on atmospheric pollution, their effectiveness as a regional institution is questioned.

Despite national and regional levels being assigned equal importance, it is clear that the nation takes centre stage in the CPTP. ASEAN’s role in the response only targets information gathering and distribution. This power imbalance indicates the haze crisis was seen through a strictly state-centred framework; if domestic policies contribute to the haze, solutions should therefore be oriented with a domestic focus. It was only after a particularly disastrous haze incident in 1997 when the importance of a regional response was given further thought.

The effects of the 1997 haze episodes were so destructive and unprecedented that they warranted the creation of the first ASEAN environmental document exclusively addressing the haze.¹⁰¹ Whereas the CPTP tackled the haze within the larger context of

⁹⁸ “ASEAN Co-Operation Plan on Transboundary Pollution,” *ASEAN Economic Bulletin* 12 (1995): 1, 89-95, *Objectives* (8).

⁹⁹ *Ibid.*, *Activities* (11).

¹⁰⁰ *Ibid.*, *Regional Institutions and Arrangements* (13).

¹⁰¹ Coinciding with a particularly severe El Niño year, Southeast Asia witnessed its most destructive haze crisis on record in 1997. It is estimated that as a result of this episode alone, an estimated 0.81 to 2.57 gigatons of carbon were released into the atmosphere.

transboundary pollution, the 1997 Regional Haze Action Plan (RHAP) focuses solely on the haze crisis. The RHAP also breaks from the CPTP with regards to the relationship between national and regional responsibilities, pointing towards a realisation of the importance of an integrated regional response. This is not to say that the RHAP completely discards the CPTP's state-based framework. However, there is a subtle shift towards states being held more accountable for preventing the haze. For example, while the CPTP did not mention any legislative measures, the RHAP stresses the importance of "strict enforcement of laws and legislation" as well as intensified surveillance on unsustainable land-clearing practices.¹⁰² It is important to understand that these measures were framed in a way that was palatable to ASEAN members. RHAP explicitly recognises that due to individual "development needs, priorities, and concerns", not all member countries are at the same level of haze mitigation efforts.¹⁰³ This acknowledgement of the differences between member countries is meant to reassure states that despite the increased national obligations towards environmental health, they are under no official pressure to cede national priorities for the sake of the regional interest.

The RHAP also provides ASEAN with a greater role in building a regional response to the haze, particularly with the creation of "regional ASEAN workshops". Held by ASEAN, the purpose of these workshops is to "facilitate cross-comparison" between the different national anti-haze plans in order to "exchange information" between relevant parties. Although these workshops are strictly informational in nature, a constructivist perspective on the relationship between international organisations and states will reveal that their establishment is a significant step in the development of a regional approach towards the haze. According to constructivist theory, the process of interaction between states and international organisations creates realities which determine their behaviour towards one another. In this example, even if there is no formal framework for a regional response to the haze, the act of nations repeatedly converging together on the basis of

¹⁰² Association of Southeast Asian Nations, *Regional Haze Action Plan*, 23 December 1997, <https://cil.nus.edu.sg/wp-content/uploads/2017/07/1997-Regional-Haze-Action-Plan-1.pdf>, *Preventative Measures (6a, 6b)*

¹⁰³ *Ibid.*, *Preventative Measures (5)*

ASEAN information sharing creates a reality in which the haze evolves from a purely domestic to a shared, regional challenge.

Again, the ASEAN Way has a role in the framing of this relationship between the nation and the region. The purposeful use of the informal term ‘workshop’ is meant to reiterate that ASEAN holds no supranational authority to judge or assess national plans against the haze. Although anti-haze efforts largely remain the responsibility of domestic institutions, the RHAP represents ASEAN’s role in creating regional environmental expectations which, albeit not legally binding, are important in conceptualising a common regional response.¹⁰⁴ The difference between the CPTP and the RHAP may seem subtle, but the RHAP represents an important step in reinforcing a regional mentality that the haze is too great of a challenge to be solved alone. This sentiment paved the path for what would become one of ASEAN’s few legally binding documents on the environment, the ATHP.

Paving the way for future collaboration

The ATHP becomes a different document when viewed in the context of its predecessors. Alone, the ATHP presents a weak-willed regional response to the haze on the part of ASEAN. States dominate all action and therefore the effectiveness of ASEAN bodies is seriously hampered by their inability to exert any direct influence over states. However, as this Chapter has shown, it is not ASEAN’s *modus operandi* to cast itself as a regional watchdog or enforcer. Instead, in light of its members’ fierce rejection against any semblance of a threat to their national sovereignty, ASEAN works with the ASEAN Way rather than against it. This method has resulted in incremental, but noticeable efforts towards creating an approach towards environmental protection along regional lines. This section delves deeper into how the ATHP represents a culmination of ASEAN’s goal since 1995 to create a regional conceptualisation of environmental protection.

In the previous documents, ASEAN’s representative in the anti-haze regime was limited to the ASMC. Yet, with the ATHP, a separate ASEAN body was specifically created to address the haze: the ASEAN Centre. The establishment of the Centre is the

¹⁰⁴ Hameiri, *Governing Borderless Threats*, 94.

ATHP's primary contribution to creating a regional response to the haze. As outlined in Chapter 2, criticisms against the Centre largely point at its lack of power and agency. However, this thesis has argued that a Centre with such features would never be accepted by ASEAN states. Instead, reflecting a form of regionalism with the greatest chance of success regarding the haze crisis, the Centre should be recognised as a prime example of a 'regional network arrangement'. These types of arrangements link members across a region not through formal institutionalism but rather through loose yet consistent patterns of interaction on more informal matters. According to Elliot, such regional network arrangements should not be regarded as 'lesser' or incomplete forms of rule-based governance but rather a different approach towards regionalism that is best suited for ASEAN.¹⁰⁵

Therefore, although the Centre does not have authoritative power, it is a valuable tool for the normative governing power of ASEAN. Since it is not in ASEAN's interest to portray itself as an instructive force on its members, the Centre is explicitly constructed as subordinate to national governments. Although critics argue that such a hierarchy undermines the validity of the Centre, the constructivist approach maintains that by requiring states to regularly interact with the Centre by providing information on the haze, the normative value of the Centre to the anti-haze regime is strengthened.¹⁰⁶ By looking at the state-dominated focus of the CPTP and RHAP, the formation of a non-governmental body which states are legally obliged to cooperate with is an achievement within itself. Furthermore, the framing of the Centre as neutral and institutionally 'weak' due to its limited powers attracts otherwise apprehensive states wary of threats to their sovereignty. Ultimately, even if the Centre is limited to only producing a risk assessment with the data they receive, it creates a reality in which states are held, no matter how loosely, accountable to a regional body. This is a monumental development considering ASEAN's historic aversion to supranational authorities.

It has been argued that criticisms against ASEAN's role in the anti-haze regime are founded on faulty understandings of ASEAN's form of regionalism. However, this is

¹⁰⁵ Elliot, "ASEAN and Environmental Governance," 50.

¹⁰⁶ Ian Hurd, *International Organizations: Politics, Law, Practice*, (Cambridge: Cambridge University Press, 2014), 27.

not to say that ASEAN is free from criticism; the continued recurrence of the haze clearly indicates that more needs to be done. This thesis argues that in order for further progress on mitigating the haze, ASEAN should continue its efforts towards constructing a shared ASEAN ecosystem. The transboundary nature of the haze requires states to shift from a state-centric perspective to a more holistic view which regards the environment from a regional level. Doing so works around ASEAN states' aversion towards interference in sovereign affairs because it would re-define the very notion of interference. Although historically seen in a negative light, interference on the basis of protecting a shared environment is differentiated from "illegitimate or hostile meddling" with ulterior motives.¹⁰⁷ Furthermore, such an approach creates a narrative in which ASEAN states are working towards a common goal where they stand as a region in the name of environmental protection.

Conclusion

Far from being universally applicable, the concept of 'regionalism' is loaded with implicit assumptions on what constitutes as valid or successful forms of regionalism. In answering the question, "*How does the 'ASEAN Way' impact the ability of the Association of Southeast Asian Nation to create an effective regional response to the Southeast Asian haze crisis?*", this thesis uses a historical approach to argue for a more localised understanding of regionalism. It has shown that the historical context of ASEAN's formation has significantly influenced the style of regionalism which has observed in Southeast Asia. This historical perspective is essential in showing why the ASEAN Way

¹⁰⁷ Lian et al., *ASEAN Environmental Legal Integration. Sustainable Goals?* (Cambridge: Cambridge University Press, 2016), 14.

continues to persist in Southeast Asian relations despite the criticism it has received as being the biggest obstacle blocking more 'successful' regionalism in Southeast Asia.

The trajectory of regionalism in Southeast Asia was directly impacted by the international atmosphere among Southeast Asian states in the 1960s. A geographical region without a regional identity, at the time Southeast Asia was fraught with mistrust, suspicion, and paranoia as states regarded each other with caution. The colonial memory and tensions of the Cold War left these states simultaneously wary of foreign interference and fiercely protective of their national sovereignty. In this context, balancing rationalistic aspirations with highly state-centric was essential in creating any form of Southeast Asian regionalism. This notion is captured within the ASEAN Declaration and the Treaty of Amity and Cooperation. The shared cultural and historical links between Southeast Asian states were drawn upon to build a nascent Southeast Asian regional identity, which then formed the basis of regional cooperation. This regional cooperation was characterised by the supremacy of national sovereignty and the admonishment of any forms of intervention in the internal affairs of other states. Although seemingly paradoxical, this state-centric nature of this style of regionalism was successful because the regional cooperation was framed in a manner which safeguarded national interests.

This historicization of ASEAN regionalism is not meant to pardon ASEAN from criticism against its governance of the region. Certainly, knowing the reasons why an international organisation acts in a certain manner is not the same as excusing such behaviour. On the contrary, a comprehensive understanding of ASEAN can only lead to more valid types of criticism against the organisation. In other words, any assessment on ASEAN as a tool for regionalism should be based on an accurate understanding of regionalism in a Southeast Asian context. In this regard, recommendations for ASEAN to discard the ASEAN Way and embrace more legally based, formal, and integrational forms of regionalism are clearly unsuitable for the realities of Southeast Asian affairs.

This thesis has applied this historical approach towards the ASEAN Way of diplomacy onto the case study of the Southeast Asian haze crisis. The relevance of the haze crisis lies in the tension between the nation and the region at the core of Southeast Asian anti-haze efforts. The transboundary nature of the haze inevitably challenges the organisation's doctrine of non-interference in the domestic affairs of its

members, yet the mitigation of the haze necessitates regional cooperation. It has been proposed that the haze has posed a challenge so great to the essence of ASEAN diplomacy that the ASEAN Way should be relegated to the past. However, this thesis argues that an effective response to the haze is only achievable by *integrating* rather than dismissing the ASEAN Way. Regional cooperation is necessary to prevent the cause and spread of an environmental challenge such as the haze. However, due to the history of foreign interference in Southeast Asian domestic affairs, any form of supranational authority is immediately perceived as a threat to the sovereignty of ASEAN members. In response to this threat, ASEAN states are more likely to adhere more strongly to the ASEAN Way to protect their right against non-interference than they are to accept the imposition of regional standards of environmental protection. As such, the ASEAN Way must be accounted for in the construction of an effective anti-haze regime.

As analysis on the haze documents have shown, the most important role of ASEAN as a regional organisation is to bring and keep states on the discussion table. The more ASEAN states interact with one another within the context of solving the haze, the more the haze becomes an ASEAN problem. The regional framing of the haze is essential in mitigating the haze because it allows states to reframe their very understanding of the term 'intervention'.¹⁰⁸ No longer is intervention regarded as inherently disruptive meddling in domestic affairs, thus threatening national stability and sovereignty. Instead, the creation of regional standards for environmental protection is seen as legitimate intervention in domestic policies in the name of the greater good. This thesis chose an environmental issue such as the haze to analyse the ASEAN Way, yet further research on other forms of challenges such as economic integration or security arrangements are also worthwhile in understanding the impact of the ASEAN Way on Southeast Asian region-building.

Understanding the ASEAN Way as Southeast Asian regionalism on Southeast Asian terms promotes the development of more non-Western centric approaches towards international relations. To repeat Amitav Acharya's approach towards the topic,

¹⁰⁸ *Ibid.*, 14.

regions are inherently 'imagined concepts'.¹⁰⁹ Yet, the factors affecting their imagination are rooted in real-world conditions and pressures. As such, the ASEAN form of regionalism should be understood as an interpretation of regionalism that is specifically catered to maximise regional cooperation in Southeast Asia. As such, even abstract notions constituting the ASEAN Way such as non-intervention, informality, and sovereignty all become inseparable elements of Southeast Asian regionalism. Its continued relevancy, in managing the geopolitical tensions of the Cold War to novel environmental challenges today, is testimony to the integral role the ASEAN Way plays in Southeast Asian regionalism.

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¹⁰⁹ Acharya, "Ideas, norms, and regional orders," 185.

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