ASEAN ACTIVITIES WITH RESPECT TO THE ENVIRONMENT*

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INTRODUCTION

The Association of South East Asian Nations (ASEAN)¹ currently comprises six members: Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand.² Having celebrated its twenty-fifth anniversary in the summer of 1992, ASEAN looks to the future with confidence, expanding its relations with countries within³ and outside⁴ the region.

By 1992, some 20 years had elapsed since the international community began its efforts to develop and codify international law concerning protection of the environment. Since the UN Conference on the Human Environment convened at Stockholm from 5–16 June 1972,⁵ according to one source, some 200 documents containing resolutions, guidelines, principles, decisions and recommendations have been prepared by international organizations of

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1 For a general introduction to ASEAN, see SOMPONG SUCHARITKUL, "ASEAN Society, a Dynamic Experiment for South East Asian Regional Cooperation", 1 *AsYIL* (1991) 113–148.

2 For basic texts, see *ASEAN Documents Series 1967–1988* (third edition, ASEAN Secretariat, Jakarta, ISBN 979–8080–0107, hereafter: Doc. Ser.) p. 45.

3 Papua New Guinea has regularly attended the annual ASEAN Ministerial Meetings since 1980, and in 1992 Vietnam and Laos acceded to the ASEAN Treaty of Amity and Cooperation in South East Asia of 24 February, 1976, Doc. Ser. 39–44.

4 As to ASEAN cooperation with Australia, Canada, the EEC, Japan, New Zealand and USA, see SUCHARITKUL, loc. cit. n. 1 at pp. 141–147.

5 The Declaration of the UN Conference on the Human Environment, Stockholm, 5 June 1972, was adopted at its 21st plenary meeting on 16 June 1972, see *Basic Documents of International Environmental Law* (Vol. 1, 1992, ed. HARALD HOHMANN No. 1) (hereafter Basic Docs.).

universal (e.g. UN, UNEP, ILC) or regional (e.g. ASEAN, OAU, EEC) character, or by learned societies (e.g. Institut de Droit International, International Law Association) and, in some instances, have led to the conclusion of international conventions on environmental law.⁶

While ASEAN nations or their experts have participated actively in the preparation of such documents, and thus contributed to the norm-creating process aimed at protection and preservation of the global environment, their principal aim has been to ensure the safety and welfare of their inhabitants through environmental measures at the regional level. The following deals mainly, but not exclusively, with such measures.

1. INTERNATIONAL PROTECTION OF THE ENVIRONMENT OF THE ASEAN REGION

1.1 The Manila Declaration on the ASEAN Environment, Manila, 30 April 1981⁷ and its Sequence

The ASEAN Ministers of Environment meeting in Manila, adopted a Declaration on the ASEAN Environment, to which was annexed the ASEAN Environmental Programme (ASEP), prepared with the support of UNEP and other international organizations. The Programme deals with the following areas:⁸

- (a) Environmental Management including Environmental Impact Assessment;
- (b) Nature Conservation and Terrestrial Ecosystems;
- (c) Marine Environment;
- (d) Industry and Environment;
- (e) Environmental Education and Training; and
- (f) Environmental Information.

1.1.1 The Objective of ASEP

6 See Basic Docs. Vols. I, II and III. Larger collections of international environmental law documents include *International Protection of the Environment, Treaties and Related Documents* (Dobbs Ferry, Oceana, 1990), 30 volumes and Index and three additional loose-leaf volumes.

7 Doc. Ser., pp. 400–401. No Press Release was issued by the First ASEAN Ministerial Meeting on the Environment, during which the Manila Declaration was adopted.

8 The Reports of the ASEAN Experts' Group meetings and the ASEAN Environmental Programme Document was annexed to the Manila Declaration in Doc. no. ASEAN/MME/4.

The Manila Declaration on the ASEAN Environment was endorsed by the Fourteenth ASEAN Ministerial Meeting in Manila on 17–18 June 1981.⁹ Its overall objective as well as policy guidelines were formulated on the basis of preparatory work undertaken earlier by the ASEAN Experts' Group.¹⁰ The objective of ASEP is to ensure the protection of the ASEAN environment and the sustainability of its natural resources, so that it can sustain continued development with the aims of eradicating poverty and attaining the highest possible quality of life for the people of the ASEAN countries.¹¹

1.1.2 Policy Guidelines

Policy guidelines for the progressive implementation of projects under ASEP were adopted as follows:

- (1) Foster a common awareness among the people of the ASEAN countries of the biological, physical and social environment and its vital significance for sustained development to proceed apace;
- (2) Ensure, as far as possible, that environmental considerations are taken into account in development efforts, both on-going and future;
- (3) Encourage the enactment and enforcement of environmental protection measures in the ASEAN countries;
- (4) Foster the development of environmental educational programmes."¹²

The Second ASEAN Ministerial Meeting on the Environment was convened in Bangkok on 29–30 November 1984,¹³ preceded by a meeting of ASEAN Senior Environmental Officials. Two important Declarations were adopted by the expanded ASEAN including Brunei Darussalam: the ASEAN Declaration on Heritage Parks and Reserves¹⁴ and the Bangkok Declaration on the ASEAN Environment.¹⁵ The ASEAN Environmental Programme II also received ministerial endorsement.¹⁶

9 See the Joint Communiqué in Doc. Ser., pp. 97–104, especially para 46 on p. 102.

10 The meetings of the ASEAN Experts' Group were held in Jakarta (1978); Penang (1979); Manila (1980) and Singapore (1981).

11 See the Manila Declaration.

12 Para 1, Doc. Ser. p. 400.

13 See the Joint Communiqué of the Second Ministerial Meeting on the Environment, Bangkok, 29–30 November 1984; *ibid.*, at pp. 402–403.

14 *Ibid.*, at pp. 404–405.

15 *Ibid.*, at pp. 406–408.

16 This programme is referred to as ASEP II.

1.2. ASEAN Declaration on Heritage Parks and Reserves, Bangkok, 29 November 1984

Recognizing the uniqueness, diversity and outstanding values of certain national parks and reserves of ASEAN countries, ASEAN Ministers proceeded to identify and declare the following ASEAN national heritage parks and nature reserves:¹⁷

- (1) Brunei Darussalam: Tasek Merimbun;
- (2) Indonesia: Leuser National Park, Kerinci-Seblat National Park and Lorentz Nature Reserve;
- (3) Malaysia¹⁸: Kinabalu National Park, Mulu National Park and Taman Negara National Park;
- (4) Philippines: Mount Apo National Park and Iglit-Baco National Park;
- (5) Thailand: Khao Yai National Park and Kor Tarutao National Park.

The Ministers envisaged the setting up of regional conservation and management plans to prepare and implement guidelines, to undertake research on the structure and function of ecosystems and to promote education on wilderness values, with a view to maintaining ecological processes and life support systems, preserving genetic diversity, ensuring sustainable utilization of species and ecosystems, and preserving wilderness for its scenic, cultural, educational, research, recreational and touristic values.

1.3 Bangkok Declaration on the ASEAN Environment, Bangkok, 29 November 1984

The Bangkok Declaration on the ASEAN Environment¹⁹ was another milestone in further refinement of policy guidelines to be implemented throughout the ASEAN region with respect to the following areas:

- (1) *Environmental Management*: notably to develop a macro-economic *cum* environmental development plan, to strengthen the use of Environmental Impact Assessment (EIA) and extended Cost-Benefit Analysis for minimizing adverse effects, to evolve criteria for augmentation of renewable resources and economical use of non-renewable resources, and to prepare an optional land use pattern and zoning plan.
- (2) *Nature Conservation*: to develop new and practical approaches for preserving forest wildlife, and other ecological systems in the face of continuing population pressure.
- (3) *Marine Environment*: to develop practical methods for the management

17 Doc. Ser., operative paragraph on p. 404.

18 It is noted that Singapore has not identified a national heritage site for conservation purposes.

19 Doc. Ser. pp. 406–408.

of pollution discharges, so that economic development of coastal resources may proceed in parallel with the preservation of the quality of coastal beaches and resorts and the marine environment.

- (4) *Industrial Development*: to devise practical methods for ensuring reasonable control of waste discharges from the earliest stage of project planning and, wherever practical, to adopt low waste and non-waste technology and more effective re-use and recycling of wastes in production; and to develop a toxic and hazardous waste control programme as well as suitable systems for control by government agencies and industry.
- (5) *Urban Environment*: to increase efforts to provide water-borne sewage systems with central sewage treatment facilities.
- (6) *Environmental Education*: to enhance public awareness of the importance of environmental protection, to provide training of personnel involved in decision-making on projects, to introduce stronger general environmental themes into school and university syllabuses, and to provide technical training for the staff of environmental protection agencies.
- (7) *Environmental Information System*: to facilitate decision-making, to establish suitable data bank/storage and retrieval systems, to implement monitoring programmes for continuing surveillance of sensitive environmental resources and to promote increased use of remote sensing to establish environmental data bases.
- (8) *Wider Involvement*: to promote cooperation between governments, NGOs, universities, and business communities within ASEAN in the field of environmental management.
- (9) *Legislation*: to prepare legislation in support of proper management and development of the environment.
- (10) *International Cooperation*: c) to promote further cooperation with developed and developing countries and international agencies for transfer of technology and sharing of experience in the management of the environment.

1.4. ASEAN Agreement on the Conservation of Nature and Natural Resources, Kuala Lumpur, 9 July 1985

Following the Bangkok Declaration, the Foreign Ministers of ASEAN signed in Kuala Lumpur on 9 July 1985, the "ASEAN Agreement on the Conservation of Nature and Natural Resources",²⁰ the first and comprehensive instrument in a series of agreements to be concluded by ASEAN countries.

20 Doc. Ser. pp. 409–420.

The Agreement contains eight chapters totalling 35 articles, including the final clauses.

As a fundamental principle,²¹ ASEAN member countries have agreed to adopt singly as well as through concerted action, measures necessary to maintain ecological processes and life-support systems, to preserve genetic diversity and to ensure the sustainable utilization of harvested natural resources under national jurisdiction in accordance with scientific principles and with a view to attaining the goal of sustainable development. To this end, national conservation strategies shall be developed and coordinated within the framework of a collective strategy of the region. Conservation and management of natural resources are to be treated as an integral part of national development planning at all stages and levels.²²

Chapter II provides for the conservation of species and ecosystems,²³ maintaining maximum genetic diversity by ensuring the survival of all species under national jurisdiction and control. Appropriate measures are to be adopted to conserve animal and plant species whether terrestrial, marine or fresh water, and more especially to conserve their habitats, to ensure sustainable use of harvested species and take all measures to prevent the extinction of any species or sub-species.²⁴ Parties also agree to take all necessary measures to ensure the conservation of the vegetation cover and, in particular, of the forest cover on lands under their national jurisdiction. Accordingly, they agree to control clearance of vegetation, prevent bush and forest fires and overgrazing, regulate mining or mineral exploration requiring rehabilitation of vegetation, reforestation and afforestation in designated forest reserves, to maintain potential for optimal sustainable yield, and avoid depletion of resource capital.²⁵

Attention is drawn to measures of soil conservation, improvement and rehabilitation, taking necessary steps to prevent soil erosion and other forms of degradation, safeguarding the processes of organic decomposition and continuing fertility.²⁶ Appropriate measures shall also be taken towards conservation of underground and ground water resources, promoting of hydrological research to ascertain the characteristics of each watershed; control and maintenance of natural life support systems and aquatic fauna and flora.²⁷ Measures are to be taken to ensure air quality management compatible with sustainable development.²⁸

21 See Article 1 in Chapter I: Conservation and Development, *ibid*, at p. 409.

22 See Article 2, *ibid*, at pp. 409–410.

23 *Ibid*, at pp. 409–412.

24 See Articles 3, 4, 5 and 6, *ibid*, pp. 410–411.

25 Article 6: Vegetation Cover and Forest Resources, *ibid*, p. 411.

26 Article 7: Soil, *ibid*, pp. 411–412.

27 Article 8: Water, *ibid*, p. 412.

28 Article 9: Air, *ibid*, p. 412.

Conservation of ecological processes is provided for in Chapter III. Article 10 prescribes specific measures to prevent, reduce and control degradation of the natural environment, including sound agricultural practices and proper application of pesticides, pollution control of industrial processes and products with adequate economic or fiscal incentives.²⁹ Article 11 requires States to endeavour to prevent, reduce and control polluting discharges and emissions harmful to the natural ecosystem of animal and plant species.³⁰

Chapter IV contains provisions relating to Land Use Planning,³¹ Protected Areas³² and Impact Assessment.³³ Chapter V provides for measures promoting scientific research,³⁴ education³⁵ and administrative machinery to implement the provisions of the Agreement.³⁶

Key provisions are contained in Chapter VI on International Cooperation.³⁷ Cooperation and coordination of activities in the field of conservation of nature and management of natural resources are required of member States of ASEAN by way of mutual assistance and exchange of information and data on a regular basis.³⁸ Harmonious utilization of shared resources is mandatory, taking into account the sovereignty, rights and interests of the Parties concerned in accordance with generally accepted principles of international law.³⁹ The Contracting Parties accept responsibility for ensuring that activities under their jurisdiction or control do not cause damage to the environment or the natural resources of other Contracting Parties or of areas beyond the limits of national jurisdiction, by requiring environmental impact assessment before engaging in any risk-creating activity, by notifying in advance details of the planned activities and by consultation and exchange of information.⁴⁰

Chapter VII institutionalizes international supporting measures,⁴¹ specifying

29 Article 10: Environmental Degradation, *ibid.* at p. 412.

30 Article 11: Pollution, *ibid.* at p. 413.

31 See Chapter IV: Environmental Planning Measures, Article 12, *ibid.* p. 413.

32 Article 13, *ibid.* pp. 413–414.

33 Article 14, *ibid.* p. 414.

34 See Chapter V: National Supporting Measures, Article 15, *ibid.* p. 415.

35 Article 16, *ibid.* p. 415.

36 Article 17, *ibid.* p. 415.

37 See Chapter IV, *ibid.* pp. 415–416.

38 Article 18: Cooperative Activities, *ibid.* pp. 415–416.

39 Article 19: Shared Resources, imposes a duty to give advance notification and to consult as well as to inform of emergency situations and sudden grave natural events generating adverse repercussions on their environment.

40 Article 20: Transfrontier Environmental Effects, *ibid.* p. 417.

41 Chapter VII: International Supporting Measures, *ibid.* pp. 417–418.

the need for periodic meetings of the Parties,⁴² the establishment of a central secretariat,⁴³ and national focal points.⁴⁴ The last chapter contains Final Clauses.⁴⁵

The ASEAN Agreement on the Conservation of Nature and Natural Resources is thus an example of a framework agreement pursuant to which ASEAN nations could assist each other in close cooperation and collaboration with other nations at the global as well as the regional level, and with competent international organizations and NGOs active in environmental affairs.

Actual implementation of the fundamental principles and policy guidelines enshrined in the ASEAN Agreement is left to each individual member State and is to be carried out in accordance with its national conservation strategies and legislation. Being non-self-executing, it is left to each State to act in conformity with its own processes of ratification, accession or acceptance⁴⁶. It is the avowed intention of ASEAN nations to undertake individual and collective action for the conservation and management of the living and non-living resources on which they depend.⁴⁷

1.5 Jakarta Resolution on Sustainable Development, Jakarta, 30 October 1987

The Third ASEAN Ministerial Meeting on the Environment (AMME III), met in Jakarta on 29–30 October 1987, and adopted the ASEAN Environment Programme III (ASEP III : 1988–1992) and the Jakarta Resolution on Sustainable Development.⁴⁸ The Resolution emphasizes the need to strengthen ASEAN regional cooperation on all matters relating to the environment. It stresses that efforts be aimed at common resources and issues that affect the well-being of the peoples of ASEAN, and that ASEAN cooperation should encompass governments and government agencies as well as the private sector, professional associations, educational and academic institutions and NGOs. Environmental considerations will be incorporated into the programme and

42 Article 21: Meeting of the Contracting Parties, *ibid*, pp. 417–418.

43 Article 22: Secretariat, *ibid*, p. 418.

44 Article 23: National Focal Points, agencies or institutions, *ibid*, p. 418.

45 The Final Clauses, Articles 24–35, pp. 418–420.

46 This Agreement is treated by ASEAN as a Treaty and is required to be registered in conformity with Article of 102 of the Charter.

47 See, e.g., the Preamble to the 1985 ASEAN Agreement on the Environment, Doc. Ser. pp. 409.

48 See Doc. Ser. pp. 422–423.

activities of the ASEAN committees, thereby strengthening existing institutional arrangements for regional cooperation.⁴⁹

The Jakarta Resolution will serve as a guide and as an integrating factor in the common effort to implement the principle of sustainable development.⁵⁰ The Ministers identified as common resources and issues on which to focus ASEAN cooperative efforts⁵¹ the following:

- (a) The common seas;
- (b) Land resources and land-based pollution;
- (c) Tropical rain forests;
- (d) Air quality; and
- (e) Urban and rural pollution.

It was noted that the promotion of sustainable development would be best served by the establishment of a regional body on the environment of sufficient stature, in particular, to recommend policy guidelines for the implementation of the principle of sustainable development, to monitor the quality of the environment and natural resources, to enable the periodic compilation of ASEAN state-of-the-environment reports, and to enhance in general intra-ASEAN cooperation on all environmental matters.⁵²

1.6 Kuala Lumpur Accord on Environment and Development, Kuala Lumpur, 19 June 1990

Following the Jakarta Resolution on Sustainable Development of 30 October 1987, the ASEAN Heads of Government met in Manila on 14–15 December 1987⁵³ and confirmed the desire that ASEAN cooperation should aim at achieving sustainable development based on sustained availability of needed natural resources, and should seek continuous improvement in the level of income, the quality of life and the environment. The ASEAN Heads of Government declared that to this end ASEAN shall systematically integrate the principle of sustainable development into all aspects of development.⁵⁴

ASEAN has developed a practice of sharing and dividing the collective endeavours. In this connection, six Working Groups under the chairmanship of respective ASEAN member countries were established as the result of the Fourth ASEAN Ministerial Meeting on the Environment (AMME IV),

49 See Joint Press Release of the Third Ministerial Meeting on the Environment, Jakarta, 29–30 October 1987, *ibid*, p. 421.

50 See operative para. I of the Jakarta Resolution, *ibid*, p. 422.

51 See operative para. II of the Jakarta Resolution, *ibid*, p. 422.

52 See operative para. IV of Jakarta Resolution, *ibid*, p. 422.

53 See Joint Press Statement, Meeting of the ASEAN Heads of Government, Manila, 14–15 December 1987, *ibid*, pp. 61–70.

54 *Ibid*, para. 47, at p. 67.

Selangor, Malaysia, 18–19 June 1990.⁵⁵ They are:

- (1) ASEAN Working Group on Nature Conservation (ANC);
- (2) ASEAN Working Group on ASEAN Seas and Marine Environment;
- (3) ASEAN Working Group on Transboundary Pollution;
- (4) ASEAN Working Group on Environmental Management;
- (5) ASEAN Working Group on Environmental Economics; and
- (6) ASEAN Working Group on Environmental Information.

AMME IV also created a body known as the ASEAN Senior Officials on the Environment (ASOEN),⁵⁶ adopted the Kuala Lumpur Accord on Environment and Development⁵⁷ and agreed on a common ASEAN stand on major environment issues in preparation for ASEAN's participation at future ministerial meetings such as the Conference on Environment for Asia and the Pacific 1990⁵⁸ and the United Nations Conference on Environment and Development 1992.⁵⁹ The linkages of environmental concerns with the development needs of countries were stressed, and it was recognized that the future of mankind rests on an equitable sharing of duties and obligations and allocation of liabilities in global environmental efforts, taking into account existing asymmetries between developed and developing countries.⁶⁰

The Kuala Lumpur Accord of June 19 1990,⁶¹ also referred to the Langawi Declaration on Environment issued by the Heads of Government of the Commonwealth countries in October 1989.⁶² The Accord reaffirms ASEAN's commitment to the pursuit of sustainable development, and contributes towards ASEAN's preparation for the 1992 United Nations Conference on Environment and Development. It was recognized that in the pursuit of environmental conservation and sustainable development, developing countries would have to forego some economic and developmental opportunities. Developed countries should appreciate the needs of the developing countries, assist the latter through transfer of environmentally sound technology, and contribute to appropriate funding mechanisms. ASEAN Environmental Ministers agreed on the following ASEAN common stand on environmental issues:

55 See Joint Press Release, in: *ASEAN Documents Series 1989–1991*, Supplementary Edition (hereafter: Doc. Ser. Suppl.) pp. 50–51.

56 Joint Press Release of AMME IV, *ibid.*, p. 50.

57 *Ibid.*, pp. 52–53.

58 See the Bangkok ESCAP Ministerial Declaration on Environmentally Sound and Sustainable Development 1990, in: Basic Docs, doc. 38 a, Vol. 1, pp. 567–569.

59 The Earth Summit Document *ibid.*, docs. 78 a, 78 b, pp. 1737–1804.

60 Joint Press Release, AMME IV, *ibid.*, pp. 50–51.

61 *Ibid.*, pp. 52–53.

62 See the Joint Declaration Eighth ASEAN-EC Ministerial Meeting, Kuching, Malaysia, 16–17 February 1990, *ibid.*, pp. 55–64, especially para. 83, pp. 63–64.

- (1) On the Montreal Protocol on Substances that Deplete the Ozone Layer, the need for transfer of technology and provision of financial assistance;
- (2) On the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, greater emphasis to be placed on issues relating to the responsibilities of exporting countries to re-import wastes, and on liability and compensation for damage resulting from transboundary movements and disposal of hazardous wastes;
- (3) On the proposed Climate Change Convention, the need to assess the ecological and socio-economic impacts of global warming and the implications of the proposed Convention for the ASEAN region;
- (4) On the Biological Diversity Convention, the need to consider issues on poverty and development as well as compensation in the proposed international legal instrument on the Conservation of Biological Diversity of the Planet.⁶³

1.7. ASEAN-EC cooperation in the preservation of global environment, Kuching, 16–17 February 1990

The Eighth ASEAN-EC Ministerial Meeting in Kuching, Malaysia, 16–17 February 1990⁶⁴, marked another significant step in the integration of environmental issues into mutually beneficial cooperation between the European Community and the ASEAN countries to ensure a more integrated approach to environmental and development problems.⁶⁵ Consensus was reached as regards the need to strengthen ASEAN's ability to respond to environmental concerns which, as a major issue, should not be used to introduce a new form of conditionality in aid and development financing. The European Community Ministers agreed to consider assisting the upgrading of ASEAN's facilities, capabilities and expertise in the areas of management of natural resources and environment monitoring through technical and environmental assistance.⁶⁶

63 See the Joint Press Release of AMME IV, *ibid*, p. 51; and the Kuala Lumpur Accord of 1990, *ibid*, pp. 52–53.

64 See Joint Declaration of the Eighth ASEAN-EC Ministerial Meeting, Kuching, Malaysia, 16–17 February 1990, *ibid*, pp. 55–64.

65 See in particular, paras 77–83: Environment, *ibid*, pp. 63–64.

66 See paras 81–82, *ibid*, at p. 63.

2. SOME SPECIALIZED AREAS OF ENVIRONMENTAL PROTECTION

2.1 ASEAN Tropical Forestry

One of the common areas and issues on which ASEAN attention has been focused is the management of ASEAN tropical forestry resources. This sector embraces the forest cover of the soil, soil erosion, deforestation, flood control, rain forests and even climate change, affecting not only the land but also the water resources and the air quality. ASEAN efforts in this particular area of environmental protection are outlined below.

2.1.1 Jakarta Consensus on ASEAN Tropical Forestry, 13 August 1981

Prior to the conclusion of the 1985 ASEAN Agreement, a less formal instrument recorded the consensus reached among ASEAN Economic Ministers regarding forestry management and development within the ASEAN region.⁶⁷ A common ASEAN policy was adopted for developing the forestry sector in ASEAN countries as the basis for long-term development of that sector. This Common ASEAN Forestry Policy⁶⁸ pertains to:

- (a) Conservation, Reforestation and Management of Forestry Resources;
- (b) Utilization of Forest Resources: Production, Processing and Marketing;
- (c) Research and Development;
- (d) Education and Training.

Technical cooperation is vigorously pursued among ASEAN countries in each of the above four fields.⁶⁹ Cooperation is promoted in intra-ASEAN trade in timber and wood-based products.⁷⁰ Several models of institutions such as the Institution of Forest Management, the Timber Industry Research, Development and Training Centre and other similar institutions have been studied to implement the above areas of cooperation.⁷¹ A common stand was agreed on international forestry issues, including technical and development cooperation, economic and trade cooperation as well as environment and wild life protection.

67 VISU SINNADURAI (ed.) *Multilateral Treaties between ASEAN Countries*, Butterworths 1986, pp. 225–230.

68 I. ASEAN Common Forestry Policy.

69 II. Technical Cooperation, *ibid*, pp. 227–228.

70 III. Institutions and IV. Cooperation in Intra-ASEAN Timber Trade, *ibid* p. 228.

71 V. ASEAN Common Stand on International Issues on Forestry, *ibid* pp. 228–229.

2.1.2 Cooperation with the EC

Following the Eighth ASEAN-EC Ministerial Meeting in Kuching, on 16–17 February 1990⁷² where the EC agreed to consider helping ASEAN upgrade its facilities, capabilities and expertise in the field of management of natural resources and environment monitoring, an ASEAN tropical forest mission, led by Indonesia's Forestry Minister, met European Commission officials in Brussels in October 1990. The discussion focused on sustainable forest management in the ASEAN countries. One issue covered, *inter alia*, trade in tropical timber products which some of the EC member countries want banned. The meeting agreed that ASEAN and the EC have a common interest and common responsibility in conserving and regenerating tropical forests. The European Commission proceeded to launch significant pilot projects in the ASEAN region and carried out a first identification mission in January 1991.⁷³

2.1.3 Tropical Timber Agreement, Geneva, 1983

An agreement was concluded on tropical timber in Geneva in 1983,⁷⁴ establishing a framework for international cooperation between producing and consuming members in finding solutions to problems facing the tropical timber economy, recognizing the importance of tropical timber to the exports of producing members and the supply requirements of consuming members. Among the producing members are listed four ASEAN countries: Indonesia, with 139 votes; Malaysia, 20 votes; Philippines, 43 votes; and Thailand, 19 votes. Myanmar, 31 votes, Papua New Guinea, 24 votes and Vietnam, 18 votes, are also named as producing members from the region of South East Asia. The allocation of votes gives ASEAN countries 221 out of the total of 1000 votes. Among the heavier consumers of tropical timber are Japan with 330 votes; the EC, 277 votes; the United States, 79 votes; and the Republic of Korea, 56 votes. The objectives of the Agreement include the following:⁷⁵

- (1) To provide an effective framework for cooperation and consultation with regard to all relevant aspects of tropical timber economy;
- (2) To promote the expansion and diversification of international trade in timber and the improvement of structural conditions in the tropical timber market;
- (3) To improve forest management and wood utilization;
- (4) To promote industrialization and increase export earnings;

72 See the Joint Declaration, para. 82 *ibid*, p. 63.

73 See the European Community's relations with ASEAN, Europe Information 1/91

74 See Doc. No. 64a Basic Docs. Vol. III pp. 1398–1400.

75 See Article 1. Objectives, *ibid*, pp. 1388–1389.

- (5) To develop industrial tropical timber reforestation and forest management activities;
- (6) To improve marketing and distribution of tropical timber exports;
- (7) To encourage sustainable utilization and conservation of tropical forests and their genetic resources, thereby maintaining the ecological balance in the regions concerned.

2.2 Marine Environmental Protection and Related Issues

2.2.1 ASEAN cooperation

ASEAN cooperation in the environmental field was initiated in 1977 when ASEP I was prepared with the assistance of the UNEP. Draft ASEP I was considered by the ASEAN Experts Group on the Environment (AEGE) in Jakarta on 18–20 December 1978. Since then, the AEGE has met regularly each year and has become a permanent body under the purview of the ASEAN Committee on Science and Technology (ASEAN COST).⁷⁶

ASEAN cooperation in the field of marine science and marine environment is conducted through three distinct regional bodies, the Coordinating Body on the Seas of East Asia (COBSEA), the AEGE and the Working Group on Marine Science (WGMS). While AEGE and WGMS are ASEAN bodies under ASEAN COST, COBSEA is directly under the purview of the UNEP.

COBSEA was established in December 1981 by the ASEAN countries to coordinate the Action Plan for the Protection and Development of the Marine and Coastal Areas of the East Asian Region. Progress of the Action Plan was reviewed through annual meetings in Bangkok (1982), Yogyakarta (1983), Genting Highlands (1984), Manila (1985), and Singapore (1986); the following projects were among those implemented under the Plan:

- (a) Cooperative Research on Oil and Oil Dispersant Toxicity;
- (b) Study on Coral Resources and the Effects of Pollutants and other Distinctive Factors on Coral Communities and Related Fisheries;
- (c) Study of the Maritime Meteorological Phenomena and Oceanographic Features;

⁷⁶ See the 1981 Manila Declaration on the ASEAN Environment, *supra* n. 7.

⁷⁷ See MOCHTAR KUSUMA-ATMADJA, "Regional Marine Environmental Protection in the Southeast Asian Seas," *Proceedings of SEAPOL International Conference on the Implementation of the Law of the Sea Convention*, Denpasar, 28–30 May 1990 (Bandung, 1992) pp. 52–53.

⁷⁸ *Ibid.*, pp. 56–57. The Expert Group on Marine Pollution followed closely IMCO recommendations and guidelines on marine pollution matters.

- (d) Survey and Monitoring of Oil Pollution and Development of National Coordinating Mechanisms for the Management and Establishment of Regional Data Exchange System;
- (e) Assessment of Concentration Levels and Trends of Non-Oil Pollutants and their Effects on the Marine Environment; and
- (f) Implementation of a Technical and Scientific Support Programme for Oil Spill Contingency Plan.⁷⁷

A UNEP-COBSEA Workshop on Cleaning Up of Urban Rivers was held in Singapore on 14–16 January 1986. Measures were recommended to solve short-and long-term urban river pollution problems in ASEAN countries.

Two ASEAN-UNDP Projects funded by UNDP Fourth Cycle deserve mention. The first, the Development of Cooperation Action Plan for Oil Pollution Combat (South China Sea) and second, Environmental Guidelines for Coastal Zones Management. A third project is entitled “The Integrated Island Ecosystems Development Approach in ASEAN Countries”.

The ASEAN-US Coastal Resources Management Project (CRMP) was initiated in 1984 to develop site-specific management plans in each of the ASEAN countries. Other such projects include ASEAN-Australia Living Coastal Resources Project.

2.2.2 ASEAN Contingency Plan

ASEAN developed its own Contingency Plan for marine pollution due to oil spills occurring in the early 1970s in the Straits of Malacca and Singapore. The ASEAN Contingency Plan was drafted by the Expert Group on Marine Pollution in November 1974 and finalized at the Manila Meeting in July 1975. The Plan is designed to ensure “Control and Mitigation of Marine Pollution” with the following objectives:⁷⁸

- (a) to cater for effective reporting to alert member countries;
- (b) to keep each other up-to-date on individual anti-pollution capabilities;
- (c) to render mutual assistance wherever possible in anti-pollution operations.

The value of the ASEAN Contingency Plan has been put to a test since the grounding of the *Showa Maru* in the Straits of Singapore in 1975.⁷⁹ The nightmare of a catastrophic oil spillage by a transit tanker had been a matter of serious concern for many years. The ASEAN Straits States, Malaysia, Singapore and Indonesia, took the initiative of instituting a unique under-

⁷⁹ See CHIA LIN SIEN and COLLIN MACANDREWS, (eds.) *The Straits of Malacca and Singapore: Navigational, Resources and Environmental Considerations*; also in *Southeast Asian Seas: Frontiers for Development* (1981), pp. 239–263, at p. 245.

keel clearance scheme with the approval of the IMO,⁸⁰ not only for the safety of transit passage navigation but also for the environmental protection of the coastal areas. Traffic separation schemes were also introduced and enforced by the ASEAN Straits States with the endorsement of the IMO.⁸¹ The three ASEAN Governments agreed:

- i. that the safety of navigation in the Straits of Malacca and Singapore is the responsibility of the coastal States concerned;
- ii. that the safety of navigation in the area depends on tripartite cooperation;
- iii. that a regional body to coordinate such efforts be established, i.e., the Malacca Straits Council.

2.2.3 Protection of the marine environment through the global system and national legislation

Several treaty régimes have been established to preserve and protect the marine environment from pollution from various sources. These include:

- (1) The United Nations Convention on the Law of the Sea 1982,⁸² signed by all ASEAN States and already ratified by archipelagic States within the ASEAN community. Article 194 requires States to take all measures consistent with the Convention to prevent, reduce and control pollution of the marine environment from any source, in particular,
 - (a) the release of toxic, harmful or noxious substances from land-based sources, from or through the atmosphere or by dumping;
 - (b) pollution from vessels;
 - (c) pollution from installations and devices used in exploration or exploitation of the natural resources of sea bed and subsoil;
 - (d) pollution from other installations or devices in operation in the marine environment.
- (2) The Convention for the Prevention of Pollution from Ships (MARPOL) 1973 as revised in 1978.⁸³ Tankers and sea-going vessels have been improved and are safer in operational terms. Standards and operational procedures have been greatly improved in ports and oil terminals.

80 See MARK J. VALENCIA and ABU BAKAR JAAFAR, "Environmental Management of the Malacca/Singapore Strait: Legal and Institutional Issues," 25 *Natural Resources Journal* (1985) 195.

81 See SOMPONG SUCHARITKUL, "Thailand's Positions in the Light of the New Law of the Sea", *SEAPOL Studies* No. 3, 1991, pp. 1–36, at pp. 16–17 and 26–32.

82 Montego Bay, Jamaica, 10 December, 1982. Ratifications by Indonesia, 3 February, 1986, and by the Philippines, 8 May, 1984. Other ASEAN countries signed the Convention on 10 December, 1982, and Brunei on 5 December, 1984, upon attaining independence.

83 The Convention entered into force in 1983. Annex I Pollution by Oil; Annex II Noxious Liquid Substances. See also the 1978 Tanker Safety and Pollution Prevention Protocol (MARPOL PROT 1978).

ASEAN countries have revised and updated their national legislation to protect and preserve their respective coastal areas including coastal zone management.⁸⁴ ASEAN countries have participated in the South East Asian Programme on Ocean Law Policy and Management (SEAPOL) which include regional participants from Myanmar, Vietnam, Japan and Korea and from other distant Pacific neighbours such as Canada, the United States and Australia. Attention has been directed towards precautionary measures to prevent marine pollution from offshore hydrocarbon development.⁸⁵

2.2.4 Protection of ASEAN marine environment: management of living resources

Apart from protection of the marine environment from pollution from various sources, ASEAN countries have been actively engaged in studies and scientific researches in fisheries management to ensure optimum utilization of the living resources of the sea in accordance with the principle of sustainable development. Thus, ASEAN experts and specialists have taken part in the various international conferences and regional workshops organized by SEAPOL relating to marine environmental protection and other issues. The Denpasar Workshop 29–30 May, 1990, devoted one entire session to the problems of national management of fishery resources.⁸⁶ A subsequent workshop, SEAPOL III, was convened in Rayong, Thailand, on 6–9 December, 1992, entitled “Challenges to Fishery Policy and Diplomacy in Southeast Asia.” Wide-ranging problems have been examined from regional fishery interests, to national fishery management policies and practices in the region as well as fishery disputes and their settlement.⁸⁷

2.3 Protection of the Air and the Atmosphere

2.3.1 Convention for the Protection of the Ozone Layer, Vienna, 1985

Practically every ASEAN member State has ratified the Vienna Convention for the Protection of the Ozone Layer 1985: Malaysia on 29 August 1989, the

84 See, e.g., ARTHUR J. HANSON, “Coastal Zone Management in a National Planning Context: Indonesia and Thailand Compared” *SEAPOL Phuket Workshop, Thailand, 1–3 May, 1989* (1992) pp. 91–114; and in the Philippines: “Development and Perspectives”, *ibid.* pp. 115–122.

85 See *SEAPOL Proceedings, Denpasar (Bali), Indonesia, 28–30 May, 1990*, Section VII: “Offshore Hydrocarbon Development and Marine Pollution” (1992) pp. 321–363.

86 See the Denpasar Proceedings, pp. 364–404.

87 See the Working Documents of SEAPOL III, 1992, International Workshop, Rayong, 6–9 December, 1992.

Philippines on 19 July 1991, Singapore on 5 January 1989, Thailand on 7 July 1989, and Brunei on 20 July 1990.⁸⁸ Indonesia and the Philippines signed the Montreal Protocol on Substances that Deplete the Ozone Layer which entered into force on 1 January 1989, while Thailand, Singapore and Malaysia have already ratified the Protocol.⁸⁹

2.3.2 Draft Convention on Climate Change

Prior to the Rio Conference on Environment and Development of June 1992, the Heads of State and Government of ASEAN met in Singapore and adopted the Singapore Declaration on 28 January 1992. Paragraph 7 of the Declaration: ASEAN Functional Cooperation, contains a clear statement of ASEAN environmental policy. It runs, in part,⁹⁰

“The ASEAN member countries shall continue to play an active part in protecting the environment by continuing to cooperate in promoting the principle of sustainable development and integrating it into all aspects of development;

ASEAN member countries should continue to enhance environmental cooperation, particularly in issues of transboundary pollution, natural disasters, forest fires and in addressing the anti-tropical timber campaign;

The developed countries should commit themselves to assist developing countries by providing them new and additional financial resources as well as the transfer of, and access to environmentally sound technology on concessional and preferential terms;

The developed countries should also help to maintain an international environment supportive of economic growth and development.”

To these words, the ASEAN Foreign Ministers added in their Joint Communiqué of the 25th ASEAN Ministerial Meeting, Manila, 21–22 July 1992, that “Environmental and human rights concerns should not be made conditionalities in economic and development cooperation”.⁹¹

3. THE RIO CONFERENCE AND FOLLOW-UP ACTION

The environmental policy guidelines agreed at the ASEAN Summit in

88 Basic Docs. Vol III, No. 76, pp. 1679–1703; 1 *AsYIL* (1991) p. 187. The Convention entered into force on 22 September, 1988.

89 See Basic Docs. Vol. III, No. 76a, pp. 11704–1713; 1 *AsYIL* (1991) p. 188.

90 Singapore Declaration, para. 7.

91 See the Joint Communiqué of the 25th ASEAN Ministerial Meeting, Manila, 21–22 July, 1992, para. 18.

Singapore in 1992⁹² reaffirmed the determination of ASEAN nations to continue their joint efforts to preserve and protect the global environment and attain the goals and objectives of the Rio Conference of June 3–14, 1992.⁹³ These policy guidelines were followed by ASEAN delegations attending the Conference and post-Rio Meetings.

While the four United Nations documents prepared for the Earth Summit in Rio have met with a substantial measure of success, much is left for further follow-up action. The Rio Declaration on Environment and Development is the counterpart of the Stockholm Declaration on Human Environment of 1972. Twenty-seven principles were adopted, of which the second principle was a revised updated version of the time-honoured Principle 21 of the Stockholm Declaration.⁹⁴ New elements were introduced at Rio, notably a statement on “precautionary approach”, reference to a “right to development”, assertion of an obligation to undertake “environmental impact assessments” and the desirability of a “supportive and open economic system”.⁹⁵ The Framework Convention on Climate Change reflects a consensus among the parties to establish a process whereby greenhouse gas emissions can be monitored and controlled. National reports and inventories of sources and sinks of greenhouse gases are subject to review by the parties. Assistance is to be channelled through the Global Environmental Facility of the World Bank, UNDP and UNEP until the first Conference of the Parties. A subsidiary body will be set up to provide further scientific assessments and advise on advances in relevant technologies for addressing climate change and global warming.⁹⁶ The Convention on Biological Diversity provides for national monitoring of biological diversity, development of national strategies, plans and programmes for conservation measures to implement the Convention and the effectiveness of these measures. The United States Government announced that it would not sign the Convention pending clarification of certain points of concern, such as

92 See above, Singapore Declaration, especially sub-para 4, 5 and 6 of para. 7. Sub-para. 7 declares: “ASEAN looks forward to seeing these commitments (i.e., on the part of developed countries to provide additional financial resources...etc.) reflected in the outcome of the United Nations Conference on Environment and Development in 1992 at Rio de Janeiro.”

93 The outcome of the Rio Conference of 1992 has not fulfilled the expectations of ASEAN leaders. Four documents were adopted: (1) the Rio Declaration on Environment and Development; (2) the Framework Convention on Climate Change; (3) the Convention on Biological Diversity; and (4) the Statement of Principles for a Global Consensus of the Management, Conservation and Sustainable Development of all Types of Forests. See 31 ILM, 874, 849, 818 and 881.

94 See Stockholm Declaration on the Environment and an Action Plan 1972 leading to the establishment of the UNEP with an Inter-governmental Governing Council and an Environmental Fund, UN Doc. A/CONF.48/141 Rev. 1, U.N. Publication E. II A.14 (1973); ILM (1972) 1416.

95 See Introductory Note by EDITH BROWN WEISS in 31 ILM (1992) 814 at 816; for Agenda 21 negotiations, see *ibid.* pp. 814–815.

96 *Ibid.* at p. 816. Global warming, if unchecked, may raise the sea level high enough to cover the entire Maldive Islands and several other low-lands.

technology transfer and intellectual property rights, biotechnology and biosafety, and the designation of a permanent financial mechanism.⁹⁷ The Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests represents the first global consensus applicable to all forests although still at this stage non-binding on the parties. It could serve as a point of departure to address a series of global problems relating to forests. The United States Government gave top priority to the item on forests and offered US\$ 150 million to fund forest activities. Germany added another US\$ 165 million to this fund.⁹⁸ On the whole, the Earth Summit constitutes a significant milestone in the progressive development of international environmental law.⁹⁹

Among the earliest follow-up actions taken by the ASEAN Foreign Ministers at their Twenty-fifth Ministerial Meeting in Manila, 21–22 July 1992, was an expression of welcome for the convening of the Rio Earth Summit which they viewed “not as an end in itself but as a new beginning for a global partnership in attaining sustainable development in both developed and developing countries”.¹⁰⁰ In this context, it is imperative that “the developed countries and the multilateral financial institutions implement the commitments made in Rio by granting new and additional financial resources and environmentally sound technologies to the developing countries”.¹⁰¹ The extra-territorial application of strict legal provisions requiring higher standards of protection for industrial development outside the developed world would be noted in developing countries. The ASEAN Ministers reiterated that “environment and development are mutually interrelated and mutually reinforcing. The right to development is a fundamental right of all peoples and measures for the protection of the environment should support economic growth and sustainable development”.¹⁰² The Foreign Ministers reaffirmed that “ASEAN should strengthen joint actions in countering the anti-tropical ... campaigns in the major developed countries”.¹⁰³

The ASEAN Foreign Ministers at the Manila Meeting endorsed “the Singapore Resolution on Environment and Development adopted by the Fifth Conference of ASEAN Ministers Responsible for Environment held in

97 Ibid, at pp. 816–817.

98 Ibid, at p. 817.

99 ASEAN Leaders were not satisfied with the immediate outcome of the Rio Conference. Industrialized countries did not agree to commit 0.7 per cent of their Gross National Product to assist developing countries as suggested by the Group of 77, of which ASEAN countries form an integral part.

100 See the Joint Communiqué of the twenty-fifth ASEAN Ministerial Meeting, Manila, 21–22 July 1992, para. 37.

101 Ibid, *in fine*.

102 Ibid, para. 36.

103 Ibid, *in fine*.

Singapore on 17–18 February 1992, which sets the directions for ASEAN to enhance its on-going and future cooperations on environment and development".¹⁰⁴ They maintained that "environmental and human rights concerns should not be made conditionalities in economic and development cooperation", and noted that "human rights, while universal in character are governed by the distinct culture and history of, and socio-economic conditions in, each country" and that "their expression and application in the national context are within the competence and responsibility of each country".¹⁰⁵

Further significant follow-up actions were initiated by ASEAN leaders through Malaysia's introduction of seven draft resolutions¹⁰⁶ which were all adopted without a vote by the General Assembly of the United Nations at its forty-seventh session on 22 December 1992, after careful consideration and minor amendment. The seven resolutions were numbered 47/188, 47/189, 47/190, 47/191, 47/192, 47/193 and 47/194 respectively.¹⁰⁷

Resolution I (47/188) decides to establish an Inter-governmental Negotiating Committee to elaborate a Convention on combatting drought and desertification "particularly in Africa", including appointment of chairman of the committee, membership, site, agenda, sessions, secretariat and a multi-disciplinary panel of experts with necessary funding, and inviting participation of UNDP, UNEP, FAO, IFAD, WHO, WMO, UNESCO and UNCTAD as well as interested competent non-governmental organizations.¹⁰⁸

Resolution II (47/189) decides to convene a Conference in April 1994 on the utilization of marine and coastal resources to meet essential human needs, maintain bio-diversity and improve the quality of life for island people, particularly in developing island States, and establishes a list of specific tasks for the Conference. A Preparatory Committee is set up for the Conference, with the appointment of Chairman, schedules of the sessions, provisions for funding and participation of relevant NGOs.¹⁰⁹

Resolution III (47/190) decides to convene not later than 1997 a special session for the purpose of an overall review and appraisal of Agenda 21.¹¹⁰

Resolution IV (47/191) designates institutional arrangements to follow up UNCED by endorsing the establishment of a high-level Commission on

104 Ibid, para. 47.

105 Ibid, para. 18, *in fine*.

106 The Seven draft resolutions were introduced by H.E. RAZALI ISMAIL (Malaysia), Chairman of the informal group on the item: Report of the UNCED, as submitted to the Second Committee. See doc. A/47/719 (December 18, 1992).

107 There were, respectively, Draft Resolution A/C.2/47/L.46; A/C.2/47/L.47; A/C.2/47/L.51; A/C.2/47/L.61; A/C.2/47/L.62; A/C.2/47/L.63; and A/C.2/47/L.64. For details of the deliberations and proposals for amendments, see doc. A/47/719.

108 See 32 ILM (1993) 286, pp. 244–246.

109 Ibid, pp. 247–251.

110 Ibid, pp. 252–253.

Sustainable Development to make recommendations to the General Assembly through the Economic and Social Council in coordination with other United Nations bodies such as UNEP, UNDP, UNCTAD and UN Sudano-Sahelian Office, with United Nations regional commissions and a high-level Advisory Board with Secretariat support.¹¹¹

Resolution V (47/192) decides to convene a Conference in 1993 on straddling and highly migratory fish stocks, with an organizing session on 19–23 April, and a substantive session on 12–30 July 1993, in New York to complete its work in advance of the forty-ninth session of the General Assembly in 1994.¹¹²

Resolution VI (47/193) decides to declare 22 March of each year “World Day for Water”, starting in 1993, to promote public awareness of the conservation and development of water resources and the implementation of Agenda 21.¹¹³

Resolution VII (47/194) requests the Commission on Sustainable Development to give urgent consideration to the implementation of Agenda 21 on capacity-building, and to adopt early action in support of developing countries, in particular the least developed countries in the area of capacity-building.¹¹⁴

111 Ibid, pp. 254–262.

112 Ibid, pp. 263–265.

113 Ibid, pp. 265–266.

114 Ibid, p. 266.