

# An Evolving Path of Regionalism: The Construction of Environmental *Acquis* in Comparative Perspective between the EEC and ASEAN

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The Dynamics of East Asian Regionalism in Comparative Perspective:

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# Last Summer . . .

- EU Studies *against* Comparative Regionalism
  - A Teleological Model: a Self-Contained Legal Order
  - A *sui generis* Model: Governance beyond the Nation-State
  - Eurocentricism and No Comparative Perspective
- Research Agendas *for* Comparative Regionalism
  - Impacts of Regional Governance on Democracy
  - Relations between Regional and Global Governance
  - Democratic Problems and Embeddedness into UN System

# This Summer . . .

- One Perspective of New Regionalism Studies
  - Regionalism as a Response to Globalisation
  - The Embeddedness into Multilateral Arrangements
- Suggestions of Historical Institutionalism in EU Studies
  - Accumulative Processes rather than Big Political Decisions
  - The Construction of *Acquis* in a Policy Sector
- A Low Politics Issue: the Environment
  - The EEC and ASEAN Environmental Governance

# Theoretical Assumptions

- Institutional Evolution
  - Unanticipated Consequences after a Big Bang
  - Expansion of *Acquis* that constrained Grand Bargains
- *Acquis*
  - Multidimensionality: the Legal, the Political and the Social
  - Two Resources
    - Multilateral Arrangements outside Regional Projects
    - Shared Practices through Institutional Practices

# Theoretical Perspectives

## Regional Responses to Globalisation

- The Second Wave of Regionalism in the mid-1980s
  - Old Regionalism in the Context of the Cold War
  - New Regionalism in the Context of Globalisation
- New Regionalism for Multilateralism
  - A Stumbling-Block or a Building-Block?
  - Regional Complement to National and Global Governance

# Theoretical Perspectives

## Historical Institutionalism

- A Process-based Approach
  - Not Grand Bargains but Accumulative Processes of day-to-day Policy-making concerning Low Politics Matters during Intervening Periods
  - The Sharing of Norms and Values that creates Institutional Culture
- Unanticipated Consequences
  - Initial institutional setting constrains the possibility of following institutional development (Path Dependency).
  - That development brings about sunk cost that raises the price of exit.
  - Member States lose the control of actual functioning of institutions.
  - But, shift in preferences of Member States occurs.

# Theoretical Perspectives

## *Acquis Communautaire*

- The Corpus of Principles, Norms, Rules and Standards
  - The Legal: Treaty Provisions/Secondary Legislation/Cases
  - The Political: Shared Practices/Policy Objectives
- Accumulated Achievements over Time
  - Factors of Sunk Costs of Policy-Making, Institutional Barriers to Reform and the Rising Price of Exit (Pierson 1998: 45)
  - Accession Conditions of Candidate Countries
- Informal Resources of *Acquis*
  - ‘ideas and world views which inform debates over policy substance and agenda-setting’ (Wiener 2000: 326)

- Embedded *Acquis Communautaire* (Wiener 2000)
  - 'The *acquis* is . . . best perceived of as being embedded in structure of governance, while at the same time contributing to its substance. This embedded structure is distinguishable according, on the one hand, to informal resources such as shared values, ideas, and world views and, on the other, to the routinization of practices which lead to agreement on policy objectives. The formal resources of the *acquis* thus depend on the preceding processes. Informal resources entail ideas and world views which inform debates over policy substance and agenda-setting.' (p.326)



# Empirical Materials

- Embryonic Environmental Governance
  - The EEC before the SEA of 1987
  - ASEAN before Hanoi Action Plan of 1998
  - Before the Breakthrough of Fully-fledged Regional Projects
- Comparative Considerations
  - Initial Institutional Designs
  - Internal Environmental Action Programmes
  - International Environmental Arrangements
  - The Construction of Environmental *Acquis*: Types & Sources

# EEC Environmental Governance

- No Environmental Legal Bases in Basic Treaties, but....
  - Massive Environmental Legislation as Unexpected Outcomes
  - An Environmentalist Interpretation to Art. 2 (Mastellone 1981)
  - The Symbolic Authority of the EEC as Europe that became a signifier within the development of environmental law (Chalmers 1999)
    - Common Market Building (Art. 100)
    - Basic Community Objectives (Art. 235)
- The First EAP of 1973 and after
  - Paris Communiqué and Environmental Political Declaration
  - The 1972 UN Stockholm Conference and a Space Ship Earth
  - Precursor of Regional Complement to Global Governance

# Environmental Action Programmes of the European Union

<b>Before the SEA</b>	
The First EAP The period of 1973 to 1976. Declaration, OJ 1973 C112/1.	UNCHE (Stockholm Conference) June 1972
The Second EAP The period of 1977 to 1982. Council Resolution, OJ 1977 C139/1.	
The Third EAP The period of 1983 to 1986. Council Resolution, OJ 1983 C46/1.	
<b>After the SEA</b>	
The Fourth EAP The period of 1987 to 1992. Council Resolution, OJ 1987 C328/1.	The Report of the WCED (Brundtland Report) August 1987
The Fifth EAP The period of 1993 to 2000. Council Resolution, OJ 1992 C138/1.	UNCED (Rio Summit) June 1992
The Sixth EAP The period of 2002 to 2012. Decision 1600/2002/EC.	

# Environmental Directives before the Single European Act of 1987

- Dangerous substances
    - (labeling, lead, mercury, cadmium)
  - Air pollution
    - (Sulphur dioxide and suspended particulates, Motor vehicle, Industrial plant, hexachlorocyclohexane, nitrogen dioxide)
  - Noise
    - (Motor vehicle, Subsonic aircraft)
  - Waste
    - (polychlorinated biphenyls, oil, titanium dioxide, Sewage sludge in agriculture, others in general)
  - Water
    - (Detergents, Drinking water, Bathing water, Fresh waters, Shellfish waters, Ground water, Dangerous substances discharged into aquatic environment)
  - Conservation
    - (Wild birds, Seal pups)
  - Environmental Assessment
- Number of Directives
 

– Total:	35
– Before the First EAP:	4
– Under the EAPs:	18
  - Legal Bases
 

– Article 100:	12
– Article 235:	3
– Arts 100 & 235:	20
  - Compliance deadlines
 

– Longest:	3 years
– Shortest:	3 months
– 13 directives:	2 years
– Cf. Bathing Water Dir:	10 years
  - Other Environmental Instruments under EAPs (excluding instruments for adopting international agreements)
 

– Decision:	4
– Recommendations:	6
– Resolution:	10

# EEC External Environmental Relations

- No Competences for entering into International Agreements in Environmental Matters
- Article 235
  - A Backdoor of International Environmental Agreements to the EEC
- Article 229
  - All Appropriate Relations with International Agencies
- *ERTA* (Case 22/70) and *Rhine* (Opinion 1/76)
  - Internal Competences implicate External Competences.
- Dual Representation
  - the Commission and the Council Presidency

## **Main International Environmental Conventions to which the EEC was a party**

- Paris Convention for the prevention of marine pollution from land-based sources: OJ 1975 C168/1
- Barcelona Convention on the protection of the Mediterranean Sea against pollution: OJ 1977 L240/3
- Bonn Convention for the protection of the Rhine against chemical pollution: OJ 1977 L240/37
- Berne Convention concerning the International Commission for the Rhine: OJ 1977 L240/50
- Geneva Convention on long-range transboundary air pollution: OJ 1981 L171/13
- Convention on the conservation of Antarctic marine living resources: OJ 1981 L252/27
- Convention on the conservation of migratory species of wild animals: OJ 1982 L210/11
- Convention for the Conservation of Salmon in the North Atlantic Ocean: OJ 1982 L378/25
- Berne Convention on the conservation of European wildlife and natural habitats: OJ 1982 L38/3
- Convention on international trade in endangered species of wild fauna and flora: OJ 1982 L384/7
- Gdansk Convention on fishing and conservation of the living resources in the Baltic Sea and the Belts:  
OJ 1983 L237/5
- Bonn Agreement for cooperation in dealing with pollution of the North Sea by oil and other harmful  
substances: OJ 1984 L188/9
- International Convention for the Conservation of Atlantic Tunas: OJ 1986 L162/34

**Exchange of Letter between the Commission and International Agencies  
based on Article 229 EEC before the Single European Act of 1987**

The Council of Europe:	In 1959, with the General Secretariat.
FAO:	In 1962, with the Director-General.
UNESCO:	In 1964, with the Secretariat.
WHO:	In 1972, with the Regional Office for Europe.
UNEP:	In 1983, with the Executive Director.

[Table 7 in the paper]

## Actions within International Organizations suggested by the First EAP

Within UN System	Outside UN System	Regional Organisations
UNESCO WHO FAO WMO	IAEA OECD GATT	The Council of Europe  NATO

[Table 8 in the paper]



## **Environmental Instruments that refers to International Arrangements before the Single European Act of 1987 (Table 6 in the paper)**

- Directive 70/220/EEC:
  - The technical requirements adopted by the UN Economic Commission for Europe
- Directive 72/306/EEC:
  - The technical requirements adopted by the UN Economic Commission for Europe
- Directive 76/464/EEC:
  - The Convention for the prevention of marine pollution from land-based sources;
  - The draft Convention for the protection of the Rhine against chemical pollution;
  - The draft European Convention for the protection of international watercourses against pollution
- Directive 76/769/EEC
  - The adoption of restricting the production and use of polychlorinated biphenyls (PCB) by the Council of the OECD on 13 February 1973
- Directive 80/51/EEC
  - The standards specified by the International Civil Aviation Organization.
  - Annex 16 to the Convention on international civil aviation (July 1978)
- Directive 80/779/EEC
  - Values based on the findings reached in the framework of the WHO with regard to sulphur dioxide and suspended particulates

- Directive 83/513/EEC
  - The Convention for the protection of the Rhine against chemical pollution
- Directive 84/360/EEC
  - The Convention on long-range transboundary air pollution
- Directive 85/203/EEC
  - A limit value based on the results of work carried out for the World Health Organization
- Decision 80/372/EEC
  - The International Conference on chlorofluorocarbons held in Munich from 6 to 8 December 1978
- Decision 76/161/EEC
  - The International Referral System (IRS) of the UNEP
- Decision 77/795/EEC
  - The global environmental monitoring system provided for in UNEP
- Recommendation (Commission) 75/65/EEC
  - The Convention concerning the protection of the World Cultural and Natural Heritage
- Recommendation (Commission) 75/66/EEC
  - The International Convention for the Protection of Birds
  - The Convention on the Conservation of Wetlands of International Importance especially as Waterfowl Habitat
  - The Convention for the Protection of Birds useful to Agriculture
- Recommendation (Commission) 76/51/EEC
  - The Paris Convention on the prevention of marine pollution from land-based sources

- Recommendation (Commission) 78/358/EEC
  - The Scientific Committee for Food
  - The Joint FAO/WHO Expert Committee on Food Additives
- Recommendation (Commission) 82/74/Euratom
  - Conclusions of International Nuclear Fuel Cycle Evaluation
- Resolution OJ 1975 C168/1
  - The Convention for the Prevention of Marine Pollution from Land-based Sources
  - European convention for the protection of international watercourses against pollution
- Resolution OJ 1978 C133/1
  - The overall coordinating role of UNEP in relation to research.
- Resolution OJ 1983 C14/1
  - The conclusions reached by the International Council for the Exploration of the Sea (ICES)
- Resolution OJ 1984 C272/1
  - The Intergovernmental Intersessional Preparatory Committee on the Environmental Perspective to the year 2000 and beyond, established by the United Nations World Commission on Environment and Development and UNEP;
  - The Declaration of 1 February 1980 of Environmental Policies and Procedures relating to Economic Development, signed by UNEP and 10 multilateral development financing institutions
- Resolution OJ 1986 C184/1
  - Joint International Programme on Chemical Safety among WHO, UNEP, ILO, the International Agency for Research on Cancer (IARC) and OECD

# Environmental *Acquis*

- ‘. . . throughout the 1970s and 1980s European integration 'by stealth' generated a sizeable environmental *acquis* in spite of the prevailing economic and social conditions.’ (Jordan 2002: 56)
- ‘The environmental arena has proven to be a fruitful arena for institution-building. The Community has been able to increase its stature, its international reach, and its effectiveness within international organizations. Each global treaty has proven to be a step in a process of institution-building which is still ongoing.’ (Sbragia 1998: 303)

# Environmental *Acquis*

- Emergence of *Acquis* as Regional Environmental Law:
  - Increasing Secondary Legislation and ECJ's Cases
  - Evolving Treaty Provisions respecting the Environment
  - Legal Principles: Polluter Pays Principle
  - Targets and Standards: Limit Values and Quality Objectives

# Environmental *Acquis*

- External Environmental Relations as a Resource of *Acquis*
  - Internalisation of International Environmental Norms
  - Cooperation with International Agencies related with the Environment
- Shared Practices:
  - The 1st to 5th EAPs as non-binding documents: Policy Processes
  - Resolution for Comitology (OJ 1975 C168/5):
    - Committee on Adaptation to Technical & Scientific Progress
  - Gentlemen's Agreement (OJ 1973 C9/1):
    - Notification of National Measures

# ASEAN Environmental Governance

- The ASEAN Way
  - Soft Law Formulation of Common Action Frameworks
  - National Implementation of ASEAN Policy Guidelines
  - Non-interference and No Compliance Procedure
- No Legal Base Requirement
  - No Institutional Constraint for Agenda Setting
    - No Remarks about the Environment in the 1976 ASEAN Concord, but
    - The First Environmental Programme by the 1981 Manila Declaration

# ASEAN Environmental Governance

- Implementation Deficits
  - Elliot 2003
  - ‘poor planning coordination, overlapping and conflicting jurisdictions, weak implementation of pollution and conservation regulations, understaffing of relevant agencies and lack of technical and legal expertise’ (p. 45)



- **ASEAN Environmental Instruments**
  - 1981 Manila Declaration on the ASEAN Environment
  - 1984 Bangkok Declaration on the ASEAN Environment
  - 1984 ASEAN Declaration on Heritage Parks and Reserves
  - 1985 Agreement on the Conservation of Nature/Natural Resources (Hard Law)
  - 1987 Jakarta Resolution on Sustainable Development
  - 1990 The Kuala Lumpur Accord on Environmental and Development
  - 1992 Singapore Resolution On Environment and Development
  - 1994 Bandar Seri Begawan Resolution on the Environment and Development
  - 1995 ASEAN Co-operation Plan on Transboundary Pollution
  - 1997 Jakarta Declaration on Environment and Development
  - 1997 Regional Haze Action Plan
  - 1998 Hanoi Plan of Action (1999-2004): a General Action Plan
  - 2002 ASEAN Agreement on Transboundary Haze Pollution (Hard Law)
  - 2003 ASEAN Declaration on Heritage Parks
  - 2003 Yangon Resolution on Sustainable Development
  - 2004 Vientiane Action Programme (2004-10): a General Action Plan

- Elliot 2000
- ‘The years since [the adoption of ASEAN Environmental Programme (ASEP I)] have witnessed the development of an increasingly complex web of declarations, resolutions and issue-specific agreements which define the administrative, institutional and normative contours of regional environmental cooperation. However in a region where political relationships are based on the norms of national resilience, personal diplomacy and consensus, and a rigid interpretation of non-interference in the sovereign affairs of other states, environmental cooperation for much of this period has been confined more to agreement on general principles and broad guidelines on matters of common concern than to establishing effective programmes for joint action.’ (p.238)

# ASEAN Environmental Governance

- An Intergovernmental Method and Expert Working Groups
  - Environment Ministers Meeting (AMME)
    - Formal meetings in every three years and annual informal meetings
  - Senior Officials on the Environment (ASOEN)
    - Annual meetings supported by the Bureau of Functional Cooperation in the ASEAN Secretariat headquartered in Jakarta.
  - Five Working Groups
    - Multilateral Environmental Agreements
    - Nature Conservation and Biodiversity
    - Coastal and Marine Environment
    - Environmentally Sustainable Cities
    - Water Resources Management

# ASEAN Environmental Programmes

- Two Programmes: Environmental Protection for Development
  - ASEP I (the 1981 Manila Declaration)
  - ASEP II (the 1984 Bangkok Declaration)
- A Hard Law Instrument
  - Agreement on the Conservation of Nature and Natural Resources: signed in 1985, not yet entered into force.
- A kind of Agency?
  - ASEAN Regional Center for Biodiversity Conservation
- Haze as a Region-Specific Problem
  - Regional Haze Action Plan of 1997
- Corpus of Preceding Programmes and Future Plans
  - Hanoi Plan of Action of 1998 (1999 to 2004): Setting Time Schedules

- ASEP I and II
  - Basic Objectives
    - Development and Environment
  - Priority Areas
    - Environmental Impact Assessment
    - Nature Conservation and Terrestrial Ecosystems
    - Marine Environment
    - Industry and Environment
    - Environmental Education / Information
  - Policy Guidelines
    - Environmental Integration
    - Cooperation with International Agencies
    - Establishment of Environmental Units in each Member State.

- **Agreement on the Conservation of Nature and Natural Resources of 1985**
  - Adoption of ‘Sustainable Development’ as a goal before the issue of the 1987 Brundtland Report
  - Joint and individual State actions
  - Provisions:
    - Genetic diversity
    - Soil, underground/surface water and air quality management
    - Ecological processes
    - Natural parks
    - Natural resources and Transfrontier environmental effects concerning shared resources
    - Adoption of protocols
  - Ratified by Thai, Indonesia and Philippines.
  - Viet Nam, Myanmar, Cambodia and Laos adopted this agreement as part of instruments of accession.
  - The ratification by Brunei, Malaysia and Singapore is required for entering into force of this Agreement.

- Regional Haze Action Plan of 1997
  - Regional Monitoring System
  - Strict Enforcement of Laws and Legislation
  - Reporting Regimes
  - The establishment of National Task Forces
  - ‘largely ineffective’ (Koh 2002: 9)
- Agreement on Transboundary Haze Pollution of 2002
  - ASEAN Coordinating Centre for Transboundary Haze Pollution Control
  - Monitoring and prevention systems
  - A hard law instrument, signed in June 2002 and entered into force in November 2003
  - The First COP in November 2004 in Hanoi
  - The Second COP will be held in 2006.

- **1998 Hanoi Plan of Action**

- Full Implementation of The ASEAN Cooperation Plan on Transboundary Pollution with the Regional Haze Action Plan (by the year 2001).
- Strengthening the ASEAN Specialized Meteorological Centre with emphasis on the ability to monitor forest and land fires and provide early warning on transboundary haze (by the year 2001).
- Establishment of the ASEAN Regional Research and Training Centre for Land and Forest Fire Management (by the year 2004).
- Strengthening the ASEAN Regional Centre for Biodiversity Conservation (by the year 2001).
- Promoting regional coordination for the protection of the ASEAN Heritage Parks and Reserves.
- Development of a framework and improve regional coordination for the integrated protection and management of coastal zones (by the year 2001).
- Strengthening institutional and legal capacities to implement Agenda 21 and other international environmental agreements (by the year 2001).
- Harmonisation of the Environmental Databases of Member Countries (by the year 2001).
- Implementation of an ASEAN Regional Water Conservation Programme (by the year 2001).
- Establishment of a Regional Centre or Network for the Promotion of Environmentally Sound Technologies (by the year 2004).
- Adoption of an ASEAN Protocol on Access to Genetic Resources (by the year 2004).
- Development of a Regional Action Plan for the Protection of the Marine Environment from Land-based and Sea-based Activities (by the year 2004).
- Implementation of the Framework to Achieve Long-Term Environmental Goals for Ambient Air and River Water Qualities for ASEAN Countries.
- Enhancement of regional efforts in addressing climatic change.
- Enhancement of public information and education in awareness of and participation<sup>32</sup> in environmental and sustainable development issues.



# ASEAN External Environmental Relations

- Common Positions on UNCED
  - Commitments to Sustainable Development
    - The 1990 Kuala Lumpur Accord
    - The 1992 Singapore Resolution
- Regional Implementation of Agenda 21
  - 1994 Strategic Plan of Action on the Environment
  - 1995 Cooperation Plan on Transboundary Pollution
  - 1997 Jakarta Declaration on the Environment and Development
  - 1998 Hanoi Plan of Action

- 1995 Cooperation Plan on Transboundary Pollution
  - Three Programmes:
    - Transboundary Atmospheric Pollution
    - Transboundary Ship-borne Pollution
    - Transboundary Movement of Hazardous Wastes
- Jakarta Declaration on the Environment and Development
  - ASEAN Regional Center for Biodiversity Conservation
  - Support for UNEP and its continued role as a forum for promoting global environmental well being and implementation of Agenda 21
  - A Common Stand on the Berlin Mandate of COP of the UNFCCC
  - Ratification of all ASEAN Countries of the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal.
- Hanoi Plan of Action
  - Strengthening institutional and legal capacities to implement Agenda 21 and other international environmental agreements (by the year 2001).

# ASEAN Environmental *Acquis*

- Soft Law Formulation: *Acquis Politique*
  - Continuous Reconfirmation of Required Measures
    - Shared Policy Guidelines and Notification Regimes
  - Rhetorical Discourses: the Construction of a Regional Identity
    - A Single Ecosystem of the ASEAN Region
    - Clean and Green ASEAN under ASCC (Socio-Cultural Community)
- Main Elements of ASEAN Environmental *Acquis*
  - The UNCED Framework
    - Sustainable Development and Environmental Integration
    - Implementation Measures of Agenda 21
  - The Accumulation of Institutional Practices
    - ASOEN, Working Groups and Regional Centres

# East Asian Regionalism: Some Scenarios

- Community-Building: the East Asian Community
  - Closed Membership/Basic Legal Documents/a Regional Tribunal
- Intergovernmental Cooperation: East Asian Summits
  - Open Membership/Issue-specific Agreements/Political Dialogue
- Variable Geometry: the ASEAN Plus 3 Process
  - ASEAN the Core Asia + Asia *a la Carte* for Plus 3 Countries
- The Construction of *Acquis Politique* in ASEAN
  - Two Scenarios:
    - Gradual Legalisation and Differentiation from Neighbouring Countries
    - Soft Commitments but Core Values of East Asian Open Regionalism