Regional Commons: An Assessment of the Impact of the Framework Convention and Kyoto Protocol on the Organization of American States and the Association of South East Asian Nations and Suggestions for the Role of Regionalism in International Environmental Law

Alexandra R. Harrington

Available at: https://works.bepress.com/alexandra_harrington/13/

Alexandra R. Harrington, Esq.

I. INTRODUCTION

In an age of increasing globalization, it is interesting to note the plethora of regional and subregional groups which exist in international law and society today. These groups exist to further a variety of purposes, from general well-being and cooperation within the designation region to business and trade promotion to military alliances. Within these groups, the Organization of American States (OAS) and the Association of South East Asian Nations (ASEAN) are among the most comprehensive in purpose and regional membership. These organizations are also among the oldest and best established regional groups, having been created in 1948 and 1967 respectively. Because of their standing within the regions they attempt to serve, the OAS and ASEAN serve as key policy making and enforcement entities in a variety of areas, including those addressing environmental protection and, as a corollary, sustainable development.

In light of the prominence of these groups and their history of seeking to address the environmental issues which concern and affect their membership, this article examines the environmental policies of the OAS and ASEAN during the time period from pre-UN Framework Convention on Climate Change to the present day. This examination necessarily includes an evaluation of the impact of the Kyoto Protocol on the policies and practices of these groups and also considers the potential impact of the Bali road map on the extant policies maintained by these groups.
Part II of this article provides a discussion of the history and purpose of the OAS and ASEAN, as well as the environmental and sustainable development treaties, agreements, and other positions taken by these groups through the relevant time period. It also discusses the constitutional parameters of OAS and ASEAN members in relation to the environment and sustainable development. Part III of this article discusses the terms of the UN Framework Convention on Climate Change, the Kyoto Protocol and the recently created Bali road map.

Part IV analyzes the impacts of the UN Framework Convention on Climate Change, Kyoto Protocol and the proposed Bali road map on the activities of the OAS and ASEAN. It concludes that, while there is an overlap in reference to environmental protection and sustainable development issues, the regional organizations involved have been far more adept at addressing the core issues which face their members – namely, poverty eradication, access to resources, education, and promotion of industries such as tourism, which showcase the already existing natural resources of each country – in ways which are at once more comprehensive than any of the UN documents and yet also more palatable to the concept of sovereignty retained by the member states. This conclusion, the author posits, is the result of the inherent understandings and commonalities associated with regional organizations and their constituent members, as well as the legal similarities in the legal structure and philosophies which underlie the members of the OAS and ASEAN respectively. It is in these similarities and their demonstrated ability to form a consensus regarding sustainable development and environmental issues that the studied regional organizations derive a strength which is uncommon in the global international system. In the author’s view, this is an important understanding for regional
organizations, state actors, and the UN climate change system, as each of these actors attempts to grapple with issues relating to the environment and sustainability. For that reason, the future of a successful global attempt to combat issues surrounding the protection of the environment and sustainability should look to regional organizations as opposed to global organizations for legal and practical solutions because the regional commons are more powerfully understood than the idea of a global good. Part V of this article summarizes this argument and the laws and facts which support it.

II. OAS AND ASEAN

A. OAS

1. ORGANIZATION STRUCTURE AND ACTIVITIES

The OAS was founded in 1948.\(^1\) The organization was a formalized version of the sense of cooperation between North and South America which existed for decades before the founding of the OAS.\(^2\) Currently, there are thirty-four active members of the OAS.\(^3\) Cuba is also a recognized member of the OAS, however it is not allowed to participate in OAS proceedings and activities by agreement of the other OAS members.\(^4\)

The OAS Charter, which provides the essential legal backbone for the organization, sets forth a number of goals for the organization, namely “to strengthen the


\(^{2}\) See id.

\(^{3}\) See ORGANIZATION OF AMERICAN STATES MEMBER STATES, ORGANIZATION OF AMERICAN STATES, available at http://www.oas.org/documents/eng/memberstates.asp (last visited Apr. 1, 2008). These member states are: Antigua and Barbuda, Argentina, the Bahamas, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, the United States, Uruguay and Venezuela. Id.

\(^{4}\) See id.
peace and security of the continent,\footnote{OAS CHARTER CH. 1 ART. 2 (A), ORGANIZATION OF AMERICAN STATES, available at http://www.oas.org/juridico/english/charter.html (last visited Apr. 1, 2008).} democracy promotion,\footnote{Id. art. 2(b).} prevention of conflict between members,\footnote{Id. 2(c).} collective self-defense,\footnote{Id. 2(d).} “to seek the solution of political, juridical and economic problems that may arise among them,”\footnote{Id. 2(e).} “to promote, by cooperative action, their economic, social and cultural development,”\footnote{Id. 2(f).} “to eradicate extreme poverty,”\footnote{Id. 2(g).} and the protection of members from the use of weapons by other members.\footnote{Id. 2(h).} The OAS Charter charges states with the requirement to facilitate economic development within their borders and within the borders of other member states, including measures which would now fall under the category of sustainable development.\footnote{See id. ch. VII (“Integral Development”).}

The OAS is comprised of various governmental entities, such as the General Assembly\footnote{See General Assembly, ORGANIZATION OF AMERICAN STATES, available at http://www.oas.org/consejo/GENERAL%20ASSEMBLY/Asambleas.asp (last visited Apr. 14, 2008).} and specialized entities, such as the Inter-American Court on Human Rights.\footnote{See Inter-American Court of Human Rights, available at http://www.corteidh.or.cr/index.cfm?CFID=211575&CFTOKEN=38775654 (last visited Apr. 14, 2008).} It also has working and policy groups that address a wide variety of issues common to the OAS’ membership; key among them for the purposes of this article is the Department of Sustainable Development.\footnote{See Department of Sustainable Development, ORGANIZATION OF AMERICAN STATES, available at http://www.oas.org/dsd/ (last visited Apr. 1, 2008). See also GCOS-CCCCC IMPLEMENTATION STRATEGY MEETING, DEPARTMENT OF SUSTAINABLE DEVELOPMENT, ORGANIZATION OF AMERICAN STATES, available at http://www.oas.org/dsd/Caribbean/GSOSMeeting.htm (last visited Apr. 1, 2008).} The Department of Sustainable Development works on several policy areas, such as water management, renewable energy sources, land use and planning, chemical management, biodiversity, and issues involving
environmental law and trade policy. The Department of Sustainable Development also works with a specific focus towards addressing environmental and sustainable development issues facing Caribbean members. The Department of Sustainable Development frequently works with other international entities such as the World Meteorological Organization to provide members with scientific and policy guidance for environmental issues. The Department also works to assist member states in enacting environmentally-focused domestic legislation in conjunction with the Inter-American Forum on Environmental Law.

In 1992, the OAS created the Inter-American Institute on Global Change Research for the purpose of bringing together scientists and researchers in order to add a regional understanding of climate change to the existing national and global climate change research regimes. The stated reason for this regional perspective was the lack of coordination and appropriate insights offered by both the national and global regimes established to that point. The agreement establishing this entity was either ratified or accepted by nineteen OAS members, including Cuba and the United States.

In 1944, the members of the OAS created the Inter-American Institute of Agricultural Sciences with the aim of fostering agricultural knowledge and the exchange

17 Id.
18 Id.
19 Id.
22 Id.
thereof between members. This initial agreement to create such an entity was amended and expanded several times, the latest being in 1979, however each of these amendments were written in order to further the initial intent of the 1944 agreement.

The OAS has fashioned itself as the “hemispheric forum for facilitating dialogue and analysis on sustainable development” and has sought to assume a similar function regarding environmental protection issues in the hemisphere. In order to carry out these functions, the OAS created the Unit for Sustainable Development and Environment in 1996. This entity was charged with vast research and coordination tasks, as well as working with international and regional entities.

Although there are no multilateral treaties or agreements between the members of the OAS in regards to environmental protection or sustainable development outside of the agreements creating the Inter-American Institute for Global Change Research, a number of OAS resolutions have been passed in recent years that are of particular importance to this article. 2006 saw the creation of the Declaration of Santa Cruz + 10. This document incorporated many of the same ideas of responsibility sharing dependent on the status of a country found in the Kyoto Protocol, recognized the importance of sustainability to the public and private sectors within the OAS region, especially in regards to water

26 OAS GENERAL SECRETARIAT EXECUTIVE ORDER No. 96-6 (1996).
27 Id.
28 Id.
29 DECLARATION OF SANTA CRUZ + 10.
resources, forest management, agriculture and tourism.\textsuperscript{30} The Declaration of Santa Cruz +
10 stressed the importance of sustainability as a local and regional issue.\textsuperscript{31}

The Inter-American Program for Sustainable Development (IAPSD) 2006 – 2009
was launched by the OAS in 2006.\textsuperscript{32} The IAPSD stressed that sustainable development is
not simply an environmental issue, but rather required that the issue be assessed with a
view to “economic, social, educational and cultural development.”\textsuperscript{33} As with previous
and subsequent declarations of the OAS, the IAPSD stressed that issues involving
environmental protection and sustainable development are local and regional, requiring
coordination domestically and within the regional parameters of the OAS.\textsuperscript{34} The IAPSD
stressed an issue which would become vital at the Bali conference – the need to assist
island and low-lying locations with threats posed by climate change.\textsuperscript{35} The IAPSD made
the OAS the regional framer for coordinating research and collaboration regarding issues
tied to sustainable development.\textsuperscript{36}

The Declaration of Panama: Energy for Sustainable Development contains several
important provisions.\textsuperscript{37} The Declaration of Panama explicitly addressed the sovereignty
issues which are attendant in discussions of sustainable development and assured the
members that sovereignty was the paramount concern and right of states.\textsuperscript{38} The
Declaration of Panama emphasized the importance of energy generation and the

\textsuperscript{30} Id.
\textsuperscript{31} Id.
\textsuperscript{32} INTER-AMERICAN PROGRAM FOR SUSTAINABLE DEVELOPMENT (2006 – 2009).
\textsuperscript{33} Id.
\textsuperscript{34} Id.
\textsuperscript{35} Id.
\textsuperscript{36} Id. § III.
\textsuperscript{37} AG/DEC .52 (XXXVII O/07) (6/5/2007).
\textsuperscript{38} Id. (“reaffirming . . . the sovereign right of our countries to the conservation, development and
sustainable use of their resources.”).
promotion of renewable energy source creation within the hemisphere generally.\textsuperscript{39}

Overall, the Declaration of Panama promotes the need for sustainable development as a regional concern, which is to be undertaken by the members of the OAS as a whole.\textsuperscript{40} The Natural Disaster Reduction, Risk Management, and Assistance in Natural and Other Disaster Situations resolution was passed by the OAS on 2007.\textsuperscript{41} This resolution made the OAS the coordinating entity for climate change and environmental protection issues occurring in the OAS region.\textsuperscript{42} Also in 2007, the OAS adopted two resolutions relating to water resources which directly affected sustainable development: the Inter-American Meeting on Economic, Social, and Environmental Aspects Related to the Availability of and Access to Drinking Water\textsuperscript{43} and Water, Health and Human Rights.\textsuperscript{44}

2. **CONSTITUTIONAL STRUCTURES OF OAS MEMBERS**

The collective constitutions of the OAS member states share striking similarities and differences. Historically, these constitutions range in age from the constitutions of the United States, which has been amended twenty-six times but has remained largely the same since its adoption in 1787\textsuperscript{45} to the recently amended constitutions of Chile\textsuperscript{46} and Colombia.\textsuperscript{47} In the middle of these extremes are the constitutions of member states such

\textsuperscript{39} Id.
\textsuperscript{40} Id.
\textsuperscript{41} See The Natural Disaster Reduction, Risk Management, and Assistance in Natural and Other Disaster Situations.
\textsuperscript{42} See id.
\textsuperscript{43} Inter-American Meeting on Economic, Social, and Environmental Aspects Related to the Availability of and Access to Drinking Water.
\textsuperscript{44} Water, Health and Human Rights.
\textsuperscript{46} See Chile Const., available at http://pdba.georgetown.edu/Constitutions/Chile/chile05.html (last visited Apr. 16, 2008).
as Mexico, enacted in 1917, and Grenada. The history of OAS member state constitutions is important to this article because, in the author’s view, constitutional history demonstrates the rights and privileges that are deeply entrenched within a society – and thus its domestic legal structure – and those which were added in an attempt to remedy the political and societal hardships suffered by a nation in the immediate past. While it is difficult to say whether either of these types of constitutional history leads to a greater level of adherence to constitutional provisions, it is the author’s belief that understanding that such differences exist between OAS member state constitutions is important for analyzing the ways in which the OAS has addressed issues relating to the environment and sustainable development.

In terms of provisions addressing the environment and sustainable development, the constitutions of Antigua and Barbuda, Argentina, the Bahamas, Belize, Canada, Costa Rica, Dominica, the Dominican Republic, El Salvador, Grenada,

Guyana, Jamaica, Mexico, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, the United States and Uruguay contain no relevant provisions. The Brazilian constitution contains explicit provisions requiring the state to protect the environment and preserve component parts of the Brazilian environment, as well as to protect the population against poverty and food scarcity. The Chilean constitution requires that the state keep the environment free from contamination and also to preserve nature within the state. The Colombian constitution provides a general state requirement to recognize the internationalization of relationships that involve the environment, as well for the rights of indigenous attachment to their historical territories to be protected. Under the terms of the Cuban

---

68 See U.S. CONST.
70 See supra notes 50 – 69.
71 BRAZIL CONST. ARTS. 23, 24.
72 CHILE CONST. ART. 8.
73 Id., ART. 19.
74 COLOMBIA CONST. ART. 226.
75 Id., ART. 330.
constitution, the state exercises control over all resources on the island. The Ecuadorian constitution provides for environmental protections and for sustainable development promotion, as well as for indigenous rights, including property rights. The Haitian constitution provides for extensive environmental protections and for assistance to local agriculture. The constitution of Panama provides for ecological protections as well as agricultural preservation. Paraguay’s constitution also provides for environmental protections and agrarian reforms. The Peruvian constitution provides for environmental protections.

The constitutions of several OAS member states contain provisions that do not specifically relate to the environment or sustainable development but are still tied to these issues. The Bolivian constitution expressly provides for agrarian reforms. The Guatemalan constitution provides rights and protections to indigenous communities. The Honduran constitution provides for agrarian reforms. The Venezuelan constitution also provides for certain indigenous rights.

B. ASEAN

76 Cuba Const. Art. 11.
77 Ecuador Const. Arts. 86 – 91.
78 Id. Art. 84.
79 Haiti Const. Tit. IX, Ch. II
80 Id. Ch. I.
81 Panama Const. Arts. 114-117.
82 Id. Arts. 118 – 124.
83 Paraguay Const. Art. 8.
84 Id. Arts. 114 – 115.
85 Peru Const. Tit. 3.
86 Bolivia Const. Titulo tercua.
87 Guatemala Const. Arts. 66 – 70.
88 See Honduran Const. Art. 344 etc.
89 Venezuela Const. Art. 119 – 126.
1. ORGANIZATION STRUCTURE AND ACTIVITIES

ASEAN was founded in 1967. Originally, ASEAN was comprised of Indonesia, Malaysia, the Philippines, Singapore and Thailand. These members were later joined by Brunei Darussalam, Vietnam, the Lao People’s Democratic Republic, Myanmar and Cambodia. ASEAN’s primary objectives are to create an apparatus for its members to peacefully resolve disputes with each other and “to accelerate economic growth, social progress, and cultural development in the region.” Among the primary focuses of ASEAN’s economic components is the ASEAN Free Trade Area (AFTA), which is structured to remove tariff and other barriers to trade in existence between ASEAN member states. In addition to reducing barriers to trade that existed between member states, ASEAN, through AFTA, has made alliances with a variety of other nations with the goal of lowering barriers to trade between the AFTA members and those nations. ASEAN’s other economic measures strive to promote regional unity through the construction and maintenance of key infrastructural elements within the member states. Such infrastructure is a vital underpinning of promoting and achieving meaningful sustainable development.

Environmental concerns, including sustainable development issues, are a key concern to ASEAN, as evidenced by the importance the ASEAN Secretariat places on


Id.
Id.
Id.
Id.
Id.
Id.
Id.
Id.
these issues.\textsuperscript{97} There is a specialized ASEAN Ministerial Meeting on the Environment within ASEAN’s governing structure; this entity is made up of ASEAN Environment Ministers and receives information from ASEAN Senior Officials on the Environment and a variety of issue-related working groups.\textsuperscript{98}

The ASEAN Secretariat enacted the Strategic Plan of Action on the Environment 1994-1998 with the goal of, among other things, “introduc[ing] policy measures and promot[ing] institutional development that encourage the integration of environmental factors in all developmental processes both at the national and regional levels; establish[ing] long term goals on environmental quality and work[ing] towards harmonized environmental quality standards for the ASEAN region; harmoniz[ing] policy directions and enhanc[ing] operational and technical cooperation on environmental matters, and undertak[ing] joint actions to address common environmental problems; study[ing] the implications of AFTA on the environment and tak[ing] steps to integrate sound trade policies with sound environmental policies.”\textsuperscript{99} The 1994-1998 Plan goes on to elaborate that the way to achieve these goals is for ASEAN members to work together to promote the exchange of knowledge, research, and forms of economic development which stress the importance of the environment and sustainability.\textsuperscript{100}

\textsuperscript{97} See \textsc{Environment – ASEAN Secretariat}, ASEAN, available at \url{http://environment.asean.org/} (last visited Apr. 3, 2008).
\textsuperscript{98} See \textsc{ASEAN Cooperation on Environment}, ASEAN, available at \url{http://environment.asean.org/index.htm} (last visited Apr. 3, 2008).
\textsuperscript{100} Id.
In 1981, the ASEAN Secretariat issued the Manila Declaration on the ASEAN Environment.\(^{101}\) This document established environmental protection and resource sustainability as key objectives of ASEAN and its members.\(^{102}\) The Manila Declaration emphasized the need for states to ensure environmental protections and sustainability as national issues of concern and also extended the need for sustainability understanding and appreciation to citizens of ASEAN member states.\(^{103}\) At the same time, the Manila Declaration makes clear links to the need for sustainable development in order to eradicate the poverty levels of most member states.\(^{104}\)

The ASEAN Declaration on Heritage Parks and Reserves was signed by the ASEAN Secretariat in 1984.\(^{105}\) This document contained a list of parks in each member state which were to be protected under the terms of the declaration and also stressed the importance of environmental conservation and sustainable development for the maintenance of these parks as historical, cultural and economic places of value.\(^{106}\) The idea of interrelatedness between the environmental policies of one ASEAN member state and the preservation of the national parks of another was also raised in this declaration.\(^{107}\)

The ASEAN Secretariat also signed the Bangkok Declaration on the ASEAN


\(^{102}\) Id. (stating that ASEAN’s objective was “to ensure the protection of the ASEAN environment and the sustainability of its natural resources so that it can sustain continued development with the aim of eradicating poverty and attaining the highest possible quality of life for the people of the ASEAN countries”).

\(^{103}\) See id.; Id. § 1(b) (i) (making the following a “policy guideline”: to “foster a common awareness among the people of the ASEAB countries of the biological, physical and social environment and its vital significance for sustained development to proceed apace”).

\(^{104}\) See generally id.


\(^{106}\) Id.

\(^{107}\) Id.
Environment in 1984. The Bangkok Declaration stressed the correlations between economic progress and development and the environment, and mandated that both ASEAN and its member states work to ensure that environmental concerns were considered when plans for sustainable and other development were being considered and made. The Bangkok Declaration also addressed concerns regarding industrial development and pollution in ASEAN member states, requiring government and industry to control the flow of toxic and other waste products. The Bangkok Declaration addressed the need for the creation of sewage systems in cities and large towns, as well as the need to work with other regional and international groups to further the environmental concerns of ASEAN members.

The 1985 Agreement on the Conservation of Nature and Natural Resources by ASEAN members highlighted the specifically intertwined nature of economic development and environmental issues in the member states. This Agreement required that states take action at the domestic and ASEAN-regional level in order to “conserv[e] and manag[e] . . . their living resources and the other natural elements on which they depend.” The Jakarta Resolution on Sustainable Development of 1987 again recognized the link between the needs of ASEAN member states to use the resources available to them to provide economic growth mechanisms to their citizens and the need for these forms of economic growth to be done in a way that optimizes sustainability for

---

109 See id.
110 Id.
111 Id.
the nation and the region. The Jakarta Resolution stated that the ASEAN members as a whole would work together in areas such as “the common seas; land-resources and land-based pollution; tropical rain forests; air quality; and urban and rural pollution.” The Jakarta Resolution also reinforced ASEAN’s position that the best method to handle the issues of environmental protection and sustainable development facing its membership is to work in the regional context to coordinate and develop responses and plans to handle these issues.

In 1990, the Kuala Lumpur Accord on Environment and Development was issued by the ASEAN Ministers for the Environment. Many of the principles of the Kuala Lumpur Accord were enacted with the intent of coordinating ASEAN responses and suggestions in advance of the 1992 United Nations Conference on Environment and Development, which ultimately produced the UN Framework Convention on Climate Change described in Section III of this article. The Kuala Lumpur Accord again stressed the need for ASEAN members to coordinate their policies on environmental protection and sustainable development, this time with a notably more evolved sense of the types of issues which ASEAN members should reconcile in order to advance their

114 Id. § II.
115 Id. IV (“the ASEAN Environmental Ministers are aware that the pursuit of sustainable development would be best served by the establishment of a regional body on the environment of sufficient stature whose task should include, but not be limited to: a) recommending policy guidelines on the implementation of the principle of sustainable development; b) facilitating the incorporation of environmental considerations into the programmes and activities of ASEAN committees; c) monitoring the quality of the environment and natural resources to enable the periodic compilation of ASEAN states of the environment reports; and d) enhancing the cooperation on environmental matters.”).
117 Id.
environmental and development goals domestically and regionally. The Resolution on Environment and Development in 1992 reiterated the concepts and principles set forth in the Kuala Lumpur Accord with a better sense of organization. The 1992 Resolution contains a greater sense of the importance of ASEAN acting as a regional block both for the Rio Convention at which the UN Framework was created and in general in order to achieve the aims set forth by the ASEAN member states.

In the wake of the Rio Convention and the creation of the UN Framework Convention on Climate Change, ASEAN passed the Resolution on Environment and Development in 1994. This Resolution embraced the principles of the UN Framework Convention on Climate Change while at the same time asserting the importance of a regional solution to the issues of environmental protection and sustainable development. The 1997 Jakarta Declaration on Environment and Development again embraced the UN Framework Convention on Climate Change and also embraced the ideas of additional environmental responsibilities for developed countries that were an integral part of the Kyoto Protocol. The tenor of this Declaration is geared towards using the already made gains in environmental protection and sustainable development as a stepping stone for future environmental and development policies which are in keeping

---

118 See id.
120 See id.
122 Id.
123 See Jakarta Declaration on Environment and Development paras. 10 - 11, ASEAN, available at http://environment.asean.org/agreements/jakartadeclaration.htm (last visited Apr. 3, 2008) (“To urge developed countries to fulfill their commitments made at UNCED by providing additional resources and transfer of technology . . . to urge developed countries to commit targets of limitation and reduction of greenhouse gas emissions under the Berlin Mandate.”).
with the concepts of sustainability elucidated by ASEAN members in previous agreements, declarations, accords and resolutions.\textsuperscript{124}

One of the important environmental and development issues facing ASEAN members is and has been “transboundary haze pollution,” perhaps better known to readers as air pollution. Although this issue was mentioned sporadically in prior documents and some basic plans, transboundary haze pollution was the subject of the 2002 ASEAN Agreement on Transboundary Haze Pollution.\textsuperscript{125} In addition to domestic requirements, this Agreement requires signatories to consult with other affected nations when a fire or other form of pollution encroaches on their sovereign territory.\textsuperscript{126} This Agreement created the ASEAN Co-ordinating Centre for Transboundary Haze Pollution Control, which creates both research and response coordination responsibilities.\textsuperscript{127} The Agreement imposes fairly stringent domestic legislative and compliance standards for signatories.\textsuperscript{128} A Conference of the Parties was established by the Agreement and

\begin{itemize}
  \item \textsuperscript{124} See \textit{id}.
  \item \textsuperscript{125} See generally ASEAN AGREEMENT ON TRANSBOUNDARY HAZE POLLUTION, ASEAN, \textit{available at http://environment.asean.org/agreements/index.htm} (last visited Apr. 3, 2008). The specific objectives of the Agreement were stated to be: “to prevent and monitor transboundary haze pollution as a result of land and/or forest fires which should be mitigated, through concerted national efforts and intensified regional and international co-operation. This should be pursued in the overall context of sustained development and in accordance with the provisions of this Agreement.” \textit{Id.} art. 2.
  \item \textsuperscript{126} \textit{Id}. art. 4.
  \item \textsuperscript{127} \textit{Id}. pt. II.
  \item \textsuperscript{128} \textit{Id}. art. 9. (requiring that: “developing and implementing legislative and other regulatory measures, as well as programmes and strategies to promote zero burning policy to deal with land and/or forest fires resulting in transboundary haze pollution; developing other appropriate policies to curb activities that may lead to land and/or forest fires; identifying and monitoring areas prone to occurrence of land and/or forest fires; strengthening local fire management and firefighting capability and co-ordination to prevent the occurrence of land and/or forest fires; promoting public education and awareness-building campaigns and strengthening community participation in fire management to prevent land and/or forest fires and haze pollution arising from such fires; promoting and utilizing indigenous knowledge and practices in fire prevention and management; and ensuring that legislative, administrative and/or other relevant measures are taken to control open burning and to prevent land clearing using fire.”).
\end{itemize}
required to meet at least annually in order to address the issues raised in the Agreement.\textsuperscript{129}

Many of the same themes predominate in the 2003 Yangon Resolution on Sustainable Development, which again highlights the intertwined nature of environmental protection and sustainable development.\textsuperscript{130} The Yangon Resolution incorporates more general concepts of environmental protection with specific requirements relating to cities and urban areas, water access and use, biodiversity and transboundary haze.\textsuperscript{131} Also in 2003, ASEAN revisited the issue of national parks in the ASEAN Declaration on Heritage Parks.\textsuperscript{132}

In 2004, ASEAN as an organization implemented the Vientiane Action Programme 2004-2010, a comprehensive plan for the future actions and structure of ASEAN across the full range of issue and policy areas which ASEAN was created to address for its members.\textsuperscript{133} Several of these policy areas are of relevance to this article. The Vientiane Action Programme includes the increased feasibility of sustainable development in its “ASEAN Socio-Cultural Community” provisions, stressing that sustainable development is necessary to improve the lives of ASEAN member states’ citizens while preserving their cultural heritage and potential for future affluence.\textsuperscript{134} This Programme splits environmental issues facing the ASEAN member states and their citizens into issues of “environmental management” and “natural resource

\textsuperscript{129} Id. art. 18.
\textsuperscript{131} Id.
\textsuperscript{134} Id. § 3.
management." Environmental protection issues, such as transboundary haze, domestic environmental legislation enactment and enforcement, preservation of environmentally friendly farming and other practices, waste reduction and management, and management of urban areas, with their attendant and unique environmental issues, are classified under the “environmental management” heading. Issues typically associated with sustainable development, such as preserving land and maritime resources while encouraging and enabling the economic advancement of area residents, and issues necessary for the promotion of sanitation and infrastructure fall under the heading of “natural resource management.”

2. CONSTITUTIONAL STRUCTURES OF ASEAN MEMBERS

The constitutions of the ASEAN member states generally share more similarities in legal requirements and socio-legal expressions of priorities for government and society than the constitutions of the OAS members as discussed in Part II. B. Several ASEAN member nations are currently in the process of transitioning from communist control to a more free-market based economic and government structure, although these members are progressing at different rates and their laws reflect these different stages of development. Several other ASEAN member states are currently experiencing a situation of active political repression, in which the state is the primary actor, which has

---

135 Id. § 3.3.
136 Id.
137 Id.
138 Supra Part II.B.
complete control over the actions of its people in reality as well as at law. Other ASEAN member states are democratic and vest their people with a greater sense of control over the land and its usage. Despite these political, legal and societal differences, there are stark constitutional similarities which, the author argues, are the reason that ASEAN as an entity has been able to work together towards a progression of environmental and sustainable development policies which are largely self-sufficient in that they do not depend on outside guidance or assistance. The constitutions of Laos, Vietnam, Cambodia, Indonesia, Myanmar and Malaysia contain provisions that expressly vest the state with ownership and control of all natural resources located within their territories.

142 LAO CONST. ch. II. art. 17. (“all organization and citizens must protect the environment and natural resources: land, underground, forests, fauna, water sources and atmosphere.”).
143 VIETNAM CONST. ch. II art. 17 (“the lands, forests, rivers and lakes, water supply, wealth lying underground or coming from the sea, the continental shelf and the air, the funds and property invested by the state in enterprises and works in all branches and fields – the economy, culture, society, science, technology, external relations, national defence, security – and all other property determined by law as belonging to the state, come under ownership by the people.”; art. 18 (providing that the Vietnamese state “manages all land” located within its borders).
144 CAMBODIAN CONST. arts. 58, 59 (“the state shall protect the environment and balance of abundant natural resources and establish a precise plan of management of land, water, air, wind, geology, ecological systems, mines, energy, petrol and gas, rocks and sand, gems, forests and forestrial [sic] products, wildlife, fish and aquatic resources.”).
145 INDONESIAN CONST. ch. XIV art. 33.
146 MYANMAR CONST. ARTS. 8, 13.
147 MALAYSIA CONST. pt. VI ch. 4.
148 See supra notes 142 – 147.
constitutions of the Philippines \(^{149}\) and Thailand \(^{150}\) require the state to protect and conserve the environment for its people, while the constitutions of Singapore \(^{151}\) and Brunei \(^{152}\) are silent on the issues of environmental protection and sustainable development. \(^{153}\) The Malaysian constitution provides the government with the ability to control land located within the state through its ability to create and implement a national land development plan. \(^{154}\) The constitutions of the Philippines and Thailand contain provisions for agrarian reform, which in each instance partly addresses issues of sustainable development in the farming context. \(^{155}\) Additionally, the Thai constitution provides that “the State should proceed to raise the quality and standard of living of people,” \(^{156}\) and that “the State should have a demographic policy appropriate for natural resources, economic and societal conditions and technological progress for the benefit of the economic and social development and for the security of the State.” \(^{157}\)

**PART III – UN DOCUMENTS**

**A. UN FRAMEWORK CONVENTION ON CLIMATE CHANGE.**

In 1992, the UNEP convened nations from around the world for a conference which culminated in the creation and subsequent ratification of the United Nations

---

\(^{149}\) PHILIPPINES CONST. art. II § 16 (“the state shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”).

\(^{150}\) THAI CONST. ch. V § 78 (“the state should conserve environment, balance of natural resources and its substation and should prevent and eliminate pollution and should plan suitable use of the soil and water.”).

\(^{151}\) See generally SINGAPORE CONST.

\(^{152}\) See generally CONST. OF BRUNEI DARUSSALAM.

\(^{153}\) See supra notes 149 – 152.

\(^{154}\) MALAYSIA CONST. pt. VI ch. 5.

\(^{155}\) See PHILIPPINE CONST. ART. III §§ 4 – 8; Thai const. ch. V art 82.

\(^{156}\) THAI CONST. ch. V art 79.

\(^{157}\) Id. art. 87.
Framework Convention on Climate Change (“UN Framework Convention”).

Although it is geared towards addressing issues related to greenhouse gas emissions, the UN Framework Convention addressed many issues related to environmental protection and sustainable development which are also encompassed and broadened within the agreements and other documents promulgated by the OAS and ASEAN. The sustainable development provisions of the UN Framework Convention are tailored to the domestic abilities of the particular signatories. The UN Framework Convention provides for coordination on many levels, including the regional level, in order to enact environmental protections and ensure sustainable development promotion.

The UN Framework Convention specifically allows for the creation of international and intergovernmental research entities, although it does not elaborate the level to which regional organizations are to be involved in the research process. The UN Framework Convention provides for coordination on many levels, including the regional level, in order to enact environmental protections and ensure sustainable development promotion.

The UN Framework Convention creates a sliding scale of responsibility for counteracting the release of greenhouse gases based on the development status of the signatory nation. Only those nations listed in Annex I to the UN Framework

\[158 \text{ See United Nations Framework Convention on Climate Change, FCCC/INFORMAL/84, GE.05-62220 (E) 200705.}
  
159 \text{ See id.}
  
160 \text{ Id. § 4.}
  
161 \text{ Id. § 4.}
  
162 \text{ Id. art. 5.}
  
163 \text{ Id. § 4.}
  
164 \text{ Id.}

23
Convention are deemed to be developed and subject to restrictions.\textsuperscript{165} The only members of the OAS who are listed as Annex I countries in the UN Framework Convention are Canada and the US.\textsuperscript{166} No members of ASEAN are or were on the Annex I list.\textsuperscript{167} All members of the OAS and ASEAN are signatories to and have ratified the UN Framework Convention.

**B. THE KYOTO PROTOCOL.**

In 1994, the UNEP began the process of creating the Kyoto Protocol to the United Nations Framework Convention on Climate Change ("Kyoto Protocol").\textsuperscript{168} The Kyoto Protocol was largely geared at addressing the issue of greenhouse gas emissions and climate change, however sustainability was still an important concern.\textsuperscript{169} The Kyoto Protocol specifically addressed the issue of increasing and elaborating on the responsibilities of developed and developing countries in regard to their greenhouse gas emissions, the trading of greenhouse gas emissions, and assisting developing countries in lowering their greenhouse gas emissions.\textsuperscript{170} All members of the OAS and ASEAN are signatories to the Kyoto Protocol\textsuperscript{171}; all members of the OAS have ratified the Kyoto Protocol except the United States and all members of ASEAN have ratified the Kyoto Protocol.\textsuperscript{172} The Kyoto Protocol is set to expire in 2012.\textsuperscript{173}

**C. THE BALI CONFERENCE**
In December, 2007, representatives from governments around the world, along
with representatives of observer entities, NGOs and scientists met in Bali, Indonesia to
attempt the creation of a framework for global coordination on environmental and
associated issues once the Kyoto Protocol expires.\textsuperscript{174} All members of the OAS –
including the United States – and all members of ASEAN sent representatives to the Bali
meeting and these representatives participated actively in the discussions which
ensued.\textsuperscript{175}

The Bali meeting did not produce a working or draft agreement to replace the
Kyoto Protocol; it did, however, result in the identification of key environmental issues to
be addressed by policy-makers.\textsuperscript{176} Of importance to this article is the emphasis the Bali
meeting participants placed on the need to assist islands and low-lying areas which have
been identified as in danger due to climate change.\textsuperscript{177} This issue, as discussed above, was
central to the policy work of ASEAN before the Bali meeting. The Bali participants also
acknowledged the vitality of sustainable development to the goal of controlling
greenhouse gas emissions and controlling climate change.\textsuperscript{178} Overall, the Bali meeting
produced a basic road map for the future but demonstrated the difficulties in coordinating
global policies and responses to environmental issues in a way which is meaningful to
individual participant nations, the regions in which these nations are located and the
global population.\textsuperscript{179}

\begin{flushright}
\textsuperscript{174} See \textsc{United Nations Climate Change Conference in Bali, UNFCCC}, available at
\textsuperscript{175} See id.
\textsuperscript{176} See id.
\textsuperscript{177} See id.
\textsuperscript{178} See id.
\textsuperscript{179} See id.
\end{flushright}
PART IV – COMPARISONS BETWEEN THE IMPACT OF THE REGIONAL ORGANIZATIONS AND THE UN DOCUMENTS.

According to a well-known saying, “charity begins at home.” Although this concept might be a rather simplistic way of viewing the world, it nevertheless has some applicability in the context of environmental protection and sustainable development issues in the international policy arena.

The regional organizations studied in this article are powerful political actors within their respective regions and within the global political sphere not only because of their membership’s identity per se but also because of their ability to act in a concerted manner. This ability is perhaps best demonstrated by the policy choices made by the OAS and ASEAN in regards to environmental protection and sustainable development.

The OAS and ASEAN have promulgated a variety of documents which evince the intent of their respective member states to address issues related to environmental protection and sustainable development as these issues face the member states and the particular region. The actions of the OAS have evinced an organizational intent to work with a unified stance on the need to ensure environmental protection measures are taken within the region and to enact measures which promote sustainable development as a way to protect the regional and domestic environment while at the same time promoting the wellbeing and prosperity of citizens of member states. The situation of OAS member states is diverse in that these states represent states across the spectrum of development status, political stability and ideology, as evidenced by some of the differences in their constitutional provisions relating to the environment and sustainability. At the same time,
however, there is such an overwhelming sense of importance to environmental protection and sustainable development issues that these constitutional differences have been bypassed by members of the OAS. As part of a regional organization, the members of the OAS are accustomed to the concept that legal and socio-legal policies in one state affect the region as a whole when the policy area involved relates to transborder issues. Shared geographic relations and ties also, in the author’s view, lead to a better understanding of the needs and priorities of other member states, as well as the challenges to achievement which other member states face. This understanding is critical to forming a consensus around sustainable development and related topics in particular because the needs of each society and political structure in relation to sustainability will necessarily differ on some level.

For many of the same reasons, it is easy to understand how ASEAN has enacted numerous policy instruments that endorse the need for action in the fields of environmental protection and sustainable development. There are fewer ASEAN member states than OAS member states, however the ASEAN member states by and large share similar constitutional mandates to protect the natural resources of the state and, in many instances, to assist in agrarian reform. Although there are differences in overall domestic development and political ideology within the member states of ASEAN, these states are faced with many similar issues involving environmental protection and particularly sustainable development. This, in the author’s view, is the reason that ASEAN has been extremely proactive in the environmental and sustainable development realms.

Although the members of the OAS and ASEAN have been actively involved in the creation of the UN Framework Convention, the Kyoto Protocol, and at the Bali
meeting, they are but few of the many voices involved in the creation of these UN
documents. Global coordination of policies such as environmental protection and
sustainable development is certainly a laudable – and arguably necessary – way to
promote awareness, understanding and harmonization of these issues. However, when
these issues are tackled on a global scale, they become subject to political and legal
negotiations that tend to chip away at the specific needs of the states and organizations
involved in their promulgation in order to reach a palatable consensus for all those
involved. Thus, it becomes difficult for state and region-specific issues to be directly
addressed in a global debate or document because these issues are likely not shared by
the global commons.

In this context, the success of the OAS and ASEAN in promulgating documents
which concretely address the regional commons which are within their jurisdiction and
scope of expertise – and the sustained ability of the sub-organizations created by the OAS
and ASEAN to be relevant and vital fora for research, coordination and planning by
regional members and the international community – is factually, politically, and legally
logical. The similarity of the constitutional mandates driving the members of the OAS
and ASEAN in their policies toward environmental protection and sustainable
development, as well as their understandings of the politics and needs of their neighbors,
allows these regional entities to serve their constituencies in a more thorough and timely
manner than the UN documents. Additionally, it is easier for the decisions of the OAS
and ASEAN to be altered in the event that any such alteration is necessary because of the
legal structure of the OAS and ASEAN, as well as the fewer number of members needed
for a decision to be made. Therefore, it is the author’s view that strong regional
organizations such as the OAS and ASEAN are a better solution to meeting the legal and practical goals of the UN documents than the UNEP or international conferences because these organizations have sufficient legal and practical understanding of their members’ political and legal realities, as well as of the issues which are facing the constituencies of their members and how to address them. While there is a place for international collaboration to research and identify issues such as environmental protection and sustainable development from a global context, it is the author’s position that the primary focus of law in relation to environmental protection and sustainable development should be on regional organizations. This is especially important in view of the emerging issues involving the fate of island nations because those who will ultimately face the outcome of the predicted effects of climate change on such nations will be the neighboring countries which will be required to handle the political and legal fallout of their neighbor’s plight.

PART V – CONCLUSION

The goal of this article is to explore the relationship between two regional organizations – the OAS and ASEAN – and the series of UN documents promulgated to address climate change and environmental issues – namely, the UN Framework Convention, the Kyoto Protocol, and the Bali road map – with a view toward understanding whether regional organizations offer a more concrete legal and practical method to address environmental protection and sustainable development issues. After assessing the ways in which the OAS and ASEAN have acted in this policy area, this article argues that it is the regional commons, rather than the global commons, that unite law and policy in an effective and malleable way that is better suited to the practical
needs of groups of nations with like legal systems and issues in relation to environmental protection and sustainable development.