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A Supranational Law Perspective on the Right to a Healthy Environment in Southeast Asia: The ASEAN Agreement on Transboundary Haze Pollution

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RESUMO

O presente estudo visa avaliar a eficácia do Acordo da ASEAN sobre Poluição por Fumaça Transfronteiriça (AATHP) na mitigação da fumaça regional e identificar os principais fatores que condicionam o seu sucesso operacional e as suas limitações. Utilizou-se uma análise documental qualitativa de documentos oficiais da ASEAN, relatórios governamentais e literatura acadêmica para examinar a transposição dos mandatos legais do AATHP em resultados práticos. Os principais resultados indicam que, embora o AATHP forneça um quadro normativo abrangente e tenha impulsionado estratégias adaptativas, o seu impacto tangível na redução consistente da fumaça enfrenta desafios profundos. Os impedimentos identificados incluem atrasos históricos na ratificação por parte de Estados-membros chave, fragilidades na aplicação, a nível nacional, das leis anti-queimadas, a ausência de mecanismos sancionatórios robustos no Acordo, e a dificuldade persistente em abordar as complexas causas socioeconômicas subjacentes aos incêndios. O estudo conclui que, embora o AATHP seja um instrumento indispensável para a cooperação regional, alcançar uma ASEAN livre de fumaça continua a depender de uma implementação e aplicação nacional reforçada, de um compromisso genuíno para enfrentar as causas subjacentes e, potencialmente, de uma recalibração das dinâmicas de cooperação regional para fomentar uma proteção ambiental mais assertiva. **Palavras-chave:** AATHP; ASEAN; direito supranacional; governança ambiental; poluição por fumaça transfronteiriça; sudeste asiático.

ABSTRACT

This study aims to evaluate the effectiveness of the ASEAN Agreement on Transboundary Haze Pollution (AATHP) in mitigating regional haze and to identify the primary factors conditioning its operational success and limitations. A qualitative documentary analysis of official ASEAN documents, governmental reports, and academic literature was employed to examine the translation of the AATHP's legal mandates into practical outcomes. Principal results indicate that while AATHP provides a comprehensive framework and has spurred adaptive strategies, its tangible impact on consistent haze reduction is profoundly challenged. Identified impediments include historical delays in ratification by key member states, weaknesses in national-level enforcement of anti-burning laws, the absence of robust sanctioning mechanisms within the Agreement, and the persistent difficulty in addressing complex socio-economic root causes of fires. The study concludes that although the AATHP is an indispensable instrument for regional cooperation, achieving a haze-free ASEAN remains contingent upon enhanced national implementation and enforcement, a genuine commitment



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to tackling root causes, and potentially a recalibration of regional cooperative dynamics to foster more assertive environmental protection.

Keywords: AATHP; ASEAN; environmental governance; supranational law; transboundary haze pollution; southeast asia.

Introduction

The Association of Southeast Asian Nations (ASEAN), established on August 8, 1967, by Indonesia, Malaysia, the Philippines, Singapore, and Thailand, was founded to accelerate economic growth, social progress, and cultural development, and to promote regional peace and stability (ASEAN, 1967). Currently comprising ten member states: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam, ASEAN represents a significant geopolitical and economic entity in the Asia-Pacific region.

One of the persistent environmental challenges confronting the region has been transboundary haze pollution, primarily caused by land and forest fires, which has had significant social, economic, and environmental repercussions since the early 1990s. The recurrent nature of this haze, often crossing national borders, highlighted the need for a coordinated regional response (Miller & Bratspies, 2008).

Initial efforts included the Regional Cooperation Plan on Transboundary Pollution in 1995 and the Regional Haze Action Plan (RHAP) in 1997. These initiatives culminated in the adoption of the ASEAN Agreement on Transboundary Haze Pollution (AATHP) in Kuala Lumpur on June 10, 2002. The AATHP is a legally binding agreement aimed at preventing, monitoring, and mitigating land and/or forest fires to control transboundary haze pollution through concerted national efforts and intensified regional and international cooperation (Jerger, 2014). It entered into force in November 2003 after the sixth ratification and was eventually ratified by all ASEAN Member States (AMS) by January 2015, following Indonesia's ratification.

Despite this comprehensive legal framework, the effectiveness of the AATHP in achieving a haze-free ASEAN has been a subject of ongoing concern and analysis (Koh & Robinson, 2002; Koh, 2008). Issues such as the delayed ratification by Indonesia, a major contributor to regional haze (Heilmann, 2015), and the inherent limitations within the agreement itself, such as the lack of strong enforcement mechanisms and sanctions (Tan, 2005), have been identified as significant challenges (Tan, 2015; Varkkey, 2013; Varkkey, 2009). Furthermore, the "ASEAN Way" of non-interference and consensus-based decision-making has been suggested to influence the vigor with which regional environmental agreements are implemented and enforced (Mushkat, 2014).

This study, therefore, seeks to answer the research question: To what extent has the AATHP effectively translated its legal and institutional mandates into sustained, on-the-ground mitigation of transboundary haze, and what are the primary factors conditioning its operational success and limitations?

We hypothesize that while the AATHP provides a crucial cooperative platform and a comprehensive legal framework, its overall effectiveness in achieving substantial and consistent haze reduction has been significantly impeded by a confluence of factors, including challenges in national-level enforcement and implementation, the inherent structural limitations of the Agreement (such as the absence of robust punitive measures), the complexities of addressing deep-seated socio-economic root causes of fires, and the overarching influence of the "ASEAN Way" which emphasizes national sovereignty and non-interference.

Literature Review and Theoretical Framework

The Doctrinal Framework of Transboundary Environmental Harm

The challenge of governing environmental problems that transcend national borders is a central theme in contemporary international law. Transboundary haze pollution in Southeast Asia serves as a quintessential example of this dilemma, pitting the foundational principle of state sovereignty against the imperative to



prevent extraterritorial environmental harm. The legal and institutional response to this issue, embodied in the AATHP, is situated within a complex doctrinal landscape that attempts to balance these competing norms. Understanding the AATHP requires an initial examination of the core principles of international environmental law that provide its normative context and, simultaneously, expose its inherent structural tensions.

At the heart of the AATHP, as articulated in its Article 3, lies a fundamental bargain of international environmental law. The Agreement explicitly affirms the "sovereign right of Parties to exploit their own resources pursuant to their own environmental and developmental policies". This clause anchors the treaty in the Westphalian tradition of state sovereignty, a principle of paramount importance within the political culture of ASEAN. However, this right is not absolute. It is immediately qualified by the corresponding "responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment and public health of other States". This duality reflects the landmark

sic utere tuo ut alienum non laedas principle (use your own property so as not to injure that of another), a cornerstone of international environmental jurisprudence (Miller & Bratspies, 2008).

This legal architecture, while standard in international agreements, creates a source of perpetual tension within the ASEAN context. The AATHP's legal text provides the normative basis for the very political behavior that undermines its effective implementation. The strong affirmation of national sovereignty in Article 3 can be, and often is, invoked by member states to deflect criticism and resist more stringent, binding enforcement actions. This creates a self-defeating dynamic where the treaty itself can be used to argue against its own full realization, prioritizing the principle of non-interference over the obligation to prevent transboundary harm. As Robinson (2002) notes in examining the ASEAN model, this regional approach to governance carries specific lessons about the practical application of such legal principles.

To counteract the reactive nature of liability-based regimes, the AATHP explicitly incorporates the precautionary principle as a guiding norm for state action. This principle mandates that Parties must take measures to "anticipate, prevent and monitor transboundary haze pollution to minimize its adverse effects". Crucially, this obligation applies even in the absence of full scientific certainty regarding the cause-and-effect relationship between an activity and potential environmental damage. The inclusion of this principle, as highlighted in the analyses of Nguitragool (2011), Sukma (2010), and Tay (1998), represents a theoretical shift towards proactive and preventive environmental governance. It is designed to be a forward-looking tool that compels states to act before environmental degradation becomes severe or irreversible.

However, the operationalization of the precautionary principle within the AATHP framework is significantly constrained. While the principle provides a strong normative basis for early intervention, its implementation depends entirely on the political will and domestic capacity of individual member states. Without robust regional oversight or enforcement mechanisms, the application of precautionary measures remains a matter of national discretion. This gap between the principle's ambition and its practical enforcement reflects a broader weakness in the agreement's design, where progressive legal norms are not supported by the necessary institutional teeth to ensure compliance. The principle exists on paper, but its translation into consistent, on-the-ground preventive action is far from guaranteed.

A final critical dimension of the doctrinal framework concerns state responsibility and liability for environmental damage. While the AATHP establishes a duty to prevent harm, it is notably silent on the consequences of failing to do so. The absence of specific provisions for liability, compensation, or sanctions for non-compliant states is a significant departure from more robust international environmental regimes (Tan, 2005). This structural omission is not an oversight but a deliberate feature reflecting the political sensitivities of the region. As Heilmann (2015) argues, this lack of an enforcement mechanism severely diminishes the impetus for compliance and weakens the Agreement's overall deterrent capability.



The conceptual underpinnings of state liability, explored in the broader legal scholarship by authors such as Dupuy (1977) and Rossa (1991), underscore what is missing in the AATHP. A fully developed regime would articulate clear procedures for attributing responsibility and determining reparations for damage caused. The AATHP's avoidance of these issues effectively transforms its legal obligations into political commitments, reliant on goodwill and diplomatic pressure rather than legal accountability. This design choice places the primary burden of implementation squarely on the individual parties, a model that has proven insufficient in compelling the necessary domestic action to prevent the underlying causes of haze pollution (Heilmann, 2015).

Regional Governance Modalities: The 'ASEAN Way' as Context

While the AATHP is grounded in established principles of international environmental law, its interpretation, implementation, and ultimate effectiveness cannot be understood apart from the unique regional governance modality in which it is embedded: the 'ASEAN Way'. This distinct diplomatic and political culture is arguably the single most significant factor conditioning the Agreement's operational reality. It shapes not only the text of the treaty itself but, more importantly, the manner in which its obligations are pursued and enforced, often prioritizing regional harmony and state sovereignty over assertive environmental protection. The 'ASEAN Way' provides the essential context for why a legally binding agreement has yielded limited practical results.

The 'ASEAN Way' is a process-oriented approach to regional cooperation characterized by a set of core tenets. As described in the literature, these include an unwavering commitment to the principles of non-intervention in the internal affairs of member states, the preservation of national sovereignty, and decision-making through consensus (Varkkey, 2013). This modality favors non-confrontational negotiation tactics, a reliance on informal and consultative discussions, and a general preference for non-legalistic procedures over formal, adjudicative ones (Koh, 2008). This approach has profound implications for regional institution-building, often leading member states to "eschew" more stringent agreements, "exclude politically delicate subjects" from formal agendas, and "hesitate to criticize" one another publicly.

This staunchly intergovernmental approach stands in stark contrast to supranationalism, a model of regional integration where member states delegate a degree of sovereignty to a central authority capable of making decisions that are binding on all members. The European Union serves as the primary exemplar of this evolution, where institutions like the European Commission and the Court of Justice possess legal personality and powers that can supersede national law in specific domains. This transfer of authority is precisely what the 'ASEAN Way' is designed to prevent, as ASEAN's core identity is built upon the preservation, not the pooling, of national sovereignty (Ulum, 2022). The absence of a supranational enforcement body within ASEAN is a deliberate choice reflecting its foundational principles, which fundamentally shapes the potential efficacy of any regional agreement.

The challenges for ASEAN in moving toward any form of supranationalism are profound and deeply rooted in the region's political and historical diversity. Key obstacles include the significant disparities in economic development, varying political systems, and a post-colonial legacy that fosters a strong attachment to national sovereignty. Consequently, there is a pervasive reluctance among member states to cede control to a regional entity, fearing that such a body would fail to accommodate their unique national interests (Sujadmiko et al., 2023). This deep-seated resistance ensures that even when facing collective crises like transboundary pollution, the institutional framework remains tilted towards national prerogative rather than collective, binding action.

This diplomatic culture directly influenced the AATHP's design and continues to govern its implementation. It grants member states considerable autonomy in how they interpret and apply their treaty



obligations, a point emphasized by Koh and Robinson (2002). The result is a regional environmental agenda that is largely voluntary in practice, even when codified in a legally binding instrument. The AATHP thus exists as a hybrid: a hard-law text implemented through a soft-law political process. This mismatch creates a persistent gap between the Agreement's stated objectives and the collective actions taken to achieve them, as the imperative to avoid confrontation often overrides the need for accountability.

Given its aversion to formal supranational structures, ASEAN's operational logic can be better understood through the lens of network governance. This model emphasizes the role of informal relationships, trust-building, and multi-level interactions among state and non-state actors to foster cooperation and integration without relying on hierarchical, legally coercive mechanisms. In theory, network governance allows for flexible and adaptive responses to regional challenges by leveraging social capital and shared norms (Sundram, 2025). However, in the context of the AATHP, this approach reveals its weakness: while it facilitates dialogue, it lacks the institutional teeth to compel compliance from uncooperative members, thereby perpetuating the gap between commitment and enforcement.

The functional limits of the 'ASEAN Way' become particularly apparent when the interests of member states diverge. The model is effective in fostering cooperation on issues where national interests align, but it falters when faced with contentious problems like transboundary haze, which pits the interests of upstream polluting states against those of downstream affected states. In such scenarios, the consensus-based, non-confrontational approach frequently leads to the "evasion of contentious issues" and an avoidance of direct engagement (Koh & Robinson, 2002; Quah, 2002). This dynamic helps explain the cyclical nature of ASEAN's response to the haze crisis.

This systemic behavior fosters a "crisis-response cycle" rather than a system of proactive, continuous governance. Meaningful regional action and high-level political attention are episodic, triggered only by severe haze events that generate significant public and international pressure. During these acute periods, ASEAN mechanisms are activated, and commitments are renewed. However, because the 'ASEAN Way' prevents a direct confrontation over the politically sensitive root causes of the fires within national borders, these underlying problems remain unaddressed. Consequently, once the seasonal monsoon arrives and the immediate crisis subsides, the political pressure dissipates, and the impetus for difficult domestic reforms vanishes. This pattern ensures the problem's recurrence, locking the region into a predictable loop of intense but temporary action followed by prolonged periods of relative inaction.

Despite its overarching intergovernmental structure, subtle elements of supranationalism can be observed in functional areas where collective action is indispensable. For instance, the adoption of English as the sole working language of ASEAN represents a *de facto* supranational policy. This decision, driven by practical necessity, standardizes communication and facilitates the creation of a cohesive regional identity, transcending national linguistic policies for the purpose of integration (Lee et al., 2024). While this does not equate to a transfer of political sovereignty, it demonstrates that member states are willing to adopt common, binding practices at a supranational level when it serves the functional goals of the organization without directly threatening core political principles.

A stark illustration of these dynamics occurred in late 2006, when Singapore, frustrated by the persistent haze, raised the issue at the United Nations General Assembly to seek broader international collaboration. This move was immediately perceived by Indonesia as an unwelcome "interference in its internal affairs" and a violation of its national sovereignty (Varkkey, 2009; Sunchindah, 2015). Indonesia's response, insisting that the matter be handled exclusively within the ASEAN framework, powerfully demonstrated the inviolability of the non-interference principle. As analyzed by Heilmann (2015), this incident highlighted the deep-seated resistance



to external oversight and reinforced the notion that the haze, despite its obvious transboundary impacts, remains fundamentally a domestic issue in the eyes of source countries.

This episode serves as a critical case study of the 'ASEAN Way's' limitations. It reveals the low tolerance for actions that could be construed as coercive or shaming, even when undertaken by a fellow member state suffering from the consequences of inaction. It also underscores the frustration within affected states over the AATHP's lack of coercive mechanisms and the inability of the regional framework to compel compliance. The incident demonstrates that the political cost of confrontation within ASEAN is often perceived as higher than the environmental and social costs of the haze itself, a calculation that perpetually hinders the development of a more effective regional response.

This tension between regional ambition and national sovereignty is further complicated by ASEAN's economic integration agenda. The pursuit of the ASEAN Economic Community creates inherent pressures for policy harmonization and can expose governance gaps, particularly when regional goals conflict with issues of unequal development at the sub-national level (Suman et al., 2017). While ASEAN member states fiercely protect their political sovereignty in areas like environmental enforcement, the demands of a single market necessitate a level of coordination that invariably challenges strict non-interference. This creates a fundamental paradox where the bloc pushes for economic supranationalism in function while simultaneously resisting its political form, a contradiction that continues to define the limits and possibilities of ASEAN cooperation.

The Political Economy of Haze: Unpacking the Root Causes

The AATHP's limited effectiveness cannot be attributed solely to its legal design or the constraints of regional diplomacy. A deeper analysis reveals a fundamental mismatch between the Agreement's state-centric, top-down framework and the complex, on-the-ground political and economic realities that drive the fires. The Agreement primarily addresses the symptom—transboundary haze—while lacking the mechanisms to compel action on its underlying disease: a political economy rooted in deficient natural resource governance, unresolved land tenure conflicts, and powerful economic incentives for deforestation and land clearing through fire. The failure to tackle these root causes is a critical obstacle to any sustainable solution.

A crucial distinction must be made between the proximate cause of the haze (land and forest fires) and its ultimate causes. The literature synthesized for this study consistently identifies these ultimate drivers as deep-seated, structural issues within national borders. These include "deficient natural resource management, ongoing land tenure conflicts, and the prevalence of illegal logging activities" (Chokkalingam & Suyanto, 2004; Tan, 2015; Sunchindah, 2015). The AATHP alludes to assessing root causes, but it fails to articulate detailed mechanisms or binding obligations for member states to reform the domestic policies and economic structures that perpetuate the problem. This leaves the regional agreement largely powerless against powerful national interests.

The socio-economic drivers of the fires are not monolithic; they involve a diverse set of actors with different motivations, creating a complex policy challenge. On one hand, small-scale farmers and rural communities are significant contributors. Often "lacking access to alternative technologies or resources," these communities resort to traditional slash-and-burn methods as the most cost-effective means of land preparation (Chokkalingam & Suyanto, 2004, p. 1). Furthermore, in regions marked by protracted land tenure disputes, communities that have been displaced from their ancestral lands may use arson as a tool of protest or retaliation against corporations or state entities they perceive as having usurped their rights (Tan, 2015).

This reality exposes a "dichotomy of blame" that paralyzes effective policymaking. The haze problem involves two distinct actor groups: marginalized subsistence farmers driven by necessity and powerful corporate entities driven by profit. A single, blunt policy instrument like the AATHP's call for a "zero-burning policy"



(Sukma, 2010) is ill-suited to address this complexity. A policy that strictly penalizes smallholders without providing viable economic alternatives risks creating a humanitarian crisis and further marginalizing vulnerable populations. Conversely, a policy targeting corporate actors requires immense political will to confront powerful, politically connected business interests that are often central to national economic development strategies.

On the other hand, large-scale corporate actors, particularly in the palm oil and pulp and paper industries, are widely implicated as major drivers of land clearing through fire. As scholars such as Varkkey (2009) and Tan (2015) have documented, fire is often used systematically and illegally by or on behalf of large agribusiness firms to clear vast tracts of land at a fraction of the cost of mechanical methods. This practice is enabled by weak state oversight, corruption, and a lack of effective law enforcement in remote rural and forested areas. This establishes a critical distinction between fires set for subsistence agriculture and those set for large-scale, export-oriented commercial expansion.

Ultimately, the persistence of haze-causing fires is a symptom of a failure of national governance. The AATHP, as a regional agreement between states, depends on the capacity and willingness of its individual members to enforce laws within their own territories. The documented "weaknesses in national-level enforcement of anti-burning laws" represent the most critical breakdown in the causal chain of haze prevention. Even with a comprehensive regional treaty, if the domestic legal and administrative mechanisms to stop fires at their source are deficient, underfunded, or subverted by corruption, the regional framework remains an empty vessel. The AATHP can facilitate cooperation and monitoring, but it cannot substitute for the sovereign responsibility and political will of a state to govern its own territory effectively.

The AATHP in Practice: A Critical Review of the Regional Response Mechanism

A comprehensive assessment of the AATHP requires synthesizing the doctrinal, political, and socio-economic analyses into a direct critique of the Agreement's practical application and overall effectiveness. While the AATHP establishes a formal institutional architecture for regional cooperation, its performance has been consistently undermined by structural weaknesses in its design and the challenging context in which it operates. The Agreement's observable failures are not accidental but are the predictable outcome of a system where legal obligations are not matched with enforcement powers, and where regional ambitions are constrained by national priorities and a deeply ingrained culture of non-interference.

The AATHP's institutional framework provides a blueprint for regional action. Central to this is the ASEAN Co-ordinating Centre for Transboundary Haze Pollution Control, established under Article 5 to facilitate cooperation and coordinate management efforts (Sunchindah, 2015). The Agreement also mandates robust national monitoring of fire-prone areas and haze pollution under Article 7 and provides for a system of Joint Emergency Response through the provision of assistance under Article 12 (Sunchindah, 2015; Tay, 1998). This assistance, however, is contingent on the consent of the receiving party, a provision that reinforces the principle of national sovereignty (Heilmann, 2015). On paper, this architecture appears comprehensive, covering monitoring, prevention, and response.

However, the most significant and widely cited flaw in this design is the complete "absence of specific sanctions for member states that fail to adhere to their obligations". This critique, central to the analyses of Tan (2005) and Heilmann (2015), points to the Agreement's lack of a credible enforcement mechanism. Without the threat of penalties—be they economic, political, or legal—compliance is rendered largely voluntary. The AATHP relies almost entirely on peer pressure and the goodwill of its members to ensure its obligations are met. As decades of recurrent haze have shown, this reliance has proven to be an insufficient deterrent against domestic actions (or inactions) that lead to transboundary pollution.



Beyond its design flaws, the AATHP has been plagued by profound challenges in implementation, most notably illustrated by the long delay in its ratification. Indonesia, as the primary source of regional haze, did not ratify the Agreement until January 2015, more than twelve years after it was signed. This historical impediment, highlighted by Heilmann (2015), Varkkey (2009), and Jerger (2014), rendered the regional agreement functionally inert for over a decade. It demonstrated how domestic political considerations and sensitivities surrounding national sovereignty could effectively sideline a multilateral treaty, underscoring the immense gap between regional commitment and national action. This delay was not merely a procedural hurdle; it was a clear signal of the political difficulties in translating regional consensus into binding domestic law.

The limited success of the AATHP can be understood as the result of a "cascade of failure," where weaknesses at each level of governance—from the international to the local—compound and reinforce one another. This is not a single failed policy but a failed system. The cascade begins at the level of international law, where the foundational legal principle of sovereignty, enshrined within the AATHP itself, provides the normative justification for prioritizing national interests over regional responsibilities. This legal principle, in turn, enables and legitimizes the political culture of the 'ASEAN Way', with its rigid adherence to non-interference and consensus.

This political modality directly shapes the design of the treaty, leading to an agreement that deliberately omits sanctions or strong enforcement mechanisms, as such provisions would be deemed too confrontational and an infringement on sovereignty (Tan, 2005; Heilmann, 2015). This weak, state-centric diplomatic instrument is then deployed to address a problem whose roots lie in the complex domestic political economy of land use, involving powerful corporate interests and marginalized communities. The tool is fundamentally mismatched with the problem it is intended to solve. The inevitable outcome is a persistent and predictable implementation gap, where the Agreement exists as a symbol of regional cooperation but has minimal tangible impact on the ground, ensuring that the cycle of haze continues.

Materials and Methods

This study employed a qualitative research methodology centered on a comprehensive documentary analysis to investigate the effectiveness of the AATHP and the factors conditioning its operational success and limitations. The selection of documentary analysis was deemed appropriate for systematically examining the existing body of knowledge, official records, and scholarly discourse surrounding the AATHP's framework, implementation, and outcomes.

The data collection process involved an extensive search for relevant documents from a variety of sources. To ensure comprehensive coverage of legal, scientific, policy-oriented, and critical academic literature, several electronic databases were systematically queried. These included, but were not limited to, HeinOnline for legal scholarship and treaties, Web of Science (WoS) and Scopus for peer-reviewed scientific and social science research, and EBSCOhost (encompassing databases such as Academic Search Premier and Environment Complete), JSTOR, and ProQuest for a broader range of academic articles, books, and reports.

The search strategy utilized a combination of targeted keywords and Boolean operators to refine and focus the retrieval of documents. Core keywords included: "ASEAN Agreement on Transboundary Haze Pollution," "AATHP," "transboundary haze," "Southeast Asia haze," "forest fires ASEAN," "peatland fires ASEAN," "air pollution ASEAN," and "environmental governance ASEAN." These were often combined with secondary terms such as "effectiveness," "implementation," "challenges," "enforcement," "compliance," "ASEAN Way," "dispute settlement," and specific country names within ASEAN.



Results

The ASEAN Agreement on Transboundary Haze Pollution: Framework and Objectives

The overarching aim of the AATHP is to prevent and monitor transboundary haze resulting from land or forest fires. This objective is to be achieved through concerted national efforts and intensified regional and international cooperation, all pursued within the broader context of sustainable development (Jones, 2008; Koh, 2007).

Several core principles, outlined in Article 3, guide the AATHP's implementation. Foremost among these is the affirmation of Parties' sovereign right to exploit their own resources according to their environmental and developmental policies. This is coupled with the crucial responsibility to ensure that activities within their jurisdiction do not cause environmental damage or harm human health in other States or areas beyond national jurisdiction. In a spirit of solidarity and partnership, the Agreement mandates the strengthening of cooperation and coordination among Parties to effectively prevent, monitor, and mitigate transboundary haze pollution (Robinson, 2002). This collaborative approach is fundamental to addressing the regional nature of the challenge (Jones, 2008).

A precautionary approach is also central, requiring Parties to take measures to anticipate, prevent, and monitor transboundary haze pollution to minimize its adverse effects. Importantly, such precautionary measures are to be taken even in the absence of full scientific certainty if threats of serious or irreversible damage exist (Nguitrageol, 2011; Sukma, 2010; Tay, 1998).

Institutional Mechanisms and Operational Provisions of the AATHP

To facilitate its objectives, AATHP establishes a comprehensive suite of institutional mechanisms and operational provisions. Central to this is the ASEAN Co-ordinating Centre for Transboundary Haze Pollution Control, instituted under Article 5. This Centre is mandated to foster cooperation and coordination among Parties in managing the repercussions of land and forest fires, specifically the ensuing haze pollution.

Robust monitoring frameworks are essential; thus, Article 7 compels Parties to adopt suitable measures for monitoring all areas prone to fires, actual land and/or forest fires, environmental conditions that favor such fires, and the haze pollution that arises from them. Each Party is also required to designate one or more National Monitoring Centres for this purpose and must undertake immediate actions to control or extinguish fires upon their occurrence (Sunchindah, 2015).

Preventive strategies are detailed in Article 9, which mandates Parties to implement measures for preventing and controlling activities related to land and/or forest fires that could result in transboundary haze pollution. Such measures include the development and implementation of legislative and other regulatory actions, alongside programs and strategies to promote a zero-burning policy. Parties must also ensure that legislative and administrative measures control open burning and prevent land clearing using fire (Sukma, 2010).

In instances necessitating broader support, Article 12 provides for Joint Emergency Response through the Provision of Assistance. A Party requiring assistance due to land/forest fires or haze within its territory may request such aid from any other Party, either directly or through the ASEAN Centre, or from other states or international organizations where appropriate (Tay, 1998). Such assistance is rendered only at the request and with the consent of the requesting Party, or, if offered, with the consent of the receiving Party (Heilmann, 2015).



Implementation Efforts and Complementary Initiatives

After the AATHP's establishment, ASEAN Member States (AMS) advanced further initiatives to combat transboundary haze. A significant step was the 2016 adoption of the "Roadmap on ASEAN Cooperation for Transboundary Haze Pollution Control with Means of Implementation." This initial Roadmap aimed to operationalize the AATHP, envisioning a "transboundary haze-free ASEAN by 2020." It sought to eliminate regional haze by intensifying collective actions, which were supported by three specific progress indicators and eight overarching strategies (Tay, 1998).

Recognizing the need for continued and evolving efforts, in 2021, AMS acknowledged the findings from a review of this first Roadmap (Mushkat, 2014). Consequently, they agreed to develop a subsequent iteration to guide future actions (Koh & Robinson, 2002; Sunchindah, 2015). The "Second Roadmap on ASEAN Cooperation for Transboundary Haze Pollution Control (2023-2030)" was formally adopted in August 2023. This new iteration consciously builds upon previous experiences, employing multidisciplinary and science-based approaches to the problem (Sukma, 2010).

Further strategies focus on strengthening national policies, laws, and their enforcement; enhancing cross-sectoral and multi-level cooperation for global environmental protection; improving public awareness and stakeholder participation; and evaluating and mitigating the multifaceted impacts of haze on health, the economy, society, and the environment. The ultimate success of this Second Roadmap is acknowledged to be contingent upon the capacities, priorities, and prevailing circumstances within the respective AMS, as well as the capabilities of the ASEAN Co-ordinating Centre for Transboundary Haze Pollution Control, all intrinsically linked to the legally binding obligations under the AATHP (Varkkey, 2009).

Assessed Effectiveness and Identified Challenges of the AATHP

The efficacy of international governance regimes is notably varied; while some exert considerable influence, others demonstrate significant deficiencies. The success of any treaty regime fundamentally hinges upon securing compliance from key actors within party states, which is achieved through the diligent implementation and enforcement of its prescribed norms (Tan, 2005).

In the context of the AATHP, several factors have been identified as undermining its overall effectiveness. A significant historical impediment was Indonesia's late ratification. As a primary contributor to regional haze, its status as a non-party until January 2015 considerably limited the Agreement's jurisdictional reach and practical impact, although this specific challenge has since been formally resolved (Varkkey, 2009; Heilmann, 2015).

Another structural weakness inherent in the AATHP is the absence of specific sanctions for member states that fail to adhere to their obligations. This lack of an enforcement mechanism can diminish the impetus for compliance and weaken the Agreement's deterrent capabilities (Heilmann, 2015).

Furthermore, a critical obstacle to the AATHP's success lies in its insufficient capacity to tackle the fundamental, underlying causes of haze. While the Agreement alludes to assessing root causes, detailed mechanisms or obligations to address them are not thoroughly articulated. These causes often stem from complex issues such as deficient natural resource management, ongoing land tenure conflicts, and the prevalence of illegal logging activities (Chokkalingam & Suyanto, 2004). For example, small-scale farmers, often lacking access to alternative technologies or resources, may resort to traditional slash-and-burn techniques for land preparation. Separately, communities displaced from ancestral lands may use arson as a form of protest or retaliation against entities they perceive as having usurped their land rights (Tan, 2015; Koh, 2007; Sunchindah, 2015).



The "ASEAN Way," the traditional approach to regional cooperation, also presents distinct challenges. Member states typically favor principles of non-intervention and the preservation of national sovereignty (Koh & Robinson, 2002). This modality often involves consensus-seeking, upholding the inviolability of sovereign rights, demonstrating sensitivity, employing non-confrontational negotiation tactics, relying on informal discussions, and emphasizing non-legalistic procedures (Varkkey, 2013). As a result, parties may eschew legally binding agreements, exclude politically delicate subjects from regional discourse, and hesitate to criticize fellow member states. This grants considerable autonomy in the implementation of regional environmental agendas (Koh, 2008). The "ASEAN Way" tends to function more effectively when the interests of member states converge. Conversely, when interests diverge, this approach frequently leads to the evasion of contentious issues and an avoidance of direct confrontation, particularly once an immediate crisis, such as a severe haze episode, has subsided (Koh & Robinson, 2002; Koh, 2007; Quah, 2002).

The underlying ASEAN model effectively places the primary burden of implementation, compliance, and enforcement squarely upon the individual parties themselves, which has contributed to suboptimal prevention efforts and limited the Agreement's capacity to deliver sustainable, long-term solutions for haze pollution (Heilmann, 2015).

An illustrative episode of these dynamics occurred in late 2006. Singapore raised the haze issue at the United Nations General Assembly, advocating for broader international expert collaboration. Indonesia perceived this action as an interference in its internal affairs and an affront to its sovereignty, asserting that the matter should be addressed exclusively at the ASEAN level (Varkkey, 2009; Sunchindah, 2015). This incident highlighted both a potential threshold beyond which states may not strictly adhere to the "ASEAN Way" and the frustration stemming from the AATHP's lack of coercive mechanisms (Heilmann, 2015).

Discussion

The findings from this documentary analysis paint a multifaceted picture of the ASEAN Agreement on Transboundary Haze Pollution. The AATHP undeniably represents a significant regional effort, establishing a comprehensive legal and institutional framework for addressing a persistent environmental problem that respects no borders. The subsequent development of roadmaps, particularly the most recent Second Roadmap (2023-2030) with its science-based approaches and specific targets like aligning with WHO PM2.5 guidelines, further indicates an adaptive and evolving commitment to the Agreement's objectives (Chokkalingam & Suyanto, 2004).

However, the translation of this legal framework into tangible, consistent, and effective on-the-ground outcomes has been profoundly challenged, a point extensively corroborated by the analyses within the source documents (Heilmann, 2015; Koh, 2008; Mushkat, 2014; Tan, 2015; Varkkey, 2013; Chokkalingam & Suyanto, 2004).

Secondly, the AATHP's structural design, notably the absence of robust punitive measures or sanctions for non-compliance, weakens its deterrent effect. This aligns with broader critiques of international environmental agreements that rely heavily on voluntary compliance and peer pressure. The "ASEAN Way," characterized by principles of non-interference, national sovereignty, and consensus-based decision-making, further complicates strong regional action (Heilmann, 2015). While fostering diplomatic harmony, this approach can dilute the impetus for holding member states accountable and may prevent the adoption of more stringent, legally enforceable regional standards (Varkkey, 2013).

Thirdly, the persistent failure to adequately address the complex socio-economic and political root causes of land and forest fires—such as rural poverty, land tenure conflicts, unsustainable agricultural practices by



smallholders, and the role of large corporations in land clearing—means that the AATHP often tackles symptoms rather than the underlying disease (Mushkat, 2014; Tan, 2015; Varkkey, 2009).

The Second Roadmap (2023-2030) offers a renewed opportunity, but its success will hinge on the sustained commitment and tangible actions of all member states, particularly in resource mobilization and strengthening national policies and their enforcement (Heilmann, 2015; Sunchindah, 2015).

Conclusions

This documentary analysis of the AATHP confirms its status as the central, legally binding instrument designed to combat a critical and enduring environmental threat in Southeast Asia. The Agreement establishes a comprehensive framework for regional cooperation, encompassing monitoring, prevention, emergency response, technical collaboration, and institutional support. Subsequent initiatives, most notably the series of regional roadmaps including the latest Second Roadmap (2023-2030), demonstrate an ongoing, adaptive effort by ASEAN Member States to operationalize the AATHP's objectives and improve its effectiveness.

However, the findings presented clearly indicate that despite these efforts, the AATHP's success in mitigating transboundary haze pollution has been limited. The persistence of haze episodes, including severe crises like the one in 2013, underscores a significant gap between the Agreement's legal aspirations and its practical impact.

Ultimately, while the AATHP has facilitated important dialogue, cooperation, and information sharing, and has helped to formally recognize transboundary haze as a shared regional problem rather than a purely domestic one, its ability to achieve a haze-free ASEAN remains contingent on overcoming these deep-rooted challenges. The Agreement provides the vehicle, but its effective journey requires stronger national engines and a more assertive collective navigation system.

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