Globalization and the International Environmental Legal Response: 
The Asian Context

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I. INTRODUCTION

Asia has reaped great benefits from the dramatic lowering of barriers to international 
trade and investment since the Second World War. One tragic incident, however, vividly 
illustrates that the process of integration into the world trade system has serious costs. The 
Bhopal gas disaster, generally regarded as the worst industrial calamity ever, occurred nineteen 
years ago, but its devastating consequences continue to reverberate today.

At midnight on December 3, 1984, over forty tons of highly poisonous methyl isocyanate 
gas leaked out of the pesticide factory of Union Carbide, now Dow Chemical, in Bhopal, India,

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1. See Michel Camdessus, Former Managing Director of the International Monetary Fund, Remarks at the 
resulting in an estimated 5,000 deaths in the immediate aftermath. By 2001, exposure-related diseases raised the death toll to 16,000 and those injured to half a million. Still today, nearly a dozen people die every month as a direct result of this incident. Those who have survived are said to “face a fate worse than death,” suffering from a wide range of physical and mental disabilities such as acute respiratory problems, brain damage, clinical depression, menstrual chaos, and breakdown of immunity—ailments collectively referred to as “chemical AIDS.” The lingering physical and mental anguish has been further exacerbated by the loss of capacity to work, economic deprivation, and the resulting erosion of dignity and livelihood. Moreover, abandoned chemical tanks continue to contaminate the soil and drinking water, causing irreparable damage to the human and physical habitat.

Incidents such as the Bhopal disaster have helped cultivate an extremely mixed attitude towards globalization in both the policy arena and general public. Globalization’s material benefits notwithstanding, it has increasingly come to be viewed as a process of economic enhancement involving a high degree of environmental disruption and, thus, potentially unsustainable development. As elaborated in the first section of this article, however, recently adopted international documents reflect a determined effort to reshape the process of globalization by re-orienting it towards goals such as the promotion of human rights, human needs, social justice, and individual empowerment.

The ideological shift demonstrated in these documents carries significant implications for the Asian region, where the tension between the imperatives of rapid economic growth and environmental preservation manifests itself in many forms, in both the physical (e.g., severe pollution) and social (e.g., communal fragmentation) domains. This tension and the need for balance among conflicting goals are the central themes of the present article. The second section brings this into focus by examining perceptions of the evolving phenomenon of globalization, and some of the challenges it poses for the Asian region. Essentially, three issues loom large on

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3 Bhopal Gas Disaster, supra note 2.


5 Bhopal, supra note 4.

6 See Bhopal Gas Disaster, supra note 2. Today, more than 20,000 people live close to the factory site and a second generation of children is exposed to the impacts of a toxic industrial legacy on their lives and health. Id.

7 The term “globalization” lacks a precise definition. See David Held & Anthony McGrew, Globalization, in OXFORD COMPANION TO POLITICS OF THE WORLD (Joel Krieger et al. eds., 2nd ed. 2001), available at http://www.polity.co.uk/global/globocp.htm (last visited Feb. 27, 2003), for a “basic” definition: “a process (or set of processes) which embodies a transformation in the spatial organization of social relations and transactions, expressed in transcontinental or interregional flows and networks of activity, interaction, and power.” Id.
the policy agenda: (1) the inevitability of smoothly integrating individual countries into the
global economy; (2) the importance of engaging in capacity building as a means to addressing
financial risks and poverty; and (3) the necessity to recognize the crucial role played by civil
society. These issues are outlined and explored from a normative perspective. Finally, the third
section of the article critically assesses the option of “regionalization” in Asia as a possible
mechanism for mediating some of globalization’s negative effects.

II. A NEW GLOBAL ORIENTATION—GLOBALIZATION WITH A HUMAN FACE

To the chagrin of its ardent proponents, globalization has been blamed for much of the
world’s political and socio-economic injustices, as well as for destabilizing the delicate balance
between human enterprise and the environmental resource base. Thus, a recent analysis by
globalization opponents contends that the forces of transnationalism have led to greater poverty,
less fulfillment of basic need, wider inequality between and within nations, increased
concentration of corporate power, reduced social services, and decreased leverage of labor vis-à-
vis global capital. Others warn that globalization has set in motion a downward social and
ecological spiral and an erosion of state sovereignty to the detriment of the common good. The
“social” critique of globalization has also entered the international political arena, propounding a
new/old ethos of people-centered globalization.

Specifically, arguments are advanced that “globalization with a human face” should be
grounded in the following objectives and values: sustainable development, enabling a life of
dignity for all, global responsibility and solidarity, social justice and inclusion, and human rights.
Several major international documents reflect elements of this trend, giving rise to “soft law”
prescriptions stipulating that, in order to achieve a just distribution of the benefits of
globalization, its negative spillovers (especially the effects on the provision of public goods, such
as social services, a healthy environment, and pluralistic cultural expression) have to be
mitigated through the reform of governance at the international, regional, and local levels.

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Ultimately, the purpose is to ensure that those currently not at the forefront of the globalization thrust gain a voice in the political processes affecting their choices and well-being.

A. Copenhagen Social Summit + 5

Notably, concerns about the effects of globalization dominated the United Nations General Assembly’s Special Session on the Five-Year Follow-up to the Copenhagen Social Summit, held in Geneva from July 1 to 7, 2000. The Annex to Resolution S-24/2, Further Initiatives for Social Development (outcome document), acknowledges that globalization and accompanying technological advances “offer unprecedented opportunities for social and economic development. At the same time, [however,] they continue to present serious challenges, including widespread financial crises, insecurity, poverty, exclusion and inequality within and among societies.” The Social Summit +5 outcome document also emphasizes that considerable obstacles to further integration and full participation in the global economy confront developing countries (DCs), the least-developed countries (LDCs), and countries with economies in transition (EITs). The General Assembly notes, “[u]nless the benefits of social and economic are extended to all countries, a growing number of people in all countries and even entire regions will remain marginalized from the global economy.”

In addition, the outcome document outlines several actions and initiatives that governments should take to help implement the commitment expressed by the U.N. in Copenhagen. The General Assembly calls upon governments to ensure both that “people are placed at the centre of development” and that they have “the right and the ability to participate fully in the social, economic and political life of their societies.” Furthermore, the outcome document emphasizes “the crucial role of Government in advancing people-centred sustainable development through actions to develop and maintain increased equality and equity,” thereby ensuring the realization of the basic rights affirmed in numerous international instruments and declarations. To this end, the General Assembly entreats governments to maintain “effective,


14 Id. ch.1, para. 4.


17 Id.

18 Id. ch. 3, para. 2.

19 Id. ch. 3, para. 4.

20 Id. ch. 3, para. 5.
transparent and accountable governance and democratic institutions that are responsive to the needs of people."\textsuperscript{21}

In its recommendations for easing the pains of globalization, the Social Summit +5’s outcome document exhorts the “international community, particularly creditor and debtor countries and pertinent international financial institutions, to identify and implement development-oriented and durable solutions to external debt and debt-servicing problems of developing countries.”\textsuperscript{22} The outcome document also devotes special attention to capacity building efforts by “[f]acilitating the transfer to developing countries and countries with economies in transition of appropriate technology, know-how, knowledge and information,”\textsuperscript{23} as well as increasing and improving access of products and services of DCs/LDCs/EITs to international markets.\textsuperscript{24} More generally, the Social Summit +5 highlights the enhancement of “positive interaction among environmental, economic and social policies as . . . essential for the successful attainment of the Summit goals.”\textsuperscript{25} The Social Summit +5 outcome document thus lends high-level institutional support to the notion that globalization cannot be exclusively focused on economic growth, but should incorporate a broader social, political and environmental vision.

\section*{B. UNDP Human Development Report 2000}

The quest for such a vision manifests itself in the coupling of globalization with a radically refurbished, human rights-based, and social justice-centered concept of development. The latter is cogently articulated in the \textit{Human Development Report 2000 (Development Report)} issued by the United Nations Development Programme (UNDP).\textsuperscript{26} The Development Report is designed to advance dialogue on one of the main challenges of the new millennium: how to secure both human rights and human development for all people in all countries. Furthermore, the Development Report illustrates how the movement for human rights and the movement advocating human development are not just inextricably linked, they exist synergistically—they

\begin{itemize}
  \item \textsuperscript{21} \emph{Id.} para. 3.
  \item \textsuperscript{22} \emph{Id.} para. 6.
  \item \textsuperscript{23} \emph{Id.} para. 11.
  \item \textsuperscript{24} \emph{Id.}
  \item \textsuperscript{25} \emph{Id.} para. 7.
  \item \textsuperscript{26} U.N. Development Programme, \textit{Human Development Report 2000} (2000), available at http://hdr.undp.org/reports/global/2000/en (last visited Feb. 27, 2003) [hereinafter UNDP, \textit{Development Report}]. Human development is defined as “the process of enlarging people’s choices, by expanding human functionings and capabilities.” \emph{Id.} at 17. In addition to developing the “three essential capabilities” (to lead a long and healthy life, to be knowledgeable and have access to the resources needed for a decent standard of living), the realm of development extends to other highly valued areas such as participation, security, sustainability, and guaranteed human rights. \emph{Id.} “In the ultimate analysis, human development is development of the people, for the people and by the people.” \emph{Id.}
depend on each other in order to take root and flourish in divergent societies.\textsuperscript{27} Up until the last decade, the movements paralleled each other in both concept and action.\textsuperscript{28} In recent years, however, the human development agenda and the human rights agenda have been steadily converging.\textsuperscript{29} The \textit{Development Report} notes that when human rights and human development are “[u]nited in a broader alliance, each can bring new energy and strength to the other.”\textsuperscript{30} More specifically, the report continues:

The tradition of human rights brings legal tools and institutions—laws, the judiciary and process of litigation—as a means to secure freedoms and human development.

Rights also lend moral legitimacy and the principle of social justice to the objectives of human development. The rights perspective helps shift the priority to the most deprived and excluded, especially to deprivations because of discrimination. It also directs attention to the need for information and political voice for all people as a development issue—and to civil and political rights as integral parts of the development process.

Human development, in turn, brings a dynamic long-term perspective to the fulfillment of rights. It directs attention to the socio-economic context in which rights can be realized—or threatened. The concepts and tools of human development provide a systematic assessment of economic and institutional constraints to the realization of rights—as well as of the resources and policies available to overcome them. Human development thus contributes to building a long-run strategy for the realization of rights.

In short, human development is essential for realizing human rights, and human rights are essential for full human development.\textsuperscript{31}

Globalization, the \textit{Development Report} argues, must be about human rights, and not solely capital and trade.\textsuperscript{32} Human rights principles and protection need to be incorporated into rules and institutions of globalization. In particular, given the dwindling autonomy of the State and the quickening pace of international economic integration, bodies such as the World Trade

\textsuperscript{27} \textit{Id.} at 2.
\textsuperscript{28} \textit{Id.}
\textsuperscript{29} \textit{Id.}
\textsuperscript{30} \textit{Id.}
\textsuperscript{31} \textit{Id.}
\textsuperscript{32} See \textit{id.} at 9.
Organization (WTO) and global corporations must take greater responsibility to ensure that their policies and practices reinforce human rights.\textsuperscript{33} The Development Report notes that rules governing international trade have developed in a patchwork manner, separate from human rights and environmental agreements.\textsuperscript{34} The Development Report therefore calls for economic governance that delivers social justice. It contends that multilateral trade agreements have serious consequences on human well-being and human rights, and therefore, their impacts must be assessed as part of trade negotiations.\textsuperscript{35}

Finally, the Development Report suggests that the increasingly integrated world of the 21st Century should move from a state-controlled model to a multi-actor system of accountability that specifically includes transnational corporations (TNCs).\textsuperscript{36} As the entities responsible for approximately one-quarter of global production,\textsuperscript{37} TNCs should bear the corollary responsibility of tailoring their practices to help realize human rights (as well as labor and environmental standards).\textsuperscript{38} Similarly, the Organization for Economic Cooperation and Development (OECD) at its Ministerial Meeting in June 2000, recommended that multinational enterprises adopt a set of principles and standards for responsible business conduct—the OECD Guidelines for Multinational Enterprises.\textsuperscript{39} The OECD Guidelines encourage enterprises to “[r]espect the human rights of those affected by their activities,”\textsuperscript{40} and “[c]ontribute to economic, social and environmental progress with a view to achieving sustainable development.”\textsuperscript{41}

\textsuperscript{33} See id.

\textsuperscript{34} Id. at 86.

\textsuperscript{35} See, e.g., id. at 83-85. The Development Report criticizes the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) for the possibility that it will raise the price of medicine, placing many life-saving drugs out of reach of the poor, and for failing to protect the traditional knowledge of indigenous communities. Id. at 84. The Development Report is also critical of the secrecy of many international trade and economic negotiations, an approach that both conflicts with a rights-based approach to transparency in economic policymaking and also undermines accountability. Id. at 85.

\textsuperscript{36} See id. at 79.

\textsuperscript{37} See id.

\textsuperscript{38} See id. at 80.


\textsuperscript{40} Id. at 140.

\textsuperscript{41} Id.
C. The U.N. Global Compact

The Global Compact between the U.N. and the world business community, proposed by U.N. Secretary-General Kofi Annan at the 1999 World Economic Forum in Davos, echoed sentiments expressed by both the OECD and the Development Report. Designed to “ensure that the global market is embedded in broadly shared values and practices which reflect global social needs, and that all the world’s people share the benefits of globalization,” the Global Compact calls on business leaders to embrace and enact principles conducive to responsible development. In the area of human rights, the Global Compact “asks” businesses to support and respect the protection of international human rights within their sphere of influence, and ensure their own corporations are not complicit in human rights abuses. Regarding labor standards, the Global Compact also “asks” the international business community to uphold four basic principles: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of compulsory labor; the effective abolition of child labor; and the elimination of discrimination in employment and occupation. With respect to the environment, the Global Compact “asks” companies to support a precautionary approach to environmental challenges; undertake initiatives to promote greater environmental responsibility; and encourage the development and diffusion of environmentally friendly technologies. All of the Global Compact’s nine principles are predicated on the assumption that profit maximization cannot be pursued productively if not harmonized with broader social, political, and environmental goals.

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42 See The Global Compact, Overview, at http://www.unglobalcompact.org (last visited Feb. 27, 2003). The Global Compact was formally launched as a coalition of global leaders from the world of business, labor, and civil society organizations at the U.N. Headquarters on July 26, 2000. Id.

43 See Kofi A. Annan, A Deal with Business to Support Universal Values, INT’L HERALD TRIB., July 26, 2000, at 8.


45 Id. princs. 1-2.

46 Id. princs. 3-6.

47 Id. princs. 7-9.

48 See The Global Compact, Overview, supra note 42.
The First Global Ministerial Environment Forum, held in Malmo, Sweden, from May 29 to 31, 2000, also issued a call for a greater commitment by the private sector vis-à-vis the environment. The Malmo Ministerial Declaration acknowledges the emergence of the private sector as “a global actor that has a significant impact on environmental trends through its investment and technology decisions,” and implores businesses to “engender a new culture of environmental accountability.” The ministers suggested that such accountability could be achieved through the “application of [a] polluter-pays principle, environmental performance indicators and reporting, and the establishment of a precautionary approach in investment and technology decisions.” Similarly, the Malmo Ministerial Declaration emphasizes the importance of civil society in addressing environmental purpose and values. In particular, the ministers stressed the critical role that civil society plays in “bringing emerging environmental issues to the attention of policy makers, raising public awareness . . . and promoting transparency as well as non-corrupt activities in environmental decision-making.” The significance of the ministers’ stance lies in the avowed willingness to embrace decentralized structures that derive their vigor from active participation of all stakeholders, particularly those at the grass-roots level. The world’s environment ministers also took special notice of the threats posed by globalization to cultural diversity and traditional knowledge, especially to indigenous and local communities. They also recommended that in decision-making concerning the management of the environment and natural resources greater emphasis be given to the “gender perspective.”

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49 See U.N. Environment Programme, Malmo Ministerial Declaration, at http://www.unep.org/malmo/malmo_ministerial.htm (last visited Feb. 27, 2003). The Malmo Forum was “held in pursuance of United Nations General Assembly resolution 53/242 of 28 July 1999 to enable the world’s environment ministers to gather to review important and emerging environmental issues and to chart the course for the future.” Id.

50 See id. paras. 11-13.

51 Id. para. 11.

52 Id.

53 See id. paras. 14-20.

54 Id. para. 15.

55 Id. para. 18. The ministers lauded recent efforts on the international scene to acknowledge the potential perils of globalization to indigenous cultures. “[W]e welcome the proclamation by the United Nations General Assembly of the year 2001 as the International Year of Dialogue among Civilizations.” Id.

56 Id. para. 19. This provision reflects the recognition of the vital role played by women in environmental management and development, rendering their full participation essential to achieve sustainable development. See
Additionally, they highlighted the need for independent and objective media at all levels in order to enhance awareness and develop shared global environmental values. Finally, the Malmo Ministerial Declaration acknowledged the important role of governments in addressing environmental challenges.

E. The Critical Ecosystem Partnerships Fund

The broadening of the developmental agenda to encompass social, political, and environmental dimensions has not been reflected in international legal documents alone. At the more practical level, specific initiatives have been undertaken to promote the goal of a wider policy focus and more flexible decision-making structures. A noteworthy recent example of a global project with an “environmental face” is the 150 million-dollar Critical Ecosystem Partnership Fund. A joint venture of the World Bank, the Global Environment Facility, and Conservation International, the fund is designed to “better safeguard the world’s threatened biological hotspots in developing countries.” Specifically, it “will support projects such as


57 Id. para. 20.
58 Id. para. 22.
61 The Global Environment Facility (GEF) is an international organization set up after the Rio Earth Summit to provide grants and concessional funding to developing countries and economies in transition for projects to protect the global environment. For example, GEF is the financial mechanism for the Convention on Biological Diversity and receives contributions from countries worldwide. As of February 24, 2003, there are 174 GEF member countries. See generally The Global Environment Facility, at http://www.gefweb.org (last visited Feb. 27, 2003).
63 See Norman Myers et al., Biodiversity Hotspots for Conservation Priorities, 403 Nature 853, 854 tbl.1 (Feb. 27, 2000), available at http://www.nature.com (last visited Feb. 27, 2003). Twenty-five biodiversity hotspots have been identified. In the Asia Pacific region, these hotspots include: Indo-Burma, the Philippines, Mountains of South-Central China, Sundaland (in Indonesia, Malaysia, Brunei), Wallacea (in Eastern Indonesia), Western Ghats
training, transnational planning, local dialogue with extractive industries, conflict resolution, priority setting and consensus building, strengthening indigenous organizations, and facilitation of partnerships between the private sector and protected areas."

As demonstrated in this section, while globalization has not been discarded as a developmental goal, its legitimacy increasingly hinges on policymaking that places social and environmental costs firmly on the agenda and recognizes the primacy of human rights and stakeholder autonomy. Moreover, it may be argued that the international instruments highlighted above attest to the emergence of “international soft law” prescribing norms consistent with such a view. This normative framework, in turn, is buttressed by specific high-level multi-party initiatives like the Critical Ecosystem Partnership Fund.

III. THE ASIAN PERSPECTIVE

Perhaps more than any other part of the world, Asia represents a firm commitment to rapid economic growth through policies designed to capitalize on the trend towards globalization. This commitment has been expressed in unambiguous terms at the official level and has been pursued, on the whole, with remarkable success. As a result of its externally-oriented economic strategies, the region (with some exceptions) has been able to undergo industrialization at a pace unseen elsewhere and in many instances has attained living standards comparable with those prevailing in leading developed countries.

The almost single-minded quest for material transformation, however, has led to imbalances which are not only undesirable in the short-term but may also prove detrimental to smooth long-term economic progress. Wide disparities in income and wealth, for example, are

of India and the Island of Sri Lanka, Southwestern Australia, New Zealand, and Polynesia/Micronesia. Id.

Critical Ecosystem Partnership, supra note 59.

Id.

For discussion on the effects of globalization on the specific issue of protection of human rights in East Asia compare Yash Ghai, Rights, Social Justice and Globalization in East Asia, in THE EAST ASIAN CHALLENGE FOR HUMAN RIGHTS 241-63 (Joanne R. Bauer & Daniel A. Bell eds., 1999) (maintaining that integration of markets undermines economic and social rights), with Kevin Y. L. Tan, Economic Development, Legal Reform and Rights in Singapore and Taiwan, in THE EAST ASIAN CHALLENGE FOR HUMAN RIGHTS 264-84 (Joanne R. Bauer & Daniel A. Bell eds., 1999) (contending that globalization will usher greater respect towards human rights in the region; economic development will eventually improve the rights situation by raising both rights consciousness and providing the political space for activism on behalf of rights). See generally Alex Y. Seita, Globalization and the Convergence of Values, 30 CORNELL INT’L L.J., 429, 491 (concluding that “globalization has contributed to the convergence of basic values among nations towards the liberal democratic values of market economies, democratic governments and human rights. . . . For people in different countries globalization has contributed to an expanding consciousness that prefers democratic governments and human rights over authoritarian regimes that repress freedoms.”).

common in Asia and policy-making styles are oriented toward the authoritarian end of the spectrum.\textsuperscript{68} This detracts from social cohesion and undermines policy learning. Equally noteworthy is the worrisome scale of environmental degradation,\textsuperscript{69} which has potentially serious adverse consequences, including, paradoxically, serious economic damage.\textsuperscript{70} This side of the globalization equation has recently been accorded some long overdue attention, highlighting the need for a more balanced policy agenda in the region.

As matters stand, efforts to “humanize” globalization in Asia have not yet yielded concrete results.\textsuperscript{71} These efforts continue to focus primarily on integrating individual countries into the world trade system. Attention, however, has begun to shift towards capacity-building as a mechanism to address concerns about financial risks and poverty, and there have been some attempts to address, in practical terms, the positive role of civil society in environmental decision-making.\textsuperscript{72}

A. Integration into the Global Economy

The ramifications of globalization for the Asian region were the subject of a special study by the U.N. Economic and Social Commission for Asia and the Pacific (ESCAP), titled Policy Issues for the ESCAP Region: Development Through Globalization and Partnership in the Twenty-First Century: An Asia-Pacific Perspective for Integrating Developing Countries and


\textsuperscript{70} ASIAN DEVELOPMENT BANK, EMERGING ASIA: CHANGES AND CHALLENGES 222 (1997). The economic costs of environmental degradation in Asia are estimated to range from one to nine percent of national GNPs. Id.


\textsuperscript{72} See, e.g., ESCAP, State of the Environment, supra note 69, at ch. 14 (providing an account of the increased activity of non-governmental organizations (NGOs) in the region and the improvement of linkages between these organizations and governmental institutions—including concrete examples of the institutionalization of NGO-government partnerships).
Not surprisingly, the ESCAP Study focuses on the international trading system and the WTO. In particular, the Study emphasizes that in order to maximize the advantages and minimize the negative effects of globalization and growing interdependence it is imperative for developing countries and economies in transition in Asia to integrate into the multilateral trading system, on a fair and equitable basis, without further marginalization. The ESCAP Study suggests a number of ways in which this may be achieved.

First, the ESCAP Study proposes that the WTO, with its improved and enhanced rule-based system, play a pivotal role in the integration of developing countries into the world trade system by promoting an international trade regime that pays adequate attention to the special needs of developing countries. To date, however, a number of imbalances and asymmetries in the negotiations and implementation of WTO agreements have prevented developing countries from successful integration. Recognizing these imbalances, the ESCAP Study issues a set of

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73 This study was examined at ESCAP’s 56th Commission Session held in Bangkok from June 1 to 7, 2000. For a summary of the findings and recommendations of the Study, see ESCAP, Policy Issues for the ESCAP Region: Development through Globalization and Partnership in the Twenty-First Century (May 2, 2000), at http://www.unescap.org/56/e1158e.htm (last visited Feb. 27, 2003) [hereinafter ESCAP Study].

74 See id. paras. 16-17.

75 See id. paras. 11-13. The ESCAP Study notes that, while the region’s developing countries (DCs) have participated actively in the global economy in the areas of trade, investment and finance, the levels and pace of their integration have differed, owing to a wide diversity in their economic and socio-political circumstances. Thus, for example, the overall level of integration of South Asia is much lower than that of East Asian and Southeast Asian countries. Id. para. 11.

76 See id. para. 14. Given their limited capacity and other formidable constraints that are placed on them as they try to participate in the globalization and regionalization processes, economies in transition (EITs), as well as least-developed countries (LDCs) in the region have remained largely unintegrated. Id.

77 See id. para. 16.

78 See id. paras. 17-19.

79 Id. para. 19. These imbalances or asymmetries include: (1) the fact that, despite successful negotiations in areas of importance to developed countries (e.g., telecommunication services, information technology products and intellectual property rights), developing countries have yet to receive the benefits of free trade in labor services, primary products and textiles in which they have comparative advantage; (2) the emergence of new forms of trade barriers (e.g., anti-dumping measures, technical and hygiene standards, and subsidy investigations) that hinder developing countries’ access to developed countries’ markets; and (3) the high costs of participating effectively in WTO negotiations, taking cases to the Dispute Settlement Body, and implementing trade agreements. Id. Nonetheless, participation of developing countries in the WTO dispute-settlement system has increased considerably in recent years. Between 1995 and 1999, developing countries have acted as complainants in approximately 35 proceedings and have been represented in approximately 100 disputes as either complainants or defendants during the same period. Most active has been India who participated as complainant, defendant or third party in more than 20 WTO disputes during that period. See generally Dispute Resolution, Overview of the State-of-Play of WTO Disputes, at http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm (last visited Feb. 24, 2003). Indeed, the growing involvement of developing countries has contributed to the conclusion of the Agreement Establishing the Advisory Centre on WTO Law, signed by 29 WTO member countries on December 1st, 1999, at the WTO’s Seattle Ministerial Conference. See, e.g., Azucena Castillo, Nicaragua: Statement by H.E. Mrs. Azucena Castillo, Minister
specific proposals, aimed at improving the quality of integration of DCs, LDCs and EITs into the world trade system.\(^80\) This authoritative document highlights the fact that Asia continues to regard itself as a beneficiary of globalization and remains committed to the process. Nevertheless, the primary goal at this stage is to maximize integration into the global economy on equitable terms.

Integration into the world trade system would arguably have a positive impact on the environmental policies of developing states. Researchers examining the effects of China’s accession to the WTO contend that membership “will encourage China’s development of sound and transparent environmental policies.”\(^81\) Specifically, publication requirements established under WTO agreements\(^82\) will likely “boost present, limited initiatives in China addressing public notice of proposed environmental laws.”\(^83\) Similarly, WTO agreements mandating that states notify other Members of proposed requirements that might affect international trade, “could significantly intensify pressure on China to expand current initiatives aimed at increasing public access to and participation in the environmental rule-making process.”\(^84\) Such initiatives could include an integrated environmental assessment of trade liberalization agreements (such as the WTO, SPS or TBT) and accompanying policies.\(^85\) Public participation, in turn, “can be expected to encourage increased efforts to ensure sustainable use of natural resources and the pursuit of other environmental objectives.”\(^86\) In addition, WTO agreements urging members to base

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\(^80\) See ESCAP Study, supra note 73, para. 36. Proposals include: bringing the international dispute settlement mechanism within the financial reach of poor countries, extending to them special and differential treatment in the accession process, allowing duty and quota free market access for exports, incorporating debt relief for LDCs, and increasing the quantum and speed of technical assistance. Id.


\(^83\) Ferris & Weiner, supra note 81.

\(^84\) Id.

domestic requirements upon international yardsticks could considerably expand China’s reference to, and employment of, international standards in its domestic environmental regulatory regime.

Most scholars expect China to become one of the most important players in the WTO regime, potentially playing a major role in future discussions on trade, the environment, and sustainable development. Although China has one of the world’s strongest economies, it also is the “largest developing country” and shares similar concerns with other developing countries. As such, when China advocates issues and positions at the WTO table, it is likely to emphasize the “need for developing exporting countries to have early access to information and opportunity to comment on environmental measures as they are being developed in other countries.” China will also stress that developing countries receive the necessary technical assistance for implementing WTO agreements. While China’s size and political structure may distinguish it from its neighbors, it has consistently reacted to globalization issues in a manner that reflects its status as a developing country.

B. Capacity-Building

As countries in the Asian region make their ways through the rocky process of integration into the world trade system, economic woes have heightened concerns about the vulnerability of

86 Ferris & Weiner, supra note 81.

87 See, e.g., SPS Agreement and TBT Agreement, supra note 82 (encouraging Member States to use international standards with respect to products, environmental management, and environmental quality, as well as standard harmonization and mutual recognition).

88 See Ferris & Weiner, supra note 81. See also Michael Ma, Mainland Urged to Lift “Green” Trade Credentials, SOUTH CHINA MORNING POST, November 15, 2001, at Business 6 (referring to statements made by China’s EPA deputy chief that with entry to WTO, foreign trade departments needed to improve environmental protection requirements especially since “WTO tended to favor the side with ecological superiority”).


91 Id.

92 See, e.g., Wang Yingfan, Statement by H.E. Ambassador Wang Yingfan, Permanent Representative of China to the UN, at the 26th Annual Meeting of Foreign Ministers of G-77 (Sept. 20, 2002), at http://www.china-un.ch/eng/350140.html (last visited Feb. 27, 2003) (pledging China’s continued support to the G-77 “in the common endeavor to steer international development cooperation in a direction that is more favorable to the development of the developing countries” and in “making sure that developing countries can fully benefit from globalization”).
the region to the financial risks associated with globalization. Analysts have highlighted the need for economic and financial surveillance by appropriate international institutions to deal with the adverse impact of financial market volatility. Again, regional experts made calls for the effective involvement of DCs/LDCs/EITs in the international economic decision-making process, as well as for the prompt implementation of the enhanced Heavily Indebted Poor Countries (HIPC) debt relief initiative. These suggestions reflect the desire to participate in the reshaping of the international financial architecture in order to ensure that Asia’s integration into the global economy does not expose the region to painful shocks.

A recent session of the U.N. Commission on Sustainable Development also expressed the importance of DC/LDC/EIT involvement in the international economic decision-making process. In this session, representatives from Asia joined the “G-77/China” group in urging donor countries to cancel or substantially reduce debt burdens, and meet their Agenda 21 financial commitments, thereby enabling struggling countries to promote sustainable development and, most important, build the capacity necessary for the eradication of poverty.

As stated in ESCAP’s review of sustainable development policies, State of the Environment and Sustainable Development Policy, these goals have assumed increasing significance. The trend is reflected in the evolving institutional agenda

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94 See id. paras. 25-26.

95 Committee on Legal Aspects on Sustainable Development: Fourth Report 10, n.20 (2000), Int’l Law Ass’n London Conf. (2000), at http://www ila-hq.org/pdf/Sustainable%20Development/SustDev.pdf (last visited Feb. 27, 2003). “The HIPC initiative was established in 1996 through an International Monetary Fund (IMF) Executive Board instrument creating a trust for financing debt-rescheduling operations. The joint IMF-World Bank HIPC initiative, which was substantially broadened at the G7 meeting of finance ministers in Cologne in June 1999, aims at helping developing countries to reduce debt to levels that enable them to meet their foreign obligations without jeopardizing economic development.” Id.


99 See ESCAP, State of the Environment and Sustainable Development Policy para. 36 (June 29, 2000),
demonstrated in the *Review*. For example, the *Review* notes: “poverty reduction in a socially, environmentally and economically acceptable manner is the biggest challenge facing the region.”\(^{100}\) Thus, regional action that formulates and implements a sustainable development strategy that attacks poverty is required.\(^{101}\) While acknowledging the progress that has been made toward this regional goal, the *Review* stresses that inadequate attention has been paid to social equity and governance.\(^{102}\) Specifically, the numerous institutional and organizational arrangements and mechanisms for environmental management set up by the countries of the Asian region are still insufficient to meet the challenges of integrating poverty reduction, social mobilization, and sustainable development into a cohesive policy.\(^{103}\) The *Review*, in noting the importance of this objective, stresses the role of effective governance: “No poverty reduction strategy can succeed unless, in the first place, there is effective management at all levels and management relations in administration and society are fully streamlined.”\(^{104}\)

C. *The Role of Civil Society*

Of special importance in this regard is the role that civil society plays in the context of the globalization of both economies and norms. Indeed, the authors of a study on “Civil Society and the Future of Environmental Governance in Asia,”\(^{105}\) argue that the “growth and effectiveness of [Asian] civil society—and the process of democratization that nourish it—are likely to be the most significant force in the emergence and implementation of [a new paradigm of ecologically sustainable and equitable development in Asia].”\(^{106}\) Specifically, the quest for a new ethics-based approach to global (and national) governance presents two major implications for the potential role of Asian civil society.\(^{107}\)

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\(^{100}\) Id. para. 36.

\(^{101}\) See id. para. 1.

\(^{102}\) Id. paras. 35-36.

\(^{103}\) See id.


\(^{106}\) See id. at Abstract.

\(^{107}\) Id. at pt. II.
The progression towards increasingly democratic governance in Asia implies a concomitant strengthening of civil society. A stronger civil society will, in turn, likely have a profound influence on environmentally sustainable and equitable development. First, Asia NGOs, “who are already highly concerned about social and environmental impacts of globalization, will be increasingly linked in with a ‘global public policy network’ which seeks a different, ethics-based approach to global market governance.” Consequently, “there is likely to be increasing pressure on all governments to enact global standards and norms.” Such pressure will encourage governments to both increase their accountability on issues related to the environment and human rights, and also work towards a new equity-based approach to development. Second, governments in Asia will “increasingly face contradictory external pressures, viz, to be competitive in global markets yet raise their environmental and human rights standards.”

The recommended course for governments in the Asia-Pacific region is therefore to include a broad range of stakeholders (both business and civil society) that can potentially function as a “crucial driver for paradigm and policy change.” Since Asia is not culturally homogeneous, different concepts and models of civil society engagement are likely to emerge (where provided with the necessary political space). A number of scholars nonetheless conclude that “there is reason to expect that both NGOs and business in Asia will continue to press for a greater role in policy making and that NGOs in particular will demand some form of a strategic stakeholder engagement model.”

Some progress has thus been made in confronting the challenges posed by globalization in the region. As noted earlier, at the conceptual level, Asia has positioned itself for the era of transnationalism by (1) seeking to effect a smooth integration of its member countries into the global economy; (2) boosting institutional capacity to address financial risk and poverty; and (3) engaging civil society in efforts to maximize information flows, enhance social stability and improve governance. While the gap between policy designs and policy reality may be

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108 Id. at Abstract.

109 Id.

110 See id.

111 Id. The contradictory external forces faced by Asian countries include the pressure “not to raise industry environment standards for fear of losing foreign investment and trade competitiveness” and the pressure “to accept higher standards set by North American or European States as conditions of market entry, or demanded by Western consumers via free markets.” Id. at pt. II.

112 See id. at Conclusion. These stakeholders should “span[] from labor, environmental and community groups to professionals to policy-oriented thinktanks, advocates and critics.” Id.

113 Id.

uncomfortably wide, the seeds of action have apparently been sown and there are reassuring signs of momentum particularly with regards to the first goal.

IV. THE REGIONALIZATION OPTION

Regionalization offers another way for Asia to mitigate the potentially adverse effects of globalization, notably environmental degradation, by providing collective mechanisms for addressing problems and coordinating responses. In the wake of dwindling international resources, regional cooperation also provides efficient means for training, capacity building, implementing guidelines, and sharing the findings of studies on special topics, experiences and good practices in Asia. Unsurprisingly, therefore, UNEP’s *Global Environmental Outlook 1997* reports “[s]ince the Earth Summit in 1992, there has been great emphasis on regional environmental co-operation [in the Asia Pacific region].”

A. Regional/Sub-regional Cooperative Arrangements

Regional environmental initiatives were designed to address critical environmental issues affecting Asian countries. Specific initiatives have been developed in the areas of land degradation, climate change, freshwater resources, acid depositions, wildlife conservation, management of coastal zones and marine resources, and control of transboundary movements of hazardous wastes. A number of regional cooperative structures have also been set up to deal with issues and problems presented by globalization, including the Strategic Plan of Action on the Environment (1994-98) agreed to by ASEAN’s Senior Officials on the Environment (ASOEN) in 1993 and 1999 respectively; South Asia Co-operative Environment Programme’s (SACEP) Strategy and Programme (1992-96); and the South Pacific Regional Environmental Programme’s (SPREP) Action Plan (1991-95). Given their proclivity towards providing general frameworks, as opposed to concrete objectives, an assessment of the effectiveness of such structures may be difficult. Arguably, however, their mere existence promotes a dynamic of regional collaboration and advance environmental security.

One notable initiative at the sub-regional level is the groundbreaking *Framework for the Northeast Asian Sub-regional Program of Environmental Co-operation*, established by a Meeting of Senior Officials on Environmental Co-operation in Northeast Asia in Mongolia.

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116 See id.

117 Id.

118 Id.

119 Id.
Commentators have commended this effort as a “remarkable initiative at the sub-regional level, promoting environmental collaboration and sustainable development efforts.” Another significant sub-regional success story is the increased co-operative focus in addressing environmental threats in South Asia—as reflected in the Malé Declaration (and action plan) on Control and Prevention of Air Pollution, adopted at SACEP’s 7th Governing Council meeting in April 1998, in Maldives. The South Pacific has arguably crafted the “most developed” of the sub-regional initiatives, as this region is governed by several major multilateral environmental agreements (MEAs) and related arrangements.

B. The Association of Southeast Asian Nations (ASEAN)

ASEAN is the most visible vehicle for regional cooperation in Asia, and its actions, or lack thereof, carry particular significance in evaluating globalization-induced Asian defensive strategies vis-à-vis the environment. Notwithstanding the lack of strong legal instruments binding on ASEAN States, commentators have applauded the ASEAN environmental

120 The North-East Asian Subregional Programme on Environmental Cooperation, at http://www.unescap.org/enrd/environment/Activities/NEASPEC/index.asp (last visited Feb. 27, 2003). The sub-region of Northeast Asia is a vast and diverse area making up over 44 percent of the entire population of Asia and the Pacific region. Northeast Asia is comprised of six major countries: China, Democratic People’s Republic of Korea, Japan, Mongolia, Republic of Korea and the Russian Federation. Id. Another, more recent, significant collaborative enterprise is the agreement forged by Cambodia, China, Indonesia, Malaysia, and the Philippines to carry out a 5-year (2001-2006) project designed to save marine life in the South China Sea and the Gulf of Thailand. Southeast Asia: UNEP Unveils Plan to Reverse Pollution of Seas, UNWIRE, Mar. 29, 2001 at http://www.unfoundation.org/unwire/archives/UNWIRE010329.asp#11 (last visited Feb. 27, 2003).


123 See The Association of Southeast Asian Nations, at http://www.aseansec.org/64.htm (last visited Feb. 27, 2003). ASEAN is composed of ten member countries: Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. Id.

124 One exception to the general absence of regional legal frameworks is the ASEAN Agreement on the Conservation of Nature and Natural Resources, July 9, 1985, available at http://sedac.ciesin.org/entri/texts/asean.natural.resources.1985.html (last visited Feb. 27, 2003). In fact, even this Agreement has failed to obtain the
enterprise as “thorough” and have suggested that ASEAN serve as “a model for other regional organizations.” The ASEAN Strategic Plan of Action on the Environment, 1994-1998, encompasses a full range of strategies, including a regional framework on biological diversity conservation and sustainable use of its components, promotion of protection and management of coastal zones and marine resources, promotion of environmentally sound management of toxic chemicals and hazardous wastes and control of transboundary movement of hazardous wastes, as well as (the recently added) prevention, mitigation and monitoring of land and forest fires and transboundary haze.

Although ASEAN efforts should be commended, given members’ insistence on the rules of “consensus decision-making” and “non interference in a country’s internal affairs,” recently doubts have arisen regarding the “efficacy” of ASEAN, especially with respect to “security” matters. The legitimate argument here is that the organization has not struck a balance between the desire not to infringe upon members’ sovereignty and the need to produce strategically meaningful decisions in an effective fashion. Critics of ASEAN have also pointed out that regional mechanisms to resolve human rights have evolved at an extremely slow pace.

One illustration of the limitations imposed by ASEAN’s non-interference policy is the regional response to the 1997-1998 haze caused by forest fires in the Indonesian provinces of Kalimantan and Sumatra that eventually spread across Southeast Asia. Although an ASEAN necessary number of ratifications and is not yet in force.

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127 See ASEAN’s Challenge Is In Maintaining Consensus, BUSINESS TIMES, Aug. 13, 1997, at 19. Consensus decision-making essentially means that each member country is able to veto any decision at any time.

128 See generally Robin Ramcharan, ASEAN and Non-Interference: A Principle Maintained, 22 CONTEMP. SOUTHEAST ASIA 60, 60-88 (April 2000). The concept of non-interference has been the cornerstone of ASEAN diplomacy. Id. at 60. Basically, since ASEAN is comprised of nations with diverse political systems (democracies, quasi-democracies, states based on Communist ideology), a rule of non-interference has been the convenient rule in this context.

129 “Security” in this context extends to human rights and environmental concerns. In fact, in the context of the ASEAN Regional Forum (ARF)—which is comprised of ASEAN members as well as Australia, Canada, China, the European Union, India, Japan, New Zealand, Papua New Guinea, Russia, the U.S., and most recently North Korea—the concept of “comprehensive” or “cooperative” security goes beyond traditional security issues, like border disputes and military forces. It includes new issues under the security rubric, such as ethnic unrest, natural disasters, drug smuggling, the uncontrolled mass movements of people, and gross violations of human rights. See generally Anand Panyarachun on Future of Security and Stability for ASEAN: A Secure ASEAN Will Take Reinvention, BANGKOK POST, Nov. 22, 2000, at 13.

130 See, e.g., Frank Ching, ASEAN Needs to Revitalize Itself, FAR E. ECON. REV. 28 (Aug. 17, 2000) (noting that since 1993, “only three members [Indonesia, Malaysia, and Thailand] have set up a national human-rights commission, which is considered a necessary prelude to the regional mechanism”).

131 See generally UNEP, Forest Fires in Indonesia, at http://www.unep.org/unep/per/for_fire/indo2.htm
Cooperation Plan on Transboundary Pollution was adopted in 1995, and a Haze Technical Task Force was also established. ASEAN countries stopped short of devising an efficient mechanism for collective intervention or action where a domestic situation had spillover effects on other members of ASEAN. As one commentator pointed out, during the haze crisis, despite the devastating harm to the environment and the injurious effects on human health, the question of individual state responsibility was seldom raised at the political levels. Even after the haze dissipated, no attempt has been made to affirm, in line with established international legal principles, that a state has the “responsibility to ensure that activities within [its] jurisdiction [or control] do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.” Pointedly, no reference to this principle was made in the official statement of ASEAN’s environmental ministers in Singapore (August 1999).

Some have noted, however, that even in situations like the one created by the Indonesian haze, blaming one country is “not consistent with Asian diplomacy and culture.” Such

(last visited Feb. 27, 2003). Most of the 1997-1998 fires were in Indonesia, but many other countries in the region also experienced severe fires, including Malaysia, Singapore, the Philippines, Thailand, and parts of Brunei. Id.


133 Other initiatives include the establishment of an ASEAN Ministerial Meeting on Haze [AMMH] whose most significant outcome has been the adoption of a policy on zero-burning to be implemented and enforced by the relevant States. See Press Release, ASEAN, Joint Press Statement of the Eighth ASEAN Ministerial Meeting on Haze (August 26, 1999), at http://www.aseansec.org/1684.htm (last visited Feb. 27, 2003)[hereinafter Eighth ASEAN Meeting on Haze].


136 See Eighth ASEAN Meeting on Haze, supra note 133.

137 Sornarajah, The Haze Over South-East Asia, supra note 134, at 641.
hesitancy to single out individual polluting states has prompted analogies that liken ASEAN to a big family that acts in accord with the “ASEAN way”—emphasizing harmony and shunning conflict oriented approaches. More generally, others assert that the “ASEAN way” and “its preference for non-interference in the domestic affairs of member States; for non-binding plans, instead of treaties; and for central institutions with relatively little independent initiative or resources” renders ineffective even the most commendable environmental strategies and plans. The arrangements made to contend with the Southeast Asian fires and the resulting haze powerfully underscored the weaknesses endemic to the “ASEAN way.”

The low-key “ASEAN/Asian Way” of proceeding through “concerted unilateral action” has also been judged inadequate when addressing challenges like those posed by the economic and financial crisis of 1997-98—a crisis that has created and exacerbated serious environmental problems in the region (in addition to weakening the capacity and resolve of governments to enforce environmental regulations). Similar criticisms have been lodged against other significant Asian regional bodies. For example, notwithstanding the considerable potential of the Asia Pacific Economic Co-operation (APEC), its rhetoric of sustainable

138 Id.

139 Tay, Southeast Asian Fires supra note 135 at 258.

140 See id. at 256-260. The Agreement on Transboundary Haze Pollution was signed after a long delay on June 10, 2002. The Agreement is not yet in force and is awaiting ratification by at least six members. While designed to be binding, the Agreement will not be punitive in nature. Termsak Chalermpalanupap, Special Assistant to the Secretary-General of ASEAN, The Need of a Legal Framework for ASEAN Integration, Paper Presented at the International Law Conference on ASEAN Legal Systems and Regional Integration 9-9 (Sept. 3-4, 2001), at http://www.asia-europe-institute.org/Events/International-Law-Conference/presenters.htm (last visited Feb. 27, 2003). The Agreement obligates member countries to “cooperate in developing and implementing measures to prevent, monitor and mitigate transboundary haze pollution” but no sanctions are provided for failure to comply with the obligations stipulated. See Press Release, ASEAN, ASEAN Signs Agreement to Tackle Haze (June 10, 2002), at http://www.aseansec.org/10202.htm (last visited Feb. 27, 2003).


142 See Peter Dauvergne, Environmental Crisis, FAR E. ECON. REV., July 15, 1999, at 27 (noting that “corporate and individual efforts to ride out the crisis have meant greater illegal activities. Some firms are dumping more untreated waste into nearby water systems. . . . Anecdotal evidence also points to a sharp rise in illegal fishing, logging and poaching. . . . Migration of urban poor and unemployed to the countryside also has put greater pressures on rural land, water and forest resources as these people struggle to survive. . . . Weak currencies and the need for foreign exchange create powerful incentives to export large quantities of fish, minerals, agricultural goods and plantation products. Forests could well face some of the greatest future pressures.”).

143 Jason Hunter, APEC: Promise or Peril in the Asia-Pacific, 2 ECOLOGICAL ECON. BULL. No. 3 (1997) available at http://www.nautilus.org/papers/enviro/hunter_apec.html (last visited Feb. 27, 2003). APEC has been described as a “club of winners,” particularly as its membership includes “two of the world’s three largest industrial economies, Japan and the US; two of the world’s most populous and rapidly [in the case of one] developing nations, China and Indonesia; and some of the most successful newly industrialized economies, including Singapore, Chile, Hong Kong and Malaysia,” and given estimates that the “region could account for one third of world output by year 2005.” Id. pt. II. In fact, APEC is the only regime that has, at least in mandate and vision, attempted to address the “Rio bargain,” and has the “potential institutional capacity to address the nexus of interrelated trade, economic, technical co-operation and sustainable development issues.” Id.
development has failed to deliver, while its broad agenda of financial and market liberalization may even accelerate natural resource degradation.  

C. The Asia-Pacific Economic Cooperation (APEC) Forum

Despite grand visions, optimistic agendas, and some gains in norm and capacity-building, APEC’s broader sustainable development agenda has had “little to show in terms of implementation or improvements in environmental performance.” Specifically, there has been limited follow-up to APEC’s two main environmental initiatives—the Food, Energy, Environment, Economic Growth, and Population program (FEEEP) proposed at the Organization’s 1995 Economic Leaders Meeting and the 1996 Manila Action Plan on Sustainable Cities, Cleaner Production, and Sustainability of the Marine Environment.

The organization’s shortcomings notwithstanding, it has been suggested that, if APEC makes certain strategic adjustments and adopts and executes several proposed environmental initiatives, APEC may still play a decisive role in addressing the region’s environmental


145 Hunter, APEC: Promise or Peril, supra note 143, pt. 2.


147 See INT’L INST. FOR SUSTAINABLE DEV., APEC Environment Ministerial Meeting on Sustainable Development 9-11 June 1997, 6 SUSTAINABLE DEV. No. 3 (June 13, 1997), available at http://www.iisd.ca/linkages/sd/sd0603.html (last visited Feb. 27, 2003) (noting relevant paragraphs in the Joint Statement which merely direct officials to “continue to be actively involved in the FEEEP process” and endorse strategies for the implementation of the three themes of Sustainable Cities, Cleaner Production and Sustainability of the Marine Environment. The summary reports further notes that “these strategies, with a few exceptions, are limited to information exchange, training seminars and loose commitments to ‘cooperation.”’).

148 See Hunter, APEC: Promise or Peril, supra note 143, pt. 3 (emphasizing the need to integrate the goals of environmental and economic cooperation and coordination).

149 See Esty, supra note 141, at 320-26 (proposing four such initiatives: joint implementation of climate change projects, reduction of agricultural and energy subsidies, sustainable fisheries, and harmonizing standards).
challenges. As argued by Daniel Esty, the Director of the Yale Center for Environmental Law and Policy,

APEC presents a logical institution to be charged with responding to harms that extend throughout the Asia Pacific. It may also help to reinforce weak environmental programmes at the local, national, or global levels. APEC may be better positioned to react than other regulatory authorities, and can act more efficiently than local authorities trying to regulate outside of their jurisdictions by coordinating a multilateral response and foster economy of scale advantages.\footnote{150 Id. at 307.}

The assertion that APEC may be transformed into a more effective institutional mechanism has some theoretical appeal, although the practical constraints cannot be overlooked.

D. Assessing the Regionalism Option

1. Effectiveness

In any event, it should be emphasized that “regionalism” is not the answer to all environmental problems that afflict Asia. Rather, a selective approach might be more appropriate in this context. Specifically, the problems addressed at the regional level should be those that would benefit from a regional policy response, where neither national nor global programs are better positioned to produce successful outcomes.\footnote{151 Id. at 317-18.} The haze that engulfed Southeast Asia, detrimentally affecting human health and the environment in the region,\footnote{152 Haze contains small particulates which can be spread by winds and exacerbate other pollutants. Once it enters into the respiratory system, particulates remain for a long period of time. For further details of the harm caused to human life as well as to the flora, fauna and ecosystem. See generally Information on Regional Haze, U.S. Environmental Protection Agency, http://www.epa.gov/oar/oaqps/regusmog/infhaze.html (last visited Feb. 27, 2003) (providing general information on regional haze).} coupled with the inability of Indonesia (where the fires had originated) to tackle the problem,\footnote{153 See Simon Tay, Seeing Through the Haze, SINGAPORE INST. OF INT’L AFFAIRS, at http://www.siaonline.org/article/seeing%20Through%20the%20Haze.doc (last visited Feb. 24, 2003), (noting Indonesia’s reluctance to enforce its own laws because of factional interests and corruption). See also Chang Li Lin & Ramikishen S. Rajan, Regional Versus Multilateral Solutions to Transboundary Environmental Problems: Insights from the Southeast Asian Haze 16 (October 2000), available at http://www.adelaide.edu.au/cies/0041.pdf (last visited Feb. 24, 2003) (pointing to “Indonesia’s internal policy failures, lack of policy coordination, inept management and political compulsions.’”).} exemplify the necessity for regional action.\footnote{154 Lin & Rajan, Regional Versus Multilateral Solutions, supra note 153, at 14. The failure of “regionalism” in this case may indicate that “regional countries affected by a much larger neighbour may find it easier to tackle the issue at a global level.” Id. The authors further suggest that a global institution (a mooted World Environment Organization) would have been able to perform a mediating function between Indonesia and its neighbors. Id. at 16.} Clearly, Indonesia was not properly equipped to...
tackle the problem on its own. By the same token, global intervention would have been difficult to implement in a cost-effective manner and would have given rise to unnecessary complications.

More generally, optimal management of transboundary environmental issues, which often have far-reaching health, economic, social, and political consequences throughout the region, would arguably require collective, integrated regional and sub-regional approaches. Acid rain and depleted fisheries are cases in point. The 1992 U.N. Conference on Environment and Development in Rio de Janeiro, Brazil and Agenda 21 both highlight the need to “[e]stablish and/or strengthen regional agreements for transboundary air pollution.”156 The Conference in Rio de Janeiro drew particular attention to successful European regimes for transboundary air pollution and acid rain control, which other regions are expected to follow.157 A successful initiative such as the Long-Range Transboundary Air Pollution Convention may serve as a useful model on a selective basis. The Acid Deposition Monitoring Network in East Asia (EANET) is a case in point.158 However, this need not imply total convergence between European and Asian policy responses.

Similarly, based on the success of the Mediterranean Action Plan,161 the U.N. Environmental Program (UNEP) initiated thirteen other Regional Seas Programs.162 The recent creation of a similar program in Asia is mirrored in the Regional Program on Partnerships in


158 Wakana Takahashi, Formation of an East Asian Regime for Acid Rain Control: The Perspective of Comparative Regionalism, 1 INT’L REV. FOR ENVIRONMENTAL STRATEGIES 97, 98, 102 (2000). The Long-Range Transboundary Air Pollution Convention has been cited as a successful regional program because it has “established a regional regime in Europe and North America, based on a review process and cooperative programmes for systematic observation of air pollution, assessment and information exchange.” Id. at 98.

159 See, e.g., id. at 109-113 (analyzing macropolitical trends and intergovernmental processes that have influenced regional efforts to address acidification issues in East Asia).

160 See id. at 102. The comparison of European and Asian policy responses need not imply total convergence. After all, the process of regime formation is driven not just by environmental concerns but also by a host of other, perhaps more critical, factors, including economic, social, and political concerns. Id. at 113.


Environmental Management for the Seas of East Asia (PEMSEA), which is founded on the recognition that

[s]olving marine environmental degradation problems require regional and subregional collaboration. No single government, agency, donor agency, non-government agency nor specific groups can solely and effectively resolve the environmental problems of the region because of their complexities and transboundary nature.\footnote{PEMSEA, Building Partnerships, at http://www.pemsea.org/abt%20pemsea/build_partnr.htm (last visited Feb. 24, 2003).}

This is not just a matter of transplanting specific European regional environmental responses to Asia. There are several distinct advantages in a regional approach to environmental law-making, which “may result in a set of obligations more in accordance with regional concerns and consequently improve chances of effective implementation.”\footnote{See Peter Lawrence, Regional Strategies for the Implementation of Environmental Conventions: Lessons from the South Pacific 15 THE AUSTRALIAN YEARBOOK OF INT’L L. 203, 225 (1994) (citing the example of the SPREP Convention and its Protocols). See also David van Hoogstraten & Peter Lawrence, Protecting the South Pacific from Hazardous and Nuclear Waste Dumping: The Waigani Convention (1998) 7 REV. OF EUR. COMMUNITY & INT’L ENVTL. L. 268, 272 (1998) (highlighting the "pros" of the regional approach in respect of the Waigani Convention).} Writing about environmental conventions by South Pacific island countries (PICs), Peter Lawrence argues “development of regional conventions may reduce the otherwise large costs of PIC attendance at global convention meetings held outside the region.”\footnote{See Lawrence, supra note 164, at 226.} Regional conventions also offer the advantage that “difficulties encountered in their implementation may be quickly addressed as they arise through meeting of the parties.”\footnote{Id.} In addition, a regional approach may facilitate more effective monitoring of convention obligations.

Regional treaties in themselves, however, are not sufficient to secure effective regional action. In particular, environmental treaties that merely “emphasize cooperative action, without assigning liability or setting specific limits, have been ineffective.”\footnote{Id.} While the traditional modes of operation in the region would seem to militate against the acceptance of legally-binding liability regimes, there are signs that even the entrenched “ASEAN way” may be capable of modification.\footnote{See id.} Internationalization of issues, especially when U.N.-sanctioned, may also contribute to relaxation of embedded norms like “non-intervention in domestic affairs.”

\footnote{Simon Tay, Southeast Asian Fires: The Challenge for International Environmental Law and Sustainable Development, 11 GEO. INT’L ENVTL. L. REV. 241, 285 (1999). Tay contends that “[a] regional treaty setting thresholds for transboundary harm and creating sufficiently strong institutions to monitor and ensure compliance with them would be a step toward guarding Southeast Asia against fires.” Id.}
2. Impediments to implementation

By the same token, effective regional action may hinge on the existence of a "deep" sense of integration of both economic and non-economic issues (such as democracy, human rights and environmental policies), and a willingness to accept some loss of sovereignty. The Asia-Pacific region appears to be lacking in all these respects. Notwithstanding numerous declarations about political unity and collective identity, as well as several integration initiatives, effective, cohesive regional initiatives by ASEAN will likely remain elusive in the absence of enforceable rules-based systems. This is especially pertinent in light of the increased divergence of the ASEAN following the newer entrants to the group.

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169 See Press Release, ASEAN, Joint Press Statement of the Eighth Ministerial Meeting on Environment (AMME) para. 7 (Oct.6-7, 2000), at http://www.aseansec.org/651.htm para. 7 (last visited Feb. 24, 2003) (“[t]he Ministers agreed to proceed with the negotiation for the development of an ASEAN Agreement on Transboundary Haze as soon as possible.”); see also ASEAN Secretary-General Rodolfo C. Severino, The ASEAN Way and the Rule of Law, Address at the International Law Conference on ASEAN Legal Systems and Regional Integration (Sept. 3, 2001), at http://www.aseansec.org/newdata/asean_way.htm (last visited Feb. 24, 2003) (predicting that ASEAN, in light of rule-based developments within its economic regime, will undertake legal obligations related to transnational regional problems such as the marine environment, the preservation of biodiversity, money laundering, trafficking in human beings, drug trafficking, and piracy); Simon S.C. Tay, ASEAN, East Asia and the Asia-Pacific: A View from South East Asia (2000), http://www.siiaonline.org/article/asean-east%20asia.pdf (last visited Feb. 24, 2003) (analyzing the adaptation of ASEAN institutional approaches in response to environmental crises and highlighting the regular meetings of senior environment officials to review progress, the more open discussion of underlying problems and the lack of sufficient action, and the opening of proceedings to international institutions and non-governmental organizations).

170 See Tay, Survey, supra note 134, at 241-43. East Timor is an example of participation by ASEAN States in U.N.-authorized multinational forces, albeit with Indonesian consent to the intervention. The author suggests that the call for Indonesian consent to intervention may be seen as a preference backed by both common sense and widely accepted principles of peace-keeping instead of evidence of ASEAN’s reticence. Id. at 243.

171 See Esty, supra note 141, at 319. On the other hand, even a highly integrated organization such as the European Union, appears to experience problems (not unlike their Asian counterparts) in the implementation of Community environmental law. See LUDWIG KRAMER, FOCUS ON EUROPEAN ENVIRONMENTAL LAW 7-25 (Sweet & Maxwell 2d ed. 1997).

172 See, e.g., ASEAN Secretary-General Rodolfo C. Severino, The Three Ages of ASEAN, Address at the ARCO Forum of Public Affairs, Kennedy School of Government, Harvard University (Oct. 3, 2002), available at http://www.aseansec.org/12310.htm (last visited Feb. 24, 2003). “[C]loser regional integration would require stronger regional institutions with greater authority than the ASEAN Secretariat is currently allowed to wield—more binding economic agreements, the standardization of products and of safety and environmental requirements, the coordination of national policies, the authority to ensure compliance with such agreements and measures, the power to adjudicate disputes. This would mean voluntarily ceding a measure of sovereignty for regional purposes.” (emphasis added). Id.

173 See Press Statement, Chairman, The Fourth ASEAN Informal Summit (Nov. 25, 2000) at http://www.aseansec.org/5310.htm (last visited Feb. 27, 2003). Integration initiatives include the establishment of ASEAN Free Trade Area (AFTA), ASEAN Investment Area (AIA), and most recently, the conclusion of an E-ASEAN Framework Agreement and an agreement to launch an Initiative for ASEAN Integration (IAI). Id. See also ASEAN, Joint Communique of the 34th ASEAN Ministerial Meeting (July 23-24, 2001), available at http://www.aseansec.org/3045.htm (last visited Feb. 27, 2003) [hereinafter Joint Communique].
Regional cooperation is further inhibited by “substantial geopolitical issues” such as the Taiwan question, China’s possible regional ambitions, divisions between Northeast and Southeast Asia, power asymmetries across the region, and tension on the Korean peninsula.

On a more positive note, regional processes such as ASEAN+3 (ASEAN + China, Japan and Korea) and rapprochement between old antagonists suggest that a sense of goodwill and a

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174 See generally Severino, The ASEAN Way, supra note 169 (noting that the increasing frequency of legally binding agreements concluded by ASEAN since 1992 are indications of “ASEAN’s growing realization that closer regional economic integration requires basing it on binding legal foundations if integration is to be stable, credible and effective”).

175 See Man Pham Binh, ASEAN’s Economic Integration Opportunities and Challenges for Vietnam (May 10, 1999), at http://www.wcfia.harvard.edu/fellows/papers98-99/pham.pdf (last visited Feb. 27, 2003). The admission to ASEAN of Southeast Asia’s weakest and least developed economies of Vietnam (in 1995), Laos, Myanmar (in 1997), and Cambodia (in 1998) has posed serious challenges to integration efforts and to progress in closing the development gap between these countries and the older members of the group. See id.

176 See Ben Boer et al., INTERNATIONAL ENVIRONMENTAL LAW IN THE ASIA PACIFIC 314 (1998) (identifying geopolitical issues that are barriers to regional co-operation, including the failure to resolve the Taiwan question and the continuing fear of military aggression by some states). Other observers note that China’s “dominating” status and its role as a source of investment vis-à-vis countries such as Cambodia, Laos, Thailand, and Vietnam may underpin reluctance by the latter to challenge the harmful effects of massive hydroelectric dams constructed by China along the Mekong River. See Ron Moreau & Richard Ernsberger Jr., Strangling the Mekong, NEWSWEEK (ATLANTIC EDITION), Mar. 19, 2001, at 26. The river meanders through six countries: “It passes through China’s Yunnan province, skirts Burma, divides Thailand and Laos, splits Cambodia, spills its rich silt deposits in Vietnam and then empties into the China Sea.” Id. China, it may be added, is not the only “culprit” in this respect. While the sentiment towards dams in Asia has shifted dramatically outside China, dams continue to play a key role in China’s modernization drive and little regard is paid by the authorities to negative impacts beyond the country’s borders. Id. See also Muthiah Alagappa, Environmental Governance - The Potential of Regional Institutions: Introduction, in THE GLOBAL ENVIRONMENT IN THE TWENTY-FIRST CENTURY: PROSPECTS FOR INTERNATIONAL COOPERATION 255, 265-266 (Pamela S. Chasek ed., 2000) (noting that “North-East Asian States (China, Japan and the two Koreas) have yet to develop a cooperative framework to address the acid rain problem that confronts this sub-region. . . . [largely] hindered by political tensions [and] a lack of political will, especially on the part of China”).

177 See, e.g., Measured Approach, SOUTH CHINA MORNING POST, Dec. 27, 2000, at 15. China and Vietnam have agreed to delimit their sea border in the Gulf of Tonkin. Id. Although both countries have yet to resolve the intractable boundary disputes over the Spratly and Paracels Islands (disputes that also involve Malaysia, Taiwan, the Philippines and Brunei), both China and Vietnam have agreed “not to take actions to complicate or aggravate disputes” and have “adopt[ed] a cool and constructive attitude” if disputes do break out. Id.

Another potentially significant event is Mainland China’s adoption of a “pragmatic and more inclusive” version of its long-standing “one China” policy towards Taiwan. See John Pomfret, Beijing Signals a New Flexibility Toward Taiwan, WASH. POST, Jan. 5 2001, at A1. A more recent positive development is the “progress in the consultations between ASEAN and China towards the adoption of the Code of Conduct in the South China Sea.” See Joint Communiqué, supra note 173, para. 20. Foreign ministers of the ASEAN countries embraced not only “self restraint by all parties” and the “promotion of confidence building measures in this area,” but also “a commitment to resolving disputes in the South China Sea by peaceful means in conformity with recognized principles of international law including the UN Convention on the Law of the Sea (UNCLOS) as well as to ensuring the freedom of navigation in the area.” Id. See also ASEAN Close to Deal on Regional Disputes, SOUTH CHINA MORNING POST, Oct. 31, 2002. “In the latest draft of the Declaration on the Conduct of Parties in the South China Sea, [ASEAN and China] may explore or undertake co-operative activities including marine environment protection and scientific research, safety of navigation and communication at sea, search and rescue operations and combating transnational crime.” Id.
spirit of pragmatism might move Asian countries towards a stronger sense of cohesion and cooperation. Furthermore, while intra-regional unity should be emphasized, smaller ad hoc groupings and partnerships or the so-called “coalitions of the willing” also should be recognized. This will allow the “willing and committed” to forge ahead without waiting for all members, while also helping them to “avoid being held captive by the lowest and slowest common denominator.”

With regard to the specific issue of environmental protection, however, the region does not seem to manifest a “true shared consciousness and concern about common environmental issues.” Indeed, even a comprehensive consciousness-raising plan such as the ASEAN Vision 2020, which professes a vision of ASEAN as “a concert of Southeast Asian nations, outward-looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies,” refrains from affirming a legally-backed common stance in addressing regional environmental problems. Similarly, while emphasizing the fundamental goal of achieving human security and development for the peoples of ASEAN, the ASEAN Eminent Persons Group on Vision 2020, established to provide insights on realizing Vision 2020, omits environmental concerns from its list of laudable aims.

3. Prospects

Nonetheless, deteriorating environmental conditions in the Asia-Pacific, and the critical environmental problems deeply embedded in the socio-economic fabric confronting countries throughout the region, may prove to be a powerful catalyst for regional cooperation. In addition, increasing pressures related to globalization, including the persistence of poverty, the growing gap between developed and developing countries and developments in biotechnology need to be addressed and are likely to generate a regional platform. Similarly, the dwindling availability


179 BOER ET AL. supra note 176 at 315.


181 See id.


183 See id. § 2, para. 10. The aims identified by the ASEAN Eminent Persons Group include: “individual rights and civic responsibility; gender equality; religious tolerance and racial harmony; reduction of poverty and the more equitable distribution of wealth; employment and training opportunities; educational opportunities for all; providing health and food security to all; [and] promotion of ASEAN’s rich cultural diversity among its people.” Id.

184 See ESCAP, Review of the State of the Environment in Asia and the Pacific, available at http://www.unescap.org/mced2000/so1.htm (last visited Feb. 27, 2003). “An overall deteriorating trend has been observed as the most common denominator in all environment media of the region from land, forest and biodiversity to inland water, marine and coastal environment and the atmospheric ecosystem.” Id. para. 4.
of international financial assistance renders regional and sub-regional cooperation essential in order to facilitate resource mobilization and the transfer of environmentally sound technologies and know-how, as well as for enhancing national capacity-building processes.186

Indeed, the Ministerial Conference on Environment and Development in Asia and the Pacific issued a “regional message” along the above lines in September 2000.187 Envisioning “a future of continuously improving environmental quality sustained by dynamic and vibrant economies,” the regional message identifies “regional solidarity,” together with “national unity” and “global partnership,” as elements in the architecture of a sustainable future.188 Such a future is to be built upon three key areas: environment, economy, and empowerment.189

More specifically, a Regional Action Programme for Environmentally Sound and Sustainable Development, 2001-2005, has been adopted as a “rational and viable instrument for achieving the common goal of sustainable development” in the region.190 The Action

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185 See id. para. 34. “New and emerging issues have also surfaced from bioprospecting and recent developments in biotechnology (particularly those related to genetically modified organisms), which are threatening the cultural and traditional rights of indigenous communities and farmers through biopiracy and monopolization of improved varieties of seeds by a few multinational companies exercising property rights and patent regimes. Given this scenario, the need to acquire information and promote regional and subregional cooperation has never been so pressing in the region as it is today.” Id. See also ESCAP, Phnom Penh Regional Platform on Sustainable Development for Asia and the Pacific, (November 27-29, 2001), available at http://www.unescap.org/ernd/environment/activities/hrm_wssd/ENR_HRM_WSSD_Platform.doc (last visited Feb. 27, 2003) (renewing regional commitment to and affirming the role of Asia and the Pacific in promoting global sustainable developments). See ESCAP, High Level Regional Meeting of the World Summit on Sustainable Development, Asia-Pacific Round Table on Sustainable Development, Chairman Report (Nov. 27, 2001), available at http://www.unescap.org/ernd/environment/activities/hrm_wssd/Round%20Table%20Chairman%27s%20summary.doc (expressing to concerns by participants over the inadequate treatment in the Regional Platform).

186 See ESCAP, Report on the Current Economic Situation, supra note 93. “Technical and economic cooperation among developing countries themselves, or South-South cooperation, has become a significant phenomenon in the ESCAP region.” Id.


188 Id. para. 17.

189 Id. The Regional Message further identified the goals in the three areas:

   “Environment: providing adequate life-giving services to all, including safe water, clean air, fertile lands, bountiful forests and marine ecosystems; and overall ecological stability.

   Economy: undoing the vicious cycle of poverty; building on the equitable sharing of resources and their benefits at national, regional and global levels; and transforming markets into instruments of environmental management.

   Empowerment: including all peoples and stakeholders in the decision-making process; strengthening local government authorities, civil society and the private sector; and creating effective political will for national, regional and global action for sustainable development.”

Programme focuses on regional priority issues clustered around several strategic themes, including environmental quality and human health, biodiversity, coastal and marine resources, freshwater resources, desertification and land degradation, globalization and policy integration, and climate change and sustainable energy development.  The Programme further elaborates on overall implementation, coordination, and appraisal mechanisms that combine regional and global organizations as well as all stakeholders in the pursuit of sustainable development in the region.

Environmental threats demand action at all levels: global, regional, and national. No environmental challenge can be met at one single level alone. Neither can environmental problems be tackled and sustainable development goals accomplished, without full partnerships and dialogues among and within the various levels—encompassing international agencies, multilateral financial institutions, national and local governments, civil society, and the private sector. Globalization that focuses on the non-economic dimensions of development should loom larger on the multi-level policy agenda. Moreover, while geared towards economic integration, this agenda should evolve in a manner reflecting the aspirations of all relevant stakeholders, including those on the periphery of the multi-level system.

V. Conclusion

The process of globalization is proceeding apace. At best, one can only hope that its effects can be moderated. Globalization has proved greatly beneficial in many respects but not unambiguously so. Economic gains have been substantial yet not equally distributed. Traditional social structures have been undermined without necessarily being replaced by new communal forms providing opportunities for personal fulfillment in a stable collective setting. Above all, widespread environmental degradation has ensued.

Initial enthusiasm, often unqualified in nature, has thus given way to a more restrained assessment of globalization and its consequences. While distinctly extreme opinions may be found on the intellectual periphery, the mainstream position is that policies need to be realigned with a view to somehow capturing the benefits while minimizing the costs. This manifests itself in the emergence of a set of international norms, reflecting a vision of “globalization with a human face.” The norms place a strong emphasis on equitable distribution, alleviation of economic deprivation, protection of human rights, and environmentally sound sustainable development. With respect to sustainable development, the norms also stress the importance of cross-sector responsibility-sharing, a high degree of transparency and accountability, openness to stakeholder participation and the crucial role of civil society.

While perhaps not fully embracing the vision underlying the new set of international norms relating to globalization, Asia has nonetheless sought to confront the phenomenon in a manner broadly consistent with the spirit of the new norms. Specifically, Asia has adopted three goals designed to mitigate the adverse effects of globalization: (1) to facilitate the integration of

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countries in the region, especially developing and least developed ones, into the global economy in general, and the world trade system in particular; (2) to reduce regional vulnerability to financial shocks and enhance the capacity to comply with international environmental norms and standards in an autonomous fashion; and (3) to bring civil society to the fore in the management of environmental problems and efforts to contain poverty.

The pursuit of the above goals arguably calls for a relatively high degree of regional and sub-regional cooperation. Several arrangements have been implemented to give concrete expression to this assumption. On the whole, they constitute a tentative step in the right direction, but their effectiveness hinges on a host of economic, social, and political factors that may be difficult to control. The impression is that Asia has effectively identified the opportunities and problems associated with globalization. Due to its diversity and economic inertia, as well as the sheer complexity of the challenge involved, however, Asia may merely muddle through the process of converting this successful diagnosis into an operationally viable strategy.