

The Norms that Weren't

ASEAN's Shortcomings in Dealing with Transboundary Air Pollution

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In this paper, I examine the shortcomings of the Association of Southeast Asian Nations (ASEAN) as a treaty organization. ASEAN has created an international community for dealing with environmental disasters, most notably the Southeast Asian haze. I use the contextual, economically focused background of ASEAN as a means to understanding its present-day structure, which I conclude is inefficient in dealing with non-economic issues. I then discuss some possible changes that might be made to address ignored threats of the Southeast Asian haze.

The Southeast Asian smoke haze of 1997, which resulted from widespread and synchronized incidents of incendiary land-clearing agricultural practices in Indonesia, is described by many experts as one of the century's worst environmental disasters. Leaving a charred area the size of Costa Rica utterly devastated with reported damages amounting to US\$4.5 billion,¹ the haze cast a poisonous shadow over 70 million people living in Malaysia, Singapore, Brunei Darussalam, The Philippines, Thailand, and Indonesia itself.² Globally localized but doubtlessly a transnational environmental issue, the corresponding economic downturn and ecological damage, coupled with the astronomical implications for human health, was unprecedented – at its peak, the haze even forced the closure of several Southeast Asian international airports due to the incredibly poor visibility. At the time a Singaporean high-schooler, I remember looking out of my window one day and barely being able to

make out the outline of the family car, which was parked on the street a mere twenty meters away from my bedroom. As a further demonstration of the extent of the catastrophe, biodiversity was also harmed: endangered species including rhinos, tigers and orangutans were driven precariously closer to extinction.³

Interestingly, despite these more immediately obvious ramifications, what many scholars and political scientists found most unsettling about the event was the fact that this haze was not an isolated phenomenon. In fact, Southeast Asia had been plagued by periodical occurrences of haze since 1982 (with the most recent haze outbreak occurring in 2004). Although the haze of 1997 was greater in severity of effect, reach and consequence, it was no different in terms of origin and cause than the hazes of 1994, 1991, or even 1986;⁴ all this in spite of several agreements signed after the first haze occurrence by the Association of Southeast Asian Nations

(ASEAN) committing member nations to cooperate in preventing transboundary air pollution. Clearly, ASEAN was not doing enough to enforce its environmental policies. In this paper, I will argue that the main reason behind this apparent ignorance is an internal conflict of priorities: ASEAN's primary focus as a regional treaty organization is not and has never been tackling environmental issues. Because of this, the present-day organizational structure of ASEAN ignores many general guidelines of international environmental lawmaking in the name of economic advancement and is ill-suited to handle large-scale environmental disasters like the recurring Southeast Asian haze.

To understand the haze's suffocating extent, and to simultaneously analyze the shortcomings of ASEAN in handling the matter, it is first necessary to comprehend the scientific nature and complex causal origins of the haze itself, as well as to consider the

organizational structure of ASEAN.

Definition of Haze

The ASEAN Haze Action website, which was officially spawned as a result of ASEAN's Regional Haze Action Plan of 1997 and contains among other utilities an intranet linking ASEAN meteorological services and environmental agencies to improve communications and enhance the effectiveness of existing early warning and monitoring systems,⁵ defines transboundary haze as:

Sufficient smoke, dust, moisture, and vapor suspended in air to impair visibility. Haze pollution can be said to be "transboundary" if its density and extent is so great at source that it remains at measurable levels after crossing into another country's air space.⁶

The damage done to both the economy and people of Southeast Asia is also elucidated on the website in terms of the detrimental effects particulate matter exerts on those exposed:

Particulate matter [that comprise haze] less than 10 micrometers in size ... can penetrate deep into the lungs. In recent studies, exposure to particulate pollution—either alone or with other air pollutants—has been linked with premature death, difficult breathing, aggravated asthma, increased hospital admissions and emergency room visits, and increased respiratory symptoms in children.⁷

It is easy to see why haze poses such a huge threat to the health of those living in its sphere of influence. As such, the haze affected

not only Southeast Asian natives, but also the tourism industry, which has traditionally been one of the core tenets of the regional economy. On top of this, the Regional Haze Action Plan lists a variety of other sectors that were adversely affected, namely air, water and land transport, shipping, construction, forestry and agriculture.⁸

Causes of the Haze

With the multitude of negative implications haze carries, the crux of the issue for ASEAN must have surely concerned learning from its mistakes and working to prevent the man-made forest and grass fires that have, in a regular cycle, given rise to this problem. It is difficult to believe that hydrated rainforest vegetation can burn at all in a tropical area like the Indonesian state of Kalimantan, the locality held responsible for the causal fires. Geographically centered on the equator, the forests of Kalimantan experience remarkably high levels of rainfall, resulting in a continuous saturated state of atmospheric humidity which is seemingly impervious to burning of any kind. However, a combination of factors has contributed to the susceptibility of these forests to burning, most notably the El Niño Southern Oscillation (ENSO), which in every four years or so culminates in a Southeast Asian dry season,⁹ and various human activities, such as rapid deforestation and the draining of peat swamps for rice cultivation.¹⁰

Government revenue in Indonesia relies heavily upon its timber industry. The granting of excessive timber concessions to logging companies and the poor enforcement of selective deforestation policies, largely due to corrupt

Indonesian government officials, leads to extensive forest cover damage and a forest floor littered with brittle timber debris, which exacerbates the drying of forests in seasons with low rainfall.¹¹ The fires themselves are also started through human activity. When evaluating human responsibility, it is important to draw the distinction between fires caused by native forest communities and those incited by large commercial operations.

The Dayak tribe, an indigenous Kalimantan forest people, has been—for thousands of years before the first ever incident of transboundary haze in Southeast Asia—practicing shifting cultivation, also known as slash-and-burn agriculture. This entails the controlled use of fire to clear land for their agricultural subsistence, and upon exhausting the vegetative nutrition of a particular plot of land, moving to a different plot and repeating the process.¹² The Dayak culture emphasizes the necessity of both a deep respect for nature and harmony with the natural environment. They can be exempted from blame not only because the small-scale pollution they produce is relatively negligible and not an international environmental issue but also for the time it takes for a plot of land to fully lose its agricultural value: typically two to four years. The Dayaks' centuries of experience shows in that during the cropping of a new plot of land, the previous plot is left to fallow and regenerate its sustenance, sometimes for up to 60 years. The short cropping period, followed by a long fallow, restores carbon and nutrients to the system and facilitates the reinvasion of negatively impacted flora and fauna.¹³

This process lies in stark contrast with the techniques applied by the burgeoning timber and oil palm

industries. To maximize profits and with minimal regard for long-term damage, large sections of rainforest are burned down and converted to plantations. Burning is the cheapest method of land-clearing known to relatively impoverished Indonesia, and since the aforementioned industrial programs receive extensive support from the Indonesian government, companies are in effect given the go-ahead to exploit Indonesia's natural resources to their financial advantage.

Goals and Structure of ASEAN

Understanding the nature of haze helps to demonstrate why it is a problem to which ASEAN should assign a higher priority. Understanding the causes of haze in relation to the political structure of Indonesia and the organizational structure of ASEAN should help to demonstrate why ASEAN has been so ineffective in curbing transboundary air pollution in Southeast Asia. The Treaty of Amity and Cooperation, signed at the First ASEAN Summit in 1976, glorifies within its fundamental principles the following ideals:

- a) Mutual respect for the independence, sovereignty ... and territorial integrity of all nations;
- b) The right of every state to lead its national existence free from external interference, subversion or coercion;
- c) Non-interference in the internal affairs of one another.¹⁴

These ideals are well suited and indeed integral to ASEAN's primary purpose, which its founding document, the Bangkok Declaration of 1967 (also known as the ASEAN Declaration) clearly announces as:

To accelerate the economic growth, social progress

and cultural development in the region through joint endeavors in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian nations...¹⁵

When ASEAN was founded as an international conglomeration in 1967, its main focus was to strengthen economic relations among its members. With ten current member nations (Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, The Philippines, Singapore, Thailand and Vietnam), ASEAN has a combined population of around 500 million spread over about 4.5 million square kilometers of land. The member nations of ASEAN have today come to define the geographical limits of "Southeast Asia," and fuelling them is a combined GDP of US\$737 billion and an overall trade of US\$720 billion which has transformed the region into what Kofi Annan, Secretary-General of the UN, terms an "indispensable and real force to be reckoned with even far beyond the region."¹⁶

With development and a solidifying of organizational identity comes greater shared responsibility, and today's ASEAN, as a treaty, an international organization, and a geographical region, is responsible for a variety of other concerns, including protecting the Southeast Asian environment. However, a detailed study of ASEAN's founding documents, including the Bangkok Declaration and the Treaty of Amity and Cooperation, reveals no mention whatsoever of environmental issues or policy; in fact, a cursory Internet Explorer word search turns up not a single appearance of the word "environment".¹⁷ This

is surprising because almost every other conceivable social, economic and developmental issue is addressed in these two treaties, including some which do not necessarily supersede the environment in terms of absolute global importance, such as the promotion of Southeast Asian studies.¹⁸ Of course, this does not imply that separate environmental accords have not been signed since the founding of ASEAN 38 years ago, but it does mean that the original intentions of ASEAN were biased towards very different issues. History shows that the environment came into the picture much later, and only as a result of ASEAN realizing that, as an organization growing in international stature and repute, adopting regional environmental policies would become inevitable.

Shortcomings of ASEAN in Dealing with the Haze

It is no secret that environmental concern and industrialized development often stand in direct opposition. In a region like Southeast Asia, with developing countries making up eight of the ten member nations (only Brunei Darussalam and Singapore are not classified by the World Bank as "developing"),¹⁹ economic advancement has always, albeit understandably, taken precedence over environmental concerns. Only when the haze issue was recognized as a serious threat to the regional economy did ASEAN respond with its Regional Haze Action Plan. Since then, the issue has appeared in two other agreements: the Jakarta Declaration on Environment and Development of 1997²⁰ and the ASEAN Agreement on Transboundary Haze Pollution of 2002.²¹ Tellingly, all of these treaties

fail to take into consideration one significant factor: the conflicting political culture of individual nations – remember, this is a treaty organization that received widespread global criticism for not taking incisive action against the genocidal regime of Cambodia's Pol Pot.²² Perhaps this is a function of ASEAN's outdated fundamental principles,²³ but in any case, it is imperative to recognize that environmental agreements must be based on certain norms, which are undefined in the case of Southeast Asia.

Corruption is rife in Southeast Asia, and among the most serious offenders is Indonesia. NGO Indonesia Corruption Watch spokesperson Luky Djani explains, "Corruption in Indonesia is ingrained [in the culture] and systematic."²⁴ In Indonesia, bribery and use of government funds for personal benefit are ways of life. With such a mindset, it is extremely difficult to work around the ideals of sustainable development, intergenerational equity and common heritage of humankind,²⁵ simply because they are not thought of as norms. What is assumed to hold true for most rational, law-abiding states amounts to nothing within the radically differing political realities of ASEAN. In this aspect, it is almost inevitable that the current haze situation has not progressed beyond the way it was in 1982. One of the Regional Haze Action Plan's primary objectives is to prevent land and forest fires through better management policies and enforcement,²⁶ but how is this to be observed through multilateral pressure when the defining value of ASEAN is non-intervention?²⁷

Having studied the background of the recurrent haze crises, it becomes apparent that their root cause is firmly embedded in the Indonesian system,

and merely agreeing to regionally enforce the agreements without any actual action does not solve anything because international law cannot be effective without first establishing a general acceptance of customary norms.²⁸ Precisely because of this, ASEAN nations struggle to draw the line between respecting their neighbors' privacy and cooperatively mediating a situation which ultimately affects the entire region. Even the most comprehensive of the haze treaties, the ASEAN Agreement on Transboundary Haze Pollution, which claims to provide a legal framework in addressing the problem, lists a number of internal solutions which rely on a country's own resources to police.²⁹ To this day, ASEAN has yet to implement any form of serious punishment against Indonesia – a stance attesting to the primary goals of the organization. To ASEAN, actions such as imposing trade sanctions would be unthinkable; encouraging free trade and increasing economic prosperity are still paramount. For now, the environment takes a backseat.

Possible Rectifications

Solving the Southeast Asian haze issue is a daunting prospect. The challenge of sustainable development in Indonesia has not been handled well, considering the reckless disregard for the long-term future of the country's natural resources. To change this, corruption in Indonesia must first be addressed, preferably by an international organization such as the UN, which may have enough global backing and clout to make its point firmly. Currently, even states and NGOs that want to offer aid to the tsunami victims in Indonesia are hesitant, because they cannot be sure

where their money will end up. Newly elected Indonesian President Susilo Bambang Yudhoyono, who took office in September 2004, is trying to rectify this, and has promised a campaign against corruption, which has sadly been met with an overwhelming feeling of skepticism.³⁰

ASEAN must redesign its treaty structure regarding environmental issues so as to better serve the dynamic, ever-evolving interests of the region. Its principle of non-intervention needs to be reinvented to allow for transboundary environmental policy enforcement, simply because Indonesia does not have the finances or technology to monitor itself in this department, nor does it care to do so. If the UN can provide a certain amount of professional anti-corruption advice and if ASEAN can undergo a profound shift in its mindset, then the source of the problem will be addressed and the occurrences of transboundary air pollution in Southeast Asia will be, if not totally eradicated, at least less common.

Conclusion

The sad truth is that there exists in certain parts of our world communities for which starting large-scale forest fires in the name of land clearing and industrial advancement is an accepted, or at least tolerated, agricultural practice. If this practice is seen as the norm in Indonesia, then it is pointless to sign treaty after treaty calling for the country to clean up its act. Treaties are based on a common normative understanding, and in the case of the Southeast Asian haze, active multilateral enforcement of environmental policy is required.

ASEAN as a treaty organization has been successful

in certain aspects—the economy of Southeast Asia has grown spectacularly since its inception, and is progressing well towards the final destination of development—but it is miserably ineffective in addressing the problem of transboundary air pollution. Once the ASEAN leaders begin to realize that they are at a stage of their development at which more concern can and should be paid to issues other than economic development, they will hopefully recognize how they have been failing the future generations of Southeast Asians and change their policies. ASEAN indeed covers a limited geographic scope, but transboundary air pollution is not contained by treaty affiliation, and once ASEAN awakens to its harsh reality, the global community will be better off for it.¹

Endnotes

¹ Indonesia's Fire and Haze: The Cost of Catastrophe (David Glover et al. ed., 1999). Excerpt available at <http://web.idrc.ca/en/ev-9410-201-1-DO_TOPIC.html> (visited Jan. 17, 2005).

² "Effects of Indonesian Forest Fires," James R. Lee, American University Trade Environment Database, available at <<http://www.american.edu/projects/mandala/TED/indofire.htm>> (visited Jan. 15, 2005).

³ Indonesia's Fire and Haze, supra note 1.

⁴ Effects of Indonesian Forest Fires, supra note 2.

⁵ ASEAN Regional Haze Action Plan, Dec. 23, 1997, available at <<http://www.aseansec.org/9059.htm>> (visited Jan. 15, 2005).

⁶ Haze Info, ASEAN Haze Action Online, available at <<http://www.haze-online.or.id/help/firehaze.php?PHPSESSID=52a7d97c157e3336622e16cbd3037a13>> (visited Jan. 15, 2005).

⁷ Id.

⁸ ASEAN Regional Haze Action Plan, supra note 5.

⁹ "The Haze over Southeast Asia: Challenging the ASEAN Mode of Regional Engagement," James Cotton, *Pacific Affairs*, Vol. 72, No. 3, Aut. 1999, available at <<http://links.jstor.org/sici?sici=0030-851X%28199923%2972%3A3%3C331%3AT%22OSAC%3E2.0.CO%3B2-0>> (visited Jan. 16, 2005).

¹⁰ "Politics and Peat: The One Million Hectare Sawah Project," *Inside Indonesia*, no. 48, Oct.-Dec., 1996, available at <<http://www.insideindonesia.org>> (visited Jan. 17, 2005).

¹¹ The Haze over Southeast Asia, supra note 9.

¹² Effects of Indonesian Forest Fires, supra note 2.

¹³ "Alternatives to Slash and Burn Agroforestry, Shifting Cultivations or Swidden Farming," Erick C.M. Fernandes, 1998-1999, Cornell University Crops and Soil Sciences International Agroforestry Resources, available at <http://www.css.cornell.edu/ecf3/Web/new/AF/ASB_01.html> (visited Jan. 17, 2005).

¹⁴ Treaty of Amity and Cooperation in Southeast Asia, Feb. 24, 1976, available at <<http://www.aseansec.org/1217>

> (visited Jan. 16, 2005).

¹⁵ Bangkok Declaration, Aug. 8, 1967, available at <<http://www.aseansec.org/1212.htm>> (visited Jan. 17, 2005).

¹⁶ Overview: The Association of Southeast Asian Nations, available at <<http://www.aseansec.org/64.htm>> (visited Jan. 14, 2005).

¹⁷ Bangkok Declaration and Treaty of Amity and Cooperation in Southeast Asia, supra notes 14 and 13.

¹⁸ Id.

¹⁹ World Bank Group Data & Statistics, available at <<http://www.worldbank.org/data/countryclass/classgroups.htm>> (visited Jan. 18, 2005).

²⁰ Jakarta Declaration on Environment and Development, Sep. 18, 1997, available at <<http://www.aseansec.org/6085.htm>> (visited Jan. 18, 2005).

²¹ ASEAN Agreement on Transboundary Haze Pollution, Jun. 11, 2002, available at <<http://www.aseansec.org/6086.htm>> (visited Jan. 18, 2005).

²² The Cambodia Daily ASEAN Supplement, available at <<http://www.camnet.com.kh/cambodia.daily/asean/11.htm>> (visited Jan. 18, 2005).

²³ Treaty of Amity and Cooperation in Southeast Asia, *supra* note 14.

²⁴ "Corruption in Indonesia is Worrying Aid Groups," Raymond Bonner, *The New York Times*, Jan. 13, 2005, available at <<http://www.nytimes.com/2005/01/13/international/worldspecial4/13corruption.html>> (visited Jan. 18, 2005).

²⁵ The Origin and Emergence of International Environmental Norms, Armin Rosencranz, *Hastings International and Comparative Law Review*, Vol. 26, No. 3, Spring 2003.

²⁶ ASEAN Regional Haze Action Plan, *supra* note 5.

²⁷ ASEAN and the Principle of Non-Intervention: Practice and Prospects, John Funston, *Institute for Southeast Asian Studies Journal*, No. 5, Mar. 2000.

²⁸ *International Environmental Law and Policy* (2nd Ed.), David Hunter et al., 2002.

²⁹ ASEAN Agreement on Transboundary Haze Pollution, *supra* note 21.

³⁰ Corruption in Indonesia, *supra* note 24.



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