

# REVISITING THE “MYTH” OF THE ASEAN WAY: RECENT LEGAL DEVELOPMENTS ON TRANSBOUNDARY HAZE\*

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## Abstract

*The Southeast Asian region has experienced transboundary haze on an almost annual basis for decades. ASEAN has been the platform for regional cooperation and collaboration for regional haze mitigation since 1985. ASEAN's main legally-binding instrument for this purpose is the 2012 Agreement on Transboundary Haze Pollution (ATHP). Despite this, haze episodes continue to persist until present times. This paper analyses recent legal developments related to transboundary haze management among the three main affected countries; Indonesia, Malaysia and Singapore. Particularly, it examines Singapore's Transboundary Haze Pollution Act, an extra-territorial act that extends criminal and civil liability to anyone causing or contributing to haze in Singapore. It also analyses Indonesia's ratification of the ATHP, which followed soon after Singapore unilaterally passed their Act. Finally, it considers Malaysia's indecisiveness in deciding its next legal move in the face of these developments among its neighbours. The ASEAN Way, a set of behavioural or procedural norms that govern regional engagement, prescribes non-legalistic procedures and non-interference of sovereign rights, among others. This paper uses the framework of the “myth” of the ASEAN Way, popularly argued by Nischalke in 2000, to explain the changing positions of the associated states towards legal recourse related to transboundary haze. It argues that ASEAN member states can choose whether or not to adhere to the ASEAN Way in order to preserve crucial economic interests, without suffering any consequences. Hence, shifting national interests among these three states over time can likewise explain shifting attitudes and compliance towards certain ASEAN Way norms.*

**Keywords:** ASEAN Way, Agreement on Transboundary Haze, Transboundary Haze Pollution Act

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## I. INTRODUCTION

Haze is defined as “sufficient smoke, dust, moisture, and vapor suspended in air to impair visibility”, and it is classified as trans boundary when “its density and extent is so great at the source that it remains at measurable levels after crossing into a country's airspace”<sup>1</sup>. The Southeast Asian region has experienced trans boundary haze on

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<sup>1</sup> ASEAN Secretariat 2008. *Information on Fire and Haze* [Online]. Jakarta: ASEAN Secretariat. Available: <http://haze.asean.org/about-us/information-on-fire-and-haze/> [Accessed 1 August 2009].

an almost annual basis for decades. This smoke haze originates from peat and forest fires, primarily from Indonesia and to a lesser extent Malaysia. A majority of these fires have been traced back to deliberate (as a quick, cheap and easy way to clear land for planting) or accidental (as a result of the drying out of land during clearing) behavior linked to commercial plantations, especially palm oil and pulp and paper<sup>2</sup>. At its worst, the haze can travel to reach six Southeast Asian nations; Indonesia, Malaysia, Singapore, Thailand, Brunei, and the Philippines, disrupting visibility, health and general wellbeing across the region<sup>3</sup>. Due to their proximity to the source of most of the fires, Indonesia, Singapore and Malaysia are hit hardest and most regularly by trans boundary haze, regularly experience school closures, airport shutdowns, and economic slowdowns during haze periods.

ASEAN has been the platform for regional cooperation and collaboration for regional haze mitigation since 1985. That year, after agreeing to acknowledging haze as a regional concern, ASEAN member states adopted the Agreement on Conservation of Nature and Natural Resources. This agreement specifically referred to air pollution and its “trans frontier environmental effects”. The first ASEAN-level activity that specifically addressed haze was in 1992, with the Workshop on Trans boundary Pollution and Haze in ASEAN Countries<sup>4</sup>. This was followed by several other soft-law initiatives like the Co-operation Plan and Haze Technical Task Force (1995), the Regional Haze Action Plan (1997), the Hanoi Plan of Action (1998), and the ASEAN Peatland Management Initiative (2002). This was eventually followed by ASEAN’s first ever legally-binding mechanism, the ASEAN Agreement on Transboundary Haze Pollution (ATHP) in 2002<sup>5</sup>. Despite this, haze episodes continue to persist until present times. Common arguments among scholars for the lack of success of these ASEAN initiatives are the limitations of the ASEAN Way norms which govern modes of engagement in the region,

<sup>2</sup> Helena Varkkey, *The Haze Problem in Southeast Asia: Palm Oil and Patronage*, London, Routledge.2016.

<sup>3</sup> Judith Mayer. Transboundary Perspectives on Managing Indonesia’s Fires. *The Journal of Environment & Development*, 15, 202-233.2006.

<sup>4</sup> ASEAN Secretariat 1995. ASEAN Meeting on the Management of Transboundary Pollution. Kuala Lumpur.

<sup>5</sup> ASEAN Secretariat 2002. ASEAN Agreement on Transboundary Haze Pollution Kuala Lumpur.

and Indonesia’s decade-long non-ratification of the ATHP.

This paper analyses recent legal developments related to transboundary haze management in Singapore, Indonesia, and Malaysia, in the context of regional governance. Particularly, it examines Singapore’s 2014 transboundary Haze Pollution Act (THPA), an extraterritorial act that extends criminal and civil liability to anyone, causing or contributing to haze in Singapore. It then analyses Indonesia’s long-awaited ratification of the ATHP, which followed soon after Singapore passed their unilateral Act. Finally, it considers Malaysia’s indecisiveness in deciding its next legal move in the face of these developments among its neighbours. This paper uses the framework of the “myth” of the ASEAN Way, popularly argued by Nischalke<sup>6</sup>, to explain the changing positions of the associated states towards legal recourse related to transboundary haze. It argues that ASEAN state can choose to *not* adhere to the ASEAN Way in order to preserve crucial interests, without suffering any consequences at the regional level. The paper concludes that shifts in national interests can explain why certain countries changed their engagement patterns with the ASEAN organization and also with other ASEAN member countries over the haze issue.

## II. ASEAN WAY NORMS AND STATE COMPLIANCE

The ASEAN Way is a set of behavioural and procedural norms that include the pursuit of consensus; the sanctity of sovereign rights and the related concept of non-interference; the principles of sensitivity and politeness; non-confrontational negotiation processes; behind-the-scenes discussions; an emphasis on informal and non-legalistic procedures; and flexibility<sup>7</sup>. Opinions are divided as to the strength of the ASEAN Way norms. Severino<sup>8</sup> has described the ASEAN Way as a “doctrine”; something ideological and therefore, to be adhered to at all costs. As such, the ASEAN organization is tightly bound to these norms

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<sup>6</sup> Tobias Ingo Nischalke. Insights from ASEAN’s foreign policy co-operation: The “ASEAN way”, a real spirit or phantom? *Contemporary Southeast Asia*, 22, 89.2000.

<sup>7</sup> Timo Kivimäki. The long peace of ASEAN. *Journal of Peace Studies*, 38.2001.

<sup>8</sup> Rodolfo C Severino. *Southeast Asia in Search of an ASEAN Community: Insights from the former ASEAN Secretary-General*, Singapore, ISEAS.2006.

as guidance devices for decision-making<sup>9</sup>.

Scholars who subscribe to this understanding of the ASEAN Way norms have argued that the persistence of the haze in the Southeast Asian region is caused by the limitations posed by the ASEAN Way of regional governance. They argued that while regional environmental governance can be instrumental in finding solutions to collective action problems, this model of ASEAN cooperation does not work when dealing with environmental challenges such as fires and haze<sup>10</sup>. Due to the *necessarily* strict adherence to the ASEAN Way, the haze problem is approached through the non-interference principle. This impedes collective problem-solving methods, as other states are not allowed to pressure members into acting in accordance with collective interest. Because of this, it is argued that ASEAN states struggle to draw a line between respecting their neighbouring government's right to self-determination and cooperatively mediating the region's haze problem<sup>11</sup>. Therefore, ASEAN has emphasized policy pronouncements and rhetoric over actual implementation of effective haze mitigation efforts<sup>12</sup>, largely rendering most of the mechanisms described above ineffective. Hence, while ASEAN states "undoubtedly desire the elimination of the haze problem", they were unable to balance this with their stronger desire to comply with the broader ASEAN Way norms, especially those of non-

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<sup>9</sup> Shaun Narine. Institutional theory and Southeast Asia: The case of ASEAN. *World Affairs*, 161, 33, Kratochwil, F. V. 1989. *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs*, Cambridge, Cambridge University Press, Kratochwil, F. V. 1984. The Force of Prescriptions. *International Organization*, 38. 1998.

<sup>10</sup> Bryan Tan. The Norms that Weren't: ASEAN's Shortcomings in Dealing with Transboundary Air Pollution *International Environmental Politics*, Spring 2005, Japan Center for International Exchange. 2000  
 . Fires and Haze in Southeast Asia. In: Noda, P. J. (ed.) *Cross-Sectoral Partnerships in Enhancing Human Security*. Tokyo: Japan Center for International Exchange, Yahaya, Nadzri. 2000. Transboundary Air Pollution: Haze Pollution in Southeast Asia and its Significance. *Journal of Diplomacy and Foreign Relations*, 2, 41-50, NGUIT-RAGOOL, P. 2011. Negotiating the Haze Treaty. *Asian Survey*, 51, 356-378, Chang, L. L. & Rajan, R. S. 2001. Regional Versus Multilateral Solutions to Transboundary Environmental Problems: Insights from the Southeast Asian Haze. *Transboundary Environmental Problems in Asia*, 655-670. 2005.

<sup>11</sup> Tan, see note 11, p. 3

<sup>12</sup> Chang & Rajan, see note 11, p. 3

interference and decision making based on consensus<sup>13</sup>.

Other scholars find these arguments to be flawed. ASEAN member states do *not* blindly follow the ASEAN Way principles due to some deeply ingrained “habit”. Instead, states pick and choose whether or not to adhere to the ASEAN Way principles, depending on whether it is in their interests to do so. Indeed, this is the crux of the ASEAN model of regionalism. While, for example, the European Union model of regionalism is characterized by the pooling of sovereignty, the ASEAN model is characterized by the maintenance of national sovereignty<sup>14</sup> and by extension, national interest. This is the so-called “myth” of the ASEAN Way, so described by Nischalke<sup>15</sup> in his 2000 paper on foreign policy cooperation among ASEAN member states. Indeed, there have been many instances where the ASEAN Way was deliberately ignored so that ASEAN states could pursue narrow understandings of their self-interests<sup>16</sup>. Furthermore, no ASEAN member state had any serious reservations about the policy outcomes in most of these cases, despite them being contrary to the ASEAN Way. Hence, an ASEAN state can choose to *not* adhere to the ASEAN Way in order to preserve crucial interests, without suffering any consequences at the regional level<sup>17</sup>.

I have previously used the “myth” of the ASEAN Way framework to explain the ineffectiveness of ASEAN haze mitigation efforts up till early 2014<sup>18</sup>. I argued that the patron-client networks (both local and cross-border) within the region’s palm oil plantation sector have had a strong influence over Indonesia, Malaysia and Singapore’s national interests. This is due to the mutually beneficial relationship between government officials (patrons) and well-connected businessmen

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<sup>13</sup> Vinod K. Aggarwal & Jonathan T. Chow. The perils of consensus: How ASEAN’s meta-regime undermines economic and environmental cooperation. *Review of International Political Economy*, 17, 262-290. 2010.

<sup>14</sup> Philomena Murray. The European Union as an integration entrepreneur in East Asia - Yardstick or cautionary tale? Australian Political Studies Association Conference, 27-29 September 2010 Melbourne, KIM, M. 2011. Theorizing ASEAN Integration. *Asian Perspectives*, 35, 407-435. 2010.

<sup>15</sup> Nischalke, see note 7, p. 3

<sup>16</sup> Shaun Narine. ASEAN and the management of regional security. *Pacific Affairs*, 71, 195. 1998.

<sup>17</sup> Nischalke, see note 7, p. 3

<sup>18</sup> Varkkey, see note 3, p. 2

(clients). Hence, elite-centric issues like continued access to, and ability to exploit natural resources took priority over citizens' health and safety. Because of this, the states involved *chose* to adhere to the ASEAN Way when dealing with the haze. By insisting on ASEAN Way principles like national sovereignty and self-determination<sup>19</sup>, member states have been able shape collective mitigation initiatives at the ASEAN level in accordance with their most pertinent interests at the time – that of the elites. Such behavior has been predicted by Nesadurai<sup>20</sup>, who has argued that “the ASEAN Way is often only strictly adhered to and enforced by states in areas where crucial economic interests are affected”.

This has weakened ASEAN's capacity to create and enforce haze mitigation efforts that serve collective regional interests. It has resulted in a sort of paralysis where haze initiatives instead protect elite corporate interests, preserve state sovereignty, and deflect responsibility on the haze issue. Even when the ASEAN member states agreed to adopt the legally-binding ATHP, this was done while still closely adhering to the ASEAN Way. This ensured that the ATHP became a highly watered-down document that lacked hard law mechanisms and continued to protect current national economic interests<sup>21</sup>. Furthermore, as mentioned briefly above, Indonesia, the country of origin of most of the smoke haze, conveniently remained the only ASEAN member state yet to ratify the ATHP after more than a decade of the agreement coming into force. Indonesia's prolonged snub of the ASEAN Way principle of consensus (after all the other nine member states ratified the agreement) did not incur any serious consequences for Indonesia, further reinforcing the “myth” argument that states who do not comply to the ASEAN Way will not suffer any ill-effects of non-compliance.

It can be concluded that in the beginning of 2014, the three member states most involved in the transboundary haze issue shared relatively similar national interests. All three countries were heavily invested in the region's palm oil sector. The sector was regarded as Indonesia's “miracle crop”, contributing a steady 5-7% of GDP yearly. Many Malaysian and Singaporean plantation companies, both facing

<sup>19</sup> Narine, see note 17, p. 4

<sup>20</sup> Helen E. S. Nesadurai. The Association of Southeast Asian Nations (ASEAN). *New Political Economy*, 13, 225. 2008.

<sup>21</sup> Varrkey, see note 3, p. 2

limited land banks for cultivation at home, were encouraged by their governments to venture out to the vast lands of Indonesia to cultivate palm oil as well. At its peak, up to half of all palm oil plantations in Indonesia were linked to either Malaysian or Singaporean interests<sup>22</sup>. The patron-client culture of doing business, which was common in all three countries, ensured that business elites in this sector enjoyed the protection and support of not only the Indonesian government but also home governments. Hence, I have argued that the flurry of activity at the ASEAN level was a strategic move by ASEAN member states to show the increasingly vocal civil society in all three countries that they were “doing something” about the haze, while at the same time preserving their crucial economic interests<sup>23</sup>.

However, subsequent events towards the second half of 2014 saw a significant change of heart among two of the central countries in the haze equation, Singapore and Indonesia. Firstly, after decades of willing cooperation and support of ASEAN haze mitigation efforts, Singapore unilaterally established its own national legal instrument to address haze, the transboundary Haze Pollution Act<sup>24</sup>. Secondly, after almost a decade of dragging its feet, Indonesia finally decided to ratify the ATHP<sup>25</sup>. What triggered these two counter-intuitive legal developments? Using the “myth” framework, this paper continues below to argue in detail how the change in behavior of both states can be explained by evolving national interests.

### III. SINGAPORE: EXTRA-TERRITORIAL UNILATERALISM

The parliament of Singapore passed the Transboundary Haze Pollution Act on 5 August 2014. This Act provides for criminal and civil liability for any entity that engages in conduct, authorizes or condones

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<sup>22</sup> Aditia Maruli Radja. “Half of RI’s oil palm plantations foreign-owned”. *Antara Magazine*. Jakarta: Financial Times Information Limited, The Star. “Helping to clear the haze Eight Malaysian-owned firms under Indonesian probe”. *The Star*, 25 June 2013.

<sup>23</sup> Varkkey, see note 3, p. 2

<sup>24</sup> Parliament of Singapore 2014. Transboundary Haze Pollution Bill No. 18/2014.

<sup>25</sup> Wahyudi Soeriaatmadja. “Indonesia’s parliament agrees to ratify Asean haze pact”. *Straits Times*, 16 September 2014.



any conduct regardless of whether the entity is in or outside Singapore, which results in transboundary haze pollution in Singapore<sup>26</sup>. It is one of the few extra-territorial environmental legislations in the world, as even foreign companies without any assets in Singapore would be liable under the Act<sup>27</sup>. The act gives considerable investigative powers to the National Environmental Agency (NEA) of Singapore. Now, the Agency is empowered to request for information directly from these companies, bypassing formal diplomatic processes. It can also take preventive measures, including issuing a notice to require the entity to control fires or deploy personnel<sup>28</sup>.

Several international law principles are used by Singapore to claim jurisdiction under this Act, detailed as follows. The “passive personality” principle arises when the victim of the harm caused in a citizen. The “protective” principle is when the interests of the legislating state are being threatened, typically national security. The “effects doctrine” is for conduct wholly outside the country that has consequences within its borders<sup>29</sup>. It also calls into effect the principle of *sic utere tuo ut alienum non laedas*, or “use your own property as not to injure that of another” (Republic of Singapore, 2016). Of course, all this is rooted in several international treaties. The United Nations Principles on Business and Human Rights provides that “states should set out clearly the expectation that all business enterprises domiciled in their territory and /or jurisdiction respect human rights throughout their operations” and corporations have a related “responsibility to respect human rights [that] requires [they] (a) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”<sup>30</sup>. And of course, Principle 21 of the Stockholm Declaration,

<sup>26</sup> UNEP 2015. Air Quality Policies. UNEP.

<sup>27</sup> Alan Khee-Jin Tan. The ‘haze’ crisis in Southeast Asia: Assessing Singapore’s Transboundary Haze Pollution Act. *Faculty of Law Working Paper Series*. Singapore: National University of Singapore. 2015.

<sup>28</sup> Rajah & Tann 2014 The Transboundary Haze Pollution Act 2014: Impact and Consequences. Singapore.

<sup>29</sup> Tan, see note 28, p. 6

<sup>30</sup> Mahdev Mohan. A domestic solution for cross border human rights harm: Singa-



which both countries have acceded to, stresses that while countries have “the right to exploit their own resources pursuant to their own environmental policies”, they also have the “responsibility to ensure the activities within their jurisdiction or control do not cause damage to the environment of other states or areas beyond the limits of their national jurisdiction” (the “precautionary principle”)<sup>31</sup>.

This Act by Singapore has been described as an attempt to “criminalize” and “securitize” haze. While internal Indonesian regulations do exist which criminalize clearing land by fire (Regulation Number 4 of 2001 on Pollution Control and/or Damage Relating to the Environment, Forest Fires, or Land in 2001)<sup>32</sup>, they are not being implemented effectively in practise, made worse by the rampant corruption and protectionism enjoyed by well-connected clients. As a result, if the cases are brought to court at all, prosecutors in Indonesia generally press for lower charges or offences which result in courts handing down relatively light sentences<sup>33</sup>. Hence, in the face of a source government that refuses to effectively criminalize haze, Singapore is attempting “extra-territorial criminalization”. In contrast to past haze mitigation efforts at the ASEAN level, this Act focuses on companies, instead of the state<sup>34</sup>. It is a market-based tool that seeks to raise the relative cost of land clearing by fire in Indonesia. It aims to tilt the incentives in the country in favour of less polluting means of clearing land<sup>35</sup>. It largely relies on the concern of the companies’ reputational risks to their core business and image, which would arise if they are charged under the Act<sup>36</sup>.

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pore’s haze pollution law. *Business and Human Rights Journal*, 1-9.2017.

<sup>31</sup> Janice Ser Huay Lee, Zeehan Jaafar, Alan Khee Jin Tan, Luis R. Carrasco, J. Jackson Ewing, David P. Bickford, Edward L. Webb & Lian Pin Koh. Toward clearer skies: Challenges in regulating transboundary haze in Southeast Asia. *Environmental Science & Policy*, 55, 87-95.2016.

<sup>32</sup> Marco Bassano & Denis Tan. Dissecting the Transboundary Haze Pollution Bill of Singapore. Columbia School of International and Public Affairs.2014.

<sup>33</sup> Tan, see note 28, p. 6.

<sup>34</sup> Rajah & Tann, see note 29, p. 6

<sup>35</sup> Tan & Bassano, see note 33, p. 6

<sup>36</sup> Raman Letchumanan. Singapore’s Transboundary Haze Pollution Act: Silver Bullet or Silver Lining? *RSIS Commentary*. Singapore.2015.

An Indonesian scholar has described this as an act of securitization<sup>37</sup>; an extreme version of politicization that enables extraordinary means to be used in the name of security<sup>38</sup>. Sometime prior to the second-half of 2014, Singapore's perception of the haze problem shifted from one that was a regular transboundary issue (not threatening national security) to an extraordinary transboundary issue (threatening national security). In line with the "protective" principle described above, this served to justify the extraordinary action of passing a unilateral extra-territorial act in an attempt to protect national security in Singapore. This paper argues that this shift of perception of the haze issue is rooted in the nature of national interests. Nye<sup>39</sup> has argued that national interests are a subjective "set of shared priorities regarding relations with the rest of the world". National interests are not consistent, especially in today's information age, where massive flows of information create difficulties to "maintain a consistent set of shared priorities in foreign policy". Gutjahr<sup>40</sup> has illustrated the changeability of national interests in his case study of Germany in 1995. In the same vein, here I illustrate how Singapore's national interest is also subjective and have changed over time.

As with Malaysia and Indonesia, Singapore remains a major player in the regional palm oil sector. Even though there is a dearth of oil palm plantations in Singapore itself, Singaporean presence in the Indonesian palm oil sector has always been notable<sup>41</sup>, both on the plantation side as well as for processing and refining. Hence, palm oil has for many years been crucial to Singapore's economic interests. Likewise, many of these investments enjoyed close relations with Singapore's ruling elite, resulting in the amalgamation of national interests with that of the government and business elites. Hence, it was unsurprising that

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<sup>37</sup> Kardina Gultom. Sekuritisasi Kabut Asap di Singapura 1997-2014. *Indonesian Perspective*, 1, 49-66. 2016.

<sup>38</sup> Barry Buzan, Ole Waever & Jaap de Wilde. *Security: A New Framework for Analysis*, Colorado, Lynne-Rienner.1998.

<sup>39</sup> Joseph S. Nye Jr. Redefining the National Interest. *Foreign Affairs*, 78, 22-35.1999.

<sup>40</sup> Lothar Gutjahr. Stability, Integration and Global Responsibility: Germany's Changing Perspectives on National Interests. *Review of International Studies*, 21, 301-317.1995.

<sup>41</sup> WALHI & SAWIT WATCH. Memorandum: Issues Surrounding Malaysia Palm Oil Investments and Plantation Operations in Indonesian Palm Oil Industry. 2009.

Singapore, for many years, was largely in step with Indonesian and Malaysian attitudes towards haze; that it was unsavory but necessary side effect along the path of development<sup>42</sup>. However, the passing of the THPA is a clear indicator that Singapore’s national interests are no longer squarely in line with elite interests. While Singaporean presence in this sector remains high till today, (Nazir Foead, an Indonesian official spearheading the Peatland Restoration Agency was quoted recently saying that “you will be surprised to see how many Singaporean investments are involved in driving the peat swamp conversion [for oil palm plantations] – money from Singapore”<sup>43</sup>, the THPA in practise does not serve to protect Singaporean companies operating in Indonesia. In fact, Singaporean companies are most at risk under this act. Even though technically, even foreign companies without any assets in Singapore are liable under the Act, realistically, this Act can most easily be brought to bear upon companies based in Singapore, or at least have business or officers linked in Singapore. This is because, despite the extra-territorial nature of the Act, Singapore cannot compel officers who are in Indonesia to attend court proceedings in Singapore even after issuing a valid warrant<sup>44</sup>.

Hence, why is Singapore putting their own allies, previously so important to its national interests at risk with this Act? This paper argues that over time, the actors most important to Singapore’s national interests have changed. As the most modern and industrialized country in Southeast Asia today, Singapore’s human resources has become more lucrative than its natural resources. Human resource-reliant industries like Business Services (15.8%) and Finance and Insurance (13.1%) are among the top three contributing sectors to the Singaporean industry<sup>45</sup>. Hence, transboundary haze affects Singapore’s most important resource: its work force. Ever-worsening haze episodes effectively closed the entire tiny island, resulting in lost man hours and the deteriorating

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<sup>42</sup> VARKKEY a, see note 3, p. 2

<sup>43</sup> Audrey Tan.” Clear skies likely despite haze season: Indonesian official”. *The Straits Times*, 19 May 2017.

<sup>44</sup> Rajah & Tann, see note 29, p. 6

<sup>45</sup> Statistic Singapore. *Share of GDP by Industry* [Online]. Singapore: Statistics Singapore. Available: <http://www.singstat.gov.sg/statistics/visualising-data/charts/share-of-gdp-by-industry> [Accessed 23 August 2017].

health of its valuable work force<sup>46</sup>. One source has put economic losses suffered by Singapore during the recent 2013 haze episode as high as SGD342 million (USD250 million)<sup>47</sup>. The haze has also reduced Singapore's attractiveness as an expat and investment destination<sup>48</sup>.

Recall my argument above that ASEAN member states were comfortable with ASEAN-level haze cooperation because it was a platform where they could show civil society that they were “doing something” about the haze, while at the same time preserving their crucial economic interests<sup>49</sup>. However, recent years saw an increase in the flow of information, both from Indonesia to Singapore (about the on-the-ground situation), and from the Singaporean civil society to the Singaporean government. As noted above, such information flows encourage governments to reconsider their national interest priorities. Hence, as civil society in Singapore became increasingly more vocal and active<sup>50</sup> over haze, the Singaporean government began to take the concerns of this increasingly economically important group to heart. Furthermore, not wanting to look ineffective in the face of public outcry is especially important to the ruling party now, especially after significant decline in popular support for the party after the 2011 parliamentary elections<sup>51</sup>. As such, the Singaporean government began to understand and frame the haze as a situation where its national security interests were being threatened. Singapore hence developed the political will to act more strongly (even unilaterally) in attempts to preserve its new national interest and national security priorities, ultimately culminating in the THPA.

As mentioned above, the “myth” of the ASEAN Way proposes that an ASEAN state can choose whether or not to adhere to the ASEAN Way in order to preserve crucial interests. On the surface,

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<sup>46</sup> Jeremy Grant & Ben Bland. “Singapore widens battle against toxic haze from forest fires”. *Financial Times*, 19 Februar 2014.

<sup>47</sup> Gultom, see note 38, p. 7

<sup>48</sup> Joanne Poh. “3 Reasons Why Singapore May NOT Be the Most Liveable City For Asian Expats”. *MoneySmart*. Yahoo Finance: Yahoo.16 March 2016.

<sup>49</sup> Varkkey, see note 3, p. 2

<sup>50</sup> Arlina Arshad. “Singapore team digs in to help Riau village combat haze”. *Straits Times Asia*, 23 May 2017.

<sup>51</sup> Tan & Bassano, see note 33, p. 6

Singapore’s decision to bring in the force the THPA can be seen as a marked departure from the traditional ASEAN approach to resolving regional issues, which prioritizes diplomatic over legal solutions<sup>52</sup>. By putting into place an extra-territorial legislation that attempts to extend Singapore’s jurisdiction into Indonesia’s territory, it can be regarded as a direct violation of the ASEAN Way principle of non-interference in the internal affairs of other states. Hence, in accordance with the “myth” framework, it can be deduced that Singapore chose *not* to adhere to the ASEAN Way in order to preserve Singapore’s “new” national interest priorities, as discussed above. The “myth” framework further argues that states choose whether or not to comply with the ASEAN Way norms without suffering any negative consequences at the regional level. Indeed, in the early days of the THPA, no ASEAN member state raised any serious protest to Singapore’s legislative decision. Indeed, Indonesia was generally supportive of Singapore’s Act. At the proposal stage, the Act received public support from Indonesian officials and academics. Once it came into force, many Indonesian lawmakers also expressed support for the legislation. Most notably, Indonesia’s new leader, Joko Widodo (popularly known as Jokowi), also declared his support for the Act just days after winning the presidential election<sup>53</sup>. Hence, during this “honeymoon” period, Singapore suffered no ill consequences for not strictly adhering to central principles of the ASEAN Way. However, this was not sustained for long. To further shed light on these developments and what it means for ASEAN regionalism and the salience of its norms, Indonesia’s subsequent responses to the THPA is considered in the next section.

#### **IV. INDONESIA: RESPONSES, RATIFICATION AND CONSEQUENCES**

Almost concurrent to the developments in Singapore, another notable legal development occurred on Indonesia’s side. After more than a decade of dragging its feet on the matter, the Indonesian parliament finally decided to ratify the ATHP in September 2014, about a month after the passage of Singapore’s THPA. This was, predictably,

<sup>52</sup> Mayer, see note 4, p. 2

<sup>53</sup> Tan & Bassano, see note 33, p. 6

welcomed with much fanfare by the other ASEAN member states<sup>54</sup> (recall that Indonesia's non-ratification has long been considered a vital explanation of the ineffectiveness of ASEAN haze mitigation efforts). It is interesting to consider Indonesia's motivations in ratifying the ATHP at this time. As mentioned above, Indonesia weathered out one decade of non-ratification (which was clearly against the ASEAN Way norm of consensus) with almost non-existent consequences from other ASEAN member states. Arguably, Singapore's 2014 THPA was the first real "consequence" of Indonesia's non-ratification. So, what triggered the change of heart in Indonesia? Unlike Singapore, there is no visible shift of national interest priorities – the palm oil sector still remains one of the most lucrative economic sectors for Indonesia, and the relationship between the government and business elites in the sector remains strong.

Two factors are notable in the context of this unexpected ratification: the stepping down of Indonesia's outgoing president, Susilo Bambang Yudhoyono (SBY) and indeed Singapore's THPA. It is pertinent to note that the ATHP was ratified not under the Jokowi administration, but by SBY, as one of his few final acts in office<sup>55</sup>. Despite many years of using the excuse that the ratifying the ATHP would not be in the national interests of Indonesia<sup>56</sup>, it is indeed fitting that SBY, an avid "ASEAN-ist" and supporter of Southeast Asia's regional project, managed to push through the ratification of the ATHP before his retirement, to show his personal support for the "ASEAN project". However, more important for consideration is the effect of the THPA. The draft THPA was announced and released for public consultation in February 2014<sup>57</sup>, hence Indonesia was well aware of Singapore's intentions to pass the Act early on in the year. As will become clear below, Indonesia could have pushed for the ratification of the ATHP as "insurance" against Singapore should Singapore threaten Indonesia's crucial interests with the THPA. Even though non-ratification previously served to protect Indonesian elite interests from unwanted scrutiny and pressure, the prospect of

<sup>54</sup> Straits Times. "Ratification of Asean haze agreement a historic step in tackling problem: Malaysia PM Najib Razak". *Straits Times*, 8 September 2015.

<sup>55</sup> I Made Sentana & Joko Hariyanto. Indonesia Ratifies Regional Pollution Treaty as Haze Spreads to Neighbors. *The Wall Street Journal*, 16 September.2014.

<sup>56</sup> Varkkey, see note 3, p. 2

<sup>57</sup> National Environment Agency 2014. Factsheet on Transboundary Haze Pollution. Singapore.

these interests being legally liable under the THPA would clearly be the bigger threat. Hence, Indonesia’s act of ratification should not be read as a change of heart towards a more pro-ASEAN stance, but instead as an updated strategy to preserve its crucial national interests, that of the palm oil sector and the elites within the sector. While Indonesia’s national interests remained the same, strategies to preserve them have had to evolve to suit new developments in the neighbourhood.

Indeed, while Indonesia did not at first raise any serious protest towards the THPA, and in fact informally threw its support behind it, Indonesia’s stance soon changed when Singapore first attempted to use the Act against Indonesian interests. In 2016, Singapore obtained a court warrant against the director of an Indonesian company linked to haze-causing fires. This led to an immediate protest by Indonesia’s Ambassador to Singapore in May 2016<sup>58</sup>. This was followed by much sterner statements from Indonesia’s Environment and Forestry Minister, Siti Nurbaya Bakar in June 2016. Directly referring to the act, she denied that Singapore could step into Indonesia’s legal domain on the issue of forest fires because the two countries did not have an agreement on the matter<sup>59</sup>. Most notably, the Minister also claimed that the act was “controversial” and that Singapore did not show “mutual respect” in accordance with the ASEAN Way. She reminded Singapore that the ATHP has precedence over haze issues<sup>60</sup>. As it stands, the warrant still stands and the director against whom the warrant has been issued still can be detained by the NEA for investigations if the director enters Singapore<sup>61</sup>.

These statements clearly show the fruits of Indonesia’s foresight in ratifying the ATHP. Now, Indonesia could take the moral high ground by claiming that Indonesia is giving full cooperation at the ASEAN level for haze mitigation (by ratifying the ATHP), and in contrast, Singapore was not (by “ignoring” the ATHP which has precedence).

<sup>58</sup> Saifulbahri Ismail. “Protest conveyed to Singapore Environment Minister: Indonesia”. *Channel NewsAsia*, 16 May 2016.

<sup>59</sup> Saifulbahri Ismail. “Singapore cannot enter Indonesia’s legal domain on forest fire issues: Forestry Minister”. *Channel NewsAsia*, 14 June 2016.

<sup>60</sup> Ismail, see note 59, p. 10

<sup>61</sup> Audrey Tan. “Haze-linked firm ‘opaque with information’”. *The Strait Times*, 3 March 2017.



Furthermore, it is clear that to Indonesia's reasoning, Singapore's Act clearly violates the ASEAN Way norms, and that Indonesia was not comfortable with that. However, closer examination of the ATHP calls into question whether or not Singapore's Act is indeed overstepping the bounds of the ATHP. It is important to note that the "precautionary principle" is in fact adopted within Article 3.3 of the ATHP. This can be taken to mean that the Act is in fact in line with and complement to provisions of the ATHP<sup>62</sup>. The ATHP, for example, calls upon all states "to take legislative, administrative and/or other measures to implement their obligations to prevent and monitor transboundary haze pollution" and obliges the state where "transboundary haze pollution originates to respond promptly to a request for relevant information or consultation sought by an affected state". Hence, under the ATHP, Singapore' is technically allowed to take legislative action – and chose to do so in the form of the THPA. Furthermore, Indonesia is obliged to respond promptly to Singapore's requests for information related to such action (which Indonesia has not been doing - Singapore only resorted to the court warrant only after repeatedly asking for information related to the case from Indonesian authorities)<sup>63</sup>.

The complexity of the matter stems from the fact that the ATHP, as a legally-binding document, itself challenges the norms of the ASEAN Way which prescribes non-legalistic procedures. This has led to a back-and-forth between the two governments about whether Singapore is in violation of the ASEAN Way norms or not. In response to Indonesia's statements, Singapore issued a statement clarifying that the Act did not mean to challenge Indonesia's sovereignty and the fact that the Singapore has repeatedly asked for information from Indonesian authorities on such cases proves that Singapore very much respects Indonesia's sovereignty<sup>64</sup>. Specifically, Singapore argued that the THPA is not intended to supplant the laws and enforcement actions of other countries (and indeed ASEAN); rather, the intention is to complement

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<sup>62</sup> Mohan, see note 31, p. 6

<sup>63</sup> Raman Letchumanan. Singapore's Transboundary Haze Pollution Act: Silver Bullet or Silver Lining? *RSIS Commentary*. Singapore.2015.

<sup>64</sup> Channel Newsasia. "Transboundary Haze Pollution Act not about national sovereignty: MEWR". *Channel NewsAsia*, 15 June 2016.

the efforts of other countries to hold companies to account<sup>65</sup>. In this way, Singapore presented the THPA as a “key component to a holistic solution which will include further multilateral cooperation as well as a recommitment to the ATHP”<sup>66</sup>. Based on this, Singapore argued that Indonesia should instead welcome this additional tool to address the haze issue<sup>67</sup>. Indeed, it answers the age-old Indonesian argument that victim states should look at their own companies first before blaming Indonesia<sup>68</sup>. Seen here, while the act of passing the THPA does not conform to several ASEAN Way norms (non-interference, non-legalistic procedures, etc), Singapore was able to justify its actions using the ATHP mechanism.

Indonesia’s cooperation is highly important in ensuring the effectiveness of the THPA, especially when it comes to the attempted prosecution of non-Singaporean linked entities. As only official data can be admissible in the Singapore courts, Indonesia’s willingness to share the information and maps relating to entities that start fires are vital for successful prosecution of liable parties<sup>69</sup>. Furthermore, additional evidence like on-the-ground witness testimonials and aerial photography using low-flying planes would be important in determining where the fires have been started, whether they have been lighted deliberately, and by whom. This requires the explicit consent of Indonesia to enter and fly over their territory<sup>70</sup>. Hence, Indonesia’s vocal opposition of the Act thus far is almost certainly limiting the effectiveness of the THPA and preventing cases to be feasibly brought to Singaporean courts under this law. By doing so, Indonesia can again be seen to be strategically using the ASEAN Way in order to preserve their crucial interests. As soon as the interests of the elite business groups were threatened (i.e. with the issuance of the warrant from Singapore), Indonesia chose to use the ASEAN Way norms as the basis of protest against Singapore’s THPA. By shaming Singapore for “ignoring” ASEAN procedures and

<sup>65</sup> Republic of Singapore 2016. Protection of the Atmosphere- Information on Domestic Legislation of Singapore- Transboundary Haze Pollution Act 2014.

<sup>66</sup> Subraresh Menon. “Barbarians at the gate: challenges of globalization to the rule of law”. *World Bar Conference*. Queenstown.2014.

<sup>67</sup> Channel Newsasia, see note 65, p. 11

<sup>68</sup> Lee.et al., see note 32, p.6

<sup>69</sup> Tan & Bassano, see note 33, p. 6

<sup>70</sup> Tan, see note 28, p. 6

refusing to cooperate based on the reasoning that Singapore did not act in accordance with the ASEAN Way, Indonesia is placing more weight on ASEAN Way norms than usual (evident in the fact that Indonesia did not ratify the ATHP for a decade). Hence, the “myth” of the ASEAN Way is seen in strategic practice here.

The “myth” framework argues that members should be able to pick and choose compliance *without* suffering any negative consequences. Note that Singapore’s passing of the THPA resulted in negative consequences in the form of the diplomatic spat with Indonesia as described above. However, this spat has remained confined squarely within the scope of the haze issue. Both countries have not allowed these grievances to affect broader Indonesia-Singapore relations. Indeed, Singapore and Indonesia just recently lavishly celebrated its 50th anniversary of bilateral and diplomatic relations<sup>71</sup>. While relations over the haze has been at best civil and at worse tense between the two countries since the incident with the warrant in 2016, relations over other aspects important to both countries, especially trade, tourism, and security has been consistently cordial. Hence, it can be argued that the negative consequence suffered by Singapore for “not complying with ASEAN norms” is only that the Singapore will have some difficulty trying non-Singaporean linked entities under the Act without Indonesia’s full cooperation (which may yet change down the road). It should still be able to effectively prosecute those who have clear linkages to Singapore. Furthermore, as a deterrent effect, many Singaporean, Malaysian and Indonesian companies with linkages to Singapore will have to re-examine their direct and indirect links to entities causing forest fires lest they come within the Act’s purview<sup>72</sup>. Already, preventive notices sent out by the NEA have prompted a degree of compliance on the part of companies which have responded<sup>73</sup>.

As predicted by the “myth” framework, in the broader scope of regional relations and ASEAN regionalism, no negative consequences have been incurred. In fact, some scholars have identified the true value of the THPA as lying more in exerting pressure on Indonesia

<sup>71</sup> Francis Chan. “Singapore, Indonesia mark 50 years of relations”. *Straits Times*, 8 Sept 2017.

<sup>72</sup> Rajah & Tann, see note 29, p. 6

<sup>73</sup> Mohan, see note 31, p. 6

to take greater action of its own<sup>74</sup>. At the very least, Indonesia is now fully on board with the ATHP, something that the whole region has been waiting for with bated breath. While several scholars are pessimistic that Indonesia’s ratification will make any difference to the effectiveness of the ATHP (due to it being a fundamentally weak instrument)<sup>75</sup>, there is hope in terms of the eventual establishment of the ASEAN Coordinating Centre for Haze in Riau, the easing the process of seeking and receiving assistance<sup>76</sup>, and the full participation of Indonesia at ASEAN level meetings (instead of just being an observer)<sup>77</sup>. Furthermore, Singapore has openly implied that the recent “active efforts by the Indonesian government” to prevent repeats of severe haze episodes was indirectly influenced by Singapore’s passing of the THPA. For example, Indonesia has recently been more actively using legal means to prosecute wrongdoers. PT Nasional Sago Prima was fined IDR1.07 trillion (USD81 million) for its link to forest fires in Indonesia. Indonesia has further announced that it is pursuing five other lawsuits against companies linked to forest fires<sup>78</sup>.

## V. MALAYSIA: NORMATIVE CONSIDERATIONS

The country of Malaysia, which is positioned north of both Indonesia and Singapore, is also a central actor in the regional haze equation. Malaysia also suffers from haze as a result from fires in neighbouring Indonesia. In addition, Malaysia also, even though to a lesser extent, suffers from self-inflicted haze, from fires within their own territory. The fires in Malaysia generally does not affect any other Southeast Asian country – the smoke haze produced generally remains internal

<sup>74</sup> Lee et al., see note 32, p.6

<sup>75</sup> See for example Helena Varkkey. Recent ASEAN Developments on Peatfires and Haze: National Responses. *Malaysian Journal of International Relations*, 4, 163-173.2016.

<sup>76</sup> Fadhilah Abdul Ghani, Nor Izzati Nor Redzuan, Nur Farhanah Mohd Nasir & Munirah Salamat. Review on ASEAN Transboundary Haze Pollution Agreement 2002: Problems and Solutions. *International Conference on Humanities, Language, Culture & Business*. Pahang: Research Gate. 2017.

<sup>77</sup> Daniel Heilmann. After Indonesia’s Ratification: The ASEAN Agreement on Transboundary Haze Pollution and Its Effectiveness As a Regional Environmental Governance Tool. *Journal of Current Southeast Asian Affairs*, 34, 95-121.2015.

<sup>78</sup> Mohan, see note 31, p. 6

or are blown off into the sparsely populated South China Sea. It can be said that the haze that affects Malaysia is slightly less severe than that of Singapore. Being a small island state, haze episodes affect the whole of Singapore at once, in effect “shutting off” the entire island, especially when this involves airport closures. In comparison, haze would affect only certain parts of Malaysia at a time, and only rarely does the situation become bad enough that all parts of Malaysia are enveloped. Despite this however, the parts that do get affected also suffer badly. For example, the recent severe haze episode in 2013 affected the southernmost states of Malaysia especially badly; prompted the Malaysian government to declare a state of emergency in two southern districts, causing hundreds of schools to be closed for several days<sup>79</sup>.

In the early days of Singapore’s THPA, Malaysia also announced that it is considering putting into place a similar law and is studying the feasibility of such a law in the context of the country’s constitution<sup>80</sup>. However, after the diplomatic ruckus between Indonesia and Singapore regarding the warrant and related THPA issues, Malaysia has since toned down on its legal intentions. In early 2017, Malaysia’s Minister of Natural Resources and Environment admitted that Singapore’s difficulties in enforcing the THPA prompted Malaysia to reconsider such a legalistic approach<sup>81</sup>. A major issue that was identified was the question of how owners of errant firms will not be caught as long as they do not enter the countries implementing such laws<sup>82</sup>. Hence, he said that Malaysia has decided that diplomacy was a better option and would work better than enacting a law similar to the THPA, noting that “we can get access to the authorities in Indonesia”<sup>83</sup>.

Malaysia’s national interests are a combination of that of Indonesia

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<sup>79</sup> The Sun Daily. “PM declares haze emergency in Muar and Ledang”. *The Sun Daily*, 23 June 2013.

<sup>80</sup> Fadhilah Abdul Ghani, Nor Izzati Nor Redzuan, Nur Farhanah Mohd Nasir & Munirah Salamat, see note 77, p. 12, Tay, S., Chen, L. C. & Yi, L. X. *Southeast Asia’s Burning Issue: From the 2015 Haze Crisis to a more Robust System*. Singapore: Singapore Institute of International Affairs. 2016.

<sup>81</sup> Andrea Soh. “Malaysia prefers to use diplomacy to fight haze-causing fires”. *The Business Times*, 7 April 2017.

<sup>82</sup> Siau Ming En. “No haze for Singapore this year from Sumatran fires: Governor”. *Today*, 7 April 2017.

<sup>83</sup> Soh, see note 82, p. 13

and Singapore. While many powerful and well-connected Malaysian companies make up the largest foreign investor group in the Indonesian palm oil sector, Malaysia also is facing steadily increasing pressure from civil society back home. In addition to this, Malaysia is also a major palm oil producer in the world (the second largest after Indonesia), and faces its own internal fire and haze issues. Malaysia’s relationship with Indonesia however, is more complicated than that of Singapore with Indonesia. Indeed, Malaysia is an important trading partner with Indonesia<sup>84</sup>. However, one of the biggest political conflicts in Malaysia’s history, which almost culminated in war, was the Konfrontasi with Indonesia in 1963<sup>85</sup>. Following this, the Malaysia-Indonesia relationship has been fraught with cross-border conflicts, including ownership rights to various cultural items like songs, cloth (batik), dances and food<sup>86</sup>. Most recently, passions flared again when Malaysia mistakenly printed the image of the Indonesian flag upside-down in a SEA Games pamphlet<sup>87</sup>. Hence, compared to Singapore, Malaysia is much warier of stepping on Indonesia’s toes.

It is clear that Malaysia has played a “wait and see” game with regards to unilateral legal action over transboundary haze. Indeed, Malaysia was genuinely interested in pursuing legal recourse with Indonesia for haze, especially since Indonesia’s general response to Malaysia’s concerns over the years was, as mentioned above, “check your own companies first”<sup>88</sup>. However, once Indonesia’s response towards Singapore’s THPA turned sour, Malaysia has all but abandoned this legalistic approach. Several factors in relation to ASEAN regionalism is at play here. Firstly, Malaysia was the main proponent of the ATHP at the ASEAN level, and indeed was the first country to ratify it mere months after it was signed. Indeed, since Singapore has been perceived

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<sup>84</sup> Bernama. “Malaysia is among Indonesia’s biggest trading partners with trade over US\$24b”. *Malay Mail Online*, 28 January 2015

<sup>85</sup> Adam Leong Kok Wey. “The War That Gave Birth to ASEAN”. *The Diplomat*, 9 September 2016.

<sup>86</sup> New Mandala. “Indonesia and Malaysia’s love-hate relationship”. *Asian Correspondent*, 8 April 2014.

<sup>87</sup> Malay Mail. “Flag gaffe shows Malaysians and Indonesians are strangers, says Jakarta Post”. *Malay Mail Online*, 23 August 2017.

<sup>88</sup> Janice Ser Huay Lee, Zeehan Jaafar, Alan Khee Jin Tan, Luis R. Carrasco, J. Jackson Ewing, David P. Bickford, Edward L. Webb & Lian Pin Koh, see note 32, p.6

as “overstepping the ATHP”, Malaysia would not want to be considered doing the same, especially since Malaysia was the main proponent of the agreement. Secondly, Malaysia’s statement that “we can get access to the authorities in Indonesia” can be read that Malaysia wants to be perceived as having a better relationship with Indonesia as compared to Singapore, and hence does not have to resort to legalistic procedures to get the information and results they want.

However, it must be reminded that Malaysia’s interests continue to be more in line with Indonesia’s, especially in terms of the important Malaysian elite interests active in Indonesia, that the Malaysian authorities would still seek to protect. While civil society groups like CERAH<sup>89</sup> and Global Environmental Centre<sup>90</sup> are slowly gathering more traction, the flow of information from civil society, especially over environmental issues, to the Malaysian government is still limited<sup>91</sup>, and would be hard pressed to have enough influence to change national priorities. Hence, to preserve crucial national interests, Malaysia chose to adhere to the norms of the ASEAN Way, citing diplomacy (non-legalistic procedures) as the continued preferred approach in addressing transboundary haze. While the “myth” framework, and Singapore’s experience would predict that there would be no adverse consequences to Malaysia at the regional level should it enact a law of its own (in this way, going against ASEAN Way norms), Malaysia also has to consider how this may be detrimental to Malaysia’s own interests (by putting the well-connected Malaysian companies at risk of unwanted scrutiny of their practices), and also to Malaysia’s continued turbulent relationship with Indonesia. It is however interesting to note, for future reference, that Malaysia does not seem to have completely abandoned the idea of giving the environment a stronger legal standing. In early 2017, Malaysian Chief Justice Tun Arifin Zakaria expressed his desire for the country’s constitution to be amended to include the “right to a clean and healthy environment”<sup>92</sup>.

<sup>89</sup> Susan Tam. “Towards smog-free skies in Malaysia. Catalyst Asia, 13 August”. CHAN, J. 2016. Clear goal for haze-free products. The Star, 25 March, NIZA, M. 2016. Fighting for clear blue skies. Focus Malaysia, 1 June 2016.

<sup>90</sup> The Sun. “Preventing peat forest fire important in tackling haze issue, says GEC director”. The Sun, 7 November 2016.

<sup>91</sup> Tan, see note 28, p. 6

<sup>92</sup> Mohan, see note 31, p. 6



## VI. CONCLUSION

In conclusion, this paper has zoomed in on legal developments in three of the major countries involved in transboundary haze pollution in Southeast Asia. Using the “myth” of the ASEAN Way framework, this paper argues that shifts in national interests can explain why certain countries changed their engagement patterns with the ASEAN organization and also with other ASEAN member countries over the haze issue. Namely, Singapore’s national interests have shifted alongside a shift in their economic priorities: from a natural resource-based economy to one more reliant on human resources. As such, Singapore’s national interests became more closely aligned with that of their public, and not that of Singaporean companies in the Indonesian palm oil sector. This resulted in Singapore passing the THPA.

Indonesia’s move of ratifying the ATHP soon after Singapore’s move in turn highlights that while Indonesia’s interests have not changed, its strategy for preserving those interests have had to evolve alongside the evolving regional environment. Since Singapore’s THPA now threatens legal action on Indonesian interests, Indonesia chose to ratifying the agreement in an attempt to delegitimize Singapore’s action as not in line with the ASEAN Way norms. This paper hence argues that for Indonesia, ratification of the ATHP was a “lesser evil” compared to the THPA. The “myth” framework argues that states can pick and choose compliance with ASEAN Way norms without suffering any consequences. This paper shows that while there have been some consequences to Singapore’s unilateral legal move, these have been minimal and in fact may yet inspire positive outcomes on the road to more effective haze mitigation.

Malaysia, in turn, has showed indecisiveness on whether or not to put into place legal instruments similar to Singapore. While the “myth” framework and Singapore’s track record shows that even if Malaysia does do so, consequences should be minimal, Malaysia’s national interests (and also its turbulent diplomatic history with Indonesia) that still lie more closely aligned with Indonesia’s would prevent Malaysia

to do so. Overall, this paper provides further evidence to illustrate and strengthen the “myth” of the ASEAN Way framework, which argues that an ASEAN state can choose to *not* adhere to the ASEAN Way in order to preserve crucial interests, without suffering any consequences at the regional level. Indeed, ASEAN member states do *not* blindly follow the ASEAN Way principles due to some deeply ingrained “habit”. Hence, a close examination of any change in a state’s national interest should be a good indicator in predicting state compliance to ASEAN Way norms over particular issues.

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