

# Chapter 8

## Preventing Dispute over Haze Through Regional and Local Governance



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### 8.1 Introduction

Fires and haze originating mostly from Indonesia have caused widespread air pollution across Southeast Asia, especially in Indonesia's immediate neighbouring states of Singapore and Malaysia. This transboundary pollution was first reported in 1982 and has grown more frequent over the years, making it an almost annual event today (Suwarsono et al. 2007: 1). This means that the region has been suffering from transboundary haze pollution in varying intensities for more than three decades. This has given rise to a conflicting situation between the haze-exporting state of Indonesia and the states that import haze.

However, this conflict situation over haze has never grown into a full-blown interstate legal or political dispute situation. The reason why this interstate regional conflict has never escalated to a dispute situation is worth investigating. This chapter argues that good incompatibility management has enabled them to avoid the conflict from escalating into a dispute situation. Oishi (2016: 8–15) has identified five distinct types of incompatibility management strategies, and this chapter finds two strategies that are especially applicable to the regional haze situation, particularly “redefining incompatibilities” and “manoeuvring around incompatibilities”. In the case of transboundary haze in Southeast Asia, this chapter finds that ideas of globalization and development have been useful in redefining incompatibilities and ASEAN has been useful in manoeuvring around incompatibilities.

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However, the chapter finds that poor governance at both the national and regional level poses a challenge to effective incompatibility management in the case of transboundary haze in the long term and thus has increased the risk of this conflict to escalate into a dispute situation. This is evidenced by the recent unilateral action of Singapore in crystallizing its incompatibilities with Indonesia in terms of a legal dispute, through the unilateral action of bringing into force the Transboundary Haze Pollution Act in 2014. While this situation has not escalated into a full-blown dispute situation in the sense that there has not yet been a formal case brought to court under this law, this chapter overall argues that improvement in governance at both the national and regional level can play an important role in further preventing this escalation.

This chapter first contextualizes the fires and haze in Indonesia in the context of the globalization of the agribusiness sector, particularly palm oil. It then goes on to define the incompatibilities that exist between the different actors at the national and international level with regard to transboundary haze. This is followed by an investigation into how ideas of globalization and ASEAN have been useful in managing these incompatibilities so as to avoid conflict escalation. The chapter then discusses how poor governance has nevertheless limited effective incompatibility management and has led to a potential legal dispute between Indonesia and Singapore. It concludes by highlighting ways in which good governance at both the national and regional level can play an important role in preventing this potential dispute from further escalation. A common theme throughout this chapter is the prevalence of patron-client relationships within the countries being discussed, which are useful in explaining national interests, incompatibilities and poor governance in the context of the haze.

## 8.2 Fires, Haze and Globalization

The term “haze” has been used in the Southeast Asian region to refer to “sufficient smoke, dust, moisture, and vapour suspended in air to impair visibility”. Haze pollution is transboundary when “its density and extent is so great at the source that it remains at measurable levels after crossing into another country’s airspace” (ASEAN Secretariat 2008). Haze originates from peat and forest fires, primarily from Indonesia. At its worst, the haze can travel to reach six Southeast Asian nations: Indonesia, Malaysia, Singapore, Thailand, Brunei and the Philippines (Mayer 2006: 202–203).

Forest fires have been extensively recorded in Southeast Asia, particularly in Indonesia, since the nineteenth century (Eaton and Radojevic 2001: 2). The “Great Fire of Borneo” in 1982, destroying 3.6 million hectares of forestland, was partially attributed to natural causes like drought and an accidental spark resulting from two branches rubbing together (Jakarta Post 1994) and partially to fires started by small-scale shifting cultivators who use fire as a tool to clear their land in preparation for planting (Dennis 1999). Poverty and ignorance were identified as major factors

driving the man-made fires of this time, as poverty left these small-scale farmers no choice but to use the cheapest means possible to prepare their land (fire) and ignorance meant that they were not aware of the larger regional effects of their actions (Colfer 2002: 313–316; Quah and Johnston 2001; Varma 2003).

However, the haze events of 1997–1998 massively surpassed the scale of the 1982 fires, resulting in the worst haze the region has seen in 50 years (Jakarta Post 1998). These fires burned an estimated 10 million hectares around Indonesia, destroying forests and bushland, including conservation areas and national parks (Dauvergne 1998). The 1997 and 1998 fires coincided closely with the palm oil boom experienced in Indonesia in the late 1990s.

Globalization, particularly economic globalization, was an important driver of this palm oil boom. Economic globalization can be defined as the decline in costs of doing business internationally. This is usually as a result of two separate but not necessarily mutually exclusive trends: globalization of production and trade and globalization of finance and capital flows. Both aspects of globalization are aided by three factors: innovations in transportation, information and communication technologies, push by various international institutions towards global economic liberalization, and the shift in perceptions about the appropriate role of government for economic success. One of the key effects of economic globalization is to enhance the international integration of markets for goods, services, technology, ideas, capital and labour. An indicator of its progress is reducing differences in prices for those products and factors across the world (Rajen 2001: 1; Anderson 2012: 2).

All three factors were visible in the globalization of the palm oil market. Until the 1950s, the majority of fats available for human consumption were animal fats, milk, butter and meat. Following years saw technological breakthroughs in the production and processing of oilseed-based fats, including palm oil. This greatly reduced the cost of baking and frying fats, margarine, butter-like spreads, salad oils and cooking oils in relation to animal-based products and increased demand for these oils. Encouraged by this upswing in worldwide demand, a number of major political initiatives promoted the further development of oil crops (Popkin 2006: 8). This included Malaysia and Indonesia in Southeast Asia, which decided to pursue agrarian modernity by exploiting its comparative advantage in its ability to grow the oil palm with optimum efficiency (McCarthy and Cramb 2009: 116). Furthermore, in the case of Indonesia, the World Bank gave specific assistance to the government to make direct investments in palm oil in the country (Gellert 1998: 77–81).

Palm oil's significant price discount to soy oil (Yeoh et al. 2011: 1) further boosted its popularity, especially during the years of financial crises, which saw the markets shift to less expensive edible oils (Tan and Oetomo 2011: 1). During the 1980s, the world price of palm oil surpassed the price of rubber (McCarthy and Zen 2010: 155–156), further solidifying the Southeast Asian region's preference of palm oil as an agrarian priority crop. Today, palm oil is the most traded oil in the global oils and fats market (Malaysian Palm Oil Council 2006: 7), with Malaysia and Indonesia making up more than 90% of global supply (World Growth 2011).

With local plantation investors getting the first pick of land for development into plantations, the Indonesian government later also opened up their lands to foreign

investors, offering attractive foreign investment opportunities as further encouragement (Rifin 2010: 174; McCarthy and Cramb 2009: 114–117). This open call was picked up primarily by Malaysian and Singaporean plantation companies and investors (Rajenthiran 2002). Today, about 50% of all plantation land in Indonesia is owned by foreign interests (Maruli 2011), with the majority of this Malaysian interests. This strategy had significant economic payoffs for Indonesia, with palm oil steadily contributing a significant chunk of at least 5% to Indonesia's GDP every year (Das 2014: 5).

This rapidly expanding global market for palm oil as a cash crop has led to rapid agricultural intensification in Indonesia, and to a lesser extent Malaysia (Meyfroidt et al. 2013: 439). In these countries, palm oil was grown on fully integrated large-scale plantations because of large economies of scale in both production and marketing of the crop (Swinnen and Maertens 2006: 57). This had led to the logging of pristine forests at an alarming rate to make space for these palm oil plantations (Lambin and Meyfroidt 2010).

After clear-cutting the forests, concessionaires had to then prepare the land for planting. This required flat, clean land absent of debris. To do this, many plantation companies systematically set fire to their concession areas, scaling up local age-old burning techniques to quickly and cheaply clear their land in preparation for planting (Casson 2002: 234–239; Gellert 1998: 81; Dauvergne 1998: 13–17). Clearing land using machinery can cost up to \$200 per hectare (Dauvergne 1998), so this was largely an economic decision.

However, as a side effect, this resulted in massive amounts of smoke from the land-clearing fires, which later floated over national boundaries to other countries in the region as transboundary haze. Figures from various sources that indicate most of the fires during the 1997–1998 years (65–80% by the World Wildlife Fund for Nature and 35% by the World Bank) (Saharjo 1999: 143; Jones 2006: 434) and also following years were on plantation concessions (Spracklen et al. 2015: 1; Marlier et al. 2015: 1). Hence, as ASEAN countries, and in this case Indonesia in particular, became more integrated into the global system of commodities markets, transboundary haze emerged as a side effect of this globalization and furthermore as a source of conflict in the region.

### **8.3 Incompatibilities Due to Patronage: Elites vs the General Public**

Conflict is a struggle or contest between people with incompatible needs, ideas, beliefs, values or goals (Diez and Huysmans 2007: 565). In every conflict, it is possible to define and explore the incompatibilities that exist between various actors in the context of that conflict. In the case of the transboundary haze in Southeast Asia, tensions can clearly be seen between different classes of society, namely, the elites and the general public, which have incompatible needs, ideas, beliefs, values and

goals in relation to transboundary haze. This is observable through patronage politics at both the national (Indonesia) level and the regional level.

Patronage politics can be defined as “a special case of dyadic (two-person) ties involving an instrumental friendship in which an individual of higher socioeconomic position (patron) uses his own influence and resources to provide protection or benefits, or both, for a person of lower status (client) who, for his part, reciprocates by offering general support and assistance, including personal services, to the patron” (Scott 1972: 72). Patrons and clients are almost exclusively motivated by material gain (Kurer 1996: 645–661) and can be seen as “a form of domination that is used by modern political and economic elites to channel resources for their own benefit” (Gunes-Ayata 1994: 17–26). Patronage “allows leaders to build a team of public managers who share the leaders’ policy agenda and who can be trusted not to sabotage or delay important programs” (Brinkerhoff and Goldsmith 2004: 163–182). In such conditions, there often arise situations of “mutual hostage” relations, where the “partners (politicians and business leaders) become locked into a situation of mutual dependency, where change by one threatens the well-being of the other” (Enderwick 2005: 129).

Patronage is known to be a dominant characteristic of societies in the region (Enderwick 2005: 117–127), so much so that patronage ties are a legitimate, accepted, even expected part of the economic process here (Dauvergne 1995: 89–98). It has also been identified as a central feature of the Indonesian palm oil sector. The sector tends to be organized through personal and industry-based social networks and relationships (Sim 2006: 491). For example, it is common among the top tiers of Indonesian plantation firms to have retired senior government bureaucrats (*mantan*) who could act as intermediaries with the state and perform “advisory and brokerage functions” on behalf of the company when needed (Varkkey 2016: 120). Malaysian and Singaporean firms who entered Indonesia to invest in the sector, familiar with the function of patronage networks at home, understood the necessity of these connections and had no qualms of adopting this patronage culture themselves. Hence, Malaysian and Singaporean plantation firms also established their own linkages with patrons by hiring or establishing relationships with prominent Indonesians (Varkkey 2016: 121).

The “mutual hostage” relations in the palm oil plantation industry is observable at both the central and local level in Indonesia. Central government elites in Indonesia needed these investors to support “national causes” (Tay 2003: 51–53), like the development of the agribusiness sector to successfully ride the rising tide of globalization. Local government elites, recently reeling from the drastic process of decentralization in Indonesia, suddenly found themselves responsible for a large part of their own administrative budgets. Hence, these investors were important to local government elites to provide them with a taxable source of income to fill regional government coffers (Duncan 2007: 711–724). On a more personal level, some business elites in this sector were also known to fund political campaigns of hopeful candidates at both the central and local level and to keep them on staff on a retainer basis once they have been elected into office (Varkkey 2016: 124).

In return, these investors were granted choice parcels of land for development, even sometimes within protected forest areas (Richardson 2010: 68). Even more pertinently to issue at hand, the patrons within the government will provide protection to the client when needed, in this case, in terms of fire use. Commercial land clearing by use of fire has been illegal in Indonesia since 1997. Due to rising concerns of haze that year, a Presidential Decree and a new Environmental Management Act (EMA) No. 23/1997 banned all slash-and-burn style land clearing activities across the country. Several other laws were put into place after 1997 to complement the EMA, most notably, Government Regulation No. 4/2001, Law 18/2004 Concerning Crop Estates and Ministry of Agriculture Regulation No. 26/2007 Concerning the Guidance on Estate Enterprise Permit (Syarif and Wibisana 2007: 20; Zakaria et al. 2007: 24). Overall, there are some 19 presidential and ministerial decrees that deal specifically with forest fires that supplement these basic laws (Bowen et al. 2001: 60). However, the protection offered by powerful government patrons bred a culture of impunity among these clients, and corporate open burning became the norm. These well-connected plantation companies had no reason to fear punishment, as burning laws are often disregarded by the administration itself (Kurer 1996: 645–661), usually upon instruction by a high-ranking patron. Thus, major plantation companies were able to continue to conduct large-scale open burning for land clearing, often undetected or, if caught, unsuccessfully charged in court (Varkkey 2016: 141).

Hence, the incompatibilities between the (political and business) elites and the general public become clear. Patrons and clients usually regard some inefficiencies in the system (in this case, haze), as a small price to pay for the material gains that they are able to reap in collusion with each other (Brinkerhoff and Goldsmith 2004: 163–182). However, to the general public external to this relationship, such behaviour is considered disreputable (Eisenstadt and Roniger 1995: 209–233) and downright irresponsible. For the public, both the Indonesians that live close to the vicinity of the plantation fires and the Malaysians and Singaporean who experience its transboundary effects, their needs, values and goals are quite incompatible to those of the government and business elites involved in this industry.

While the (Indonesian, Malaysian and Singaporean) elites within the plantation industry are motivated primarily by material gain, the motivations of the general public are largely to be able to enjoy their God-given right to clean air, to stay healthy and to not have their economies disrupted by external factors like haze. However, every year, the general public continue to suffer just that. For example, the particularly severe haze episode in June and July 2013 affected parts of Indonesia, Singapore, Malaysia, Brunei and Southern Thailand. Locally, the residents of Riau in the island of Sumatra closest to the fires suffered from the brunt of the haze, such as low visibility and health problems, alongside widespread damages to their crops due to out-of-control fires (Harahap 2013). The Singapore Pollutant Standards Index (PSI) recorded the worst levels of air pollution ever experienced by the island, reaching the previously unheard of 401 mark on 21 July, indicating critical levels “potentially life threatening to ill and elderly people” (Shadbolt 2013). The haze that reached Malaysia also triggered the government to declare a state of emergency

in two southern districts, causing hundreds of schools to be closed for several days. The most recent haze episode in 2015 was estimated by the World Bank to have costed Indonesia \$16 billion in economic losses (World Bank Group 2016).

This is a classic free-rider or collective action problem: what might be rational at the society level makes less sense at the (elite) individual level and disincentivises these elites to make changes in the patronage system that would benefit the majority. Patrons disregard the long-term interest of society at large and instead focus on helping their clients. Hence, anyone outside of this favoured group can expect little from the government (Larson and Soto 2008: 218–226). Thus, in the case of transboundary haze, the incompatibilities are not clearly drawn across national boundaries but instead are drawn across social classes, i.e., between the elites and the general public.

## 8.4 Incompatibility Management

An international dispute arises from a conflict situation among states when incompatibilities are crystallized with respect to certain issues (Grimberg 2015: 24). In the case of transboundary haze in the Southeast Asian region, even though considerable incompatibilities exist as expounded in the previous section, neither conflicting parties have fully crystallized their incompatibilities and by extension their conflict in terms of international disputes. This section argues that good incompatibility management has enabled them to avoid the conflict from escalating into a dispute situation. Two incompatibility management strategies that are especially applicable to the regional haze situation are “redefining incompatibilities” using globalization and developmental arguments and “manoeuvring around incompatibilities” through ASEAN.

### 8.4.1 *Globalization and Development: Redefining Incompatibilities*

Conflicting parties may dissolve incompatibilities by turning their mutually clashing positions into ones that are compatible with each other. There are generally two ways to go about this. First, the parties may adjust their positions through bargaining so that there may be no clash between them any longer. Second, the parties may adjust their positions in such a way that their underlying interests can be satisfied (Oishi 2016: 10). Both of these tactics are observable in the case of incompatibility management over haze. In this case, the main “managers” and “redefiners” of incompatibility have been from among the elites, since there is a marked inequality over the control of power, wealth and status of the societies concerned. In comparison, the general public are weaker and thus do not have much influence as agents of

change. Both methods of adjustments have similar underlying strategies: to co-opt the general public into supporting the elite's pursuit of reaping the benefits of economic globalization.

Some of the major incompatibilities between the business elites and the public can be narrowed down to the incompatibilities between the individual plantations and their surrounding communities in Indonesia. The communities living closest to the burning plantations are usually the ones that suffer the worst effects of the haze, not only health-wise but also economically, as mentioned above (Harahap 2013). Additionally, there have been reports of clashes between plantations and villagers where villagers claim that their Native Customary Lands have been unfairly "grabbed" by plantation companies (Potter 2015: 2; Tan 2015: 15). This sometimes leads to additional fires (and haze), when these villagers burn these lands (for a lack of any better way) as an act of revenge or frustration (Tan 2015: 15).

Cutting back on the activity that is the source of the incompatibility (fires) would make plantations less competitive in the globalized market, where price sensitivity is key. While some altruistic plantations have made efforts to reduce fires and absorb the associated costs, others have chosen instead to co-opt surrounding communities into their operations and included them as an integral part of their global supply chain. This can be done in three ways. One way is through the nucleus-plasma arrangement, where these private plantations (nucleus) prepare plantation areas (usually for oil palms) for surrounding communities (plasma) that in turn run these plantations under formal partnership with these companies (Ministry of Agriculture 2013). They will usually continuously receive aid from the plantations in the form of fertilizer, machinery and the like, and the plantations are obliged to buy the produce from their plasma. About 11% of all plantation land are administered by plantation companies under the nucleus-plasma arrangement (Ministry of Agriculture 2013; Boer et al. 2012). Another way is by employing the surrounding community to do labour and menial work on the plantations (World Growth 2011: 13). Usually, as part of their Corporate Social Responsibility (CSR) towards their workers, the plantation will build schools, hospitals, houses of worship and the like for the use of the surrounding community (Ministry of Agriculture 2013). Thirdly, plantations, especially those with mills, will enter into preferential agreements with surrounding farmers who also plant oil palm, to buy their produce at a preferred rate (Marti 2008: 71). All three of these tactics are usually quite attractive to the surrounding communities because these activities involve prospective steady incomes and a way out of poverty for them.

As a result, for successful cases of co-option, incompatibilities would have been effectively redefined. The incompatibilities may not have been completely dissolved (because these communities are still close to ground zero and thus must suffer haze when fires occur), but now both parties have mutual interests, and the surrounding communities in fact have vested interests in the continued successful integration into the global palm oil market. Such conditions perform two things: satisfying underlying interests and avoiding clashes. By contributing to the social and economic development of the surrounding communities, plantations are able to satisfy their underlying interests of health (by building hospitals) and economy

(by providing steady jobs and income). This should be able to suppress other incompatibilities, at least while the benefits to the surrounding communities continue to outweigh the negative effects of the haze at ground zero.

In the same way, the governments, especially Indonesia and Malaysia, have tried to use certain tactics to co-opt their public into supporting their quest for further integration into globalized markets. For example, Indonesia has been promoting the globalization of its agribusiness sector as a solution to a number of its developmental problems such as poverty, overpopulation and unemployment (Barber 1998: 4). It highlights the role of the palm oil industry, through activities described above, as successfully connecting smallholders to globalized palm oil markets (McCarthy et al. 2012: 562). The industry was given credit for the increase of farmers' income from \$920 per household per hectare per year in 2005 to \$1607 in 2011, an increase of 12.24% annually (Caroko et al. 2011: 18). It has been promoted as an important engine in Indonesia's developmental "miracle" (Chang and Rajan 2001: 665), and externalities like haze are considered as merely short-term costs of such development and could be dealt with later (Gellert 2005: 1346–1358). Furthermore, the benefits from this "miracle" are said to reach all layers of society, through its contribution to GDP (averaging 5% yearly) (Das 2014: 5), corporate taxes (Di 2011: 4), foreign exchange incomes (Jarvis et al. 2010: 2–12) and employing up to 3.6 million additional Indonesians all along its extended process chain (World Growth 2011: 4–11).

Across the seas in Malaysia, government actors tell the general public that globalization (especially economic globalization through palm oil) is inevitable and that those who stand in its way will suffer the dire consequences of being left behind (Cooke 2002: 189–190). Bodies set up by the government like the Malaysian Palm Oil Board (MPOB) and Malaysian Palm Oil Council (MPOC) avidly defended the palm oil sector in the face of international sustainability concerns (Basiron and Chan 2004). Neocolonial arguments, made famous by Malaysia's former Prime Minister Mahathir Mohamed during his years in office, that developing countries have the right to develop and that developed countries have no right to force developing countries to preserve their natural resources (Mohamed 1992) were held up with renewed vigour. National pride was invoked as the image of the oil palm was chosen to grace the RM50 note. This author herself witnessed first-hand a senior government officer declaring to a group of other government servants, "like it or not, palm oil pays your salaries". And perhaps most tellingly, the government of Malaysia has consistently tried to distance its companies from the fires in Indonesia, saying that Malaysian companies were not involved in the fires there (Bernama 2009; New Straits Times 2005; Business Times 1997).

Such has been among the efforts of government elites in the region to redefine incompatibilities among the elites and the public on a more general scale. They have been especially eager to paint the globalization of the palm oil industry, and the side effects that arise from it (in this case, haze), with the broad brush of development. While the underlying interests of the general public have been harder to satisfy in this way, since the benefits of palm oil globalization to the larger public are harder to display and prove (although they have tried), these tactics have been quite

successful in avoiding major clashes. Proof of this is visible through the fact that there is no sustained concern over haze outside of each haze season (De Pretto et al. 2015). The general public responds to the haze as an “out of sight, out of mind” problem and very rarely raises the issue when there are clear blue skies (Tay 2016; SIIA 2010). Hence, public concern over the haze issue has never escalated to the level of what could be described as a clash in any of the involved countries.

As a whole, globalization and development arguments have been quite effective in managing incompatibility through redefining the incompatibilities between elites and the general public both at the local level on the ground and the regional level. By extension, this has been an important factor in preventing dispute over haze at both the local and regional level too. This has furthermore been complemented by ASEAN initiatives, as detailed in the following section.

### ***8.4.2 ASEAN: Manoeuvring Around Incompatibilities***

ASEAN first began to acknowledge haze as a regional concern in 1985, with the adoption of the Agreement on Conservation of Nature and Natural Resources. This agreement specifically referred to air pollution and its “transfrontier environmental effects”. The first ASEAN-level activity that specifically addressed haze however was in 1992, with the Workshop on Transboundary Pollution and Haze in ASEAN Countries (ASEAN Secretariat 1995). 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 (ASEAN Secretariat 2002). The agreement was ratified by all ASEAN member states in 2014, with Indonesia being the final member to accede (Soeriaatmadja 2014).

Sometimes, instead of trying to redefine or change incompatibilities, parties prefer to manoeuvre around, neglect or set aside incompatibilities. This is especially common when the parties expect the incompatibilities to change, dissolve or disappear on their own over time. Especially helpful in such cases would be the existence of a mechanism to absorb tensions or shocks arising from the incompatibilities. This mechanism “would operate in the space surrounding the parties and serve as a buffer or cushion between their mutually incompatible positions by preventing them from directly confronting each other” and, by extension, prevent disputes. When a functioning mechanism such as this exists, parties may be happy to coexist with each other despite the incompatibilities (Oishi 2016: 11–12). In the case of the haze, ASEAN can be seen as a mechanism that is equipped with the ability to be such a “buffering space” (Caballero-Anthony 2005: 108), through its practice of the ASEAN Way.

It is important to begin this discussion with an understanding on how environmental and pollution issues are understood at the ASEAN level. ASEAN was

founded with the focus of promoting economic cooperation and prosperity among its members, towards accelerating economic growth in the region (ASEAN Secretariat 1976: 418; Smith 2004). As a result, environmental objectives are often overlooked in the pursuance of these economic goals (Campbell 2005: 220). While member states recognized that they had common environmental problems, their material interests in addressing them arose from the importance of domestic economic progress and development. Therefore, it was more important for these states to maintain the availability of and access to natural resources (Elliott 2003: 29–35) like timber and forest products to be used in the pursuit of development. Indeed, the protection of the environment within ASEAN was largely seen as something that would threaten economic growth, development and social cohesion of most of the member states (Jones and Smith 2002: 101). This was reflected in ASEAN environment-related treaties, including the ATHP, which explicitly upholds member states' sovereign right to exploit their own resource as they see fit, in pursuit of their own developmental and environmental policies (ASEAN Secretariat 2002).

Furthermore, ASEAN itself is known as a very elite-centred framework (Ferguson 2004: 396; Collins 2008: 313), where elite-led economic growth takes precedence over social development and environmental protection (Nesadurai 2008: 229). This situation enables elites to favour arrangements that ensure domestic and regional political economic stability and market access to these natural resources (Solingen 1999: 31–46) while providing a lack of incentives for effective regional environmental conservation. Government elites are generally unwilling to antagonize their business clients' interests by applying prohibitive national- or regional-level environmental law, especially when such natural resource interests are so closely intertwined with the patron's political power base (Boas 2000: 415; Aggarwal and Chow 2010: 278–282). Hence, the protection of these elite interests was more important than responding to environmental issues through ASEAN (Cotton 1999: 341–342).

The application of the ASEAN Way within the haze-related initiatives mentioned above is telling of the ASEAN elites' efforts to manoeuvre around, neglect or set aside the incompatibilities between them and the general public over haze. The ASEAN Way is a set of behavioural and procedural norms that prescribe approaches for regional interactions and include the search for consensus, the principles of sensitivity and politeness, non-confrontational approaches to negotiations, behind-the-scenes discussions, an emphasis on informal and non-legalistic procedures, non-interference and flexibility initiatives (Kivimaki 2001: 16).

To be clear, states do not blindly follow the ASEAN Way principles due to some deeply ingrained "habit" (Narine 1998: 555). Instead of being a limiting effect on state behaviour, the ASEAN Way can be better explained as tools for political action that state elites can selectively use in line with their interests (Khoo 2004: 42). Hence, states *choose* to adhere to the ASEAN Way if it is in their interests to do so. Upholding the ASEAN Way when necessary shields states from having to commit joint tasks that they find either politically difficult (going against dominant national interests), administratively challenging or simply not important enough (according to their national priorities). In keeping with the norms of non-interference, member states can stress the primacy of national laws, policy-making and implementation

(Elliott 2003: 32–40). In keeping with procedural voluntarism, members can avoid legally binding agreements. This complicates the application of multilateral pressure and collective problem-solving methods (Tan 2005b: 3–4). The non-interference clause also enables governments to exclude any issue they consider to be politically sensitive from ever being discussed at the ASEAN level (Nesadurai 2008: 225). As a result, these principles provide members with substantial autonomy in determining to what extent they would carry out regional environmental agendas, even those that they have already agreed to initially (Nesadurai 2008: 227).

In the case of the haze, regional elites have chosen to closely adhere to the ASEAN Way to preserve their personal and national economic interests. Because of close adherence to the ASEAN Way, all the regional-level haze mechanisms have largely focused on national plans, ensuring states the freedom to pick and choose regional initiatives that best suit their narrow economic national interests (Campbell 2005: 222). Hence, these initiatives have been useful in generating a massive amount of information on haze (Severino 1999), but not much in terms of effective implementation of haze mitigation activities. Overall, the ASEAN haze initiatives have had no observable impacts on intergovernmental policy practices of ASEAN members and have failed to transform their globalized trade and investment patterns with regard to palm oil (Kim 2011: 412).

Even the ATHP, while legally binding, has become essentially a document that continues to protect national economic interests, preserve state sovereignty and deflect responsibility on the haze issue. It was “vague and lacking in various hard-law instruments such as strong dispute-resolution and enforcement mechanisms. Important provisions, including those for developing preventive measures (both legislative and administrative), and a national emergency response, are left to member parties to interpret and apply” (Nguitragool 2011: 357). Unlike other similar treaty regimes, the ATHP does not include any provisions for dispute settlements through international courts or other arbitration tribunals (Tan 2005a: 664). As Article 27 of the Agreement states, “any dispute between Parties as to the interpretation or application of, or compliance with, this Agreement or any protocol thereto, shall be settled amicably by consultation or negotiation” (ASEAN Secretariat 2002). And furthermore, the application of the non-interference norm meant that neither the ASEAN Secretariat nor any member country could question or pressure Indonesia on the question of ratification. Besides, despite the severe socioeconomic effects of the haze, governments have been reluctant to pursue the matter of ratification with Indonesia, due to their own vested interests in the Indonesian oil palm plantation sector.

Hence, even though ASEAN has been involved fairly early on in coordinating regional cooperation over haze issues, ASEAN’s role until present times can be seen as not much more than a “buffering space” to help member states manoeuvre around incompatibilities and prevent disputes until eventually the haze problem resolves itself or disappears (hopefully with the natural process of development). It thus becomes obvious that the ASEAN organization has an inherently weak capacity to act in the regional collective interest of the general public. Indeed, any direct

confrontation over haze will threaten the regional political and business elites' own vested interests in the Indonesian plantation sector.

The comparatively little weight ASEAN as an organization gives to public voice as compared to elite interests (Collins 2008: 313) ensured that, even when faced with public outcry (an example of a tension or shock), the organization was more than willing to absorb the shock, by simply manoeuvring around these concerns. For example, the ASEAN Way has been used as a reasoning tool to the general public to justify why member states could not "directly confront each other" despite worsening incidences of haze. Indeed, this has been explicitly written in the ATHP, where any dispute between parties should be settled amicably through consultation and negotiation (Article 27). Singapore has in fact repeatedly declared that it was Indonesia's sovereign right whether or not to ratify the ATHP, when its citizens demanded it to pressure Indonesia to do so (Channel NewsAsia 2006; Tan 2007). Hence, the strategic use of the ASEAN Way among the regional elite has enabled ASEAN member states to coexist without any dispute escalation for over three decades of haze, while these elites continued to reap the benefits of globalized agri-business markets.

## 8.5 Escalation of Conflict: Indonesia and Singapore

The national and regional tactics of incompatibility management discussed above has been fairly successful in preventing dispute over the haze for about three decades. While this is a considerably good track record, there are some small cracks that are beginning to appear on the surface of this hitherto effective conflict management plan. While relations between Malaysia and Indonesia are still relatively strong and still very much within the auspices of the ASEAN Way, recent developments on the relationship between Indonesia and Singapore over haze have been worrying.

As mentioned above, Singapore experienced its worse ever bout of haze in 2013, where the PSI levels in the city-state reached the all-time record high of 401. A chain of haze-related ASEAN-level meetings in 2013 and 2014 following this severe haze episode saw Singapore proposing a new Haze Monitoring System (HMS) which included a mechanism where all ASEAN countries would have to make their forest and concession maps open access and publicly available to all. Singapore promoted the idea to other ASEAN members as important in providing a deterrence effect on potential errant companies and also to more accurately assign responsibility for fires on the ground. However, Indonesia was firmly against making their maps publicly available, citing privacy and legal concerns (Feng 2014).

This negative response, coupled with the especially bad haze the year before, ignited a diplomatic row between Indonesia and Singapore, with Singapore's then Minister of the Environment and Water Resources Dr. Vivian Balakrishnan expressing frustration at Indonesia's decision (Woo 2014b) and accusing Indonesia of not caring about the welfare of its neighbours (Grant and Bland 2014). It was also

around this time that Dr. Balakrishnan first revealed plans to table a Transboundary Haze Pollution Act (THPA) that would provide for criminal and civil liability for any Singaporean or non-Singaporean entity causing or contributing to transboundary haze pollution in Singapore (Woo 2014a).

The Act has since come into operation, as of 25 September 2014 (Government Gazette 2014). The Act is unique for its application of extraterritoriality; it covers the operations of all Singapore and non-Singapore entities whose activities outside of Singapore contribute to haze pollution in the city-state. It is the first of its kind for Singapore, as Singapore usually punishes action overseas only for severe crimes, such as corrupt acts or illegal sex with minors. It is also the first of its kind in the region and globally, as there is currently no law in the world that allows a country to prosecute commercial entities in other countries for such offences (Woo 2014a). And most importantly, it was a marked departure from the traditional ASEAN approach to resolving regional issues, which prioritizes diplomatic over legal solutions (Mayer 2006: 202–218).

While Indonesia was largely silent on the matter for the first year or so since the Act was brought into force, things changed when Singapore's National Environment Agency (NEA) used the Act to obtain a court warrant against the director of an Indonesian company linked to haze-causing fires.<sup>1</sup> Indonesia's Ambassador to Singapore first conveyed his protest on the matter in May 2016 (Ismail 2016a), and this was followed by much sterner statements from Indonesia's Environment and Forestry Minister Siti Nurbaya Bakar in June 2016. The Indonesian minister declared that what Singapore had done was "controversial" and did not show "mutual respect", an important component in the region's ASEAN Way of engagement. She referred to the ASEAN Agreement on Transboundary Haze Pollution (ATHP) as having precedence over haze-related matters and reminded Singapore that as parties to the ATHP, they need to respect each other's sovereignty over haze issues. 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 (Ismail 2016b).

This rebuke forced Singapore to issue a statement clarifying that the Act was not about national sovereignty or dignity and that in fact Singapore very much respects Indonesia's sovereignty and has always upheld its bilateral relations with Indonesia. The Ministry for Environment and Water Resources (MEWR) said that the fact that Singapore has repeatedly asked for information on companies suspected of illegal burning from relevant Indonesian authorities prove that this is so. The MEWR clarified that the Act was not directed at any individual or company based on nationality but is meant to deter and prosecute irresponsible companies which clear land by burning, regardless of nationality. The Ministry said that Indonesia should instead welcome this additional tool to address the haze issue (Channel NewsAsia 2016).

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<sup>1</sup>The NEA had in 2015 requested for interviews with representatives of companies linked to that year's haze, to assist in their investigations. This unnamed director had failed to turn up for the interview despite being served a legal notice and was issued a warrant on those grounds.

In the same statement, the MEWR, while acknowledging that Indonesia is an important destination for Singaporean investment, also insisted that companies that irresponsibly burn show a blatant disregard of the environmental, health, economic and social consequences affecting millions of people in Indonesia and the region (Channel NewsAsia 2016). This may indicate a slight shift in considerations of incompatibilities for Singapore. While in the past, Singapore was happy to overlook the concerns of the general public, arguably in favour of their own elite interests within the plantation sector in Indonesia, now it seems that public concerns have somewhat increased in importance for Singapore. This could be attributed to the record high haze experienced by Singapore in 2013, which no doubt came along with (yet undetermined) record of high health, social and economic damages for the small nation state.

However, it can be argued that the THPA may not threaten the operations of Singaporean plantation companies in Indonesia at all, since Singapore can easily choose not to prosecute Singaporean entities, especially the ones well-entrenched in regional patronage networks. Indeed, the first warrant put out under the Act was for an Indonesian entity. And Singapore has been known to defend the actions of their companies publicly in the past (Varkkey 2016: 97), even in the face of evidence by the Indonesian government (The Straits Times 1998). Hence, it could be concluded that Singapore's elite economic interests are still important, but the interests of the general public now are *also* important.

The way that the diplomatic spat described above played out is also telling in what it says about larger regional norms. Indonesia chose to confront Singapore for its actions by citing the ATHP and regional norms. Singapore immediately responded to this by trying to prove that its actions were not contravening said norms. The decision for both countries to engage over the THPA on ASEAN terms shows that both countries, and Singapore especially, still place a lot of importance on ASEAN as a buffer mechanism to absorb the shock of the THPA and to avoid a full-blown dispute. Singapore could have instead chosen to retaliate by stating that it had every right to unilateral legal action through the THPA, notwithstanding regional norms; however, this did not happen. By trying to prove that it is doing things "by the ASEAN book", Singapore hopes to be able to avoid further escalation of the conflict and essentially hopes to be able to continue to preserve their business elites' interests in Indonesia. In this way, it can be argued that Singapore is trying to do both: look out for the interests of its business elites (through ASEAN) and the interests of its people (through the THPA).

As defined previously, an international dispute arises from a conflict situation among states when incompatibilities are crystallized with respect to certain issues. Legal disputes occur where opposing legal claims arise among states (including matters like the interpretation of a treaty, international law, the existence or not of an alleged violation of an international obligation or the establishment of the nature or extent of the damages due in case of violation of international obligations). Political disputes are the disputes where the parties' conflicting claims cannot be legally formulated (Grimberg 2015: 24). While this incident between Singapore and Indonesia cannot be regarded as a full-blown legal (since no opposing legal claims has yet to

arise) or political dispute, it is evident that it shows a situation where the incompatibilities surrounding the conflicting situation have been less than optimally managed.

Arguably, if the incompatibilities among the concerned parties were better managed, the situation may have not escalated to such an extent that this diplomatic spat would have occurred. While the conflict seems to have cooled down for now, it is important to investigate what were the underlying causes of the escalation of conflict and what can be done to prevent this conflict from flaring up again. One possible avenue for investigation is in terms of governance, at both the national and regional level. Good governance can be defined as the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development (Cotonou Agreement 2000). The following sections argue that poor governance at both the national and regional level played an important role in conflict escalation. By extension, enhancing good governance at these levels could be a useful strategy in preventing a further escalation of this dispute and indeed the flaring up of other disputes within the context of the haze as well.

### ***8.5.1 Poor Governance at the National Level***

The powerful patronage networks that exist within the plantation sector in Indonesia have had a drastic effect on good governance of fire management there. As mentioned above, the protection accorded to well-connected clients makes it easy for them to skirt, resist or even ignore state policies with regard to fire (Dauvergne 1995: 89–99). If on the off chance they are caught for illegally using fire to clear land, the same protective networks will ensure that prosecutions are rare (Varkkey 2016: 141).

However, beyond this direct “protection”, patronage networks are also responsible for more indirectly weakening of state governance. Because of the “mutual hostage” relations between patrons and clients as explained above, patrons in the government are locked into making policy choices that reflect the interests of their clients. This results in an overall weak bureaucracy paralysed in its ability to create or uphold effective policies (Varkkey 2016: 26). This bureaucracy is thus restricted in its ability to be accountable, autonomous and transparent and to organize around common and enduring interests (Garcia-Guadilla 2002: 91–106). Hence, the rule of law and strong institutions, hallmarks of good governance, are replaced instead by personal ties based on reciprocity (Tay 2003: 39–54; Case 2003: 263), resulting in overall weak laws that are to the advantage of elite interests.

Indonesia’s burning laws reflect this influence well. For example, even though it is illegal to burn the land, there is no legal restriction to plant on burned land (Jakarta Post 2006a). Therefore, if plantations escape being caught during the burning, no retrospective action can be taken. Also, existing policies on insurance schemes have been shaped to benefit plantations; insurance schemes guarantee refunds for fire damaged plants without investigation into the source of the fire (Jhamtani 1998: 366).

And while the EMA 1997 mentioned above incorporated the principle of strict liability whereby the burden of proof should lie with the company responsible for the pollution, efforts to operationalize this principle have never been put into place (McCarthy and Zen 2010: 155–171). Therefore, companies that were setting the fires still had to be caught red-handed (Parliament of Singapore 1998), or evidence such as matches and oil jerrycans had to be found at the site of the crime (Varkkey 2016: 139). This is difficult to do (Jakarta Post 2005; Parliament of Singapore 1998) because current laws do not allow police to take action against land burners on the spot or collect evidence in the field (Jakarta Post 2006b). Furthermore, if a company maintained a good relationship with police, it would receive adequate warning before police arrives so that evidence could be cleared. The police also would not search for evidence of burning thoroughly (Varkkey 2016: 138–139).

Taking advantage of this loophole, concessionaires have developed further tactics to avoid being caught. These include burning on weekends or during Friday prayers, so that when police or officials detect fires and approach the company office, no one will be around for confrontation, as everyone can claim to be away for prayers. Some plantation companies trespass and burn villager's land beside their concessions and let the fires spread to their land, as a way to circumvent laws. Other companies may hire subcontractors or locals to burn the forests, placing strategic distance between them and the hand lighting the fire. Sometimes, even the companies themselves call police to “catch” these hired perpetrators, leaving behind conveniently burned land to conduct new planting (Varkkey 2016: 141). Local policymakers and prosecutors predictably tend to side with the commercial plantation companies in such cases instead of these few implicated smallholders and locals, who usually lack powerful political backers (Hameiri and Jones 2013: 471). In all these ways, patronage-related activities are one of the biggest barriers to good governance on fires and haze in Indonesia.

### ***8.5.2 Poor Governance at the Regional Level***

The Cotonou Agreement identifies the goals of equitability and sustainable development as a general goal of good governance. As observed above, these goals have not been well pursued in the ASEAN organization. Firstly, ASEAN has proved to be inequitable, as it is an organization that is elite-centred, rather than people-centred (Collins 2008). Secondly, ASEAN has prioritized economic development over sustainable development. Both of these outcomes are especially noticeable in the context of the transboundary haze. Member states' sovereign right to exploit their own resources as they see fit has been upheld over environmental interests of keeping the region free from pollution. And diplomatic elites active at the ASEAN level were able to ensure that all ASEAN initiatives preserve their narrow national economic interests and those of their patronage networks, instead of the region's collective interests.

It is important to have a transparent, accountable and above all strong secretariat to ensure good governance in the direction of equitability and sustainable

development. However, the ASEAN Secretariat is a relatively weak secretariat as far as international organizations go. Its member states have deliberately denied the ASEAN Secretariat the resources and mandate necessary (Kim 2011: 422) to ensure good governance at the regional level. Instead, the secretariat is subordinate to national secretariats (Solingen 1999: 49; Beeson 2007: 237). This situation therefore enables member states to control the scope, depth and speed of regionalism in ASEAN, which best suits their national interests (Kim 2011: 416). Therefore, decision-making in ASEAN is shaped according to the interests of its member states, and the ASEAN Secretariat (and by extension the organization) has an inherently weak capacity to act in the regional interest (Varkkey 2016: 167).

This is obvious in how the secretariat was very limited in its organizational capacity to determine the direction of negotiations of the ATHP, or to push for more stringent outcomes. Throughout this process, member states sought to protect elite interests by maintaining their “power of veto” (by denying the secretariat a strong mandate) over effective policy innovation on haze mitigation (Cotton 1999: 341–342). For example, due to the negative public and international backlash from the haze issue, secretariat staff avidly argued the case for intervention and the possibility of automatic consent of the intervention-receiving state for assistance. However, member states overruled this concern and chose to prioritize sovereignty concerns over ensuring practical progress on the ground. Therefore, it was decided that ASEAN initiatives would strictly observe the norm of non-interference and that assistance would only be upon the request or consent of the receiving state. Furthermore, member states made sure that the secretariat keep “sensitive issues” off the table during negotiations. For example, even though there was an unspoken understanding that commercial plantation burning was the major source of haze, the issue of illegal burning by local and foreign plantation companies was never raised during discussions leading up to the signing of the agreement. And of course, due to the non-interference norm, after the ATHP was signed, the secretariat staff could not in any way pressure Indonesia to quickly ratify the agreement, resulting in the agreement being ratified by Indonesia more than a decade after it came into force (Varkkey 2016: 179–180).

Here it becomes obvious that while member states have a choice on whether or not to observe the ASEAN Way norms (and usually basing this choice on elite interests), the ASEAN Secretariat does not have the luxury of that choice. The secretariat is essentially subordinate to its member states, resulting in a weak secretariat which is severely limited in its capacity to maintain standards of good governance in the conduct of the organization.

## 8.6 Conclusion

It can be concluded that patron-client relationships, the same relationships that define the incompatibilities between the elite and the general public over haze, are a considerable barrier to good governance at both the national and regional level. At

the national level, patronage not only ensures that corporate perpetrators are able to get away with illegally burning their land in preparation for planting but it also ensures that the laws concerning fire use have been structured in such a way as to benefit and protect these corporate clients. At the regional level, patronage has motivated elite representatives of member states to limit the mandate of the ASEAN Secretariat in order for member states to have better control over outcomes at the regional level, so that they can ensure all outcomes favour national elite interests.

While these are serious incompatibilities, regional governments have attempted to manage these incompatibilities in order to maintain regional stability. At the national level, central governments have impressed upon the public the importance of haze-producing agribusiness sectors for national development and globalization. At the regional level, governments have consistently used the ASEAN Way as a pretext to explain the lack of effectiveness of ASEAN-level initiatives to the general public. In both these ways, governments have been able to either redefine or manoeuvre around the incompatibilities existing between the elites and the public, to dissipate conflict. As a result, regional stability is maintained; however, this is of course at the continued cost to the environment and public health due to the continued production of haze.

However, poor governance at both the regional and national level poses challenges to incompatibility management. This is visible through the slight escalation of conflict between Indonesia and Singapore, which, while it did not reach the level of a full-blown dispute, did raise some concerns for regional stability. It can be argued that if these instances of poor governance were reduced or absent, the incompatibilities between Indonesia and Singapore would not have escalated to the extent of which it did. For instance, if the ASEAN Secretariat was given a stronger mandate, stronger and more innovative clauses could have been weaved into the ATHP, and Singapore may have been content with using the ATHP as a mechanism for which to engage Indonesia over the haze. If so, there may not have had a need for Singapore to unilaterally put the THPA into place. Secondly, if the burning laws were stronger in Indonesia, errant plantation companies may get away with some fires, but not all of them. This could have possibly avoided the PSI 401 incident in Singapore which served as the turning point on Singapore-Indonesia relations over haze.

However, all of this is easier said than done. Patronage networks are notoriously hard to suppress, destroy or dismantle (Lande 1983: 438–450; Brinkerhoff and Goldsmith 2004: 163–182). This is because such linkages are ubiquitous at all levels of the administration, from the very top leadership to local strongmen (Rose-Ackerman 2008: 330), and in all three branches of administration (judicial, legislative and executive). Hence, these networks support the needs and interests of many individuals. Therefore, elites are highly motivated to block, dilute or slow down any form of legislative or policy amendments that would threaten the informal relationships from which they so greatly benefit (Brinkerhoff and Goldsmith 2004: 163–182).

All hope is however not lost. Indonesia is currently under the leadership of President Jokowi, who is notable for being the first Indonesian president from a non-political and non-military background (Cochrane 2014). He is regarded as a

reflection of popular support for new “clean” leaders (Nasir 2012), who have not benefited from and are not part of the almost ubiquitous patronage networks that dictate much of the politics and business in the country. He has already declared a crackdown on government and business elites who contribute to the haze and most notably has linked the promotions (or removal) of government officials to the incidences of fires in their administrative area (Today 2016). This new “clean” president may be just what Indonesia needs to dismantle the prevailing patronage networks, starting at the very top. As patronage has been an important consideration in so many elements of fires and haze at both the national and regional level, such a development would definitely go far in managing incompatibilities and preventing future dispute in the region over transboundary haze.

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