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Cutting Through the Haze: Will Singapore's New Legislation Be Effective?

By J. Jackson Ewing

Synopsis

Singapore has passed legislation to hold actors accountable for fires causing transboundary haze. This demonstrates a new level of proactivity from a haze-affected state, and reveals both Singaporean resolve and limitations in the face of haze challenges.

Commentary

AFTER SEVERAL months of public review and two days of parliamentary debate, the Singapore government passed the Transboundary Haze Pollution Bill on 5 August 2014. The Bill represents the most ambitious domestic effort to date for addressing Singapore's haze problem. The Bill - quickly qualified as no 'silver bullet' by Environmental and Water Resource Minister Vivian Balakrishnan - had its genesis in the historically acute haze episode of late-June 2013 and enjoyed support from MPs across parties.

It seeks to create a framework of accountability for 'errant companies' that start haze-causing fires, and to deter such companies by threat of financial penalty. The future effectiveness of the Bill remains to be seen, but its message is fairly simple: Singapore will now employ punitive tools in its haze-response strategy.

Tougher penalties on offenders

The Bill seeks to prosecute any entity, foreign or domestic, that either engages or condones 'conduct which causes or contributes to' haze pollution in Singapore. Parties found guilty may be levied a fine of up to S\$100,000 for every day of haze that can be tied to their activities.

An additional fine of up to \$50,000 dollars per day may be imposed if the offending actor fails to comply with a 'preventative measures notice' provided in relation to a haze episode. All fines relating to a single conviction will be capped at \$2 million.

The greatest point of the parliamentary debate on the Bill concerned the levels of fines. The Draft Bill that was presented for public review in February capped the maximum fine at \$300,000 – a figure found wanting by many of the Bill's critics. The new maximum fine of \$2 million is likewise seen as insufficient by some members of the House who note that corporate actors in the palm oil and pulp and paper sectors (the two largest culprits) operate on budgets into the billions.

Dr. Balakrishnan responded that the Bill needed to avoid 'overreach' in the form of 'unrealistic penalties' given that it is an untested tool for combating haze pollution. Financial censure is also designed not just to affect a firm's immediate bottom line. Tan Yi Han, founder of the youth People's Movement to Stop Haze, and Nigel Sizer of the World Resources Institute both note that penalising processes of any sort are important because of the negative reputational costs they will have for offending companies.

Challenges and uncertainties

However, the levying of fines and reputational costs both presume that plaintiffs will be able to prove the culpability of offending actors. While the Bill seeks to define land ownership and occupation, assigning blame for haze-causing fires will remain difficult. Fires that begin on one property or leasehold can quickly spread to others. Significant forensic efforts will be needed to determine the origins of fires and the actors behind them.

Satellite data and weather information can be brought to bear from Singapore, but on-the-ground intelligence gathering will require both resources and cooperation with actors in the haze-fuelling hotspots.

Determining culpability is further problematised by Indonesia's historically convoluted land ownership, mapping and management systems. Multiple concession maps have presented conflicting realities in the past, and unclear or overlapping land ownership claims muddy the waters further.

The drive towards a single land concession map in Indonesia matured during the Yudhoyono administration, which sought to combat inter-ministerial competition, divergent local claims and corruption in the land-allocation space. Singapore's efforts to determine offending actors will hinge in part on the success of these Indonesian reforms.

The Bill likewise seeks to prosecute shell companies and subcontractors fuelling fires on lands that they do not own. Language around 'condoning' or 'supporting' haze-causing activities provides a foundation for bringing the actors to heel. This may work well in some instances, but in many cases the complex and often opaque organisational structures of land-clearing actors could make assertions about support for burning activities difficult to prove.

New phase in combating the haze

Indonesia is largely supportive of Singapore's recent actions. Milton Pakpahan, Head of the Indonesian Parliament Commission on Energy and the Environment, stated that the country appreciates Singapore's legislation as 'it urges us to find our own solution to the problem', and restated Indonesia's intention to ratify the ASEAN Transboundary Haze Agreement. Indonesian leaders continue to trumpet regional cooperation and multi-stakeholder involvement as the key to a lasting solution, which have both long been lauded but often proven elusive in practice.

The future of such cooperation is unclear, but Singapore's recent legislation is a clear effort to further internationalise the haze problem and gain further leverage through its response options. The Objective Territorial Principle in international law states that while countries have the right to exploit their natural resources as they see fit, they have a responsibility to ensure this does not damage their neighbours.

This Principle forms a legal foundation for Singapore's haze legislation, which itself demonstrates that international law on its own has proven insufficient for battling the haze. Singapore is seeking to place specific parameters around a haze penalisation regime and in doing so create avenues for pressuring and preempting offenders.

At their core, Singapore's legislative efforts reveal both the country's inescapable limitations and determination to be proactive in facing haze challenges. The country remains largely hostage to activities in Indonesia; haze penalties that are effectively levied will still be reacting to situations in which Singapore has again suffered from transboundary pollution. The hope is clearly that landowners and firms will alter their behaviour for fear of being fined and called out publically as

polluters. Singapore now has defined the legal mechanisms for such censure, for which there is no precedent in the history of haze response efforts. That, in itself, sends an important message.

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