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New Series on the Haze Issue (3)

Towards a Transboundary Haze-Free ASEAN by 2020: Coordinated National Strategies

By Raman Letchumanan

Synopsis

ASEAN Member States should set in place coordinated national level strategies to address fires and haze to support the regional level commitment for a transboundary haze-free ASEAN.

Commentary

ARTICLE 2 OF the Haze Agreement states that: the objective of this Agreement is to prevent and monitor transboundary haze pollution as a result of land and forest fires which should be mitigated, through concerted national efforts and intensified regional and international cooperation – to be pursued in the overall context of sustainable development.

While recognising their sovereign right to exploit their resources, the principles in Article 3 place heavy obligations on national governments to act responsibly at the national level; and to act as necessary, cooperate and share information at the regional level if harm or damage is caused to others. The following set of recommendations explores the importance and impact of coordinated national level activities to address transboundary haze pollution.

Undertake concerted national efforts

The Haze Agreement emphasises national level actions as the essential means to prevent haze, to be supported by regional and international cooperation. The

Agreement also emphasises sustainable development as the basis for tackling the root causes that contribute to haze.

Hence, every ASEAN Member States (AMS) should view the Haze Agreement in its proper context, and consider it as a platform to address pressing national environmental, social and economic issues through regional and international cooperation. It is clear that efforts to prevent fires and haze can contribute directly to climate change mitigation and biodiversity conservation.

The Haze Agreement has set in place a robust, rules based and high level institutional mechanism and processes at the regional and sub-regional level. In fact, only the haze issue is addressed through a dedicated ministerial level institutional mechanism (Conference of Parties and the two Sub-regional Ministerial Steering Committees) as compared to all other environmental issues.

AMS should make greater use of this legal framework and institutional mechanism to collaborate on the broader and more impactful environmental and developmental issues, which essentially are the root causes of fires and haze. They should avoid the notion that haze is just a problem of a few countries in the region, or that the Haze Agreement has little contribution to its national needs.

Enhance and implement effective Work Programme

ASEAN has developed a comprehensive template for a Work Program based on the relevant clauses in the Haze Agreement, as a basis for discussion and monitoring of the implementation of the Haze Agreement. The Work Program consists of both regional activities and related national activities. However, only the ASEAN Secretariat has been diligently reporting on regional activities, while just a few member states have reported on its national activities.

It is important that national activities are captured and discussed as a basis for monitoring the implementation of the Haze Agreement. After all, the Agreement mandates national governments to act first to prevent and control the fires in their territory. Furthermore, regular reporting of national measures and issues, and cooperation or assistance rendered to assist governments, will ensure ownership and buy-in by the governments of the Haze Agreement.

As part of its research, RSIS has conducted a mapping of regional and national activities based on publically available sources. It does show a commendable range of activities which if properly implemented and regularly monitored can effectively address the fire and haze issue.

AMS should populate the Work Programme on a regular basis as a useful means for discussion on the effectiveness of the Haze Agreement at regional meetings. This can generate useful exchange of information and experiences, highlight shortcomings and weaknesses for corrective action and support, and build upon impactful practices to further enhance the implementation of the Agreement.

Prioritise national legislative instruments

The ASEAN Haze Agreement, by itself, does not have supra-national authority to effect compliance at the national level. The effectiveness of the Agreement therefore depends on national laws and regulations for its implementation. Accordingly, the Agreement places the responsibility to take action on national governments through appropriate “legislative, administrative and other measures to implement their obligations under the Agreement”.

Furthermore, Articles 3 and 4 outlines the principles and general obligations for Parties to cooperate and share information regionally when they are not able to prevent transboundary haze originating within their territory.

To be fair, there are sufficient national legislations to control behaviour that leads to unmitigated fires and the resulting transboundary haze. Many AMS have zero-burning (which permits controlled-burning in special circumstances) laws or regulations, and several other legislations related to environmental pollution, natural resource management and land-use planning.

The Haze Agreement enables AMS to benchmark their national laws and regulations against their obligations under the Agreement, and to enhance their enforcement capacity and capability. However, much more needs to be done in terms of enforcement of laws and regulations, and overall governance and management at the national level.

To make the implementation of the Haze Agreement at the national level even more effective, necessary protocols or annexes need to be adopted as provided for in Article 21 and 23 respectively. Currently there are several ASEAN guidelines such as for zero burning and controlled burning, Standard Operating Procedures (SOPs) for monitoring, information sharing, and emergency response that have been adopted and operationalised. It would be useful to make the relevant instruments an integral part of the Haze Agreement for effective implementation.

Singapore has enacted its Transboundary Haze Pollution Act in 2014. The law is unique in the sense that it has extraterritorial reach which creates an offense for causing transboundary haze pollution in its territory, even if the source originates outside the country. The Act serves as a further deterrent to violators; and the Haze Agreement can certainly facilitate the implementation of the Act in terms of cooperation among AMS to achieve the overall objective of the Agreement.

Such an Act may not be relevant for other AMS, but some of its provisions can be adopted. For example, national laws should not only regulate open burning within their territory, but could also include provisions to prosecute national entities operating in other countries for causing transboundary haze. Malaysia has stated its intention to look at a national law similar to that of the Singapore’s Act.

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