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By Invitation

Sovereignty, jurisdiction and international law

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Singapore's transboundary haze pollution law is consistent with international law principles, which do permit a country's laws to have extraterritorial jurisdiction in some instances.

In 2014, Singapore enacted the Transboundary Haze Pollution Act, which came into force on Sept 25, 2014. Essentially, the Act makes it an offence for any entity to engage in conduct, or to condone conduct, causing or contributing to haze pollution in Singapore. Apart from criminal liability, the Act also creates statutory duties and civil liabilities.

The Act is unusual but not unprecedented in targeting conduct that occurs outside Singapore, and which causes or contributes to haze pollution in Singapore.

Foreign Minister Vivian Balakrishnan, speaking in Parliament in August 2014, said the Act "is not intended to replace the laws and enforcement actions of other countries, but it is to complement the efforts of other countries to hold companies to account". He added that "we, in Singapore, cannot simply wait and wishfully hope that the problem will be resolved on its own. The Singapore Government would want to send a strong signal that we will not tolerate the actions of errant companies that harm our environment and put at risk the health of our citizens".

EXTRATERRITORIALITY AND INTERNATIONAL

LAW There were mixed reactions to this law in Indonesia. Some parties expressed support for Singapore's law. Others, including some Indonesian ministers, criticised the law on the grounds that it was a violation of Indonesia's sovereignty. A typical comment was: "As it happened in Indonesia, it is part of Indonesia's jurisdiction. If Singapore could easily try Indonesian citizens, it could be a violation of Indonesia's sovereignty."

The Singapore Government responded that the law was consistent with international law. It was drafted with the advice of international law experts and did not violate the sovereignty of any country.

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The issue is whether it is permissible for a country to enact legislation that would have extraterritorial reach. The answer to this question turns on a proper understanding of the established principles of international law.

The general principle in international law is that states exercise jurisdiction on a territorial basis, namely, over persons, property and acts within its territory. However, there are exceptions to this principle.

One exception is a group of crimes that attract universal jurisdiction. Examples are piracy, genocide, torture, slavery, crimes against humanity and serious war crimes. For instance, under this exception, it is permissible for an Indonesian or Singapore court to try persons accused of committing piracy, such as Somali pirates, even if the acts of piracy occurred outside their respective maritime jurisdictions.

Another exception involves crimes committed outside a state's territory but which have harmful effects on the state concerned.

There are many examples, including bribery and corruption, terrorism, cybercrimes and cyber attacks and pollution. Such an exercise of extraterritorial jurisdiction can be justified under several principles of international law, notably the "objective territoriality principle".

To argue that states cannot exercise such jurisdiction would mean that states are powerless to deal with a variety of situations where individuals, groups and corporations can, with impunity, carry out acts outside their territories which have harmful effects and consequences on them.

INTERDEPENDENT WORLD

Indeed, the United Nations International Law Commission (ILC) 2006 Report stated that "today, the exercise of extraterritorial jurisdiction by a state with respect to persons, property or acts outside its territory has become an increasingly common phenomenon".

The ILC said this phenomenon is due largely to increased movements of persons beyond national borders, the growing number of multinational corporations, globalising of the world economy,

increased transnational criminal activities, increased illegal migration and increased use of the Internet for legal or illegal purposes.

To that, we will add the growing interdependence between nations, and the undeniable fact that we live in a fragile environmental ecosystem, where harmful polluting activities in one country can cause serious harm, not only to its own people but to the people of other countries. The nature of transboundary offences necessarily means that multiple states do have a legitimate interest in bringing the offenders to justice.

It cannot therefore be said that any of these states would be acting in contravention of the offending state's sovereignty by enforcing its own laws. Such a violation of sovereignty would arise in some cases, such as, for example, if a state were to send its firefighters into the territory of another state, without its consent, to put out a fire.

Clearly, Singapore's legislation does not seek to do this. The law is enforced only when the party accused of causing the harmful act enters Singapore and comes within Singapore's jurisdiction.

We should add that Indonesia itself has enacted laws that have extraterritorial reach, such as its laws on corruption and on electronic transactions.

CONCLUSION

In a previous contribution to The Straits Times, ("The haze, international law and global cooperation", Oct 6, 2015), we discussed the principle of international law that a state has the sovereign right to exploit its natural resources, including its forests. However, that sovereign right is limited by a second principle, namely that a state has the responsibility to ensure that activities within its jurisdiction or control do not cause damage to the environment of other states.

We explained that there is a clear rule in international law that acts committed in one territory that cause environmental harm to the territory of another state constitute a legal wrong. It is, therefore, consistent with international law for Singapore to hold accountable individuals and companies that have caused the fires in Indonesia or elsewhere for that matter, and which have, in turn, caused the haze pollution in Singapore.

Singapore and Indonesia are close friends and partners. We are two of the founding members of Asean. Under Article 2, paragraph 2 of the Asean Charter, Asean and its member states are committed to adhering to the rule of law and upholding international law.

Indonesia insists that the haze issue be resolved under the Asean Agreement on Transboundary Haze Pollution. We agree that we should use the Asean agreement, as well as other bilateral, regional and international agreements, to solve this problem. However, such agreements cannot curtail Singapore's right to take actions that are in compliance with international law.

Singapore's Transboundary Haze Pollution Act is consistent with international law. It does not violate Indonesia's sovereignty.

On the contrary, Indonesia should welcome Singapore's law, which complements Indonesia's efforts to hold accountable those errant companies and individuals that have acted in blatant disregard of the serious harm they have caused to the people of Indonesia as well as those of its neighbours.

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