



**STRENGTHENING CAPACITY FOR ENVIRONMENTAL LAW IN
THE ASIA-PACIFIC : DEVELOPING ENVIRONMENTAL LAW CHAMPIONS**
Manila, March 22nd - 26th, 2015

Regional Environmental Law

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and
Partnership for Governance Reform in Indonesia





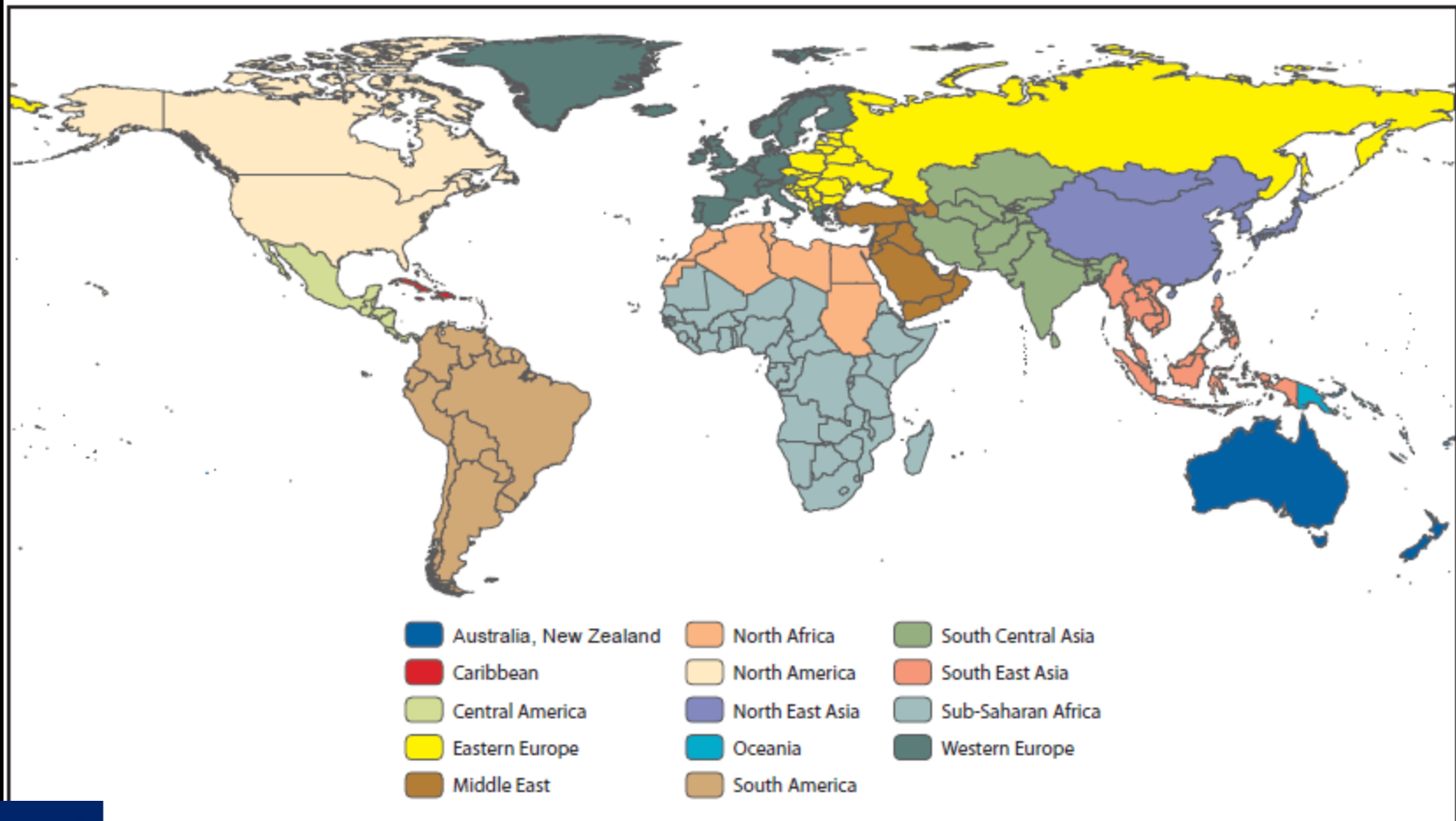
Why do we need Regional
Environmental Law?

Regional Environmental Conditions



- Regional Environmental characteristics are different from one another;
- **Apart from ‘international setting’, countries are grouped in ‘regional political setting’;**
- Political and cultural commonality among regional member countries can ease environmental cooperation;
- **Most regions are suffered from environmental degradation;**
- Most Multilateral Environmental Agreements encouraging ‘regional environmental cooperation’

Regional Grouping



Existing Regional Grouping

- European Union (EU)
- **Organization of African Unity (OAU) -- now the African Union (AU)**
- South Asian Association for Regional Cooperation (SAARC)
- **Union of South American Nations (USAN)**
- Association of South East Asian Nations (ASEAN)
- **North Atlantic Free Trade Area (NAFTA)**
- Secretariat of the Pacific Community (SPC)
(In the past called South Pacific Commission).. Etc...



Classification of Regional Environmental Agreements



- Regional 'soft law' Environmental Agreement
- **General 'hard law' environmental agreement**
- Specific 'hard law' environmental agreement

Example of Regional Env Agreements

Regional 'Soft law'	General 'hard law'	Specific 'hard law'
The 2010 Parma Declaration on Environment and Health	The 1986 Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (Noumea Convention)	1979 Convention on Long-Range Transboundary Air Pollution
The 2008 Dhaka Declaration and SAARC Action Plan on Climate Change	the 1985 Agreement on the Conservation of Nature and Natural Resources	2002 ASEAN Agreement on Transboundary Haze Pollution
The 1981 Manila Declaration on the ASEAN Environment	African Convention on the Conservation of Nature and Natural Resources, 1968 and revised in Maputo 2003	Convention for Cooperation in the Protection, Management and Development of the Marine and Coastal Environment of the Atlantic Coast (Africa Abidjan Convention) 1995 Agreement on Cooperation for Sustainable Development of Mekong River

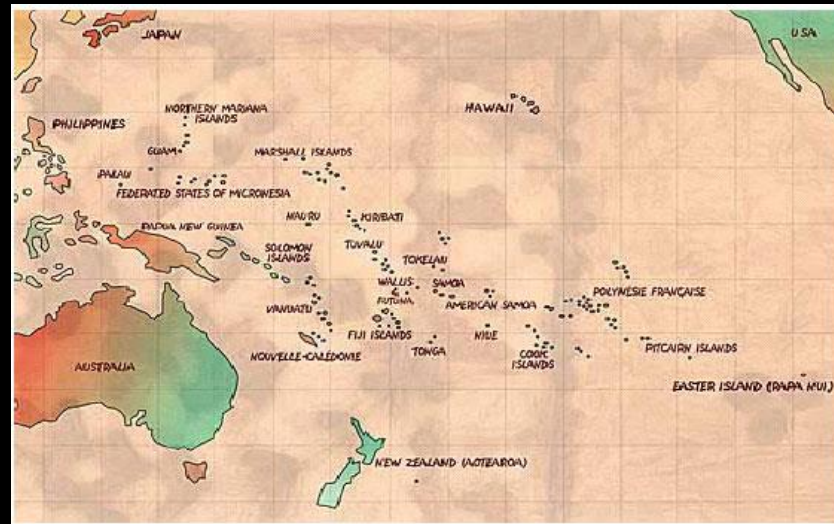


South Pacific Environmental Cooperation



***The 1986 Convention for the
Protection of the Natural Resources
and Environment of the South Pacific
Region (Noumea Convention)***

Noumea Convention: Objectives



....to take all appropriate measures in conformity with international law to **prevent, reduce and control pollution** in the Convention Area from any source, and to **ensure sound environmental management and development of natural resources**. The adoption of appropriate measures includes: the **establishment of laws and regulations** for the effective discharge of the obligations of the Convention, and the **co-operation between countries** in order to undertake activities that prevent, reduce and control pollution.

Main Provisions of Noumea Convention

Pollution from vessels (art. 6)	- storage of toxic and hazardous wastes (art.11)
Pollution from land based resources (art.7)	Mining and costal erosion (art.13)
Pollution from sea-bed activities (art.8)	Specially protected areas and protection of wild flora and fauna (art.14)
Airborne pollution (art. 9)	Combating pollution in cases of emergency (art.15)
Disposal of wastes (art.10)	Environmental impact assessment (art.16)

Protocols of Noumea Convention



- The 1990 Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region
- The 1990 Protocol for the Prevention of Pollution of the South Pacific Region by Dumping



SPREP

Secretariat of the Pacific Regional Environment Programme

American Samoa	Marshall Islands	Samoa
Australia*	Nauru	Solomon Islands
Cook Islands	New Caledonia	Tokelau
Federated States of Micronesia	New Zealand*	Tonga
Fiji	Niue	Tuvalu
France*	Northern Mariana Islands	United Kingdom*
Guam	Palau	USA*
Kiribati	Papua New Guinea	Vanuatu
Wallis and Futuna. * Developed country with direct interest to South Pacific		



European Union



EU Environmental Protection

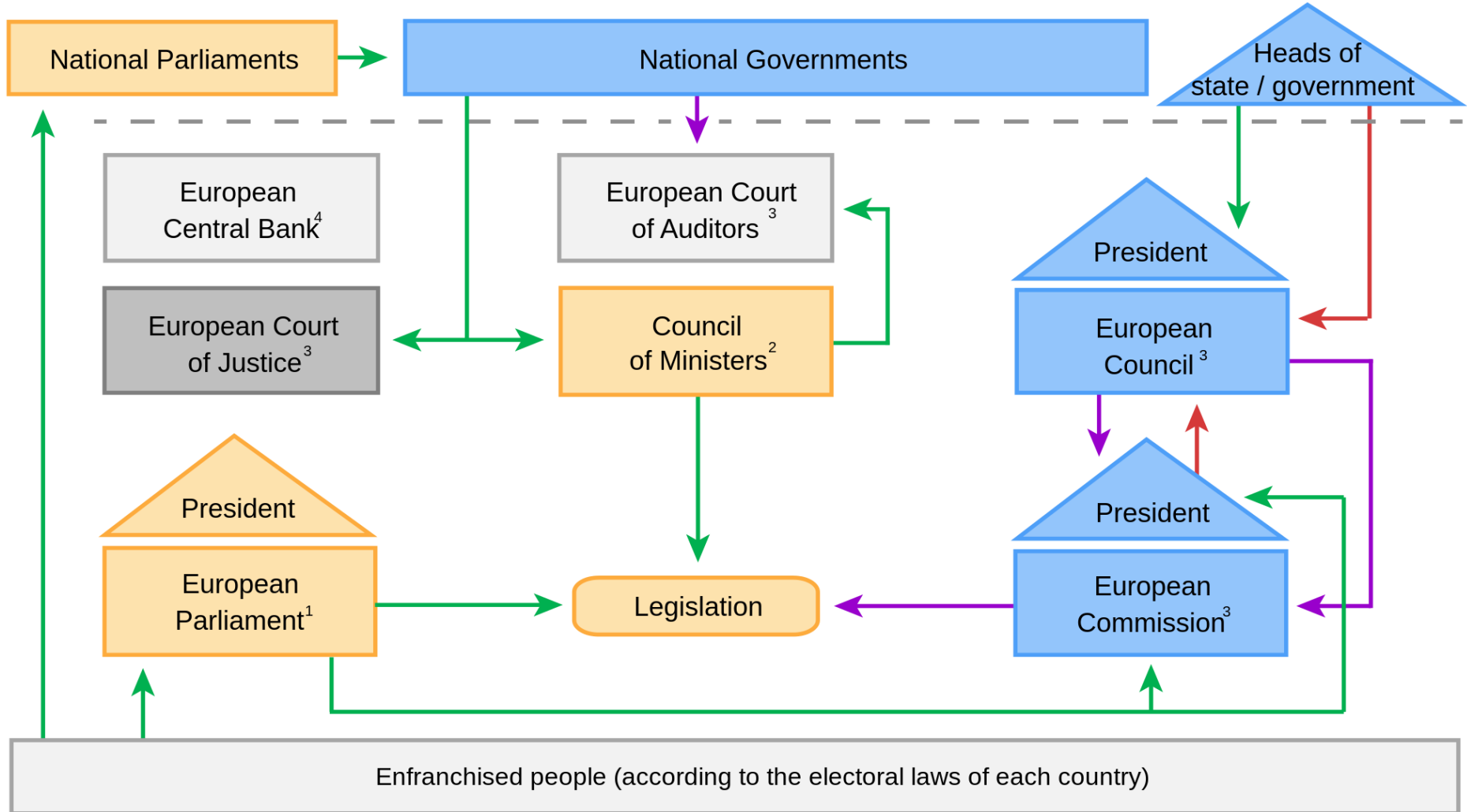


- EU has various regional conventions/agreements on environmental protection and successfully develop an effective environmental legal framework and institution.
- EU is the only region that have an “**independent regional body**” that have the **authority to monitor/evaluate and enforce EU laws at national level of every EU member.**
- EU has a long history on regional environmental protection initiatives, but the conclusion of the *Treaty of European Union (TEU)* in Maastricht on 7 Feb 1992 can be considered as the **New Strong Foundation of Modern EU Environmental Law.**

Objectives of the 1992 Treaty of European Union



- ... to promote throughout the Community a harmonious, balanced **and sustainable development of economic activities**, ... sustainable and non-inflationary growth, ... **respecting the environment**, a high degree of convergence of economic performance, **a high level of protection and improvement of the quality of the environment**, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among member states. **(Article 2)**



- Legislative branch
- Executive branch
- Judicial branch
- elects / appoints / decides on
- membership
- proposes

- 1: Elections are every 5 years. The right to vote may be different depending on the country.
- 2: State chamber. Convenes in varying composition depending on the policy area. Each country is represented by one member per department
- 3: Each country is represented by one member
- 4: The European Central Bank is composed of representatives of the national central banks. Its Board is elected by the European Council on the proposal of the Council of Ministers

EU Decision Making Process

- (1) Commission** (*ensuring the implementation of EU Env Law at Regional & Domestic levels*);
- (2) Parliament** (*initiating env laws & policies*);
- (3) Economic & Social Committee and Committee of the Regions** (*advisory functions*);
- (4) Council** (*as the main decision-making body, Council has the final vote on all legislation, including environmental legislation*); and
- (5) European Court of Justice & Court of First Instance.**

Note: Apart the above formal agencies, the EU recognised the Role of “**Non-Institutional Actors**” (Remember: *Aarhus Convention*)

EU Environmental Legal Instruments



Regulation	Communications
Directive	Action programmes
Decision	Resolutions
Recommendation.	Regional Environmental agreements

Ludwig Krämer, *EC Environmental Law*, 2000

Examples of EU Legal Instruments

- **EC Regulation** No 396/2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC
- *Council Directive 84/3660 of 28 June 1984 on the Combating of Air Pollution from Industrial Plants.*
- **EC Directive Concerning the Quality of Bathing Water**
- **Council Recommendation 79/3 (1979)** on the cost of pollution control to industry, Etc..

Example of the Enforcement of EU Laws in Member States



- **Case C-59/89 Commission v. Germany**
(Germany failed to comply with the *Directive 82/884 on a Limit Value for Lead in the Air*) (1982)
(Official Journal L378/15).
- **Bathing Water case**, where the Commission threatened the United Kingdom with proceeding in the ECJ if UK continue to postpone the full implementation of the *Bathing Water Directive*.



ASEAN Approach to Environmental Protection

ASEAN Territory





ASEAN Declaration, 8 August 1967
“Environment” was not in the mind of
the founders of ASEAN



ASEAN Environmental Crisis





Water

Will be Presented by Prof Ben Boer



Marine

Narrow + Bussy



Tanker Collision Causes Singapore Strait Oil Spill Nightmare (May 2010)



Zoom It 😊



Reclamation Projects



Marina Bay & Tanjong RHU
Reclamation



Jurong Island Reclamation



Pulau TEKONG Reclamation



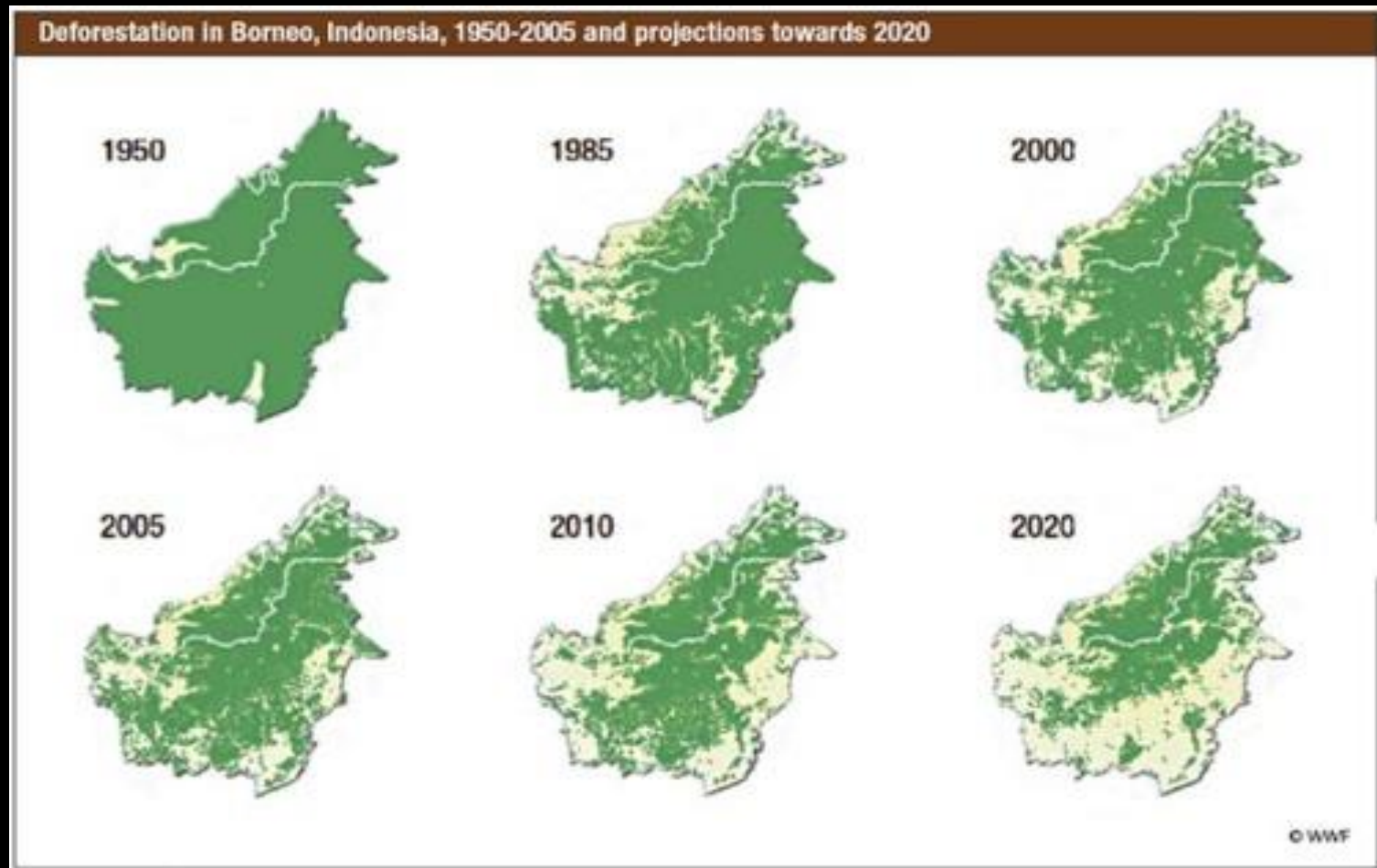
Atmosphere



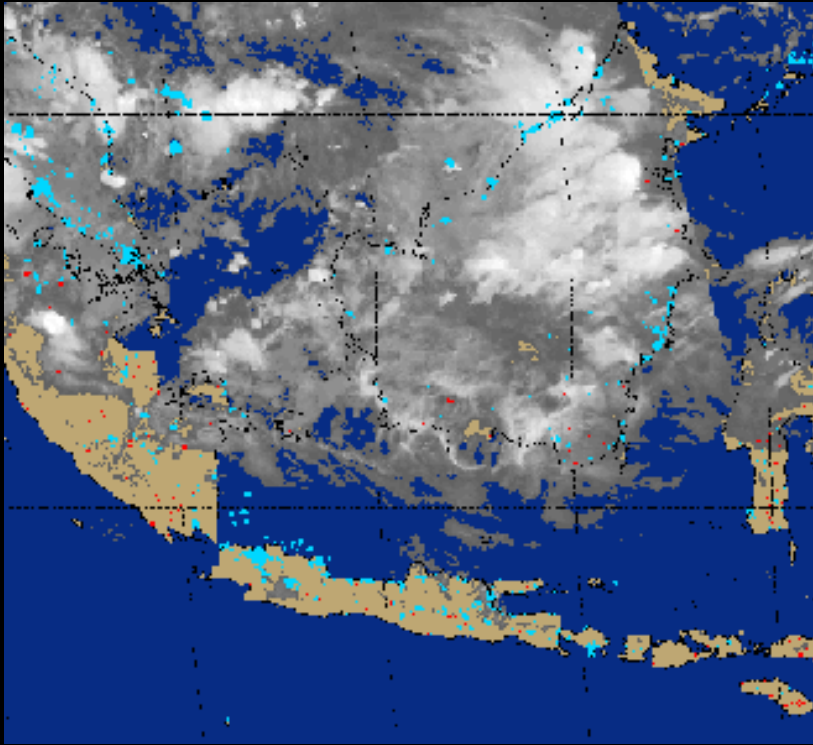
Indonesia

Photo: Greenpeace/Ardiles Rante

Deforestation in Borneo



Indonesian Export





EXPORT to Malaysia



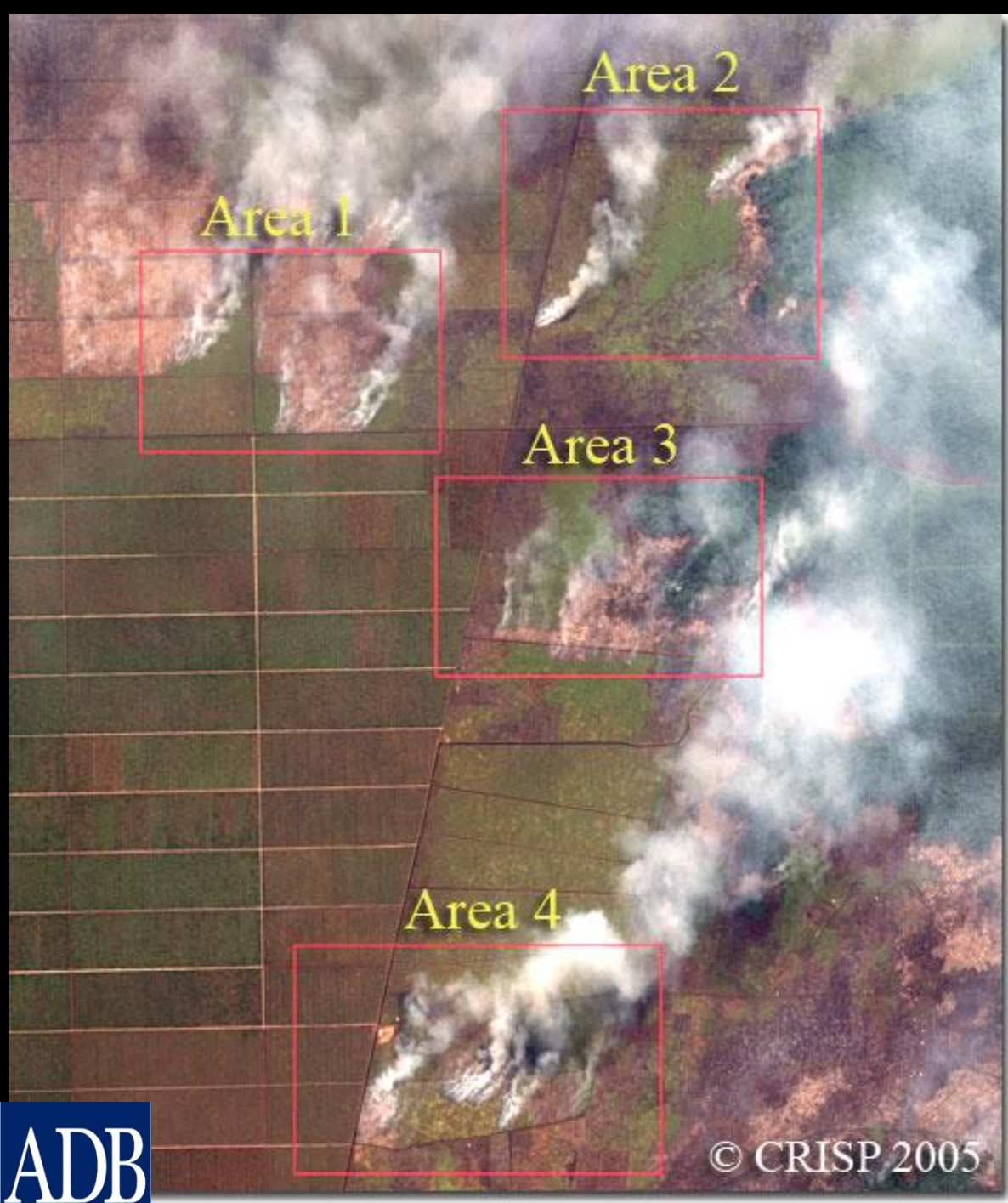


Compare this 'Singapore'



Where the Fire come from?

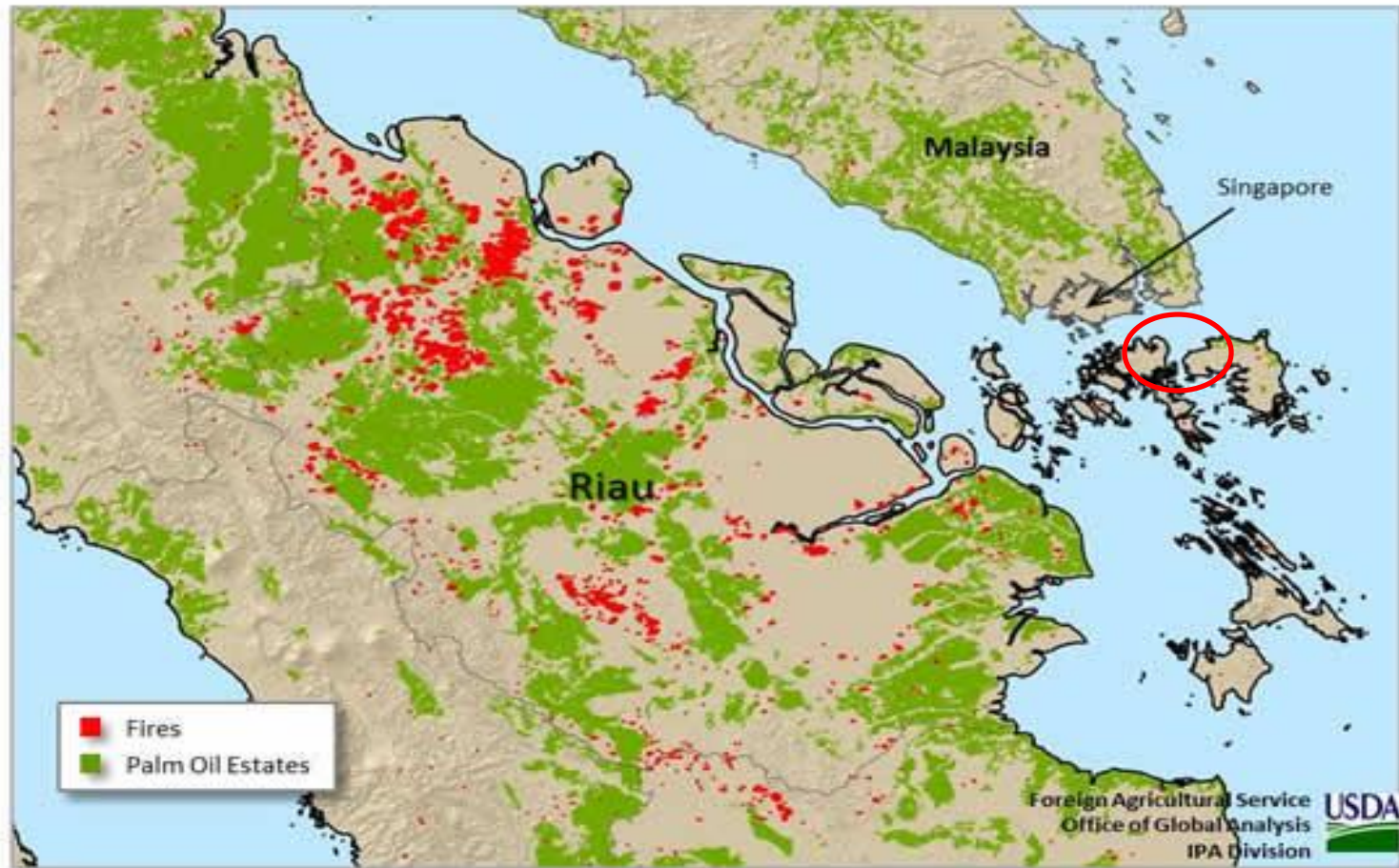




Concession Areas
High Resolution
2005 Fires
Sumatera

Where is the Fire come from?

SUMATRA, INDONESIA: Fire Locations June 18-25, 2013



Sources: NASA-FIRMS Daily Fire Data , 2013; Center for Remote Imaging, Sensing & Processing (CRISP) 2010

We want THIS 'nice' View



Total area of Oil Palm Plantation



- 8 Million Hectares (2013)
 - 13 Million Hectares (2020)
 - Most of them are located in Sumatera and Kalimantan (Borneo)
- (Source: Ministry of Agriculture, 2013)

Indonesia's Palm Oil Production and Export

	2010	2011	2012	2013
Production	21.8	23.5	26.5	28.0
Export (MT)	15.6	16.5	18.1	21.0
Export (USD-Billion)	16.4	20.2	21.6	N/A

Sources: FAO, Indonesian Palm Oil Producers Association (Gapki) and Indonesian Ministry of Agriculture



Economic loss



ADB and BAPPENAS (Indonesian National Development Agency) summarised that economic loss due to 1997-1998 fires was US\$ 9,298 million (Indonesia), US\$ 321 million (Malaysia) and US\$ 69.3 million for (Singapore);

There is no comprehensive data about economic loss experienced by the 4 countries from forest fires in 2000-2014.

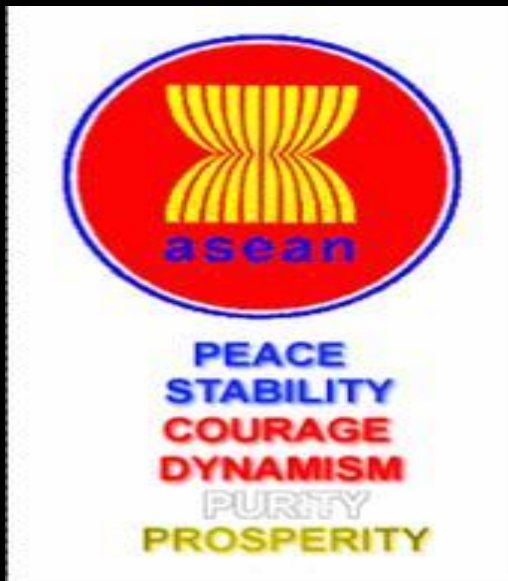


19th ASEAN SUMMIT INDONESIA 2011



ASEAN Response

ASEAN Legal Responses



- Mostly in form of “Soft Law Instrument”
- So far only three ‘hard law agreement concerning the environment’
- Environmental protection has been recognised as an important aspect of cooperation after the conclusion of ASEAN Charter in 2007.



ASEAN has produced several
'General' and 'Specific' Soft Laws
and Hard Laws on TAP/Haze issues

General Soft Law Instruments:

- *1987 Jakarta Resolution on Sustainable Development;*
- *1990 Kuala Lumpur Accord on Environment and Development*
- *1992 Singapore Resolution on Environment and Development.*
- *1994 Bandar Seri Begawan Resolution on Environment and Development*
- *1997 Jakarta Declaration on Environment and Development,*
- *2000 Kota Kinabalu Resolution on the Environment.*
- And several other 'ASEAN soft law instruments'

Special TAP/Haze Instruments



- ***Jakarta Declaration on Environment and Development***
calls upon AMS to cooperate and render assistance wherever possible, to prevent and control all domestic sources of pollution and activities that could contribute towards transboundary pollution, including haze formation.
- ***ASEAN Cooperation Plan on Transboundary Pollution***
 - assess the origin, main causes, and nature of transboundary atmospheric pollution;
 - prevent and control the source of haze at both national and regional level by applying environmentally sound technologies; and
 - develop and implement national and regional emergency response plans.

Responsibilities under ASEAN Cooperation Plan

- establish National Focal Points
- **expand the role of ASEAN Specialised Meteorological Centre (ASMC) to develop atmospheric transport models;**
- **establish procedures for reporting/alerting of fires**
- develop common air quality index;
- **develop a regional fire danger rating system;**
- share knowledge and technology in the prevention and mitigation of forest fires and other emission sources;
- **establish a mechanism for cooperation in combating forest fires and other emission sources and their points of activation; etc**

ASEAN Regional Haze Action Plan (ARHAP)

1. to prevent land and forest fires through better management policies and enforcement;
2. to establish operational mechanisms to monitor land and forest fires; and
3. to strengthen regional land and forest fire-fighting capabilities and other mitigating measures.

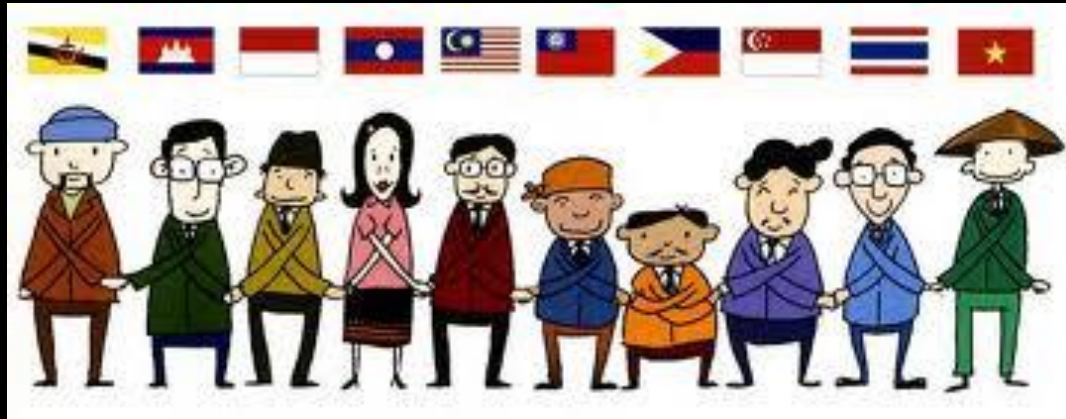
PREVENTION-MONITORING-MITIGATION





ASEAN 'hard' but 'soft' law Instruments

Hard Law Instruments



- *1985 ASEAN Agreement on the Conservation of Nature and Natural Resources*
- *2002 ASEAN Agreement on Transboundary Haze*
- *2007 ASEAN Charter*



The ASEAN Charter

7. To **STRENGTHEN DEMOCRACY**, enhance **GOOD Governance** and the **RULE of LAW** and to **PROMOTE** and protect **HUMAN Right** and **FUNDAMENTAL FREEDOM** .. of the members State of ASEAN

9. To **PROMOTE SUSTAINABLE DEVELOPMENT** so as to **ENSURE** the **PROTECTION** of the region's **ENVIRONMENT**, the **SUSTAINABILITY** of its natural resources, the **PRESERVATION** of its **CULTURAL HERITAGE** and the **HIGH QUALITY OF LIFE** of its people. [Article 1 (7 &9)]



The 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources

Main Provisions

- *Conservation of wild flora & fauna;*
- *Protection of the ecosystem of renewable natural resources;*
- *Protection of endangered species & its ecosystem;*
- *Conservation of ground and surface water;*
- *Air quality management;*
- *Land use planning;* and
- *Protected Areas.*

National Flowers of 10 Asean countries



Thailand



Ratchaphruek



Brunei Darussalam



Simpur



Philippines



Sampaguita jasmine



Singapore



Vanda miss joaquim



Cambodia



Ramdul



Myanmar



Praduk



Indonesia



Moon orchid



Vietnam



Lotus



Laos



Champa



Malaysia

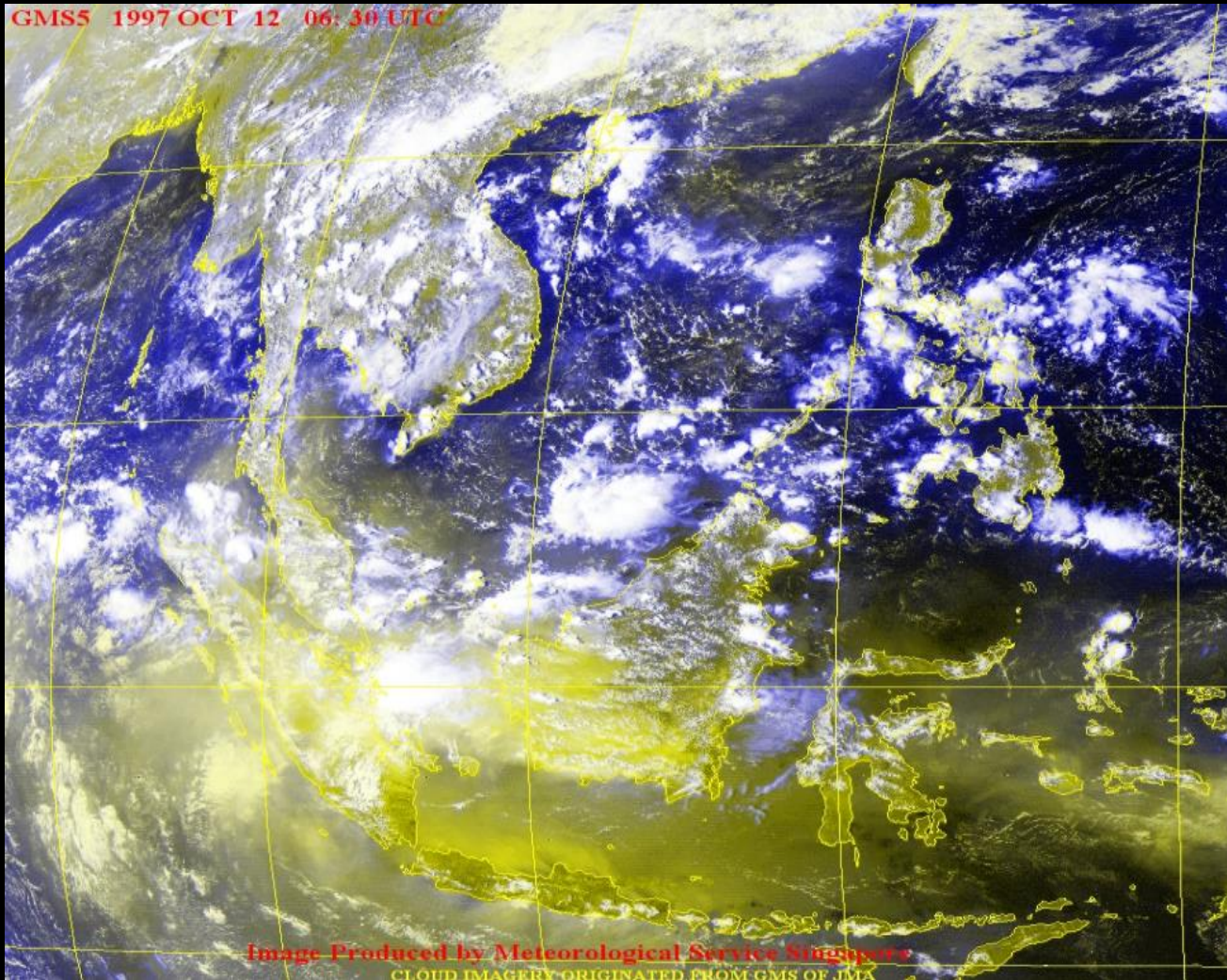


Bunga Raya

iSLCollective.com

Weaknesses

- Wording of its provisions are extremely weak: “shall endeavour” & “wherever possible”;
- **No state responsibility if the Parties fail to comply;**
- Lack of enforcement mechanism;
- Until now only ratified by 3 ASEAN countries: (Indonesia, Thailand & Philippines)
- **Very narrow dispute settlement mechanisms: (Consultation & negotiation).**



ASEAN Agreement on Transboundary Haze Pollution 2002

Objective ASEAN Haze Agreement



The objective of this Agreement is to **prevent and monitor transboundary haze pollution** as a result of land and/or forest fires which should be **mitigated, through concerted national efforts** and intensified regional and international co-operation. This should be pursued in the overall context of sustainable development and in accordance with the provisions of this Agreement.

(Article 2)

State Responsibilities under AHA

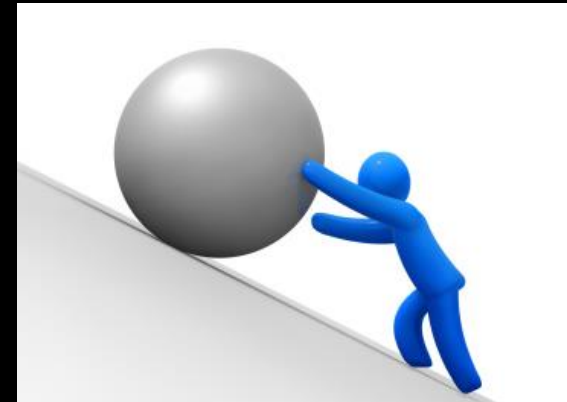
- enacting special law on forest fires,
- **share information with other AMS,**
- established focal point and ‘competent’ authorities,
- **conducting monitoring and assessment,**
- joint emergency response, and
- other “administrative” requirements.

All countries have ‘fulfilled’ their ‘responsibilities’



Implementation Challenges

- **Very late ratification of Indonesia**
- Lack of political will of the government to enforce the existing law
- **Lack of capacity of national and sub-national government to deal with the fires.**
- ***SADLY..... Corruption is still a major factor in lack of enforcement.***



Indonesia reluctant to Ratify ASEAN Haze Agreement due the following reasons:



- Malaysia, Singapore, Brunei Darussalam are not ratifying the 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources,
- Malaysia is not serious in preventing the smuggling of logs from Sabah and Sarawak in Borneo border.
- Malaysia does not want to sign FLEGT-VPA with the EU
- Some companies who set fire on their concession are linked to Malaysia and Singapore



Indonesian Effort to STOP the fires

Government Target



26-41 % emission reduction by 2020

The G-20 Summit 'historical' speech

(Pittsburgh, 25 Sep 2009)



USD 1 Billion

Letter of Intent (LoI)

“co-operation on reducing greenhouse gas emissions
from deforestation and forest degradation”

26 May 2010



Lol Focus & Objective



to contribute to *significant reductions* in greenhouse gas emissions from deforestation, forest degradation and *peatland conversion*



INSTRUKSI PRESIDEN REPUBLIK INDONESIA

NOMOR 10 TAHUN 2011

TENTANG

PENUNDAAN PEMBERIAN IZIN BARU DAN

PENYEMPURNAAN TATA KELOLA HUTAN ALAM PRIMER DAN LAHAN GAMBUT

President Instruction on the Postponement of New Permit
and the Enhancement of Forest Governance
in Primary Forest and Peat Land
2011

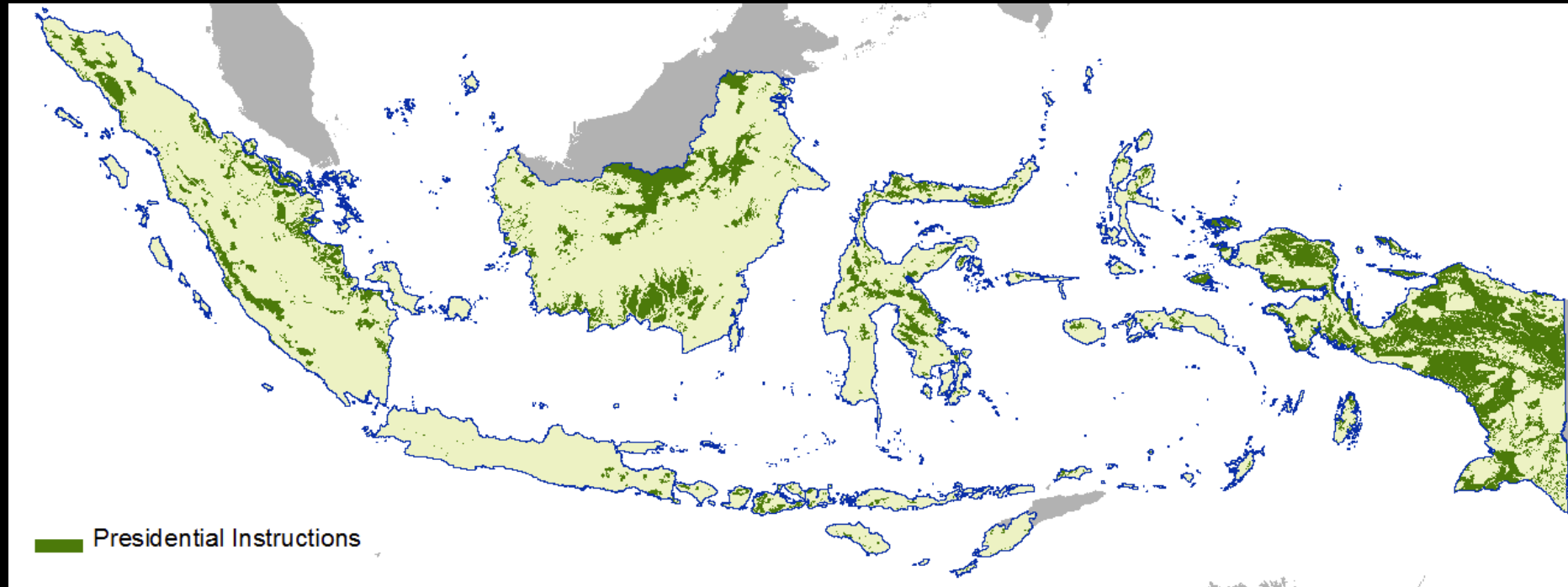
Content of the Instruction to the Ministry of Forestry and other 9 government agencies

**STOP the NEW permit on
Primary Forest and Peat Land,
EXCEPT**

For vital national development,
such as: geothermal, oil and gas,
electric power, paddy and
sugar cane field



Moratorium 'Locations'



Moratorium Indicative Map 2011

Extension of Moratorium for another 2 years



INSTRUKSI PRESIDEN REPUBLIK INDONESIA

NOMOR 6 TAHUN 2013

TENTANG

PENUNDAAN PEMBERIAN IZIN BARU DAN PENYEMPURNAAN TATA KELOLA
HUTAN ALAM PRIMER DAN LAHAN GAMBUT

The Same Content with additional Emphasis to
update the Moratorium Indicative Map and More **DETAIL**
Action Plans

Even the Greenpeace is Happy 😊



Real benefits of Moratorium



- important step towards meeting its voluntary commitment to reduce emissions.
- The moratorium's application to peatlands is likely to generate the most significant environmental benefits because of their large carbon storage capacity.
- A continually updated Indicative Moratorium Map (IMM) will be an important tool for public scrutiny and a mechanism to further secure and possibly increase the area covered by the moratorium.

(Daniel Murdiyarto, at.all, CIROR, 2011)

Some 'regrets' on Moratorium



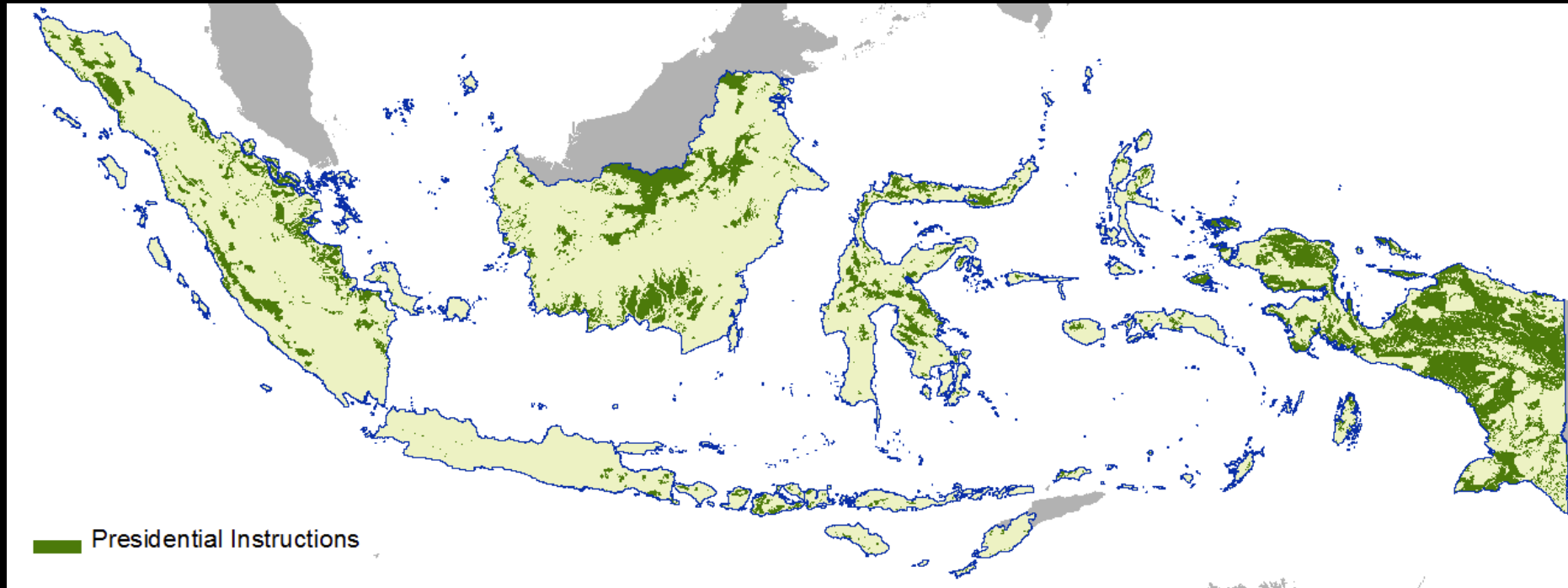
- The moratorium's exceptions for activities related to food and energy security create loopholes that could undermine the suspension of new concession licenses.
- The failure to include secondary forests and logged-over forests in the moratorium represents a lost opportunity to protect, at least temporarily, forests rich in carbon and biodiversity.

(Daniel Murdiyarso, at.all, CIROR, 2011)



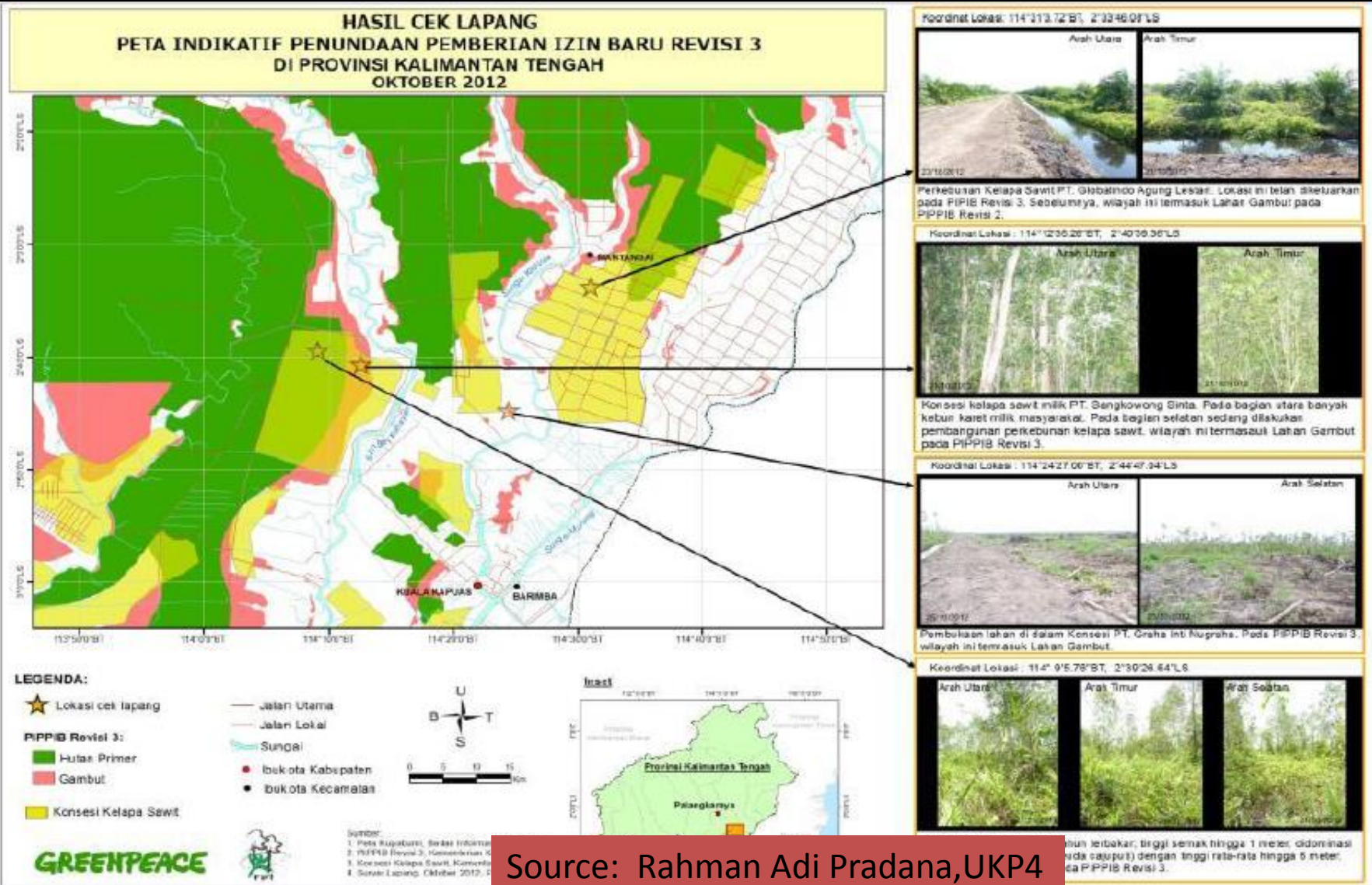
- The Ministry of Forestry has issued a huge 'land conversion licenses' before 2011.
- New license applications are queuing at the Ministry of Forestry
- The current 'moratorium' is based on the 'indicative map' and usually different from the ground,

Moratorium 'Locations'



Moratorium Indicative Map 2011

Example of Ground Checking



Source: Rahman Adi Pradana, UKP4

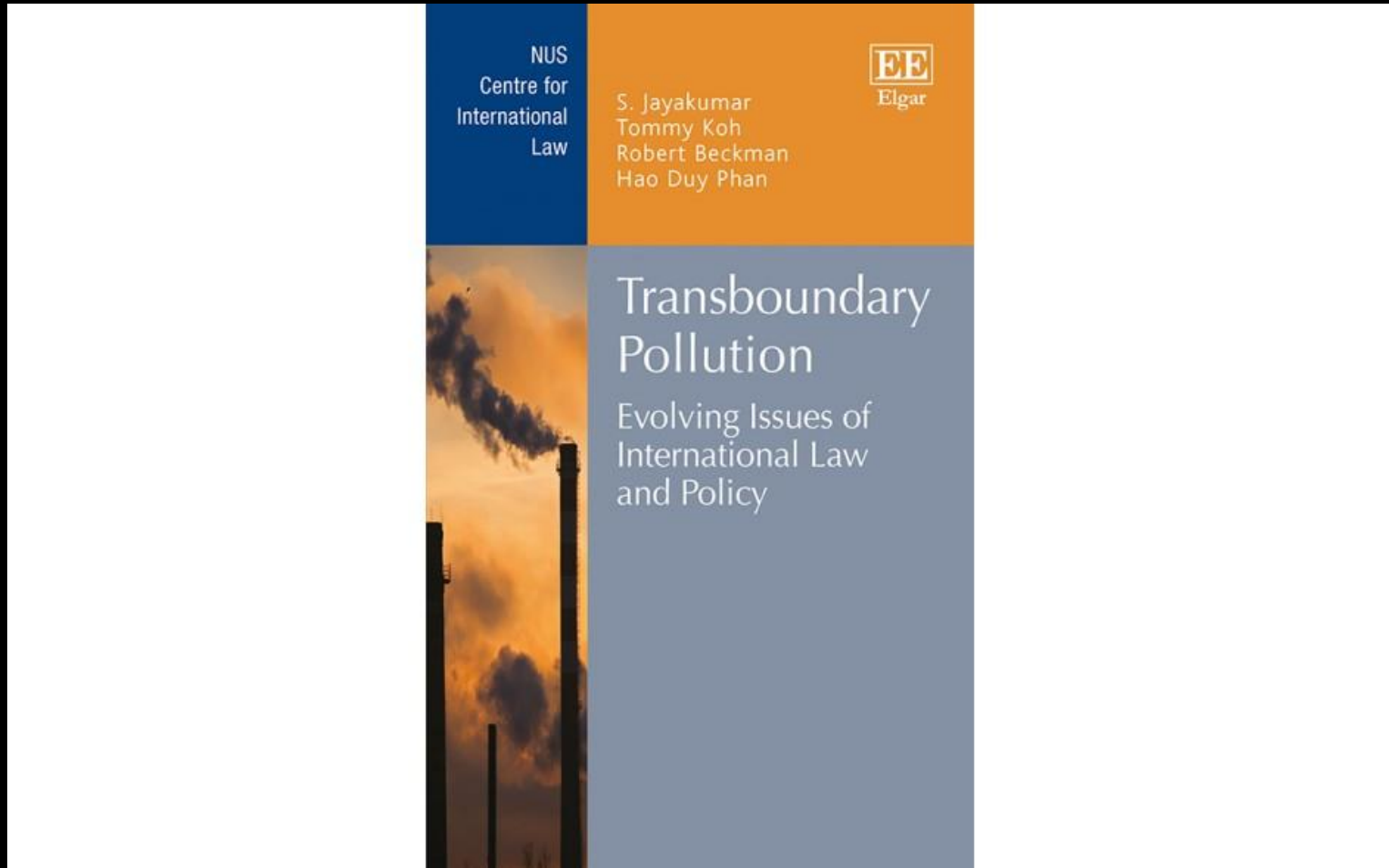
Conclusion

- ASEAN still need serious effort to protect its environment.
- **ASEAN has no adequate legal and institutional frameworks to protect its environment.**
- ASEAN member States shall put serious effort to enforce their own national environmental law.

Electronic Sources

- **South Pacific** (<http://www.sprep.org/legal/the-convention>)
- **Africa-** (<http://abidjanconvention.org/>)
- <http://www.african-court.org/en/images/documents/Sources%20of%20Law/Conservation%20of%20Nature/nature%20eng.pdf>
- **Europe:** <http://www.euro.who.int/en/health-topics/environment-and-health/Climate-change/publications/2010/protecting-health-in-an-environment-challenged-by-climate-change-european-regional-framework-for-action/parma-declaration-on-environment-and-health>
- **South Asia:** http://saarc-sec.org/areaofcooperation/cat-detail.php?cat_id=54
- **ASEAN;** www.aseansec.org

Relevant Reading Material



Shameless Promotion 😊



Thank you-Terima kasih

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