

# **UCLA**

## **UCLA Pacific Basin Law Journal**

### **Title**

ENVIRONMENTAL LAW AND POLICY IN THE PACIFIC BASIN AREA. Ichiro Kato, Nobuo Kumamoto, and William H. Matthews, eds.

### **Permalink**

<https://escholarship.org/uc/item/138043p4>

### **Journal**

UCLA Pacific Basin Law Journal, 1(2)

### **Author**

Cooke, Stephen D.

### **Publication Date**

1982

### **DOI**

10.5070/P812022412

### **Copyright Information**

Copyright 1982 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at <https://escholarship.org/terms>

Peer reviewed

ENVIRONMENTAL LAW AND POLICY IN THE PACIFIC BASIN AREA. Ichiro Kato, Nobuo Kumamoto, and William H. Matthews, eds. Japan: University of Tokyo Press, 1981. Pp. ix, 229. \$27.50.

## Stephen D. Cooke\*

In response to the increasingly international effects of pollution, the editors organized the first Asian-American Conference on Environmental Protection.<sup>1</sup> The sixteen papers presented at the conference comprise *Environmental Law and Policy in the Pacific Basin Area*.<sup>2</sup> Conferees, from Pacific Basin nations, examined the laws and policies controlling environmental problems in Japan, the United States, and five Southeast Asian countries.<sup>3</sup>

The papers are regionally grouped into three sections. The first section concerns the deteriorating environmental conditions of five Southeast Asian states: Indonesia, Malaysia, the Philippines, Singapore and Thailand.<sup>4</sup> The papers discuss these developing countries' pollution problems and the national policies that emphasize economic expansion, often at the risk of environmental damage.<sup>5</sup>

---

\* Student, U.C.L.A. School of Law.

1. ENVIRONMENTAL LAW AND POLICY IN THE PACIFIC BASIN AREA, at viii (I. Kato, N. Kumamoto & W.H. Matthews eds. 1981) [hereinafter cited as ENVIRONMENTAL LAW AND POLICY]. The Conference took place at Sapporo, Japan, in August 1978. A second conference was held at Jakarta, Indonesia in 1980. As of publication, additional conferences were scheduled through 1984.

Provided with funds from The Ford Foundation and The Toyota Foundation, the Japan Center for Human Environmental Problems commissioned research on environmental management and laws in Southeast Asian countries. The conference dealt with the results of this research. *Id.* at 1.

2. For readers interested in the contributors' credentials, biographical information is found in the last five pages.

3. *Id.* at 1-4. Researchers visited China in September 1979. The book's introduction briefly discusses their findings. Researchers found that the population density in the inhabitable regions, the antiquity of industrial equipment, and the dumping of waste contribute to China's environmental pollution. A new Environmental Protection Law promulgated in 1979 involves prevention and reduction of pollution and standards for environmental conservation.

4. *Id.* at 2. The researchers found problems of deforestation, and air, soil, and water pollution in rural areas. In the cities, overpopulation and concomitant urban problems exist.

5. *Id.* at vii. The developing nations encourage modernization without governmental regulations or emission control equipment. Some of the countries, the Philippines for example, subordinate their regulations and programs for pollution control to

The second section contains seven papers which collectively analyze Japan's government,<sup>6</sup> judiciary, and public<sup>7</sup> response to pollution.<sup>8</sup> One can generally conclude from these works that Japan has successfully controlled pollution.<sup>9</sup> The challenge now facing the country is to repair the environmental damage caused by industrial development.<sup>10</sup>

Two papers in the final section discuss the United States' environmental policy.<sup>11</sup> The concluding paper calls for increased in-

---

their plans for national development. Fernandez, *National Policy Trends on Environmental Protection and Pollution Control in the Philippines*, ENVIRONMENTAL LAW AND POLICY, *supra* note 1, at 39.

6. The cornerstone of Japanese environmental policy, the Basic Law for Environmental Pollution Control enacted in 1967, is reprinted in full in Appendix I of the book. ENVIRONMENTAL LAW AND POLICY, *supra* note 1, at 203-211.

7. Two authors discuss the traditional attitudes of Japan's governmental bureaucracy towards regulatory standards and public participation in the process of setting such standards. The Japanese governmental bureaucracy relies on a pyramidal authority structure and stresses efficiency, functional rationality, and competition. The bureaucracy maintains preemptive power over private enterprise and the public. Morishima, *Japanese Environmental Policy and Law*, ENVIRONMENTAL LAW AND POLICY, *supra* note 1, at 81-82; Utsunomiya, *Community Strategies for Improving Our Quality of Life: From Pollution Control toward 'Amenity' Development and Enhancement*, ENVIRONMENTAL LAW AND POLICY, *supra* note 1, at 147.

8. In addition to the contributions on Japanese environmental law and procedures for settling pollution cases, one paper focuses on land use along the Japanese shore (Abe, *Land Reclamation and the Protection of the Sea and Seashore Surrounding Japan*, in ENVIRONMENTAL LAW AND POLICY, *supra* note 1, at 113-121.) Another paper discusses the Japanese Noise Regulation Act and problems of noise control (Nomura, *Problems and Concepts in Noise Prevention*, in ENVIRONMENTAL LAW AND POLICY, *supra* note 1, at 123-139.)

9. Morishima, *supra* note 7, at 79. The emphasis on sustained growth and production in the 1950's and 1960's caused serious water and air pollution which resulted in health injuries. Industrial discharges during this period led to respiratory diseases, a painful bone ailment, and cases of mercury poisoning. According to a report cited in the article, Japan's neglect of environmental protection contributed to the problem.

However, environmental pollution in Japan improved significantly in 1974 and 1975. Utsunomiya, *supra* note 7, at 143. and table *Id.* at 144. For a comparison of Japan pollution control expenditures with those of western countries, see Gross & Scott, *Comparative Environmental Legislation and Action*, 29 INT'L & COMP. L. Q. 619, 654-655 (1980). For an extended review of how Japan sets emission control standards, see Gresser, *The Development of Pollution Control in Japan*, 1 HARV. ENVTL. L. REV. 541, 545 (1976).

10. Utsunomiya, *supra* note 7 at 141-152. Since Japan has abated several types of pollution, the author is concerned with developing and enhancing amenities or improving the physical living environment. Convinced that man's total environmental needs encompass four elements—physiological, economic and safety, social, and psychological and emotional—Utsunomiya argues that Japan's environmental policies expand to include issues of pleasantness, preservation, and beauty. With respect to amenities, Utsunomiya believes Japan's centralized political administrative system cannot deal with such subjective or unmeasurable concerns. Instead, he argues local communities assess inhabitants' needs and establish effective regulations and restrictions. An example of local restrictions which Utsunomiya advocates is increased land-use planning and zoning. *Id.* 147-151.

11. ENVIRONMENTAL LAW AND POLICY, *supra* note 1, at 159-181. In Bosselman,

ternational cooperation in protecting the environment.<sup>12</sup>

Any collection of papers written by numerous authors suffers from inherent difficulties of discontinuity and incomprehensiveness. The editors minimized these problems by including an extensive index for reference and comparison. Beyond these inevitable weaknesses, however, serious shortcomings remain.

In most of the papers on the five Southeast Asian countries, the authors present detailed case studies which focus on one or two environmental problems stemming from industrialization.<sup>13</sup>

---

*Relations Between Levels of Government in Preservation of the Natural Environment*, ENVIRONMENTAL LAW AND POLICY, *supra* note 1, the author examines the traditional roles of the various levels of government (federal, state, and local) in environmental policy making and advocates increased collaboration and creativity in meeting this country's environmental needs.

In Matthews & Carpenter, *The Growing International Implications of the U.S. Requirements for Environmental Impact Assessments*, ENVIRONMENTAL LAW AND POLICY, *supra* note 1, the authors thoughtfully analyze the 1979 Executive Order requiring United States agencies to prepare environmental impact statements on prospective federal actions in foreign countries. Such environmental assessments involve the United States in foreign prerogatives and sovereignty. *Id.* at 159, 170. Developing countries experiment with environmental assessment, but remain suspicious that it will retard growth projects. The possibility of formal intervention exists if a donor agency's environmental study addresses fundamental strategy or policy of a recipient country. *Id.* at 161-163.

The intensity of review depends upon the impact of the particular action. For example, an environmental assessment is required if an action significantly affects the "environment of the global commons," whereas an action with a lesser impact may only require that an agency undertake a bilateral or multilateral study or a review of available information. *Id.* at 160-161.

The Executive Order was an extraterritorial extension of the U.S. National Environmental Policy Act (NEPA) of 1969. The text of the Act is contained in the book's Appendix. For a review of how the process of the Executive Order differs from that of the National Environmental Policy Act and how the process might apply in federal decision-making situations, see Whitney, *Regulation of Federal Decision Making Affecting the Environment Outside the United States, Its Territories and Possessions*, 3 GEORGE MASON U.L. REV. 63 (1980).

12. In Fuse & Iwama, *Regional Cooperation for the Protection of the Environment in the East Asian Seas and the Pacific*, ENVIRONMENTAL LAW AND POLICY, *supra* note 1, at 183-201, the authors recommend stronger Pacific Basin international cooperation in protecting the oceans. In 1974, the United Nations Environment Programme endorsed regional activities dealing with marine environmental problems. This paper sought to encourage future development of plans to protect regional seas. *Id.* at 183-185.

Citing prior examples of collective action among nations, the paper's authors believe that sub-regional organizations, promoting the protection of East Asian Seas, could respond to the needs and policies of its member countries, and thus avoid some of the geographical and political problems which prevent the region as a whole from adopting a common approach to marine pollution. The author claims that the South-west Pacific political climate is ready for regional environmental management programs. *Id.* at 191-197.

13. For example, one study detailed how recycling of old car battery casings caused lead poisoning in a small Thai village. In the paper on densely populated Singapore, the author analyzed land-use patterns. In the paper on Indonesia, the reader learns about water pollution, but not about Indonesia's air quality.

The reader remains ignorant of each individual nation's other environmental problems.<sup>14</sup> Moreover, since different problems are discussed for each country, the reader does not obtain a comprehensive picture of the overall condition of the region. Aside from the particular problems covered by the case studies, the authors present only a superficial overview, rather than a critical analysis of environmental laws and regulations.

Another problem with the Southeast Asian papers is their limited treatment of the relationship between economic growth and environmental controls. Many of the authors assert that economic development in the Southeast Asian countries need not lead to environmental contamination.<sup>15</sup> Yet, they do not persuasively show how strict pollution controls and industrialization are compatible. While lauding new regulations controlling effluents, the authors recognize that severe shortages of skilled personnel and measuring instruments make enforcement impossible. Unenforced environmental standards existing side-by-side with accelerated economic growth and foreign investment can only aggravate present pollution. A lack of consensus as to the extent of the deterioration and the desirability of pollution controls further compounds the problem.<sup>16</sup>

One thing is clear: all five Southeast Asian countries endure substantial environmental deterioration to foster economic growth. The five nations need only look as far as Japan to justify pollution as an inevitable result of industrialization. Only when they, like Japan, reach a high level of development, can environmental protection become a priority.

This reader is not convinced that the regional organization proposed in the concluding<sup>17</sup> paper would be able to effectively regulate pollution when individual countries cannot or will not. Rather, countries would probably participate only as long as participation was in their self-interest. One of two alternatives would result.

First, the author's proposal suggests that regional organizations will respond to the needs and priorities of member countries.

---

14. In fairness to the editors, it should be noted that a more comprehensive study of pollution for each of the countries might have been impossible or beyond the scope of the book. Also, the seven papers on Japan's environmental problems do give a helpful and in-depth look at the environmental policies of that nation.

15. See Chen, *Development and Environmental Planning in Singapore*, ENVIRONMENTAL LAW AND POLICY, *supra* note 1, at 31, who contends that, while there is a historic relationship between economic growth and pollution, the relationship need not necessarily be repeated in the developing countries.

16. See Sutamihardja, *Water Pollution in Indonesia from the Aspect of Industrial Development*, ENVIRONMENTAL LAW AND POLICY, *supra* note 1, at 65. *Accord supra* note 5.

17. See Fuse and Iwama, *supra* note 12.

But within each country, pollution control is subordinated to the demands of development. No country would press for stricter controls at a regional level than it would accept individually. Therefore, any guidelines adopted would be minimal in order not to fetter any state's plans for growth.

Second possible alternative would occur if the subregional organizations attempted to enforce restrictive policies on the theory that each nation benefits more from collective environmental management than from individual action. Assuming that the organization's environmental standards are more stringent than those the countries would enact, each nation has an incentive to violate the standards to gain the collective benefit without paying the individual costs.

The book's most glaring shortcoming, however, is not the absence of a convincing argument for the compatibility of pollution controls and economic growth, but rather the failure of its contributors to consider the impact of the world-wide economic slowdown on environmental policy. In a recession, national social and welfare needs often become more pressing than environmental concerns.<sup>18</sup> Unfortunately, the book does not discuss strategies for natural resource management in light of constrained economies. This shortcoming probably reflects the 1978 date of the conference. The editor's failure to update the papers prior to their 1981 publication limits the book's relevance.

While not comprehensive, *Environmental Law and Policy in the Pacific Basin Area* furthers an understanding of the environmental concerns of the seven countries covered. To the degree that increased understanding makes the goal of international cooperation more attainable, the authors deserve commendation. The authors' efforts may draw the attention of the countries studied, and therefore stimulate evaluation of their environmental regulation. Such an outcome would be significant, for nations will not support effective international controls until they realistically face their own environmental problems.<sup>19</sup>

---

18. Cf. Utsunomiya, *supra* note 7 at 145. Arguably, Japan's current emphasis on economic issues, not pollution control, might exemplify this shift. For the developing nations, a slowdown or delay in development "is a genuine concern because of the urgency to increase food supplies, create jobs, secure foreign exchange, and achieve a greater measure of self-reliance." Matthews and Carpenter, *supra* note 11, at 163.

19. Grievs, *International Law and the Environmental Issue*, 1 ENVTL. AFF., 826, 827 (1972), *The United Nations and the Environment*, 64 AM. SOC'Y. OF INT'L L. PROC. 211, 235 (1970) (quoting remarks by Ruth Russel).

