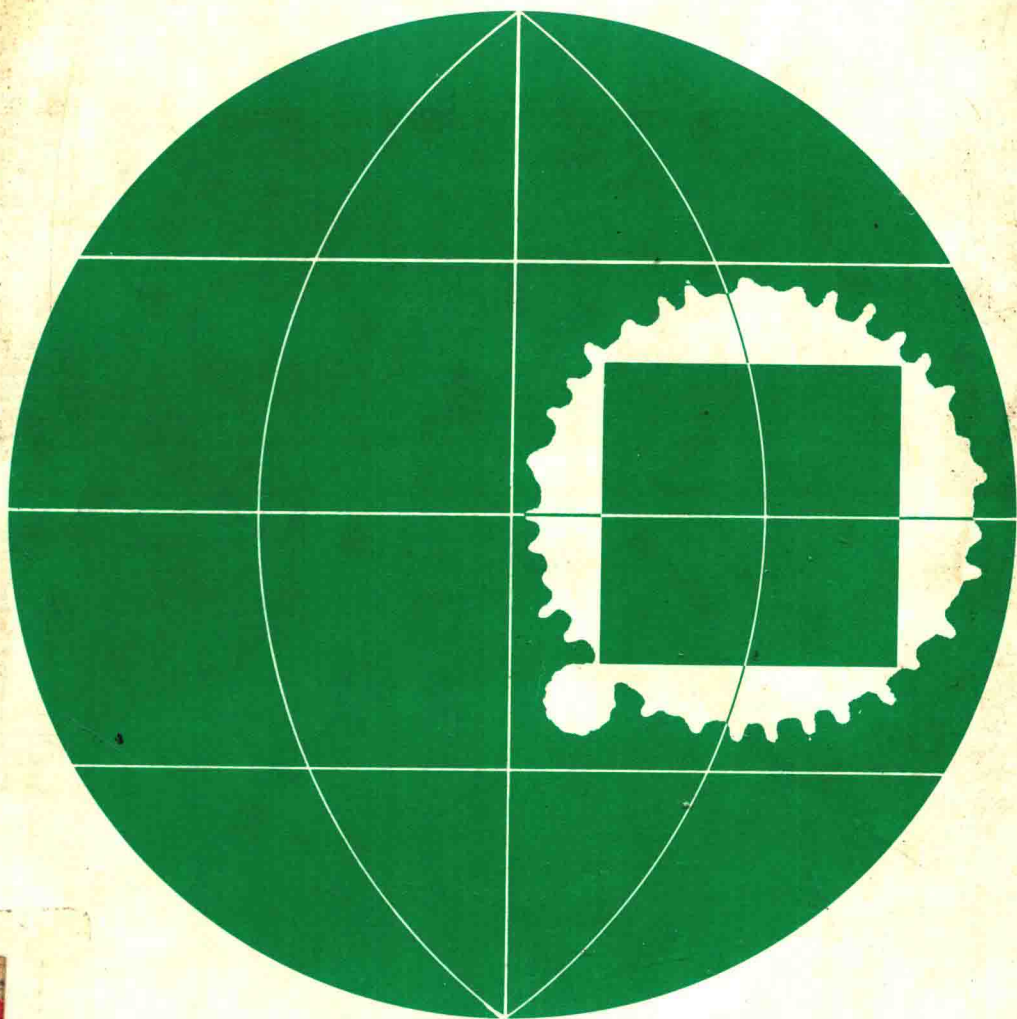


Environmental Law and Policy in the Pacific Basin Area

Edited by Ichirō Katō, Nobuo Kumamoto,
and William H. Matthews



UNIVERSITY OF TOKYO PRESS

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Preface

For the past two decades, scientists, economists, lawyers, and citizen groups have been deeply involved in the movement for the protection and improvement of our environments, which have been endangered, damaged, or invaded by the rapid, powerful, and expanding development of the present civilization. The invasion has occurred not only in advanced countries but in growing nations or developing countries as well.

In the advanced countries, however, countermeasures against this type of invasion have been gradually adopted step by step. Through laws and orders of governments, decisions by courts, and strong citizen movements in these countries, sufficient time and technical and budgetary latitude have been allowed for countermeasures against fatal damages to our civilization to be taken. On the other hand, in the developing countries no latitude has been provided for steps against environmental pollution as in the advanced countries. Cars and factories have intruded rapidly and increasingly into these nations without any governmental regulations or preventive equipment against pollution. In addition, demand for development in industry in these less-developed countries has given preference to more rapid and wide adoption of technology and manufacturing to produce, rather than to technique and knowledge for pollution prevention. Thus, the richer and better have become better, while the poorer and worse have become worse, similar to the North-South dilemma in economics.

Anyone who is prudent enough, however, to observe the present situation and the character of pollution itself will be easily aware of the close relationship between the advanced and developing countries. In other words, no country can disregard the serious effect of pollution

to another country today. We, the people who live around the Pacific Basin, should recognize this fact. Water is one example. Through rivers it carries hazardous discharged chemical materials to neighboring countries. Or it links one nation to another through ocean water.

These facts, needless to say, require us to adopt international co-operation among the nations in this area. From this point of view, members of the Japan Center for Human Environmental Problems started a survey in 1975 on environmental problems in Southeast Asian countries from the aspect of legal controls. Since then several efforts have been made in this area. The International Conference on Environmental Problems in 1975 (Kyoto, Japan), the Japanese-American Seminar on Land Planning and Regulation of Development in 1977 (Honolulu, Hawaii), and the first Japanese-American Conference on Environmental Protection in 1978 (Yokohama, Japan) are examples of efforts in which the members of the Center have been deeply involved.

In addition, more steady and concrete achievements have also been attained in this area. The effort was mainly directed toward a survey on environmental management and laws in the Southeast Asian countries, such as the Philippines, Thailand, Malaysia, Singapore, and Indonesia between 1977 and 1979. Based on the results of this survey, we organized the first Asian-American Conference on Environmental Protection in Sapporo, Japan, in August 1978. It was, we believe, a step toward ensuring a healthy and hazard-free environment for future generations. On the final day of the conference, two resolutions were proposed and unanimously adopted: to publish the papers presented at the conference as a book, and to organize the second Asian-American Conference on Environmental Protection somewhere in Asia. This book is the achievement of the first resolution, and the second conference was held in Jakarta, Indonesia, in September–October 1980.

It was decided at the Jakarta Conference to organize the third Asian-American Conference on Environmental Protection in Kuala Lumpur in 1982 and the fourth conference in Bangkok in 1984. We strongly believe that these conferences will slowly but steadily attract the attention of all those concerned—governments, organizations, and people alike—with the protection and preservation of the world environment for this and future generations.

We are grateful to the following organizations and persons whose support made those efforts possible: The Commemorative Association for the Japan World Exposition; The Toyota Foundation; Hokkaigakuen University; Institute of Environmental Research of Chulalongkorn University, Bangkok; East-West Environment and Policy Institute of the East-West Center, Hawaii; Mr. Kazuhiko Kurata and Ms. Nina

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Introduction

Environmental Laws in Southeast Asia and China: An Overview

Ichirō Katō

In terms of industrial and economic development, East Asia can be divided roughly into three regions: one consisting of Japan and the Republic of Korea, which may be called advanced industrial countries, the second occupied by China, an immense country which is currently in the process of development, and the third made up of the developing countries in Southeast Asia.

Over the past few years, the Japan Center for Human Environmental Problems has carried out research on environmental problems in Southeast Asia and China. The Ford Foundation and The Toyota Foundation, although their parent companies are rival automobile manufacturers, have cooperated with each other and provided us with necessary funds for our research on Southeast Asia. We dispatched researchers to the various countries in Southeast Asia for a period of three years to conduct our studies. In regard to China, fifteen members of our group visited the country in September 1979 and made an inspection tour of the cities of Peking, Shanghai, Nanking, and Wuhan.

Our studies in Southeast Asia have been concentrated on the five ASEAN nations, that is, the Philippines, Indonesia, Singapore, Malaysia, and Thailand. Most of these countries were colonies before World War II, and even today the legal systems of their former colonial masters are either still in existence or have exerted great influence on their systems. For example, the legal system in the Philippines is based on American laws, while Indonesia has Dutch laws, and Singapore and Malaysia British laws as the basis of their legal systems. In the case of Thailand, it has its own original legal system because it has long been an independent country. These countries each have their different histories and their own characteristics; but rather than concentrating on

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these differences, let us look at what these countries have in common with each other, that is, in terms of environmental laws and the problems of environment.

Environmental problems in developing countries are considerably different from those existing in developed countries. The first environmental problem that cropped up in the countries of Southeast Asia was the urban problem. Overpopulation in large cities in these countries has created slums, poverty, unhygienic conditions, and diseases, which are the major issues in the urban problem. It is very important for these countries to solve these problems, and this is why the environmental problem comes into focus. These problems, however, cannot be completely solved by environmental laws, which have their own limitations. Rather, they could be more successfully solved by policies and countermeasures implemented by the respective governments.

Then, what is the situation in mountain and farming villages? Problems exist in these villages which again are different from those in advanced countries. For instance, there is the problem of overcutting forests, although there also exist problems similar to those witnessed in advanced countries, such as pollution of the air, water, and soil. These problems are aggravated during the process of economic development in Southeast Asian countries and also with the advance of foreign enterprises, including Japanese. A representative case is the deforestation of these countries' woodlands by such foreign enterprises.

Let us see what types of environmental laws are in existence in these countries. The environmental laws in the countries of Southeast Asia are much more effective than might be expected. In some countries, propositions concerning the protection of the environment have been incorporated in their constitutions. There are also countries that have comprehensive laws incorporating provisions against pollution and the protection of nature and the environment. Countries that do not have such provisions at present are currently preparing them, and it will not be long before they will be systemized legally. In my opinion, such legal systems will be thorough because the countries are earnestly studying the laws of such countries as the United States and Japan, where environmental protection laws are developed.

The real problem, however, is whether the laws in these countries are being faithfully carried out or not. The number of government officials in charge of the execution of the laws is extremely small. In Malaysia, for example, there are only about ten people in charge of the enforcement of the environmental laws. Furthermore, these officials are working in the central government, and in many cases there is no one in charge of the environmental laws in local regions. In regard to en-

vironmental administration, there is an insufficient supply of instruments and devices required for measuring the degree of environmental pollution. Therefore, even if the control standard of the pollution is specified at a certain ppm, supervising officers, due to the lack of measuring instruments, are unable to detect accurately the degree of pollution that is emitted from a factory or plant. Under these circumstances, there is virtually no way of controlling pollution. We may say that, consequently, the environmental laws exist merely on paper, and that the laws are not being effectively implemented. Regarding this problem, in my opinion developed countries, such as the United States and Japan, can and should help by supplying these countries with necessary measuring instruments and devices or by training the sanitation staffs.

The situation in China is somewhat different. When our delegation visited China, we were at first concerned about the existence of environmental problems in such a vast country. We asked a Chinese official where we should go in order to grasp most accurately the environmental problems of the country. He replied that "there is serious environmental pollution everywhere in China, so you may go anywhere you want to see it for yourself." As a matter of fact, wherever we went we saw voluminous amounts of black smoke being emitted from the smokestacks of plants and factories, while untreated industrial wastes from such installations were being dumped into rivers. Our impression, consequently, was that the environmental pollution problem in China is unexpectedly serious.

One reason why the environmental problem is so serious in China is because, while the country has a vast area, it also has a colossal population. Only several years ago, the population of China was said to be about 800 million, but according to an announcement made in 1979, it was about 975 million at the end of 1978. Actually, it is said that China's population is now one billion and that an increase of another 100 million can be expected in several years. Statistics in China regarding the population are not accurate, and the rapid increase of the figure probably includes the populations that had not been hitherto surveyed. At any rate, China's rate of population increase is extremely high, and this is one factor that has made the country's population unexpectedly large.

Furthermore, the large deserts and high mountains in the western part of China are nearly unpopulated. The inhabitable regions, therefore, are in the eastern part of the country in plains near the sea. The population density in these regions is considerably high. The population density of Japan is also high compared with the United

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States, but the population density in China, particularly in the areas surrounding Peking and Shanghai, is higher than that of Japan. For example, one is hardly able to walk straight through the main street of Peking because of the crowds of people flooding the thoroughfare. Under these circumstances, it seems quite natural that the environmental problem should be such a serious issue in China.

Another factor that is contributing to environmental pollution in China is the superannuation of the equipment used in plants and factories. For example, there is a gigantic steel mill in the suburbs of Peking where we found that the equipment was of pre-World War II vintage, and no modern facilities had been installed. The sight that greeted our eyes there was a cloud of black smoke billowing out from the smokestacks. In Japan, when we visit a plant on an inspection tour, the plant authorities usually try to hide the defects of the plant and try not to let out smoke, but in China, when we visited the steel mill, it was almost as though the authorities were trying to welcome us by spewing out a blast of billowing black smoke. In Japan, the people are very sensitive to environmental pollution, and consequently factory authorities also are concerned about controlling pollution, but in China it seemed that the people and the plant authorities do not pay much attention to this problem. This may have been one of the reasons why so much smoke was being spewed out from the steel mill we inspected in the outskirts of Peking. This smoke and the so-called yellow dust transported by the wind from the Gobi Desert in the northwest combine to envelop the city of Peking in a black and yellow haze, particularly on winter days.

In Nanking, there is a huge chemical plant located along the Yangtze River, which we also visited. Industrial wastes from the plant were being poured into the Yangtze too, and the river in Shanghai was also considerably polluted. Since the Yangtze is a large river, it would seem that it could swallow large amounts of industrial waste without being seriously polluted. However, from what we saw, it seemed that solutions to the environmental pollution problem have only recently begun to be found in China. The Chinese government, however, is tackling the problem seriously. Even as far back as more than ten years ago, the then Prime Minister Chou En-lai had stressed the importance of the problem and urged measures for its solution. Chou En-lai, who seems to be the most respected man in China today, had already been aware of the importance of the problem ten years ago.

In September 1979 when we visited China, a new Environmental Protection Law was legislated and promulgated. Why was it that this environmental law was promulgated despite the fact that other laws

were still incomplete? I believe that it is because of the government's policy to control environmental pollution first of all before launching its four modernizations program. What then are the contents of the new Environmental Protection Law? The law involves an extremely wide scope of prevention and elimination of environmental pollution and the conservation of nature. It also includes provisions for punishing violators of the law as well as compensation for victims of pollution. This, however, is a basic law, and in the future more detailed laws and regulations concerning the pollution of the air, water, etc., must be enacted under this comprehensive basic law.

Following is a summary of our impressions when we read the law and what we felt when we talked to the Chinese authorities. The authorities are rather optimistic about environmental protection. For example, they believe that prevention of pollution can be realized in parallel with the development of the economy—in other words, that the prevention of pollution itself will favorably affect the expansion of the nation's economy. Generally speaking, environmental pollution goes hand in hand with industrial and economic development, but according to the Chinese authorities, such development can be carried out by preventing pollution. The Chinese authorities say that by preventing pollution from the start, they will not have to spend colossal amounts of money later after the pollution has intensified during the process of industrial and economic development. They add that by preventing pollution in parallel with the development of their economy, it will be more effective from a long-range point of view and also abet the development of the economy. This may be an ideal way of thinking and an excellent one, but since China is still a developing nation, if it starts out rapidly to modernize its industries, a contradiction may ultimately be created between the two.

The second factor that has led the Chinese to take an optimistic view of the environmental problem is that a provision in the new Environmental Protection Law has been incorporated by which waste material could be recycled and turned into usable commodities. For example, after processing, the industrial wastes from factories and plants could be used as fertilizer. It is a constructive idea to utilize wastes, but on the other hand, how much will it cost? For example, in the case of Japan, the only profitable recycling business today is limited to that of used newspapers and magazines. It seems that China, which is a socialist country, is not making realistic calculations regarding the cost of recycling. We witnessed numerous ineffective phases in the production sectors of the Chinese economy. It goes without saying that reprocessing various kinds of wastes into usable products is

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indeed a good idea, but the fact still remains that the recycling costs would be tremendous.

Another thing that we found characteristic of China is the people's way of thinking concerning laws, which is considerably different from that of the Japanese. Take, for instance, the new Environmental Protection Law. The provisions in the law are not written in strict legal terms but are rather descriptive terms in declaration of the government's policy. Therefore, this law, or, rather, the government's policy, is said to have penetrated deeply into local provinces, and the people of the provinces are said to be respecting the law faithfully. Unlike in the United States or Japan, lawsuits rarely occur in China because the enterprises that are subjected to legal restrictions are all government-operated and the restrictions themselves have been enforced by the government. In Japan, however, the common practice is to solve a problem through negotiations rather than lawsuits, and in this regard the Japanese approach is similar to that in China.

The Chinese bureaucracy is very effective in seeing to the implementation of government policies. For example, when a law is legislated by the central government, the local governments are informed of it very quickly. Unlike the countries of Southeast Asia, there are numerous officials in the local governments of China who are in charge of environmental problems. When we visited the cities of Wuhan, Nanking, and Shanghai, we found that the municipal government officials were studying the new Environmental Protection Law very earnestly. In our discussions with them, we found that they knew precisely how to implement the law. They told us that before a law is legislated, the central government calls in people from the local provinces and hears their experience and opinions. After the law is legislated, the government quickly informs the people in the provinces of the new law. What can be perhaps said is that although the articles and paragraphs of a law may not be precise and complete, the policies of the government are being endorsed by the people. On this point, China is more advanced than the countries of Southeast Asia.

Now to turn to the Republic of Korea, or South Korea. South Korea witnessed tremendous economic expansion during the 1970s, similar to the expansion of the Japanese economy in the 1960s, which also created a serious problem of environmental pollution. It was during the 1970s that the same problem occurred in South Korea, and laws to control pollution were legislated. These laws are generally patterned after those of Japan and are very precise and complete. However, it must be admitted that economic growth in South Korea has stagnated in recent years and the environmental problems have subsided.

In conclusion, by comparing these three regions, we can contribute to the enactment of environmental laws in the developing countries of these areas. Our research has forced us to engage in some self-reflection regarding pollution and pollution prevention laws.

Southeast Asia
