Part II Regional and global environmental issues and the development of environmental law and policy : 14 The ASEAN agreement on the conservation of nture and natural resources and the ASEAN strategic plan of action

14

The ASEAN Agreement on the Conservation of Nature and Natural Resources and the ASEAN Strategic Plan of Action

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INTRODUCTION

Environmental problems are becoming global in scale, problems of pollution and environment which were hitherto dealt with on a national level are crossing national boundaries and affecting entire regions, and there is a mounting awareness that the damaging effects of these problems are being felt in common all over the world. As a result, when dealing with the sources of pollution it is becoming increasingly difficult to distinguish between domestic, national and global levels, and at the same time it is becoming harder to define the different varieties of pollution. Problems which require environmental protection and management from an international perspective are steadily piling up; for example, acid rain caused by atmospheric pollutants such as nitrous and sulfuric oxides crosses international boundaries; as does damage to the ozone layer caused by fluorocarbons. Nuclear weapon tests and radioactive waste management, the disappearance of forests which serve to absorb carbon gases and forestall global warming, in the interests of immediate energy consumption: problems of marine pollution and protecting the use of resources; are but a few examples of international-scale environmental problems.[1]

In order to carry out meaningful solutions to these problems, national and international perspectives on environmental management are like two wheels of a bicycle: both are essential and it is extremely important that they should mutually support one another. It is of course quite obvious that there are limitations to any response to environmental problems based only on the national, domestic level. At the same time, no amount of earnest international discussion will be of any use without concrete implementation at the national/domestic level. However, in view of the fact that the origins of environmental problems are ultimately to be found at state level, there can be no doubt that state-level responses to problem-solving are the first essential precondition. In this sense, the expression "Think Globally, Act Locally," which one often hears these days, is essentially correct. However, the reverse

expression, "Think Locally, Act Globally," is equally correct. Both kinds of linkage between national and international aspects are necessary.[2]

Respect on the part of each country for its own environment, and a heightening of its legal response capabilities, are the strongest foundation for the solution of domestic environmental problems, and also an essential precondition to the solution of global environmental problems. However, the global environmental problems which are currently the topic of international debate have the nature of being compounded from the environmental influences affecting each country. This means that merely piling up all the different partial responses improvised by different countries will be inadequate in terms of problem-solving effectiveness. To put it another way, it is now believed that we need to strengthen international environmental management from an all-inclusive, general standpoint that crosses national borders. For example, emission restrictions applying to specified sources of pollution can be said to have been effective with respect to limited and definable pollution sources, but when one considers that the causes of global pollution problems are large numbers of undefined pollutants, many of them compounds of pollutants from different countries, one concludes that international environmental controls, restricting or regulating overall levels of pollution on the basis of a generalized conceptualization, is essential.[3]

Although the need for this global-level overall regulation, based on a general, international perspective, is widely recognized, there are various impediments to present-day international environmental management. One example would be the negative response to environmental management of international organizations, and another would be the tardiness and ineffectuality of domestic responses in developed and developing countries alike. In particular, when one compares the attention paid to environmental problems with that paid to various kinds of economic activity, the order of priority accorded to environmental problems is extremely low. It is moreover apparent that the international as well as domestic legal framework, which reflects all these considerations, is exceedingly weak.

International efforts to date have been symbolized by a pair of international conferences, the 1972 UN Conference on the Human Environment and the 1992 UN Conference on Environment and Development, and the changing flow of consciousness between the two.

Drastic change may be observed in people's understanding and consciousness of the key points at issue in environmental debate.[4] Thus for example, the preface to the Rio Declaration — one of the principal achievements of the 1992 conference — uses the following phrase in reference to the creation of a systematic [environmental] framework: "With the goal of establishing a new and equitable global partnership. . . which respect the interests of all and protect the integrity of the global environment and development system. . ." [5] Another one of the representative documents coming out of the assembly, Agenda 21, states at the beginning of its 38th article, on 'International institutional arrangements,' that "The mandate of the United Nations Conference on Environment and Development emanates from General Assembly resolution 44/228, in which the Assembly, inter alia, affirmed that the Conference should elaborate strategies and measures to halt and reverse the effects of environmental degradation in the context of increased national and international efforts to promote sustainable and environmentally sound development in all countries. . ."[6] However, the Rio Declaration also states that each country shares common, but differentiated responsibilities. As this suggests, between developed and developing countries there are both shared responsibilities and those which are of different levels.

In future the international consciousness of environmental problems will heighten, and international responses will become more active still. Influenced by these international devel-

opments, national activities will also become more active. However, according to UNDP Administrator James Gustave Speth (WRI president, 1982-92; appointed UNDP Administrator, 1993), writing in the introduction to Peter S. Sand's book, *Lessons Learned in Global Environmental Governance*, "No one knows exactly what the challenge of 'internationalization' will ultimately require. Major policy and institutional innovations will clearly be needed, but the bottom line is that national environmental policy will more and more be set in concert with other nations."[7] In short, when dealing with international environmental management, it would appear necessary to institute harmonious and developmental reform in both the development of environmental law at the domestic level and the development of global environmental law.

What can we do in future to develop our approaches to environmental problems? Sand has undertaken research on the use of "selective incentives" for persuading countries that are slow to respond to international environmental treaties to take part in alliances for environmental protection. He says, "It is time to take stock of this accumulated experience and institutional know-how, with a view to identifying innovative mechanisms for environmental standard-setting and implementation directly related to some of the decision-making ahead."[8]

Section 1 of this paper will deal with the ASEAN Nature Conservation Agreement (formally known as the "ASEAN Agreement on the Conservation of Nature and Natural Resources"), adopted in 1985 but not yet implemented. Section 2 deals with the ASEAN Strategic Plan of Action on the Environment adopted in 1994, while Section 3 discusses the shift within ASEAN from hard law to soft law, and the background behind this shift. The aim of this paper is to compare the two different approaches to international environmental law embodied in the two documents already adopted, the ASEAN Nature Conservation Agreement and the ASEAN Strategic Plan of Action on the Environment. This comparison, and recent developments in the ASEAN region, lead me to the conclusion that the basic approach being adopted towards regional environmental law in ASEAN is one of "soft law," in the form of inter-state agreements including policy declarations, and I wish to point out the part which this plays in the formation of real laws. In short, when the ASEAN countries come to regional agreements, there is a strengthening tendency at the present stage for them to choose soft law rather than hard law.

It is my belief that this tendency toward soft law deserves attention as a developmental pattern for new policy and law on environmental protection in the Asian region. Domestic environmental law in individual Asian countries also shows this kind of combination between hard law and soft law, including numerous declaration documents, but it is not my intention to discuss these domestic matters in the present paper. The response to environmental problems in ASEAN is showing a tendency to select soft law rather than hard law, i.e. aiming to fulfill environmental objectives through policy convergence rather than legalistic pacts. To sum up, the aim of this paper is to examine the positive responses being made to environmental problems by the various ASEAN countries through the twin approaches of policy and law.

1. The ASEAN Agreement on the Conservation of Nature and Natural Resources

The fragility of the ASEAN organization can be understood as an intrinsic quality characterizing the present stage of its existence. But there are different views on this: Should we see it

as resulting from the economic, social, and cultural diversity of the Asian countries belonging to ASEAN, or should we understand it as a stage in ASEAN's development in the "context of institutionalized dispute management and cooperation in international society"?[9]

It should be said that ASEAN's functions have changed considerably since the organization's founding, so we cannot discuss its past and present under the same terms. This theme has already been discussed widely, and does not need repetition here. Still, we should note that at the start ASEAN was basically an anti-communist organization, while it subsequently shifted to lending support for economic cooperation. And with the collapse of the Cold War order, Vietnam has also become a member. Furthermore, we should perhaps perceive the seeds of further transformation in the discussion on more Indochinese members to form the "ASEAN 10" in the future, the discussion on strengthening ASEAN structurally, and other such events.

At the same time, ASEAN faces new challenges that differ fundamentally from those arising heretofore, such as activities for AFTA and the issue of security in Asia. It also faces highly international challenges like APEC.[10] The ASEAN Regional Forum (ARF) that is the subject of debate recently is providing a venue for talks on security among 12 countries in the region including ASEAN members, Japan, and China, that began with the problem of territorial sovereignty over the Spratley Islands and the discussion about the military buildup in Asia. What's more, the ASEAN dialog provides a venue for talks among many nations, including the developed countries. In contrast to these events, the EAEC proposed by Malaysia's Prime Minister Mahathir in a sense seeks economic development for Asia from centripetal force within the region.

The steps ASEAN is taking toward regional environmental cooperation are progressing by subtle degrees in a way that mirrors the varying political and economic circumstances of each country, as well as the fast-changing post-Cold War international situation. For this reason we must keep in mind the broad array of problems facing these countries — including security, politics, and socioeconomic problems — when discussing regional cooperation on the environment in relation to the ASEAN organization. The rest of this section will examine the ASEAN Nature Conservation Agreement.

1.1 How the ASEAN Nature Conservation Agreement Came About

As we have already seen from Asian Regional Cooperation in the Field of the Environment,[11] ASEAN regional environmental cooperation began in 1978 with support from the United Nations Environment Programme (UNEP). At first it was an action plan for the ASEAN Subregional Environment Program (ASEP). This ASEAN Nature Conservation Agreement was signed and adopted in July 1985 at Kuala Lumpur within the process of implementing three programs (1978-1982, 1983-1987, 1988-1992).

I have already examined in another article the formation, purpose, changes in emphasis, and other matters concerning ASEP,[12] so this section will only discuss the character of the ASEAN Nature Protection Agreement.

This agreement is the first regional convention on the environment in the ASEAN region, although in other parts of Asia there are similar conventions on environmental law, which were all created with help from UNEP, ESCAP, and other international organizations. There is a problem, however, in that the ASEAN agreement has yet to enter into force.

1.2 Contents of the ASEAN Nature Protection Agreement

This agreement was adopted on July 9, 1985 at Kuala Lumpur, signed by the six countries that were ASEAN members at the time. Officially it is called the ASEAN Agreement on the Conservation of Nature and Natural Resources. Preparations were made for drafting the agreement with the help of parties such as the IUCN's Environment Center. The IUCN said that the agreement was the most progressive of its day, and that its creation was a highly noteworthy event for the wise management and sustained use of natural resources in the region.[13]

The agreement's preamble says, "Wishing to undertake individual and joint action for the conservation and management of their living resources and the other natural elements on which they depend" these countries conclude and implement this agreement, which is the reason given for entering into the agreement. In all it comprises 35 articles, which are divided into: Chapter I, Conservation and Development; Chapter II, Conservation of Species and Ecosystems; Chapter III, Conservation of Ecological Processes; Chapter IV, Environmental Planning Measures; Chapter V, National Supporting Measures; Chapter VI, International Cooperation; Chapter VII, International Supporting Measures; Final Clauses; and Appendices.[14]

The first article, Fundamental Principle, reads, "The Contracting Parties, within the framework of their respective national laws, undertake to adopt singly, or where necessary and appropriate through concerted action, the measures necessary to maintain essential ecological process and life-support systems. . ." (Paragraph 1), and further that, "To this end they shall develop national conservation strategies, and shall co-ordinate such strategies within the framework of a conservation strategy for the Region" (Paragraph 2). Thus, the parties are not making promises about their rights and obligations for the actions each will take pursuant to the agreement; rather, they are merely agreeing upon the measures that they must undertake "to adopt singly, or where necessary and appropriate through concerted action." Nevertheless, it is quite noteworthy that such a declaration, stating that they would formulate a nature conservation strategy on the regional level and coordinate the strategy, was the first ever in regional cooperation up to that time.

As the implementing institution for the agreement, ordinary meetings of the contracting parties are to be held at least once every three years, and extraordinary meetings are to be held at any time upon the request of one contracting party. This doesn't mean, however, that there is a permanent institution for this task. A secretariat is to be created when the agreement comes into force in order to perform the functions specified in Article 22. To facilitate communications with other parties and with the secretariat, the agreement says that parties are to designate appropriate national agencies or institutions for that purpose.

The agreement also states that disputes between parties arising out of the agreement's interpretation or implementation shall be settled amicably by consultation or negotiation, but it does not create any special institution for setting disputes. There is thus no implementing institution to insure the agreement's effectiveness.

It is stipulated that the ASEAN Nature Conservation Agreement shall enter into force only after all countries have ratified it. Already more than 10 years have passed since the agreement's adoption in 1985, but it has still not entered into force. Partly this is because the appendices had not been written when the agreement was created, but that was 10 years ago. Article 33 states, "This Agreement shall enter into force on the thirtieth day after the deposit of the sixth Instrument of Ratification." So although the parties signed the agreement

when it was adopted, it has not yet entered into force because this requires that all countries deposit their instruments of ratification.

It seems that for the time being the ASEAN secretariat is not very intent on bringing this Nature Conservation Agreement to completion as an official agreement.[15] In content, the agreement has from the beginning been considered very advanced by ASEAN member governments, and they have therefore thought it necessary to review their domestic laws to accommodate the agreement to the greatest extent possible.[16]

There is a good deal of literature that discusses the legal character and functions of the ASEAN organization,[17] so I will not touch upon this here, but I should explain that within ASEAN they basically have no regard for accord-forming methods that are legally binding on each other's countries. In fact, it seems they have consciously avoided international accords that involve legally binding one another.[18] The reasons for this are evident from the circumstances surrounding ASEAN's origins, its purposes, its form of organization, and the like. Representative of this is the basic stance of arriving at agreement only by means of the "consensus-making" of all ASEAN member states. We might think of this as a procedure by which these countries mutually respect their differing political, economic, and social circumstances, which could also be called their diversity. Looking from the opposite perspective one might say that because there is still little mutual trust among ASEAN countries, they see multilateral treaties as being most important for decision-making.

But despite this basic ASEAN attitude, there are signs of constructive progress regarding legal cooperation[19] in several areas.[20] One can discern a certain amount of progress in areas other than environmental law, such as economic cooperation, avoiding double taxation, the extradition of criminals and other judicial cooperation, characteristic and shared problems such as eradicating drugs, and problems that need action badly. Paragraph 3 of this agreement says, "The purpose is to facilitate positive cooperation and mutual help on matters of shared interest in the economic, social, cultural, technical, scientific, and administrative fields." For example, in his paper "The Development of ASEAN Legal Cooperation," Thailand's Chumporn writes, "The Bangkok Declaration is one of the principles upon which ASEAN regional cooperation should be based, and it sets forth 'justice and the rule of law.'" Just as he observes, we can see that ASEAN has adopted the concept of regional cooperation through law as doctrine.[21]

What are the reasons why this convention has not yet entered into force? Conceivably they are, first, the limitations imposed by ASEAN's organizational law; second, ASEAN's low-priority status for the environment; third, member countries' disposition of avoidance toward signing treaties; and fourth, the difficulties of making domestic law conform to the agreement. It would seem that these reasons together evince themselves as the negative attitude toward signing or applying regional treaties. Still, the third reason does not necessarily hold as we can see from their positive response toward international multilateral treaties, for more and more ASEAN states are ratifying and signing these conventions in such fields, including the Basel Convention on the Transboundary Movements of Hazardous Wastes and their Disposal, and treaties on restricting CFC use and on biodiversity.

Discussions of the aforementioned problems are, on the first, the observations by Professor Murase;[22] on the second, a paper by Sakumoto and Inoue; and on the third, papers by Sakumoto and by Chumporn. This makes it necessary to examine this in contrast to the fourth reason, having ASEAN countries' domestic law conform to treaties.

The issue is whether, in view of this agreement's terms, the domestic legal institutions of the ASEAN countries are very belated in accommodating international agreements, and there is already a report on this matter, from a 1994 seminar held by the IUCN in

Singapore.[23] This report discusses, by country and by theme, the fact that these countries' environmental laws have made rapid progress in recent years. Progress in their environmental legislation and the quickness of conforming to international conventions are just as this research group has already found, and the situation is already well-understood from the research on environmental law in Asian countries. For that reason I shall not go into the state of environmental legislation here, but I think we can say that in the 1990s, developments in Asian countries' environmental law and administration are highly characteristic. Along with systematic legislation, these countries are building legal institutions, in individual areas of law and in a very specific manner, using basic environmental laws or individual ordinances, or through the process of domestic legislation to comply with international environmental conventions. For example, ASEAN countries' environmental legislation includes the themes found in the ASEAN Nature Conservation Agreement, such as species and ecosystems (Chapter II), environmental degradation and pollution (Chapter III), land use planning, protected areas, and environmental impact statements (Chapter IV), scientific research, education, providing information, public participation, and training (Chapter V), and transboundary pollution (Chapter VI).

2. The ASEAN Strategic Plan of Action on the Environment

2.1 The Drawing Up of the Strategic Plan

The ASEAN region is currently seeing increasingly dynamic movements in terms of environmental cooperation. We can say that in the background of this cooperation are the fact that environmental problems are occurring, that there has already been significant cross-border damage, and that an awareness is coalescing on the need for a common legal framework to deal with it. Multilateral treaties dealing with the environment have been signed and ratified, and a variety of environmental-related declarations have been adopted. In addition, beside the ASEAN Agreement on the Conservation of Nature and Natural Resources which we looked at in Section 1, a variety of bilateral and multilateral arrangements dealing with specific environmental issues have been made.[24]

The ASEAN Strategic Plan of Action on the Environment, however, which was adopted in 1994, can be seen as an indication of the point that had been reached by the ASEAN Subregional Environment Program (ASEP) at that point in time. It was formulated as a plan of action for ASEAN in response to the Agenda 21 from the 1992 United Nations Conference on Environment and Development (UNCED, the Earth Summit), and it was issued along with a variety of strategic plans in other fields. The plan, which was adopted at the economic ministers' meeting in Brunei in April, 1994, has as its target the period from 1994 to 1998.

Compared to the ASEP program up to that time, the ASEAN Strategic Plan of Action on the Environment has the following two special features. First, as we have already seen, it was intended to examine the strategic priorities for ASEAN in response to Agenda 21, which was adopted at the 1992 Earth Summit as a plan of action to achieve sustainable development. Second was the need to consider the necessity of harmonizing environment policy in the near future for AFTA.[25]

Other regional declarations related to the environment besides the ASEAN Strategic Plan of Action on the Environment include the 1981 Manila Declaration on the ASEAN

Environment, the 1984 Bangkok Declaration on the ASEAN Environment, the 1987 Jakarta Resolution on Sustainable Development, the 1990 Kuala Lumpur Accord on Environment and Development, the 1992 Singapore Resolution on Environment and Development, and the 1994 Bandar Seri Begawan Resolution on Environment and Development. For instance, the 1992 Singapore Resolution stressed the promotion of regional cooperation. In other words, it points out that environmental factors should be included in all development processes, that the member countries should cooperate to formulate basic environment quality standards for ambient air and river quality, that regional environment quality standards should be implemented in a harmonized way, and that there should be common moves to transfer and develop appropriate environmental protection technology. The resolution pointed out, as agreed issues among the nations for implementing sustainable development, basic policies, multilateral information exchanges, institutional development, technical cooperation, and increased awareness, but also included a concrete environmental cooperation program for the ASEAN region, including programs related to haze caused by forest fires, air and water quality management, natural resources and environmental accounting, environmental economics, transfrontier parks and other protected areas, setting up a regional network for the preservation of biodiversity, and the protection of the marine environment. These contents were later formally adopted in the previously mentioned 1994 Bandar Seri Begawan Resolution on Environment and Development which was held in Brunei.

2.2 The Contents of the ASEAN Strategic Plan of Action on the Environment

The Strategic Plan of Action was adopted through the previously mentioned Bandar Seri Begawan Resolution on Environment and Development in 1994. The Resolution included, in addition to the adoption of the Strategic Plan of Action, the declaration of 1995 as the ASEAN Year on the Environment (Art. 2), a plan to adopt unified environmental standards on air and water quality and when necessary to create measures in this area (Art. 3), and to strengthen mutual cooperation between the ASEAN states to ensure the effective implementation of the resolutions made at the second meeting of signatories of the Basel Convention (Art. 4).

The Strategic Plan includes 10 strategies and 27 actions to put the strategies into concrete practice. The contents of the 10 strategies are as follows.

Strategy 1: Support the development of a regional framework for integrating environment and development concerns in the decision-making process.
Strategy 2: Promote government-private sector interactions that lead towards the development of policies that mutually support the thrust of each sector.
Strategy 3: Strengthen the knowledge and information data base on environmental matters.
Strategy 4: Strengthen institutional and legal capacities to implement international agreements on environment.
Strategy 5: Establish a regional framework on biological diversity conservation and sustainable utilization of its components.
Strategy 6: Promote the protection and management of coastal zones and marine resources.
Strategy 7: Promote environmentally sound management of toxic chemicals and hazardous wastes, and management of transboundary movement of hazardous wastes.

Strategy 8: Develop a system for the promotion of environmentally sound technologies.
Strategy 9: Promote regional activities that strengthen the role of major groups in sustainable development.
Strategy 10: Strengthen the coordinative mechanism for the implementation and management of regional environment programmes.

In addition, the following five policy objectives are listed at the beginning of the Strategic Plan of Action.

a) To respond to specific recommendations of Agenda 21 requiring priority action in ASEAN;
b) To introduce policy measures and promote institutional development that encourage the integration of environmental factors in all developmental processes both at the national and regional levels;
c) To establish long term goals on environmental quality and work towards harmonised environmental quality standards for the ASEAN region;
d) To harmonise policy directions and enhance operational and technical cooperation on environmental matters, and undertake joint actions to address common environmental problems; and
e) To study the implications of AFTA on the environment and take steps to integrate sound trade policies with sound environmental policies.

The Plan states that the first five items above, from a) to e), give the objectives Plan of Action, and the previously mentioned 10 strategies are intended to attain the objectives.[26]

In this way, the contents of the Strategic Plan cannot necessarily be seen as a step backward from the earlier mentioned ASEAN Agreement on the Conservation of Nature and Natural Resources. Of course, it is extremely difficult to accurately compare the contents of the expressions in the two documents, but many of the expressions relating to policy in the Plan of Action are very strong. However, the Bandar Seri Begawan Resolution on Environment and Development contains very strong wording such as "ASEAN should promote the principles contained in the Rio Declaration on Environment and Development, and actively implement Agenda 21" (Preamble) and "ASEAN member countries share common environmental aims and objectives and that the state of the environment lies ultimately in the hands of the people of ASEAN themselves." The articles of agreement made by the ASEAN environmental ministers in the declaration are also very clear, and the policy objectives are stated in very concrete terms.

The Plan of Action is, as its name implies, only a plan of action, and does not carry the force of law. However, in the ASEAN context there is a high level of achievement of the contents of such plans of action. For instance, the previously mentioned ASEP III set 17 program objectives and 60 regional projects, and 90% of these projects were achieved, 60% of them within its term (1988-92). Not only this, but it is reported that several environmental projects carried over from ASEP II were completed during ASEP III.[27]

3. From Hard to Soft Law

When we take the view outlined above, we find that the Strategic Plan is not in any way a retreat from the Nature Conservation Agreement, that it contains concrete strategic goals in terms of language and content, and that in some places the declaration contains within it some forward-looking and progressive discussions on common environmental standards and the harmonization of laws in the ASEAN region.[28] In this sense, it is an extremely powerful position statement demonstrating the political will of the ASEAN states to achieve policy implementation. However, the question is to what extent it will be implemented, since it does not carry the force of law and does not contain any multilateral obligations to the member states, and is merely drafted as policy goals or a declaration.

Now, I would like to discuss this issue again in the light of the positioning of soft law, as described by Sand in his book which I introduced earlier. In a section of the book entitled "Fast Tracks: How to Beat the Slowest-Boat Rule," he states that, "Possibly the most serious drawback of the treaty method is the time lag between the drafting, adoption, and entry into force of standards."[29] He thus points to the problems in the traditional process of promoting treaties, in that it not only takes time to negotiate the treaty itself, but that even after it is signed it takes time for the necessary number of countries to ratify it. He then pointed to the following three ways of avoiding these obstacles, which he indicated have already been accepted as international custom:

(1) provisional treaty application;
(2) soft-law options; and
(3) delegated law-making.

Incidentally, according to research results from the United Nations Institute for Training and Research (UNITAR), the time period between signing and enactment for a multilateral treaty ranges between 2 and 12 years, with the average being 5 years.[30]

In the case of provisional application (1), in cases where there is a great deal of time before the formal enactment, the signatory countries begin to implement the treaty through the formulation of additional protocols or through adopting separate agreements. Delegated law-making (3) is seen as a method through which "technical standards" are adopted, with multilateral specialist organizations given the authority to periodically revise them. It is normally conducted through the simplification or exemption of procedures, or through "tacit consent," but sometimes the governments avoid the act of ratification, and by doing this evade traditional parliamentary control, and this has been pointed to as "a threat to the democratic process."[31] The idea of soft law (2) is that the "states may decide to forego treaty-making altogether and to recommend, by joint declaration, common rules of conduct — usually referred to as 'soft-law' to distinguish them from the 'hard law' of formal agreements,"[32] and it can be positively valued as having the merit of allowing states to implement the recommendations immediately without the necessity of national ratification processes. As concrete examples, we can point to the "Environmental Law Guidelines and Principles" addressed since 1978 by the United Nations Environment Programme (UNEP) Governing Council, the "World Charter for Nature" adopted by the UN General Assembly, as well as other declarations.[33] The possibility always remains for these "soft laws" to be "hardened" at some future time.

When seen in this way, in the case of environmental cooperation in the Asian region, we can say that soft law has achieved accumulative and unique results, as seen for instance through the previously mentioned environmental declarations and resolutions adopted by the ministers' meetings, as well as the step-by-step and continuous development of the action plan called the ASEAN Subregional Environmental Plan (ASEP). It is also clearly shown by the above evaluation of the ASEP III. Furthermore, in the loose forum of ASEAN, it clarifies, strategically and concretely, in the form of a political statement which does not legally bind the free decision-making or position of the different states, the issues to be taken up by ASEAN as a whole and those which the member states must deal with. In one sense, the fact that there have been no noteworthy developments in terms of hard law in this region can be seen as a minus, but in fact this can be seen as a realistic and practical way of doing things given the looseness of ASEAN, the gaps between the national strengths of the member states, the political diversity, and the differences in the environmental situation in the different countries.

Incidentally, it is believed that there are common issues between, on the one hand, the obstacles which stand between the signing of international environmental treaties and the implementation of the treaties, and, on the other, the obstacles we have seen above in signing treaties in the ASEAN region. The issue is the weakness of international organizations and the problems that emerge from this weakness. There is a great resemblance between the weakness of the ASEAN organization and the situation where, with international environmental treaties, there is a lack of international bodies to take charge of the implementation. In international society, the system has been maintained under the leadership of the advanced industrial states, but ASEAN is only made up of developing nations, so that even when a treaty is signed there are no special organs to ensure its implementation. Just as there are no bodies to cope with international environmental disputes should they arise, no such bodies exist within ASEAN. And just as the field of international environmental law is a relatively new field, there are no other treaties in the environmental field in ASEAN except for the previously-mentioned ASEAN Agreement on the Conservation of Nature and Natural Resources. In addition, concerning the ratification process, there is the issue of the immaturity of the legal structures in these countries, and this is not limited to the field of environmental law alone. Environmental law is intimately linked to other legal areas, and must wait for the development of these other areas. Not only this, but even if we confine our perspective to regional treaties, Asian countries still bear remnants of the systems of their long colonial eras as well as old traditions, and their legal structures in general are still in a process of development, and it would be difficult to say that all these states are prepared to be able to react quickly, changing their domestic laws in response to the signing of a regional environmental treaty.

CONCLUSION

In closing this paper, I would like to look at the benefits and drawbacks of soft law in the context of the situation in the ASEAN region. Under soft law, the results of a joint statement can be implemented immediately without waiting for ratification. Soft law has the drawback that its ability to legally bind the countries adopting or making a declaration is weak, but on the other hand it can bring about immediate political results without waiting for countries to

ratify. Soft law does, however, retain the potential of becoming hard law by accumulation, through the development of regional treaties.

To borrow the words of Sand, which I mentioned earlier, generally speaking, when international multilateral environmental agreements are signed, it must be agreed to by the largest possible number of pledgees, and thus it can be said that the principle adhered to is "the law of the least ambitious program," as shown by Norwegian political scientist Arild Underdal.[34] However, there are exceptional cases where, through "arguments, side-payments, or various kinds of political pressure," countries which take a reluctant stance can be persuaded to modify their positions.[35]

In this way, ASEAN's decision-making process is not done by majority rule, so there is a problem of inefficiency, but I think it can also be, on the contrary, something which allows us to see the good points of the situation in the ASEAN countries today. By doing this the drawback is avoided of having decision-making reflect the largest number of signees, and we can also see how this is a useful type of step-by-step decision-making process for creating agreements between countries like ASEAN which have very different basic conditions such as socioeconomic ones. In addition, we can say that when a form of decision-making which places an emphasis on consensus is used to set common goals and realize action plans to fulfill these goals, it is especially good in the sense that it can mobilize good points when used to balance the interests of a small group of nations. However, if the membership of ASEAN grows in the future, the problem of whether this type of decision-making system can remain effective is quite another problem. In any case, in the present state of affairs, at least, we can appreciate the significance of the unique development of soft law in the ASEAN region.

Notes

1. The periodical White Paper on the Environment published by the Japanese government considers global environmental issues to be ten typical problems, which include global warming, rainforest destruction, pollution in the developing countries, and ocean pollution.
2. However, what is really necessary is the mutual linking and adjustment between domestic and international efforts, and the harmonizing of the efforts of individual countries which have been accumulated toward comprehensive solutions from an international point of view.
3. For instance, there are already agreements among the developed countries on issues such as cutting CO_2 emissions to prevent global warming and banning CFCs to protect the ozone layer, but in the developing countries, which will be the focus in the future, such policies are generally lacking, and there is a need for comprehensive measures, even if taken step by step. In this regard, much expectation can be placed on international environmental management measures such as ISO14000.
4. With regard to changes in global consciousness on environmental issues, see Naoyuki Sakumoto, "Jizoku-kano na kaihatsu to hogensoku no kakuritsu" (Sustainable development and the establishment of legal principles), *Keizai hokaron shu* (Collection of studies on economic law), Yokohama National University, Vol. 2 No. 1, March 1994, pp. 123-147.
5. *Agenda 21*(Kaigai-Kankyo Center), 1993, p 449.
6. *Agenda 21, op. cit.*, p 425.
7. Peter H. Sand, *Lessons Learned in Global Environmental Governance*, World Resources Institute, 1990.
8. Sand, *op. cit.*, p 21.

9. Susumu Yamakage, *ASEAN: Shinboru kara shisutemu e* (ASEAN: from symbol to system), Tokyo University Press, 1991.
10. *Ajia no anzen hosho 95-96* (Security in Asia 95-96), Heiwa Anzen Hosho Kenkyujo, 1995.
11. For more details, see Naoyuki Sakumoto, "ASEAN no kankyoho ni okeru chiiki kyoryoku no genjo to mondaiten" (State and problems of regional cooperation in environmental legislation in ASEAN), Shinsuke Yasuda, ed., *ASEAN ho* (ASEAN law), Institute of Developing Economies, 1987.
12. Naoyuki Sakumoto and Hidenori Inoue, "Hattentojokoku no kankyoho — tonan, minami ajia" (Environmental law in developing countries — Southeast and South Asia), vol. 6 of *Kaihatsu to kankyo shirizu* (Development and environment series), edited by Yoshihiro Nomura and Naoyuki Sakumoto, Institute of Developing Economies, 1996, revised edition.
13. IUCN, *Legislation for Implementation of the ASEAN Agreement on the Conservation of Nature and Natural Resources: Country Reports*, Preface, p. vii, 1994.
14. The contents of the specific articles are as follows: Art. 1 (Fundamental Principle); Art. 2 (Development Planning); Art. 3 (Species — genetic diversity); Art. 4 (Species — sustainable use); Art. 5 (Species — endangered and endemic); Art. 6 (Vegetation Cover and Forest Resources); Art. 7 (Soil); Art. 8 (Water); Art.9 (Air); Art.10 (Environmental Degradation); Art. 11 (Pollution); Art. 12 (Land use Planning); Art. 13 (Protected Areas); Art. 14 (Impact Assessment); Art. 15 (Scientific Research); Art. 16 (Education, Information and Participation of the Public, Training); Art. 17 (Administrative Machinery); Art. 18 (Co-operative Activities); Art. 19 (Shared Resources); Art. 20 (Transfrontier Environmental Effects); Art. 21 (Meeting of the Contracting Parties); Art. 22 (Secretariat); Art. 23 (National Focal Points); Art. 24 (Adoption of Protocols); Art. 25 (Amendment of the Agreement); Art. 26 (Appendices and Amendments to Apendices); Art. 27 (Rules of Procedure); Art. 28 (Reports); Art. 29 (Relationships with Other Agreements); Art. 30 (Settlement of Disputes); Art. 31 (Ratification); Art. 32 (Accession); Art. 33 (Entry into Force); Art. 34 (Responsibility of the Depositary); Art. 35 (Deposit and Registration), and Apendices.
15. I asked this question to the ASEAN Secretariat when I visited in November, 1995. Their answer was that they are not planning to ask the ASOEN experts group to reconsider the adoption of the treaty, and that it was likely they would not change their position in the near future.
16. IUCN, op. cit., p. viii, 1994. The contents of the agreement include many internationally recognized ideas such as the the polluter-pays-principle and the responsibility of notification in the case of transborder pollution. For more details, see my papers listed above.
17. See Shinya Murase, "ASEAN togo no kokusai soshikiteki sokumen" (The international organization aspects of ASEAN integration), in *Ajia Keizai*, Vol. 26 No. 10, October 1985, pp. 4-17.
18. See Naoyuki Sakumoto, "ASEAN no kankyoho ni okeru chiiki kyoryoku no genjo to mondaiten," *op. cit.*
19. I do not think the phrase "legal cooperation" is perfectly appropriate, but unlike related phrases such as "unified" or "integrated," it can be understood as harmonized activities at the state-level in the area of legal systems. For more details, see Naoyuki Sakumoto, *op. cit.*
20. Vitit Mutarborn, *The Challenge of Law: Legal Cooperation among ASEAN Countries*, Institute of Security and International Studies, Chulalongkorn University, 1987.
21. Chumporn Pachusanond, "ASEAN horitu kyoryoku no tenkai" (The development of ASEAN legal cooperation), in Katsumi Ando, ed., *Chiiki kyoryoku kiko to ho* (Regional cooperation organizations and laws), Institute of Developing Economies, 1994, p. 128.
22. Shinya Murase, *op. cit.*

23. Much has already been published in many fields, such as economics and political science, regarding to the overall character of the ASEAN organization. For instance, see Nobuyuki Hagiwara, *ASEAN.*
24. For instance, in 1996 Malaysia and Singapore signed the Notification and Control Procedure Adopted by Malaysia and Singapore for Movement of Wastes between the Two Countries, in response to the principle of the Basel Convention. There is also an agreement among the coastal nations along the Straights of Malacca.
25. ASEAN Strategic Plan of Action on the Environment, ASEAN Secretariat, 1994, pp. 2, 23.
26. *Ibid.*, p. 25.
27. *Ibid.*, pp. 21-22.
28. The "Harmonized Environment Quality Standards for ASEAN" which was adopted as part of the ASEAN Strategic Plan of Action on the Environment, sets, as long-term air environment standard, a call for the Pollutant Standards Index (PSI) for urban and industrial areas to be reduced to 100 or below by the year 2010, and for river water quality standards, calls for a pH of from 6.0 to 8.5 for cities and industrial areas by the year 2010, for a DO of 2 mg/l or higher, a BOD of 10 mg or over, and TSS of 200 mg or lower.
29. Sand., *op. cit.*, p. 14.
30. *Ibid.*
31. *Ibid.*, p. 17.
32. *Ibid.*, p. 16.
33. See Chikyu Kankyoho Kenkyukai, ed., *Chikyu kankyo joyakushu* (Collection of treaties on the global environment), Chuo Hoki, 1994.
34. Sand., *op. cit.*, p. 6.
35. For instance, (1) selective incentives, (2) differential obligations, (3) recourse to regional solidarity, and (4) promotion of overachievement by lead countries.