



Essential Readings in Environmental Law
IUCN Academy of Environmental Law (www.iucnael.org)

ENVIRONMENTAL LAW AND ASEAN

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OVERVIEW OF KEY SCHOLARSHIPS

Policy and Governance

1. Koh, K.L., *ASEAN Environmental Law, Policy and Governance: Selected Documents* (World Scientific Publisher Vol. I, 2009; Vol. II. 2012)
2. Koh, K.L., and S. Karim, "South East Asian Environmental Legal Governance", (Chapter 26) in *Routledge Handbook of International Environmental Law* (Routledge Taylor & Francis Group, 2012), pp 461 – 477.
3. Lee, J., *ASEAN Sovereignty and Intervention in Southeast Asia*, (Palgrave Macmillan, 2012).

‘Non-Traditional Security’ Approach: ASEAN and- Transnational Environmental Challenges

4. Koh, K.L., "The Discourse of Environmental Security in the ASEAN Context", Chapter 9 in Jessup B., & Rubenstein, K., (eds) *Environmental Discourses in Public and International Law* (Cambridge: Cambridge University Press: 2012)
5. S. Rajaratnam School of International Studies (Nanyang Technological University), *Building Institutional Coherence in Asia's Security Architecture: The Role of ASEAN*, RSIS-MacArthur Conference on Regional Security Cooperation; 19-20 July 2010, Singapore School of International Studies, (Conference Report).

Laws Relating to Biodiversity in ASEAN

6. Koh, K.L., "ASEAN Environmental Protection in Natural Resources Sustainable Development: Convergence versus Divergence", (2007) 4 *MqJICEL*
7. Lin, J., "Tackling Southeast Asia's Illegal Wildlife Trade", (2005) 9 *Singapore Year Book of International Law*, 191-208.
8. ASEAN Centre for Biodiversity, *ASEAN Biodiversity Outlook*. Philippines, (Dolmar Press, 2010). http://chm.aseanbiodiversity.org/index.php?option=com_content&view=article&id=146&Itemid=232

Climate Change and Energy: ASEAN's Response

9. Koh, K.L., A. Gunawansa, and L. Bhullar, "Eco-cities, Sustainable Cities – Whither?" (2010) *Social Space Journal*, pp 84 – 92.
10. Koh K.L., & L. Bhullar, "Governance on Adaptation to Climate Change in the ASEAN Region", (2011) 5:1 *Carbon and Climate Change Law Review*
11. Koh K.L., "A Survey of ASEAN Instruments Relating to Peatlands, Mangroves and Other Wetlands: the REDD+ Context", (2013) *International Journal of Rural Law and Policy* (Special Edition).
12. Tan Khee Jin, A., "Forest Fires of Indonesia: State Responsibility and International Liability", Vol. 48, *International and Comparative Law Quarterly* 826 (1999) (United Kingdom).

Background

ASEAN was established in 1967 by the *Bangkok Declaration*. It currently comprises 10 member states. The ASEAN environmental agenda can be said to have been introduced in 1978 when the ASEAN sub-regional programme ASEP Phase 1 was established. Over the last 35 years, the development of ASEAN environmental law and governance has expanded, and covers a wide ranging area. As a sub-regional organization, ASEAN is part of the global governance system. It shapes and facilitates the Multilateral Environmental Agreements (MEAs), apart from developing its own instruments to deal with environmental issues in the region.

ASEAN Environmental Policy and Governance

1. The book by **K.L. Koh**, titled *ASEAN Environmental Law, Policy and Governance: Selected Documents*, contains a selection of ASEAN environmental instruments which deal with ASEAN's progressive development of environmental law, policy and governance. It provides easy access to the reader, from general legal framework, programmes, strategies, plans of action and blueprints, declarations, resolutions, and accords. It also contains a judicious selection of the main sectors including natural resources and biodiversity, forestry, agriculture and food, cultural heritage, coastal and marine environment, water resources management, zoonotic diseases and the environment, energy and climate change, environmental disaster management, environmental education, and environmental governance. ASEAN's environmental governance includes instruments of cooperation with its Dialogue Partners including the EU, the US and Australia. These are important instruments in cooperation as ASEAN is part of the global governance system and it also shapes and impacts environmental strategies in an ever-changing world.
2. **K.L. Koh** and **S. Karim**, in *South East Asian Environmental Legal Governance*, provide a concise account and highlight the status of the stumbling blocks of its governance as illustrated in the Indonesian Haze. Some case studies are conducted of emerging issues such as wildlife enforcement under CITES.

3. The book by **J. Lee** titled, *ASEAN, Sovereignty and Intervention in Southeast Asia*, provides an understanding of the basis of the selective application of a theoretical framework for the analysis of ASEAN's sovereignty and non-interference principles which is crucial to the ASEAN Way in the context of ASEAN governance, including the environmental context. The ASEAN Way has not been without critics.

'Non-Traditional Security' Approach: ASEAN and Transnational Environmental Challenges

4. **K.L. Koh** in *The Discourse of Environmental Security in the ASEAN Context* gives an insightful analysis of the interaction between the Non-Traditional Security (NTS) approach which requires enhanced cooperation and input on a higher plane which can involve overcoming the inveterate principles of sovereignty and non- intervention.
5. The report by the **S. Rajaratnam School of international Studies (NTS)**, titled *Building Institutional Coherence in Asia's Security Architechure: The Role of ASEAN*, covers various aspects of Non- Traditional Security under the ASEAN Political-Security Community (APSC). The NTS approach is an emerging concept and its impact provides a pathway to re-thinking the ASEAN Way of institution building.

Laws Relating to Biodiversity in ASEAN

6. In *ASEAN Environmental Protection in Natural Resources Sustainable Development: Convergence versus Divergence?*, **K.L. Koh** points out various divergences as demonstrated in non-ratification of agreements (e.g. *ASEAN Agreement on the Conservation of Nature and Natural Resources*, and the *ASEAN Agreement on Transboundary Haze Pollution*). As for convergence, it can be seen in forging common ASEAN policies and implementing some instruments such as *ASEAN Declaration on Heritage Parks*.

Trade in endangered wildlife flora and fauna has become a multi- dollar business, and bolder and more sophisticated weapons are being used by poachers. In 2004 at the CITES COP meeting, ASEAN called for greater cooperation among the ASEAN member states. The ASEAN-WEN (ASEAN Wildlife Enforcement Network) was subsequently established.

7. **J. Lin's** *Tackling Southeast Asia's Illegal Wildlife Trade* examines the 13th CITES COP Meeting in Bangkok, on the 'ASEAN Statement of CITES' which called for greater regional cooperation and strengthening enforcement efforts, etc. Illegal trade in endangered species under CITES now involves large syndicated networks operating in the region and beyond. By exploring the possible links between the organised illegal wildlife trade and other more traditional forms of transnational crime, this article argues that tackling the illegal trade in wildlife involves more than our need to address an urgent biodiversity conservation issue. It suggests a more holistic approach instead: one which also takes into account the criminal enforcement and national security dimensions of the illegal wildlife trade.

8. The *ASEAN Biodiversity Outlook* is based on information provided by the ten ASEAN Member States. To protect the ASEAN biodiversity, the ASEAN Member States are Parties to the *Convention on Biological Diversity* (CBD), which committed themselves in 2002 to the 2010 Biodiversity Target: “the achievement by 2010 of a significant reduction of the current rate of biodiversity loss at the global, regional and national levels as a contribution to poverty alleviation and to the benefit of all life on earth.” This report confirms that the region, like the rest of the world, is increasingly losing biodiversity at an alarming rate within various ecosystems (forests, agro-ecosystems, peatlands, freshwater, mangroves, coral reefs, and sea-grass). The region’s biodiversity report card confirms the findings of the Third Global Biodiversity Outlook that the world failed to meet the target of significantly reducing biodiversity loss by 2010.

The Outlook underscores that the drivers of biodiversity loss continue to intensify. The key drivers of biodiversity loss in the ASEAN region include ecosystems and habitat change, climate change, invasive alien species, over-exploitation (as a result of deforestation and land-use and water-use change, as well as wildlife hunting and trade for food), pollution and poverty. In terms of addressing the drivers and threats to biodiversity loss, the ASEAN region remains slow in delivering progress, particularly in preventing invasive alien species, addressing the impact of biodiversity to species and ecosystems, and abating pollution and the exploitation of forests and wetlands.

Climate Change and Energy: ASEAN’s Response

9. The eco-city notion as an initiative for low carbon, compact city to downscale climate is recognized in the *Singapore Declaration on Climate Change, Energy and the Environment 2007*. The ASEAN Heads of State and Members’ Meeting, together with the back-to-back meeting of the East Asia Summit, was alluded to in the article by **KL. Koh, A. Gunawansa** and **L. Bhullar** titled, *Eco-cities, Sustainable Cities–Whither?* The authors considered the wider scope of eco-city and compared it with sustainable city. Nonetheless, they pointed out the potential of eco-cities as an innovative and practical strategy for climate change mitigation and adaptation.

10. **K.L. Koh** and **L. Bhullar**’s article titled, *Governance on Adaptation to Climate Change in the ASEAN Region*, provides an overview of the governance framework for climate change adaptation within the ASEAN, a sub-regional organization, and evaluates opportunities and limitations.

11. **K.L. Koh**’s *A Survey of ASEAN Instruments Relating to Peatlands, Mangroves and Other Wetlands: the REDD+ Context* deal with the two common position papers issued by ASEAN on REDD- ASEAN Common Position Paper on Reducing Emission from Deforestation and Forest Degradation (REDD) in Developing Countries’ (ASEAN, 2008)

and ASEAN Common Position Paper on Reducing Emissions from Deforestation and Forest Degradation Plus (REDD+) in Developing Countries (November 2010).

E. Transboundary Pollution

No ASEAN essential reading will be complete without an article on the Indonesian Haze, and there are many writings on the subject – from the political, economic and legal perspectives. That the Haze has reached such proportions that in June- July 2013, when there was a recurrence. Indonesia went furthest in its efforts of sharing part of its concession maps in order to track down the culprits and to boot them. But a more fundamental approach is needed, - holistic approach and structural infrastructure put in place to deal with this problem that has recurred again and again over the last 30 years.

12. **A. Tan Khee Jin, ‘Forest Fires of Indonesia: State Responsibility and International Liability’** makes a case for the state responsibility and international liability of the Indonesian government (as opposed to private citizens such as plantation owners) for failing to control the forest fires and haze disaster which caused widespread transboundary injury in Southeast Asia in 1997.

Further recommended readings:

- Koh, KL. and N. A. Robinson, “*Strengthening Sustainable Development in Regional Inter-Governmental Governance: Lessons from the ‘ASEAN Way’*”, Special Issue of Singapore Journal of International and Comparative Law on “Ten Years After Rio: Implementing Sustainable Development”, pp 640-682 (SJICL: 2002)
- Koh, KL. “*Towards an Effective ASEAN Environmental Governance for Sustainable Development?*”, Asian Review of Public Administration, Vol XX, Numbers 1-2 (January – December 2008), pp 35 – 59.