IS RAMSAR HOME YET? A CRITIQUE OF SOUTH KOREAN LAWS IN LIGHT OF THE CONTINUING COASTAL WETLANDS RECLAMATION

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Abstract

One of the ways the clash between economic development and environmental protection in South Korea is manifested is in the country's policies on coastal land use and reclamation. Even though coastal wetlands are legally considered public property, they have been continuously reclaimed and privatized by the state and its close corporate entities under the Public Waters Reclamation Act of 1962. Since its accession to the Ramsar Convention (the "Convention"), Korea has been curtailing the privatization of public lands. The country has instituted domestic measures to implement the provisions of the Convention and to follow the principle of sustainable use of wetlands. Coastal law and policy have also gained political prominence since Korea hosted the Tenth Ramsar Conference in 2008. Efforts to uphold the country's obligations under the Convention and to limit large-scale coastal reclamation projects, however, have not been effective. Over 1,000 square kilometers of coastal wetlands, or thirty percent of the remaining wetlands, are currently being developed. In addition, numerous special development laws, providing loopholes for developers to circumvent limits on land reclamation projects,. have been passed.

This article reviews South Korea's legal and institutional landscape and examines the question of whether the Ramsar Convention has been genuinely internalized by the legal system. Domestic laws are insufficient in upholding the principles of the Convention, and government administrators are not committed to upholding them. This article ultimately concludes that Korean law needs to adopt and internalize certain outside norms in order to effectively carry out Korea's obligations under the Ramsar Convention.

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INTRODUCTION

Coastal wetlands of the Republic of Korea ("Korea") have been under the constant threat of ongoing large-scale and government-led land reclamation since the 1920s. The rate of destruction peaked during the 1980s and 1990s, but continues at an alarming rate. Of the 3,204 square kilometers of coastal wetlands that existed in 1987, 653 square kilometers have been destroyed as of 2005.[1] In 2007, while the Korean government assured the Secretary-General of the Ramsar Convention on Wetlands (the "Convention") that "no large-scale reclamation projects are now being approved in Korea," the government did not provide any guarantee that the remaining 2,550 square kilometers would receive proper protection in the future.[2] This is especially disconcerting; 362 reclamation projects approved since 1980 account for 1,418 square kilometers of coastal wetlands. Only ten percent of this affected area has been developed as of 2008, with the outstanding 1,119 square kilometers still under development.[3] Furthermore, Korea's reclamation project is a global concern; the ecological impact of these coastal developments transcends national borders to the global commons and jeopardizes the conservation efforts of other nations.[4] For instance, Korea's reclamation projects are forcing countless endangered species to the brink of extinction.[5]

The Public Waters Reclamation Act of 1962, a legacy of the Japanese colonial period, has been the main cause of coastal wetland destruction.[6] In accordance with the statute, coastal wetland is defined as "public waters" and is public property owned by the Korean people.[7] Perhaps due to (or in spite of) its legal status as a common resource,[8] and the operation of Korean politics,[9]

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[1] MINISTRY OF MAR. AFFAIRS & FISHERIES, 2006–2010 MARINE ENVIRONMENT CONSERVATION MASTER PLAN 43 (2006).

[2] Rep. of the Ramsar Convention Standing Comm., 35th Sess., Feb. 14–16, 2007, ¶ 37 [hereinafter Ramsar Standing Committee 35th Session Report], *available at* http://www.ramsar.org/pdf/sc/35/key_sc35_report.pdf.

[3] MINISTRY OF LAND, TRANSP., & MAR. AFFAIRS, STATUS OF THE PUBLIC WATERS RECLAMATION (2008), *available at* http://www.kmi.re.kr/data/statistic/Mar03-03.xls [hereinafter STATUS OF THE PUBLIC WATERS RECLAMATION].

[4] Peter Hayes & Lyuba Zarsky, *Environmental Issues and Regimes in Northeast Asia*, 6 INT'L. ENVTL. AFF. 283, 290–91 (1994).

[5] *See, e.g.*, BIRDS KOREA-AUSTRALASIAN WADER STUDIES GROUP, THE 2006–2008 SAEMANGEUM SHOREBIRD MONITORING PROGRAM REPORT (2008), *available at* http://www.awsg.org.au/pdfs/Saemangeum-Report.pdf.

[6] The Joseon Public Waters Reclamation Decree was enacted on March 12, 1923, pursuant to Japan's Public Waters Reclamation Act.

[7] Public Waters Management Act, Act No. 848, Dec. 19, 1961, *amended by* Act No. 8627, Aug. 3, 2007, art. 2.1 [hereinafter PWMA].

[8] *See* GARRETT HARDIN, THE TRAGEDY OF THE COMMONS (1968).

[9] *See infra* Parts II.A and III.

coastal wetlands have been constantly destroyed and privatized via reclamation. The public generally tolerated these developments out of a belief that given the country's relatively small size, it was inevitable that more and more land would be reclaimed for agricultural, industrial, and residential developments. Of course, this is not to say that the public has fully endorsed these developments; coastal reclamation projects are increasingly being met with grassroots opposition.[10] The policy choice between coastal reclamation and conservation now sits firmly at the heart of the growth-versus-environment debate in Korea.

The Ramsar Convention on Wetlands provides an international legal framework for the protection of coastal wetlands against reclamation. Korea joined the Convention in 1997 as the 101st party, and has subsequently implemented new legislation in order to honor its obligations:[11] the Wetlands Conservation Act of 1999 was enacted to reflect the spirit of the Convention on Wetlands[12] and amend the Public Waters Reclamation Act of 1962 to add environmental provisions;[13] at the regional level, the Korean government has signed bilateral migratory bird agreements with the Russian Federation[14] and Australia,[15] and an additional agreement with Japan is currently in progress.[16]

These legal developments were paralleled by changes in the national administration of coastal management. The most notable of these changes is the formation in 1996 of the Ministry of Maritime Affairs and Fisheries, which possesses exclusive jurisdiction over coastal and marine areas below the mean high-water-mark. In 2008, the agency was merged with the Ministry of Construction and Transportation, forming the present Ministry of Land, Transport and Maritime Affairs.

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[10] Examples of grassroots opposition include those observed in response to the reclamation projects at Lake Sihwa, Saemangeum, and the Geum River Esutary. *See, e.g.*, Jung-kyun Huh, *The Saemangeum Movement has Started*, OHMYNEWS (Mar. 17, 2006, 2:35 PM), *available at* http://www.ohmynews.com/NWS_Web/view/at_pg.aspx?CNTN_CD=A0000317297.

[11] Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Feb. 2, 1971, U.N.T.S. 14583 [hereinafter Ramsar Convention].

[12] Wetlands Conservation Act, Act No. 5866, Feb. 8, 1999, *amended by* Act No. 8958, Mar. 21, 2008, art. 1 [hereinafter WCA].

[13] Public Waters Reclamation Act, Act No. 986, Jan. 20, 1962, *amended* by Act No. 8377, Apr. 11, 2007, arts. 1, 4.1, 5.2, 6.1, 11.1 [hereinafter PWRA].

[14] Agreement between the Government of the Republic of Korea and the Government of the Russian Federation on the Protection of Migratory Birds, June 2, 1994, U.N.T.S. 31354, *available at* http://untreaty.un.org/unts/ 60001_120000/29/38/00057864.pdf.

[15] Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds, June 12, 2006, U.N.T.S. 2483.

[16] *See Japan-Korea Environmental Policy Dialogue*, INTERNATIONAL ENVIRONMENTAL COOPERATION TOWARD SUSTAINABLE DEVELOPMENT, http://www.env.go.jp/earth/coop/coop/english/dialogue/japan_koria.html (last visited Dec. 20, 2011).

Against a backdrop of conflicting national political-legal commitments and institutional changes in coastal governance, this Article focuses on the legal internalization of an international environmental norm set forth in the Ramsar Convention—the sustainable use of wetlands. This Article will address: (1) how the Ramsar Convention has been implemented in Korea via incorporation into domestic law; (2) the extent to which the "wise use" of wetlands has been legally, both legislatively and judicially, internalized; (3) whether Korea's post-Convention developments have fallen short of complying with its obligations; and (4) recommendations on how Korea can better fulfill its obligations under the Convention and protect its coastal wetlands. Part II discusses the Convention itself, exploring the "wise use" norm and its interpretation. Part III delves into the laws and institutions for coastal governance in Korea, identifying the key actors involved in coastal wetlands reclamation and reviewing the development of national wetland management laws and institutions leading up to Korea's accession to the Convention in 1997. Part IV then examines how the post-Convention legislative developments fall short of the Convention. Part V analyses two key judicial decisions relating to coastal wetlands protection and development, and illustrates the limitations of the judicial internalization of the Convention by the Korean legal system. Finally, Part VI discusses the dominance of the politics of coastal development over the rule of law, and discusses how international environmental law could better influence domestic policy outcomes and build transnational decision-making governance structures and processes in future.

I. THE RAMSAR CONVENTION FOR WISE USE OF WETLANDS

As indicated in its preamble, the Ramsar Convention's main objective is "to stem the progressive encroachment on and loss of wetlands now and in the future," based on the recognition of interdependence between humanity and the environment and the value of wetland ecosystems.[17] The Convention has enjoyed considerable success, as measured by the increasing number of its parties and by the growing number and surface area of listed wetlands.[18] Although the Convention originally emphasized the need for an international convention specifically to protect habitats for waterfowl, its scope has continuously expanded such that it has now attained the status of a holistic instrument for wetland habitat conservation.[19]

The heart of the Ramsar obligation binding all contracting parties is well reflected in the mission statement: "The conservation and wise use of all

[17] Ramsar Convention, *supra* note 11, at Preamble.

[18] As of August 2011, there were 1,951 wetland sites totalling 190,134,233 hectares in 160 different countries. THE RAMSAR CONVENTION ON WETLANDS, http://www.ramsar.org (last visited Aug. 30, 2011).

[19] CLARE SHINE & CYRILLE DE KLEMM, WETLANDS, WATER AND THE LAW 32 (1999).

wetlands through local, regional and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world."[20] The distinction between the "conservation" of the wetlands of international importance and the "wise use" of all others has been emphasized in the past.[21] Acknowledging, however, that the protected area approach to individual wetlands as waterfowl habitats cannot alone safeguard wetlands in general against harmful impacts, the contracting parties have systematically broadened the scope of the Convention in a series of developments by the Conferences of the Contracting Parties ("COPs").[22]

[20] *The Ramsar Strategic Plan 2009-2015*, THE RAMSAR CONVENTION ON WETLANDS, *available at* http://www.ramsar.org/pdf/key_strat_plan_2009_e.pdf (last visited Dec. 20, 2011).

[21] Ramsar Convention, *supra* note 11, art. 3.1. The wise use concept was born out of the recognition that many rural communities near wetlands are dependent on wetlands; accordingly, precluding all human activity near wetlands is neither practicable nor desirable. Beth L. Kruchek, *Extending Wetlands Protection Under the Ramsar Treaty's Wise Use Obligation*, 20 ARIZ. J. INT'L & COMP. L. 409, 418 (2003).

[22] Efforts to strengthen and enable practical application of the wise use concept were initiated by three key texts, known as the Wise Use Guidelines, adopted by the 1987, 1990, and 1993 COPs. The 1987 Third Meeting of the COP provided the first definition of wise use as, "sustainable use of wetlands for the benefit of humankind in a way compatible with the maintenance of the natural properties of the ecosystem." Third Meeting of the Conference of Contracting Parties, The Convention on Wetlands, May 27-June 5, 1987, *Recommendation 3.3: Wise Use of Wetlands*, *available at* http://www.ramsar.org/pdf/rec/key_rec_3.03e.pdf. In the same document, "sustainable utilization" was defined as "human use of a wetland so that it may yield the greatest continuous benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations" and "natural properties of the ecosystem" were defined as "those physical, biological or chemical components, such as soil, water, plants, animals and nutrients, and the interactions between them." *Id.* This set of definitions was a major achievement as it came into being as early as 1987, months before the official publication of the Brundtland Report by the United Nations World Commission on Environment and Development. Later at the 1990 Fourth Meeting of the COP, there was an attempt to break down the rigid boundaries traditionally drawn between the listed and unlisted wetlands by extending the application of wise use to all wetlands and their support systems. Recommendation 4.10 states, "The wise use provisions apply to all wetlands and their support systems within the territory of a Contracting Party, both those wetlands designated for the List, and all other wetlands." Fourth Meeting of the Conference of Contracting Parties, The Convention on Wetlands, June 27-July 4, 1990, *Recommendation 4.10: Guidelines for the Implementation of the Wise Use Concept*, *available at* http://www.ramsar.org/pdf/rec/key_rec_4.10e.pdf. The inclusion of wetland "support systems" indicates the Contracting Parties' recognition that management of wetlands cannot be isolated from management of the catchments in which they are located. Reinforcing this, the Wise Use Working Group at the Fifth Meeting of the COP in 1993 resolved, "Where wetlands form an integral part of a wider coastal zone or catchment, wise use must also take into account the problems of the surrounding coastal zone or catchment." Fifth Meeting of the Conference of Contracting Parties, The Convention on Wetlands, June 9-16, 1993, *Resolution 5.6: The Wise Use of Wetlands*, *available at* http://www.ramsar.org/pdf/res/key_res_5.6e.pdf. Since then, this concept has been incorporated into in all of Ramsar's

Increasing emphasis is now given to the concept of wise use, blurring the distinction between the conservation of the listed wetlands and the wise use of all other wetlands.

In response to a request from the Scientific and Technical Review Panel to review the concept of wise use, its applicability, and its consistency with the objectives of sustainable development, the Ninth COP updated the definition of "wise use" in 2005.[23] Wise use of wetlands is currently defined as "maintenance of [the wetlands'] ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development."[24] By amending the definition of wise use from "sustainable use of wetlands while maintaining their natural properties" to "maintenance of the ecological character of wetland ecosystems," the Convention de-emphasized the usability of wetlands for human purposes and stressed the importance of sustaining their ecological character, while preserving the view that human uses are compatible with the wise use principle.[25]

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guidance on wetland management planning so that land uses in and around a wetland must be managed and planned consistently with wise use objectives for the wetland. Notable guidelines include: Eighth Meeting of the Conference of Contracting Parties, The Convention on Wetlands, Nov. 18–26, 2002, *Resolution 8.4: Principles and Guidelines for Incorporating Wetland Issues in Integrated Coastal Zone Management (ICZM), available at* http://www.ramsar.org/pdf/res/key_res_viii_04_e.pdf; Eighth Meeting of the Conference of Contracting Parties, The Convention on Wetlands, Nov. 18–26, 2002, *Resolution 8.14: New Guidelines for Management Planning for Ramsar Sites and Other Wetlands*, available at http://www.ramsar.org/pdf/res/key_res_viii_14_e.pdf; and Ninth Meeting of the Conference of Contracting Parties, The Convention on Wetlands, Nov. 8–15, 2005, *Resolution 9.1: Additional Scientific and Technical Guidance for Implementing the Ramsar Wise Use Concept, available at* http://www.ramsar.org/pdf/res/key_res_ix_01_e.pdf. Wise use is increasingly recognized as an essential and integral part of the broader framework of sustainable development of the coastal zone. It is worth noting that during the First Meeting of the COP, the Contracting Parties emphasized that, "wise use of wetlands involves maintenance of their ecological character, as a basis not only for nature conservation, but for sustainable development." First Meeting of the Conference of Contracting Parties, The Convention on Wetlands, Nov. 24–29, 1980, *Recommendation 1.5: National Wetland Inventories, available at* http://www.ramsar.org/pdf/rec/key_rec_1.05e.pdf.

[23] Ninth Meeting of the Conference of Contracting Parties, The Convention on Wetlands, Nov. 8–15, 2005, *Resolution 9.1, Annex A: Conceptual Framework for the Wise Use of Wetlands and the Maintenance of Their Ecological Character, available at* http://www.ramsar.org/pdf/res/key_res_ix_01_annexa_e.pdf. The updated definition took into account the Convention's mission statement, the Millennium Ecosystem Assessment's terminology, the concepts of ecosystem approach and sustainable use applied by the Convention on Biological Diversity, and the definition of sustainable development adopted by the 1987 Brundtland Commission.

[24] *Id.*

[25] Recommendation 4.8 emphasised the "fundamental importance of maintaining the ecological character of listed sites" and reinforced Article 3.2 by requesting Contracting Parties to take "swift and effective action to prevent or remedy" changes in ecological

The shift of the "wise use" concept from "sustainable utilization" of wetlands to "maintenance of their ecological character" accompanied a shift in the bottom line. Given the definition of ecological character as "the combination of the ecosystem components, processes and benefits/services that characterize the wetland at a given point in time,"[26] maintaining ecological character should be understood as protection of the integrity of ecological systems. In essence, therefore, the wise use norm refers to protection of ecological integrity, which in turn implies that there is a dimension of ecological justice.[27] Subsequently, the wise use of wetlands necessarily involves a paradigm shift from economic (short-term or "weak") sustainability efforts based on an anthropocentric ethic, to ecological (long-term or "strong") sustainability efforts based on an ecocentric ethic. Wise use is not about compromise between development and environmental interests. It is a normative legal principle based on ethics and science that recognizes the imperative of maintaining the ecological integrity of wetland ecosystems as a key component of sustainable development.

In practical terms, this means applying the precautionary principle to the decision-making process. The Convention, in its *Additional Guidance for the Implementation of the Wise Use Concept*,[28] urges contracting parties to adopt a precautionary principle:

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character. Fourth Meeting of the Conference of Contracting Parties, The Convention on Wetlands, June 27–July 4, 1990, *Recommendation 4.8: Change in Ecological Character of Ramsar Sites, available at* http://www.ramsar.org/pdf/rec/key_rec_4.08e.pdf. It further instructed the Ramsar Bureau to establish "a record of Ramsar sites where such changes in ecological character have occurred, are occurring or are likely to occur" (the Montreux Record). *Id.* On the basis of Article 3.2 and Recommendation 4.8, it can be argued by inference that the objective of conservation for the listed wetlands is to prevent changes to their "ecological character." David Farrier & Linda Tucker, *Wise Use of Wetlands under the Ramsar Convention: A Challenge for Meaningful Implementation of International Law*, 12 J. ENVTL. L. 21, 24 (2000).

[26] The phrase "at a given point in time" references Resolution 6.1, which states that, "It is essential that the ecological character of a site be described by the Contracting Party concerned at the time of designation for the Ramsar List, by completion of the Information Sheet on Ramsar Wetlands (as adopted by Recommendation IV.7)." Ramsar Ninth Meeting, Wise Use Framework, *supra* note 23. The original definition was first provided in Resolution 6.1, but was later replaced by the definition in Resolution 7.10, which has since been superseded by the above most recent definition.

[27] For further discussions of ecological integrity and justice, *see* KLAUS BOSSELMANN, THE PRINCIPLE OF SUSTAINABILITY: TRANSFORMING LAW AND GOVERNANCE (2008); Klaus Bosselmann, *Ecological Justice and Law, in* ENVIRONMENTAL LAW FOR SUSTAINABILITY: A READER 129 (Benjamin J. Richardson & Stepan Wood eds., 2006); RECONCILING HUMAN EXISTENCE WITH ECOLOGICAL INTEGRITY: SCIENCE, ETHICS, ECONOMICS AND LAW (Laura Westra et al. eds., 2008).

[28] Fifth Meeting of the Conference of Contracting Parties, The Convention on Wetlands, June 9–16, 1993, *Resolution 5.6, Annex: Additional Guidance for the Implementation of the Wise Use Concept, available at* http://www.ramsar.org/cda/en/ramsar-documents-resol-additional-guidance-for/main/ramsar/1-31-107%5E20915_4000_0__.

> While comprehensive understanding of the ecological constraints of a wetland system should be sought, activities affecting wetlands need to be governed by the "precautionary principle" when such knowledge is not available. In other words, if the impact of specific actions is not clearly understood, then these actions should be prohibited even if there is insufficient evidence to prove a direct link between the activities and resulting wetland degradation.[29]

This precautionary principle of the Convention recognizes that scientific uncertainties and risks of environmental harm are inherent in environmental management, and that a normative response is required. It is in line with the widely cited definition of the precautionary principle stated in Principle 15 of the Rio Declaration on Environment and Development, which has arguably entered customary international law as a general principle.[30] The protection of ecological integrity, however, would require the principle to go a step further by reversing the burden of proof, placing it on those who argue that a proposed activity will not cause significant environmental harm. If fully embraced and enforced in this fashion, the precautionary principle would likely prevent most land reclamation projects that currently underway in Korea.

II. LAWS AND INSTITUTIONS FOR COASTAL GOVERNANCE IN KOREA

This Part provides an overview of the mechanism of continued reclamation of coastal areas in Korea. Issues addressed in this Part include: (1) which actors are reclaiming coastal areas in Korea and why; (2) the responsible decision makers and relevant laws; and (3) each decision maker's role in coastal wetlands reclamation.

A. The Political Economy of Coastal Land Reclamation

The main rationale offered by the government for coastal wetland reclamation has been the need for agricultural land. Since 1976, however,

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[29] *Id.*

[30] C. G. WEERAMANTRY, UNIVERSALISING INTERNATIONAL LAW 198 (2004); Owen McIntyre & Thomas Mosedale, *The Precautionary Principle as a Norm of Customary International Law*, 9 J. ENVTL. L. 221, 241 (1997); James Cameron, *The Status of the Precautionary Principle in International Law*, *in* INTERPRETING THE PRECAUTIONARY PRINCIPLE 262, 283 (Timothy O'Riordan & James Cameron eds., 1994). For the Rio definition of the precautionary principle, see United Nations Conference on Environment and Development, June 3-14, 1992, *Rio Declaration on Environment and Development*, Principle 15, U.N. Doc. A/CONF.151/26 (Vol. 1) (Aug. 12, 1992) ("Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.")

Korea has consistently recorded an annual rice surplus.[31] The government has also proposed new reclamation projects for industrial and residential development, and has been converting currently licensed projects for the same purposes. Examples include a massive real estate development[32] and an international airport, along with numerous smaller projects such as shipyards and seaports.[33]

At the heart of the problem is the Public Waters Reclamation Act of 1962, which allows the privatization of coastal wetlands by reclamation. Areas below the mean high-water mark are under common ownership and are designated as "public waters" under the Public Waters Management Act of 1961.[34] Such public waters are owned neither by the state nor any individual person, but by the people. The Public Waters Reclamation Act of 1962, however, grants private property rights in reclaimed lands to the legal person holding a reclamation permit, whether this be the state, a local government, or a private person.[35] Since the cost of reclaiming land is generally much less than the property value of the reclaimed land,[36] development by reclamation is far more financially efficient than the purchase and development of suitable privately owned land.

Most reclamation projects have been proposed and planned by government ministries such as the Ministry for Food, Agriculture, Forestry and Fisheries ("MIFAFF") and the Ministry of Land, Transport and Maritime Affairs ("MLTM"), and have been approved by the central or provincial-level governments (comprising sixteen metropolitan cities and provinces) depending on the end-use of the reclaimed land and scale of the project. These projects are then implemented by state-controlled subsidiary corporations, including the Korea Rural Community and Agriculture Corporation under MIFAFF, and the Korea Land Corporation and Korea Water Resources

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[31] Dong-Oh Cho, *Lessons Learned from Lake Shiwha Project*, 33 COASTAL MGMT. 315, 326 (2005).

[32] Songdo City will be a self-sufficient metropolis built on reclaimed lands and designed to support 487,000 people. Joon H. Kim, *Korean Environmental Regulations: Ready to Take on One of the World's Largest Private Real Estate Development Projects?*, 15 PAC. RIM L. & POL'Y. J. 489, 490 (2006).

[33] *See, e.g.*, Kyung-rok Bae, *Samsung Heavy Industries May Have Received Unlawful Preferential Treatment*, HANKYOREH (Aug. 27 2008, 9:55 AM), http://www.hani.co.kr/arti/society/environment/306896.html.

[34] PWMA art. 2.1.

[35] PWRA art. 26. *See also* Jae-Kyong Chun, *Saemangeum Project and the Principle of Circumstantial Change*, 25 ENVTL. L. RES. 81, 89 (2003).

[36] This is because market value for a similar piece of land adjacent to the reclaimed land, which is used as a reference point in valuing the reclaimed land, is inevitably much lower in value than that of the reclaimed land, and the property value of the reclaimed land increases after the completion of the reclamation process. Chun, *supra* note 35, at 90.

Corporation under MLTM. Of the 1,414 square kilometers intended for reclamation, 1,051 square kilometers are licensed to such public institutions.[37]

These state-controlled public organizations in turn hire construction companies to do the actual work. The construction industry's contribution to the national economy is another key factor in coastal reclamation. Most construction companies in Korea are affiliates of *chaebol* companies, family-controlled conglomerates working intimately with the government.[38] In fact, the main motivation for the large government-sponsored reclamation projects in the 1980s was to provide work to construction companies returning from the Middle East.[39] The projects are lucrative for these companies because they are usually involved in not only the land reclamation but also the developments that follow, such as construction of residential apartment complexes, tourist resorts, seaports, airports, roads, and factories. Indeed, the majority of the nation's chemical facilities, steel factories, and shipbuilding yards are all located on the coast.[40] In addition, local governments in Korea are strong advocates of coastal development and reclamation, which increase local revenues from the sale of land and are perceived to have a positive impact on local employment and taxes revenues.

By turning public waters into private lands, the government and developers have been taking advantage of the public, granting themselves ownership of public lands and extracting profit from the subsequent developments. Korea's political economic structure has played a significant role in promoting coastal land reclamation.

The remainder of this Section will examine several major coastal developments that rely on wetlands reclamation. One of the first large-scale state-sponsored reclamation projects, the Lake Sihwa Project, was initiated in 1987 and completed in 1994 by the Korea Water Resources Corporation, then a subsidiary corporation under the Ministry of Construction.[41] An estuary with extensive salt marshes was impounded with a 12.7 kilometer-long dike in an attempt to create 173 square kilometers of land and 56 square kilometers of

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[37] Approximately 239 to local governments, 108,702 to private entities, and 15 to the state. Second Public Waters Reclamation Master Plan 2001–2011 (promulgated by the Ministry of Construction & Transp., Jul. 6, 2001), Notification No. 2001-49.

[38] Examples of *chaebol* include the Samsung Group, Hyundai, LG Corporation, GM Korea Company, SK Group, and Lotte Co., Ltd. For a general overview of the impact that these conglomerates have had on the environment, see Richard J. Ferris, Jr., *Aspiration and Reality in Taiwan, Hong Kong, South Korea, and Singapore: An Introduction to the Environmental Regulatory Systems of Asia's Four New Dragons*, 4 DUKE J. COMP. & INT'L L. 125 (1993); NORMAN EDER, POISONED PROSPERITY: DEVELOPMENT, MODERNIZATION, AND THE ENVIRONMENT IN SOUTH KOREA 83 (1996).

[39] BILIANA CICIN-SAIN & ROBERT W. KNECHT, INTEGRATED COASTAL AND OCEAN MANAGEMENT: CONCEPTS AND PRACTICES 345 (1998); Dong-Oh Cho & Stephen B. Olsen, *The Status and Prospects for Coastal Management in Korea*, 31 COASTAL MGMT. 98, 104 (2003).

[40] Cho & Olsen, *supra* note 39.

[41] For a detailed discussion on the Lake Sihwa project, see *id.*

freshwater lake. As soon as the dike was closed, however, the prevention of any exchange of freshwater with seawater caused a disastrous deterioration of the water quality of the lake, resulting in toxic fish-kills.[42] The government had no choice but to permanently open two tidal gates in the dike in 1997.[43] This meant abandoning the initial plan for a freshwater lake for agricultural irrigation.[44] Consequently, the dike, whose construction alone cost around 622 billion Won,[45] did not have any meaningful use.[46]

Another similar and highly controversial project has been under construction since 1991 on the west coast of North Jeolla Province. Known as the Saemangeum Project, the project involves the construction of a thirty-three kilometer-long seawall resulting in the reclamation of 401 square kilometers of intertidal flats.[47] The Saemangeum region is recognized as one of the most important staging sites in the Yellow Sea region for hundreds of thousands of shorebirds on their annual migration from Australasia to breeding grounds in Siberia and Alaska. MIFAFF holds the reclamation permit and the Korea Rural Community and Agriculture Corporation is in charge of executing the project. With the support of the provincial governments and local residents, *chaebol* construction companies, including Hyundai, Daewoo Group, and Daerim Metal Technology Industries Co., Ltd., have been carrying out the work. The construction of the dike is scheduled to be completed in 2010 with an estimated total cost of 2.95 trillion Won.[48] The full development

[42] The adverse impact was compounded by wastes released from a newly established industrial complex. The average water quality of the lake recorded a Chemical Oxygen Demand (COD) level of 17.4 ppm in 1997 and gradually improved to 4.3 ppm in 2000. Chang Hee Lee, Application of Total Maximum Daily Loads (TMDLs) Concept for the Water Quality Management in Lake Shihwa, MOMAF-PEMSEA Regional Workshop on Shihwa Management Strategy and Regional Initiatives for Coastal Environmental Management (Mar. 15–16, 2001), http://www.kmi.re.kr/english/data/publication/8-15.pdf; Seung-Won Suh et al., *Water Quality Simulation on an Artificial Estuarine Lake Shiwhaho, Korea*, 45 J. MARINE SYS. 143, 157 (2004).

[43] Cho & Olsen, *supra* note 39.

[44] The original plan was to convert the salt marshes around a branch estuary into rice paddies, to utilize the north side of the river as an industrial zone, and to convert the south side into a new urban area. The abandonment of the freshwater lake limited these developments.

[45] *See, e.g.*, Center for Good Budget, *The 7th Bottomless Pot Award – MOCT Wasted 622 Billion Won on Constructing Sihwa Dike*, CITIZEN ACTION (Jan. 3 2012, 8:07 PM), http://goodbudget.kr/pot_archive/2230.

[46] A project to install a tidal power plant in the dike commenced later in 2003. WOOBOK SONG, LAKE SIHWA TIDAL POWER PLANT (2011).

[47] For general dimensions of the project, see *About Saemangeum*, KOREA RURAL COMMUNITY CORPORATION, http://www.isaemangeum.co.kr/intro_is/smgis01.html (last visited Nov. 11, 2010).

[48] *Introduction to the Saemangeum Project*, WELCOME TO THE REPUBLIC OF KOREA'S SAEMANGEUM, http://www.saemankum.go.kr/saeman/02.htm (last visited Nov. 11, 2010).

of the reclaimed area is projected to last at least another ten years with a budget of 20.9 trillion Won.[49]

Some reclamation projects have been abandoned and coastal wetlands protected as the result of local grassroots movements. The Janghang Wetland, an estuarine wetland of the Geum River that flows into the ocean just north of Saemangeum, serves as a prime example. With Saemangeum disappearing, the Geum Estuary has become the most important shorebird habitat in Korea. The wetland was scheduled to be reclaimed by the Korea Land Corporation for a State Industrial Complex, but the project was caught up in the environmental impact assessment process in 2004. This eventually led the Geum River Basin Environment Office to strongly oppose the project in its environmental impact assessment in 2006. Even though the local government strongly supported the project, local fishermen and environmental groups opposed it. In June 2007, a compromise was reached and the development was moved inland. In January 2008, parts of the Geum Estuary were designated as a Wetland Protected Area by the Ministry of Maritime Affairs and Fisheries.[50]

B. Law, Policy, and Government for Coastal Reclamation

Korea's national institutional landscape with respect to coastal governance has changed significantly in the last two decades. Prior to 1996, the Ministry of Construction and Transportation ("MOCT"), [51] the Korean government's principal administrative organ for development, held jurisdictional rights over coastal policy under four main statutes: the Comprehensive Plan for National Land Construction Act of 1963 (which was replaced by the National Land Framework Act of 2002),[52] the National Land Use Management Act of 1972 (which was replaced by the National Land Use Planning Act of 2002),[53] the Public Waters Management Act of 1961 ("PWMA"),[54] and the Public Waters Reclamation Act of 1962 ("PWRA").[55] As principal land use planning statutes, the first two statutes exerted (and their successor statutes still exert) substantial influence over coastal areas through the designation of land use zones and promulgation of general land use plans and policies.

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[49] *Id.* For further discussion of the Saemangeum Project, see *infra* Part IV.B.

[50] *Designation of Seocheon Wetland Protection Zone,* MARINE ECOSYSTEMS DIVISION, MINISTRY OF TRANSP. & MAR. AFFAIRS, http://www.mltm.go.kr/USR/I0204/m_45/dtl.jsp?idx=2882 (last visited Nov. 11, 2010).

[51] MOCT is now the Ministry of Land, Transportation, and Maritime Affairs ("MLTM") after being consolidated with the Ministry of Maritime Affairs and Fisheries in March 2008.

[52] Comprehensive Plan for National Land Construction Act, Act No. 4796, 1963, art. 15.

[53] National Land Use Management Act, Act No. 5111, 1972, art. 7.

[54] Public Waters Management Act, Act No. 1990, 1961, art. 3.

[55] Public Waters Reclamation Act, Act No. 4252, 1962, art. 3.

The public waters statutes, the PWRA and the PWMA, are directly relevant to coastal governance, as "public waters" by legal definition include all coastal wetlands and some state-owned inland wetlands.[56] These two statutes were initially enacted to provide a legal basis for the planning of reclamation projects utilizing public waters and the issuance of related permits.[57] In other words, their purpose was, and still is, to support development activities in public waters for the public interest or economic development. Indeed, the purpose of the PWMA is not to manage (as its title might suggest) public waters and counteract reclamation under the PWRA, but to accommodate and grant consent to those who seek to use public waters or to drain or reclaim privately owned public waters.[58]

The PWRA and the PWMA contained no provisions concerning the environmental status of coastal wetlands until minimal recognition was instituted by amendments in 1999. Reclamation permits were issued by MOCT at its discretion without a specific set of criteria to test their environmental soundness.[59] The first national Public Waters Reclamation Master Plan prepared by MOCT for the period from 1991 to 2001 included 460 reclamation projects affecting over 960 square kilometers of coastal areas.[60]

Prior to the establishment of the Ministry of Maritime Affairs and Fisheries ("MOMAF") and Korea's accession to the Ramsar Convention, the Ministry of Environment ("MOE") and other ministries, such as the Ministry of Culture, Sports and Tourism, provided protection for coastal wetlands and other general coastal areas. MOE has been responsible for carrying out natural resource management under a number of Korean environmental statutes.[61] The Natural Environment Conservation Act of 1991 authorized the government to designate and manage those areas that are significant in terms of ecosystem values and biodiversity.[62] Pursuant to this Act, the government has designated thirty-two sites as Ecosystem Landscape Conservation Zones, two are which

[56] PWMA art. 2.

[57] *Id.* art. 1; PWRA art. 1.

[58] PWRA art. 3.2; PWMA art. 5.4. In some cases, public waters are under private ownership.

[59] PWRA art. 5.

[60] Most reclamation projects need to be approved in advance and included in the Public Waters Reclamation Basic Plan. The contents include: (1) position and scale of proposed reclamation projects; (2) land use plan of proposed reclamation areas; (3) justification on the necessity for reclamation and explanations on reclamation methods; (4) impacts anticipated from proposed reclamation and policy alternatives; and (5) feasibility study on the proposed reclamation projects. PWRA art. 6.

[61] *The History of Environmental Law*, MINISTRY OF ENVIRONMENT, http://www.me.go.kr/kor/info/statute_01.jsp (last visited Nov. 11, 2010).

[62] Natural Environment Conservation Act, Act No. 4492, Dec. 31, 1991, art. 12.

are also Ramsar Convention sites.[63] Other legally protected areas that may include coastal wetlands include National Parks managed by MOE,[64] Marine Environment Conservation Zones under the jurisdiction of MOCT and MOMAF,[65] Fishery Resources Protection Zones managed by MLTM,[66] and Natural Heritages Protection Zones managed by the Ministry of Culture, Sports and Tourism.[67]

Many of these conservation areas, however, do not protect included coastal wetlands from habitat degradation. The focus of protection in these areas has been on coastal water quality and protecting aquafarms and fisheries.[68] In effect, within the protected zones designated by the various statutes, development activities are often permitted as long as their impact on the coastal environment via wastewater discharge is within statutory limits.[69] Furthermore, the conservation of coastal wetlands has not been accorded a high priority by MOE, which focuses primarily on environmental protection directly relating to human health and economic interests, such as maintaining air and water quality for human consumption and agricultural use. The conservation of coastal wetlands, therefore, had been largely neglected until Korea's accession to the Ramsar Convention.

MOMAF emerged in 1996 as one of the largest and most powerful ministries in the central government. Structural reforms consolidated government management of oceans and coasts and granted MOMAF exclusive jurisdiction over coastal and marine areas below the mean high water mark.[70] MOMAF gained control over coastal wetlands while MOE maintained its jurisdiction over inland wetlands.[71] Coastal wetlands are "marine areas that are

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[63] Woopo Wetland and Moojechineup. See *Ecosystem Landscape Conservation Zones*, NATIONAL INSTITUTE OF ENVIRONMENTAL RESEARCH, MINISTRY OF ENVIRONMENT, http://ecosystem.nier.go.kr:8082/wo2/wo202ho1.asp (last visited Nov. 10, 2010).

[64] Natural Parks Act, Act No. 3243, Jan. 4, 1980, *amended by* Act No. 6450, Mar. 28, 2001, art. 2.

[65] Prevention of Marine Pollution Act, Act No. 4365, Mar. 8, 1991, *amended by* Act No. 7240, Oct. 22, 2004, art. 4.4.

[66] Fisheries Resources Protection Act, Act No. 298, Dec. 12, 1953, art. 40.

[67] Cultural Heritage Protection Act, 1962, Act No. 961, Jan. 10, 1962, *amended by* Act No. 10829, July 14, 2011, art. 9.

[68] Rakhyun Kim, Principles and Practices of Korean Marine Environmental Law: A Review of the International and National Legal Frameworks Relating to Land-based Sources of Marine Pollution Control (2006) (unpublished manuscript) (on file with author).

[69] *Id.*

[70] Prior to 1996, Korea's ocean-related policies were implemented by seven ministries and twelve administrative units such as the Maritime Port Authority, the Fisheries Authority, the Korea Marine Police Authority, the Ministry of Construction of Transport, and the Ministry of Environment.

[71] Wetlands are divided into two categories under Korean law: inland and coastal. Article 2 of the Wetlands Conservation Act defines wetlands as "an area where fresh,

bounded on the landward side by the line of mean high water mark and on the seaward side by the line of mean low water mark."[72] This definition is overly restrictive and disconnected; it essentially encompasses only intertidal flats, excluding any adjacent coastal marine areas that are ecologically integral parts of wetland ecosystems.[73] Jurisdiction over coastal wetlands is further divided between the two ministries at the boundary between estuarine waters and intertidal flats.[74] From an ecological perspective, this is a bizarre distinction because estuarine areas form an integral part of coastal wetland ecosystems.[75] The imposition of these political boundaries illustrates Korea's failure to adopt an ecosystem approach for the wise use of wetlands.[76]

Despite the apparent impact of upstream activities on coastal wetlands, MOMAF does not have regulatory authority over adjacent inland land areas.[77] This institutional arrangement and the lack of cooperation among the relevant ministries pose a serious danger to the protection of coastal wetlands since the

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brackish, or salt water permanently or temporarily covers the surface and [such an area is] either an inland wetland or a coastal wetland." WCA art. 2.

[72] *Id.* Inland wetlands refer to "an area, such as lakes, swamps, estuaries, etc. in land or islands."

[73] By contrast, the Ramsar Convention defines "wetland" in broad terms in recognition of the intrinsic importance of wetlands to the maintenance of healthy and productive inland and coastal ecosystems. Wetlands are defined as: "areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres." Ramsar Convention, *supra* note 11, art. 1. Article 2.1 of the Ramsar Convention states that site boundaries of a wetland may incorporate "riparian coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six metres at low tide lying within the wetlands." *Id.* art. 2.1. It further provides a list of specific types of ecosystems, which fall under the category of "coastal/marine wetlands" in accordance with the Ramsar definition of wetlands: permanent shallow marine waters; marine subtidal aquatic beds; coral reefs; rocky marine shores; sand, shingle or pebble shores; estuarine waters; intertidal mud, sand or salt flats; intertidal marshes; intertidal forested wetland; coastal brackish to saline lagoons; coastal freshwater lagoons. *Id.*

[74] Estuarine areas are defined as a "watercourse zone" under River Act, Act No. 892, Dec. 30, 1961, arts. 2.1, 2.2, and 10.1. The River Act focuses mainly on issues such as flood prevention measures and designation of rivers. See *Id.*

[75] The separation is instituted in order to accommodate managerial convenience by preventing potential inter-ministerial conflicts which might arise if the MLTM imposes its own environmental regulatory standards on estuarine areas which receive waters mixed with land-based pollutants from inland sources under the MOE jurisdiction.

[76] *See, e.g.*, Gyung-Ja Gong, *A Study on the Wetland Classification in the Wetland Conservation Act*, 20 OCEAN POL'Y RES. 97 (2005).

[77] Chang-Hee Lee et al., *Policy Recommendations for Improving the Management System of Land-Based Pollution Sources in Order to Enhance the Coastal Water Quality of Korea*, 17 OCEAN POL'Y RES. 33, 49–50 (2002).

interconnection between terrestrial and aquatic habitats is crucial to the effective maintenance of wetland viability.[78]

The emergence of MOMAF has also meant that conservation and development responsibility for coastal and marine areas has converged into a single ministry. The Environmental Management and Coastal Management Divisions within MOMAF have been successful to a certain extent at counteracting the other development-oriented divisions within the ministry. For instance, MOMAF reviewed the Second Reclamation Plan (2001–2011), which had been approved by MOCT, and rejected 169 out of 355 reclamation permits. The decision was based on consideration for environmental capacity and recognition of the ecological and economic value of coastal wetlands.[79] This stands in contrast to the 241 sites, totalling 375 square kilometers, initially approved by MOCT under the First Reclamation Plan established for 1991 to 2001.[80]

Korean coastal wetlands are in serious jeopardy. Spatial disintegration continues, and MLTM has exclusive jurisdiction over areas below the mean high water mark and has been granted administrative authority under several planning, development, and conservation statutes including the Coastal Management Act of 1999,[81] the PWRA,[82] the National Land Use Planning Act,[83] the National Land Framework Act, and the Marine Ecosystems Conservation and Management Act.[84] MOE is virtually excluded from coastal governance.

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[78] The importance of integrated management of coastal wetlands is discussed in the official guideline published by the Ramsar Secretariat. Eighth Meeting of the Conference of the Contracting Parties to the Convention on Wetlands, Nov. 18–26, 2002, *Resolution 8.4: Principles and Guidelines for Incorporating Wetland Issues in Integrated Coastal Zone Management (ICZM)*, *supra* note 22.

[79] Robert Constanza et al., *The Value of the World's Ecosystem Services and Natural Capital*, 387 NATURE 253 (1997). For economic valuations of ecological services of coastal wetlands, see Hee-Dong Pyo & Dong-Ryul Chae, *Estimating the Economic Value of Ecotourism in Anmyeondo Tidal Wetlands Using the Contingent Valuation Method*, 26 OCEAN POL'Y RES. 77 (2004); Kwanghyun Nam & Weeyeong Oh, *Analyzing an Economic Feasibility for Restoration/Creation of Artificial Tidal Flats*, 25 OCEAN POL'Y RES. 593 (2003); Hee-Dong Pyo, *Re-evaluating Benefit-Cost Analysis of the Saemankum Reclamation Project Appraised by its Research Council*, 17 OCEAN POL'Y RES. 89 (2002); Hee-Dong Pyo, *An Economic Analysis of Preservation versus Development of Coastal Wetlands around the Youngsan River*, 16 OCEAN POL'Y RES. 1 (2001); Hee-Dong Pyo, *A Comparative Analysis on the Functional Values of Coastal Wetland and Rice Paddy Ecosystems in Korea*, 16 OCEAN POL'Y RES. 159 (2001); Heung-Dong Lee, *Economic Value Comparison between Preservation and Agricultural Use of Coastal Wetlands*, 20 OCEAN POL'Y RES. 145 (1998).

[80] First Public Waters Reclamation Master Plan 1991–2001 (promulgated by the Ministry of Construction & Transp., 1991).

[81] Coastal Management Act, Act No. 5913, Feb. 8, 1999.

[82] Public Waters Reclamation Act, Act No. 4252, 1962.

[83] National Land Use Planning Act, Act No. 6655, 2002.

[84] National Land Framework Act, Act No. 6654, 2002.

MOE's vision to protect the coastal ecological axis as one of the three "ecological axes"[85] in the Korean peninsula seems to have taken a back seat to the "marine economic axis."[86]

III. POST-RAMSAR LEGISLATIVE SHORTFALLS

This Part examines the status of the Ramsar Convention in the Korean legal system, focusing on the key statutes enacted and amended as direct and indirect responses to the country's accession to the Convention. In addition, this Part will examine whether these statutes are adequate in implementing the provisions of the Convention.

A. The Status of the Ramsar Convention in the Domestic Legal System

Korea views international and domestic laws as a single body of law.[87] This implies that the adoption of international law would effectively bind the state under the stipulations of the incorporated international law. In practice, as is the case for most states, Korea has adopted a system in which international law becomes pseudo-subservient to domestic law. Often, the key determinant of which approach is applied is the nature of the international norm at issue.

The Ramsar Convention is a non-self-executing treaty; the principal obligation it imposes is the general wise use principle.[88] Even though the obligations under the Convention have been more specifically defined in COP resolutions and the Ramsar Secretariat's guidelines, legal uncertainty persists. This lack of specificity further undermines the Convention's already dwindling enforceability. Some critics argue that the Convention members have merely a moral obligation, rather than a legal obligation, to uphold the Convention.[89]

Given the soft legal nature of the Convention, ratification by the Korean National Assembly under Article 60.1 of the Constitution was not required for the Convention to become legally effective. Since the Convention was deemed to have little impact on the national economy, accession to the treaty was achieved by administrative action by the President in accordance with Article 73 of the Constitution. This means that the Convention's binding power is

[85] Natural Environment Conservation Act, Act No. 4492, Dec. 31, 1991, art. 2.8.

[86] Special Act on Development of the East-West-South Coast, Act No. 08823, Dec. 27, 2007, art. 7.1.1.

[87] Article 6, section 1 of the Constitution of Korea states, "Treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic law."

[88] SHINE & DE KLEMM, *supra* note 19.

[89] This may lead to political distortion of the Ramsar Convention's goals. Benjamin J. Richardson, *Scales of Environmental Management: Wetlands Conservation in Kenya and Uganda*, 8 AFR. J. INT'L AND COMP. L. 904, 910 (1996).

weaker than that of a ratified treaty; its status is similar to that of a presidential decree. Customary international law and ratified treaties are, however, placed above and at the same level as national statutes respectively.

Primary responsibility for ensuring compliance with treaty obligations lies with the state through its legislature, law enforcement agencies and judiciary. It is crucial that national legislation clarify the Ramsar Convention obligations. To that end, and particularly because the Convention is largely norm-based, what Koh calls transnational legal processes are fundamental in interpreting, internalizing, and enforcing the treaty obligations.[90] In order to put the Convention's wide use principle into effect, the country must internalize the broad concept of wise use, and enact detailed and coordinated legislative and policy instruments with the Convention's traditions and conditions in mind.

B. The Wetlands Conservation Act of 1999

The enactment of the Wetlands Conservation Act ("WCA") in 1999 was executed in coordination with the signing of the Ramsar Convention. One of the purposes of the WCA, as stated in Article 1, is to reflect the tenor of the Convention.[91] The WCA implements the Convention by setting up conservation policy plans, designating protected areas, and preventing certain harmful activities within those areas.

The newly established National Wetland Review Committee, composed of high-ranking government officials and members of civil society, makes decisions on the establishment and amendment of the National Wetland Conservation Basic Plan.[92] The Committee also has an important function as a decision-making body that implements the resolutions and recommendations adopted by the COP.[93]

The WCA provides legal grounds for the designation of three types of protected areas within the legal definition of wetlands:[94] the Wetland

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[90] For a discussion on concepts of transnational legal process, see Harold Hongju Koh, *Why Transnational Law Matters*, 24 PENN ST. INT'L L. REV. 745 (2006); Harold Hongju Koh, *How Is International Human Rights Law Enforced?*, 74 INDIANA L.J. 1397 (1999); Harold Hongju Koh, *The 1998 Frankel Lecture: Bringing International Law Home*, 35 HOUS. L. REV. 623 (1998); Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599 (1997); Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181 (1996).

[91] Article 1 states that the purpose of the Act is to promote the conservation of biodiversity through efficient wetlands conservation and management, and to facilitate international cooperation by reflecting the purpose of the international convention on wetlands. WCA art. 1.

[92] For details, see Republic of Korea, *National Report on the Implementation of the Ramsar Convention on Wetlands* 14–17 (2008), http://www.ramsar.org/pdf/cop10/cop10_nr_armenia.pdf [hereinafter *2008 National Report*].

[93] WCA art. 5.2.

[94] *Id.* art. 8.

Protection Zone ("WPZ"), the Wetland Surroundings Management Zone ("WSMZ"), and the Wetland Rehabilitation Zone ("WRZ"). The MOE, the MLTM, and local governments may designate an area as a WPZ and its adjacent area as a WSMZ.[95] WCA Article 8 also specifies three criteria to assist the MOE and the provincial governments in locating potential sites for a WPZ designation.[96] Potential sites go through a complex assessment with nine categories of evaluation: (1) coastal vegetation, (2) sea birds, (3) coastal benthos, (4) marine resources, (5) coastal geomorphology and scenery, (6) culture, (7) risk level, (8) restorability, and (9) local commitment to conservation. The greatest obstacles to designation usually arise at the local level. Local communities are reluctant to place restrictions on their activities.[97] In particular, local fishermen are often strongly opposed to any designation because they believe that the property value of their adjacent land will plummet.

Furthermore, it should be noted that Supplementary Article 3 of the WCA, intended to prevent an ex post facto effect, makes it impossible to designate areas subject to land reclamation or aggregate extraction permits issued under the PWRA and other relevant statutes prior to the enactment of the WCA in 1999.[98] Permits for most reclamation projects were issued before 1999.[99]

As of December 31, 2007, only seven coastal wetland sites covering an area of 156 square kilometers have been designated as coastal WPZs.[100] Because estuarine waters are defined as inland wetlands, the two estuaries of the Nakdong River and the Han River are protected under the WCA as inland WPZs.[101] The government has a policy objective of increasing the number of

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[95] *Id.*

[96] *Id.* art. 8.1. The three criteria are: (1) rich biological diversity and maintenance of a primitive state of nature; (2) habitats for rare or endangered animal/plant species; and (3) unique scenic, geomorphologic, or geological values. Notably, the Integrated Coastal Management National Plan developed under the 1999 Coastal Management Act also emphasizes that coastal wetlands of "high ecological and aesthetic values" need to be protected as WPZs.

[97] This particular aspect is noted in Korea's *National Report on the Implementation of the Ramsar Convention on Wetlands* (2008) as the greatest challenge in implementing the Convention. *See 2008 National Report*, *supra* note 92. It states that in order for the country to overcome the problem, "the Government will prepare consistent and scientifically valid criteria for designating wetland protected areas, promote in-depth surveys for wetlands protection, increase the purchases of private lands within protected areas, and minimize economic losses of local residents by promoting eco-tourism." *Id.*

[98] WCA supp. art. 3.

[99] *See* STATUS OF THE PUBLIC WATERS RECLAMATION, *supra* note 3.

[100] Three of these are Ramsar sites: (1) Muan Tidal Flat, (2) Suncheon Bay, and (3) Boseong and Beolgyo.

[101] There are in total twelve inland WPZs, totalling approximately 107 square kilometers. Six are Ramsar sites: (1) High Moor, Yongneup of Mt. Daeam, (2) Upo Wetland, (3)

WPZs to twenty-eight by 2011,[102] but how many of those will still be in existence by then remains to be seen.

The WCA requires that when the government restricts the application of Ramsar Convention provisions, the government take compensatory measures in accordance with the Convention.[103] As of December 31, 2007, Korea has designated nineteen WPZs covering a total area of 263 square kilometers.[104] The degree of protection of WPZs directly reflects how well the Ramsar wetlands of international importance are protected since, despite the government's freedom to do otherwise, most Ramsar sites (8 of 11) have been selected from the existing WPZs.[105]

No wetland reserve designated under the WCA is absolutely protected from the arbitrary discretion of decision makers. Although the WCA prohibitions are numerous in a WPZ,[106] the WCA provisions provide for clear exemptions to certain prohibitions so long as the contractor has obtained a discretionary approval from either the central or local government.[107] Furthermore, the WCA includes provisions for the approval of reclamation

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Jangdo Island High Moor, (4) Mulyeongari-oreum, (5) Du-ung Wetland, and (6) Moojechineup.

[102] National Wetland Conservation Basic Plan, 2007-2011 (promulgated by the Ministry of Environment, 2007) [hereinafter MOE 2007-2011 Wetland Plan].

[103] Under Ramsar Convention Articles 2.5 and 4.2, it is possible to delete or restrict boundaries of the listed sites when there is an urgent national interest. An example of an urgent national interest includes the building of an Airbus construction plant. *See* Lisa Courtney, *International Protection of Wetlands: Protection of a German Wetland under the Ramsar Convention and the European Union Habitats Directive*, COLO. J. INT'L ENVTL. L. & POL'Y 129, 136-39 (2001). Although the Convention does not provide any guidance on the issue, the 2002 Eighth Meeting of the Conference of the Contracting Parties produced some general guidance on the matter: Eighth Meeting of the Conference of Contracting Parties, The Convention on Wetlands, Nov. 18-26, 2002, *Resolution 8.20, General Guidance for Interpreting "Urgent National Interests" under Article 2.5 of the Convention and Considering Compensation under Article 4.2, available at* http://www.ramsar.org/pdf/res/key_res_viii_20_e.pdf.

[104] MOE 2007-2011 Wetland Plan, *supra* note 102.

[105] *Id.*

[106] WCA art. 13(1). The prohibitions apply to (1) construction/extension of any structure or changing soil character; (2) changing water level or quantity; (3) gathering soil, sand, gravel, or rock; (4) mining minerals; and (5) farming animals and plants.

[107] WCA art. 13.5; *see also* Enforcement Decree of the Wetlands Conservation Act, Presidential Decree No. 20763, Apr. 3, 2008, art. 11.2.2 [hereinafter WCA Decree]. There is an exemption for the maintenance and management of agricultural infrastructures and lands to be used for agricultural purposes. *Id.* art. 13.1. No meaningful restrictions are imposed for the protection of WSMZs and WRZs. For example, a WSMZ can be legally reclaimed if approved by either MOE or MLTM. *Id.* art. 13.3. The only prohibited activities in these areas are the grazing and cropping of wildlife defined under the Wild Animals and Plants Protection Act of 2004. *Id.* art 13.2.

projects within protected areas for the benefit of the public.[108] More generally, in the presence of a public need, the MOE, the MLTM, and the local government (metropolitan cities and provinces) may eliminate or restrict the boundaries of WPZ areas,[109] and are required by law to allow prohibited activities to take place within WPZs.[110] Public need, in the WCA context, appears to be equivalent to national economic development. For example, the Presidential Decree of the WCA explicitly states that a large-scale state project's substantial impact on the national economy shall constitute sufficient reason for exempting such a project from the prohibitions.[111] Moreover, when the government eliminates or restricts the boundaries of protected wetlands, it assumes no legal responsibility to compensate for any loss of wetlands.

The current trend has been towards adopting the no-net-loss policy, which would allow developments where economic potential is high, but would require developers to create alternative wetlands, if cost-effective, by either creating new wetlands or restoring those that have been degraded.[112] The Korean government has deviated from this policy in that the WCA provides for no restoration efforts to remedy adverse environmental impacts on wetlands (other than in the case of violations of Article 13(1));[113] it has only recommended creation of artificial wetlands. When the no net loss policy is adopted by the WCA, the creation of alternative wetlands will be required in connection with any development projects that could potentially harm wetlands. The particular concern in the Korean context, however, has been the possibility that new or restored inland wetlands might be allowed as substitutes for coastal wetlands. Coastal wetlands are very different from inland wetlands in terms of ecology.[114] Also, concerns have been raised over the likelihood that the ability to create substitute alternative wetlands will serve as a justification for destroying even more naturally existing wetlands.

Under the WCA, wetlands can be rehabilitated only if they have been designated as WPZs;[115] the vast majority of wetlands not designated as WPZs

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[108] WCA art. 16.1.

[109] *Id.* art. 10.1.

[110] WCA Decree, *supra* note 107, art. 11.2.2.

[111] *Id.* art. 11.2.3.

[112] MOE 2007-2011 Wetland Plan, *supra* note 102.

[113] Yong-Hee Lee & Mijin Lee, A Review of Wetland Policies and Related Guidelines of Leading Nations and Korea with Emphasis on Creation of Artificial Wetlands, 24 OCEAN POL'Y RES. 93, 109 (2002).

[114] WILLIAM J. MITSCH & JAMES G. GOSSELINK, WETLANDS (2000).

[115] The Ramsar Convention requires the Contracting Parties to identify priority wetlands where restoration or rehabilitation would be beneficial and yield long-term environmental, social, or economic benefits. *See* Seventh Meeting of the Conference of Contracting Parties, The Convention on Wetlands, May 10-18, 1999, *Resolution 7.17: Restoration as an Element of National Planning for Wetland Conservation and Wise Use*, *available at* http://www.ramsar.org/pdf/res/key_res_vii.17e.pdf; Eighth Meeting of the Conference of Contracting Parties, The Convention on Wetlands, Nov. 18-26, 2002,

have no chance of rehabilitation. Furthermore, conditions on rehabilitation, one of which must be met, render the rehabilitation provisions ineffective. First, the damage suffered by a WPZ must be worsening or likely to worsen,[116] where "damage" is defined as "changes in the original character of a wetland such as draining, reclaiming, or dredging, or use of a wetland such as installing a facility or a structure with a purpose other than conservation."[117] Second, a WPZ must be found to be in a bad state of conservation and "value" in rehabilitation by means of artificial management efforts must be identifiable.[118] Put simply, a wetland can only be considered for rehabilitation where the wetland is already protected as a WPZ, and either the wetland has been reclaimed or dredged, or the socio-economic benefit of restoring it surpasses the economic cost of rehabilitation.[119]

The foregoing discussions of WCA's site-specific protective measures apply only to those wetlands designated as protected areas. The vast majority of undesignated coastal wetlands are potentially subject to reclamation under the Public Waters Reclamation Act ("PWRA"). Generally, coastal land use is managed by planning and management statues such as the Coastal Management Act of 1999, but these statutes lack substantive provisions to protect coastal wetlands from development pressure.

Resolution 8.16: Principles and Guidelines for Wetland Restoration, available at http://www.ramsar.org/pdf/res/key_res_viii_16_e.pdf.

[116] WCA art. 8.2.1.

[117] *Id.* art. 2.4. Ramsar defines "change in ecological character" for purposes of implementing Article 3.2 as "the human-induced adverse alteration of any ecosystem component, process, and/or ecosystem benefit/service." Seventh Meeting of the Conference of Contracting Parties, Convention on Wetlands, May 10–18, 1999, *Resolution 7.10: Wetland Risk Assessment Framework, available at* http://www.ramsar.org/pdf/res/key_res_vii.10e.pdf. This updated definition addresses only adverse change caused by the actions of people, excluding changes caused by natural processes. For example, the Ramsar Convention has recognized that wetland restoration and rehabilitation programs can lead to favorable human-induced changes in ecological character and are key aspects of wetland management interventions. *See* Sixth Meeting of the Conference of Contracting Parties, Convention on Wetlands, Mar. 19–27 1996, *Annex to Resolution 6.1, available at* http://www.ramsar.org/cda/en/ramsar-documents-resol-resolution-vi-1-working/main/ramsar/1-31-107%5E20929_4000_0__; Eighth Meeting of the Conference of Contracting Parties, Convention on Wetlands, Nov. 18–26, 2002, *Annex to Resolution 8.14, available at* http://www.ramsar.org/cda/en/ramsar-documents-resol-resolution-viii-14-new/main/ramsar/1-31-107%5E21393_4000_0__.

[118] WCA art. 8.2.

[119] Rehabilitation measures are actually not required unless "damage" takes place in at least one-quarter of the total area of a WRZ and WPZ, in which case the government has a duty to take necessary measures to maintain only half of the damaged area and monitor it for five years. WCA art. 17.1. It is unclear to what extent a degraded wetland is to be restored, if at all, as the use of the term "maintain" implies passive conservation.

C. The Public Waters Reclamation Act of 1962

The PWRA is a development law that provides the legal basis for issuing permits for various uses and reclamation activities in coastal areas. Prior to 1999, the PWRA did not contemplate the consideration of environmental factors in the permitting process; the term "environment" did not appear anywhere in the statute. However, after Korea signed on to the Ramsar Convention, the PWRA was amended in 1999 and 2007 to take into account environmental concerns. The underlying purpose of the PWRA has been amended from "contributing towards public interests and national economic developments" to "the betterment of the standard of living" through "sustainable use of public waters."[120] The means for achieving this purpose, originally stated as "reclamation of public waters and efficient use of the reclaimed land", was amended to "environmentally friendly reclamation and rational use" in the 1999 amendment, and again to "environmentally friendly conservation/reclamation and rational use of the reclaimed land" in 2007.[121] How meaningful and effective are these changes in protecting Korea's coastal wetland ecosystems?

Since 1999, Public Waters Reclamation Master Plans ("Reclamation Plans") have been required to be environment friendly,[122] and in accordance with the Integrated Coastal Management National Plan developed under the Coastal Management Act, the Comprehensive Plan for National Land developed under the National Land Framework Act, and the Urban Management Plan developed under the National Land Use Planning Act.[123] Reclamation Plans have also been required to disclose any environmental impacts of each reclamation site.[124]

The PWRA has provided no guidance to government authorities on permitting standards; authorities are simply instructed to follow the "appropriate boundaries" of the Reclamation Plans.[125] These Plans are often ignored or modified in favor of reclamation. For example, the Lake Sihwa project proceeded even though it was not included in the original Reclamation Plan. In addition to this lack of guidance, the PWRA Amendment of 2005 has granted to state and local governments discretionary power to execute,

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[120] *See* PWRA art. 1; Public Waters Reclamation Act, Act No. 986, Jan. 20, 1962, art. 1.

[121] *Id.*

[122] PWRA art. 4.1.

[123] *Id.* art. 6.

[124] The disclosure must include: (1) damages and changes to inland and coastal wetlands; (2) changes in ocean and tidal currents and sediment movements; and (3) changes in the flora and fauna habitat environment and countermeasures. PWRA art. 6.1.4; PWRA Decree, *supra* note 107, art. 5.

[125] PWRA art. 9.5.

without a permit, "small-scale" reclamation projects (those smaller than 1,000 square meters) for public use purposes.[126]

Article 32 of the PWRA once stated the specific grounds for revocation of a reclamation permit; these grounds, however, were not only largely ineffective but were deleted in the PWRA Amendment of 2007. One of these grounds for revocation was "unpredicted changes in situational conditions", particularly when revocation is necessary to protect the public interest.[127] This was one of the legal grounds upon which the environmentalists in the Saemangeum case based their legal reasoning. They claimed that greater than anticipated environmental degradation was imminent, and therefore that "situational conditions" had changed. Both the High Court and Supreme Court, however, ruled that all adverse effects had been taken into account when the permit was issued.[128]

The PWRA also requires reviews and necessary revisions of the Reclamation Plan every five years; this has also proven to be an ineffective protective measure. Among the information to be included are damages and changes to inland or intertidal wetlands, changes in ocean and tidal currents and sediment movements, changes in biological habitats, and potential remediation measures.[129] A recent amendment to Article 6(2) mandates that the government produce separate five-year reclamation plans for each proposed reclamation project site.[130] The purpose of this amendment was to eliminate projects in the Reclamation Plan for which developers had failed to obtain permits.[131]

When a project is permanently enjoined, the PWRA requires the developer to restore the site to its original pre-disturbance state.[132] As one would suspect, however, this obligation is not strictly enforced. The PWRA stipulates certain conditions that allow MLTM and the local government to waive the restoration obligation: such waiver is allowed when "restoration is impossible," [133] and "the impact on the environment and ecosystems is minimal."[134] Whether restoration is impossible or the environmental impact is minimal has often been arbitrarily determined by the government. MOMAF's Q&A manual on the PWRA and the PWMA provides some guidance on these

[126] *Id.* art. 38.2.

[127] Public Waters Reclamation Act, Act. No. 5911, Feb. 8, 1999, art. 32.3.

[128] Seoul High Court [Seoul High Ct.], 2005Nu 4412, Dec. 21, 2005; Supreme Court [S. Ct.], 2006Du 330, Mar. 26, 2006.

[129] PWRA art. 6.1.4; PWRA Decree, *supra* note 107, art. 5.

[130] PWRA art. 6.2.

[131] Developers now need to obtain permits within five months from the project's date of inclusion in the Reclamation Plan. *Id.*

[132] *Id.* art. 35.

[133] *Id.* art. 35.1.

[134] PWRA Decree, *supra* note 107, art. 32.

questions: the irreparability of a site is to be judged based on inquiries into whether there is high economic value in restoration, whether restoration is physically feasible, and the financial capability of the permit holder.[135] Minimal environmental impact is interpreted to mean that the economic value of a site is greater than the adverse impact on the environment, as assessed by experts.[136] When a permit holder applies for an exemption from the duty to restore, however, there is no provision in the PWRA requiring the applicant to submit any such assessment of adverse effects.[137]

There are numerous cases of illegality in the area of coastal reclamation. Relatively weak penalty provisions may have played a role. Until the 2007 Amendment, no penalty existed for a person who did not comply with a restoration order.[138] The current penalty provision imposes a maximum penalty of a 20 million won fine or imprisonment of up to two years.[139] Furthermore, the 2007 Amendment has increased the maximum penalty for illegally reclaiming public waters from one-year imprisonment or a fine of ten million won to three years' imprisonment or thirty million won in fines.[140]

Notwithstanding changes in the PWRA's purpose,[141] the environmental provisions of the statute remain rhetorical and subordinate to economic interests.[142] As discussed throughout this Section, environmental factors are relatively unimportant to decision makers in the drafting of reclamation plans and issuance of permits.

D. Environmental Impact Assessment Schemes for Reclamation Projects

Under Korean law, environmental impact assessments ("EIA") are only required when the proposed activity is a large-scale project, as defined by statute.[143] For instance, an EIA is required for reclamations of over 300,000 square meters under the PWRA and over 1,000,000 square meters under the

[135] Ministry of Mar. Aff. & Fisheries, Q&A Manual on the Public Waters Restoration Act and the Public Waters Management Act (on file with Author).

[136] *Id.*

[137] Furthermore, there are no penalty provisions to hold a person liable for failing to fulfil their restoration duty. In addition, Article 38.5 exempts the state, local governments, and state-sponsored corporations from restoration duties. Public Waters Reclamation Act, Act. No. 5911, Feb. 8, 1999, art. 38.5.

[138] *See* PWRA arts. 41–43.

[139] *Id.* art. 41.2.5.

[140] *Id.* art. 41.

[141] *Id.* art. 1.

[142] *Id.* art. 6.

[143] Environmental Impact Assessment Act, Act No. 4567, June 11, 1993, *amended by* Act No. 5877, Feb. 8, 1999, art. 1.

Act on the Maintenance and Improvement of Agricultural and Fishing Villages of 1994.[144] Even within the boundaries of the Natural Environment Conservation Zones (designated by the National Land Use Planning Act), reclamation projects smaller than 30,000 square metres do not require an EIA.[145]

The findings of an EIA do not alter the fate of a proposed activity. Rather, EIA reports are merely considered for purposes of mitigating environmental impacts.[146] In addition, any proposed mitigation measures in the EIA do not legally bind developers.

While the law requires an EIA be prepared prior to public notice of a project, in practice the EIA process often does not take place until after a project is approved. In fact, the EIA often occurs during the later stages of the development process, after the development plan is complete.[147] Thus, conservation of coastal wetlands and natural reserves are frequently considered well after a reclamation plan or a land use plan has been finalized.[148] In addition, it is difficult to alter the plans to reduce adverse environmental impacts, and only one of the twenty-three items to be addressed and balanced in the EIA concerns ecosystems and biodiversity.[149]

The decision-making process is often constrained by unwarranted distinctions, such as the distinction between public projects (carried out by a

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[144] Act on the Maintenance and Improvement of Agricultural and Fishing Villages, Act No. 4823, Dec. 22, 1994, *amended by* Act No. 6596, Jan. 14, 2002, art. 14.3.

[145] This may create a loophole whereby developers could avoid the requirements of an EIA by dividing a large project into smaller pieces.

[146] Framework Act on Environmental Policy, Act No. 4257, Aug. 1, 1990, *amended by* Act No. 6846, Dec. 30, 2002, art. 28 [hereinafter FAEP]. Dong-Oh Cho, *The Evolution and Resolution of Conflicts on Saemangeum Reclamation Project*, 50 OCEAN & COASTAL MGMT. 930, 942 (2007) ("Interestingly, there has not been any project which was rejected because of information in an EIA in Korea. Even the [Sihwa] Lake Reclamation Project was not refused in the process of application by the EIA.").

[147] For example, the EIA for the [Sihwa] lake project was prepared nine months after public notice. Kim, *supra* note 32, at 505.

[148] *See* Sang-Don Lee, *The Current Status and Future Development of Korea Environmental Impact Assessment*, 8 KOREAN J. ENVTL. ECON. REV. 163 (1999).

[149] Categories associated with an EIA with regards to (A) natural environment include (1) atmosphere; (2) geology/geography; (3) animals/plants; (4) marine environment; (5) hydrology. Factors relating to human environment include (6) land use; (7) air quality; (8) water quality; (9) soils; (10) wastes; (11) noise/vibration; (12) odour; (13) radio wave impediment; (14) sunshine impediment; (15) leisure/recreation; and (16) hygiene/public health. Socioeconomic environmental factors include (17) population; (18) residents; (19) industry; (20) public facilities; (21) education; (22) transportation; and (23) historic monuments. Sang-Don Lee, *Analysis of Problems and Improvement of Environmental Impact Assessment in Social-Economic Items Based on 19 Major Large Scale Development Projects*, 13 KOREAN J. ENVTL. IMPACT ASSESSMENT 165 (2004).

government entity) and private projects.[150] For public projects, such as public waters reclamation, EIAs are virtually irrelevant as the government's decision-making process is not transparent.[151] In this context, it may be impossible to prevent the government from unlawfully destroying wetlands unless the administrative law system allows for judicial review of the relevant agency actions.[152] The likelihood of identifying adverse environmental impacts is further reduced by the fact that EIAs are prepared by the same individuals undertaking the project, and often sheltered from independent expert review.

To overcome some of the problems associated with the lack of procedural safeguards in the EIA regime, a separate instrument of environmental assessment, the Prior Environmental Review ("PER"), was instituted by a 2002 amendment to the Framework Act on Environmental Policy of 1990 ("FAEP").[153] The PER is an assessment conducted by the relevant government ministry prior to approval of an individual project or preparation of a development plan (e.g., the Reclamation Plan), to examine the environmental effects of a development activity or plan subject to an EIA under the EIA Act.[154] Korea's National Report to the Eighth COP introduced the PER as "a sort of Strategic Environmental Assessment in Korea."[155] Under the FAEP, an environmental assessment is required prior to the approval of a project with potentially high environmental impact, and may well prevent such approval.[156] Not every plan, policy, and project that may negatively affect wetlands is subject to a PER; specifically, a PER is not required for developmental projects smaller than 5,000 square meters in WPZs and smaller than 7,500 square meters in WSMZs and WRZs.[157]

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[150] For private projects, the necessary government permit, license, or concession is conditional on a satisfactory EIA.

[151] *See, e.g.*, ECOFORUM, THE PROBLEM WITH CHEONSEONGSAN AND ENVIRONMENTAL IMPACT ASSESSMENT SYSTEM (2006).

[152] Kim, *supra* note 32, at 505 ("In an effort to address these issues and improve its environmental administrative system, Korea adopted the Administrative Procedures Act ("APA") in 1998. The APA allows private citizens to participate in various government activities, a legislative effort which is the first of its kind in Korea. By enacting the APA, the Korean government is showing its willingness to increase its environmental responsibility. However, the APA is useless without effective implementation and administration.").

[153] FAEP arts. 3.7, 25, 26, and 27.

[154] The Ramsar Convention recommends an EIA that that addresses the cumulative effects of several projects and strategic plans, programs and policies. Fifth Meeting of the Conference of Contracting Parties, The Convention on Wetlands, June 9-16, 1993, *Resolution 5.6, Annex: Additional Guidance for the Implementation of the Wise Use Concept*, *supra* note 28.

[155] REPUBLIC OF KOREA, NATIONAL REPORT ON THE IMPLEMENTATION OF THE RAMSAR CONVENTION ON WETLANDS 11 (1993).

[156] FAEP art. 27.

[157] FAEP Presidential Decree Annex 2.

If Korea is to meet its obligations under the Ramsar Convention, it needs an EIA and PER regime for a wider range of proposed developments, including small scale developments.[158] Smaller projects should not be permitted to go ahead without an EIA since some wetlands, despite their relatively limited sizes, may have critical functions in larger ecosystems. In addition, the EIA process should apply at the project implementation stage so that actual environmental effects can be monitored and compared to earlier predictions. The EIA process should also not be restricted to the site of the proposed development; it should cover all relevant areas of a watershed. Environmental considerations concerning wetlands should be integrated into the decision-making process in a clear and transparent manner. When proposed activities are located in or close to a Ramsar wetland, the government must give specific consideration to carrying out an EIA.[159] Furthermore, planning and permitting procedures should include requirements for strategic and project-specific EIAs. Legislation should provide for a precautionary approach within the EIA screening process; where there are doubts as to whether a proposed activity or project may have a significant impact on wetlands, an EIA should always be required.

IV. THE PROSPECT OF JUDICIAL INTERNALIZATION OF WISE USE

One way that the Korean judiciary can assist in the legal internalization of the wise use norm is by acting as a formal translator and enforcer of the international norm in the domestic setting. Specifically, the judiciary can implement a pattern of interpretation of the wise use norm to help the ministries better adhere to the Ramsar Convention. Extended over a period of time, the benefit of this approach is substantial; through the judiciary's consistent pattern of interpretation, the norm could eventually be incorporated into national law.

The Korean courts have not, however, taken into account the customary international law of the environment in their decisions, including the norms and principles of multilateral agreements like the Ramsar Convention. The courts' short-sightedness is evident in the Saemangeum and Myeongji Bridge cases, in which the courts ignored international sustainable development norms and principles.[160]

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[158] SHINE & DE KLEMM, *supra* note 19, at 187.

[159] RAMSAR SECRETARIAT, HANDBOOK 3: LAWS AND INSTITUTIONS 39 (2004).

[160] Note that the Korean legal system is heavily influenced by the civil law traditions of Germany and Japan.

A. The Myeongji Bridge Case: Constructing a Bridge Through a WPZ

In *Myeongji Bridge*, the courts allowed the construction of a 3.1 kilometer-long bridge in an established WPZ.[161] The broader area in question, the Nakdong Estuary, is not only a wetland of international importance based on the Ramsar Convention criteria, but it is also one of the most strictly protected areas in Korea as evidenced by its location within four discrete overlapping protection area designations.[162] Construction of a bridge in this heavily protected area required two key approvals: one from the Cultural Heritage Administration under Article 34 of the Protection of the Natural Heritages Act of 1962, and another from MOE under Article 13 of the WCA.

The Nakdong River Basin Environment Office, a regional branch of MOE, recommended a route change from the proposed straight bridge to a curved one, shifting the bridge to the north by 610 meters for the sake of migratory birds roosting along the proposed straight path.[163] Busan City accepted the recommendation and changed the route. The Cultural Heritage Administration then approved the project on the condition that the construction be suspended for about four months while migratory birds were present.[164] The Nakdong River Basin Environment Office also granted the Myeongji Bridge Construction Corporation permission to carry out prohibited activities within the WPZ on the condition that the company comply with its PER and EIA so as to mitigate foreseeable adverse impacts.[165] Green Korea United Busan Branch and Wetlands and Birds Korea brought the case against Busan City and the construction company before the Busan District Court in 2005, and the court's decision in favor of Busan was appealed all the way to the Supreme Court.[166]

The Supreme Court justified its decision by stating that the bridge is a public necessity and that its benefits far outweigh the environmental interests of individual plaintiffs.[167] In particular, even after acknowledging the edge effect theory that the plaintiffs posited, which predicted that fifty-meter-wide strips of land on both sides of the bridge would be unsuitable to serve as bird habitat, the court still ruled that the one hundred meters between the Nature Reserve for the Migratory Birds and the bridge would be a wide enough space for the birds.[168] In essence, the court found that while some degree of adverse

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[161] WCA art. 13.1.

[162] These are the Nakdong River Downstream Migratory Birds Site, Ecosystem Conservation Area, Natural Environmental Conservation Area, and Special Management Marine Zone.

[163] Busan District Court [Dist. Ct.], 2005Kahap1499 at 2–7, 2005.

[164] *Id.*

[165] *Id.*

[166] *Id.*

[167] Busan High Court [Busan High Ct.], 2006Ra64 at 13–14, 2006.

[168] *Id.*

impact on the bird habitat was foreseeable, there was not enough evidence suggesting that the project would cause fundamental changes to the wetlands such that the area will lose its endangered-bird support functions.[169]

Myeongji Bridge reflects a narrow legal definition of wetlands and the lack of an integrated ecosystem approach. Courts have difficulties understanding the allowable distance between a harmful activity and the protected area of concern. For example, activities taking place outside the boundaries of a protected area, even if they directly impact the protected areas, are often determined to be permissible.

A Supreme Court case involving the construction of a high-speed-train railway tunnel near two inland WPZs provides further evidence of the judiciary's failure to adequately consider ecological impacts. Despite the relative proximity of the tunnel to the wetlands, which was only about a couple hundred meters, the Supreme Court ruled that there was insufficient evidence suggesting that the tunnel would have any adverse effects on the wetland ecosystems because the tunnel did not physically go through the designated areas.[170]

The Supreme Court neither recognized nor applied the precautionary principle in *Myeongji Bridge*. Rather, it agreed with the ministries that there is always room for unpredictable ecological impacts. In addition, although the Court acknowledged that the construction of the bridge might cause a leak from a landfill located on the construction site, it ruled that there was no evidence that a leak would occur.[171] The court maintained that the risk itself cannot justify the termination of the construction project.[172]

B. The Saemangeum Case: Reclamation with the World's Longest Dike

The Saemangeum coastal reclamation project created the world's longest seawall, stretching thirty-three kilometers and enclosing a total estuarine area of 401 square kilometers.[173] The ninth Ramsar Convention COP formally adopted Resolution IX.15, which requested that the Korean government inform the Ramsar Secretary-General on the current status of the Saemangeum project and the impact of the project on the waterbird populations dependent on the nearby wetlands.[174] The Korean government initially did not comply

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[169] *Id.*

[170] Busan High Court [Busan High Ct.], 2004Ra42, 2004.

[171] Busan High Court [Busan High Ct.], 2006Ra64 at 14, 2006; Busan District Court [Dist. Ct.], 2005Kahap1499 at 16, 2005.

[172] *Id.*

[173] *The Longest Dike*, GUINNESS WORLD RECORDS, http://community.guinnessworldrecords.com/_The-Longest-Dike/blog/2559541/7691.html?b= (last visited Nov. 11, 2010).

[174] Ninth Meeting of the Conference of Contracting Parties, The Convention on Wetlands, Nov. 8–15, 2005, *Resolution 9.15: The Status of Sites in the Ramsar List of*

with this request. With the tenth COP on the horizon, however, the Korean government assured the Ramsar community at the Asia Regional Meeting in January 2008 that the reclamation project would proceed in an environmentally friendly manner.[175] At the thirty-fifth meeting of the Ramsar Standing Committee in February 2008, the Korean government made a follow-up statement that several of its ministries were regularly monitoring the Saemangeum project to minimize the ecological impact, and that the government was planning to accommodate a park and environmentally-friendly agriculture within the Saemangeum area.[176] The tenth COP subsequently congratulated the Korean government for providing information on the impacts of the Saemangeum project and recommended that Korea continue providing the Secretary-General with updated reports concerning the ecological impacts of the project.[177]

Not all government ministries and agencies were supportive of the Saemangeum project. The Presidential Commission on Sustainable Development, which recommended that Korea undertake a transparent and inclusive review process, was one agency in opposition. Furthermore, MOE made it clear that the water quality of the freshwater lake could not possibly be maintained at a reasonable cost, and that alternatives to the original reclamation plan should be sought.[178] MOMAF also insisted that the benefits of conserving the wetlands outweighed the benefits of reclaiming the land. The Ministry of Agriculture and Forestry ("MAF") and the government of North Jeolla Province, however, pushed the project forward.[179]

This controversy played out in the courtroom. In August 2001, ten years into the construction of the seawall, over 3,500 people collectively filed a lawsuit in the Seoul Administrative Court against the Prime Minister and the North Jeolla Provincial Governor to stop the project.[180] After the court issued a surprising injunction against the seawall, the decision was swiftly appealed by the MAF Minister to the High Court, which overturned the lower court's

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Wetlands of International Importance, available at http://www.ramsar.org/pdf/res/key_res_ix_15_e.pdf.

[175] Standing Committee of the Ramsar Convention on Wetlands, *Report of the Secretary General to the 36th Meeting of the Ramsar Standing Committee*, DOC. SC36-2 (2008).

[176] Ramsar Standing Committee 35th Session Report, *supra* note 2.

[177] Furthermore, the Resolution also requested that the Korean government advise the Ramsar Secretariat of any significant changes in the ecological character of wetlands in the Wetland Protection Zones and Ecosystem Landscape Conservation Zones. Tenth Meeting of the Conference of Contracting Parties, The Convention on Wetlands, Oct. 28–Nov. 4, 2008, *Resolution 10.13: The Status of Sites in the Ramsar List of Wetlands of International Importance, available at* http://www.ramsar.org/pdf/res/key_res_ix_15_e.pdf.

[178] Seoul Administrative Court [Admin. Ct.], 2001Guhap3356, 2001, at 17.

[179] *Id.*

[180] *See* Seoul Administrative Court [Admin. Ct.], 2001Guhap3356, 2001.

decision.[181] The Supreme Court affirmed the High Court's decision in March 2006.[182] After years of delay and a long legal battle, the dike was completed on April 26, 2006.

Before issuing its decision, the administrative court proposed suggestions to MAF in favor of the environmentalists in its Recommendation for Adjustment, which was later rejected by MAF.[183] The court stated that to allow Saemangeum to follow in the footsteps of Lake Sihwa would be the worst decision the present generation could make for future generations. It recommended that the government first change the land use designation of the reclaimed land (from agricultural to industrial and residential) and the scale of development, and conduct a proper EIA before making any further progress. This proposal was based on the view that the reclaimed land would not be used as farmland as initially planned due to a surplus of agricultural land in the country and the government's inability to maintain the freshwater quality inside the dike.[184] After the MAF rejected this recommendation, the administrative court issued an injunctive order to halt the construction on February 4, 2005.

In reversing the administrative court's decision, the High Court and Supreme Court held that water quality could be maintained at an appropriate level for agricultural purposes, and that no significant changes in the conditions under which the permit was issued had occurred.[185] Newly-gathered scientific data, such as data pertaining to the impact of the project on shorebird populations, and changes in the demand for agricultural land, were all ignored by the courts.[186] Like the central government, these courts seemed to insist that the project would be both environmentally friendly and economically feasible.[187]

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[181] *See* Seoul High Court [Seoul High Ct.], 2005Nu 4412, Dec. 21, 2005; Supreme Court [S. Ct.].

[182] *See* Supreme Court [S. Ct.], 2006Du330 at sec. 5, Mar. 26, 2006.

[183] *See* Seoul Administrative Court [Admin. Ct.], 2001Guhap3356, 2001.

[184] *Id.*

[185] The High Court held: (1) the government did not act illegally with regards to the Saemangeum Reclamation Project; (2) although there were disputes, the economic feasibility study had no clear mistakes; (3) the water quality in the lake seems to have achieved the desired level; and (4) considering the domestic and international environment, rice production needs to be increased. *See* Cho, *supra* note 146. The Supreme Court held: (1) there was insufficient evidence to support claims from environmental organizations that the Saemangeum Reclamation Project does not have economic value, so the lower court's original ruling is justified; and (2) there was not enough evidence to prove that the government made an insufficient survey of the harmful effects of the Saemangeum Reclamation Project. *Id.*

[186] *See* Seoul High Court [Seoul High Ct.], 2005Nu 4412, Dec. 21, 2005; Supreme Court [S. Ct.]; Supreme Court [S. Ct.], 2006Du330 at sec. 5, Mar. 26, 2006.

[187] *See* Seoul High Court [Seoul High Ct.], 2005Nu 4412, Dec. 21, 2005; Supreme Court [S. Ct.]; Supreme Court [S. Ct.], 2006Du330 at sec. 5, Mar. 26, 2006.

As in the *Myeongji Bridge* ruling, the Supreme Court did not recognize the precautionary principle. While acknowledging possible marine environment degradation, the Court decided that it would be sufficient for the project to proceed with care in light of scientific uncertainty.[188] Furthermore, the Court expressly placed the burden of proof on those who claimed that the project needed to be scrapped due to unforeseen environmental impacts.[189] Adopting the principle of mere prevention, the Supreme Court decided that preemptive measures were only necessary when harm became foreseeable, and that the ongoing project could only be cancelled if such harm had not been foreseen prior to the commencement of the project.[190]

However, a joint dissenting opinion issued by the two youngest justices, Kim and Park, argued that the Korean Constitution and environmental legislation clearly recognized the value of conservation of the natural environment as superior to economic benefits.[191] These justices went on to argue that, in accordance with the principles of prevention and precaution, there was a strong need to prevent and minimize environmental harm before it occurred.[192] In light of the scientific uncertainty in predicting how marine environmental changes might affect the Saemangeum region, the dissenting justices contended that even the possibility of harm to the ecology was a sufficient reason to suspend the project.[193] In particular, they noted that the precautionary principle is acknowledged in the Framework Act on Environmental Policy, which forms the backbone of Korean environmental law.[194] This dissenting opinion provides the most progressive interpretation of Korean environmental law to date.[195]

The dissenters also reasoned that Korea joined the Ramsar Convention in order to respond to the increasing awareness of the importance of wetlands to

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[188] *See* Supreme Court [S. Ct.], 2006Du330 at sec. 5, Mar. 26, 2006.

[189] *Id.*

[190] *Id.*

[191] *Id.*

[192] *Id.*

[193] *Id.*

[194] Rakhyun Kim, *Principles of Sustainable Development in Korean Environmental Law: Towards the Earth Charter Principles*, 4 NEW ZEALAND POSTGRADUATE L. E-JOURNAL 21, 29 (2006); Gyu-yong Lee, *The Amendment Bill for the Framework Act on Environmental Policy*, 23 ENVTL. L. RES. 9 (2001).

[195] However, this provision does not require any precautionary measures to take place in advance of formal scientific evidence, which is a common denominator in various interpretations of the principle. As five other judges have quite correctly pointed out in a joint opinion, the dissenting opinions were by and large normative arguments grounded on ethics rather than law. This implies that legal obligations based on environmental ethics do not yet exist in Korean law. The precautionary principle in not widely recognized in the Korean legal system, which is still focused on addressing environmental problems rather than risks.

endangered migratory bird species, and enacted the WCA to implement the Convention's recommendations. The dissenters' opinion also noted that Korea is a contracting party to the Ramsar Convention.[196] Furthermore, they argued that Korea cannot ignore the international trend towards increasing protection for wetlands; if Korea continues at its current rate of reclamation, the country could face international criticisms and be branded an environmentally irresponsible nation.[197]

The *Myeongji Bridge* and *Saemangeum* cases required the balancing of strong development interests against the environmental interests of a few affected individuals. *Saemangeum* suggests that development interests typically prevail. Specifically, the Supreme Court in *Semangeum* found that since the Constitution recognizes the importance of both the environment and development, protection of the environment cannot take priority over development outright.[198] The Court weighed the costs and benefits of environmental protection and ruled that the economic interests of the country as a whole were more important than the environmental interests of a few individuals.[199] In theory, the Court recognized the existence of environmental rights and interests; but these considerations were subordinate to economic interests.[200] This process of balancing competing interests is a critical limitation on the effectiveness of courts in maintaining the ecology of public waters.

An additional question is which individuals hold environmental rights with respect to coastal wetlands. Article 35 of the Constitution recognizes that every citizen has "the right to a healthy and pleasant environment" as part of her basic human rights.[201] This provision, however, has been narrowly interpreted by the courts: Article 35 does not grant individual citizens specific rights unless these rights are also expressly specified in statutes.[202]

It should also be noted that the nuisance principle applies in all environmental lawsuits; a litigant must prove immediate and personal damage. Thus, it is not surprising that only on rare occasions do individuals in

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[196] Seoul Administrative Court [Admin. Ct.], 2001Guhap3356, at sec. 3, 2001.

[197] Supreme Court [S. Ct.], 2006Du330 at sec. 5, Mar. 26, 2006.

[198] Busan High Court [Busan High Ct.], 2006Ra64 at sec. 4, 2006; Supreme Court [S. Ct.], 2006Du330 at sec. 6, Mar. 26, 2006.

[199] *See* Supreme Court [S. Ct.], 2006Du330, Mar. 26, 2006.

[200] *Id.*

[201] *See* Yun-Cheon Choi, *The Meaning of the Environmental Rights Provision in Our Constitution: Protection of the Basic Rights or the Environment?*, 27 ENVTL. L. RES. 373 (2005); Hyeong-Seong Kim, *The Normative Meaning of the Constitutional Environmental Provision*, 26 ENVTL. L. RES. 115 (2004); Hun Jeong, *Constitutional Provisions on Environmental Protection*, 25 ENVTL. L. RES. 433 (2003); *Seong-Bang Hong, Environmental Basic Rights: An Interpretive and Legislative Study on Constitution Article 35*, 22 ENVTL. L. RES. 473 (2000).

[202] Busan High Court [Busan High Ct.], 2006Ra64 at sec. 4, 2006; Busan District Court [Dist. Ct.], 2005Kahap1499 at sec. 3, 2005.

Korea obtain legal remedies for environmental damage. The majority of these cases are also not ecology-based; they typically involve the rights of enjoyment, such as a resident's right to sufficient sunlight.[203]

V. "SPECIAL LAW POLITICS" OVER THE PRINCIPLED RULE OF LAW

The Supreme Court's green light for the Saemangeum Project was based on the condition that the reclaimed land be used as seventy percent agricultural farmland in accordance with the initial plan.[204] Yet it was widely known that it was not economically feasible for the land to be used for agriculture since the water quality of the freshwater reservoir needed for irrigation simply cannot be maintained at a reasonable cost.[205] This economic reality was conveniently resolved by passing the Special Act to Promote the Saemangeum Project in December 2007, shortly before the Presidential election, which essentially overruled the Supreme Court's decision and put in place legal grounds for residential and industrial use of the reclaimed land, including a Free Economic Zone.[206] The Act granted North Jeolla Province and MIFAFF the authority to enact and execute a development plan based on proposals from developers.[207] In order to speed up the process of development, the Saemangeum Special Act also allowed these developers flexibility as to consultation procedures under forty-six different conservation, development, and planning statutes.[208] The policy vision behind this was to turn Saemangeum into the "Dubai of East Asia." Proposals have been put forward for a casino, an international airport, a seaport, a marine tourism complex, a world-class university, and a hospital.

Another controversial special law enacted around the same time was the 2007 Special Act on Development of the East-West-South Coast.[209] MLTM has administered the Act with the stated purpose of developing the "coastal ecological axis" into a "marine economic axis." The vast geographical reach of the Act, which covers somewhere between thirty to forty percent of Korea's total territorial land and includes seventy-three of the 234 local government

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[203] Kim, *supra* note 32, at 515-517; Hong Sik Cho, *Law and Politics in Environmental Protection: A Case Study on Korea*, 2 J. KOREAN L. 103 (2002); Hoi-Seong Jeong, *Citizen Involvement in the Environmental Policy Process in Korea*, 11 GOOD SOC'Y 46 (2002); Hong Sik Cho, *An Overview of Korean Environmental Law*, 29 ENVTL. L. 501 (1999).

[204] *See* Supreme Court [S. Ct.], 2006Du330, Mar. 26, 2006.

[205] *Id.*

[206] Special Act to Promote the Saemangeum Project, Act No. 8795, Dec. 27, 2007, art. 31.

[207] *Id.* art. 5.

[208] *Id.* art. 15.

[209] Special Act on Development of the East-West-South Coast, Act No. 08823, Dec. 27, 2007, arts. 6, 7, 8, and 12 [hereinafter Special Act on Development of the East-West-South Coast].

units in the country's coastal areas, has been viewed as problematic by many.[210] Its jurisdiction even reaches into national and regional parks. What the Act essentially does is grant the provincial-level local governments and the central government, particularly MLTM, arbitrary powers to approve and execute development projects within the geographical area in question.[211] The provincial governments and MLTM are to draft three Master Development Plans for each of the three coastal zones (East, West, and South) and designate certain areas as Development Zones.[212] Developers then submit their Development Implementation Plans to the provincial governments for approval. Once these plans are approved, developers automatically obtain permits under thirty-five different development-related statutes, including the coastal wetland reclamation permit issued under the PWRA.[213] Such a "special" shortcut only requires a consultation with the relevant ministers, but this consultation process is generally influenced by politics. It is generally impracticable for MOE to reject development projects planned by MLTM under the Coastal Development Special Act.

Given the injustice that this legislation creates, the late former president Roh Moo-hyun had considered exercising his presidential right of veto, but political realities forced him to sign the bill. A coalition of environmental non-governmental organizations in Korea announced plans to file a lawsuit in the Constitutional Court. There were even discussions of a collective boycott of the tenth Ramsar COP in protest against the Coastal Development Special Act, particularly since the initial sponsor of the legislation was the Governor of South Gyeongsang Province, the host Province to the COP.

Another special law is being drafted for a project for the construction of three large canals connecting all major river systems in the Korean peninsula. The Lee Myung-bak administration has been a strong advocate of the project, which was devised as a presidential election pledge, as was the Saemangeum Project in the 1980s. After severe criticism, however, the project has recently been disguised and renamed the "Four Rivers Refurbishment Project." The largest of the proposed canals, the Gyeongbu Canal, is a 540-kilometer canal cutting diagonally across the country between Seoul and Busan.

Not surprisingly, given the scale and timeframe of the project, a special law is again required to allow the government and developers to bypass the environmental regulations in place. According to MLTM's initial plans, the government planned to receive proposals from private developers during the first half of 2008, and to enact a special law during the second half. This plan has been challenged by environmental groups. The canal, if built, will devastate the Korean peninsula. Referencing the wetlands and the Ramsar Convention, environmentalists argue that the Nakdong and Han River

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[210] MINUTES FROM THE 10TH SESSION OF THE 269TH NATIONAL ASSEMBLY 19–21 (statements of Lee Young-Soon and Woo Won-Sik).

[211] Special Act on Development of the East-West-South Coast arts. 6, 7, 8, and 12.

[212] *Id.* art. 7.1.

[213] *Id.* art. 15.

estuaries will be severely damaged. The ecological character of Upo Wetland (Ramsar Site No. 934), located upstream of the Nakdong, may also undergo significant changes. In the face of likely ecological changes to the Ramsar wetland as a result of human interference, the environmentalists argue that Korea is legally obliged to inform the Ramsar Secretariat.[214] There are three options for a member in such a case: (1) refrain from taking the planned, potentially damaging action; (2) report to the Secretariat and discuss the possibilities of listing the Ramsar wetland in question on the Montreux Record; and (3) report to the Secretariat, and if urgent national interests are involved, discuss the possibilities of eliminating or restricting the boundaries of the Ramsar wetland. In Korea's National Report for the tenth COP, however, no case of change or likely change in ecological character of Ramsar sites was reported to the Ramsar Secretariat.[215] Korea's apparent inaction is a clear breach of its Ramsar obligations as laid out in the Convention text itself.[216]

This pattern of legislation can best be described as special law politics trumping the principled rule of law. The relatively powerful executive branch has influence over both the judiciary and the legislature. While a special law in principle is legislation that overrides the basic laws already in place to meet a specific set of purposes, this instrument is being exploited to render otherwise illegal actions legal without popular support.

In such a case, transnational civil society needs to act to put pressure on the state to take lawful measures under its international obligations. Transnational legal process can be a promising tool for enforcement and compliance. This is particularly true in the Ramsar Convention context because while the norm is clearly present, states often do not openly discuss another state's violations for reasons of *realpolitik*. The future success of Ramsar lies in its capability to influence political outcomes within individual member states, as well as accommodating transnational legal dialogue among them.[217] This is particularly true in Korea, where politics occupy higher ground than the rule of law. Through transnational legal interactions, domestic decisions will become increasingly informed by an overarching moral concern for the global environment.

CONCLUDING REMARKS

Korea's intertidal flats are globally significant, yet are the most threatened habitat in the country. Korean coastal wetlands are critically important for migratory shorebirds, which presently face steep declines in population. This

[214] Ramsar Convention, *supra* note 11, art. 3.2.

[215] REPUBLIC OF KOREA, NATIONAL REPORT ON THE IMPLEMENTATION OF THE RAMSAR CONVENTION ON WETLANDS (2008).

[216] Ramsar Convention, *supra* note 11, arts. 3 and 4.

[217] *See* Anne-Marie Slaughter & William Burke-White, *The Future of International Law is Domestic (or, The European Way of Law)*, 47 HARV. INT'L L.J. 327 (2006).

is one of many reasons why Korean environmental laws and policies have a global impact. This Article has reviewed Korean laws in light of the continuing reclamation of coastal wetlands since the country's accession to the Ramsar Convention in 1997.

The analysis suggests that there is still a substantial gap between international obligations and Korean domestic law. The post-Ramsar legal developments in the country fall short of meeting the Ramsar obligations and have more or less remained at the textual level. In particular, Korea still needs to "protect beyond the protected" by implementing the wise use concept within the context of sustainable development.

The WCA may be considered conspicuous given the fact that most countries, including leading wetlands conservation countries, do not have legislation or policies that exist specifically for the protection of wetlands.[218] One further wonders whether the WCA has been an effective or even a necessary component of the coastal wetlands conservation regime. In fact, it is arguable that the WCA has been detrimental to conservation since it permits the illusion that problems are being solved when in fact they are not. For instance, abolishing the PWRA would have had a far more positive effect on coastal wetlands than the enactment of the WCA. Korea's approach, in this sense, could be described as a systematic disguise of problems by means of legislating empty laws.

What is particularly problematic is the fact that the WCA has no direct regulatory influence over non-protected wetlands, incompetent institutional measures to conserve the protected wetlands from development pressure, and insufficient legal means to halt, review, or revoke those areas already approved for reclamation projects. Additionally, the narrow definition of wetlands, the lack of recognition and application of the precautionary principle in decision-making processes, and the weak EIA regime contribute to the problem posed by the WCA.

What can we do to improve the coastal governance system in Korea? Environmental legislation alone has not solved and will not solve the complex and deep-seated problems in Korea. In fact, the country may have already adopted too many laws. The adverse consequence of having too many laws has led to confusion regarding the roles and responsibilities of the numerous enforcement bodies. In addition, the WCA was enacted without appropriate integration into a wider legal and policy framework. Environmental law in Korea is a fragmented collection of purpose-specific statutes. It is imperative to move away from the current piecemeal and sectional approach to a holistic and integrated approach.[219]

Korea is in need of legal and institutional reform that would tackle the root causes of coastal destruction and the flawed governance system. The government, legislature, and judiciary need to make a concerted effort to accept the wise use norm and prioritize protection of coastal wetlands. However, the state and business industries are working hand-in-hand to the

[218] These countries include Australia, Denmark, Germany, and the Netherlands.

[219] A model example is the Resource Management Act 1991 (N.Z.).

exclusion of the public, exploiting public-owned properties with a short-sighted vision of economic growth and profit. Due to the lack of political will, the existing legislative and policy framework remains rhetorical and fails to reach its full potential. With the judiciary remaining reluctant to enforce the international and national environmental obligations against the government, the efforts to prevent further coastal destruction have been more of a bottom-up social political struggle than a legal question.

The emphasis should be on the internalization of the wise use norm into the domestic social value system, which would in turn influence domestic politics and ultimately reshape the law. For this to take place, the critical role of intermediary actors in mediating between global and local stakeholders should be noted.[220] For the Ramsar Convention to work more effectively, it is crucial that we gain a better understanding of how international environmental law works in practice through the work of intermediary actors.[221] This is an issue for future researchers wishing to make the Ramsar Convention more effective in the absence of truly binding international environmental law.

[220] *See* Sally E. Merry, *Transnational Human Rights and Local Activism: Mapping the Middle*, 108 AM. ANTHROPOLOGIST 38 (2006); Sally E. Merry, *Anthropology and International Law*, 35 ANN. REV. ANTHROPOLOGY 99 (2006); SALLY E. MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE (2005).

[221] *See* Jonathan Verschuuren, *The Case of Transboundary Wetlands under the Ramsar Convention: Keep the Lawyers Out!*, 19 COLO. J. INT'L ENVTL. L. & POL'Y 49 (2008).