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Development of Environmental Law and Policy in Asia Concerning Environment Impact Assessment

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1. BASIC LEGAL BACKGROUND OF ASIAN LAW

It is quite important to understand the basic legal background of Asian laws before describing the development of environmental law in the Asian area. It is impossible to deny the prevalence of European law and legal influences on Asian nations formerly under long periods of colonial rule. Various European legal systems — Spanish, Dutch, British, French and later American — prevailed in Asia for almost three centuries.

In addition to these Western legal concepts, traditions based on legal notions or values should not be ignored in describing Asian law. These customs play substantial roles in communities or societies in Asia owing to their sociological appropriateness and thus necessity.

One good example is Japan. Despite having adopted Prussian Constitutional concepts in enacting the Constitution of the Great Empire of Japan in 1890, and French and German concepts for our substantive laws such as the Civil Code, the Criminal Code, the Code of Civil Procedure, the Code of Criminal Procedure, the Commercial Code, and the laws on Administration, we still retain some traditional legal concepts, such as the upholding of the traditional family system within the Civil Code, and arbitration, mediation, compromise, and conciliation within the Code of Civil Procedure and the Labor Union Law. These examples show that traditional values in Japanese law can still be seen in modern legal systems.

In addition to such traditional values, new concepts have also been created, such as *gyoseishido* in the field of administrative law, meaning a substantial enforcement of views by administrative authorities. This very Japanese way of enforcing administration works quite well together with notions of the rule of law or administration by law which were brought from England or Europe and introduced into Japanese law, though procedural requirements have been imposed on the enforcement of the administration's will by the Administrative Procedure Law of 1994.

Each nation in Asia has numerous similar examples of the combination of traditional values with Western influenced legal concepts.

In addition to these traditional and Western concepts, Eastern democratic values have also prevailed in China, Vietnam, and North Korea and other communist or socialist states.

Whether judged by Western standards as effective or ineffective, Eastern democracies have nonetheless been functional in these nations since World War II, with the exception of the recent collapse of the Soviet Union.

If someone were forced to describe legal structures in Asia, diversity is one word which might be used. Asia was, still is, and will continue to be diverse in languages, foods, ways of life, philosophies, religious concepts and values, social structures, and geographical conditions. All these factors are naturally reflected in legal notions and concepts, and should be so.

In spite of this diversity, which may be reflected in legal concepts, common goals for better environment should be set and achieved.

2. ECONOMIC GROWTH AND ENVIRONMENTAL PROBLEMS

2.1 Economic Development in Asia

In the last three or four decades, Asian nations have changed in various ways. A good example is economic development. Japan is not the only country to have achieved economic development so successfully. In the last two decades several Asian countries have achieved economic success to some extent, though suffering is still to be found in these societies.

2.2 Environmental Degradation in Asia

On the other hand, this economic development caused serious environmental problems in these countries. Japan is a good example, as it faced extremely serious environmental degradation not only in and around cities, but even in the countryside where, for example, people consumed mercury-poisoned fish for many years, and suffered from Minamata Disease, which cannot be cured even with the most advanced medical knowledge and technology. Numerous examples of environmental degradation can be easily cited in other Asian nations as well. Air or water pollution, traffic or noise pollution in major cities such as Bangkok, Jakarta, Manila and Tokyo are merely a few examples.

2.3 Awareness and Cooperation

Serious environmental degradation has heightened the awareness not only of government authorities, manufacturers, scientists, lawyers, economists, but also of citizens. Cooperative action among these concerned people can be seen today at various stages of development between nations, public corporations, and interdisciplinary sectors working towards common goals.

This First Asian Conference and Reunion of the Alumni of the Academy of American and International Law in Manila City is of course a good example of people striving toward common goals. Let me describe my own experience. In 1978, we organized the first Asian American Conference on Environmental Law and Policy in Sapporo, Japan, the capital of Japan's northernmost major island, Hokkaido. I still remember how hard it was to find appropriate people to invite to the Conference from Asian countries, not because of a lack of personal contacts but because there were so few experts on environmental problems at that time. I visited Manila, staying at the Manila Hotel to meet a professor of the University of

Philippines. I also visited Jakarta, Hong Kong, Singapore, Bangkok, and Malaysia to try to find people who could talk on the environmental problems of their respective countries. At present, though, I believe that each person in this room could be our guest speaker and make an excellent presentation on the environment. In the last two decades environmental problems have become urgent, and the need for solutions is quite well known to everyone.

3. THE CHANGING CHARACTER OF ENVIRONMENTAL PROBLEMS TODAY

3.1 The Character of the Past

At one time an environmental problem was thought to a matter of a legal contest or dispute between plaintiffs and defendants wherein it was asked who, or which side, was causal in the case before the court. That is a typical type of tort action, a simple legal case between two parties. The problem in court was who should take responsibility for damages in the case.

3.2 The Case of Minamata

The second stage of an environmental problem happens when no one can be clearly condemned as the causer, because much time has elapsed since the accused discharged pollution, or because of the presence of numerous potential causers, confusing causality between damage and the polluting activities under question.

This happened at Minamata Bay, Kyushu Island, where hundreds of mercury-poisoned patients brought cases against chemical and other industries without the establishment of clear causality between the industrial activity and their disease. Judges intended to settle the cases using several well-established legal devices such as (1) an expansion of the concept of joint tort action, and (2) new concepts in causality, such as epidemiological causation instead of crystal clear causality. Epidemiological causality is used in medicine to establish possible causation between numerous patients appearing in a defined area with a natural or medical phenomena occurring in the same limited area. Scientists may suggest a close relation between such phenomena and the disease from which the patients suffer.

The Court in Japan on the other hand did not adopt the most attractive legal device in such cases: the conversion of the burden of proof from the plaintiffs to the defendants¹ which an American court might have suggested for cases involving consumer protection.

3.3 No Plaintiffs, No Defendants

The third stage of environmental problems is rather complicated. We are facing new types of environmental problem where no one can be accused of causality and no one can be clearly labeled as a victim.

Let's take an example. Cars emit exhaust fumes every day as they are driven back and forth from offices, causing not only serious air pollution but global warming as well. The drivers of these cars can be considered both the "causers" of such environmental degradation, as well as the "victims" who may suffer from air pollution and global warming. No clear causation between plaintiffs and defendants can, however, be indicated in this case. This is rather characteristic of present environmental problems which prevail not only in Asia but in

the rest of the world as well. No solution can be achieved through courts or arguments between defendants and plaintiffs in this new phase of environmental problems. This is the reason why true and sincere domestic and international cooperation is required between and among countries, industries, government authorities, and other concerned people.

4. THE DEVELOPMENT OF ASIAN ENVIRONMENTAL LAW²

As to development of environmental law in Asia, we may identify several eras: (1) before and during the 1960s, (2) the 1970s, (3) the 1980s and (4) in the 1990s.

4.1 Before and During the 1960s

In Japan various environmental laws such as the *Water Contamination Prevention Law* (1959) and the *Air Pollution Prevention Law* (1962) were passed through the National Diet to prevent environmental degradation caused by the rapid expansion of industrial activity in the 1950s. *The Public Nuisance Countermeasures Basic Law* in 1969 was a fundamental act in defining seven "nuisances": air and water pollution, contamination of soil, noise, vibration, ground subsidence, and malodor. Even before the 1960s, Japan had enacted Article 709 of the Civil Code, which provides for tort action in order to settle disputes between victims and the chemical industries.

In addition, we may mention several other legislative activities in Asia in the 1960s such as the *Korean Public Nuisance Prevention Act* of 1960, and Thai legislation such as the *Cleanliness and Tidiness of the Country Act* (1960), the *Wild Animals Reservation Protection Act* (1960), the *National Park Act* (1961), the *National Reserve Forest Act* (1964) the *Minerals Act* (1967), and the *Poisonous Substances Act* (1967, amended in 1973).

Moreover, the Philippines intended to improve environmental problems with the RA 3931 (*Responsibility for Preventing and Abating Air, Water, and Other Types of Pollution to the National Pollution Control Commission*) (1960), and RA 4850 (*Laguna Lake Development Authority Act*) (1966). In addition, Malaysia, Singapore and Indonesia should be mentioned here as countries which made early efforts to protect the environment, enacting the following laws:

- (1) *The National Land Code* (1965), the *Continental Shelf Act* (1966), the *Housing Developers Act* (1966), the *Factories and Machinery Act* (1967), and the *Radioactive Substances Act* (1968) in Malaysia;
- (2) *The Environmental Public Health Act* (1968) and two other regulations on Public Health (Hawkers and Market) (1969) in Singapore; and
- (3) *The Fundamental Land Law* (1960), the *Atomic Power Act* (1964) and two pieces of legislation on forest and mining of 1967 in Indonesia.

In addition to these ASEAN nations, several examples in South Asian nations such as Bangladesh, Sri Lanka and Pakistan can be also cited, such as the *Factories Act* (1965) of Bangladesh, the *Water Resources Board* (1964), and the *River Valleys Development Board Act* (1965) in Sri Lanka.

Pakistan's legislation included Article 425 of the *Criminal Code* (1960), the *Pesticide Control Regulation of West Pakistan* (1960), the *Charcoal Control Act of West Pakistan* (1964), the *Fishery Regulation* (1964), and the *Automobile Act* (1965). In the late 1960s, we can see the *Water Supply, Sewage Disposal and Drainage Act of Lahore* (1967), the *Land Scenery Protection Act of Islamabad* (1968), the *Automobile Regulation* (1969), and the *National Disaster Prevention Saving Act* (1969) being adopted as well in Pakistan. These early efforts in the 1960s to protect the environment reflect rapid and serious environmental degradation in these countries.

4.2 In the 1970s

In the 1970s, various types of environmental laws in Asia appeared in Malaysia, Singapore, and the Philippines.

Malaysia issued the *Malaria Eradication Act* (1971), the *Protection of Wildlife Act* (1972), the *Petroleum Development Act* (1974), the *Streets, Drainage and Building Act* (1974), and the *Pesticides Act* (1974), in addition to the *Environmental Quality Act* (1974), the *Municipal and Town Boards (Amendment) Act* (1975), the *City of Kuala Lumpur (Planning) Act* (1975), and its *Regulations* (1977), and its *Rules* (1978), which covered licensing, compounding of offenses, sewage, and industrial effluents between 1978 and 1979.

Singapore adopted various environmental laws and regulations such as the *Environmental Public Health (Public Cleansing) Regulations* (1970), the *Public Utilities Act* (1970, 1972, 1974), the *Port of Singapore Amendment Act* (1971), and the *Port of Singapore Authority Act* (1971), the *Clean Air Act* (1971), the *Prevention of Pollution of the Sea Act* (1971), the *Factories Act* (1973), its *Regulation* (1974), the *Water Pollution and Drainage Act* (1975), and the *Sewage Treatment Plants Regulations* (1976). This tendency in Singapore continued into the 1980s as well.

As to development of the Philippine environmental laws in the 1970s we may count at least 17 Presidential Decrees (PD) covering such matters as the *Public Forest* (PD 331) (1973), the *Revised Forest Reform Code* (PD 705), the *Oil Pollution Operation Center* (PD 602) (1974), the *Mineral Lands and its Exploration* (PD 463), *Water Resources* (PD 1067) (1975), *Fisheries* (PD 704) (1975), *Marine Pollution* (PD 979) (1976), *Air Pollution from Motor Vehicles* (PD 1181) (1971), *Natural Resources* (PD 1198) (1977), *Environmental Policy* (PD 1151) (1977), *The Environmental Impact Statement* (PD 1586) (1978) and so forth.

4.3 In the 1980s

Indonesia is a country where most environmental legislation was adopted in the 1980s, although two acts, the *Continental Shelf Act* (1973) and the *Drainage Act* (1974), were drafted in the 1970s. Indonesia adopted the *Fundamental Environment Management Act* (1982) and nine related regulations and orders issued by the Minister of Environment between 1986 and 1988, in addition to the *Fisheries Act* (1985), the *Industries Act* (1989) and others. Hong Kong is another country where many environmental laws were drafted in the 1980s, including the *Wild Animals Protection Notice* (1980), the *Water Pollution Control Ordinance* (1980), its *Regulation* (1985), the *Waste Disposal Ordinance* (1980), the *Air Pollution Control Ordinance* (1980), the *Oil Pollution Ordinance* (1984), the *Road Traffic Ordinance* (1985), the *Fisheries Protection Ordinance* (1987), the *Noise Control*

Ordinance (1988), and the *Ozone Layer Protection Ordinance* (1989), the *Water Pollution Control Order* (1988), the *Waste Disposal Regulations* (1988), and other ordinances and regulations.

In the 1980s, Korea, China, Taiwan adopted many laws and ordinances. Korea issued the *Marine Contamination Prevention Act* (1981), the *Public Corporation for Environmental Management Act* (1983), the *Standards of Regulation for Noise* (1983), and the *Waste Disposal Management Act* (1986), China the *Ocean Environment Protection Act* (1982), the *Water Contamination Prevention Act* (1984), the *Forest Act* (1984), the *Grass Field Act* (1984), the *Fisheries Act* (1986), the *Mineral Resource Act* (1986), the *Land Management Act* (1986), the *Air Pollution Prevention Act* (1987), the *Wild Animal Protection Act* (1988), the *Water Law* (1988), the *Environmental Protection Act* (1989), the *Environmental Noise Pollution Prevention Ordinance* (1989), the *Environmental Assessment Management for Construction Act* (1989), the *Marine Environment Protection Act* (1989) and some other related regulations, and Taiwan the *Noise Control Standards* (1985), the *Industrial Waste Water Management Act* (1987), the *Water Release Standards* (1987) and the *Water Contamination Prevention Act* (1988) and more.

4.4 In the 1990s

The trend in adopting various types of environmental laws is still ongoing, in Thailand: the *Wildlife Conservation Act* (1991), the *Enhancement and Conservation of National Environmental Quality Act* (1992), the *Hazardous Substances Act* (1992), and the *Factory Act* (1992); in Singapore the *Environmental Public Health Regulations (Regulations for Control of Noise from Construction Sites)* (1990); in Indonesia the *Minister of Labor Regulations on Water Quality* (1990), *Regulations on Natural Resources and Ecological System Protection* (1990) and *Government Regulations on Rivers* (1991) and *Government Regulations on Wetland* (1990); in Korea the *Fundamental Environment Policy Act* (1990), the *Water Quality Preservation Act* (1990), the *Air Environmental Preservation Act* (1990) and others; in China the *City Planning Act* (1990) and the *Water and Land Preservation Act* (1991); in Taiwan the *Waste Disposal Act* (1990), the *Toxic Chemical Material Management Act* (1990), the *Environmental Protection Agency Organization Ordinance* (1990), and the *Water Contamination Prevention Act* (1991), and in Japan the *Fundamental Environment Act* (1993) and others.

I believe that countries where such environmental laws have not yet been adopted will adopt them sooner or later from now on. The problem is however not whether the laws can be adopted but whether they can be appropriately enforced to achieve the goals they set. It is rather easy to draft statutes. Achieving the goals contained within them is, however, entirely another story.

5. THE TRANSFER OF ENVIRONMENTAL IMPACT ASSESSMENTS TO ASIAN NATIONS

5.1 The American Experience

When discussing Environmental Impact Assessment (EIA) or Environmental Impact Statements (EIS), we should always mention the role of the National Environmental Policy Act (NEPA) of 1969 in the United States of America, which requires all federal agencies to

prepare an EIS for major actions significantly affecting the quality of the environment. This is recognized to be one of the most appropriate processes for finding better solutions to the development of the economy with the protection of environment. This American approach to addressing environmental problems is different from the Japanese way. The Japanese handling of the environment has mainly been developed based on environmental disasters involving victims of industrial activity. Cases in Japan for remedies for injuries caused by such activity forced judges and scholars to find the most appropriate legal principles and concepts to apply in order to settle these serious disputes. As stated, the expansion of joint tort action, or the demonstration of epidemiological causality between plaintiffs and defendants, were introduced to courts as a result of these efforts. Theories and principles for joint tort action brought by environmental victims have thus been developed to make it possible for scholars and lawyers to create new legal concepts in environmental law.

This approach, however, is needless to say not the best way toward future solutions for environmental problems, because no sanction is imposed on future causers. On the other hand, the American way may provide a way for possible better settlement in this field if appropriately carried out, because no permission is given to inappropriate projects that may cause damage.

5.2 Application of EIS to American Activities Abroad

The NEPA of 1969 requires that all federal agencies prepare an environmental impact statement on major actions significantly affecting the quality of human environment. In order to implement this Act, an application of it to activities in territories outside the U.S. legal jurisdiction has been broadly discussed in court, relating to the grants or loans by the U. S. agencies or funds to developing nations. Professors Matthews and Carpenter cited various examples of these cases as follows:

In 1975, the U.S. Agency for International Development (AID) was sued by a public interest group to force the preparation of EIS's on its grants and loans to other countries. As a result of this court case, USAID instituted, in June 1976, a process of environmental impact assessments on many of the projects with which it is involved.

During the following year, the intensity of the debate on the foreign extension of NEPA escalated. The U.S. Export-Import Bank was sued for non-compliance with NEPA in the matter of loan guarantees for nuclear fuel exports. The State Department was sued and in response decided to prepare an assessment concerning the furnishing of a herbicide to Mexico for spraying marijuana. The Congress of the United States became directly involved in resolving the issue. The President of the United States took a direct role in formulating guidelines for the extraterritorial extension of NEPA. These activities suggest that although other countries have the right to set their own priorities for development of their natural resources, to make their own trade-offs between short- and long-term gains, and to establish their own environmental quality standards, this does not excuse involved agencies of the U.S. Government from the responsibility of informing the other countries about risks, consequences, and external costs accompanying projects.

Early in 1978, the Council on Environmental Quality (CEQ), which reports directly to the President, circulated draft regulations on the foreign extension of NEPA, but these were not well received by all the federal agencies. The President's Counsel then asked CEQ and the Department of State to map out an acceptable

approach for consideration by the President. These deliberations led to the promulgation in January 1979 of an executive order (a statement by the President with the force of law) on reviewing environmental effects of major federal actions abroad.³

Thus the following points can be cited as particularly important in the executive order by the President:

- (a) The environment means the natural and physical environment and excludes social, economic and other environments.
- (b) The U.S. Department of State is given the authority to coordinate all communications by agencies with foreign governments concerning environmental agreements and other arrangements in implementation of this Order.⁴

5.3 Influences and Trends in Asian Nations

This Order of the President has been considered as the most important source for environmental protection in Asia, at first influencing the nations indirectly through U.S.-related projects and later suggesting that they draft assessment legislation by themselves, as Professors Matthews and Carpenter pointed out in 1981:

The promulgation and implementation of this executive order involves the United States much more directly in many societal and political processes in other countries than has been the case in the past. In many of those countries, particularly in Asia, there are also emerging pressures and initiatives in the environmental area. If these converging interests are coordinated sensitively and with diplomacy, they can be mutually supportive and result in important advances in resource and environmental management and in a new type of international partnership in the development process. If handled poorly, they could result in actions and procedures that are detrimental to sound environmental planning and to good relations.

The new area with this potential for tension or partnership is related to a broad set of activities that comprise "natural resource and environmental assessment" — the continuing process of acquiring, analyzing, understanding, interpreting, and transferring information about ecosystems as they are related to development projects. In the countries of Asia and in international and U.S. institutions that deal with them, there is a growing receptivity for environmental assessment as a useful, constructive tool for managing development.

Developing countries are experimenting with new assessment activities with a mixture of hope that they will benefit development and suspicion that they will retard growth projects. Developed countries, and particularly the United States, are urging Third World countries to incorporate natural resource and environmental assessment into their planning in order to obtain optimum and sustained benefits from their resource base and to avoid costly and even disastrous consequences in the future. In some cases, institutions dominated by industrialized countries have taken the responsibility for conducting assessments on projects supported in developing countries. This is being done with an often disconcerting blend of management concern, missionary zeal, skepticism, and reluctance. Even some multinational corporations are encouraging better environmental assessment and decision making in

developing countries, partially to avoid later problems caused by a shift in ground rules when public concern ultimately increases.

Some of the recent developments in this direction in Asian countries include the following:

1. Japan has taken major steps in understanding, monitoring, and ameliorating a broad range of environmental problems through extensive legislative and institutional initiatives. The Japanese law that provides compensation to victims of pollution is unique and may serve as an example to other nations as an innovative instrument for dealing equitably with this difficult problems.
2. A new Ministry of State for Development Supervision and Environment has been created in Indonesia.
3. In the Philippines, several agencies including the newly created national Environmental Protection Council have been combined in a new Ministry of Human Settlements.
4. Legislation in Thailand has given the National Environmental Board far-reaching powers.
5. Malaysia is beginning to implement the Environmental Assessment Policy of its Third Malaysian Plan.
6. There is a growing governmental commitment in South Korea to rectify some of the adverse effects of rapid industrialization.
7. ESCAP (Economic and Social Commission of Asia and the Pacific) and UNEP (United Nations Environment Program) are planning to create regional capability for environmental management.

These developments indicate that the value of environmental analysis and assessment in setting policies for the wise use of resources and environmental carrying capacity to meet human needs is being recognized. However, this acceptance is at critical stage. The experiences, whether good or bad, with this relatively new approach over the next few years may well determine the long-term pattern of acceptance and implementation in most countries. Any misunderstandings or tensions introduced by the action of other countries, directly or through multinational institutions, could prematurely restrict the full potential of environmental assessment in the development process.⁵

5.4 Asian EIS Cases and Objects of EIS

Several pieces of legislation influenced by the United States experience with EIS can be seen in countries such as:

- a) Malaysia (by the *Environmental Quality Act* of 1974 amended in 1985, the *Environmental Quality Order* of 1987);
- b) The Philippines (by Article 4 of the PD 1151 of 1977);
- c) Thailand [by Articles 47 to 49 of the *Improvement and Conservation of National Environmental Quality Act* of 1975 (amended in 1978 and 1992)];
- d) Indonesia [by Article 16 of the *Fundamental Act for Environment Management* of 1982 and the *Government Rule No. 29 (PP 29)* of 1986];

- e) Taiwan [the *Enforcement Act for Environmental Impact Statement* of (1985, 1991)];
- f) China [the *Environmental Protection Act* of 1989 and the *Environmental Assessment Management for Construction Act* (1989)];
- g) India [by Article 3, Sections 1, 2 of the *Environment Protection Act* of 1986 and Article 5, Section 3 (a) of its Rule of 1986];
- h) Korea (by the *Fundamental Environmental Policy Act* of 1990); and
- i) Hong Kong (by the *Advice Note* 2 of 1993 and the *Lands and Works Branch Technical Circular* No. 9 of 1988).

Objects of EIS in Asia varies from country to country depending upon their own social and economic conditions. EIS in Malaysia covers 19 sectors such as agriculture, airports, sewerage, reclamation, fisheries, forests, power stations, housing construction, ports and harbors, mining, railroad construction, water resources, and so forth as indicated by Article 34 A of the *Environmental Quality Act* of 1974. Thailand provides for 19 kinds of projects such as dams, reservoirs, irrigation, airports, resort facilities, roads, mining, industrial complexes, harbors, power stations, and industrial activities including petrochemicals, refineries and natural gas; India 12 categories such as irrigation, river valleys, power stations, mining, industries, harbors, residential areas, resort-tourist development, coastal development, and regional development; Indonesia provides for not only geographical or natural degradation but for social and cultural environment, as well as harm to animals and plants; Sri Lanka requires EIS for all projects by orders previously indicated.

5.5 The Case of Malaysia as an Example

Let us take the EIS procedure of Malaysia as an example as it was enacted in 1974, the earliest in Asia.

The procedure for EIA in Malaysia starts with submission of the EIA report to the Minister of Science, Technology and Environment. If the report of EIA is refused, it is then brought to the Review Panel, an independent board, to review the detailed assessment report. Since this system was introduced in 1988, 334 reports of EIA have been submitted. Out of these, 174 projects were carried out according to EIS procedure by 1991; 22 of these projects were related to housing construction, 22 projects to industry, 38 projects to infrastructure, and 34 were resort facilities.

The EIS of Malaysia does not require any special negotiations with local governments concerning the project, while the Philippines requires negotiations with international organizations. The EIS of Malaysia does not require re-evaluation procedures afterwards, while in some other countries EIS requires an Environment Management Plan or Report (Indonesia, 1982), Environmental Monitoring (Thailand, 1975, the Philippines, 1977), or a Report on Facilities for Environmental Protection (China, 1989).

5.6 The Case of the Philippines

The Philippines has issued a fundamental policy on the environment with PD 1151 of 1977. Article 4 requires government bodies, functionaries, and private companies promoting projects to prepare an Environment Impact Statement, and to submit it to the Department of Environment and Natural Resources (DENR). The scope of the Environment Impact Statement in PD 1151 covers nine kinds of activities such as non-ferrous metals industries,

mineral industries, oil, petrochemical industries, mining, pulp-paper industries, agriculture, urban-development projects, dam-reservoirs and so forth. A project reviewed by the Reviewing Commission of EIS of the Environmental Management Bureau (EMB) is expected to provide concerned communities with at least four sorts of opportunities such as (1) an increase in local employment opportunity, (2) increase in local tax income, (3) promotion of additional activities leading to the growth of the local economy, and (4) formation of new facilities or services which afford local people a more pleasant life.

5.7 The Case of Japan

In 1981, Professor Ichiro Kato clearly indicated the necessity of environmental assessment in Japan, as follows:

The Japanese Government has failed to present a bill for environmental assessment to the Diet three times in three years so far. The Environment Agency prepared a draft law for environmental assessment, but other ministries, especially the Ministry of International Trade and Industry (MITI), the Ministry of Construction, and the Ministry of Transport strongly opposed it. The Environment Agency could not reach agreement in its negotiation with other ministries. The Environment Agency has no authority to present a bill to the Diet without consent of other ministries.

The reasons for opposition or objection of such ministries are various. First, they point out that scientific techniques of environmental assessment are not fully developed or established, and to make environmental assessment mandatory by law is not adequate at this stage. This argument will be easily rebutted by responding that we should use feasible techniques at present and that we have a good precedent in the United States. If we wait for the development of such scientific techniques, we can never establish a law.

The second argument of the opposition is that environmental assessment is time- and money-consuming, and delays development projects. However, environmental assessment is necessary in order to advance development projects, even if it is time- and money-consuming, because citizens' movements in Japan for protecting the environment and against development are becoming stronger. We therefore need a device to make development planning reasonable and conscious of the environment as well as to persuade concerned citizens.

Third, the opposition probably fears that environmental assessment would stimulate citizen's movements. For example, if the law makes a public hearing mandatory, radicals opposing development may try to block it with violence and to destroy the whole procedure. At any rate, environmental assessment may cause trouble, stimulate lawsuits, and stop or unreasonably delay development projects. In my opinion, such considerations would be the real reason for opposition.

Therefore, our problem is not whether environmental assessment is necessary or not, but what sort of environmental assessment is needed and how to execute it. We certainly need environmental assessment for better planning.⁶

Since this statement was published in 1981, Japan has not yet adopted EIA legislation, although more than nine efforts have been made in vain to submit a draft to the Diet. However, a cabinet decision was made requiring EIS procedures for government-related projects, and many local governments at prefectural and designated city levels required EIA in

their ordinances of the 1980s. Flexibility in local government plays an important role in requiring the EIA, in contrast to national government

6. CONCLUSION

It is not appropriate to draw final conclusions on EIA in Asia at this moment because the Environmental Impact Assessment system has just started in most Asian nations and is now midway towards realization with various appropriate modifications and efforts being made by not only governmental agencies but in the private sector, including entrepreneurs and developers of industrial, economic, or service activities.

The following are some comments appropriate as tentative conclusions:

- (1) In order to achieve the goals of the Environmental Impact Assessment systems, it is important that we satisfactorily prepare relevant and necessary laws, regulations, or orders relating to standards to be satisfied by an EIA or EIS. The EIA system itself cannot work well without related environmental laws as applicable standards, for example, legislation for air or water pollution prevention.
- (2) Appropriate enforcement processes should be established in environmental laws. As previously pointed out, such processes are the key element for achieving the goals of environmental laws. This can be applicable to the EIA system as well.
- (3) Processes for freedom of access to relevant environmental data regarding projects should be adopted in the EIA system, along with the clear and advance announcement of legal settlement measures if access to the EIA is denied.
- (4) Environmental education for persons engaged in the EIA process should be appropriately and satisfactorily given by concerned organizations and authorities.
- (5) Exchange of information relating to the scope of the EIA, procedures used, follow-up requirements, and the reviewing process in case of denial of the EIA for specified projects should be set up by the government authorities concerned.

With the establishment and realization of the EIA system here in Asia there is hope that our environment can be better managed in the future. However, such ideal environmental law would still remain confined to environmental problems on a national level. Equally crucial is the development of a Pan-Asian environmental legal consciousness to deal with global environmental crises in the face of booming Asian development and conflicting claims to natural resources.

Notes

1. Julian Gresser, Koichiro Fujikura and Akio Morishima, *Environmental Law in Japan*, The MIT Press, 1981, p. 42.
2. The following are based on information stated in the *The Environmental Law of Developing Countries*, ed. by Yoshihiro Nomura & Naoyuki Sakumoto, Institute of Developing Economies, 1994.
3. William H. Matthews & Richard A. Carpenter, "The Growing International Impact Assessments," in *Environmental Law and Policy in the Pacific Basin Area*, ed. by I. Kato, N.

Kumamoto, & W. H. Matthews, University of Tokyo Press, 1981, pp. 159-160.

4. *Ibid.*, p. 160.

5. *Ibid.*, pp. 161-162.

6. Ichiro Kato, Environmental Assessment in Japan, in *Environmental Law and Policy in the Pacific Basin Area*, ed. by I. Kato, N. Kumamoto & W. H. Matthews, University of Tokyo Press, 1981, pp. 153-154.