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History, Structure and Characteristics of Japan's Environment Law

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I. History

We will first take a brief look at the history of environmental law in Japan. For details, please refer to my book, *Laws on Pollution and Environment* (The Nihon Keizai Shimbun Sha, 1981).

1. Origin of Pollution Problems in Japan

Pollution problems in Japan date back to the mining-related damage prevalent across the country in the last part of the Meiji era. Typical of such pollution and damage from mining operations was the Ashio copper mine case of the 1890s.

Industrial development in Japan then gave rise to pollution by manufacturing industries. The Osaka alkali case occurred against that background (a Supreme Court ruling on December 22, 1916).

Construction of railroads was promoted as part of national policy. In the "Shingen-ko Hatakakematsu case" involving the withering away of a pine tree with a long history due to smoke and soot from locomotive engines, the March 3, 1919, decision by the Supreme Court upheld the tree owner's claim for damages.

2. Postwar Pollution and Ordinances

With the reconstruction of various industries after World War II, pollution problems spread in various parts of Japan. Since in those days pollution, such as smoke and soot caused by the use of coal and water pollution stemming from the discharge of industrial waste water from factories, was limited to local areas or regions, pollution controls were imposed mainly through ordinances issued by local governments. The Tokyo Metropolitan Government's 1949 ordinance to prevent and control factory pollution is a good example.

3. Shift from Ordinances to Laws

In the latter half of the 1950s, heavy and chemical industrial complexes were constructed along Tokyo Bay, Ise Bay and other coastal areas, and with the shift of fuels and materials from coal to oil, pollution problems began to affect wider areas beyond the jurisdiction of a single local government. Angry fishermen and farmers forced their way into factories in protest, making pollution an acute social problem for the whole nation. As a result,

the national government enacted separate laws to control ground subsidence, water pollution and air pollution.

4. Shift from Separate Laws to Basic Framework Law

The increase in industrial pollution seriously damaged the health of affected residents. The government's approach of enacting individual laws to deal with each pollution problem could not keep up with the spread of more serious problems. In the face of mounting calls for the establishment of a philosophy to prevent pollution, the government enacted the Basic Law for Environmental Pollution Control in 1967.

5. "Pollution Diet" in 1970

With the filing of lawsuits involving the Yokkaichi air pollution problem, Minamata disease (in Kumamoto and Niigata Prefectures), itai-itai disease, and the frequent occurrence of new types of pollution problems, such as cadmium-contaminated rice in Toyama Prefecture, pollution problems became a major issue of national concern in 1970. The 64th extraordinary session of the Diet (parliament), convened in December 1970, featured intense debate concerning revision of pollution-related laws. During the parliamentary session, six new laws were enacted and eight existing laws were revised.

6. Court Rulings on Four Major Pollution Lawsuits

With the June 30, 1971, first-trial decision on itai-itai disease as a start, court rulings were handed down one after another in the four major pollution suits in a period until March 1973. These court decisions not only made a great contribution to civil law interpretation in such areas as fault, causal relationship and calculation of damages, but also had a major impact on legislation concerning the relief of pollution victims and the location of industrial facilities.

7. From Pollution to Environmental Protection

The Environment Agency was established on July 1, 1971. In June 1972, the United Nations Conference on the Human Environment was held in Stockholm. In Japan's academic circles, the Japan Center for Human Environmental Problems was inaugurated in 1973.

Against this background, the main objective of pollution-related legislation underwent a major shift from control of pollution to preservation of the environment, and Japan enacted the Nature Conservation Law in 1972. It was around this time that more attention began to be paid to environmental problems in developing countries, along with better recognition of the relationship between protection of the environment and North-South problems.

8. Review of Japanese Policy by OECD Environment Committee

The Environment Committee of the Organization for Economic Cooperation and Development conducted a review of Japan's environment policy between 1976 and 1977. The OECD review was a major event marking the beginning of Japan's history related to pollution, in that it brought to international attention the measures Japan had taken to cope with its pollution problems.

9. Japan's Economic Growth and Global Environment

In the mid-1970s, as the Japanese economy grew strong enough to have a major impact on the entire world, there was increasing recognition that imports of resources like timber,

shrimp and cotton are closely connected with the environment of exporting countries, and that imports of ivory, furs, and raw materials for Chinese medicine can result in the extinction of species of wildlife. With more people becoming aware of international environmental problems, the impact Japan's official development assistance (ODA) on the environment of recipient countries also became an issue.

10. Global Environmental Problems

In the latter half of the 1980s, there was intense discussion regarding the warming of the Earth (the greenhouse effect) and destruction of the ozone layer. Japan reacted promptly to these issues and enacted the Law Concerning the Protection of the Ozone Layer through the Control of Specified Substances and Other Measures in May 1988, aimed at smooth implementation at home of the Vienna Convention for the Protection of the Ozone Layer (effectuated on September 22, 1988) and the Montreal Protocol on Substances that Deplete the Ozone Layer (effectuated on January 1, 1989). This was the first domestic law of this type adopted by any other countries in the world.

In 1989, there were three major international conferences on the world's environmental problems' beginning with one in London in March on the protection of the ozone layer, one in The Hague, also in March, on the warming of the atmosphere, and a third in Tokyo in September on preservation of the global environment. These issues were on the agenda of the Paris Summit meeting of the Group of Seven major industrial countries in July 1989. A string of these international meetings also dealt with the political issue of which country or countries would take leadership role in preserving the environment.

11. UNCED and Basic Environment Law

The United Nations Conference on Environment and Development took place in Rio de Janeiro, Brazil, in June 1992. The conference greatly affected the drafting of new environmental legislation in Japan. In July 1992, the Central Council for Environmental Pollution Control and the Nature Conservation Council started deliberations on the basic legal framework for the preservation of the environment. Based on recommendations of the councils adopted in October 1992, the government started formulating a bill for the Basic Environment Law and it finaly passed the Diet on the 12nd of November in 1993.

II. Structure and Characteristics of Japan's Environment Law

1. Systemic Characteristics of Japan's Environment Law

a. National laws

With the new Basic Environment Law at its core, Japan's environment policy structure consists of two systemic sections. The Basic Environment Law sets out the basic principles of the nation in terms of its approach to environmental problems. Global environmental problems, affecting all parts of the world and future generations, are the common concern of all mankind. The Basic Environment Law, aiming to build a sustainable global society, presented a new approach, ahead of any other country, in line with the achievements of the Earth Summit.

Under the Basic Environment Law are one section dealing with pollution (contamination) and another with the natural environment. The former mainly deals with pollution-prevention programs and controls, settlement of pollution-related disputes and the relief of

pollution sufferers, while the latter chiefly concerns preservation of the natural environment, utilization and protection of natural parks and protection of wildlife.

Formerly, the Basic Law for Environmental Pollution Control provided a legal framework for dealing with pollution issues, but it was abolished upon the enactment of the new Basic Environment Law. As for the Nature Conservation Law, the portion concerning philosophical ideas was absorbed by the Basic Law, but the law itself still exists.

Over a period of many years, Japan did not have a law that stipulated basic matters concerning environmental policy. This was because Japan started enacting environment-related laws in the latter half of the 1960s, mainly as *ex post facto* measures to tackle pollution problems, while laws concerning preservation of the natural environment came in the second half of the 1970s. Academics and citizens had long called for the establishment of a basic environment law to integrate the two sections, and this was finally accomplished in 1993.

b. Ordinances and guidelines of local governments

In Japan, local governments have a large role to play in coping with both pollution problems and conservation of the natural environment. Local governments formulated various ordinances to deal with postwar pollution problems, to be followed by enactment of related national laws. Also, local governments have been undertaking efforts to preserve the environment in their respective regions through administrative guidance using guidelines and environmental-pollution prevention agreements. Some (Hokkaido, Tokyo, Kanagawa Prefecture and Kawasaki City) adopted a system of environmental-impact assessment through ordinances, while such efforts failed at the national level. Many local governments have their own local environment-management programs. The large experimental and supplementary role played by local governments is an outstanding characteristic of Japan's environmental policy.

2. Characteristics of Pollution Control Laws

(1) OECD report of 1977

Japan's pollution-control laws have many distinct characteristics compared with those in other countries. The OECD's 1977 report, "Japan's Environment Policy," accurately described their most salient general characteristics, saying that there are four points to be noted about Japan's approach toward pollution prevention.

a. Non-economic approach

Japan's environmental policy has been determined on the basis of "feelings" without taking into account the balance between environmental costs and economic benefits. The Basic Law for Environmental Pollution Control, enacted in 1967, contained a clause stipulating the need to harmonize pollution control with wholesome development of the economy, but the clause was deleted when the law was revised in 1970. Following a series of incidents involving serious damage to public health from industrial pollution, such as Minamata disease, many Japanese citizens began to regard industry as the villain, and thus Japan's approach to pollution problems came to be based on the idea of punishing polluters.

b. Measures focusing on specific pollution problems

Japan's pollution-control measures focused on specific pollutants such as mercury, cadmium, PCB, SO_2 and NOx, setting very stringent environmental-quality and emission standards (particularly for automobiles).

In contrast, measures against other types of pollution, such as noise, water and seawater contamination by organic substances, were relatively inadequate. The issue of amenities was also largely neglected.

c. Characteristics of policy measures adopted for pollution control

Japan preferred direct administrative regulations to indirect economic incentives. Japan has only two pollution levies in the category of economic incentives: a charge according to the amount of SO_2 emissions and a special landing fee imposed to compensate for aircraft noise.

Japan's administrative organizations, backed by their regulatory authority, directly intervene in corporate affairs, and often tell companies what to do through administrative guidance. The dominant principle here is that of a planned economy, not of a market economy.

d. Roles of local governments

The OECD report underscored such major role as we discussed in 1.-b, played by local governments in pollution control in Japan. Specifically, the report noted that local governments preceded the national government in implementing pollution control measures, compensation for pollution damage and a system for areawide total pollutant-load controls; that many local governments have set emission standards that are more stringent than national standards; that administrative guidance has been conducted by local governments; and that local governments have a remarkable track record of monitoring air pollution.

These findings contained in the OECD report accurately describe the characteristics of Japan's pollution control measures. Japan's fight against pollution began with unfortunate incidents of serious damage to human health. From there, both the public and private sectors, focusing on questions of right and wrong and applying the code of ethics, frantically and strenuously tried to prevent further pollution, resulting in achievements of which Japan can be proud. Without much heed being paid to the economic consequences, Japanese companies were not allowed to be content with existing technologies and had to scramble to develop new pollution-prevention measures. For example, in the area of auto-exhaust gas, a major source of pollution, Japanese automakers one after another succeeded in developing the first examples of such technologies in the world.

It should be noted that this was possible only under Japan's social and technological conditions. The diligence of the Japanese people, clearly-defined objectives, united efforts aimed at realizing those objectives and concentrated investment in pollution prevention all combined to make Japan successful in pollution control.

(2) Characteristics of particular areas

In this section, the characteristics of each specific area of pollution laws are discussed. Japan has many legal provisions not found in other countries, which is quite natural, since Japan experienced an unprecedented level of pollution-related health damage. Detailed study and analysis of these particular aspects should prove beneficial to other countries, representing a valuable contribution to the international community.

a. No-fault responsibility in pollution

Regarding mining damage, only after a long history of health damage including incidents such as the Ashio copper-mine pollution case, the old Mines Law was revised in 1939 to stipulate the principle of no-fault responsibility. This principle of absolute responsibility

was applied in the court rulings on the itai-itai disease case (first-trial ruling by the Toyama District Court on June 30, 1971, and second-trial ruling by the Kanazawa branch of the Nagoya High Court on August 9, 1972).

As for air and water pollution, a legal framework for no-fault responsibility was established, though limited to health damage, through revisions of the Air Pollution Control Law and the Water Pollution Control Law in June 1972, again only after the dreadful experience with the Yokkaichi asthma case and Minamata disease. But legal opinion is still divided concerning the responsibility for proving causal relationships and responsibility for joint illegal acts. The question can only be settled after a sufficient number of judicial precedents are set.

b. Pollution-related health damage compensation system

The plaintiffs won a full victory in the Yokkaichi asthma suit (decision by the Yokkaichi branch of the Tsu District Court on July 24, 1972), dealing a major blow to the business community. The Minamata disease suits in Kumamoto and Niigata Prefectures also ended with court rulings fully in favor of the plaintiffs. Under these circumstances, a study on a damage-compensation system was launched in 1972, and on the basis of recommendations issued by the Central Council for Environmental Pollution Control in April 1973, the government enacted the Pollution-Related Health Damage Compensation Law in September 1973. The law, which is unique in the world, interprets causal relationship in a very businesslike manner, based on civil-law responsibility. The law also has been given high marks for its provision whereby penalty charges can be imposed on polluters.

But different kinds of problems arise after many years. Businesses began to complain that despite corporate efforts that considerably reduced SO_2 emissions in Class I areas, the number of pollution-related disease patients had not declined and the financial burden on companies had not lessened. This problem was solved through legal revisions in September 1987 which abolished the designation of Class I areas.

As for Minamata disease, however, certification as a sufferer of the disease under the Compensation Law automatically leads to compensation under agreements between the parties concerned. This brought to the fore the problem of how to deal with the increasing number of applicants for certification who are marginal cases. In addition, Chisso Co., the polluter, faces the risk of going bankrupt under the weight of the heavy compensation burden, raising the question of whether continuing financial support to the company with funds raised through placement of Kumamoto Prefectural Government bonds will be adequate.

c. Farmland contamination and restoration of original condition

A system similar to that for restoration projects in the mining-damage sector was introduced into the area of pollution. The Agricultural Land Soil Pollution Prevention Law of 1970 aims to solve the problem of contamination of farmland by heavy metals by undertaking projects to add fertile soil in designated polluted areas. Under the Environmental Pollution Control Expense Sharing Law (or Law Concerning Entrepreneurs' Bearing of the Cost of Public Pollution Control Works), the cost of such projects can be passed on to the companies that caused the pollution. The United States later followed with a similar Super Fund Law, but Japan was able to introduce such a system earlier, learning from its experience with mining-damage restoration projects. Japan must undertake agriculture in a relatively small land area, and this specific, local factor made it possible for Japan's unique compensation system to be enacted smoothly. However, systematic responses are rather slow in coming regarding contamination of soil and groundwater in urban areas (by trichloroethylene, tetrachloroethylen and trichloroethane). In particular, there is an increas-

ing need for a system of restoring original soil and groundwater conditions, with polluters footing the bill.

d. Pollution disputes settlement system

The Law Concerning the Settlement of Environmental Pollution Disputes established a framework for settling pollution-related disputes through out-of-court mediation, arbitration, intercession and court rulings. At the national level, there is the Environmental Pollution Disputes Coordination Committee, while each prefecture has an Environmental Pollution Screening Committee. An administrative dispute-settlement mechanism was also created, as lawsuits or mediation by the courts are usually time-consuming and costly. The system was at first uniquely Japanese, but South Korea later introduced a similar system.

Despite a slow start, Japan's pollution dispute-settlement system has been used fairly frequently in recent years, and has begun to show characteristics not found in the court system. Let us look at the studded tire dust damage case, which came to a conclusion in 1988. In this case, a group of 62 lawyers in Nagano Prefecture at first sought mediation by the Nagano Prefectural Environmental Pollution Screening Committee in a dispute with seven tire manufacturers. In the course of the proceedings, the lawyers' group insisted on a halt in production of studded tires, and the case was transferred to the Environmental Pollution Disputes Coordination Committee at the national level. The case was later joined by 207 lawyers and other people from the six prefectures of the Tohoku region and Hokkaido. The mediation accord reached in June 1988 required the tire manufacturers to stop production of studded tires at the end of December 1990 and halt sales of studded tires at the end of March 1991. In June 1990, the Law Concerning Prevention of Generation of Dust from Studded Tires was enacted by the Diet, promulgated and enforced.

A settlement of the dispute that included enactment of a regulatory law could not have been expected from regular court proceedings.

e. Environmental pollution prevention accords

In December 1964, the city of Yokohama concluded an environmental pollution prevention agreement with Electric Power Development Co. Based on this initial precedent, many pollution-prevention agreements were concluded between local governments and companies. Some of them involve local residents as parties concerned or observers. Many accords have been concluded between local residents and companies. As of the end of September 1988, pollution-prevention agreements in force numbered some 29,700, with about 2,200 accords concluded between October 1987 and September 1988.

Environmental pollution-prevention agreements have become the third established method of controlling pollution following laws and ordinances. In formal terms they are contracts, but can be considered as *de facto* administrative guidance. These accords have taken firm root as a legal method unique to Japan.

f. Pollution prevention programs

Japanese are good at formulating a program and making steady efforts to achieve goals set by that program. Environmental pollution-prevention programs are an example of applying this method to pollution control. Under Article 19 of the Basic Law for Environmental Pollution Control, pollution prevention programs, at the direction of the Prime Minister, are formulated by the governors of prefectures containing areas with serious pollution problems. Programs must be approved by the Prime Minister. Between December 1970 and January

1977, such programs were formulated for almost all of Japan's big industrial cities and major urban areas. After 1977, programs whose terms had expired were reviewed. According to the Environment Agency's *1992 White Paper on the Environment*, pollution prevention programs are still in force in 36 areas across the country. Under such programs, local governments undertake pollution-prevention projects, including the improvement of sewage systems, building of green buffer zones and construction of waste-disposal facilities. To promote these projects, the national government provide special fiscal measures under the Law for Special Fiscal Measures for the Prevention of Pollution.

However, even with these programs, it is still difficult to achieve environmental quality standards for NO_2, photochemical oxidants and suspended particulate matter, and the rate of achievement is marking time for BOD and COD in rivers and lakes. The only exception is SO_2, with the environmental quality standard having been met at most monitoring stations.

g. Total quantity control

The areawide total pollutant load-control system for SOx introduced under an ordinance of the Kanagawa prefectural government in 1971 was adopted by the national government three years later. The OECD report rated the Japanese concept of total quantity control highly, saying that it not only introduced a new kind of environmental-policy objective but also made a great contribution to education on environmental problems. The method of total quantity control was adopted for the reduction of nitrogen oxides emitted from automobiles. In 1992, the Law for Special Measures for the Total Emission Reduction of Nitrogen Oxides from Automobiles in Specified Areas was enacted. To protect public health, the law provides for formulation of a basic policy on the total quantity of nitrogen oxides emitted from automobiles and implementation of special measures to curb the emission of nitrogen oxides from automobiles.

h. Environmental pollution prevention managers

In the eyes of Westerners, the system for environmental-pollution prevention managers may appear to be another form of direct administrative intervention in corporate affairs. The Law Concerning the Development of Organizations for Environmental Pollution Prevention at Specified Factories of 1971 required firms to clarify which section of the company has the primary responsibility for pollution prevention. The law also established a national examination system for environmental pollution-prevention managers. This may not be a large-scale scheme, but it nevertheless very important.

i. Others

The characteristics of Japan's environmental laws have been outlined. They have become part of Japan's regulatory framework on the basis of actual conditions and Japan's experience with pollution problems. Other aspects that can be pointed out include less-stringent "zoning" regulations, loose links between pollution control and city planning, and relatively few restrictions on private rights, such as licensing, because of the long-established belief in free utilization of land. In the field of judicial precedents, the competency of plaintiffs is narrowly defined in administrative litigation and the environmental rights have been denied in Japan. It should also be noted that Japan's environment law is generally flexible in interpreting causal relationships as shown by the theory of an epidemiologic causal relationship and probability.

3. Characteristics of Japan's Natural Environmrent Protection Law

(1) General characteristics

General legal characteristics of Japan's Natural Environmental polution law include the following points:

a. Inadequate legal framework for promotion of activities of Non-Governmental Organizations (NGOs)

Administrative control by the national or local governments alone is not sufficient to promote conservation of the natural environment, and citizen participation is essential. This is evident from the experience of the United States and European countries. Due to its heavy dependence on administrative control measures, however, Japan's legal mechanism for fostering NGOs and facilitating their activities is far from adequate.

First, it is hard to obtain approval for the incorporation of NGOs because of stringent qualifications. This problem is not limited to the natural environment-conservation field, and is found in other areas, from art and science to sports and community activities. The government should approve the establishment of public utility associations and foundations for the protection of wildlife, conservation of nature and other purposes with minimum qualification requirements, as well as positively supporting their activities.

Secondly, Japan's tax system does not enable NGOs to develop strong organizational bases. In the United States, NGOs dealing with environmental problems, population problems and developing countries enjoy tax privileges. For example, in the case of a foundation that provides funds to an environmental research organization, no tax is levied on the money and the contributor qualifies for a tax deduction. Australia has a similar tax system.

In Japan, a certified natural-environment corporation is accorded preferential tax treatment, but there are stringent qualifications to get that certification. To help contribute to national trust activities, donations to specified public trusts related to nature conservation are also eligible for inheritance tax breaks.

According to one school of thought, Japan's tax system is a major factor behind the destruction of the environment. Partition of inherited real estate, which often occurs due to heavy inheritance tax burdens, is seen as contributing to environmental destruction.

b. Little utilization of economic incentives

As with the case of pollution control law, Japan's dependence on administrative control measures is quite high in the area of Nature Conservation Law, with few economic incentives in force. Utilization of tax measures, as described above, falls under the category of economic incentives.

c. Involvement of many ministries, agencies

The Environment Agency has a fairly centralized administrative authority regarding pollution control law, but the centralization of administrative powers is far from sufficient in the case of environmental protection law. The Environment Agency has jurisdiction over matters related to the Natural Parks Law, the Nature Conservation Law and the Wildlife Preservation and Game Law. But other laws closely connected with protection of the natural environment are administered by other ministries. The Ministry of Agriculture, Forestry and Fisheries having jurisdiction over the Forest Law and the Fishery Law; the Construction Ministry over the River Law and the Coast Law; and the Education Ministry over the Cultural Properties Protection Law. The structural system of nature conservation law is not

as pyramidal as that of pollution control law. Attention should be given to how these problems will be improved under the new Basic Environment Law.

d. Characteristics of covered areas

Most of the areas and districts designated under the Natural Parks Law, the Nature Conservation Law and other Nature Conservation Laws are private land. In this regard, the situation in Japan is quite different from that in other industrial countries, particularly the United States, where most of national parks are publicly owned.

Moreover, awareness of ownership is very strong among Japanese people. In many European countries and the United States, even construction of a building requires approval by public officials with discretionary power.

In Japan, areas of natural vegetation (natural grassland and natural forests) cover only 19.3% of state land, with 60% of the total located in Hokkaido.

The forest-cover ratio is high at 67.5%, which surprises many international observers. There are economic reasons for this. Logging is not widely conducted, since imported lumber is cheaper. Steep slopes also make it hard to convert forestry to arable land.

e. Laws ahead of ordinances

In the case of pollution control law, local governments, not the national government, spearheaded administrative responses to postwar pollution problems in Japan by formulating pollution control ordinances. But in the case of natural environmental protection law, national laws preceded local ordinances. In recent years, many domestic laws were enacted for the implementation of international treaties.

(2) Characteristics of each law

a. Nature Conservation Law

Enacted in 1972, the law sets out the basic philosophy of conservation of the natural environment and provides for the designation of various relevant areas. But the relationship between this law and the Natural Parks Law (the original law was enacted in 1930 and the current law in 1957) is not exactly clear. According to the *1992 White Paper on the Environment*, under the Nature Conservation Law are designated five "wilderness areas" with a total of 5,631 hectares, nine "nature conservation areas" totaling 7,550 hectares, and 511 "prefectural nature conservation areas" totaling 72,432 hectares. The combined areas so designated cover only 0.23% of state land, with a very tiny portion of that designated by the national government.

The greatest significance of the law lies in the pronouncement of its philosophy and basic guidelines. Nationwide surveys conducted in designated areas provide precious data that help us understand the present state of the ecosystem.

b. Natural Parks Law

The law is designed to protect prominent natural scenic areas and promote their utilization. According to the *1992 White Paper on the Environment*, there are 28 national parks with a combined area of 2.05 million hectares, 55 quasi-national parks with 1.33 million hectares and 299 prefectural natural parks with 1.94 million hectares. Their total area of 5.33 million hectares account for 14.1% of state land.

Because many natural parks are privately owned, they are classified into various types and designated as areas where there are restrictions on certain types of activity. The national

government subsidizes the purchase of private land by prefectural governments, and to date such purchases made cover 48 plots for a total area of 5,126 hectares. It is desirable that the government subsidize land purchases by environmental organizations as well as purchases of publicly-owned land.

c. Protection of wildlife

Though Japan is a small and highly industrialized country, it is also blessed with a great variety of fauna and flora existing in complex and diverse natural conditions. For the protection and management of wild birds and animals, requisite control measures are carried out under the Wildlife Preservation and Game Law, originally enacted in 1918, and the Law for the Regulation of the Transfer of Special Birds of 1972, together with protection and propagation projects. In this area, Japan became party to the Washington Convention (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) and the Ramsar Convention (the Convention on Wetlands of International Importance Especially as Waterfowl Habitat), and also concluded various bilateral treaties, with related domestic laws formulated quickly. The Law for the Regulation of the Transfer of Endangered Species of Wild Fauna and Flora, enacted in 1987, is a domestic law aimed at implementing the terms of the Washington Convention. Despite this, foreign-affiliated environmental organizations and some other groups pointed to problems involved in the implementation of wildlife protection laws. In order to clearly define the basic thinking about the conservation of endangered species of wild fauna and flora and revamp the legal framework for their protection, the Law for the Conservation of Endangered Species of Wild Fauna and Flora was enacted in 1992. The new law, which absorbed the two aforementioned laws concerning the regulation of the transfer of special birds, is the first systematic law in Japan designed for the protection of endangered wild fauna and flora.

At present, lively debate is under way in Japan about whaling and pelagic fishing operations, which are likely to come increasingly strong international pressure.

d. Forest Law

The Forest Law has long been the basis for measures to enhance the productive capacity of forestry resources. In recent years, however, the law has come to function as a tool to promote the conservation of the natural forest environment. By utilizing the law's mechanisms, such as forest programs, the forest land development licensing system and "reserved forests," a great deal can be done to conserve Japan's greenery. The ideal of sustainable development should be first realized in this particular sector. One future task to be pursued is the integration of the idea of environmental conservation into agriculture, forestry and fisheries administration.

e. River Law

The River Law, the Town Planning and Zoning Law, the Urban Parks Law, the Urban Green Space Conservation Law and the Sewage Law all come under the jurisdiction of the Construction Ministry. These laws play a very important role in preserving the environment in Japan and creating an amenity-rich environment. Projects carried out under these laws often involve large sums of funds but produce visible results. Britain has a huge public office named Department of Environment that performs the combined responsibilities of Japan's Construction Ministry and Environment Agency. One wishes there were such a body in Japan. Even when they remain separate entities, however, similar effects can be expected if construction administration duly takes into account the need for environmental conservation.

f. Conservation of historic natural features

Also important are preservation of historical sites, scenic spots, natural monuments and historical structure groups under the Cultural Properties Protection Law, preservation of areas of historic natural features under the Law Concerning Special Measures for the Conservation of Historic Natural Features in Historic Municipalities, and preservation of sections of historic natural features under the Law for Special Measures Concerning the Conservation of Historic Natural Features and the Development of the Living Environment in Asuka Village.

These laws not only stipulate restrictions of conduct but also provide for the purchase of relevant land.

The Asuka Village Law of 1980 introduced a noteworthy new way of dealing with the important issue of how to coordinate the preservation of historic natural features with the everyday lives of local residents. To ensure greater harmony in this regard, the law stipulates that the Prime Minister formulate the Basic Policy for the Development of the Living Environment and Industrial Infrastructure in Asuka Village and then present it to the Governor of Nara Prefecture. In line with the basic policy, the Governor formulates the Program for the Development of the Living Environment and Industrial Infrastructure in Asuka Village, which is to include matters concerning the improvement of roads, rivers, sewage systems, parks, housing, educational facilities, welfare facilities, firefighting facilities, agricultural and forestry facilities. Projects undertaken by Asuka Village under the program receive special subsidies as well as special treatment in issuance of municipal bonds.

These measures taken under the Asuka Village Law are unique in the world, and this new method should be introduced into other legal systems in the future.

III. Basic Environment Law and Future Problems

The newly-enacted Basic Environment Law lies at the heart of Japan's environment law system. While taking over the whole of the Basic Law for Environmental Pollution Control and part of the Nature Conservation Law, the Basic Environment Law publicly pronounces the new philosophy concerning conservation of the environment and provides for a comprehensive framework of basic policies and measures under that guideline. The new law was conceived on the basis of the achievements at the Earth Summit (UNCED) held in June 1992. The law's significance and its characteristics are discussed in the following section.

1. Philosophy (Articles 3-5)

The Basic Environment Law is based on pursuing environmental conservation from a global point of view, as seen in the statement that the balance of the ecosystem must be sought on a global scale. The law's basic stance of seeking to protect not only the Japanese people but also all humanity from environmental destruction should be commended.

It also stipulates that not only present but also future generations should be able to inherit a wholesome and rich natural environment.

As the basic objectives of environmental administration, the new law cites the creation of a sustainable society that imposes less of a burden on the environmental and aggressive promotion of preservation of the global environment through international cooperation.

2. Responsibilities (Articles 6-9)

The new law clarifies the responsibilities of the national government, local governments, business enterprises and the public. It defines the relationship between these parties as one of cooperation, not confrontation, and thus does not stipulate the environmentl rights as some parties demanded. But it is worth noting that the law states that business enterprises have the responsibility to take necessary measures, in using of raw materials and in other areas, while bearing in mind what will happen when manufactured goods become waste.

3. Basic Policy Measures on Environmental Conservation

a. Guideline (Article 14)

The law gives the clear guideline that environmental policies and measures should cover five areas: human health, living environment, natural environment, biodiversity and rich communion between people and nature. It also stipulates that environmental policies and measures should be implemented in a comprehensive and planned manner.

b. Basic Environment Program (Article 15)

The law stipulates that the Prime Minister, on the advice of the Central Environment Council, formulates the Basic Environment Program and adopts it as a cabinet decision.

c. Environmental impact assessment

In the area of environmental impact assessment, the law provides for the central government's obligation to pay attention to that assessment (Article 19) and for promotion of environmental impact assessment by business enterprises (Article 20). But these two articles are only provisions in abstract terms. Enactment of a separate law is needed to make sure environmental impact assessments are actually conducted.

d. Economic measures

While opinion is still divided over the necessity and effectiveness of a carbon tax and other economic measures, the Environment Agency supports their introduction. The Basic Environment Law's Article 22 is a product of compromise between the pros and cons of economic measures. But the article is too long and abstract and defies easy understanding. In short, the article does little more than call for investigation and research into the effects and impact of such measures and efforts to seek the understanding and cooperation of people as required.

e. Products assessment

It is desirable that when companies manufacture, process and market goods, they assess the potential impact of the use or disposal of their products on the environment. Section 1, Article 24 of the law stipulates that the government should take the necessary measures to promote such assessment by companies of their products. Section 2 of the same article also provides for the promotion of recycling activities. These provisions drew less public attention than the articles on environmental impact assessment or the carbon tax, but are still of substantial importance, with a major bearing on the issue of waste materials disposal.

f. Support for local governments' activities

The Basic Environment Law has many articles concerning the activities of local govern-

ments. These articles make it clear that the central government respects local governments' independent initiatives and recognizes the importance of the role played by local governments.

g. Support for activities of private-sector organizations

In Article 26 and Section 2 of Article 34, the law clarifies the central government's support for voluntary activities, either at home or internationally, of business enterprises, individuals and private-sector entities organized by enterprises and individuals. This distinguishes the new legislation from previous laws.

h. International cooperation

The new law has four articles (Articles 32-35) on international cooperation concerning the preservation of the global environment and environmental conservation in developing areas. These articles exemplify Japan's stance of trying to respond to the expectations placed on it by other countries. Section 2 of Article 35 covers overseas business operations of Japanese enterprises, while Section 1 of Article 35 stipulates the need to pay due heed to the environment in countries receiving Japan's official development assistance.

The Basic Environment Law is written with the fundamental recognition that the preservation of the global environment is not only the common task of all humankind but is also necessary to ensure the happiness and prosperity of the Japanese people, and that the Japanese economy is operating in a web of close international interdependence. On the other hand, the law states in Section 1 of Article 31 that Japan provides environmental preservation assistance to developing areas when such aid contributes to ensuring the healthy and civilized life of the Japanese people. This kind of constraint may be unavoidable, because the new law is the first legislation in Japan concerning international cooperation in the area of the environment. But such constraints should be deleted in the future.

i. Disclosure of environment-related information

In European countries and the United States, the concept of the "freedom of environmental information" has been established and integrated into relevant laws. The Rio Declaration on Environment and Development, adopted at the Earth Summit, called for the guarantee of access by individuals to environmental information. The issue of information disclosure was discussed in the process of formulating the Basic Environment Law, and the enacted law provides for the furnishing of information (Article 27).

j. Environmental education

Japanese must abandon their previous lifestyle. As their life at home and way of doing business in the international community change, education about the environment gains in importance. The Basic Environment Law calls on the central government to take necessary measures regarding environmental education (Article 25).

The Basic Environment Law is "a challenge for Japan to spearhead the new endeavor in the world in line with the achievements of the Earth Summit" (the Prime Minister's statement issued on March 12, 1993). Along with the central government, local governments, business enterprises and private-sector organizations, it is essential that each individual reexamines his or her lifestyle and acts while bearing in mind what is happening all over the planet, including in developing areas. What we need now is a way of life that pays due heed to all humanity and future generations.