

Perspective

A JAPAN CENTER FOR HUMAN ENVIRONMENTAL PROBLEMS: THE BEGINNING OF INTERNATIONAL PUBLIC INTEREST COOPERATION

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Finding solutions to the world's pollution problems through international cooperation is an approach often discussed, but seldom implemented. In this Perspective the author proposes the establishment in Japan of a public interest center linked in a network with other centers around the world through cooperation on domestic and international environmental problems. The author explores the social, cultural, environmental, and legal-technical setting in Japan and suggests an organizational model for a public interest center that might overcome barriers to effective public interest representation in Japan.

Awareness of environmental degradation is arousing citizens throughout the world to seek new avenues of protective action. In the United States, Canada, Australia, the Common Market countries, and elsewhere, private citizen organizations have protested governmental and industrial decisions affecting the environment.¹ In Japan, university presidents, environmental lawyers, judges, doctors, scientists, and other professionals have met on several occasions over the past months to discuss the creation of an internationally-affiliated public interest organization in that country. Although the exact form, activities, and funding of this organization are only now being decided, there is hope

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1. See *Europe Seeks International Law on Environment*, in *Mainichi Shim-bun* (Mainichi News), Apr. 2, 1973.

for the commencement of operations by the end of the year.² Thus, there now seems to be an opportunity for citizen groups throughout the world to begin taking cooperative action.

On one level the need for international cooperation seems apparent. Throughout the world, citizens have entrusted environmental protection to governmental agencies; these agencies are subject to pressures from powerful vested interests, and are dependent on these same sources for information. The guardians themselves have frequently misunderstood their legal responsibilities to protect the public and have been fundamentally unaware of the environmental consequences of their actions. Citizen groups are often afforded no meaningful role in governmental and industrial decisions critically affecting their own interests in environmental protection, nor have they had the power either to prevent or to call for an accounting of injuries suffered. The interests of the average citizen are seldom considered in the international arena. Collaboration among citizen groups may provide a mechanism to correct this world-wide imbalance of power.

Despite these general indications that interchange among citizens of different countries would be valuable, the most appropriate organizational structure, professional composition, range of activities, and financial basis for such cooperation are unclear. An earlier version of this paper prepared for a conference of environmental lawyers and scholars held August 22-24, 1973, in Bonn, West Germany,³ proposed the concept of a world network of environmental action "centers," each of which, while addressed principally to the domestic environmental problems of its own country, would be linked by information and member exchange with centers in other countries and with the United Nations. The present paper refines some aspects of the earlier version, benefiting from the product of that conference.

The concept of a center suggests many possible models. In the United States, where law, lawyers, and the courts have been elevated to preeminence in the resolution of social ills, it is reasonable for legal action organizations, such as public interest law firms, to assume an important role.⁴ Characterized by private foundation support, tax-exempt status, free legal representation to the general public, and clinical

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3. The Bonn Conference was sponsored by the Earl Warren Institute of the University of California, Berkeley, with support from the Ford Foundation. Participants from the United States, France, England, West Germany, Australia, and Japan attended.

4. For a good discussion of public interest law firms in the United States see Harrison and Jaffe, *Public Interest Law Firms: New Voices for New Constituencies*, 58 A.B.A.J. 459 (1972).

legal education programs, these organizations have been reasonably effective. They will serve as a basic reference model for this paper.

At the outset two points are worthy of emphasis. First, it is not contended that the American public interest law firm model is necessarily exportable. Rather, one of the basic conclusions of the Bonn Conference was that this institution may need to be modified significantly in many instances. Each center must be created with reference to the legal, sociological, institutional, and environmental context of the country in question. Second, it is not contended that an ascertainable, uniform public interest exists, since the term necessarily embodies conflicting interests. Admittedly, the concept is even more tenuous in the international sector, where actions taken by environmentalists in one country for the public interest may clash with different concerns in other countries.⁵

While considering the foregoing caveats throughout, this paper contains the following assumptions: (a) there are identifiable interests, principally in environmental protection but also in consumer protection and other fields, shared by many citizens throughout the world which have been unrepresented and seldom considered in industrial and governmental forums; (b) international cooperation among environmentalists is essential, not only to assist in the institutionalization of such interests at the national level, but also to promote awareness and action relating to other, largely uncharted, concerns which link these groups (such as the destruction of the oceans); (c) unless man conforms his actions to the dictates of the natural world, the irreversibility of synergistic processes must necessarily jeopardize his interests.⁶ In this sense efforts of environmental groups to promote the strengthening of these values represents a broader public interest than their detractors would acknowledge.

Part I is a case study of legal, technical, and institutional factors affecting the design of public interest institutions in Japan. The example of Japan is appropriate because of the severity of environmental deterioration, the nature of responsive efforts in both the private and public sectors, and the fact that a new internationally-affiliated public interest institution is being established there. Since, as was pointed

5. Centers in the communist or developing world might act principally as data clearing houses for information relating to similar important problems such as the eutrophication of Lake Baikal in the Soviet Union or problems of sanitation in the developing world. See M. GOLDMAN, *THE SPOILS OF PROGRESS* (1972), as well as the voluminous material submitted by the developing countries to the United Nations Conference at Stockholm, June, 1972; see also Bleicher, *An Overview of International Environmental Regulation*, 2 *ECOLOGY L.Q.* 1, 75 (1972) [hereinafter cited as Bleicher].

6. For the implementation of some of these ideas in the field of environmental planning see I. MCHARG, *DESIGN WITH NATURE* (1969).

out repeatedly at the Bonn Conference, many of the critical barriers to the growth of public interest activity in Japan are experienced in varying degrees in other countries, the discussion of Japan's situation can provide instruction of more general value. Part II envisions the development of an international network of cooperating public interest groups, and contemplates the possible contribution of this kind of new human institution to the world struggle for environmental protection.

I

DOMESTIC ASPECTS OF THE PROBLEM IN JAPAN AND REQUIREMENTS FOR ITS SOLUTION

A. The Environmental Crisis and the Social Response

To understand environmental disruption in Japan, a vision of almost Kafkaesque possible futures must be contemplated. Quite simply, in Japan man and the living world around him are dying together.⁷ Environmental deterioration, consumer problems, housing shortages,⁸ chaotic transportation systems, land speculation,⁹ sanitation

7. REPORTED VICTIMS OF SOME PRINCIPAL ENVIRONMENTAL DISEASES IN JAPAN

Name of Disease	Deaths	Disabled
Minamata mercury poisoning	52	10,000
Itai-itai disease (cadmium poisoning)	100	280-1000
Kanemi rice oil disease (poly-chlorinated biphenyl poisoning)	26	over 1000
Morinaga milk poisoning	133	over 20,000
Yokkaichi asthma	52	1,023

Source: J. UI, *POLLUTED JAPAN* (1972).

There are over 5,800 additional official victims of air pollution diseases (e.g., chronic bronchitis, asthma, emphysema). JAPAN ENVIRONMENTAL AGENCY, *QUALITY OF THE ENVIRONMENT IN JAPAN* (1972) [hereinafter cited as *QUALITY OF THE ENVIRONMENT IN JAPAN*]. Poly-chlorinated Biphenyl has been detected in human milk and umbilicus. See *Mainichi Shimbun*, Dec. 28, 1972. A recent study shows alarming mercury concentrations in all vital organs of victims tested. See *Japan Times*, Jan. 8, 1973. The struggle of the natural world is also desperate: oil slicks and red tides cover the inland sea. See *Seto Inland Sea is Dying*, *Mainichi Shimbun*, Jan. 22, 1973. For an in-depth study of the death of the inland sea see Y. HOSHINO, *SETONAIKI OSEN* (Pollution of the Seto Inland Sea) (Iwanami Shoten, Tokyo 1971) 842. Grotesque tumors appear on fish in Hiro Bay. See *Asahi Shimbun*, July 4, 1972; strange deformities occur in livestock. See *Asahi Shimbun*, April 7, 1973; Lake Biwa is clogged with fuzzy balls of foul water bacteria. See *Japan Times*, Jan. 13, 1973; fish die by the thousands from unknown causes near nuclear power plants in Fukui Prefecture. *Id.*, Feb. 16, 1973; radioisotopes are found in sea bream. See *Mainichi Shimbun*, Mar. 9, 1973; within a year Hiroshima oysters double their cadmium concentration. *Id.*, Feb. 18, 1973; dead and dying fish are reported at the source of city drinking water in Nara and Osaka Prefectures. *Id.*, Mar. 11, 1973.

8. See *Tokyo's Housing Problem*, 5 Tokyo Metropolitan Gov't. Muni. Library Series (Mar. 1972).

9. See *Contemporary Image of Prosperity, Land Plutocracy*, *Japan Times*, Feb. 21, 1973 (five-part study).

problems,¹⁰ suicide,¹¹ and infanticide¹² all, perhaps because of Japan's size, appear to form a pattern. The institution to be developed must deal with the interrelationship between these problems in order to develop practical solutions. There is an immediate need for a community-based institution capable of monitoring dangers at the local and regional levels, while sophisticated enough to understand the technical and social interrelationships involved, and forceful enough to assure that the dangers perceived by it are recognized and prevented. The small size of the country may facilitate the development of such a broad-based institution.

While an institutional response to the environmental crisis has been slow to develop in Japan, protest against pollution and environmental injury has become louder and more widespread each year.¹³ Such protest must overcome deep socio-psychological repression. Japanese terms expressing powerful restraints describe these forces: "okami ishiki"—obedience to authority; "shikata ga nai"—it cannot be helped; "akirame"—ultimate resignation.¹⁴ A life-long employment system ("graduation to grave") has imposed further economic impediments.¹⁵ Labor has seldom protested unsafe working conditions for fear of employer reprisals. Today, demand is replacing resignation, and alternatives are regarded as imperative. The housewife has become a powerful political force, and even demands within companies for corporate environmental responsibility are beginning to be made.¹⁶

10. See *Tokyo Fights Pollution*, 4 Tokyo Metropolitan Gov't. Muni. Library Series (Mar. 1971) [hereinafter cited as *Tokyo Fights Pollution*].

11. For an example of "environmental suicide" see *Mainichi Shimbun*, Feb. 25, 1973.

12. For a discussion of this new epidemic see *Japan Times*, Mar. 24, 1973, and *Mainichi Shimbun*, Mar. 8, 1973.

13. See Bennett, Hasegawa, Levine, *Japan: Are There Limits to Growth?*, 15 ENVIRONMENT 6 (1973). Protest against pollution draws on historical precedents which have accompanied industrialization. Some examples from the pre-war era are: demonstrations over pollution of the Watarase River from the Ashio Copper Mine (1890); petitions to the Ministry of Home Affairs against smoke damage from the Besshi Mine Niihama Smelters (1898); disputes between the Mitsubishi Paper Company and farmers and fishermen living near the Kako River (1901); compensation settlement for smoke damage from the Hitachi mines (1906); suits filed by residents of Yanaka village for gas pollution and damage done by explosions from Yubari Coal Mine (1912); petitions and demonstrations against smoke pollution at Annaka (1941). Protests have been recorded against airport construction (*Mainichi Shimbun*, Feb. 14, 1973), highway development (*Id.*, Feb. 24, 1973), the planting of trees (*Japan Times*, Feb. 18, 1973), the siting of nuclear plants (*Mainichi Shimbun*, Jan. 28, 1973), and rising prices (*Japan Times*, Mar. 3, 1973).

14. Personal interview with Mr. Michael Reich, who has just completed an extensive one-year study of mass movements throughout Japan.

15. Reich reports of a poor family whose child died of asthma caused by polluted air around her father's plant. The family refused an autopsy of the child's body for fear of reprisals from the company.

16. Based on private interviews in Japan.

These developments foreshadow a collision of historical forces in Japan. Commentators point to a recurrent pollution accident pattern of governmental action without public input, resulting human tragedy, public outcry for investigation, governmental action and reaction, and eventual lapse without resolution.¹⁷ As environmental problems become more serious and public awareness and sophistication increases, pressure for institutional solutions will intensify. In contrast, however, the present governmental plans to remodel the Japanese archipelago, remove industry to the countryside, ostensibly to refresh Japan's polluted, crowded cities, and run a 99-trillion yen system of highways throughout the country over the next fifteen years.¹⁸ Critics of the Tanaka plan, as it is called, point out that most industry and workers will not move and that the net effect of the policy will be to bring pollution and social disruption to the countryside.¹⁹ Conflicts between local citizens, local government and the central authorities have already occurred,²⁰ and it is certain that if these conflicts remain unresolved, they will continue to produce intensifying human suffering, violence, national discord, and pressure for some sort of institutional accommodation.

Recently, the pattern of protest has begun to change. In the past, pollution was believed to affect only one segment of society, usually poor farmers or fishermen who were directly injured; protest was usually limited to claims for compensation. In contrast, citizens' movements today have brought different social groups together and scientists, lawyers, and academics now actively assist protesting consumers, environmentalists, and residents' groups with increasing frequency. The business of protest has provided opportunities for new leadership within these communities. The increased sophistication of these campaigns is expressed in a concern with new concepts of environmental rights and a growing emphasis on prevention of environmental damage.²¹ Preventive protest is now producing some important victories, such as the termination of the production of a petroleum-based protein which was feared to have carcinogenic properties,²² and the announcement by the Japan Atomic Energy Commission (JAEC) that, in the future, it will hold public hearing before deciding on construction of nuclear reactors.²³

17. UI, SONODA, IJAMA, ENVIRONMENTAL POLLUTION CONTROL AND PUBLIC OPINION 45 (1970) [hereinafter cited as UI, SONODA, IJAMA].

18. Construction Ministry announcement, Japan Times, Mar. 1973.

19. Hoshino, *Remodeling the Archipelago*, 20 JAPAN QUARTERLY 39 (1973).

20. See Mainichi Shimbun, Feb. 22, 1973.

21. Based on discussions with Reich of his study of Ohita city in Kyūshū.

22. See Japan Times, Feb. 21, 1973.

23. This evidently was the first time the JAEC had agreed to public hearings. Opposition members had charged hasty approval by the AEC of construction of a

Processes of change in citizen movements in Japan offer some hope as well as further insight into the design of institutions. Growing sophistication, contact, and academic and professional support for dissenting groups suggest the useful role such groups might play in monitoring dangers, compiling evidence, and coordinating their findings throughout the country. Public interest organizations may also serve in part to diffuse public anger and frustration, to channel mass energies constructively into all processes of government, and to provide new alternatives to traditional avenues of bureaucratic advancement for young Japanese now participating in these movements. Before the development of a viable public interest institution may be understood, however, some further aspects of the Japanese social setting must be examined.

B. *Problems of Dissociation*

Although the concepts discussed in this section may appear unrelated, they are all part of the general problem of "dissociation." In the sense used here, dissociation is essentially an emotional perception which can only be defined by the institutional responses to it suggested below. One of the legacies of the Bonn Conference has been the showing that some of the basic impediments to environmental improvement in Japan are also crucially important in other countries.

1. *Problems of Classification*

One difficulty, perhaps unique to Japan, has been the conceptual differentiation of the consequences of pollution from the problem of environmental protection. The problem's origin is in part one of terminology. When pollution damage first occurred in Japan, an appropriate term was sought and eventually *kōgai*, from the Chinese characters for "mine" and "harm," was chosen. Such terminology is easily understandable since the primary pollution source then was mine runoff. With industrialization the meaning of *kōgai* was expanded to cover a host of modern hazards—air and water pollution, excessive noise, urban sprawl—and the Chinese character for "mine" was replaced by that for "public." One possible result of such concern with "harm" rather than "environment" has been to focus attention on *compensation* or control of pollution sources which are immediate dangers to man. Conversely, comparatively little effort has been expended in developing an integrated policy for environmental protection and programs for its implementation. This anthropocentric bias is also evident in suggestions for new environmental rights. Thus, "environmental rights" and

power plant in Ikata, Ehime Prefecture. Articles on the whole problem are reported in Japan Times, Jan.-Feb. 1973.

"rights to sunshine" are conceived of as a person's right to the purity of *his* environment. Somewhat curiously, no thought has been given in Japan, with its Buddhist-Shinto tradition, to the proposition that the environment itself has rights to its own integrity, a concept proposed in the West.²⁴

One of the functions of new institutions in Japan must be to define public interest within a proper biological perspective. The practical consequences would be concern with problems of conservation along with pollution control, with resource and energy management and the preservation of endangered species, in addition to problems of compensation.

2. *Horizontal and Vertical Stratification*

A major problem in Japan and other countries has been the isolation of environmental groups and concerned professionals from each other.²⁵ Thus, within each of the major Japan bar associations there are special environmental law committees which investigate environmental problems, prepare draft legislation, and provide legal advice and representation for pollution victims. There are also major data collection centers, such as the Keiō University International Center for Preventative Medicine, the Citizen Life Center, the Institute of Energy Economics, the Japan Nature Conservation Federation (consisting of over 1000 member organizations), and the Japan Audobon Society, each of which contains a wealth of information on different aspects of environmental problems. Unfortunately, while there are exceptions,²⁶ no institutional device has yet been developed either to provide legal groups such as the bar associations with scientific and technical information on a continuing basis, or to offer Japanese environmental protection organizations skilled legal and scientific assistance.

As in other countries, the isolation of these groups is due in part to differing interests, mandates, or personalities. In the Japanese example, a highly formalized social structure impedes effective horizontal interchange. This problem is further complicated by the organization of many action groups around a founder or leader, with this relationship taking precedence over other concerns. This vertical dimension

24. See *Sierra Club v. Morton*, 405 U.S. 727, 752 (1972) (Douglas, J., dissenting); Stone, *Do Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972).

25. This common dilemma was noted by the French and English participants at the Bonn Conference.

26. Consider, for example, the multidisciplinary team organized by Professor Shigeto Tsuru of Hitotsubashi University consisting of scientists, lawyers and economists, which has given advice to plaintiffs in environmental litigation and publishes a journal, *KŌGAI KENKYŪ* (Public Nuisance Review) (Iwanami Shoten, Tokyo).

is also visible in the emphasis traditionally placed on upward mobility within a given frame, such as a company; this upward mobility within a narrow business setting discourages many people from investing their energies in environment-related avocations.²⁷

3. *Political Polarization*

The social upheaval produced by Japan's environmental crisis has raised political questions. Happily, public outcry is being channeled into electoral processes as shown by the victories of progressive candidates in the national and local elections.²⁸ Unfortunately, however, characterization of environmental problems as political has served to divide groups which might otherwise have been willing to cooperate.

Environmental litigation, which has increased sharply over the last few years,²⁹ is perceived by lawyers, scholars, judges, and others in Japan as dominated by the young, brash leftists, who are reputedly using the disruptive effect of litigation for harrassment. Whether true or not, the unfortunate result has been to discourage more active cooperation by equally concerned but politically neutral elements of the bar such as the environmental committees of the Japan Bar Association and the Tokyo Bar Association. Some "establishment" lawyers spend considerable time in special think tanks especially established by industry to frustrate plaintiffs' actions.³⁰ The neutral lawyers must negotiate a difficult course between conscience and subsistence. Polarization of this sort runs through the professional and academic world with group pitted against group.

4. *Secrecy*

Secrecy accompanies many governmental functions, and may in fact be necessary in narrowly defined cases of national security or traditionally protected legal relationships. From the public perspective, governmental and industrial secrecy has been a major impediment to effective public interest activity in all the countries represented at the Bonn Conference.³¹ Widespread ignorance of the basic risks to which the public has been exposed is causing tragedy in many countries.

27. See C. NAKANE, *JAPANESE SOCIETY* (1970).

28. See Curtis, *Conservative Dominance in Japanese Politics*, 60 *CURR. HIST.* — (1971).

29. Introduction to *KŌGAI HANREI HANDOBUKUU* (Public Nuisance Decision Handbook), Nihon Hyōronsha Hōgaku Center No. 5 [hereinafter cited as *KŌGAI HANREI HANDOBUKUU*].

30. Based on interviews with participating lawyers.

31. In France and England particularly this has been an area of controversy. Sweden is one of the few countries which has permitted a developed public right to information. See Anderson, *Public Access to Governmental Files in Sweden*, 21 *AM. J. COMP. LAW.* 419 (1973).

One of the best examples of Japanese governmental secrecy resulting in public injury is the reported nondisclosure by the Ministry of Health and Welfare of the scientific assessments of a Niigata University task force that the source of Minamata disease was methylated mercury. Minamata disease was first encountered in the small industrial city of Minamata, where several of the inhabitants were experiencing severe neurological disorders. According to Ui, the Ministry of Health and Welfare and the Ministry of International Trade and Industry obstructed dissemination to the public of these reports linking the causal agent of the disease, methylated mercury in fish consumed from Minamata Bay, with the effluent discharges of the principal industry of the town, the Japan Fertilizer Company (Chisso, Inc.).³² These ministries reportedly persisted in withholding other information necessary for diagnosis and treatment during the twelve-year period when the disease's origins were sought.³³

Governmental secrecy in relation to the public appears to occur routinely at the local level; for example, it was reported recently that there was full official knowledge that highly contaminated drainage from slaughterhouses in Saitama Prefecture has been flowing into the Naka River, a source of Tokyo drinking water.³⁴ The apparent reason for nondisclosure in this case was that the site of greatest pollution was outside the administrative competency of the local authority responsible for the source! Fear that information made available to the public will be used for political purposes is a further reason for governmental nondisclosure.³⁵

Industrial secrecy is also a basic problem; when researchers at Kumamoto University, for example, sought information regarding the Minamata plant's manufacturing processes or intermediate products, crucial to an understanding of the cause of the disease, the information was denied. The grisly consequences are now becoming known to the world.³⁶

Secrecy also penetrates intra-governmental activities. Japanese governmental agencies frequently demonstrate reluctance to share information with other agencies—a phenomenon that is serious where it impedes the proper functioning of the Environmental Agency,³⁷ the primary organ entrusted with coordinating environmental policy.³⁸

32. UI, SONODA AND IJIMA, *supra* note 17, parts 1-2.

33. *Id.*

34. *See* Japan Times, Feb. 19, 1973.

35. Based on interviews with officials in the city of Ichikawa.

36. UI, SONODA AND IJIMA, *supra* note 17, at —.

37. *See* P. SAND, LEGAL SYSTEMS FOR ENVIRONMENTAL PROTECTION: JAPAN, SWEDEN, UNITED STATES 15 (FAO Legislative Studies No. 4, Rome 1972) [hereinafter cited as SAND].

38. As a "young" agency only established in 1971, the Environmental Agency

Shame has prompted the Japanese Foreign Ministry to conceal the severity of Japanese pollution from the outside world and thereby to foreclose international assistance.³⁹ Secrecy also has its particularly pathetic side. It seems that poor fishermen along the Inland Sea now cut off the hideous growths on the fish they catch to permit their marketing.⁴⁰

C. *Association and Integration*

The phases of dissociation in Japan illuminate some needed responses. Where citizen groups or existing information centers are ignorant of each other's work they should be associated, and when agency isolation prohibits coordinated planning, these agencies must be prompted to cooperative action. In short, a new institution is needed to encourage the integration of existing organizations, groups and patterns of thought within a broad public perspective. Through such an institution many professionals both outside and within government could be brought in touch with the work of their counterparts. Data provided the public by the proposed organization could also assist in specific cases of industrial secrecy such as the Minamata tragedy, where such data were critical to an early recognition of the causes and treatment of the disease. If, for example, mass media coverage had been given to available comparative data bearing on questions of disease causation, company denials and fabrications would have been far less effective and industrial disclosure would thus have been encouraged. Finally, the atmosphere of openness which the proposed organization may inspire would encourage disclosures of public health hazards such as tumorous fish.

One of the first major institutional changes to be sought by a public interest organization in Japan must be the opening of government processes to greater public scrutiny. Since Japan does not have a statute comparable to the Freedom of Information Act in the United States,⁴¹ legislation drawing on foreign precedents may be found useful by public interest groups. Thereafter, the details of public participation and intervention in governmental hearings could be expanded and appropriate procedures developed to present relevant evidence.

It would seem certain that these purposes can be achieved in Japan only if the organization remains politically neutral. This proposi-

has been given little power to enforce the policies it sets and has not yet functioned as effectively as it might. More disturbingly, many other agencies now are relegating questions of environmental responsibility to the newly created organ, on grounds that such issues need no longer concern them.

39. See Japan Times, Feb. 16, 1973.

40. Private interviews with residents of fishing villages in Shikoku.

41. 5 U.S.C. § 552 (1970).

tion has been confirmed recently by the overwhelming bipartisan endorsement of the concepts here proposed.⁴² The central and most difficult problem is the achievement and maintenance of both political neutrality and maximum effectiveness. It is possible that the novelty of a public interest organization, amplified by its international role, will help avoid the pigeonhole of a particular political characterization and thereby aid in expanding the organization's scope of activity.⁴³ The composition of the new organization can also assist in maintaining neutrality. The staff and trustees should be persons with considerable professional and educational qualifications drawn from different groups and professions. Hopefully, the leaders of these groups, participating as trustees of the center, can subordinate their own political biases to the higher ideals of the organization. But even if only an uneasy alliance is achieved, the organization will develop its own new professionals, nurtured by broader beliefs and young enough to implement them.

While outside the industrial-governmental power structure, the organization must strive not to be solely antagonistic to it. This implies a mixture of pragmatic persuasion and action. The organization must assist industry and government in developing more effective technology, innovative legislation and courses of implementation through its international data reserves. The arrogant company or intransigent bureaucrat, however, would be confronted by whatever public pressure or legal action the organization could muster.

D. *Legal-Technical Considerations*

Legal-technical considerations directly affect the design of public interest institutions since the right of public access to courts and other decisionmaking forums is necessary for effective protection of the public interest. This discussion will touch on developments in Japan most relevant to the creation of public interest institutions.

1. *Developments in Civil Litigation*

Recently, decisions in four environmental cases have galvanized the Japanese legal world and significantly eased problems of proof for citizen groups.⁴⁴ In *Komatsu v. Mitsui Kinzoku Kōgyō* (*Mitsui Metal*

42. Thus far there have been five formation meetings involving, *inter alia*, high level lawyers, judges, planners, bureaucrats. Considerable interest, time, and support were given by groups on either side of the political spectrum.

43. The use of a politically neutral terminology for the new institution will help maintain neutrality. Considerable discussion was given at formation meetings of the Japan Center to the proper name of the organization, and especially to the appropriate translation and meaning of "public interest." The Center for Human Environment Problems was the name finally adopted.

44. *Komatsu v. Mitsui Kinzoku Kōgyō* (*Mitsui Metal Mining Co.*), 635 Hanrei

Mining Company)⁴⁵, 31 victims of itai-itai disease (cadmium poisoning) sued for injuries caused by infiltration of cadmium from the effluent of the defendant's company into food and drinking water supplies. After finding high concentrations of cadmium at the site of the defendant's company and in the rice fields near where the victims lived, the court held that cadmium had caused plaintiffs' injuries through accumulation in agricultural products and water. The Nagoya High Court awarded damages of \$380,000 under a theory of strict liability based on Article 109 of the Mining Law.⁴⁶ Of interest in this case is the court's reliance on epidemiological studies presented by plaintiff to rebut defendant's argument that malnutrition and vitamin D deficiency had caused the disease.

In *Ohno v. Shōwa Denkō Co. (Shōwa Electric Manufacturing)*,⁴⁷ 77 victims of minamata disease (mercury poisoning) recovered \$920,000 in damages from defendants for the latter's negligent upstream discharges into a river flowing past plaintiffs' rice fields. In this case the Niigata court evolved a new test for the proof of legal causation: if plaintiffs can present evidence on the nature of the disease and the substance that induced it, and can show the medium through which they were exposed to it, the court will infer that the source of the toxic substance was the defendant company, subject to contrary proof submitted by the company.⁴⁸ Interestingly, the court also noted that the defendant's compliance with existing water quality standards would not shield it from liability for injuries caused by its activities. This decision has already inspired a second victory for citizen groups in the original Kyūshū minamata disease case, *Watanabe v. Japan Chisso Kaisha*,⁴⁹ in which the court awarded plaintiffs 937 million yen, approximately \$3,460,000, under a theory of gross negligence.

Perhaps the case of greatest long range impact is *Shiono v. Shōwa*

Jihō 17 (Toyama Dist. Ct. 1971), *aff'd*, 674 Hanrei Jihō 25 (Nagoya High Ct., Kanazawa Branch 1972); *Shiono v. Shōwa Yokkaichi Sekiyū Gaisha (Shōwa Yokkaichi Petroleum Co.)* 672 Hanrei Jihō (Tsu Dist. Ct., Yokkaichi Branch 1972); *Ohno v. Shōwa Denkō Kaisha (Shōwa Electric Mfg. Co.)*, 624 Hanrei Jihō (Niigata Dist. Ct. 1971). For a discussion of these cases in English see Watanuki, *How the Environmental Pollution Problems Are Handled by the Court, the Public Authority, and the Citizens' Group of Environmentalists in Japan*, Tokyo Education Univ. Publication No. 94 (1973) [hereinafter cited as Watanuki].

45. 635 Hanrei Jihō 17 (Toyama Dist. Ct. June 28, 1971), *aff'd*, 674 Hanrei Jihō 25 (Nagoya Ct., Kanazawa Branch, 1972).

46. Article 109 of the Mining Law (Kōgyō Hō, Law 289) states: "A proprietor of the mining right is liable for damage occurred upon another person by digging a mine or disposing waste or sludge from it." Strict liability is also provided for after June 1972 in Article 25 of the Air Pollution Control Act (Taiki Osen Bōshi Hō) and Article 19 of the Water Pollution Control Act (Suishitsu Odaku Bōshi Hō).

47. 624 Hanrei Jihō (Niigata Dist. Ct. 1971).

48. *Id.* at 11.

49. 696 Hanrei Jihō 17 (Kumamoto Dist. Ct. 1973).

Yokkaichi Petroleum Co., where twelve victims of asthma and other bronchial disorders were awarded \$300,000 in damages against six of Japan's industrial giants.⁵⁰ The court's findings in the case will no doubt considerably influence the development of the law in this area. First, the court reaffirmed the use of epidemiological studies as important evidentiary guidelines, and held that air pollution was the cause of the plaintiffs' injuries. Second, the court held defendants jointly liable under Articles 709 and 719 of the Civil Code under the following theories:⁵¹ defendants, who operated as a group in the same location, were jointly liable if the injury caused could have been *predicted*. This showing was dispensed with in the case of companies physically interlinked by the supply and exchange of materials or products; they were held liable despite the fact that pollutants discharged individually were too insignificant to affect human health. Third, the court found that defendants had violated an independent duty owed defendants in the choice of plant location and were also negligent in not employing the best pollution control equipment available. The court left open the question of liability where the best available equipment had been used.

From the citizen's perspective, these cases are encouraging, not simply because of the hope of favorable judicial treatment they give to other victims, but also because of their implications for future preventive action. An interesting unanswered question is whether, under the *Yokkaichi* case, citizen groups may obtain an injunction to halt the development of an industrial combine if they can show that injurious pollution will result or that the best available pollution control equipment is not being used.

2. *Procedural Problems of Public Access to Decisionmaking Forums*

In theory, Japanese law of standing in civil actions resembles United States law since a demonstrable injury to specific interests must be shown. In practice, Japanese courts have construed standing more restrictively, and plaintiffs have had to demonstrate clear proximate injury to traditionally protected interests to gain access to the court.⁵² Despite the

50. 672 Hanrei Jihō 32 (Tsu Dist. Ct., Yokkaichi Branch 1972). The six industrial defendants were Shōwa Yokkaichi Petroleum Co., Chūbu Electric Power Co., Ishihara Sangyō Kaisha Ltd., Mitsubishi Chemical Industries Ltd., Mitsubishi Petrochemical Ltd., Mitsubishi Monsanto Chemical Co. Watanuki, *supra* note 44, at 15.

51. Article 709 states: "A person who violates intentionally or negligently the right of another is bound to make compensation for damage arising therefrom." Article 719 states: "If two or more persons have by their joint unlawful act caused damage to another, they are jointly and severally liable to make compensation for such damage; the same applies if it is impossible to ascertain which of the joint participants has caused the damage."

52. Standing posed the most important technical legal barrier to the development

fact that all major environmental suits in Japan have involved groups of people injured by pollution and that, technically, section 47 of the Code of Civil Procedure provides for representative class actions, courts have not permitted the number of plaintiffs involved to legitimate the class itself as a viable plaintiff.⁵³ All such suits consequently have been brought in the individual capacity of the parties. Similarly, no major case has yet involved an organizational plaintiff purporting to represent its members' interest in environmental security. Furthermore, although Japanese Administrative Litigation Law section 242.2 provides for public taxpayer suits by local residents to challenge tax revenue appropriations, only one major suit, involving expenditures for sewage facility construction at Tagonoura, has been filed.⁵⁴

One mechanism which has expanded public access to the courts is the development of new rights in Japan, such as the so-called "right to sunshine." Based on this concept, which has now been codified by a number of municipalities,⁵⁵ residential groups have obtained provisional injunctive relief against construction activity.⁵⁶ Considerable academic discussion has also been devoted to the legitimacy of an individual environmental right, a concept which the Japan Federation of Bar Associations has now officially endorsed.⁵⁷ Explicit judicial recognition has not yet occurred.⁵⁸

of public interest activity in the countries represented at the Bonn Conference. In England and France the standing of ideological or associational plaintiffs claiming injury to aesthetic interests has not been judicially recognized. In Germany, a narrow exception to a similarly restrictive judicial attitude has been the *Naturschutzverein*, a nature protection organization created by statute whose standing to protest on behalf of endangered nature preserves has been recognized. Some individuals have sought to solve the problem by special legislation which would grant standing to governmentally-designated groups with an interest in environmental protection. This proposal was criticized at the Bonn Conference because it raised the danger of government control of those organizations in order to forestall the efforts of more activist groups. See generally Reh binder, *German Law of Standing to Sue, Int'l Union for the Conservation of Nature (IUCN)*, Law Paper No. 3 (1972).

53. Article 47 of the Code of Civil Procedure states

A group of parties having a common interest and not coming under the provisions of the preceding Article, may appoint from among them one or more persons who are to act as plaintiff or defendant for the entire body, or alter such appointment In case a person or persons to act as plaintiff or defendant have been appointed in accordance with the provisions of the preceding paragraph subsequent to the pendency of the litigation, the other persons shall withdraw from suit by operation of law.

54. See KŌGAI HANREI HANDOBOKU, *supra* note 29, at 110.

55. See Japan Times, Feb. 17, 1973.

56. Nomura, *Kōgai no Hanrei* (Decisions on Public Nuisance), Nos. 170, 183, 195, 196 (Yūhikaku, Tokyo, 1971).

57. See Osaka Bar Association, *An Environmental Right* (1973).

58. See Narumi Motoyoshi v. Hokkaidō Denryoku Kabushiki Kaisha (Hokkaido Electric Co.) (Sapporo Dist. Ct. Dec. 23, 1972) a suit for injunctive relief based on environmental rights to live and to pursue happiness, asserted to be derived from Articles 13 and 25 of the Japanese Constitution.

3. Citizen Litigation Against the Sovereign

Although most environmental actions to date have been in tort seeking damages,⁵⁹ with some petitions for provisional orders to halt or abate pollution,⁶⁰ a number of citizen victories have also been reported in the administrative sector.⁶¹ The latter cases have either challenged public construction activities or statutory interpretations by agencies. Examples of cases challenging construction activity are *Hattori v. Ōtsu City*⁶² and *Kamikawa v. Takadagun Sanitation Work Management Association of Hiroshima and Yoshidamachi*,⁶³ where protesting residents obtained provisional orders stopping, respectively, the dumping of human wastes into a public cistern and the construction of a municipal sewage plant. The cases are interesting for the possibilities they raise for remedies against other larger environmentally hazardous government projects.

Okaga Yoshidahama Fishermen's Association v Hisamatsu,⁶⁴ *Shudō v. Tachiki*,⁶⁵ and *Tōshōgū v. Minister of Construction, Governor of Tochigi Prefecture*,⁶⁶ are all cases where citizen plaintiffs obtained suspension of permits issued by agencies for projects injurious to the environment. In *Okaga*, the plaintiff fishing association obtained a suspension, under Administrative Procedure Law Article 25, of the permit to Matsuyama municipality to reclaim the city's beach area for the runway of the Municipal Public Airport because the required notice and hearing prior to condemnation had not been afforded. In *Shudō*, plaintiff fishermen, supported by a number of environmental groups, obtained an order quashing a permit for reclamation granted to a cement manufacturer wishing to construct its plant on reclaimed land. While the exact basis for the court's order in this case is unclear, the opinion discusses the fact that reclamation was not properly authorized by the fishing cooperative, the great environmental costs of the project, and the insubstantial pollution control agreement concluded by the authorities and the company. In *Tōshōgū*, perhaps the environmental case most similar to current American litigation to date, the Governor of Tochigi Prefecture had granted a permit, approved by the Minister of Construction, to condemn land containing 16 world-famous cedars for the pur-

59. There have been approximately 100 tort cases.

60. There have been approximately 26 such petitions.

61. Watanuki, *supra* note 44, at 23.

62. 13 Kakyū Minshū 1812 (Lower Court Civil Law Report) (Ōtsu Dist. Ct. 1963).

63. 638 Hanrei Jihō 24 (Hiroshima Dist. Ct. 1971).

64. 19 Gyōsei Reishū 1295 (Administrative Law Report) (Matsuyama Dist. Ct., 1968).

65. 638 Hanrei Jihō 36 (Ōhita Dist. Ct. 1971).

66. 19 Gyōsei Reishū 373 (Administrative Law Report) (Utsunomiya Dist. Ct. 1969).

pose of constructing a scenic highway. The proprietor and manager of the famous Nikkō Shrine obtained an order quashing the permit. In finding the permit invalid the court held such destruction was unreasonable under the standard of the Land Condemnation Law.⁶⁷

Although such cases appear promising, they are exceptions to a generally conservative judicial attitude towards terminating permits granted by an administrative agency.⁶⁸ Even more uncertain is the possibility in Japanese law for such groups to obtain mandatory injunctive relief against governmental agencies.⁶⁹ No successful case of this sort has yet been reported, and there is some question among Japanese scholars about the availability of such a remedy.⁷⁰

4. Contractual Schemes for Pollution Control

Contractual arrangements for pollution control and compensation between municipalities and industries, citizens' groups and industries and, at times, all three, are being increasingly employed in Japan. Such agreements concerning dust, noise, waste, odor, and discharges from steel, chemical, pulp, and electric companies totaled 107 in 1970, 33 of which were negotiated between citizen groups and companies.⁷¹ Environmental pollution control agreements take different forms, depending on the parties. In agreements between citizen groups and companies, the major concern has been provisions for compensation in cases of personal injury, although measures are also inserted to regulate factory emissions. Agreements between municipalities and companies also differ depending on the parties and the issues. An interesting practice

67. Watanuki, *supra* note 44, at 31. The *Tōshōgū* case evidently is not the only one in which the court handled the cultural values problem. In *Ogasawa v. Cultural Properties Protective Commission*, 6 Gyōsei Reishū 2370 (Tokyo Dist. Ct. 1955), a permit by the Commission to construct an electric power plant in a valley designated under the Cultural Properties Protection Act (Law No. 214, 1950) as a "special scenic beauty area" was attacked. Here, the motion to dismiss was granted because plaintiffs were considered merely residents and were held not to possess legally protected interests in the unchanged status of the valley. The distinction between this case and *Tōshōgū* may be disheartening to Japanese lawyers representing groups of citizen plaintiffs whose interests are not easily differentiated from those of the general public.

68. See Ogawa, *Judicial Review of Administrative Actions in Japan*, 43 WASH. L. REV. 1075 (1968) [hereinafter cited as Ogawa].

69. German and French law is similarly circumscribed. There is as yet no case of mandamus granted in an environmental suit in England although this is theoretically possible under English law.

70. Even if available, the force of a mandatory mandamus order would be weakened due to the absence of a contempt power in the courts in these cases.

71. Watanuki, *supra* note 44, at 40. It is interesting to note that the use of this device is not yet widely known as evidenced by statements of an Ichikawa official who thought Ichikawa was the only city employing it. The agreements, unfortunately, have not been used to cover more than one city, a potentially useful way of overcoming the administrative division problem. See note 34 *supra*.

developing in Chiba and Okayama Prefectures is the preparation of a form agreement by the governor of these Prefectures which all companies wishing to engage in construction in those areas must accept. These pollution control contracts are executed along with the regular land purchase contract. Almost all such agreements are composed of two documents, one defining the rights and duties of the parties and the other a memorandum by the company concerning counter measures to be adopted against pollution.

Despite their increased use, there is some question whether such agreements are legally enforceable. Several violations of these agreements have provided a basis for "administrative guidance" (*gyōsei shidō*), a nonauthoritative method by which agencies induce voluntary cooperation to promote social order.⁷² In one case, a corporate party to an agreement was persuaded to improve its air pollution control equipment and compensate a farmer injured by smoke. In other cases, public authorities have used such agreements as a basis for requiring necessary alterations in pollution control equipment before plants can begin operation.

With the exception of noise pollution, the central authorities generally have pre-empted pollution control, and local government and its citizenry have not had effective legal remedies to deal with the incursion of polluting industries at the local level.⁷³ Pollution control agreements, however, reflect the growing power of resident groups. Through these contractual arrangements citizens at times have been able by direct negotiations to impose standards stricter than those in existing regulations. A public interest organization should be able to contribute significantly here by providing expert legal and technical services to local citizenry and by participating in the negotiation of such treaties under which citizen, industrial, and governmental groups may coexist in relative social and environmental harmony.

E. Existing Institutional Alternatives to Public Interest Centers in Japan

There are a number of institutions in Japan, linking the general public to governmental decisionmaking, which should be considered in the design of a public interest organization. The major institutions are discussed briefly below.

72. See Narita, *Administrative Guidance*, 2 LAW IN JAPAN 45 (1968).

73. See Tokyo Fights Pollution, *supra* note 10, at 23, which notes how Tokyo cannot even enforce its progressive new pollution control ordinance since police control is under central authorities. Possible change in this regard is indicated by the reported decision of the Environmental Agency to give control of waste water discharges to mayors of cities with populations around 250,000. See Japan Times, Feb. 22, 1973.

1. *The Civil Liberties Bureau of the Ministry of Justice and the System of Civil Liberties Commissioners*

An essential component of the policy of "democratizing" Japanese institutions after the war was the establishment of a national organ responsible for the protection of human rights. Accordingly, a Civil Liberties Bureau was organized within the Ministry of Justice in 1948, and a system of civil liberties "commissioners" was established. The institution was designed to investigate and dispose of human rights violation cases, to inspire popular respect for human rights through public information and education, and to extend legal aid to the poor.⁷⁴

The system consists of two coordinated branches. The Civil Rights Bureau, with its eight subordinate Civil Legal Affairs Bureaus and Divisions located in the 49 major cities of Japan, is an important division of the Ministry of Justice bureaucracy. Through its general affairs and investigatory sections, this bureau is entrusted with general policy and planning responsibility for the protection of human rights, the investigation of violations, and the publication of related information. The other branch is a federation of assemblies of appointed "citizen commissioners" drawn from the bar, procuracy, universities, and other sources, which investigates and reports to the bureau and divisions on human rights violations. The two-tier system interacts with the Human Rights Commission of the Economic and Social Council of the United Nations through the publication of annual reports and commissioner participation in regional seminars.

The system appears to encourage public activity in the human rights field. Approximately 9,600 complaints for human rights violations reportedly are filed by commissioners each year, with some 23,100 complaints lodged by citizens in other unrelated cases.⁷⁵ The broad definition of human rights also has involved commissioners in questions extending from corporal punishment to pollution and has given the system some flexibility.⁷⁶ The fact that commissioners are encouraged to

74. See MINISTRY OF JUSTICE, *THE GOVERNMENTAL AND NON-GOVERNMENTAL MACHINERY FOR THE PROTECTION OF HUMAN RIGHTS AND LEGAL AID IN JAPAN (1970)* [hereinafter cited as MINISTRY OF JUSTICE].

75. MINISTRY OF JUSTICE, *supra* note 74, at 7.

76. The types of cases generally handled include:

- (1) Cases of violation of human rights by public officials
 - a. Unlawful or undue physical restraint, search, or seizure, and confession under duress, torture, by law enforcement authorities;
 - b. Violence to, and unfair treatment of, prisoners by officials of peno-correctional institutions;
 - c. Corporal punishment by school teachers;
 - d. Violation of human rights by abuse of authority by public officials.
- (2) Violation of human rights by individuals other than public officials or by organizations;

assist those injured by violations has served at times to short-cut lengthy and divisive judicial alternatives.

Unfortunately, the civil rights commissioner program suffers from several basic inadequacies which have rendered it somewhat ineffective. Because commissioners are expected to serve virtually gratis, the program understandably has been able to fill only 9,227 of its 20,000 authorized positions. Although designed to serve as a bridge between government and the people, the commissioners have been inhibited in taking effective action especially against the government due to their semi-official status within it and their vulnerability to dismissal from office. Without real power to accompany their designated status, commissioners have been disinclined to consider and implement basically needed reforms in government and the industrial world with the result that, while their investigations have occasionally produced satisfactory results, the basic institutional problems remain. Vagueness in the definition of their mandate, while encouraging freedom of action, has also produced uncertainty and duplication of the efforts of other programs.

2. *The Administrative Inspection Bureau and the Counselor System of the Administrative Management Agency*

The Administrative Inspection Bureau (AIB), created by statute in 1948, was designed to complement the system of civil liberties commissioners through inspection of various phases of administrative activity and recommendation of more appropriate procedures by the agencies concerned.⁷⁷ The AIB, like the civil liberties organization, has two tiers. A permanent governmental organ whose director is a cabinet appointee, the Administrative Management Agency is responsible for all supervisory aspects of governmental agency efficiency; a federated network of citizen administrative counselors ties the agency to the citizenry. Counselors are quasi-official citizen representatives ap-

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- a. Mental and physical restraint and exploitation of women for the purpose of prostitution;
 - b. Cruel treatment;
 - c. Violation against physical freedom;
 - d. Ostracism;
 - e. Discriminatory treatment;
 - f. Obstruction to voting and similar acts;
 - g. Defamation and intrusion upon privacy;
 - h. Violation of the freedom of speech, religion, association;
 - i. Violation of the right to receive education;
 - j. Violation of the fundamental rights of workers;
 - k. Violation of the right of a person to be secured in his home;
 - l. Coercion;
 - m. Public nuisances, and hazards.

77. W. GELLHORN, *OMBUDSMEN AND OTHERS* 385 (1966).

pointed on bases identical to the civil liberties commissioners; the counselors transmit public complaints on all aspects of administrative procedures to eight regional and 41 district offices connected to the national supervisory organ. Administrative counselors work in conjunction with special complaint centers set up by some cities and prefectures.

Like the civil rights commissioner system, the AIB has had its successes despite basic weaknesses. Perhaps the most striking contribution has been its success in increasing bureaucratic efficiency. For example, reportedly over 70 percent of several thousand of its counselor recommendations on housekeeping functions such as consolidation of intergovernmental communications, procurement rationalization, and coordination of work of related administrative units, have been adopted.⁷⁸ Furthermore, reportedly 31.1 percent of citizen complaints have been resolved harmoniously at the counselor level.⁷⁹

Unfortunately, the institution's long-range impact on bureaucratic reform has been limited, and the counselor system has not proved an effective public interest advocate. Part of the problem is that, like the civil rights commissioners, counselors are expected to work without pay, and the agency offers little technical training for meaningful input on special service problems. While exceptions apparently exist, the general role of counselors, who are powerless to compel bureaucratic action, has been to transmit problems expressed by the people to the appropriate governmental channels, rather than to influence substantive policies. The system has generally been without significant influence and apparently is not widely known.⁸⁰

3. *Recent Environmental Legislation*

Initial regulatory measures for air and water pollution controls were passed by local governments between 1949 and 1951. In 1956, the national government prepared legislation on pollution control, but it failed to find support in the Diet. The Water Quality Conservation Law, a relatively weak control measure passed in 1958, was the first national pollution control measure. Throughout the 1960's governmental concern grew in proportion to the intensification of environmental and social problems. After prior proposals by the Japan Federation of Bar Associations, a special Pollution Commission was established in 1965 whose recommendations were incorporated, in part, in the Basic Act for Environmental Pollution Control (*Kōgai Taisaku Kihon Hō*) of July 3, 1967.⁸¹ The Act, while providing for national envi-

78. *Id.* at 386.

79. *Id.* at 390.

80. *Id.* at 393. Also confirmed by many informants in Japan.

81. Law No. 132 (1967).

ronmental quality standards and specific implementation and planning measures on the national, regional, and local levels, was unfortunately weakened by compromise clauses which required that environmental protection be harmonious "with sound economic development." The Act was also deficient from the administrative perspective since, while it purported to integrate policy by the establishment of an interministerial Conference of Environmental Pollution Control, many crucial policymaking functions remained in agencies dominated by policies of economic growth as the Economic Planning Agency and the Ministries of International Trade and Industry, Agriculture, and Forestry.⁸² In 1970, the Act was revamped in a special parliamentary session which passed a package of 14 legislative texts and amendments concerning environmental protection.⁸³ While eliminating the "sound economic development" clause and undertaking some important administrative innovations, government environmental policy has not freed itself structurally from larger national economic priorities to which it was originally subordinated. Some key administrative measures adopted as a result of the 1970 reforms are highlighted below.

a. Establishment of a national Environmental Agency

On July 1, 1971, a national Environmental Agency (Kankyō-Chō) was established with the mandate of "promoting overall administration of environmental protection to contribute towards ensuring the people a healthy civilized life; of promoting pollution control and the conservation and management of the natural environment."⁸⁴ The Agency has a staff of over 500, including 283 from the former Environmental Hygiene Bureau of the Ministry of Health and Welfare and 60 officials transferred from the Ministry of Agriculture and Forestry. It is headed by a Director-General—the Minister of State for Environmental Affairs—with two Vice-Ministers, and consists of a Secretariat⁸⁵ and four bureaus.⁸⁶ The Agency is supported by four advisory bod-

82. For an excellent summary of Japanese environmental protection legislation see SAND, *supra* note 37, at 14.

83. For summaries of the new laws in English see *The Situation of Environmental Pollution in Japan and the Countermeasures Thereof*, Second United States-Japan Conference on Environmental Pollution (1971).

84. See ACT TO ESTABLISH ENVIRONMENTAL AGENCY, Art. 3 (1971).

85. Legal Counsel, Administration, General Affairs and International Liaison, Accounting.

86. (A.) Planning and Coordination (Pollution Control Programs, Environmental Hygiene, Research Coordination and Environmental Information Center); (B.) Nature Conservation (Planning, Natural Parks, Recreation Facilities, Wildlife Protection); (C.) Water Quality Conservation (Planning, Water Quality Control, Soil Agricultural Chemicals); (D.) Air Quality Conservation (Planning, Air Pollution Control, Noise and Odor Control, Automotive Pollution Control.)

ies,⁸⁷ and is to supervise a Training Institute for Environmental Pollution Control and a National Research Institute for Environmental Pollution, to be created by March 1974.

Despite its apparent promise and the range of its activities, the Environmental Agency has suffered from a lack of legal and political power to enforce its mandates. Furthermore, some other agencies and industrial concerns whose actions have critical environmental effects have turned away from environmental concern claiming that affirmative action in this area is within the jurisdiction of the Environmental Agency. Unfortunately, while the Agency does maintain an international section which has gathered much useful information, it has not been able to induce more environmentally conscious positions in government or industry on matters affecting the international environment.⁸⁸

b. Dispute resolution and compensatory systems

A national network of dispute resolution committees under the aegis of a central coordinating body and a compensation program for "designated" victims of pollution and of pollution-related diseases were created in 1970 as part of the legislative response to the environmental crisis. Both systems are traditional in philosophy and rely heavily on prior organizational models. The dispute resolution program^{88a} is centered around rural-based, citizen-staffed committees (*shingikai*) of lawyers, doctors, planners, and other "men of high standing in the community." Members are appointed by prefectural governors and serve for short terms without compensation. The committeemen must refrain from political activity or affiliation, as did the civil commissioners and administrative counselors who preceded them. Each nine to 15 member committee is divided into subcommittees which conduct traditional forms of dispute settlement such as conciliation, negotiation, arbitration, and courtbased settlement. The parties to an environmental controversy can designate the professionals to represent them and the settlement procedure to be employed. There are special provisions for the representation of large groups. At the hearings both sides may present evidence and obtain a determination of liability, compensation, causation, or any other issue in the case. The hearing's contents and proceedings are closed to the public.

87. Central Council for Environmental Pollution Control, Council on Natural Parks, Central Council on Wildlife, Central Council on Water Pollution.

88. The present position of Japan at the IMCO negotiations in London is but one example; for more general information on Japan's international environmental activities see QUALITY OF THE ENVIRONMENT IN JAPAN, *supra* note 7, at 159-62.

88a. Kōgai Funsō Shōri Hō. (Law for Resolving Public Hazard Disputes) (1973).

While the system is occasionally successful, it has not yet functioned as hoped. Most controversies remain unresolved due to the consensus requirement and the emotional frenzy over environmental issues. The secret proceedings preclude public awareness and their quasi-judicial character has evidently impeded opportunities for effective public negotiation with uncompromising governmental agencies. In sum, the system reflects a Confucian bias that conflict among people must be harmonized to permit knowing bureaucrats to get on with the job of governing.

The compensatory scheme^{88b} accompanying the dispute resolution system is designed to silence pollution victims through solatium. After an official medical examination, the victims of diseases designated by Environmental Agency regulations may recoup all medical costs associated with the disease. The solatium payments are drawn from a national fund based on a prorata factory emission surcharge. Unfortunately, this system is entirely under government control, with virtually no public input in physician selection or in the victim determination and compensation process.

c. Subsidies, loans, and tax incentives

For a number of years the Japanese government has sought to induce a more enlightened industrial attitude towards the environment by combinations of subsidies, loans, and tax incentives. On June 1, 1965, the Pollution Prevention Corporation, which allocates public grants and loans for anti-pollution installations, was created. Loans for similar purposes and, more recently, for companies engaged in leasing pollution control facilities are made available through the Japan Development Bank and the Small Business Finance Corporation.⁸⁹ In conjunction with this general policy, a system of cost-sharing for public pollution control works was also devised. It uses a surcharge based on a prorata apportionment of pollution caused by each industry to finance specified anti-pollution projects.⁹⁰ Finally, pollution control is encouraged by tax incentives, including special tax depreciation for investment in control facilities and a variety of exemptions and control-related deductions.⁹¹

4. Legal Aid

Although a little-used system of deferral of court costs was pro-

88b. Kōgai Keuko Higai Hoshō Hō (Law for Compensation of Health Injury from Pollution) (1973).

89. See Act No. 115 (1951) on Financial Assistance for Small Business Modernization, *as amended*, (March 1971).

90. SAND, *supra* note 37, at 16.

91. QUALITY OF THE ENVIRONMENT IN JAPAN, *supra* note 7, at 168.

vided for in the Code of Civil Procedure prior to World War II, formal legal aid was established in post-war Japan under the administration of the newly formed Civil Liberties Bureau. In 1952, a special organization, the Japan Legal Aid Association, was organized under the auspices of the Japan Federation of Bar Associations and funded by contributions from, among others, the bar, municipalities, and the Ministry of Justice. In practice, the organization functions as a referral center. Those unable to afford counsel or litigation costs approach the association and, after consultation, are referred by a special examination committee to an affiliated lawyer. If the suit has merit and there are good chances of winning, the attorneys's fees, retainer, guarantee money and costs are all advanced to the attorney by the association; which is then reimbursed from the proceeds if a favorable judgment is rendered. Repayment is sometimes waived upon approval of the Legal Aid Examination Committee and the Ministry of Justice.⁹² In addition to bar association activities, many young lawyers have formed their own associations to provide public interest legal services. Some of these lawyers, while donating *pro bono* service to the common association, also maintain regular practices. Despite the time limitations, these groups have achieved a number of major court victories.

Public interest practice in Japan is primarily limited by insufficient funding. The bar association legal aid system has provided only limited assistance, and apparently no administrative actions have been funded.⁹³ Independent public interest lawyers have occasionally had to defray the costs of suit themselves. Some of these lawyers, as noted earlier,⁹⁴ have been isolated from more traditional elements of the bar by their claimed leftist ideological positions. Financing and politics appear to be the basic impediments to further development of a public interest bar in Japan.

F. Assessment

The foregoing analysis suggests some tentative conclusions regarding the design of public interest institutions in Japan:

1. Environmental decline in Japan has become so grave that present policies of economic and technological adjustment are inadequate. Compensatory and dispute settlement systems may not take effect in time. A mixed institutional response permitting the public a constructive role in policy formation is necessary. A threshold requirement is a determination of the extent to which existing institutions can be

92. MINISTRY OF JUSTICE, *supra* note 74, at 15.

93. *Id.* Note, however, that aid may also be granted in actions for injunctive relief.

94. See text accompanying note 30 *supra*.

adapted to meet the new needs and to what extent new types of institutions must be created.

2. The preceding discussion of civil liberties commissioners, administrative counselors, and dispute resolution committees suggests that a two-tier organization of cooperating federations would be a natural structural model. The first tier of the proposed organization would be a federation of community-oriented public interest centers with legal support from the bar associations and lawyers' groups. These centers could be small, with a few legal or professional staff members and would seek to draw financial support from local sources as discussed more specifically below. Cooperative public interest centers could provide a number of services: (a) identification of the most serious environmental hazards and assistance to environmental groups, commissioners, and counselors in investigating them; (b) coordination of presently fragmented research groups, centers, and data banks; (c) direct technical legal assistance in the negotiation of pollution control treaties as well as in mediation and litigation; (d) educational activities; and (e) assistance to local government and industry in the adoption of technical innovations and implementation of pollution control programs.

The second tier would be a federation of academics and professionals throughout Japan who are concerned with environmental and social problems. The purposes of this tier would be to supply advice and information to the first tier, while devoting its primary energies to questions of more long-range reform. Proposals could be channeled into governmental forums through the administrative counselor system at the local level and provided directly to the relevant ministries and national organizations such as the newly formed National Institute of Environmental Protection.

The two-tier public interest organization could be coordinated in Tokyo through a central information clearinghouse which could serve also as the principal base for affiliation with cooperating academic and public interest centers in other countries. As noted, the organization hopefully will establish links not only with western nations but, through information and personnel exchanges, also with the communist and developing nations.

3. In light of the organization's multiple roles and purposes both domestically and internationally, it would be desirable for its professional composition to be heterogeneous.⁹⁵ Thus, in Japan, where lawyers are just beginning to enter areas of "social engineering" and planning, it may be more natural for non-lawyer, law-trained statesmen

95. As was noted at the Bonn Conference this argument was also relevant in other countries represented there and should indeed be worthy of consideration in the United States.

or economists to initiate some of the newer, less familiar, international activities of the organization.

4. In Japan, as in many countries, the difficulties of securing financial support for public interest activity not only poses a fundamental barrier to the development of institutions but also shapes their development.⁹⁶ Public interest groups in Japan face the dilemma that their activities become increasingly suspect to vested financial interest when directed toward greater and more effective action. This is a particularly formidable problem in countries like Japan where large private foundations are only just beginning to form.⁹⁷ Despite these basic problems, there would seem some basis for hope because of the availability of some funds outside of industry and government and the possibility of alternative structural solutions. Some major cities in Japan as well as other smaller cities and towns are establishing their own environmental funds and may be willing to use these monies, previously appropriated for compensation of pollution victims, to organize or assist in the development of public interest centers.⁹⁸ Another potential funding source, as the organization's contribution becomes recognized, might be the Japanese public itself.⁹⁹ In addition, successful lawsuits could be self-financing since there are apparently no legal or ethical restrictions on the inclusion of attorney's fees in damage claims involving public interest law suits.

Problems of funding a public interest organization would be alleviated by segregating its informational and ombudsman activities from its more adversary role. This again raises the question of whether or not the organization can perform effectively once so neutralized. Yet, a variety of possible suggestions may be imagined such as using the parent ombudsman to support its more action-oriented subgroups. Seen in this light there is considerable basis for hope that Japanese business and government leaders, who have recently taken an enlightened attitude in calling for innovative alternatives, will look favorably on the growth of such institutions.¹⁰⁰ Indeed, to the extent that a pub-

96. The scarcity of available funds was recognized by everyone at the Bonn Conference as a basic problem. Public interest group ignorance of the operation of financial institutions and the availability of funds is a further complicating factor.

97. An eleemosynary trend is now beginning, as can be seen in the development of the Yoshida Foundation, the new Mitsubishi and Matsuzaka Foundations and the National Japan Foundation (Kokusai Kōryū Shikin).

98. See generally Japan Times and Mainichi Shimbun, March 18, 1973. The possibility of contributions was encouraged by Senior Directors of pollution research institutes in these cities.

99. Charitable donations have never been very large in Japan but a grassroots public interest organization might be able to obtain such donations nonetheless.

100. See Asahi Shimbun, March 23, 1973 and Japan Times, March 16, 1973, for evidence of a new awareness, concern, and search for alternatives by the business world.

lic interest network might assist environmentally sound economic development by providing sensible plans for reform, the potential of industry and government as sources of funds may be recognized more broadly.¹⁰¹

From the international perspective, problems of funding data dissemination or personnel exchange would probably be less formidable because of the availability of funds, the probable modest nature of initial requirements, and a clearly perceived need by many countries for certain types of environmental information.

5. In summary, the following points indicate the feasibility of creating a public interest organization in Japan and suggest the form it should take:

- (a) the *seriousness of the environmental situation* in Japan and the *social crisis* resulting therefrom demanding immediate alternatives;
- (b) the *international cast* of the organization which will assist in assuring its *political neutrality*;
- (c) the comparative novelty of the concept of *public interest* in Japan which gives a fresh impetus to social action independent of traditional ideological characterization;
- (d) the probity, political neutrality, professional qualifications, and competency of the organization's participants which will permit it to mediate among government, industry, and the public;
- (e) the organization's high aspirations and the novelty of its philosophy;
- (f) the legal, technical, and institutional preparedness in Japan for such an experiment as well as the interest therein;
- (g) the realization by government and industry that alternatives must be found which will increase the organization's chances of support;
- (h) the precedent that can be set as the first link in a new world institution formed by such cooperating organizations.

II

INTERNATIONAL DIMENSIONS

Part I contained a discussion of the domestic problems and factors bearing on the design of public interest institutions in Japan, many of which are also experienced in other countries. The search for solutions to these problems will be assisted by affiliation of environmental

101. Perhaps the greatest breakthrough could be support from the Ministry of Finance which could easily promote tax incentives for donors to these organizations.

action groups in different countries. In Part II the potential contribution of a world network of public interest organizations is examined in greater detail. Such a network should be encouraged to grow out of present instances of cooperation between Japanese, United States and other national groups.¹⁰²

A. *Environmental Problem Types*

Since the cooperative response indicated is shaped significantly by the nature of a particular problem, a taxonomy of international environmental problem types follows.¹⁰³

1. *Common Problems*

Common environmental problems are those which relate to all or nearly all people. Some common problems physically affect most of the globe through their persistence and mobility. Examples are pesticides, discharges of carbon dioxide or particulates into the atmosphere, and oil dumping and spillage on the high seas. Others, such as the energy crisis, reflect the common problem of man's depletion of world resources. French nuclear testing in the Pacific would seem a third instance where the absence of international environmental mandates or enforcement mechanisms permits such activities to continue.

2. *Similar Problems*

At times environmental problems link nations not by their common destructive impact, as in the case of nuclear testing, but by the similarity of the impact in different locations. Both the industrialized and developing worlds must face problems of housing shortages, sanitation, transportation, deforestation, and soil erosion. Likewise, air and water pollution today raise similar difficult scientific, technological and economic issues in Tokyo, Los Angeles, and Shanghai;¹⁰⁴ although such problems are physically unconnected, they provide fertile opportunities for international exchange.

102. For a slightly different approach see Russel and Landsberg, *International Environmental Problems: A Taxonomy*, 172 *SCIENCE* 1307-14 (1971) [hereinafter cited as Russel and Landsberg]. As a result of the Bonn Conference, French and English lawyers have begun joint work on drafting environmental legislation for their countries, and the Washington-based Center for Law and Social Policy has expanded its program of cooperation with foreign lawyers on international environmental problems.

103. *Id.* at 1308; Environmental problems relevant here generally can be classified as (1) common, (2) similar, (3) transferred, (4) coordinate, (5) regional, and (6) reaction-linked. While the types sketched in the text are in no way represented as exhaustive, they are useful in exploring the most effective response of public interest groups to these problems.

104. See Wall St. J., Nov. 21, 1972, at 48, col. 1, for report on pollution in China and progress made there.

3. *Transferred Problems*

Some problems, ostensibly only the concern of one country, are transferred to other countries via the web of international trade. Some are confronted while others go unrecognized. *Sekiyu tampaku*, an oil-based protein, is illustrative of hazards internationally mobile in tainted food and dangerous drugs. *Sekiyu tampaku*, used as a feed for cattle, is a protein derived from a petroleum base. Manufacture was initiated several years ago by a number of Japanese corporations, including Kanegafuchi Chemical Industry Company and Dai Nippon Ink and Chemicals. Consumer groups in Japan have learned recently that the substance may possibly be carcinogenic and they have initiated petitions urging the government to deny permits for its production and distribution.¹⁰⁵ In response, the Ministry of Agriculture argued that the substance was a "food" and therefore outside its jurisdiction, while the Ministry of Health and Welfare characterized it as a "feed" and justified its inaction on that basis. The citizen petitions were rejected and the government refused to disclose any pertinent information to the consumer groups. Environmental and resident groups then joined the fight, assisted by scientists and prominent academics. Eventually, secret governmental files on the dangers of the product were pried open. The governmental agencies and companies involved capitulated and production reportedly has stopped.¹⁰⁶ Unfortunately, a recent statement by the House of Representatives Social and Labor Affairs Committee has disclosed that 84 tons of the chemical have already been exported by Kanegafuchi Chemical to Italy, West Germany, Sweden, Indonesia, and the United States and eight tons to Spain, Sweden and Romania by Dai Nippon Ink.¹⁰⁷ Through secrecy and bureaucratic division a health hazard in one country was permitted to be transmitted to consumers in another.

4. *Coordinate Problems*

Some environmental problems are caused by the coordinate action of two or more governments or by the activities of international joint ventures subject to different regulatory schemes in the countries of their operations. Although it would seem reasonable that business conducted multinationally should respect basic standards for environmental and human safety everywhere, such is not the case and citizens are exposed to environmental risks in one country that would be intolerable in another. A good example is the construction of nuclear plant facilities in high density population areas in Japan. American concerns

105. The government agencies singled out for attention included the Ministry of Health and Welfare and the Ministry of Agriculture. Japan Times, February 20, 1973.

106. See Japan Times, Feb. 21, 1973.

107. See Mainichi Shimbun, March 3, 1973.

reportedly supply parts and/or funds to projects that would not be permitted to proceed under the stricter environmental standards of the United States.¹⁰⁸ Another type of coordinate problem is the creation of pollution havens; these are found in developing countries which have capitulated to the governmental pressures of industrialized countries in order to receive economic development assistance.

5. *Regional Problems*

Regional environmental problems, defined as those resulting from physical (including biological) linkages, generally are localized because of the low persistency of the pollutants and the limited scope of natural systems transporting them.¹⁰⁹ One type of regional problem is the emitter-receptor example, usually involving river systems flowing across common borders. Thus, the Rhine is both France and Germany's sewer, and part of the Netherlands' water supply. Similarly, drainage discharges from the Welton-Mohawk channel extension have increased the salinity of the Colorado River flowing into Mexico, rendering it virtually useless for irrigation. In other cases, because of the natural systems involved, all parties become both emitters and receptors. In the Baltic Sea or around Lake Erie, for example, oil or mercury pollution endangers all countries bordering the polluted area. It should also be noted that in regional areas common, similar, transferred, and coordinate problems are all frequently present, with each aggravating the other.

6. *Reaction-Linkage Effects*

In this final problem type the policies of one national government impinge directly on the sensibilities and well-being of citizens in other nations. Many countries, particularly the developing nations, have been criticized by conservationists around the world for not taking effective action to protect domestic animal species. Perhaps the most notorious cases are the poaching of African cats such as the leopard, and the massacre of Ceylonese elephants to permit forest clearing for agriculture. Although ostensibly local, such problems become international in scope when citizens of other countries are outraged and attempt to involve their own governments in sanctioning efforts.

B. *Solutions*

Solutions to the problems described above require international cooperation among private citizens. The Japan Center for Human

108. There are a number of nuclear sites in Japan and the joint venture connection was reported by a number of sources. For a discussion of protest see Mainichi Shimbun, January 28, 1973.

109. Russel and Landsberg, *supra* note 102, at 1308.

Environmental Problems hopefully will soon begin operations and will provide a basis in Japan for such international cooperation. Japanese, European, Canadian, and United States centers may then expand present exchanges of data and personnel. Lawyers, academics, doctors, scientists, architects, and other professionals concerned with environmental problems will be able to work with their counterparts from other countries and be introduced to groups of similarly concerned persons at the regional and local levels. Exchange visitors would combine action with the staff of host centers together with research, teaching, and perhaps the preparation of comparative reports on the areas of their principal activity. Such reports would assist both in the process of integrating loosely affiliated centers and in increasing the awareness and involvement of other interested groups throughout the world; as a dynamic process, the growth of new centers, would be encouraged and fueled by the experience of those preceding them. Hopefully, a world-wide institution will evolve from this network of interlinked groups. The types of activities by which these groups can pursue solutions to serious environmental problems will now be discussed.

1. *Advocacy*

The form of advocacy envisioned would necessarily differ depending on the case at hand. Some environmental problems discussed above can be attacked, for example, in the United States through traditional measures such as litigation, while others require appearances in international forums or combinations of multilateral strategies. In some instances the capability for decisive action in one country may exist, but such action may not be desirable in view of the perceived best interests of the people of another country. It will be the responsibility of cooperating groups to assess carefully at the outset the consequences of their actions.

Perhaps the most feasible opportunity for cooperative transnational action involves regional border pollution problems arising from one foreign source. In such cases a growing body of legal precedent may be drawn upon within traditional judicial forums.¹¹⁰ An example is the increased salinization of the Colorado River in Mexico from United States source runoff of the Welton-Mohawk Irrigation District. A classic public interest problem is presented, involving powerful governmental and industrial interests, unresponsive to appeals from long unrepresented elements of the public in both countries. Diplomatic and administrative negotiations aimed at resolving the problems

110. See McCaffrey, *Trans-Boundary Pollution Injuries: Jurisdictional Considerations in Private Litigation Between Canada and the United States*, 2 CAL. WEST. INT'L L.J. 191 (1973).

of the two counties have not produced satisfactory results. Assuming some possibility of prevailing on the merits,¹¹¹ American public interest groups could assist Mexican farmers in obtaining relief through direct action in American courts.

Some coordinate, transferred, and even common environmental problems may also be attacked by traditional measures in American courts. For example, a suit to enjoin projected nuclear testing at Amchitka was brought in an American court¹¹² and plaintiffs might have prevailed had world outrage been marshalled more effectively before the court. The problem of hazardous nuclear plant siting by American and Japanese joint ventures in Japan is another case vulnerable, through its financing structure, to attack in the United States even though a remedy is unavailable in Japan. For example, a case may be made that the United States Export-Import Bank, an important financial intermediary in the transaction, as a "permitting" governmental agency, should be required to prepare environmental impact studies under the National Environmental Policy Act, despite the extraterritorial impact of the project.¹¹³

All areas of advocacy need not involve litigation. Public interest groups in the United States have often presented comments on behalf of United States environmentalists before the Senate Foreign Relations Committee on the preparation by the State Department of draft conventions involving ocean dumping, limitations of liability for oil pollution,

111. See Chayes, Internal State Dep't Memorandum on the Occasion of the United States-Mexican Agreement (March 22, 1965). This "defensive" memorandum was prepared by Abram Chayes, then legal advisor to State Department, on the occasion on the American-Mexican agreement to construct the Welton-Mohawk District. The memorandum pointed out the possible liability of the United States to Mexico if suit were brought before the International Court of Justice and of the District itself to injured Mexican land owners if suit was brought by them in United States federal district court. With regard to the second suit the memorandum noted that although jurisdiction would probably be denied if suit were brought against the United States or its officials because of the doctrine of sovereign immunity and section (k) of the Federal Tort Claims Act, 28 U.S.C. §§ 2671 *et seq.* (1970), which exempts claims arising in a foreign country, these defenses, it argues, would not avail if the District itself were sued as a private party in common law tort. The memorandum expressed doubts that the District could escape by arguing that the United States was the real party in interest and thus suit should be barred on the same procedural grounds which the United States or its officials themselves could have raised.

112. Committee for Nuclear Responsibility, Inc. v. Seaborg, 463 F.2d 783, 3 ERC 1126 (D.C. Cir. 1971), 463 F.2d 788, 3 ERC 1210 (D.C. Cir. 1971), 463 F.2d 796, 3 ERC 1256 (D.C. Cir. 1971), *application for injunction in aid of jurisdiction denied sub nom.*, Committee for Nuclear Responsibility v. Schlesinger, 404 U.S. 917, 3 ERC 1276 (1971).

113. See *People of Enewetak v. Laird*, — F. Supp. —, 4 ERC 1976 (D. Haw. 1973). For Defense Department regulations requiring environmental impact assessment see 36 Fed. Reg. 15750-54 (1971); for possible requirements of impact statements for treaties see *Washington Post*, Feb. 1, 1972, § A, at 3, col. 1.

ship design and construction, and the exploitation of arctic seals. Such groups are now beginning to influence the government's international environmental policy at the formative stages through membership in delegations negotiating these conventions. There would seem to be a clear need for public interest groups, developing in Japan and other countries, to begin similar activity and to coordinate their presentations to their respective governments with groups in other countries.

New avenues for citizen advocacy are also opening before international tribunals. Thus, provisions of the proposed environmental commission of the European Economic Community would allow citizen complaints to the Commission for environmental hazards occurring anywhere in the Community, and citizen petitions have long been recognized under Article 25 of the European Convention on Human Rights.¹¹⁴ Although citizen groups should not expect damage awards or injunctive relief from these bodies, they can use declaratory statements in their favor to support other actions and to arouse sympathetic world opinion.

Public interest organizations can also assist other environmental organizations in presenting positions before international agencies. In the United States, these groups have helped organizations such as Friends of the Earth in obtaining observer status before agencies such as the International Maritime Consultative Organization (IMCO). As public interest centers continue to confederate, they will also be able to assist in the internationalization of environmental groups affiliated with them which, in turn, will aid in the accrediting of these groups before international bodies.¹¹⁵

Finally, some problem types, such as *res communis* issues or "reaction-linked" problems, may necessitate entirely new and different forms of advocacy. A general principle here is to shape a multilateral response to the "common" nature of the problem in order to avoid characterization of world citizen appeal as an "attack" from one national source. In the case of whaling, one possible strategy might be use of a public conference in Japan, where a major whaling industry still operates.¹¹⁶ At this conference anti-whaling environmental groups from around the world could cooperate with sympathetic Japanese groups in debating

114. See also 48 U.N. ECOSOC E/Res./1503 (1970), detailing procedures for citizen complaints of Human Rights violations to the United Nations. It will be interesting to see whether environmental destruction can be characterized as a violation of human rights under the Draft Declaration to the Stockholm Conference and subsequent events thereto.

115. Many groups have had to show international status to obtain accreditation.

116. Japan reportedly kills 43 percent of the world's whales while the Soviet Union kills 40 percent. The remaining catch is taken primarily by Chile, Peru, and South Africa.

openly with whaling interests the major issues involved. Through such a conference international grievances could be aired, public opinion mobilized, and the bases for implementation of the desired ten year moratorium and its aftermath explored.¹¹⁷ Axiomatic for such a strategy is strong support from a Japanese core constituency whose anti-whaling concerns have been unrepresented and unheeded in Japan and who would wish to invoke international cooperation to assist them. In the absence of such a sympathetic constituency, the problem simply degenerates into one country's environmentalists imposing their particular sensibilities on the people of another country.¹¹⁸ Traditional and new types of advocacy must be employed by federating environmental groups to open avenues of effective and constructive access for citizen participation in solutions to these problems. The long-range function of such cooperation would perhaps be limited if restricted to adversary measures alone, and it is other equally important contributions that will now be considered.

2. *Cooperation in Transnational Drafting Activity*

At the national level, public interest groups in the United States have often assisted legislators, as well as the public, in the preparation of draft legislation. In the international area environmental groups are presently assisting in the formulation of a comprehensive law of the sea to include rules regarding fishing, continental shelf exploration and exploitation, deep sea mineral mining, freedom of the seas, and a governing environmental regime. The influence of public interest groups in this area will naturally expand as liasons develop.

While the law of the sea may provide the largest area for contribution, public interest groups will be able to assist international organizations through drafting activity in other areas. One example is the question of whether international bodies should assess the environmental impacts of their development and other projects. In this area network centers may build upon precedents of the International Bank for Reconstruction and Development and the United Nations Development Program, two agencies which now have undertaken such studies.¹¹⁹

117. The United Nations Stockholm Conference of 1972 adopted a recommendation for a ten-year moratorium on whaling. The conference might have been used not only to explore how research on stocks might be conducted during the ten-year period but also what alternative international organizational mechanisms might be devised to monitor the problem after the ten-year study period to replace the ineffective International Whaling Commission.

118. A further point which should be considered is some involvement of the Soviets to dispel the Japanese impression of being singled out for censure. On the other hand, isolation of one country may have strategic advantages.

119. See J. HARGROVE, *LAW, INSTITUTIONS, AND THE GLOBAL ENVIRONMENT* 59 (1972).

Perhaps by analogy to environmental impact assessment in the domestic area, environmental groups must press other international agencies to follow similar procedures and assist in improving the content of impact studies presently conducted. The network can play a critical role in identifying cultural differences in perception of environmental impacts and in developing schedules for agency assessment sensitive to these differences.¹²⁰

In addition to impact assessment at the international organizational level, transnational cooperation will necessarily also have domestic ramifications as noted in Part I. For example, American environmental lawyers are already assisting French, English, and Japanese lawyers in developing legislation which, while similar in intent to the United States' National Environmental Policy Act, can be refined by avoiding the latter's weaknesses.¹²¹ Such legislation, while primarily domestic in focus, can also be used to reach problems of international dimensions.

The question of the duty of environmental assessment by international agencies is one part of the larger issue of responsibility for environmental disruption. A number of conventions such as the International Convention on Civil Liability for Oil Pollution Damage,¹²² the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties,¹²³ as well as the now famous *Trial Smelter Arbitration*,¹²⁴ *Corfu Channel*,¹²⁵ and *Lake Laroux Arbitration*¹²⁶ cases have already dealt with basic aspects of this overriding problem. Growing experience of public interest groups in international forums and tribunals will assist here in refining answers to basic questions such as who should pay for environmental destruction; what should be the extent of liability; and who should be entitled to compensation.¹²⁷ Through transnational collaboration public interest groups will naturally seek greater participation in decisions on these and other questions.¹²⁸

120. Again, projects whose environmental consequences would be regarded as too adverse to permit them in the industrialized world might be regarded as highly beneficial in the developing world.

121. See Sax, *The (Unhappy) Truth About NEPA*, 26 OKLA. L. REV. 239 (1973).

122. *Opened for signature*, Nov. 29, 1969, reprinted at 9 INT'L LEGAL MATS. 45 (1970).

123. Reprinted at 9 INT'L LEGAL MATS. 25 (1970).

124. 3 U.N.R.I.A.A. 1905 (1941).

125. [1949] I.C.J. 4.

126. 12 U.N.R.I.A.A. 281 (1963) [in the original French], condensed version in English in 53 AM. J. INT'L. L. 156 (1959).

127. See Note, *New Perspectives on International Environmental Law*, 82 YALE L.J. 1659 (1973).

128. For example, as was pointed out at Bonn, one of the key future problems for environmental groups may be access to environmental information from international organizations themselves.

3. *Environmental Monitoring*

The term "monitoring" customarily refers to at least three types of interrelated activity: (1) enforcing compliance with a given set of standards; (2) evaluating natural systems, setting baselines, discovering areas needing measurement, and assuring the compatibility of measurements in different countries; (3) general watchdog activity. The transnational activity discussed here contemplates all three types of monitoring.

Official monitoring has already begun in a number of countries including Sweden, the United States, and Japan. From the public viewpoint the protection afforded by the elaborate systems employed has been inadequate not only because many grave dangers have gone unrecognized but also because, as in the case of Japan, widespread violation of environmental standards has apparently become the rule rather than the exception.¹²⁹ National organizations are needed to monitor public hazards and to develop procedures to spark official enforcement of existing standards. In the international arena public interest liasons can provide an analogous role in intergovernmental "official" monitoring.

Network centers can also assist in the risk evaluation and standard setting aspect of monitoring by serving as channels for relatively unbiased technical and scientific data. Using this data, public interest centers can seek to design new regimes for risk assessment to replace present schemes of retrospectively adjusting standards after human tragedy or environmental accidents have occurred.¹³⁰

4. *Data Dissemination, Coordination, Planning*

Public interest groups will accumulate valuable experience in the coming years. The processes of advocacy, monitoring, drafting, and publication, will necessarily involve developing reserves of legal research, drafts, proposals, scientific and economic studies, technological data, or alternatives for environmentally safe development. The availability of this work product will lead to economies by reducing duplicated efforts, as the case of United States groups sharing their comments on draft conventions with cooperating environmental groups in other countries illustrates.

The public interest network centers can supplement the informa-

129. For a discussion of Japanese telemeter system for air pollution monitoring see *QUALITY OF THE ENVIRONMENT IN JAPAN*, *supra* note 7. According to a recent environmental Agency report, 32 Japanese cities, including Tokyo, Osaka and Kyoto exceed permissible human tolerance standards for air pollution.

130. See Starr, *Social Benefit Versus Technological Risk*, 165 *SCIENCE* 1232-38 (1969).

tional exchange systems being developed by the United Nations Environmental Program. For example, they could provide information on key professionals engaged in specific areas of interest to the program and also analytic information on recent legal cases in the different countries concerned.¹³¹ Information flow could also be strengthened by the exchange of professional personnel between public interest centers *inter se* and also between them and the United Nations Environmental Program and various consulting organizations, such as the International Union for the Conservation of Nature.¹³²

The development of a cooperative multinational network in the public interest sector will fundamentally contribute to better planning at the international level, and the network itself may be used by policy-makers as a forecasting mechanism not only of the environmental consequences of a given course of action but also of its world-wide economic and political ramifications.

CONCLUSION

The cooperation envisioned will develop only gradually. Technical, financial, political, and informational obstacles will continue to confound progress in public interest activity in many countries; linguistic barriers will retard working relationships; conceptual differences of professional roles and responsibilities will produce problems in transferring strategies across national boundaries; differing action priorities and areas of sensitivity and awareness will frustrate public interest professionals in their bids for cooperation from their counterparts in other countries.

Despite these impediments a tide toward the confederation of common interests can now be seen. This cooperation, perhaps *ad hoc* and regional at first, will grow in spurts with breakthroughs and failures intermixed. The process of cross-cultural interaction itself will necessarily create its own new professionals. Drawn at first from traditional practice in law, medicine, architecture, planning, or the sciences, the international public interest profession will naturally develop an ethos of its own as transnational activity in the environmental field expands into related areas of consumer protection, city planning, or even education.

The international public interest professional will be an advocate in both new and traditional terms. Some cases may be handled by

131. Such information as noted at the Bonn Conference would be invaluable to supplement the referral systems contemplated by the United Nations Environmental program and used by the International Union for the Conservation of Nature in Bonn, Germany and Morges, Switzerland.

132. Several American and French intern lawyers and law faculty of IUIN attended the Bonn Conference.

simple litigation. Other problems, of course, will necessitate more subtle approaches combining diplomacy, persuasion, negotiation, and organizational activity, often in foreign countries. Teaching, research, publication, drafting, advisory work both to foreign governments and international agencies will also be concerns. This professional will have to bridge foreign cultures and evolve new allegiances. In the United States, the development of this international profession must place new demands on professional and graduate schools, and send reverberations down the educational structure. One happy consequence of this may be the reintegration of the social and natural sciences as well as greater interaction between the professional schools and the arts.

