

# Formulation Process of Diet Law and Cabinet Law in Japan

## – A Comparative Study of Basic Environmental Law and Basic Law on Biodiversity –

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### Abstract

This paper introduces the process of law formulation and the characteristics of basic laws in Japan. More specifically, this paper presents the effects of the Basic Environmental Law and

the Basic Law on Biodiversity on environmental administration as a case study. In Japan, both the cabinet and legislators can submit a bill to the diet. When a ministry develops a bill, it must obtain a report from a council that justifies the necessity of the new law. The ministry must then obtain approval from the ruling party and consent among the other ministries including the Cabinet Legislation Bureau. After a cabinet decision, the bill is submitted to the diet. At the end of 2015, there were 48 basic laws in effect, and while there is no firm definition of a basic law, such a law generally provides simple policy framework and direction. The cabinet submitted the bill of the Basic Environmental Law, and the law was established in 1993. A collaboration of environmental officers and big-name politicians initiated its formation, and the law legalized environmental impact assessments, economic instruments, and provided a global environmental policy, significantly improving Japanese environmental policy. A group of NGOs drafted the Basic Law on Biodiversity, which was subsequently submitted by diet members. It was established in 2008; however, it has not significantly influenced environmental policy. Major issues stipulated by the Basic Law on Biodiversity had already been implemented or planned prior to the establishment of the law.

**Keywords:** law formulation, Japanese law, environment, basic law

## 1. Introduction

In Japan, both legislators and the cabinet are authorized to submit a bill to the diet, and more than 80 percent of the Japanese laws adopted after World War II were submitted by the cabinet (hereafter referred to as cabinet laws). It is no exaggeration to say that the Japanese legal system depends on these cabinet laws. Another characteristic of the Japanese legal system is the existence of many basic laws (Nishikawa, 2015). No legal definition is given regarding the basic laws, and their legal status remains unclear. They are sometimes seen as set between the Japanese Constitution and other ordinary laws, whereas a number of sectors have no basic law and some basic laws are placed under other basic laws. Many of these laws are submitted by legislators (hereafter referred to as diet laws).

There are a number of studies on the process of formation and the characteristics of diet laws. Igarashi (1994) demonstrated the diet-law formulation process and emphasized the significance of law formulation by legislators as representatives of the nation. Kayano (2015) compared the numbers of diet laws and cabinet laws, demonstrating that diet-law formulation has become active since the 1990s, when the public and mass media claimed government solely directed by politicians. Kawano (2010) identified sectors where diet laws have been established and presented their characters. Takami (2003) analyzed the constitutional authority of legislators' initiative and the relationship between legislators and their political party. Meanwhile, the procedure for cabinet-law formulation has not been legally stipulated, and there is not much literature on the formulation process—even though the procedure is self-evident among bureaucrats (Kayano, 2015).

This paper introduces the usual formulation process of diet laws and cabinet laws. Next, it discusses the formation process of the *Basic Environmental Law* (BEL) and the *Basic Law on Biodiversity* (BLB) as a case study; the former is a cabinet law, whereas the latter is a diet law. Regarding basic laws in general, Shiono (2008) comprehensively reviewed and discussed

their characteristics and functions, and Nishikawa (2015) analyzed trends of basic law formulation and evaluated their function. The majority of the studies on the BEL and BLB are focused on their legal implications. Kitamura (2004) and Koyama (2015) analyzed the impact of the BEL on judicial decisions, and Matsui (2009) critically evaluated a development project based on the object of the BLB. The Environment Agency (1994) reported the formulation of the BEL, and Kusakari (2008) and Yatsu et al. (2008) presented the formulation of the BLB, both of whom were directly involved in the process. However, there is no research regarding how the formulation was initiated and by whose initiative. Most studies on Japanese law formulation are based on written material such as literature and precedent, and few studies have focused on the actual motivation of law makers. This paper revealed the motivation not only by written material but the interviews of the persons concerned. Finally, this paper compares the effects of the BEL and the BLB on Japan's environmental administration (Note 1).

## **2. Diet Law**

The Japanese Constitution designates the diet as a sole legislative body. Therefore, only legislators and the cabinet are authorized to submit a bill to the diet (Note 2). There is no stipulation regarding the definition of diet laws nor cabinet laws, and the text of a law does not indicate whether it was submitted by the legislators or the cabinet (Note 3). The cabinet decided in 1963 that it should not submit any bills that does not stipulate people's rights or actions. Law only stipulating policy framework or declarations is generally formulated as a diet law (Cabinet, 1963).

Table 1 shows number of diet and cabinet laws established and the adoption rates of bills submitted to the diet during the decades since the first national diet session convened on May 20, 1947 until the 188th ordinary session convened on December 24th, 2014. The adoption rates is the quotient of the number of adopted bills and that of proposed bills. Out of 9,871 laws established, 1,623 (16.4 percent) are diet laws. Until the 2000s, the adoption rate of diet laws had always been less than 20 percent while that of cabinet bills has exceeded 80 percent, except in the 1970s. Both the share and the adoption rate of diet laws temporarily increased from September 2009 to December 2012, under the administration of the Democratic Party (DP). The DP won the general election, ended the long-lasting administration of the Liberal Democratic Party (LDP), and came to power as anti-bureaucratic and favoring government solely directed by politicians (Democratic Party, 2009). The DP excluded bureaucrats from decision making; however, once the LDP returned to the government, the superiority of cabinet returned with them.

Table 1. Number of Established Laws, Ratio of Adaption, and Share of the Diet Laws to the Total

	Diet Laws			Cabinet Laws	
	Number	Ratio	Share	Number	Ratio
1940s	117	70.5%	12.4	830	90.5%
1950s	457	41.8%	19.7	1861	84.1%
1960s	160	22.0%	10.8	1322	80.2%
1970s	166	20.9%	14.8	957	79.2%
1980s	124	28.1%	14.4	739	85.0%
1990s	202	41.5%	16.0	1061	92.9%
2000s	254	28.3%	19.0	1086	91.0%
2010s	143	28.9%	26.7	392	74.8%
Total	1623	31.8%	16.4	8248	84.9%
DP period	91	35.7%	31.5	198	67.1%
2013-14	57	22.2%	21.8	204	84.6%

Note. There are laws not adopted at the session to which the bills were first submitted but adopted by a later session. Such laws are not included in the table.

Source: Kayano, 2015.

Kawano (2010) concluded that diet laws are exclusively developed for the following reasons or issues: a) based on a request by a group or an industry supporting legislators, such as a law for the promotion of a certain industrial sector or introduction of a new license (Note 4); b) based on a request from a constituency, such as a law promoting regional development; c) promoting education or improving disaster management; d) promoting welfare and/or protection of a vulnerable group, such as a law for supporting handicapped people, suicide prevention, anti-cancer measures, or supporting victims of medical malpractice; e) addressing an issue generally concerning citizens, such as cultural asset protection or national holidays; f) addressing an issue where value is diverse, such as organ plantation; g) a basic law urging the national government to implement a certain policy; h) addressing a private issue such as domestic violence; i) addressing a political issue such as kidnapping by the North Korean government; j) addressing an issue regarding the diet such as the electoral system. In addition, Kojima (1983) identified that the following laws have typically been developed as diet laws: a) a law expressing and/or enforcing a policy of a political party; b) a law based on a personal idea of a legislator; c) a law for which the cabinet hesitates to submit bills. The last cases include a law whereby it is difficult to obtain consensus among the ministries or where the cabinet does not necessarily intend to establish (Note 5).

Table 2 shows the number of the environment-related diet and cabinet laws adopted by the end of 2010 that are presently effective. There is no definition of environment-related law, and so we counted the number of the laws appearing on the web site of the Ministry of the

Environment (MoE) and in the Compendium of Environmental Laws 2015 (Chuo Hoki, 2015). The first diet law was established during the 1970s (Note 6). In 1970, the special diet session on pollution control adopted 15 environmental bills that were submitted by the cabinet. The number of environment-related diet laws increased during the 2000s, but all of them were adopted before the DP took power. Therefore, the increase was not due to a change of the governing party. Environmental awareness by legislators seems to have risen during the 1970s and the 2000s, leading to an increase in the number of environmental diet laws.

Table 2. The Number of Environmental Laws Established

	Diet	Cabinet
1940s	0	5
1950s	0	11
1960s	0	8
1970s	6	20
1980s	1	3
1990s	2	18
2000s	10	12
Total	19	77

Note. Repealed laws are not included.

Source: Web site of the MoE and National Diet Library, and the Compendium of Environmental Laws 2015.

High expertise is required to draft a law. At the same time, those drafting the law are required to complete a set of necessary amendments of all related laws (Note 7). Those who actually draft a diet law are diverse. While there are some cases where a legislator's staff drafts a bill, it is usually the Legislation Bureau of the Diet (LBD) that draft bills. A legislator need only present a simple note describing an essential concept of a bill to the LBD. Then, the LBD drafts a detailed outline. Bills proposed by ruling party legislators are often drafted by officers of a concerned ministry upon a request of the LBD, while the ministry does not necessarily have to do so. Those proposed by opposition parties are usually drafted by the LBD as well (Note 8). Bills are submitted to the diet after the LBD examines the text (Note 9).

Urgently needed laws have sometimes been adopted as diet laws when the concerned ministry requests legislators to do so, but only on the premise of consensus within the government. One of such examples was the *Law on Special Measures concerning the Handling of Radioactive Pollution* adopted in August 2011. This law aimed to treat radioactive waste and debris generated by the nuclear power plant accident in Fukushima occurred in March 2011. It was desperately needed, but there was concern over the delay of cabinet bill formulation. If the MoE would have intended to formulate this as a cabinet law

by itself, negotiation within the government would have taken much time. Moreover, it was very likely that some ministries would have opposed a draft bill submitted by the MoE—the MoE had no authority to address radioactive substances (Note 10). Radioactive waste treatment was only stipulated by the *Nuclear Reactor Regulation Law* and the *Radiation Hazard Prevention Law*, both of which were under jurisdiction of Nuclear Regulation Commission, an external bureau of the Ministry of Education, Culture, Sport, Science, and Technology (MEXT) (Note 11). Commercial nuclear power plants are regulated by the MEXT and the Ministry of Economy, Trade, and Industry (METI). As a result, the MoE drafted the bill and requested the DP (the ruling party) to submit it to the diet (Note 12).

### 3. Formulation of Environmental Cabinet Laws

National government officers have strong motivation to formulate a new law. While the names of the legislators who submitted a bill are recorded in the diet record, contributors to the cabinet laws are recorded nowhere. However, the meritorious persons who actually contribute to the formulation of a cabinet law are widely recognized within concerned ministries, and they will have a greater chance for promotion or better jobs after retirement (Note 13). The development of a cabinet law is a tough job, but the officers are proud to be involved in the process (Note 14).

There are many reasons and occasions for a ministry to formulate a new law; pressure from a ruling party, petition from an industry, results of scientific research, public opinion motivated by mass media, ratification of an international agreement, or a combination of reasons. We introduce the diet law formulation process by the MoE below, as a typical case of the cabinet law formulation.

The first step is the approval of a new policy requiring a new law by a concerning bureau meeting. This meeting consists of leading members of the bureau. The policy is usually proposed by a director or by a working-level officer such as deputy director. When it is approved, it is then examined by the ministry meeting, which consists of the director generals of every bureau and other senior officers, and is chaired by the director of the minister's secretariat. After the policy is approved at the ministry meeting, it is also approved by the administrative vice minister, the highest ranking bureaucrat. Then, the policy is formally adopted by the ministry.

Next, the MoE inquires the necessity of the new policy of the Central Environmental Council (CEC). The CEC was defined by the BEL (Note 15), and it “may submit its opinions to the Prime Minister, the MoE, or other ministers concerned (Article 41 of the BEL)” (Note 16). CEC members are assigned by the minister from among people of experience or academic standing. The CEC discusses the issue and submits a report about the necessary environmental policy to the minister. The report is not legally binding but is practically indispensable to justify the necessity of a new law and to submit a bill. As mentioned below, the Cabinet Legislation Bureau (CLB) is required to review the report to examine the text of the bill. The MoE serves the secretariat of the CEC, and the meetings of the CEC usually proceed according to the MoE's intentions. The MoE usually shares the agenda with other concerned ministries and obtains consent regarding the meeting material before the meetings.

The draft report is generally written by MoE officers after obtaining the consent of other ministries.

When the report is submitted to the minister, officers start to draft a bill. In parallel, the following tasks have to be completed before the next step.

- 1) Approval of the Ruling Party: Under the LDP administration, the MoE must obtain approval from the influential legislator of the party and later the party's committee on environment. Thereafter, it is approved by the party's policy board and executive board as final approval of the LDP. The Komeito Party is presently the ruling coalition party, and so the MoE also has to go through a similar procedure within the party.
- 2) Consultation with Other Ministries: Once a bill is drafted, the MoE distributes it to all of the ministries to obtain consent. It dispatches its officers to the offices of other ministries to explain the draft when required. Ministries with conflicting interests may demand the MoE to amend texts or sometimes to withdraw the draft bill. Consensus within the government is indispensable for a cabinet decision, and this process often consumes lots of time and effort. The texts are often revised as a compromise between the MoE and other ministries during the process.
- 3) Examination by the Cabinet Legislation Bureau: The text of the draft is thoroughly examined by the CLB on the precondition that the CEC has already submitted the report to the minister. The CLB does not comment on the policy in the draft bill at all but only examines the words and phrases of the texts in relation to the constituent and other existing laws, legal validity, accuracy of the text, and consistency of the words used in the text (Igarashi, 1994).

When the above processes were completed, a final draft of the bill is created by the cabinet and submitted to the diet.

#### **4. Basic Law**

Except the constitution as the supreme law, there is neither a hierarchy of Japanese laws nor definition of a basic law. The ordinary laws do not necessarily stand under any basic laws. In 2005, the director-general of the Legislation Bureau of the House of Representatives clarified in a diet session the objectives of basic laws as "clearly presenting basic idea or a principle of a national policy in a certain sector and defining implementing organizations of the policy." (Nishikawa, 2015) In 2006, the director-general of the CLB also clarified in another diet session that basic laws have "roles to present guidelines regarding interpretation or implementation of other laws regarding important national policies" (Nishikawa, 2015) (Note 17).

The first basic law, the *Atomic Energy Basic Law*, was adopted in 1955. At the end of 2015, there were 48 basic laws in effect, and 29 were diet laws. Thirty-nine basic laws were adopted after 1997, and 24 of them were diet laws, indicating a larger share of the diet laws compared with the other laws.

The first basic law addressing environmental issues was the *Basic Law for Pollution Control*

(BLPC). This law was adopted in 1967 after a few laws regarding pollution control were already adopted (Note 18). Pollution control laws adopted after 1967 were not necessarily based on the BLPC. On the other hand, the *Basic Law for Establishing a Sound Material-Cycle Society* (BLESMS) and the BLB were established based on the BEL in 2000 and 2008, respectively.

## 5. Basic Environmental Law

### 5.1 Beginning of Formulation

Previously, the BLPC and the *Nature Conservation Law* (NCL) adopted in 1972 had provided basic principles on environmental management. As social and economic situation changed, officers of the Environment Agency (EA, later upgraded to the MoE in 1999) and some politicians gradually recognized that a new legislative framework was needed in order to address newly emerging issues such as global environmental problems. However, formulation of the BEL seemed to significantly affect the Japanese administration, and the EA naturally anticipated a stiff reaction from the concerned ministries when it started to develop a bill. On the other hand, there were two different motivations: a long-cherished wish of environmental officers and the intentions of big-name politicians.

The EA had desired a law for environmental impact assessment (EIA). It attempted to submit the bill three times, but failed due to strong opposition in the industry and their supporting legislators. In 1981, the bill was finally prepared by the cabinet and submitted to the diet, but it was discarded due to dissolution of the House of Representatives in 1983. Afterward, environmental officers had been examining a possible approach to develop the EIA law in a way that would mitigate opposition from the industry. One of the options was to partially amend the BLPC by adding one article stipulating the necessity of the environmental impact assessment. The EIA law would probably be able to be adopted as a cabinet law based on that one stipulation (Note 19).

In addition, climate change became emerging issue during the late 1980s. It is an issue that affects many areas, but there was no national framework to address it. While the Ministry of International Trade and Industry (MITI, later METI) and the Ministry of Foreign Affairs (MoFA) were also interested in the issue, the EA wanted to take the initiative by quickly addressing it (Note 20). If the EA would have succeeded, it would obtain new authority and additional budget (Note 21). In November 1991, the minister of the EA inquired both of the Central Council on Pollution Control and the Nature Conservation Council (later CEC) concerning “environmental policy in the era of globalization.” At this moment, the EA “did not necessarily attempt to formulate of a new environmental basic law distinctly in mind” (Environment Agency, 1994). It is, however, obvious that the EA intended to include global environmental issues within its jurisdiction, taking the opportunity at the United Nations Conference on Environment and Development (UNCED) held in June 1992 to introduce an economic instrument that drew attention as an effective measure of climate change mitigation. The inquiry from the minister of the EA to the councils clearly stated the following: environmental policy must be further developed following the opportunity presented at the UNCED; integration of the environment and economy and establishment of a new legislative



framework that accounts for global environmental conservation must be conducted in the wake of a new policy; and the EA should facilitate this process (Environment Agency, 1994).

During the same period, two big-named LDP politicians created another opportunity to formulate the BEL—Noboru Takeshita (prime minister from 1987 to 1989) and Ryutaro Hashimoto (prime minister from 1996 to 1998). Early in 1992, Takeshita, who was still influential in the LDP even after the resignation of the Prime Minister, convened an informal conference on basic environmental issues. This was not only a closed meeting, but its establishment was hidden in order to avoid interference by those with vested interests. The headquarters of the LDP was not chosen as a venue—instead, it was held at Hotel New Otani in Tokyo. The conference was headed by Takeshita, chaired by Hashimoto, and only influential LDP politicians were invited. Decisions were made by only limited number of big-named politician behind closed doors (Note 22). If it would have been formulated through the conventional bottom-up approach, many influential legislators, *zokugiin* (Note 23), would have entered the discussion, hindering both quick and substantial policy change.

Discussing the new concepts, the following three future directions were identified: a) to convene an international eminent persons' meeting to discuss the financial issues of Agenda 21, which was expected to be adopted at the UNCED (Note 24); b) to raise donations from the Japanese private sector to support NGOs (Note 25); and c) to establish a new law by amending the BLPC (Kobayashi, 2012). In April 1992, Prime Minister Kiichi Miyazawa announced that he instructed concerned ministries to formulate a new law appropriate to the global environmental era.

### *5.2 Drafting Process*

Coinciding with the intentions of EA officers and big-named politicians, The EA initiated to formulate the BEL. On May 15, 1992, the Central Council on Pollution Control and the Nature Conservation Council reported on the “environmental policy in the era of globalization” to the minister of the EA. On the same day, the EA established the Basic Environmental Law Formulation Office (later called the Office) consisting of 28 officers. On May 22, 1992, a meeting of concerned ministers in the global environmental conservation discussed Japanese policy toward the UNCED and agreed to examine the necessity of a new law appropriate to the coming era of global environmental conservation. According to the decision, Minister of the Environment Agency Shozaburo Nakamura attended the UNCED as the chief representative of Japanese Government, expressing the formulation of a new law. On July 3, 1992, he established a joint subcommittee of the planning subcommittee of the Central Council on Pollution Control and the natural environment subcommittee of the Nature Conservation Council to discuss “future environmental legislation” (Environment Agency, 1994, p. 75–76).

The Office intended to complete a draft bill within one year and submit it to the upcoming ordinary diet session. However, there was only a vague concept of the law and no concrete outlines were existed at all. The Office started with identifying 13 major issues to be examined. Other ministries such as the MITI, the Ministry of Construction, and the Ministry of Transport (both of them later merged to form the MILT) also established special teams

consisting with about 20 officers to countervail the EA's proposal.

It seemed difficult to obtain consensus through ordinary procedures where officers of the EA independently obtained consent from each of the concerned ministries (Note 26). The following procedure was adopted to prepare an outline of the BEL (Note 27). A small committee was established under the joint subcommittee, and it included members nominated by the concerned ministries. Every major issue was discussed and adopted by the committee. The office drafted materials and distributed them to the ministries and KEIDANREN (Japanese Federation of Economic Organization) for reconciliation before submission to the committee. The process was rapidly finalized, the draft was revised, and the meeting was convened. Other ministries requested their representing committee members to express the ministries' intentions, and the EA requested their representing members to counter them by providing necessary information sufficient to confute them (Note 28). The minutes of these meetings were finalized on the same day, and the materials for the next meeting were prepared based on these minutes.

All necessary discussions and reconciliations were conducted within the meetings of the small committee. It held more than 20 meetings and interviews with concerned organizations, and it drafted a report called *Future Environmental Legislation* on October 14, 1992. The report was adopted by the joint subcommittee on October 20, 1992 and submitted to the minister.

Along with reconciliation within the government, the committee on basic environmental issues newly formulated within the LDP discussed and adopted the outline of the bill in February and March 1993. The *Basic Environmental Bill* was then drafted by the Office and included almost all issues presented in the report. A meeting of the administrative vice ministers (Note 29) and a meeting of the cabinet decided on the bill on March 11 and 12, 1993, respectively. The bill was almost adopted at the 126th diet session but was subsequently abandoned because the House of Representatives was dissolved. The LDP lost power at the following general election in July 1993, and Morihiro Hosokawa, the leader of Japan New Party, took the office of prime minister. The new cabinet adopted the bill in September, and the BEL was finally adopted in November 1993 by repealing the BLPC and amending the NCL, integrating the policies of pollution control and nature conservation (Environment Agency, 1994).

## **6. Basic Law on Biodiversity**

Japan ratified the Convention on Biodiversity (CBD) in May 1993. The government decided it was unnecessary to establish a new law for ratification (Note30). It submitted the first national strategy to the secretariat in 1995, according to Article 6 (a) of the CBD. The MoE recognized the strategy as a base of Japan's biodiversity conservation policy with approval of the CEC. The Japanese strategy has been revised every three or four years, and cabinet decided on the latest (the fifth) version in 2012.

The BLB was adopted in 2008 as a diet law. The formulation of this law began with the submission of a personal proposal regarding a revision to the *Wildlife Protection and Hunting*

Law to the EA by Kazuaki Miyaji, an LDP member of the House of Representatives. He requested a measure addressing agricultural damage caused by wildlife. In response, the EA established a study group and started to investigate possible measures with the aim of amending the law. The law was fully amended as a cabinet law in 2003, and the *Law for the Conservation of Endangered Species of Wild Fauna and Flora* was partly amended by a cabinet law in 2003. Nonetheless, three major Japanese environmental NGOs—WWF Japan, The Nature Conservation Society Japan, and the Wild Bird Society Japan—regarded the amendments insufficient to exhaustively conserve biodiversity. The NGOs responded by establishing a network consisting of 44 NGOs in order to formulate a basic law for wildlife protection (Kusakari, 2008).

The NGO network made a petition to Kenichiro Sato, a DP member of the House of Representatives, for formulation of this basic law as a diet law. They considered a diet law more desirable than a cabinet law. If the law was to be formulated as a cabinet law, the MoE must inquire of the CEC. They were concerned that their intentions would not be precisely reflected in the discussion of the CEC, which included no representative from NGOs (Note 31). Moreover, it was likely that the draft bill would be watered down during negotiations within the government (Note 32).

Sato requested the Legislation Bureau of the House of Representative to support the NGOs. While he had not been present at any meetings, the NGO members consulted with the officers of the bureau and submitted the outline of the draft. After about 10 consultations, the outline was completed in June 2003. The draft contents of a basic law for wildlife protection were completed in November 2004 (Kusakari, 2008). Then, the NGO members lobbied both the ruling LDP and the opposition DP party. The DP committed to the establishment of the basic law by their manifesto, and they took positive steps toward the establishment. In April 2008, the DP submitted a bill (BLB) to the House of Representative. The ruling LDP was also drafting contents of the bill aiming toward submission since 2008. In May 2008, the chairperson of the Environmental Committee of the House of Representative submitted a bill for BLB, which was decided by the LDP, the DP, and the Komei Party after consultation with the three parties (Note 33). The DP withdrew their original draft. The bill was passed unanimously at both of the House of Representative and the House of Councilors in May, and the BLB was enacted on June 6, 2008 (Yatsu et al., 2008).

## **7. Effect of the Basic Laws to Administration**

### *7.1 Basic Environmental Laws*

BEL was established right after the UNCED and attracted wide attention (Note 34). Opposition parties, NGOs, and the Japan Federation of Bar Associations expressed a number of critical views. The criticism targeted the closed law-formulation process, insufficient information disclosure and public participation, no stipulation by the law on the citizens' right to enjoy good environmental, and no solid pledge for implementation (Japan Environmental Council, 1994).

Nonetheless, the BEL apparently improved the Japanese environmental policy. One of the

most significant contributions was the introduction of the *Environmental Impact Assessment Law* (EIA law) as stipulated by Article 20. Among the OECD countries, only Japan had not established the EIA law, and so the EIA was brought in based on a cabinet decision. The CEC urged the government to formulate a law referring the BEL, and the EA finally formulated it (Note 35). In 1998, the *Law Concerning the Promotion of the Measures to Cope with Global Warming* was also adopted, and the MoE was assigned a central role along with the MITI to enforce the law. The MoE was able to introduce a carbon tax under the name of a climate change measure tax according to Article 22.

Article 15 stipulates that the “Prime Minister shall formulate a draft of the *Basic Environment Plan* and ask the Cabinet for its decision, after hearing the opinion of the” CEC. The first plan was decided in 1994, and the fourth plan decided in 2012 is presently effective. It improved the environmental aspect of the legislation and policy implementation. *River Law*, *Landscape Law*, *Urban Green Space Conservation Law*, and the enforcement ordinance of *Seacoast Law* implemented by the MILT and *Forest Law* implemented by Forest Agency stipulated that the basic policies or plans shall be in harmony with the Basic Environment Plan, making infrastructure development more environmentally sound.

### 7.2 Basic Law on Biodiversity

As indicated by Article 1, the BLB was established “in line with the Basic principle” of the BEL. It is the first Japanese law covering not only some distinct taxonomic groups but all groups exhaustively. However, its effect on the national environmental administration is insignificant (Note 36).

Article 11 of the BLB requires the government to set a national biodiversity strategy. However, the government has been submitting this to the secretariat of the convention since 2007, before the enactment of the BLB. The article is merely an ex post stipulation. Among the laws and enforcement ordinances that the MoE is not in charge of, only the enforcement ordinance of the *Okinawa Promotion and Development Special Treatment Law* refers the BLB.

Article 25 urges the government to start an environmental assessment with respect to project planning. In fact, the government revised the EIA law in 2014, introducing a new procedure of environmental consideration during project planning. However, the role of the article in the introduction of the procedure was marginal. The MoE completed a series of guidelines to introduce strategic environmental impact assessments (Note 37) as early as 2007, aiming the EIA law amendment. Development of the guidelines was conducted based on a supplementary provision of the EAI law stipulating examination of law enforcement and taking necessary measures for implementation after 10 years, namely 2007. A report of the CEC submitted to the minister in 2010—the *Future Institution of Environmental Impact Assessment*—formed the base of the EIA law amendment, recognizing that the strategic EIA had already been implemented in some Japanese local governments as well as some foreign countries and that similar procedures had also been conducted in some national projects. The report took the BLB as only one of the reasons for the amendment.

## 8. Conclusion

In Japan, basic law generally provides policy framework or direction and does not include substantial stipulations affecting citizen's right or behavior. Unlike ordinary law, many basic laws have been adopted as diet laws, including the BLB. The BLB was a basic law under the BEL as indicated by the Article 1 of the former, and only eight years have passed since the enactment. It may be inappropriate to compare the former's impact on the administration with that of the latter at this stage, but we have concluded that the BLB has not substantially affected the administration and that little attention was attracted by it (Note 38). Even without the BLB, the MoE would have developed a series of national biodiversity strategies and amended the EIA law.

In contrast, the BLESMS established in 2000 under the BEL as a cabinet law has been more influential on the administration than BLB. Issues of waste and recycling were widely recognized as serious problems, and substantial measures were claimed. Presenting the basic concept toward a recycling society, the BLESMS establishes an institutional framework (Minamikawa, 2011) (Note 39). Accompanied with the establishment of the BLESMS, *Waste Management and Public Cleansing Law*, which defined the basic policy of waste management and recycling, and several other laws were substantially amended including the *Law for the Promotion of Utilization of Recycled Resources*, the *Construction Material Recycling Law*, the *Food Recycling Law*, and the *Law on Promoting Green Purchasing*. Based on the BLESMS, a series of the *Basic Plan for Establishing a Sound Material-Cycle Society* were drafted by the MoE and decided by the cabinet almost every five years. The plan presents numerical targets and the implementation is examined and disclosed every year by the CEC.

"Bureaucratic control" of the government has been tagged as a reason for the present stagnation of Japan's economy and society (Takarabe, 1996; Kato, 1997). In response to the citizens' discontent, the DP won a great victory in the 2009 general election and took the power. By the 2012 general election, the power returned to the LDP, but public opinion claiming initiative taken by politicians does not seem to have changed (Note 40). Ito (2014) concluded that "political community consisted of influential legislator, ministries, and industry under the LDP regime have protected vested interests and magnified financial deficit." Vitalization of diet law formulation as an original mandate of the legislators is expected to improve the situation (Igarashi, 1994; Takami, 2003; Legislation Bureau of the House of the Representatives, 2006). However, we concluded that it is difficult to establish effective diet laws without substantial support from national officers. The effective BLE was able to be established by coincidence of high-level political decision making with long-lasting intentions on the part of the environmental officers. The MoE mentioned in its web site that the BLESMS was established by "the government and the ruling parties in one united body" (Ministry of the Environment, 2016, para (3)). A basic law seldom includes stipulation affecting a person's right or obligation, and so this was not appropriate to be established as a cabinet law but instead as a diet law. It seems appropriate for the legislators to closely collaborate with the government to establish an effective basic law.

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## Glossary

BEL Basic Environmental Law

BLB Basic Law on Biodiversity

BLESMS Basic Law for Establishing a Sound Material-Cycle Society

BLPC Basic Law for Pollution Control

CBD Convention on Biodiversity

CEC Central Environmental Council

CLB Cabinet Legislation Bureau

DP Democratic Party

EA Environment Agency

KEIDANREN Japanese Federation of Economic Organization

LBD Legislation Bureau of the Diet

LDP Liberal Democratic Party

METI Ministry of Economy, Trade, and Industry

MITI Ministry of International Trade and Industry

MEXT Ministry of Education, Culture, Sport, Science, and Technology

MILT Ministry of Land, Infrastructure, Transport, and Tourism

MoE Ministry of the Environment

MoFA Ministry of Foreign Affairs

NCL Nature Conservation Law

UNCED United Nations Conference on Environment and Development

## Notes

Note 1. English translations of Japanese law names lack uniformity. In particular, the word, “Horitsu,” is commonly translated as both “Law” and “Act.” In this paper, we only use “Law” as the translation of “Horitsu,” without regard to the term used by the official websites.

Note 2. It is generally regarded that the Japanese parliamentary cabinet system naturally authorizes the cabinet to submit a bill while there is no stipulation over the authority. Some jurists insist that it contradicts Article 41 of the Japanese Constitution stipulating that the diet “shall be the sole law-making organ of the State” (Tadano, 2010).

Note 3. An online database of the National Diet Library (<http://hourei.ndl.go.jp/SearchSys/index.jsp>) provides information regarding the status of every law.

Note 4. The *Basic Law for Energy Policy* was adopted as a diet law in 2002, based on a request of electric power companies. Although promotion of nuclear power became a national policy, there was no law authorizing it. A legislator supported by the companies requested the Ministry of Economy, Trade, and Industry (METI) to support him in drafting a bill. The METI did not intend to formulate such a law, but they actually drafted it (Interview with a former senior officer of the METI on October 28, 2011).

Note 5. An example of a law where cabinet hesitated was a law to establish a new organization, a Tourism Agency, as an internal bureau of the Ministry of Land, Infrastructure, Transport, and Tourism (MLIT). It was a wish of the MLIT, but public opinion strongly demanded curtailment of the government organization. The MLIT persuaded an influential legislator to submit a bill as a diet law. The law was adopted in short period due to the intensive efforts of the legislator to obtain support not only from ruling parties but also from



opposition parties (Interview with a former senior officer of the METI on October 28, 2011).

Note 6. The *Law Concerning Special Measures for Conservation of the Environment of the Seto Inland Sea*, adopted in 1973, was the first diet law using the term “environment.” In those days, the water quality of the Seto Inland Sea was significantly deteriorating and coastal areas were being rapidly reclaimed. However, the Environment Agency (later the MoE) was reluctant to submit a bill because there had been no law targeting just limited regions. As a result, officers of the concerning local governments drafted a bill and persuaded legislators to submit it to the diet (Hisano, 2016).

Note 7. When the BEL was enacted, 19 amendment laws including a repeal of the *Basic Law for Pollution Control* were enacted on the same day.

Note 8. Interview with a former senior officer of the METI on October 28, 2011 and former senior officers of the MoE on October 6, 2011 and November 10, 2015.

Note 9. Takano (2007) found that the number of the diet laws submitted by the LDP legislators significantly decreased when the LDP lost power from May 1993 and April 1994. He concluded that the LDP found it difficult to draft bills when they lost the support of the ministries.

Note 10. The *Waste Management Law*, which was under the jurisdiction of the MoE, excluded radioactive waste from its definition of waste. When the *Law on Special Measures concerning the Handling of Radioactive Pollution* was adopted and the Nuclear Regulation Commission was transferred to the MoE, the MoE was formally authorized to address radioactive substances. The *Basic Environmental Plan* adopted by the cabinet in 2012 urged the MoE to address pollution of radioactive substances.

Note 11. The commission was later transferred to the MoE.

Note 12. Interview with a former senior officer of the MoE on October 6, 2011.

Note 13. Obtaining a positive evaluation within a ministry is crucially important for a senior officer to get on a good career path, not only within the ministry but also after retirement. The ministry usually offers the senior officer position in the private sector as a first step after retirement from the government, and the rank of the new position depends on the rank of an individual’s last position in the ministry. Involvement in the formulation of laws greatly contributes to an individual’s evaluation and career path.

Note 14. The concerned ministry usually establishes an ad-hoc office when it develops a cabinet law. Officers assigned to the task stay in the office day and night and are dedicated to forming the law, and the office is called an octopus trap. The head of the octopus trap is usually a senior officer who started his/her career at the concerned ministry. The director of the Basic Environmental Law Formulation Office of the Environment Agency (presently MoE) was filled by the Director of Planning Coordinating Division of the Planning Coordinating Bureau, who was seconded from the Ministry of Finance because none of the senior environmental officers had reached the seniority for such a position. Instead, all of the three chiefs under the director were environmental officers. All of them were later promoted

to the highest level of administrative positions. Many of the other environmental officers under the three chiefs had also been promoted to senior positions such as administrative vice minister or director-general.

Note 15. Before the adoption of the BEL, its predecessor, the *Basic Law for Pollution Control*, had defined the Central Council on Pollution Control.

Note 16. Council is an organ that is attached to a minister. It studies and discusses the basic or important matters from professional perspectives, and it has been deeply involved in and influential with Japanese policy or legislation formulation. Council generally establishes subcommittees, and as of 2006, there were 110 councils and over 800 subcommittees established within the Japanese Government (Nishikawa, 2007).

Note 17. The *Basic Law on Natural Disaster Control Measures* adopted in 1961 as a cabinet law presents an exceptional case of a basic law. It stipulates regulations restricting people's rights and defined their obligations. It was amended 55 times until November 2014, while other basic laws have been seldom amended (Nishikawa, 2015).

Note 18. Both the *Water Quality Conservation Law* and the *Industrial Waste Water Control Law* were adopted in 1958, and the *Soot and Smoke Control Law* in 1961. They were replaced by the *Water Pollution Control Law* and the *Air Pollution Control Law* in 1971 and 1970, respectively.

Note 19. Interview with a former senior officer of the MoE on November 10, 2015.

Note 20. Interview with a former senior officer of the MoE on November 10, 2015.

Note 21. In the 2016 fiscal year, for example, 112 billion yen was allocated from a special account for energy related expenditures to the MoE as a budget for climate change measures.

Note 22. Interview with a former senior officer of the MoE on November 10, 2015.

Note 23. LDP legislators who are influential in policy making within specific sectors including construction, public welfare, education, post, agriculture or industry are unofficially called *zokugiin* (legislator belonging to a certain sector).

Note 24. In April 1992, an "Eminent Persons' Meeting on Financing Global Environment and Development" was held in Tokyo and adopted the Tokyo Declaration on Financing Global Environment and Development. This declaration identified the character, amount, and fundraising mechanisms necessary. It later contributed to the adoption of Agenda 21 at the UNCED (EIC Net, 2016).

Note 25. The Japan Fund for the Global Environment was established in 1993 with two billion yen to support NGOs. The amount of the fund in 2015 was 14.1 billion yen (ERCA, 2016).

Note 26. During the argument with the EA, the Ministry of Construction largely changed its policy to be pro-environment. It initially demanded the EA to delete all descriptions regarding its undertakings from meeting material. However, it suddenly accepted the EA's proposal and

made all of their undertakings more environmentally sound (Interview with a former senior officer of the MoE on November 10, 2015).

Note 27. Interview with a former senior officer of the MoE on November 10, 2015.

Note 28. The MITI unofficially distributed classified draft material to business associations as soon as they obtained it, and they requested comments (mostly opposition). Even after the other ministries agreed, only the MITI resisted—mainly on the issues of global environment, environmental impact assessment, and economic instruments. A member representing the MITI repeatedly expressed the intentions of the MITI. Each time he expressed his views, he was countered by many environmental members and finally had to keep silent.

The Federation of Electric Power Companies was the most firmly opposed to the introduction of the EIA, but they were finally silenced by the MITI. When KEIDANREN discussed the EIA, the METI instructed executives of the member companies, who had retired from the MITI, to support the introduction of the EIA. The MITI and the Federation of Electric Power Companies are in a competitive relationship, and the MITI intended to more profoundly control the federation by implementing EIA to power plants (Interview with a former senior officer of the MoE on November 10, 2015).

Note 29. The administrative vice ministers meeting had approved the agenda of the cabinet meeting beforehand. When the DP took power in 2009, it abolished the meeting appealing to its usurping of power from bureaucrats and giving it to politicians. After the LDP returned as the ruling party, the government convened a liaison meeting of the administrative vice ministers. This new meeting determined not to discuss the agenda of the cabinet meeting, and there has been no further meetings since then that officially confirmed the final draft bills before the cabinet meeting.

Note 30. Before ratification of every international agreement, the Treaties Bureau of the Ministry of Foreign Affairs and other concerned ministries thoroughly examined the necessity of establishing a new law for the ratification.

Note 31. As of November 2015, there was only one NGO representative among the 27 members of the CEC, but the object of the NGO present was not nature conservation. No NGO representative was included in the subcommittee for natural environment. NGOs concerned with nature conservation requested their representative be placed on the council and the subcommittee.

Note 32. Interview with an NGO staff on November 25, 2015.

Note 33. Some officers of the MoE suggested that a MoE officer actually drafted the bill, at least some parts. The officer refused to be interviewed by us.

Note 34. The number of articles referring the BEL appeared in Asahi Shimbun, one of the five major Japanese newspapers, are 83, 117, and 77 in 1992, 1993 when the BEL established, and 1994, respectively. Since then, it had been more than 20 every year until 2000.

Note 35. Many of the Japanese local governments have already conducted EIA based on their

local ordinances since the 1970s. Presently, they conduct it to the projects not subject to the national EIA law.

Note 36. The official web site of the MoE listed concerning laws, ordinances, regulations, and notifications; however, the text of the BLB was not included as of April 2016.

Note 37. The MoE and the CIC define “strategic impact assessment” in a narrow sense as environmental impact assessments conducted during the planning stage—it does not include assessment of policy or program. The revised EIA law does not refer to a “strategic impact assessment” but to the “EIA at planning stage.”

Note 38. Number of articles referring the BLB appeared in Asahi Shimbun was 16 and 13 in 2008 and 2010, when COP10 of the CBD was held in Nagoya, Japan, respectively. Only 2 to 5 articles have appeared in the other years.

Note 39. The BLESMS stipulates the priority of waste management for the first time as 1) reduction, 2) reuse, 3) recycle, 4) thermal recycle, and 5) proper treatment. It clarifies the role of national and local government, industry, and citizens, and stipulates general principle of extended producer responsibility.

Note 40. Number of articles referring “bureaucratic control” or “bureaucratic initiative” appeared in Asahi Shimbun are 12, 271, 824, and 738 during 1975-84, 1985-94, 1995-2004, 2005-14, respectively. The number rapidly increased in 1993, when the LDP lost the general election and the New Japan Party took power.

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