

ALSA Japan Law Review 2012

—Natural Resources Law—



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supervised by Naoto Yotsuya

i. Introduction

This Law Review can be divided three sections. First section is about Japanese resources diplomacy. It shows that how Japan imports natural resources such as coal oil and natural gas. Second section is about 'Revising Mine Act' in Japan. In Japan, the government revised mining act for a certain reason. However, there are some problems in spite of Japanese governments' efforts. This section also introduces them. Third section is about 'Basic Environment Law' in Japan. It shows how Japan attempt to conserve the environment and it is relevant to natural resources.

After the Tohoku major earthquake in 2011, necessity of securing and protection of natural resources increases.

ii. Japanese Resources Diplomacy

Marina Seto

Japan, which is an island country, has only poor original natural resources. Because of this geographic background, one of the most important strategies of the national diplomacy is always how to keep safety and quantity of energy resources.

The proposition of energetic safety dates back to the early 20th century, when the fuel of the battleship changed from coal to oil.

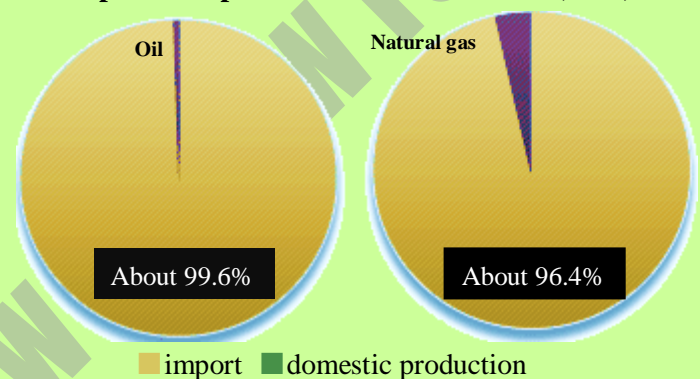
Since it was a main part of military buildup strategies, Japan had no choice but to rely on oil importation from overseas.

Therefore it was bitter for Japan to battle under economic sanctions by the Great Powers during the Pacific War. Lack of oil was one of the reasons why Japan defeated.

By those backgrounds, after the war ended the government built up a practical energy policy, it led Japan to rapid economic growth based on oil importation thanks to the Japan-US alliance during the Cold War.

In the present age, Japanese resources diplomacy has changed at the twice 'oil shocks' in the 1970's. It damaged Japanese economy severely because Japan had relied on the Middle East countries' oil. After those crises, the president Tanaka Kakuei came out with a new 'resources diplomacy': diversifying sources of energy supply,

Japanese dependence rate on overseas (2006)



encouraging energy-saving and strategic oil reserves. Since then the government went out of U.S. influence and began to seek its own way of energy acquisition. As a result, new innovative energies new clear power and natural resources increased the supplies, and 'petroleum stockpiling law' was set up in 1975. Moreover the above three strategies have kept an effect on Japanese diplomacy and it contributed to the highest Japanese energy efficiency in developed countries.

In 1990's, under the new world frame after the Cold War, the president Hashimoto Ryuichiro claimed 'Eurasian diplomacy', which meant that Japan regarded new relationships with the former Soviet Union countries as important, which have wealthy natural resources.

In the latter 1990's, Japan faced a new conflict with China for an oil field under the East China Sea. China, which experienced economic growth and needed further energy, claimed an effect of the international law by 1970's and started oil exploration around the border since 1999 without Japanese agreement. Against this action, Japan argued an effect of United Nations Convention on the Law of the Sea, which Japan ratified in 1996. This conflict has continued even now.

Since 2000, crude oil price uprising and September 11 attacks occurring in 2001, Japan went along with U.S. strategy against terrorism and tried to enforce diplomatic effect on main energy resourceful countries in the Middle East. Firstly the government enacted 'Antiterrorism Law', secondly dispatched Japan Self-Defense Force to the Indian Ocean and thirdly participated in the reconstruction of the development of oil and natural gas. Moreover it reinforced the relationship with Iran and Iraq, which are the second and third biggest oil producing nations, mainly through

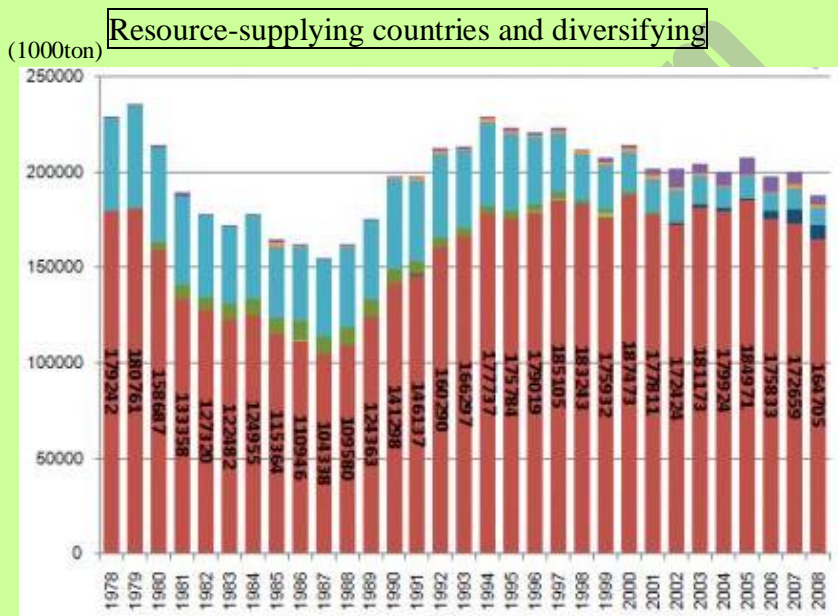
the reconstruction support of Afghanistan.

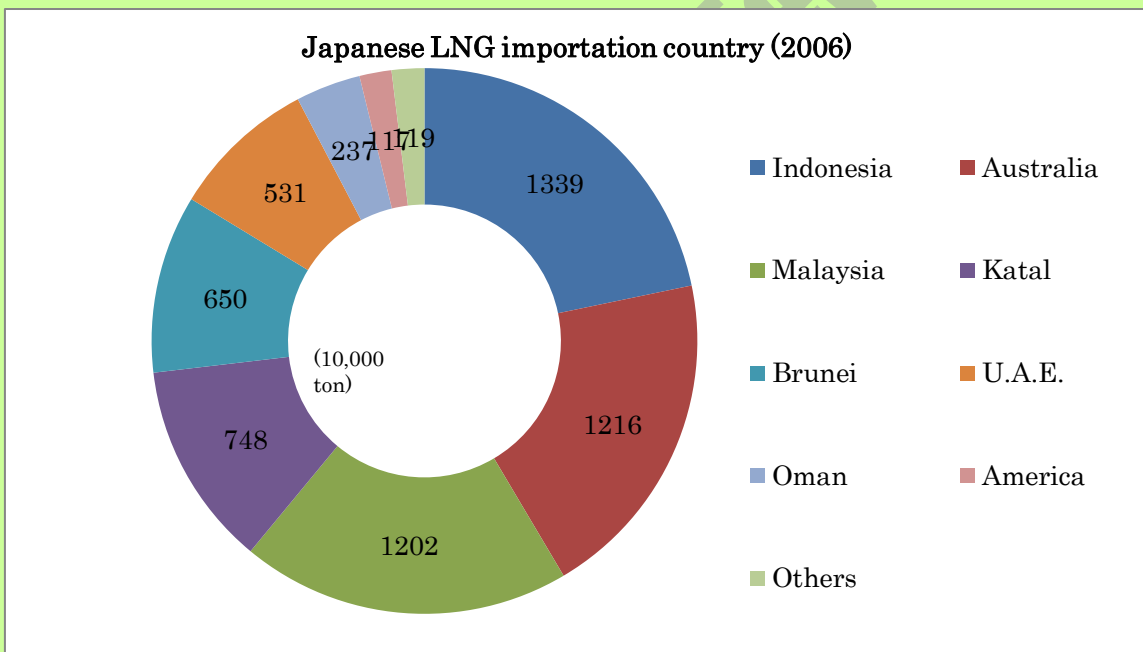
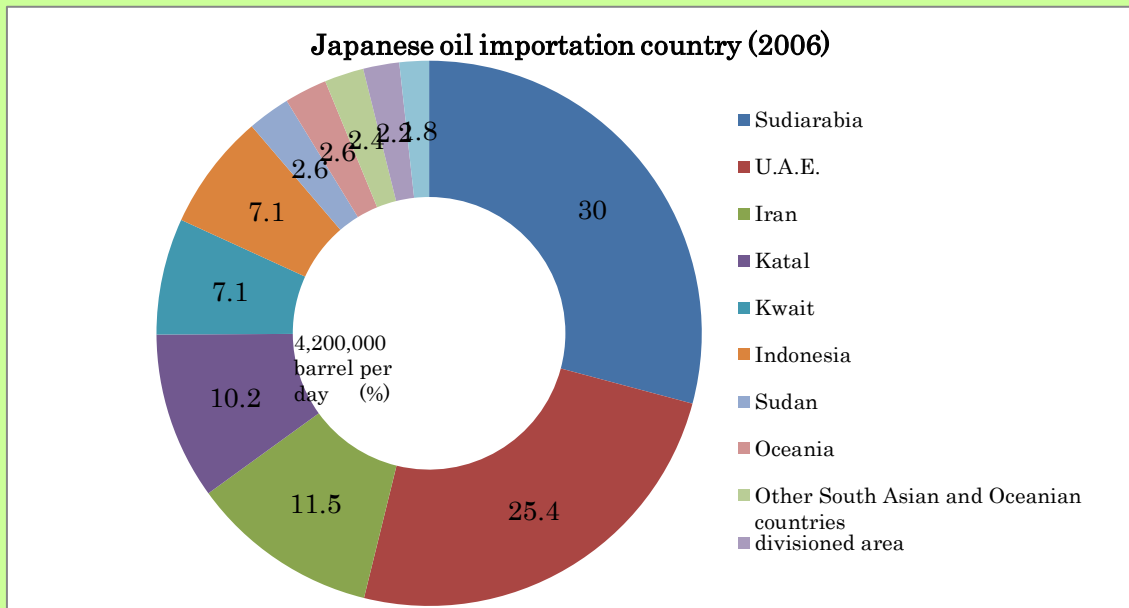
In 2006, the Prime Minister Koizumi Junichiro's government enacted 'Japan's New Energy Strategy'. In addition to usual two strategies, stronger comprehensive relationships with

sources of supply, it included a new aim which is to decrease the dependence on the Middle East. At that time Japan was relying 90% of

imported oil on those countries.

Taking over those strategies, present Japanese government is heading for reinforcing relationships and influence on not only Russia or nations around the Caspian Sea but also African or South American countries. However, the most fundamental and essential necessity for Japan is to increase self-sufficiency in natural resources, which has never been accomplished.

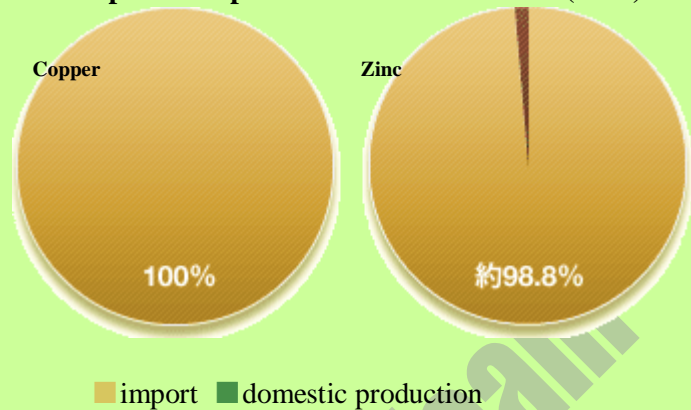




In this way, Japan rely almost all Energy resources on overseas, much of which is oil coming from the Middle East. Additionally, imported LNG is also essential mainly for Japanese electricity. Since Japan doesn't have pipelines passing borders from one country to another to transport natural gas like continental states, it is the biggest importing country of LNG in the world. The main partners of importation is Australia, Indonesia and Malaysia so less reliance on the Middle East in comparison with oil.

Japanese dependence rate on overseas (2006)

Not only oil and LNG, Japan is also depending mineral resources such as aluminum, copper, iron ore or nickel on importation.



Those are mainly for industrial goods

but present they can no longer be mined in Japan. For example, Japan used to have large copper mines in Ashio and Besshi but they were all abandoned. So Japan now obtains all copper from overseas, particularly from Chile.

In the past 20 years, Japanese share of importation is relatively decreasing because the total amount of natural resources importation in the world is rapidly increasing, particularly thanks to China and India. According to IEA, a share of energy consumption shifts from Japan, America and Europe to developing countries or BRICs. Therefore, it is prospective that Japanese influence on the world energy market will still more decrease. In a current global stream of resource protectionism, Japan faces so many difficulties both globally and domestically.

Recently, Western countries are imposing economic sanctions on Iran, charged for the nuclear development. They also require Japan to join the sanction, but it is hard because Japan depends on Iraq's oil quite much. Japan is now trying to decrease the dependence. Like this case, price hike of energy resources is very serious for Japan.

iii. Japanese mining act

Akikazu ida

In 1949, Japanese government established the mining act in order to develop mineral resources rationally. Mining right provided by the law had several characters. They were the independence from land ownership, the first-to-file system and the principle that the exercise is entrusted to person's originality and responsibility. However, increasing energy demand in the world, resource protectionism has heightened and the intense race to get new type of resources (ex. methane hydrate) has happened. So, Japanese government revised the law for the first time in 61 years.

Concerning this revision, there are two important changes. First is to introduce a permit system. The traditional law did not have the regulation against applicants for mining right and therefore, it was possible to apply without the ability to do it. This revision, however, ask them for some standards of license, for example technical abilities, a financial basis and social confidence.

On getting the mining area too, anyone who applied first could get it because of the first-to-file system, but now, the government set neighborhood system and they examine and select proper development subject regarding specific minerals (petroleum and natural gas). It made possible to exclude the companies that intend to get the right for resale or speculation.

Second is the regulation against the resource mapping. At one time, Traders search resources disorderly without thinking of the environment and ecosystem. Government, however, do not have measures to regulate the mapping by foreign ships. But now, everyone must be permitted before the mapping regardless of land or sea.

Depending on the situation, they have to report the result about the search. Minister of Economy, Trade and Industry also get legal power to stop the work and order to remove the exploratory devices in the case that foreign ships invade illegally.

Despite the revision of mining act, Japan still holds three problems.

First is to secure resource development exclusively in Japanese EEZ and continental shelf. It is thought that in the East China Sea, there are many marine natural resources, so the race between each country have been getting intense more and more. Under these situations, Japan is protecting low tide line in Okinotori Island and applying extension in the continental shelf.

Second is to protect small and medium-sized companies and venture businesses. Because of the permit system, there is possibility that mining right is concentrated in big enterprise. So, we need the proper standard for screening in order not to prevent enter of these companies having high-tech search and mining technology. We also need to discuss the way to public support to check wasting and possession of rights and interests.

Third is to correspondent to environment risk. The accident in development damages the environment and an ecosystem seriously. The disposal of such environmental pollution also needs a lot of time and funds. So, as a step to decrease these risks possibly, we have to set the standard of environment assessment and support technological development.

iv. Basic Environment Law

Yukitaka Kose

After WW II, Japan had achieved rapid economic growth. However, some social problems such as environmental pollution and destruction occurred. To deal with these problems, the government established the Basic Law for Environmental Pollution (1967) and Nature Conservation Law (1972), encouraged the administration and corporations to invest in environmental preservation.

After that, city type pollution like air and water pollution caused by daily human life became problem. In foreign countries, similarly, the destruction of Ozone-layer, acid rain and reduction in tropical forest and wild animals due to expansion of human activity and increase in world population came into question. Considering these circumstances, it was necessary to review the economic activity and cooperate with each country to solve these problems. Then, the government established Basic Environment Law aimed for building a new outline for environment policy.

The aim of the Basic Environment Law is to confirm a nation, local public body, entrepreneur and the people's role and contribute present and future humankind healthy and cultural lives. To realize these goals, the administration is required to build regulation measure and precaution against environment pollution. Also, it is in need of connection with other foreign countries therefore this law provides that Japanese government and local public body keep up with the trend of the times and environment.

Accompanied with this law, some new law and policy plan (e.g. Fundamental environment plan, Environmental Impact Assessment Act, Basic Law for Establishing the Recycling-Based Society and other recycle laws) established and announced

realizable policies. A series of law establishment turned correspondence to antipollution measure and then into global environment preservation.

On the other hand, there are many issues in this law. First, 'Environment' is not clearly defined in it. This is because environmental law contains many different kinds of purposes and definition which change at different times or by the consciousness of the people. Also, while promotion of Environmental Impact Assessment (EIA) is provided in Article 20, it does not work well. In 1997, though EIA law was established, it is passive to citizen's commitment and does not play a role in a place for expressing their opinion.

It is true that Basic Environment Law and other related environmental law establishments led to a step of high-feasibility policies, but these are too generic. Before Basic Environment Law was established, both nation and local environmental administrations preserved nature from industrial pollution in urban and other specific areas. After that, however, environmental pollution areas became larger than before, therefore they were forced to change their policies and couldn't divide each tasks.

In addition to these issues, Environmental Right is not sanctioned legally in Japan. It first appeared in the Declaration of the United Nations Conference on the Human Environment (1972, Stockholm). Also, it included the right to enjoy personal and joint environmental profit. It is thought that Environmental right is accepted in the constitution of Japan Article 13 (Life, liberty and the pursuit of happiness) and 25 (Right to life). While many countries tend to accept it in a precedent level, the Japanese government's opinion is that it is immature and ambiguous so it is unable to sanction it.

In order to prevent Basic Environment Law from losing substance, it is desirable to organize nations, local public bodies, entrepreneurs and the people to

associate in and carry out fundamental environment plans elaborately. Therefore, what is needed concretely is release information that each actor can do both good and bad effective act on nature and the collaborative relationship between nation, local public body and entrepreneur.

In conclusion, it is necessary to solve problems mentioned above and considers how the law's basic principle 'Global environment maintenance by the international cooperation' mirrors the actual policy.

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