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## Alternative dispute resolution in Japan

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# Alternative Dispute Resolution in Japan

Helmut Weidner

## 1 Introduction

Within Japanese culture, cut off for centuries from outside influences, homogeneous, independent modes of behaviour and social roles, as well as a specific legal mentality have developed, which are still important today (cf. in general, Mayer & Pohl 1995, Rehbinder 1994). The Japanese perception of justice still holds that conflicts within traditional Japanese society are resolved not with a view to individual rights, but according to their impact on the community. It can be said in general that the Japanese desire for harmony has led to the prevention of conflicts where one party wins at the expense of a loser, and instead to solutions through mutual compromise. In this, conflicts have generally been laid to rest by way of mediation by other people or institutions (cf. Weidner 1996).

There have certainly been changes in the "political culture" of Japan over time, and the legal system has been fundamentally modernised, with reference to systems in the West, since the Meiji reforms of 1868, the current mentality, practice and social attitudes to law are nonetheless strongly characterised by this tradition. In comparison to other industrialised countries, (formal and informal) extrajudicial procedures for conciliation or setting aside disputes are still of immense value to a wide variety of groups (as in conflicts with authorities, employers, neighbours or spouses).

This tradition may also explain the great success of the system for mediating disputes between private citizens and the authorities, instituted in 1960. Under this system, a broad network of volunteers, whose function could be described as that of ombudsmen, has developed. They handle on average around 119,000 complaints, while there are only some 1,000 administrative court cases per year.

## 2 Extrajudicial Conflict Resolution Procedures

Extrajudicial conciliation and complaints procedures are also widespread in cases of conflict over environmental protection (cf. Weidner 1996: 395 ff., Foljanty-Jost 1990, Sagami 1989). Owing to the heavy increase in complaints by the public over environmental problems since the end of the 1960s and the growing number

of disputes and civil lawsuits, a special legal regulation was decreed in respect of the environment. The basis was Article 21 of the 1967 Environmental Basic Law, which has since (in 1993) been amended. It states that the government is to take necessary measures for the creation of a procedure to resolve disputes caused by environmental damage in the form of mediation, conciliation and arbitration, and that this is to include consideration of financial compensation. On this basis, the 1970 "law on resolving disputes concerning environmental damage" and the 1972 "law on setting up a committee to deal with environmental damage" were decreed. Accordingly, three institutions were established independently from one another: complaints committees at the local community, prefecture and national administrative levels. While the complaint committees at local level are primarily concerned with action to help complainants,<sup>1</sup> dealing with conflicts concerning damage and compensation is at the forefront of the work of the other committees.

In all, there are four distinguishable procedures for resolving disputes: mediation, conciliation, arbitration and decision making procedures over fault, liability and responsibility.

The course taken by the four procedures<sup>2</sup> varies, and there are also differences in the extent to which the outcomes are legally binding. The least formal structure is the mediation procedure. Here, the function of the committee consists primarily of playing the role of ambassador between the parties to the dispute until they can agree upon a common basis for resolving the conflict.<sup>3</sup> The result of the negotiation process is generally a written memorandum which then functions as a civil law contract, and if all parties agree to it, they are subsequently unable to follow the normal route through the courts with respect to the case.

The conciliation procedure is more formally structured than the "mediation"; it also requires active, guiding participation by the mediator. While the procedure is in progress, the parties to the conflict may not take action in the courts. Moreover, it is normal for the conciliation committee to conduct site inspections, commission studies, hold hearings and finally present a draft agreement, which is then considered to have been accepted, unless the parties involved reject it within 30 days. The result of the conciliation procedure also takes the form of a civil contract.

The results of research to date on the Japanese complaints and extrajudicial dispute resolution system for environmental conflicts (cf. Sagami 1989) have shown, among other things, that the complaints (ombudsman) system is generally viewed

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- 1 In all prefectures and communities with more than 100,000 inhabitants, complaints offices have been set up. The "environmental officers" working there co-operate with the responsible authorities and seek a valid agreement between parties to a conflict.
  - 2 Arbitration and this specific form of decision making process will not be discussed in any more detail here, as they play only a subordinate role in relation to mediation procedures.
  - 3 If the parties cannot themselves reach a solution to the dispute, the committee is able to make its own (non-binding) recommendation.

positively with respect to the way it functions, as it remains close to the affected area and citizens and can be conducted with little difficulty. The assessment of the other procedures for extrajudicial dispute resolution brings with it more problems, owing to the state of available information. In general, positive emphasis is laid on its relative speed and flexibility, and on its considerably lower costs in comparison with court procedures. A statistical evaluation has shown that mediation procedures are used more often than conciliation (cf. Weidner 1996: 403 ff., Fujita 1990). Nonetheless, the numbers of court cases concerning larger conflicts over environmental protection have increased since the 1970s; "this does not rule out negotiation before, in parallel with or after the trial, in order to exploit the . . . advantages of consensual agreement" (Foljanty-Jost 1990: 49). In addition, local authorities now tend, where a project can be seen to invite conflict, to require applicants to obtain a conciliation proposal from the local administration before submitting the formal licensing application. Both the applicants and affected citizens then participate in the procedure. If no conciliation can be achieved, the normal licensing procedure takes place.

### 3 Environmental Protection Agreements

Alongside the legally formalised "extrajudicial dispute resolution procedures", there exists a special form of negotiated solution in respect of environmental protection where neither the procedure nor the result is fixed in law. This is the widespread practice of concluding environmental protection agreements (*kogai boshi kyotei*), of which there are now some 45,000 (cf. Weidner 1996: 245 ff.)

Environmental protection agreements were being concluded in isolated cases as early as in the 1950s. The first significant agreement was in 1964 between the municipality of Yokohama and the Electric Source Development Corporation, over a planned coal-fired power station; only in this way had it proved possible to avoid massive public protest. Citizens' groups also took part in the negotiations on concluding the agreement. Following this, the number of such agreements grew strongly.

In the majority of cases, environmental protection agreements are concluded between businesses and the local and prefectural authorities of the area affected. There are also numerous cases where citizens' groups participate (in an advisory or co-decision-making capacity) as third parties. However, there are also environmental protection agreements exclusively between businesses and citizens' groups, currently estimated to total around 6,000; between 1993 and 1994, for example, there were 287 such agreements. Citizens' groups are also autonomous contractual parties in cases where agreements are reached with the communities themselves, such as on waste incineration or sewage treatment plants.

It is virtually a defining characteristic of environmental protection agreements that their requirements with respect to the environment tend to exceed by far the

legal requirements. In return for this "overshoot" in environmental protection, the signatories among the citizens' groups renounce the exploitation of any legal possibilities or extrajudicial measures to obstruct the project. The jurisprudential problems of such agreements are certainly discussed among legal experts in Japan<sup>4</sup>, but this has scarcely gained significance in practice, as the majority of those entering into environmental protection agreements (and this includes in particular the responsible local environmental authorities) prefer this form of negotiated solution to formal procedures because of the greater flexibility it offers in environmental conflicts.

In all, it can be seen that environmental protection agreements are held by local authorities and citizens' groups to be a suitable means of complementing the regulations of national environmentally legislation at grass roots level. Not only the local situation (the environment and particular political or social preferences at the location), but also the economic and technological capabilities of the firm are taken into account. Although these agreements are not strictly speaking legally binding (civil or administrative) contracts, but rather "gentleman's agreements", cases of a firm's breaking a contract are relatively scarce. This is due not only to the well-developed environmental information system (cf. Weidner 1987), but also to the fact that breaking an agreement reached on the basis of consensus leads to a "loss of face" and a variety of "informal" sanctions by the various authorities involved.

There is no question for experts in Japan that Japanese environmental policy at both local and especially national level has gained decisive impetus from environmental protection agreements. The consequent decentralisation of environmental politics has neither led to chaos in centralised state planning or regulatory functions nor held back economic development. Regulations arrived at local level through agreements are often later taken up into national environmental legislation. In this respect the phenomenon could be described as a local testing ground for state environmental policy (cf. Tsuru & Weidner 1989).

## 4 Negotiated Solutions with Respect to Waste Management

### 4.1 *Background*

For some years now in Japan there has been talk of a crisis in waste policy: waste volumes, especially from industry and commerce, are rising and available disposal areas are becoming increasingly scarce in densely populated Japan, particularly in population centres. In this respect experts, including those of the state and local authorities, consider a fundamental change in waste policy to be urgently required. Necessary are not only efforts to reduce the (in some areas extremely large)

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4 For criticism on political and legal grounds cf. Isono (1996: 166 ff.), Weidner (1996: 269 ff.).

amounts of waste produced, but a general restructuring of the economic system and consumer culture (Miyamoto 1994).

Between the mid-1970s and mid-1980s, total volumes of normal waste fell, but since this period there have been increases again. Industrial waste, on the other hand, increased, and continues to do so (although growth in both domestic and industrial waste has remained slower than growth in gross domestic product). Not only the increase in volumes, but also the composition of the waste has become more problematic: more and more scarcely recoverable plastic items and bulky refuse (cars, electrical appliances, pianos, etc.) have been appearing in domestic waste and there have been similarly problematic developments in commercial waste, such as "computer scrap" and specially treated office paper.

Because of the scarcity of disposal sites, the increasingly stricter regulations on hygiene and the environment and the difficulties of transportation, Japan began the construction of waste incineration plants very early on. Over 70 per cent of waste defined as "incinerable" is currently treated in incineration plants. Almost every larger local authority area has such a plant, and many businesses own smaller facilities for incinerating hazardous waste, waste oil, sewage sludge and plastic refuse. According to government figures there are almost 500 sewage sludge incineration plants in Japan, of which only some 12 per cent are run publicly, 410 waste oil incinerators and over 1,300 plastic waste incinerators. There are around 2,000 (often very small) local authority waste incineration plants and very many of them lie in the middle of residential areas. The energy generated is often used to heat public baths, sports centres and other social or local amenities, primarily in order to gain the acceptance of residents.

As a response to the increasing waste problems, the 1970 Waste Disposal Act was fundamentally changed in 1992. The new act is based on "three pillars": reducing waste quantities through recycling, producing an appropriate waste disposal structure and securing sufficient capacity in waste disposal facilities. Parallel to this, a law on promoting the re-use of raw materials (Recycling Act) was passed, under which instruction, advice and monitoring from government authorities stimulates recycling activities in the various business sectors. In order to be able to fix per capita waste volumes at 1990 levels, as planned, domestic waste must be reduced by 12 per cent, industrial waste by eight per cent, and these are the targets at which the most recent legal regulations are directed (Miyamoto 1994: 11). In association with the legal reforms, efforts to increase economic incentives have also begun. In around 1,130 (of 3,236) local authority areas, about 35 per cent of the total, some form of waste disposal charge is currently being levied for domestic waste.

Under waste law, industrial and commercial waste must be disposed of by its creators. Correspondingly, there are very many privately run disposal facilities and waste disposal companies in Japan. While the Health and Welfare Ministry is responsible at national level for domestic waste, it is the Ministry of International

Trade and Industry (MITI) which is responsible for industrial waste (and implementation of the Recycling Act). At lower administrative levels, the prefectural authorities are responsible. By 1985, industrial waste had increased to 313 million tons, a rise of some 20 million tons against 1980.

Waste incineration plants and landfills are heartily disliked by the Japanese population. Planning and realising such facilities is frequently linked to conflict-laden and relatively drawn-out procedures. However, the reasons for protests against incinerators are in part very different to those in other countries. In Japan, opposition to such projects is more frequently made for aesthetic reasons (waste incineration plants spoil the cityscape) and because of odour, noise and traffic. All the same, incinerators are continually being built in Japan, even in heavily populated communities, and the government is aiming, through legal and financial support, to have 85 per cent of incinerable waste pre-treated in waste incineration plants. Residual waste from the incinerators is disposed of in landfills or used as packing on artificial islands (which are later recultivated; industrial companies and power stations are then often located here).

The environmental awareness of the Japanese public with respect to waste is relatively high, as has been shown in many surveys (cf. Imai 1994). Many of the respondents state that they would be prepared to take a more active role in waste disposal and prevention measures; however, behavioural studies show that there is still a considerable gap between awareness and actual behaviour. On the other hand, there has long been strong public participation in recycling of paper, scrap iron and glass. Of over 100 citizens' initiatives involved in waste prevention and recovery in Japan, three quarters focus on recycling (Imai 1994: 16); numerous Japanese cities have built up well-functioning recycling infrastructures and intend to expand them still further.

There were greater conflicts over waste in Japan many years ago. The most famous case was the so-called "rubbish war" in the early 1970s in Tokyo, where a citizens' action group had been obstructing the construction of a waste incineration plant in the constituency of Sugunami, so that the rubbish from this (relatively well-to-do) constituency was taken to the sea and dumped. The vehicles transporting the waste passed through the (relatively poor) constituency of Koto, which aroused strong protest from its inhabitants, who in turn erected barricades to stop the passage of the waste through the streets. Because of this situation, the Tokyo prefectural government declared "war on waste", in particular developing the principle that every constituency should dispose of its rubbish within its own borders (cf. Tsuru & Weidner 1989). This led to the planning of waste incineration plants for virtually every constituency; however, these plans have been realised in only a few cases, owing to public resistance and also opposition from among the constituencies' political representatives themselves. In order to increase the plans' chances of realisation, participation by citizens' groups has been increased on the one hand, while



economic incentives have been developed on the other hand, and so the constituencies receive considerable investment subsidies for building incinerators, if they can show a broad public consensus in favour. Acceptance has also been increased through linkage to social facilities (homes for the elderly, swimming baths, community centres, which are supplied with energy from the waste incineration plants). These efforts are being further intensified, as a landfill emergency is clearly evident in the metropolitan centres. In Tokyo, for example, predictions are that—if waste volumes continue to increase at the same rate—industrial landfill capacity will be exhausted within a couple of years, domestic landfills within around eight years, and the creation of new landfill areas is becoming increasingly difficult, while the until now common practice of creating waste islands is also reaching its limits. At present, much waste from the large cities is exported to thinly populated areas, but here too, protest is increasing in the affected regions (Miyamoto 1994: 6 ff.)

#### 4.2 *Environmental Protection Agreements*

As explained earlier, the environmental protection agreement is an instrument used frequently by local authorities and citizens' action groups in Japan to push through environmental standards which are stricter than those required by law. Such agreements are widespread with respect to waste management, particularly in the case of waste incineration plants. For virtually all new incinerators, agreements are made between the responsible authorities and citizens' groups; they are also used in the case of modernisation or expansion of older facilities (Weidner 1966, Tsuru & Weidner 1989).

A study of the use of environmental protection agreements in waste incineration plants in the cities Tokyo, Yokohama, Matsudo, Omiya and Kawasaki, carried out in the course of a research project (cf. Sommer 1995), came to the following general conclusions in this respect: the agreements have a demonstrably strong influence on the stringency of environmental standards in the planning of waste incineration plants, while they contribute equally to minimising social conflicts. There are nonetheless great differences as regards participation by citizens' groups: in some cities they are involved only peripherally, and the practice of public information also varies greatly, so that in some cities, only groups with a "justified interest" (generally defined by the proximity to the incinerator) are informed of the agreement, while in others, they are made known to the public at large. The conclusions specific to each region studied are given below.

##### (1) Tokyo

In consequence of the evident "waste emergency", one of the measures undertaken was the establishment of the "Tokyo Waste Council" in January 1991, to which representatives of the authorities, business and citizens' groups belong. Within

nine months it produced a waste minimisation programme with the goal of reducing total waste by 23 per cent by the year 2000 (30 per cent industrial and commercial, 20 per cent domestic waste) and, in response to the "landfill emergency", placing strong emphasis on incineration to reduce volumes.<sup>5</sup> At present there are 13 waste incineration plants in operation in the prefecture of Tokyo, and almost all of them were installed in tandem with systems for "grass-roots services" (such as energy supply to community centres and homes for the elderly).

In order to simplify the planning and implementation process, environmental protection agreements were concluded in all cases; with one exception (the plant in Nerima), these agreements were set out in written form. Participating at the negotiations were representatives of the prefectural government, members of the constituency council and citizens' groups, whereby the latter's interests were frequently represented by the constituency council. The negotiation procedures are quite heavily "formalised", and almost all of them follow a similar course. Moreover, a characteristic of procedure in Tokyo is that negotiations do not generally start until the prefectural government has already developed highly detailed plans, which then form the basis for negotiation. Since these plans already take into account Best Available Technology (BAT) and very stringent environmental standards, the negotiation process seldom leads to major changes to the initial plans. Thus the negotiations are a form of participatory confirmation, with slight amendments, of the official plan. The agreements are almost always kept, there are at any rate very few conflicts in this respect. There are "post-negotiations" in certain problem areas, for example in the case of dioxin emissions. Here, the prefecture agreed to upgrade existing waste incineration plants rapidly, in order to meet national recommended guidelines; however, the environmental protection agreements were not altered correspondingly.

Moreover, the content of the agreements is generally kept fairly vague; detailed regulations on measurement facilities or remedial action in problem cases are seldom. However, special committees have been set up to monitor compliance with the agreements, consisting of representatives of the prefectural and constituency governments and of citizens' groups. The agreements are available to the public in principle, although in practice it is difficult for those not directly affected to obtain detailed information. For example, details of the actual quantity of waste treated by each individual plant are not given to such applicants: the reason for this is presumably to prevent the quantities of "imported waste" from becoming generally known.

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5 The responsible prefectural authority presented an expansion programme for waste incineration plants in October 1991, providing for the construction of ten additional plants by 2010, preferably in those constituencies where there is presently no incineration plant.

### (2) Kawasaki

In the city of Kawasaki (in the prefecture of Kanagawa) also, the quantity of waste had risen strongly for many years, although there has been a slight fall in recent years. Four waste incineration plants are in operation there, which receive virtually 100 per cent of all incinerable waste. With respect to the permissions procedure for siting the incinerators, there were no disputes in three of the cases, predominantly because the plants were built in industrial zones. In the case of the Tachibana plant, which was built in a residential area, there were fairly heated disputes after it came onstream, as this gave rise to considerable environmental pollution. The heavy pollution from this plant is considered to be primarily a result of the fact that there was scarcely any public participation in the planning process. Owing to heavy public protest, a committee had to be set up later, in which neighbourhood groups and environmental organisations participated. This committee conducted negotiations with the responsible municipal authorities over modifications to the plant. Representatives of citizens' groups whose apartments lay within a radius of 1.5 km of the plant were given access to the committee. In 1974, they reached an agreement which provided for considerable environmental protection measures. Since then, the committee has been meeting twice a year, in order to discuss with the responsible authorities how the agreement has been honoured and any technological improvements.

### (3) Yokohama

The city of Yokohama (also in the prefecture of Kanagawa) is one of the pioneering municipalities as regards environmental protection agreements. Despite countless waste prevention programmes and initiating recycling measures, the mountains of rubbish in this city too have risen considerably over the years. There are five waste incineration plants operating in Yokohama, processing almost all of its incinerable refuse. Surprisingly, no environmental protection agreements have been concluded in Yokohama on incinerators. The reason given first and foremost is that the general environmental regulations in the city are so stringent that additional agreements are unnecessary. Further reasons given are comparatively low level of public interest in such plants and the possibility for public participation during the locally managed environmental impact assessment, whose scope for participation goes beyond that laid down in national regulations. And thus the permissions procedure for the waste incineration plant at Tsunami, which came onstream in 1995, was also concluded without conflict.<sup>6</sup>

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6 A partial study of environmental standards in Japanese waste incineration plants (cf. Sommer 1995) found them to be extremely high in general. In some cases, the plants have long ago achieved standards which have recently been laid down in Germany's 17th Federal Immission Control Ordinance. On the other hand, German standards for dioxins and furanes are often considerably more stringent; this can also be attributed to the fact that these problems

### 4.3 *Dispute Resolution Procedures in Tokyo*

Case studies have been used to investigate the extent to which negotiation-based procedures have been used in the prefecture of Tokyo for dealing with conflicts over waste management measures, and what form these procedures took (Isono 1993, Imai 1994). The area studied covered the 23 so-called special constituencies of Tokyo which make up the actual city centre. Here there has been a significant rise in waste produced since the mid-1980s: from 3.8 million tons in 1984 to 4.9 million tons in 1989.<sup>7</sup> The waste charges system is considered extremely inadequate, because it is limited to the so-called resident population (and also fails to cover the total costs), whereas something like the same volume of waste is generated by persons and businesses whose actual place of residence is elsewhere. In addition, the many small businesses who are obliged by law to organise disposal of their own waste themselves dump their refuse "as domestic waste".

Both the prefecture and the Bureau of Public Cleansing are responsible for waste disposal in the special constituencies. The Bureau employed a total of more than 10,600 people in 1993. Plans exist to transfer the tasks of waste disposal on to the constituencies themselves by the year 2000, this nonetheless presupposes that each one has set up a waste incineration plant.

In the area studied, some 30 citizens' groups are active in the field of waste management. They are financed by membership fees and receive no state support. Their main sphere of action is organising informational campaigns and setting up the logistic requirements for waste prevention and recycling. The constituency consumer groups are also active in these areas, but they restrict their activities mainly to recycling and organising flea markets, etc. There are no politically oriented or belligerent citizens' organisations here, and environmental associations are equally only active to a limited extent.

Among the more recent activities of the responsible authorities are waste prevention campaigns (starting in 1989 with one introduced by the municipal Bureau of Waste), the inclusion of waste reduction goals in long-term civic planning, setting up (pluralistically constituted) citizens' advice committees to develop basic

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were not publicly discussed in Japan until considerably later. Some of the progressive environmental protection measures for incineration plants can also be explained by the fact that Japanese manufacturers of the plants aim for high technological standards, as they are relatively strongly oriented towards exports. While the study found very great differences between the cities with respect to the inclusion of detailed emissions standards into environmental protection agreements, regulations and agreements regarding general operating standards, transportation of refuse and compensation were all very similar.

7 Between 1989 and 1992 there was a slight fall in domestic waste volumes in the special constituencies. Independent experts explain this primarily as a side-effect of the severe economic recession, while the responsible authorities claim it predominantly as a result of their waste management policies.

waste prevention programmes, and the introduction of a "semi-transparent refuse bag". The latter measure led to considerable conflict. The intention was to motivate the public to separate their refuse properly (the normal bags were opaque). However, as a consequence of the strong protests, this measure was partially restricted and opaque plastic bags were once again deemed acceptable. Nevertheless, through organisational changes and intensified public information campaigns, it was possible to bring the proportion of semi-transparent refuse bags up to 90 per cent by July 1994. With the introduction of these bags, the quantities of waste they contained also fell (by about six per cent). All the same, these measures are held by experts to be a "botch-up". They recommend in particular the introduction of waste charges which cover the total costs of treatment and disposal, which, especially in the industrial and commercial sectors, nevertheless presents serious political problems in its implementation.

Although waste disposal plants number among the "unloved" environmental facilities, the proportion of waste incinerated in Tokyo has risen sharply since the mid-1970s. Then, relative to total incinerable waste, it was only around 30 per cent, while it now stands at over 70 per cent. As a consequence of the growing shortage of landfill space, it was decided in October 1991 to build ten additional incineration plants by 2010 in order to reach the originally intended waste incineration quota of 100 per cent by the end of 1996. After strong public protest, this plan is also clearly no longer realistic. Notwithstanding, the rate of waste incineration in Tokyo is extraordinarily high when compared internationally.

Reasons for protest against waste incineration plants have changed drastically within the last 25 years. A comparison between public opinion surveys on these plants in 1969 and in 1993 makes this clear: while in 1969 over 50 per cent of respondents rejected them because they were unhygienic and damaging to health (only 16 per cent considered them necessary), around half of those questioned in 1993 saw waste incineration plants as a sensible and necessary solution to waste problems. The most important reasons for rejecting them in 1993 were as follows: increased traffic problems and deteriorating air quality from the transportation of waste, that the plants themselves would spoil the residential environment, and negative effects on local real estate prices.

The increase in the proportion of waste incinerated in Tokyo which, despite the conflicts associated with such facilities, has been a great success compared internationally, can be traced back to the relatively complex negotiation-based decision making procedures, which aim to produce consensus. An important factor is the fundamental requirement that every constituency should in principle dispose of its own waste. This basic principle was developed under the "War on Waste" campaign, initiated by the prefectural government at the start of the 1970s. The inclusion of the general public in planning and setting up waste incineration plants was also increased. Thus in the constituency of Sugunami, where

rejection of the incineration plant led to severe disputes of waste, it was possible to gain widespread public acceptance of its eventual construction from affected residents.

Up to now, on the basis of this participatory approach and the fundamental principle that "every constituency looks after its own waste", a total of 16 incineration plants have been built in twelve of the 23 special constituencies, six of them between 1974 and 1994. The prefectural government has been making intensive efforts for many years to motivate the other eleven constituencies to build a waste incineration plant, but implementing the plan is particularly difficult, if only for the reason that many of the constituencies without an incinerator belong to the very centre of the city, where there is a concentration of commercial buildings, government administrations and other service sector establishments. In order to smooth the path to a consensus in these difficult areas, the municipal government has developed a five-point plan of action, providing for the following:

- implementing the most stringent technological and other measures to reduce pollution;
- pleasing architectural design for the incineration plants;
- equipping them with efficient heat recovery systems;
- complex measures for reducing waste transportation and its associated pollution and burdens;
- compensatory measures such as the construction of public buildings in the constituency.

Some examples of implemented or planned action should illustrate these principles: the newest incineration plant in Tokyo Bay, which came into operation in July 1994, has been built in the form of a ship. The three-cornered chimney is made of artificial marble and is 140 metres high. Discussions are currently in progress as to whether an "underground" incineration plant should be built in the city centre; costs are estimated at two to three times the normal investment. Also under discussion is the construction of a "swimming" waste incineration plant to be placed in Tokyo Bay. Efforts are also being made to increase energy recovery; in 1992, 26 per cent of energy generated was recovered and used, a part of it being fed into the public electricity grid. A sharp increase in the amount of energy recovered is intended. In order to reduce pollution and other burdens from transportation, quite long tunnel routes supplying the plants have been constructed, and among other further planned measures is a sharp reduction in noise and exhaust emissions from refuse transporters. All plants supply energy free of charge or at well below market price to surrounding public or social establishments (swimming baths, homes for the elderly, youth and community centres, etc.).

Alongside the formal procedure for planning and licensing a waste incineration plant, which also includes conducting an environmental impact assessment more comprehensive and transparent than provided for in national guidelines, a regular and complex consensus building procedure takes place in the affected constituency. A site is then acceptable only if it receives a majority in the constituency parliament. A general goal is also to site incineration plants on municipal or state-owned land. As early as during the EIA, commissions covering a plurality of interests are set up, whose influence on the subsequent decision is relatively string (Imai 1994). There are two such commissions, one at municipal government, the other at constituency level. They conduct negotiations with affected citizens, consider their objections, scrutinise planning documents and make recommendations with respect to the licensing decision and any conditions attached.<sup>8</sup>

#### 4.4 *Planning for a Waste Incineration Plant in Meguro*

The following points to some of the basic characteristics of the dispute resolution procedure, using the permissions procedure for a waste incineration plant in Meguro as an example (cf. Imai 1994). The site selected was state-owned, and bordered a school, thus it met with opposition from the corresponding school administration and the parents association in particular. In all, only relatively few citizens' groups and individuals involved themselves with the procedure, especially active was the "Independent Association Against the Construction of a Waste Incineration Plant in Meguro". During the search for a site the mayor, the constituency parliament and representatives of neighbourhood associations were already told about the prospective site—but not, however, the general public.

The constituency gained the concession that state-owned land which became free could be used by the constituency for its own needs, if the construction of the incineration plant was agreed to. In addition, land for a public playground was offered to the constituency and moreover, it was granted above-average levels of compensation if it agreed. Compensation is usually ten per cent of the investment costs for a waste incineration plant; in this case almost 40 per cent (118 million DM) were allocated, to be used for a pedestrian footbridge and construction of a new constituency centre and a swimming pool. The formal constituency committees agreed in principle to the deal, but the citizens' groups formed against the plant were unwilling to add their agreement. Their arguments were primarily that the prognoses for waste volumes had been manipulated and that there was in

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8 The municipal commission is set up by the governor and consists of representatives from the affected constituency, independent scientists, members of the prefectural parliament and representatives of state ministries. The constituency-level commission is set up by its mayor and consists of members of the constituency parliament, independent scientists, representatives of the authorities and members of citizens' groups.

principle already sufficient waste incineration capacity, that the principle of each constituency disposing of its own waste was fundamentally irrational as it would lead to further excess capacity, and that the constituency should place stronger emphasis on waste prevention and recycling. The groups demanded that the planned site be used for building a waste recycling centre.

However, the citizens' groups were unable to win over either the (parliamentary and administrative) constituency committees or the advisory committees. The latter voted after a relatively short period of consultation (two months) for the construction of the plant at the proposed site. Their decision emerged during informal discussions which normally take place in breaks during the meetings. The aim is to find a consensus, which is then presented under the official agenda and formally accepted. Reasons for the decision are thereby not mentioned, and therefore also absent from the official minutes (Imai 1994).

It would thus be correct to speak of an intensive, informal, negotiation-based decision making procedure, but not from a "strongly participatory" one, at which all interests are given equal consideration. All the same, this procedure—and this is important for Japanese political culture—avoids seeming to publicly reject or vote down the aims and arguments of individual groups. The compromise may not be fully consensual, but it is generally based on widespread agreement from the majority of those participating in the procedure. This gives the outcome a relatively powerful legitimacy among the non-participating public.

#### 4.5 *Planning for a Waste Incineration Plant in Chiba*

Similar characteristics of Japanese negotiation procedures have been shown by Isono (1993).<sup>9</sup> Also apparent was the fact that so-called "opinion-leaders" in the participating neighbourhood groups play a central role in consensus building. Because of their social position, they exert great influence on opinions formed and the level of acceptance by the groups they represent, which often leads to the case where they tend not so much to use the proposals developed during the negotiation process as the starting point for a discourse with those they represent, but rather try to persuade them of the benefits of certain options which they themselves feel able to support.

The case in the city of Chiba was the planning of a third incineration plant. The consensus building procedure under the so-called committee for investigating the municipal waste management plan came, after a total of 22 meetings over three years, to the conclusion that a third incineration plant was certainly necessary, but was unable to agree on the question of siting. Four alternatives were proposed and examined by a special working group, to which representatives of citizens in

9 Her study also covered two cases of decision making in the Tokyo area.



the affected areas also belonged. This resulted in preferences for a site whose land was publicly owned. Two citizens' representatives from the area opposed the decision and, when they were unable to persuade the others, walked out of the committee before the planned conclusion of the procedure. For this reason, the committee was not able to produce an agreed final report. Nonetheless, the responsible civic authorities decided in favour of building the plant at the disputed site. This was seen by those affected as an extraordinary breach of the rules, and they took their case to court. In her assessment of the procedure, Isono (1993: 13) supposes that it would probably have come to a consensus if the civic authorities had not made their decision "prematurely", but first implemented some of the other measures recommended by the commission (such as introducing separated waste collection, increasing recycling, etc.). These measures would, among other things, have calmed the fears of the affected community that inadequate sorting of waste would lead to hazardous substances being emitted by the plant. Based on her results, Isono recommends that the selection of mediators (generally the chair of so-called advisory committees) be made with stronger reference to neutrality than is currently usual in Japan, where the mediators are normally selected and nominated by the responsible authorities.

## 5 Résumé

A broad summary of the studies makes the point that, in Japan also, conflicts over the planning and licensing of waste disposal plants can only be resolved through consensus-based dispute resolution procedures if the mediators are recognised as neutral by the participants, if the responsible authorities can show that the construction of an incineration plant is unavoidable, despite great efforts to prevent and reduce waste, and if the affected community receives considerable and diverse forms of compensation when the decision is in favour of an incineration plant, even with the implementation of complex environmental protection measures. An increase in alternative mediation procedures where environmental groups receive more substantial opportunities for participation than at present is to be expected, above all if they are granted greater possibilities for intervention under environmental legislation. Finally, it has become clear that alternative environmental dispute resolution is based on a highly traditional pattern of conflict management with only a very few similarities to moderation procedures in other countries, particularly the USA. As the traditional patterns favour, on balance, the economic and above all governmental actor groups, it is hardly surprising that mediation procedures on environmental conflicts have a poor reputation among citizen groups and environmental organisations. Since there are as yet no trained environmental

mediators, and no recognisable trend in this direction, a rapid spread of mediation procedures along the lines of that in the USA is unlikely in the coming years.

## Literature

- Foljanty-Jost, G. (1988). *Konfliktlösung durch Verhandlung: Außergerichtliche Beilegung von Umweltkonflikten in Japan*. FFU rep 89-4. Freie Universität Berlin
- Fujita, T. (1990). "Das Mittersystem in der Verwaltung nach japanischem Recht". In: W. Hoffmann-Riem & E. Schmidt-Abmann (Eds.), *Konfliktbewältigung durch Verhandlungen*, Vol. 1: Informelle und mittlerunterstützte Verhandlungen in Verwaltungsverfahren. Baden-Baden, pp. 289-293
- Imai, K. (1994). *Abfallpolitik in Tokio. Unter besonderer Berücksichtigung von Konfliktregelungsverfahren*. Unpublished study commissioned by Wissenschaftszentrum Berlin für Sozialforschung. Berlin (manuscript)
- Isono, Y. (1996). "Umweltpolitik der Kommunen—zur Arbeitsteilung von Zentralstaat und Kommunen". In: G. Foljanty-Jost (Ed.), *Ökologische Strategien Deutschland/Japan. Umweltverträgliches Wirtschaften im Vergleich*. Opladen, pp. 155-184
- Isono, Y. (1993). *Waste Incineration Policy in Tokyo and Chiba. Settling Conflicts between Local Authorities and Residents* Unpublished study commissioned by Wissenschaftszentrum Berlin für Sozialforschung. Tokyo (manuscript)
- Miyamoto, K. (1994). *Der Einsatz gesetzlicher und wirtschaftlicher Instrumente in der japanischen Umweltpolitik*. Kyoto (manuscript)
- Sagami, Y. (1989). "The Environmental Pollution Dispute Settlement System". In: S. Tsuru & H. Weidner (Eds.), *Environmental Policy in Japan*. Berlin, pp. 196-206
- Sommer, D. (1995). *Kogai Boshi Kyotei: Konfliktmanagement bei der Planung von Abfallverbrennungsanlagen in Japan*. Unpublished study commissioned by Wissenschaftszentrum Berlin für Sozialforschung. Berlin (manuscript)
- Tsuru, S. & Weidner, H. (Eds.) (1989). *Environmental Policy in Japan*. Berlin
- Weidner, H. (1996). *Basiselemente einer erfolgreichen Umweltpolitik. Eine Analyse und Evaluation der Instrumente der japanischen Umweltpolitik*. Berlin