

Emergence of Japan's Civil Society and Its Future Challenges

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Public attention to civil society surged abruptly and dramatically in Japan in the wake of the Great Hanshin-Awaji Earthquake in Kobe in January 1995, which took the lives of over 6,400 people. More than 1.3 million volunteers and a large number of nongovernmental organizations (NGOs) converged on the devastated city to offer relief and assistance to the victims. Their dedicated and impressive work was a bright spot in the otherwise grim scene of disaster. The media reported a number of poignant stories about the critical role played by volunteers and NGOs and nonprofit organizations (NPOs),¹ and belabored the allegedly bureaucratic and inept response of national and local government officials. Though there may have been a lack of balance in portraying the effectiveness of civil society organizations and volunteers in contrast with the ineffectiveness of "bumbling bureaucrats," the intense reportage helped the Japanese public as well as government officials and political and business leaders focus on civil society.

This sudden awareness of the value or utility of volunteers and NPOs prompted the government and political parties to find ways of facilitating their activities. Because as many as 18 government agencies rushed to respond to the new popularity of volunteer activities, they decided to form a Liaison Committee for Related Government Ministries and Agencies Regarding Volunteer Activities. Most of the main political parties started drafting new NPO legislation that would effectively promote and support the activities of Japan's nonprofit sector. For three years following the earthquake, intense debate over the NPO legislation occurred, involving not only NPO leaders but also politicians, bureaucrats, business leaders, and the media. The so-called NPO Law (officially the Law to Promote Specified Nonprofit Activities) finally passed the Diet in March 1998, providing a new impetus for the further growth of civil society in Japan. Equally significant is that the debate over the NPO Law

fostered a better understanding among leaders and the public of the ways in which civil society could contribute to the public good.

But because public attention to civil society swelled so abruptly and quickly, the debate over civil society development tended to be superficial and even emotional at times. There is a lack of awareness, for example, of the significant growth of NGOs/NPOs in Japan before the earthquake, and little effort has been made to understand the causes for the evolution of civil society domestically. Thus, some of the government responses following the earthquake focused on “volunteers” and overlooked other actors in civil society commonly recognized in many other countries, such as NGOs/NPOs, private foundations, and independent policy research institutions. Moreover, some bureaucrats (and conservative politicians who have close ties with them) regarded volunteers as inexpensive subsidiaries to government bureaucrats, as evidenced by some legislative proposals at the time of debate over the NPO Law that called for limiting the number of paid staff for incorporated NPOs. It is not surprising, therefore, that recent debate on civil society in Japan has typically been devoid of sufficient analysis and understanding of the relevance of civil society development for the governance of society. Nor has there been much effort to relate civil society debate to the debate over deregulation and downsizing of the government, which is by far the most critical issue of the day in Japan.

FORCES BEHIND THE DEVELOPMENT OF CIVIL SOCIETY

The Great Hanshin-Awaji Earthquake clearly was a major turning point in the development of civil society in Japan. It is generally believed that had the earthquake not highlighted the activities of volunteers and NPOs, it would have taken many more years for government agencies and the major political parties to act to pass the NPO Law. It is more accurate, however, to say that the earthquake was an event that galvanized the forces already at work in Japan to bring about an important leap forward for civil society—namely, enactment of the law. Without the foundation laid in the years preceding the earthquake by dedicated civil society actors, the concerted efforts of many groups and individuals to get the NPO Law

passed would not have been successful. Whether the momentum to build a stronger civil society can be sustained and will eventually prevail in Japan's sociopolitical milieu is a critical question to be addressed.

The Global Trend toward Civil Society Development

Diverse exogenous factors have influenced the development of civil society in Japan. It is widely acknowledged that the United Nations Conference on Environment and Development in 1992 in Rio de Janeiro was a watershed event for Japan's NGO movement. Japan's NGOs gained momentum through successive UN conferences such as the World Conference on Human Rights in Vienna in 1993, the International Conference on Population and Development in Cairo in 1994, the World Summit for Social Development in Copenhagen in 1995, and the Fourth World Conference on Women in Beijing in 1995. Even prior to the 1992 Rio conference, Japanese NGOs started emerging in response to changing external environments. Several NGOs were established in 1979 to support Indochinese refugees. In the late 1980s, the international NGO movement to address global environmental issues stimulated the founding of many environmental NGOs. The growing number of regional networks among NGOs in Asia encouraged participation by Japanese NGOs, thus stimulating their growth.

“Good corporate citizenship” became an important corporate practice after the extensive exposure of Japanese corporations to American local communities following the surge in Japan's foreign direct investment subsequent to the Plaza Accord in the mid-1980s. Trade tensions and calls for Japan to play a larger international role prompted Japanese corporate giving abroad.² The growing interest among Japanese corporations in forming partnerships with NPOs follows a noticeable trend set by multinational corporations in recent years.

The development of think tanks in Japan has also been significantly influenced by the international trend of “track two diplomacy” and the international collaborative networks of independent policy research institutions that are increasingly pursuing common research agendas. The need to strengthen Japan's representation in such international cooperative networks is stimulating exploration on how to bolster Japan's policy research institutions.

Another recent international phenomenon that has contributed to the development of Japan's civil society is the impressive growth of what has come to be known as "transnational civil society"—the set of collaborative networks of civil society organizations addressing global issues. The International Campaign to Ban Land Mines, which effectively engineered the "Ottawa process" resulting in the treaty to ban antipersonnel land mines in December 1997, is one prominent example. At COP3, the Third Session of the Conference of the Parties to the U.N. Framework Convention on Climate Change, held in Kyoto in December 1997, the Climate Action Networks, consisting of 250 NGOs concerned with the global environment, and the Kiko Forum '97, a group of NGOs organized in Japan to work for the Kyoto conference, played a critical role in giving transparency to the conference proceedings through information dissemination, which greatly influenced participating governments. The emergence of transnational civil society reflects the limits of national security in the post-cold war world, the deepening of economic interdependence worldwide, and the relative lowering of the authority of states. Revolutionary advances in information technology have created a situation in which the state can no longer monopolize information. Under such circumstances, international networks of organizations and people sharing a commitment to a certain set of values or ideas can be expected to play an even greater role in international governance.³

As Japanese NPOs became more exposed to the international trend of NPOs playing a bigger role in society and became more conscious of the need for enhancing their infrastructure and social recognition, they grew keenly aware of various factors inhibiting their growth and became motivated to work to remove the serious impediments to the development of the NPO sector in Japan.

Greater Acceptance of Civil Society as a Constructive Social Force

In the early years after the end of World War II, Japan's NGO movement was characterized by its antigovernment and anticorporate position. During that period, Japan was heavily influenced by the ideological conflict between the socialist-communist camp and the democratic-free market camp. Those who worked for the NGO movement, which was

sometimes referred to as the “citizens’ movement,” were labeled as left-wing elements. This image has changed considerably, if not totally, in recent years, particularly with the end of the cold war. Many NGOs, now more commonly called NPOs, were formed to address the issues created by a complex and pluralistic society, such as home care for senior citizens, environmental protection, foreign labor, social welfare, and consumer protection. A pattern of partnership between NPOs and municipal governments to address social issues in their local communities began to emerge. NPOs have been particularly effective in areas where government bureaucracy does not have sufficient flexibility or resources to respond effectively. As social needs and values became more diverse and the government budget became more constrained, the space for NPOs widened.

Significantly, more and more corporations started to find partnership with NPOs to be a useful approach for satisfying the interests of their stakeholders. The sense of good corporate citizenship that corporations acquired through their overseas experience was buttressed by the consciousness that corporations must meet the pluralistic interests of society. The concept of *kyosei* was introduced by Hiraiwa Gaishi, president of Keidanren (Japan Federation of Economic Organizations), in 1991 as a guiding principle of corporate activities. The word *kyosei* can be translated as “symbiosis” and refers to the Japanese business concept of interdependence and mutual prosperity—hence, in this context, a need to promote good corporate citizenship. The One Percent Club was established within Keidanren in 1989 to encourage corporations to contribute 1 percent of pretax revenues to worthy social causes, and, along with the Committee on Corporate Philanthropy of the same organization, encourages corporate support and partnership with NPOs. Though corporate support for NPOs is still limited, it has greatly helped recognition of NPOs as a constructive social force.

The media had started paying attention to the importance of civil society even before the Great Hanshin-Awaji Earthquake, and the media coverage raised people’s consciousness about the contributions NPOs could make to society. The combined number of articles on NGOs and NPOs in the *Asahi Shimbun*, the *Yomiuri Shimbun*, and the *Mainichi Shimbun*, three major Japanese dailies, rose from 178 in 1990 to 850 in 1992, and to 1,455 in 1994. After the earthquake, the number jumped to 2,151 in 1995, and it continued to rise thereafter,

reaching 2,868 in 1997.

Growing Recognition of Civil Society's Role in Governance

Even before the earthquake, a new awareness had emerged among Japanese leaders and the general public that the forces of globalization had brought about a situation where government alone cannot cope with today's increasingly complex socioeconomic issues, leaving a growing space for NGOs to fill. This recognition of government's limits coincided with a global trend of a decline of confidence in government in advanced industrial democracies as well as in developing nations. Joseph Nye of Harvard University, in a 1997 article titled "In Government We Don't Trust," wrote that governments "will share more of the processes of governance with market and nonprofit institutions" into the next century (111). Nye also pointed out that the popularity of the concept reflects the antigovernment mood in many countries, which has led to demands that government's role be reduced and that the nongovernmental sector be relied on to a greater degree. This trend has become pronounced in Japan, where confidence in bureaucracy has plummeted in recent years. Bureaucrats, once regarded as the agents of change in Japan's phenomenal industrialization and modernization process, have come to be seen as a major hindrance to the changes needed in the country today.

The global trend toward more reliance on the nongovernmental sector was clearly identified by a 13-nation (including Japan) study undertaken at the initiative of Johns Hopkins University in 1990–1995—the Johns Hopkins Comparative Nonprofit Sector Project. On the basis of this study, Lester Salamon, director of the project, concluded that the world is witnessing a global "associational revolution" and argued that it "may prove to be as significant to the latter twentieth century as the rise of the nation-state was to the latter nineteenth." Salamon reported that the upshot of this associational revolution is the emergence of "a massive array of self-governing private organizations, not dedicated to distributing profits to shareholders or directors, pursuing public purposes outside the formal apparatus of the state." He suggested that "the proliferation of these groups may be permanently altering the relationship between states and citizens" (Salamon 1994, 109).

Similarly, a survey project launched in the spring of 1993 by the Japan Center for International Exchange (JCIE) to assess the current state of civil society organizations in 15 countries in Asia Pacific noted the impressive growth of the nonprofit sector in the region in recent years. The results of the study were published jointly by the Singapore-based Institute of Southeast Asian Studies and JCIE in September 1995 under the title *Emerging Civil Society in the Asia Pacific Community*. In addition to an expansion of the size of the sector, the survey pointed to an evolution of the scope and nature of activities. In the “Integrative Summary,” this writer, acting as the editor of the book, reported that “many NGOs and philanthropic organizations in these countries have been transforming themselves from traditional organizations that provide charitable contributions and services to the poor, to those that directly involve themselves in the development process or in addressing issues such as the environment and human rights” (Yamamoto 1995, 5).

Indeed, the rise of civil society in Japan before the earthquake was evident in the then new phenomenon of citizens coming together to address new and complex issues, such as caring for the growing number of elderly in many communities, providing support for the large number of foreign laborers migrating into urban as well as rural communities, and protecting the natural environment against industrial pollution. The government’s failure to respond effectively to the vast social changes and the pluralization of social values brought about by the forces of globalization and the intensification of interdependence, on the one hand, and a growing interest on the part of citizens in responding to the widening space of social needs, on the other hand, resulted in the emergence of civil society in Japan.

However, the development of civil society in Japan, as is the case with many other countries in the region as portrayed in the Asia Pacific survey report, has been hindered by the continuing tendency of the government to “turn to” the nonprofit sector, spawning a hierarchical relationship where civil society organizations are reduced to mere subsidiaries of government agencies. The debate over the NPO Law reflected the tension between the government bureaucracy and civil society, as will be further analyzed later. It can be argued, then, that the development of civil society itself has become the issue of governance.

Impetus to Improve the Legal and Regulatory Context of Civil Society

One prominent aspect of the recent NPO movement in Japan is the tendency for these organizations to form networks among themselves to exchange information and to cooperate to remove the various constraints against their activities. Often these networks are linked with the overseas networks. As NPOs tried to help each other and attempted to improve effectiveness through collaborative networks, they became keenly aware of various government controls that impede their activities. Removal of governmental control over NPOs and facilitation of their activities through changes in the incorporation process and the provision of tax incentives for contributions to NPOs became a common cause of those who worked in NPOs and supported NPOs.

Such concerns gave rise to several initiatives to study the possible change of the legal and administrative context of civil society in Japan in the years immediately preceding the Great Hanshin-Awaji Earthquake, particularly between 1993 and 1995.⁴ Those study groups established around this time include the Coalition for Legislation to Support Citizens' Organizations (called C's); the Japan Civil Liberties Union; the Study Group on Tax Provisions for Contributions to NGOs, established by the Liberal Human Rights Association; the Committee for Promotion of NGO Activities, established by the People's Forum 2001, an environmental NGO; the NPO Study Forum, set up by a group of scholars led by Professor Honma Masaaki of Osaka University; and the Study Group on Building Infrastructures for Citizens Public Interest Activities, supported by the National Institute for Research Advancement (NIRA). The aforementioned Johns Hopkins Comparative Nonprofit Sector Project gave impetus to such research activities through its study group on the Japanese case organized by JCIE and begun in 1990. The Johns Hopkins study group played an important role in stimulating more intense research activities to deal with what was considered to be an outmoded and deficient legal and administrative context for NPO activities in Japan. This served as the basis for the studies conducted by Professor Amemiya Takako of Shoin College and other experts concerning the legal and regulatory context of civil society in Japan, which resulted in perhaps the first definitive studies on Japan's civil society published

in English (Yamamoto 1998).

Efforts to strengthen independent policy research institutions in Japan and promote more active Japanese participation in policy-oriented intellectual exchange activities were started in the early 1990s. In the late 1980s, NIRA undertook a multipronged research project titled “Agenda for Japan in the 1990s,”⁵ and as a part of this project commissioned JCIE to analyze the role of independent research institutions in other advanced industrial democracies in Europe and North America. The Sasakawa Peace Foundation (SPF) started a study project in 1991 on “Think Tanks in Japan—Their Potential and Prospects” with a view to rectifying Japan’s policy-making process, which, because it is dominated by the bureaucracy, is devoid of long-term perspective and creative approaches to diverse socioeconomic issues. As a part of this project, a study was commissioned to the Urban Institute in the United States, which produced a report titled *A Japanese Think Tank: Exploring Alternative Models*. On the basis of this project, SPF organized the World Think Tank Forum in Tokyo in February 1995, bringing together representatives of a number of major independent research institutions in Japan. The Global ThinkNet Washington Conference in March 1997 and the Global ThinkNet Tokyo Conference in February 1998 organized by JCIE may be regarded as sequels to the World Think Tank Forum.

The pressures to build more full-fledged independent policy research institutions have grown considerably in the past few years, owing to the increasing inability of government bureaucracy to generate coherent policy directions in diverse issue areas. In the debate over the government-initiated financial restructuring law in 1998, the government bureaucracy’s role, in particular that of the Ministry of Finance, was substantially reduced, and in a departure from the traditional legislative process, negotiations occurred between young turks of the governing Liberal Democratic Party (LDP) and the opposition Democratic Party of Japan (DPJ) over the draft bill. Significantly, the government bureaucrats were essentially shut out of the legislative process as the contents of the draft bill were rigorously debated between relatively young politicians on both sides of the political divide. While this episode, as well as the legislative process for the NPO Law, indicated the likely emergence of a new pattern in the legislative process with more active participation by Diet members, defying the traditional

pattern of legislators sitting on the sidelines while bureaucrats handle the drafting of bills, it also highlighted the absence of appropriate staff capacity or policy ideas and advice from independent policy research institutions.

Emergence of Partnership between Politicians and Civil Society Leaders

In the early 1990s, a number of political parties started showing strong interest in the nonprofit sector. On September 8, 1994, Diet member Hatoyama Yukio and several other representatives of the New Party Sakigake (*sakigake* means harbinger), which would join the LDP and the Social Democratic Party of Japan (SDPJ) in the coalition government in 1994, visited JCIE headquarters for an extended discussion over what is called in the United States a “brown bag dinner.” Hatoyama’s talk with this writer and senior staff of JCIE continued late into the evening. As a follow-up to this session, JCIE organized a series of five seminars for the members and staff of the New Party Sakigake in October and November of the same year; NPO leaders attended as resource persons to help the party formulate its draft proposal for legislation to promote civil society.

Around that time, other parties were also setting up study teams on the subject of civil society. The SDPJ began to hold discussions with the Japanese Center for International Cooperation (JANIC) and other NPO groups in the summer of 1994 concerning means of enhancing NGOs, including streamlining incorporation procedures and allowing tax-deductible donations. Speaking in the House of Representatives Committee on Finance on November 18, 1994, Domoto Akiko of the SDPJ noted, “NPOs and NGOs are now essential as intermediaries in the relationship between the government and the people and in links between local government bodies and their residents and between businesses and consumers.” She went on to say, “We already have three or so drafts of proposed bills in our hands,” suggesting that the cooperation between legislators and representatives of the nonprofit sector had already reached the stage of work on concrete legal provisions. When the New Frontier Party (NFP) was formed in December 1994, it included “building a private nonprofit sector” as one of its key policy commitments as set forth in its inaugural manifesto.

By this time, citizens’ groups, private research and exchange institutions, and private

foundations were already actively conducting research and lobbying in connection with the issues of incorporation and taxation for civil society organizations. Of particular significance was the launching in November 1994 of C's, which brought together 24 citizens' groups to work on these issues. They further intensified the dialogue between political parties and NPOs. Reflecting on the developments around this time, Nakamura Keizo, a senior editor of the daily *Mainichi Shimbun*, wrote in the paper on January 23, 1997: "We cannot overlook the fact that research into NPO issues among political parties, citizen groups, and others has picked up since the start of the 1990s; the groundwork has thus been laid for a wide-ranging debate if the political leaders take an initiative on this issue."

IMPEDIMENTS TO THE DEVELOPMENT OF CIVIL SOCIETY

The rising waves of demand for a more enabling environment to nurture civil society in Japan reflected the heightened frustrations and concerns of civil society leaders over the many constraints against their efforts. The excessive government intervention in the affairs of civil society organizations is symbolic of the traditional Japanese system of state-centric governance, which served the country well when it was trying to pursue rapid industrialization and economic growth. As Japan achieved its earlier development goals, however, the society found itself with many more pluralistic needs than the government alone could deal with. Ironically, when citizens today try to come together to address these issues by themselves in the spirit of "associational revolution," they are confronted with a multitude of governmental regulations, not to speak of any incentives for self-help.

Outside the country, the paucity of Japanese NGOs, independent research institutions, and organized philanthropies has caused a situation that is sometimes referred to as the "underrepresentation" of Japan in many international cooperative ventures and dialogues. It is said that Japanese organizations are little in evidence in places like refugee camps, where NGOs from around the world converge, and only a limited number of Japanese NGOs are taking part in the international NGO networks of the Asia Pacific region. The scarcity of

Japanese participation in “track two” exercises, namely, policy research and dialogue concerning international relations among private-sector think tanks and policy thinkers, has become a matter of considerable concern among intellectual leaders around the world.

Bureaucratic Control over Incorporation and the Operation of Civil Society

Under the current system, regulations for granting incorporated status to NPOs are stipulated in Article 34 of the Civil Code, which was adopted in 1898. Article 34 specifies that “an association or foundation . . . relating to public interests and not having for its object the acquisition of gain may be made a juristic person subject to the permission of the competent authorities.” “Competent authorities” refers to government ministries with jurisdictional authority over the area of activities of the nonprofit organization in question. The Civil Code, in other words, left it up to bureaucrats to determine whether a particular organization was in fact contributing to the public interest; also, incorporation required explicit permission. Thus, the competent authorities possess discretionary authority to approve or reject applications for incorporated status without regard to objective criteria. Moreover, through mere administrative guidance without any legal basis, government agencies currently require applicants for incorporated status to have a minimum of approximately ¥300 million as an endowment and of approximately ¥30 million as an annual budget. The application process is complex, and it can take one year easily. This situation has resulted in a pervasive pattern of bureaucratic control over public-interest corporations and has led to a trend whereby so-called independent organizations employ former bureaucrats who, because of their connections with government ministries, can expedite the organization’s incorporation and secure government subsidies.

The extent of the government subsidies and commissioned work given to incorporated NPOs is an indicator of their degree of dependence on their competent authorities. Of the 26,089 incorporated NPOs and NGOs, in fiscal year 1995 (April 1995 to March 1996) over 5,000 organizations received a total of ¥583.6 billion in subsidies, and 3,781 organizations received commissioned contracts for ¥659.3 billion (Prime Minister’s Office 1998).

The limited availability of tax incentives for financial contributions to NPOs makes it

extremely difficult for these organizations to maintain their autonomy from government agencies. As of 1996, there were only 906 public-interest corporations under Article 34 with the privilege of tax-deductible contributions. That is a mere 3.4 percent of public-interest corporations. Needless to say, the process of gaining the special tax privilege is even more difficult and cumbersome than the incorporation process. Moreover, the privilege has to be renewed every two years. Most of the recipient organizations, called “Corporations to Promote Specially Designated Public Interest,” are those created by government agencies, with staff seconded by these agencies and budgets augmented by subsidies.

The competent authorities exert rigid control over the activities of NPOs under their jurisdiction. The incorporated NPOs must submit budgets and plans of activities for the coming fiscal year, and file a financial report and a report of activities after the end of the fiscal year. This, and the fact that NPOs have to receive approval of their activities from their competent authorities, which are compartmentalized in the bureaucratic system, contributes to the inflexibility of incorporated NPOs in responding to new and complex issues, many of which are interdisciplinary in nature. It is reported that only a limited number of incorporated NPOs could respond to the Kobe disaster, which meant that much of the urgent work was left to the unincorporated NPOs.

Growing Criticism of Government Control over Civil Society

Because of the formidable complexities of the incorporation process and the cumbersome control of the government agencies, many NPOs prefer to operate without incorporated status. Nonincorporated status means that bank accounts must be opened or vehicles purchased in the name of an individual representing the organization, rather than in the name of the organization itself; when that individual resigns from the organization, new bank accounts must be opened and vehicles must be reregistered. More important, remaining unincorporated deprives an organization of social status. Because of these inconveniences, of the 243 think tanks with some working relationship with NIRA, 108 think tanks (44.4 percent) chose for-profit status largely to avoid the difficult incorporation process and control by government agencies over their activities.

A report published in 1994 by the Oiso Study Group, made up of leaders of foundations and exchange organizations active in promoting closer cooperative relations between Japan and the United States, fueled public concern about the impediments facing Japan's civil society organizations. The report, titled "Toward More Effective U.S.-Japan Exchanges: Challenges and Opportunities," pointed out the major obstacles faced by many civil society organizations dedicated to promoting Japan-U.S. cooperation and exchange. Most American private foundations, major NGOs, and exchange organizations, for example, cannot incorporate themselves in Japan, and, thus, encounter many inconveniences such as being forced to use individuals' names to set up bank accounts, get telephone numbers, and rent offices. The more than 50 non-Japanese civil society organizations with operational bases in Japan all have to promote their activities under such unfavorable conditions. From its perspective on the plight of these non-Japanese civil society organizations operating in Japan, the report threw new light on the numerous and complex impediments to the activities of unincorporated domestic NPOs.

The heightened concern about civil society among NPO leaders and a growing number of opinion leaders, including those in politics and business, starkly contrasted with the traditional view of a significant number of bureaucrats who believed that they are the sole legitimate arbiters of public interest and, thus, entitled to control civil society organizations. A growing tension became evident between those who believed in the importance of an unfettered civil society and those who believed in the necessity of continued bureaucratic control. When the Center for Global Partnership (CGP) was created in 1991 within the Japan Foundation with Japanese government funding, an inaugural symposium was organized two months prior to its establishment on the theme of "Challenges and Opportunities for U.S.-Japan Exchange in the New Era." Many representatives from major U.S. foundations and research institutions were invited to discuss the future direction of policy-oriented intellectual exchange, in which CGP would play a major role. A high-ranking government official caused an uproar when he stated in his presentation something to the effect that the newly created CGP should be controlled by the government bureaucrats because "the fund is backed by taxpayers' money" and an "overly independent fund might strike out a certain independent,

individualistic, unorthodox, or controversial policy unacceptable to the government.” Indignant reactions from the audience, particularly from the Japanese participants, were indicative of the growing sentiment in Japan that more autonomous civil society organizations would be critical for Japan’s future governance and the country’s external relations.

THE EARTHQUAKE AND NPO BILLS

The Great Hanshin-Awaji Earthquake occurred as tensions were rising between the government bureaucracy and civil society leaders over the autonomy of NPOs. Many of the organizations and study groups that had started studying the legal and administrative context of civil society organizations converged on the site of the disaster. They experienced firsthand and in a poignant manner how civil society organizations could make a difference in dealing with the acute suffering of fellow citizens. Within three days of the earthquake, several organizations, such as JANIC, the One Percent Club, and C’s, set up field offices to coordinate the rescue work of volunteers and the delivery of food and supplies.

A seminar that JCIE had happened to organize on January 23, 1995, just over one week after the earthquake, to launch the results of the Johns Hopkins Comparative Nonprofit Sector Project turned out to be a timely and emotional event. Several NPO leaders returned from field offices in Kobe to attend the seminar. It was evident that the tragedy of such a huge loss of life provided civil society leaders with the opportunity to push forward their agenda. “Volunteer,” spelled out in katakana, a Japanese alphabet, as “boranchia,” suddenly became a household word. A newspaper ran the headline “Have You Been to Kobe Yet?,” urging more volunteers to join the rescue work. Aside from the 1.3 million people who aided the earthquake victims in the field, Japanese throughout the nation contributed money and relief supplies. The Red Cross, the Community Chest, media organizations, and NPOs raised ¥160 billion in financial contributions within three months. The One Percent Club alone collected ¥13.2 billion and donations of tons of food and supplies from corporations. One NPO leader commented to this writer around that time that “this tailwind behind our movement is almost

scary.”

The NPO Bills as a Central Focus of Debate on Civil Society

That tailwind brought about several legislative initiatives related to volunteer activities and NPOs. “NPO bills” proposed by diverse actors were basically designed to facilitate the application process for NPOs/NGOs seeking incorporation and to restrict the traditional intervention of government agencies.

Given the aforementioned formidable constraints against the autonomous activities of NPOs, it is understandable that the three-year debate over the NPO bills was extremely intense. There were mainly five contending forces in this debate. One was the ruling coalition of three parties, the LDP, the Social Democratic Party (the former SDPJ), and the New Party Sakigake. Second was the opposition parties, led by the New Frontier Party until its demise in December 1997. The third was the government agencies represented by the aforementioned Liaison Committee. Fourth was the NPO group centered largely around C’s and advocates and supporters of NPOs, including Keidanren, a business organization. Fifth, the media played a significant role in the legislative process and was a strong promoter of the NPO bill. Naturally, there were disagreements and conflicts within each of the contending forces. Bureaucrats persistently lobbied the conservative elements within the LDP, whereas the more liberal wing of the party was willing to work with the coalition partners to support NPO positions. The NPO side was divided on some issues such as tax privilege. The legislative process for the bill represented a major departure from the way normal bills are drafted in that dynamic interactions occurred over different draft bills, including the one proposed by C’s representing NPO positions. Normally, legislative bills are drafted by government bureaucrats and passed through the Diet with the support of the ruling party with only minor modifications.

The debate over enactment of legislation to facilitate the incorporation process for NPOs and their tax treatment gained momentum with the interest shown by political leaders. But the political initiative had to await the tragedy of the earthquake. On January 24, 1995, the day after the aforementioned seminar organized by JCIE, Lester Salamon had a breakfast meeting

with Kato Koichi, then chairman of the Policy Affairs Council of the LDP, and they discussed the legislation needed to bring about a more enabling environment for civil society development in Japan. On January 27, 1995, Kato delivered the following remarks during a session of the House of Representatives Budget Committee.

We had been generally conscious of the recent emergence of a new wave of activity involving volunteers, nonprofit groups and organizations, and what are called NGOs in other countries. Our own party had set up a study group in order to explore our position on these entities. It was in this context that the earthquake struck. Within the LDP, the attitude had been that volunteer groups were adversarial toward the government and public sector, but it seems that over the past few years the view has been growing within administrative circles acknowledging the utility of these organizations to take care of matters that the government lacks the resources to handle. . . . In his response just now, the minister of justice expressed the view that legislation should be enacted to provide for the incorporation of these groups. Once this issue of incorporation is accomplished, there is another issue that I realize will be difficult but that should be worked on, even if the progress is only gradual. This is the question of what to do about the tax provisions. I believe that this is a matter for which the office of the chief cabinet secretary should draw up a coordinated action on the part of the government.

Normally, legislative processes are launched with this type of exchange between a representative of the ruling party and a cabinet minister in charge at the Diet interpellations. This was the case with the NPO bill as well, but what followed diverged substantially from the normal pattern.

Response of Government Bureaucracy

Though some government officials, particularly those in the Economic Planning Agency, had started studying about civil society before the earthquake, most of them were not well informed about the civil society development in Japan or abroad. Because of the new attention given to volunteers and nonprofit organizations, 18 government agencies were keen

on getting involved in drafting the new legislation, making it necessary for them to organize the Liaison Committee mentioned earlier. Not all were well prepared to take on the task of drafting new legislation, however. For example, one of the first things the committee did was to contact the American Embassy to inquire which American organizations to contact if the committee were to send an investigation team on civil society to the United States.

The first draft of proposed legislation that came out of the committee met severe criticism from NPO leaders and the media. The draft was aimed primarily at providing for the incorporation of volunteer groups, and it did not consider NPOs in general. Moreover, the draft clearly revealed the government's intention of imposing its control over volunteer groups. Even the revised drafts continued to reveal the traditional bureaucratic views toward NPOs, namely, that they should be subject to government control and be limited to a role supplementary to that of the government. For example, the initial draft provided that consumers' groups and organizations involved in advocacy movements of a political nature not be included among those eligible for incorporation, that organizations be required to report to the authorities the names of executives and other paid staff members, and even that the responsible government agency have the authority to search an organization's premises and, if it so judged, to revoke the organization's incorporated status.

The issue of tax deductibility for contributions to NPOs was a point the government bureaucracy was adamant about from the outset of the legislative process. The bureaucrats' reluctance to extend the range of organizations eligible for tax deductible contributions was predictable given the current situation regarding the tax privileges of NPOs. The bureaucrats see themselves as being the ones most qualified to decide resource allocations, and they fear that the tax privilege would be abused as a route for tax evasion. When the NPO bill was finally passed in March 1998, tax deductibility was not one of its provisions. After a fierce debate, a Diet resolution was attached to the bill to the effect that the issue of tax privilege will be reviewed within two years of promulgation.

At this same time, moves were under way to achieve deregulation and downsize the government. As discussions on the NPO bill blossomed into a debate on the role of bureaucracy in the governance of society and became intermingled with arguments over

streamlining government bureaucracy, the government's position was gradually undermined. Moreover, a series of scandals that had tarnished the bureaucrats' reputation caused distrust of their claim—which for many years had been legitimate—that they were the sole guardian of the public good. Meanwhile, in the debate over the NPO bill the issues moved beyond support for volunteers to focus more on the role of civil society organizations in conducting public-interest activities within the context of the enhancement of domestic governance. Thus, though they had initially hoped to take charge of the legislative process, the government bureaucrats gradually became disengaged from the process except for lobbying politicians to support their views. It was the final straw for the government bureaucrats when Kato, who as chairman of the Policy Affairs Council was in a position to coordinate legislative matters, stated, “NPOs are nongovernmental organizations, so it would be peculiar for the government to take the initiative in proposing legislation concerning them. Since it is a matter of putting completely new ideas into law, there will be difficult problems, but I definitely want the bill to be submitted to the Diet by legislators” (quoted in the *Mainichi Shimbun* 23 January 1997).

Response from Political Parties

The political parties sided with the NPO leaders in their reaction against the government-sponsored legislative proposal. The critical political issue of deregulation and downsizing of government reinforced support from the parties for the nonprofit sector's position. As mentioned before, most of the political parties had started working with NPOs before the earthquake. Against this background of readiness, in mid-February of 1995 a special project team on NPOs was launched by the ruling coalition. The opposition New Frontier Party formed a similar group in March. These teams served as the core for drafting the respective legislative proposals. The Japan Communist Party also drafted its own proposal. These study groups worked closely with NPO leaders in drafting their respective bills. The process of drafting the new legislation was a historic breakthrough in the way it was based on close cooperation between legislators and leaders of NPOs, excluding the bureaucrats who ordinarily play the dominant role in drawing up bills.

Certainly there were some politicians, particularly within the LDP, who were skeptical of the greater roles to be played by civil society. Government bureaucrats lobbied hard to retain their long-held control over civil society organizations. Conservative politicians refused to have the word “citizen” appear in the draft title, as the word still connoted leftist activists in their understanding. Some others questioned the use of the English alphabet in the bill, opposing the use of the acronym “NPO.” There were some disagreements among the political parties regarding certain critical elements of the draft bills. The New Frontier Party, for example, insisted that no draft bill without a tax provision should be passed. Nevertheless, politicians across party lines felt civil society development should be encouraged. In the end, the bill was passed with the unanimous support of all the parties.

Such strong support from the political parties could not have been imagined some years ago. Some recent statements by leading political figures indicate that their support for civil society is largely a reflection of their concern about the current state of Japan’s governance. For example, at the Global ThinkNet Conference in February 1998, LDP Secretary-General Kato made a speech including the following remarks:

It was considered to be normal for the politicians, namely, the elected representatives of the state, not to challenge the bureaucrats. Such a tendency persisted even after Japan had gone through the modernization process successfully. Our competent bureaucrats defined the national interest and were its sole guardians; as such, they monopolized resource allocation. That system worked well while Japan was pursuing catch-up development, and was seen to be working well until recently. . . . As the power balance between bureaucrats on the one hand and politicians, the media, and the general public on the other will continue to shift, the think tanks and their networks can start working with politicians and bureaucrats to generate policy debate in our society, which will then be a broader basis for political decision-making. (Kato 1998, 13, 15)

Similarly, Hatoyama, one of the founding members of the DPJ, referred to the role of civil society in the governance of society in a magazine article considered to be the manifesto of the newly formed political party:

According to the conventional wisdom of the past century, public affairs were the domain of the “authorities,” and those in the private sector could be no more than beneficiaries. But from now on we require a new arrangement, one in which citizens, local governments, businesses, and the national bureaucracy face each other as equals around the table of “public affairs,” all undertaking their appropriate roles and engaging in constructive rivalry with each other . . . so as to create a locus of public-interest values. This requires holding down the weight of the public sector, which has been too prominent so far, and giving much freer rein to the wisdom and energy of the private sector. This is an important part of what we mean when we speak of shifting from a “state-centered society” to a “citizen-centered society.” (Hatoyama 1996, 122)

Even some of the senior politicians seen as conservative and relatively cool to citizens’ involvement have come out with statements in favor of an increased role for civil society. For example, former Prime Minister Miyazawa Kiichi stated in the *Asahi Shimbun* on June 29, 1997, in an article titled “Proposals for the Twenty-first Century”: “Our country lacks leadership now that we have finished the process of catching up with the West. Bureaucrats are incapable of setting our goals. At a time when leadership needed to be exercised, Japan’s politicians, myself included, failed to provide it. . . . From now on the role of the nongovernmental sector will become greater and greater vis-à-vis that of the government.”

Another former prime minister, Nakasone Yasuhiro, offered the following remarks to reporters in the wake of the nuclear tests by India and Pakistan (as reported in the *Asahi Shimbun* on May 30, 1998): “I think we’re now at the point where the Japanese government needs to enlist the cooperation of the NGOs in a global movement like the one for the treaty to ban land mines so as to promptly bring the Comprehensive Test Ban Treaty into effect, achieve ratification of START II, and get the nuclear powers to make a no-first-use commitment, particularly toward the nonnuclear states.”

Response from NPOs and NPO Supporters

When the full debate on the new legislative proposal was launched in early 1995, the NPO

side was the best prepared. To seize the new opportunity to advance their cause, a group of NPOs launched the Liaison Group on Systems for Citizens' Activities with the participation of various organizations that had been studying the regulatory and fiscal context of civil society since before the earthquake. The participants in this new liaison body included C's, the Research Group to Consider Support Systems for Citizens' Public-Interest Activities, JANIC, and the NPO Forum, Japan.

One critical point in the legislative process for the NPO bill was the coordinated joint efforts by NPO leaders and supporters of NPOs. Extensive discussions and lobbying activities were carried out in connection with the bill with the participation of NPO leaders, leaders of businesses interested in working in partnership with the nonprofit sector, senior officials of labor unions, academics and researchers studying civil society, and journalists. C's, which was formed as a nationwide coalition of concerned citizens' organizations, acted as a catalyst for this development. In addition, C's held numerous meetings to discuss the specific provisions of the bill, conducted continuing and persistent lobbying activities supplemented with the submission of petitions with thousands of signatures, made direct appeals to key politicians, carried out media briefings, and kept up a stream of faxes informing its members of the state of progress of Diet deliberations on the bill.

Another distinctive feature of the process leading to the enactment of NPO legislation in Japan was the active involvement of business and the media. Keidanren's Committee on Corporate Philanthropy came out with a statement declaring, "NPOs are important partners for corporate philanthropy, and they are an essential part of efforts to build a rich and diverse society." Furthermore, staffers from the One Percent Club joined NPO leaders in virtually camping out in the Diet to conduct lobbying activities.

In October 1997, when prospects for the bill's passage were at the final make-or-break point, Keidanren Chairman Toyoda Shoichiro made a direct appeal to Prime Minister Hashimoto Ryutaro for his help in getting the bill enacted, and Wakahara Yasuyuki, chairman of the One Percent Club, took on the task of overcoming the strong opposition of Murakami Masakuni, secretary-general of the LDP in the House of Councillors. In addition, Wada Ryukoh, senior managing director of the Keidanren Secretariat, and members of the secretariat

staff called on numerous legislators to request their cooperation. Meanwhile, the major newspapers all printed repeated editorials and analysis concerning the proposed legislation, calling for it to be enacted and supporting suggested amendments.

As a fruit of these cooperative ties, the Japan NPO Center was established in November 1996 as a national organization bringing together representatives of prefectural NPO centers, leaders of business groups, representatives of major nonprofit organizations, foundations, and research institutions, and others. In addition, on July 13, 1998, researchers on nonprofit activities and representatives of the sector joined in forming a founding committee dedicated to the establishment of a Japan NPO Research Association (JANPORA). The inauguration of these new organizations has strengthened the networks at both the national and local levels among those directly involved in the work of nonprofit/nongovernmental organizations, people in businesses and local governments that are building cooperative relationships with such organizations, academics, researchers, journalists, and others, all of whom wish from their respective standpoints for the development of Japan's civil society.

PASSAGE OF THE NPO LAW AND FUTURE CHALLENGES FOR CIVIL SOCIETY

The NPO bill became law on March 19, 1998, was promulgated on March 25, 1998, and enacted on December 1, 1998. The bill's passage through the Diet can be regarded as historic both because of the legislative process and because of its having been passed unanimously by all the political parties. Under the new legislation, NPOs can be incorporated without the approval process, and the governor of the prefecture where the proposed corporations are located (or the Economic Planning Agency in the case of NPOs with offices in at least two prefectures) is required to authenticate establishment of such organizations if they conform with the provisions set forth in the new legislation. The incorporation process will be much quicker under the new legislation because the granting authorities must decide on the certification within two months immediately succeeding the two-month period of public announcement.

It took almost three years from the time the NPO draft legislation was first submitted to the Diet to its final enactment. A variety of factors worked to delay the process, including disagreements among the coalition parties, disagreement between the ruling coalition and the opposition parties, a complex legislative calendar, and the general election in the House of Representatives while the bill was still under consideration. It also indicated the continuing challenges for civil society's full-fledged development. In the course of the debate on the NPO bill, some fundamental questions on the role of civil society were raised: Who is to define the public interest? Who is to maintain and promote the public interest? Who is to respond to the challenges and needs of society? What are the roles of the bureaucracy and the citizens in the governance of society? While these issues are related to the role of civil society in the governance of society, civil society organizations have to improve their performance in order to prove that they can significantly contribute to the ongoing efforts in Japan to improve its system of governance.

Proving the Role of Civil Society in Improving Governance

Whether in developing or industrialized countries, it is an article of faith among those involved in the nonprofit sector that civil society contribute to the improvement of governance. By comparison with the rigid bureaucratic organs of the state, civil society institutions can display greater creativity, be more innovative, and act without hesitating to take on risks in dealing with the varied issues of a pluralistic society, since they themselves are capable of adopting pluralistic responses.

In addition, they can take more humanistic approaches, dealing with many problems in a way that places greater weight on the personal or human dimension. They can also keep a watch over the organs of the state, playing the role of ombudsman. Furthermore, they can promote solutions of problems through greater citizen involvement. Unlike bureaucrats, who are constantly struggling to keep up with the demands of their everyday tasks, the people in civil society organizations can take a longer perspective.

Civil society thus offers a number of advantages, but the key point for those involved in or supporting nonprofit activities in Japan is to demonstrate empirically that these

advantages actually apply in Japan's case. It is also essential to consider the potentially negative aspects of nonprofit activities. For example, certain nonprofit organizations undeniably have a tendency to focus on a single issue and pay insufficient attention to the overall picture of the interests of the community or the country as a whole. It is also not uncommon for them to criticize government policies without offering alternatives or considering the actual work involved. There still is a lingering doubt among many Japanese as to whether these NGOs have done away with their earlier ideological orientation. What is therefore essential for civil society organizations is to clearly demonstrate that they can, indeed, effectively deal with the issues facing society in the manner governmental institutions alone cannot. They have to do so with their own track record of their visible contributions to domestic governance as well as international governance. This is the only way to win the trust of the government, businesses, and the people, and build a firm and broad support base for civil society in Japan.

Capacity Building for Civil Society Organizations

To demonstrate the effectiveness of civil society, these nonprofit and nongovernmental organizations must enhance their institutional capacity to address the issues they deal with. They have to prove that they can make a difference. This requires greater efforts to develop human resources and improve professional expertise of the organizations. There has not been a clear career path in Japan for those who wish to engage themselves in civil society activities. This is, in large measure, due to a dearth of civil society organizations with financial bases strong enough to allow the payment of adequate salaries to their staff. The fact that Japan has a low level of labor mobility between sectors further impedes the process of professionalization, though this traditional pattern of "lifetime employment" is slowly eroding. While the number of private foundations and independent policy research institutions has increased significantly over the past years, the lack of highly qualified human resources is impeding their development. In most cases, these organizations rely on former bureaucrats and retired businessmen rather than individuals they have groomed internally. The number of nonprofit groups with a full complement of professional staff is minuscule; in

most cases they depend on a small number of dedicated individuals without sufficient remuneration.

A similarly important issue in terms of gaining the trust of the government and the public is for these organizations to increase their levels of transparency and accountability. Without such efforts, it will be difficult for them to resist the attempts of the bureaucracy to maintain its controls over them. A challenge for civil society organizations to be incorporated under the NPO Law is their new obligation to file annual financial statements for public record. This requirement places an added burden on the small number of staff they can afford to have.

Continued Efforts to Improve the Legal and Regulatory Environment

As observed earlier, the enactment of the NPO Law represented a major advance in the legal and regulatory environment for nonprofit organizations in Japan. But additional efforts are required for the sake of the further development of civil society as a whole. Efforts must be redoubled to improve the tax system so as to promote contributions to nonprofit organizations. This issue has become a central focus of networks of civil society organizations and their supporters in business and the media.

There is also a fundamental contradiction in the legal structure related to civil society that has to be addressed. The NPO Law has been regarded as “special case” legislation under Article 34 of the Civil Code. As a result, the legal framework applicable to civil society organizations has become two-tiered. The law has created a new category of incorporation on top of the incorporated foundations and associations provided for by the Civil Code. It is not yet clear what implications this will have on the development of the nonprofit sector as a whole. It appears likely that most independent groups will seek incorporation under the NPO Law. And if it becomes clear that the new system allows organizations to operate with less interference from the government, the question will probably arise of whether public-interest corporations incorporated under the old system may be allowed to switch to the new system. These issues show the need for a review of the existing legal framework for civil society as a whole, a task that some legal scholars and nonprofit organization leaders are already addressing.

In addition, there is a need to consider changing the provisions of Article 89 of the Constitution, which reads, “No public money or other property shall be expended or appropriated for the use, benefit, or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.” If strictly applied, this provision would make it impossible for the government to provide any direct financial support for independent private-sector organizations that are not under direct control of government agencies. This will constitute a significant obstacle to the development of equal partnership between the government and other public institutions and autonomous civil society organizations.

Cross-Sectoral Partnership for Improved Governance

In the context of the domestic drive to deregulate and to streamline the government, it is only natural to consider increased involvement by citizens in governance. The task of governance should be seen as something to be approached on the basis of a partnership across sectoral lines among the government, businesses, and civil society. In order to consider the proper future shape of governance on the basis of such partnership, those in each of the three sectors must redefine their respective roles.

The bureaucracy has come under harsh criticism for a tendency to place its narrow sectional interests ahead of the national interest and for the corrupt behavior of some of its members. Politicians have also complained about bureaucrats’ policy blunders and the excessive concentration of power in their hands. This has led conscientious civil servants to undertake a serious reexamination of their future role.

A new awareness is also budding within the world of Japanese business, whose corporations were the engines of the country’s remarkable postwar economic development. A considerable number of business leaders are similarly reexamining the role their corporations should play as members of society with responsibilities to a wide range of stakeholders.

What this indicates is that those in diverse sectors will have to reconsider their respective roles for the governance of society. What is most important of all is for citizens to overcome their sense of dependence on the bureaucracy and take responsibility themselves for

maintaining and developing the common interests of society. The role of Japan's emerging civil society is to bring about a fundamental transformation of the country's governance. The development of civil society, we may say without exaggeration, will be the basis for Japan's metamorphosis from a state-centric, producer-led, inward-looking society to a more humanistic and democratic society with strong emphasis on people's interest, one that stresses the quality of life and is open and oriented to the rest of the world.

NOTES

1. There is confusion in Japan regarding the semantics for the terms used for NPOs and NGOs. The term NGO has been used in reference to nonprofit organizations in overseas programs, such as development assistance and global environmental issues. The term NPO has come to be used in recent years to encompass nonprofit organizations engaged in domestic as well as international activities.
2. The impact of changing external environments on Japan's philanthropic development is analyzed Yamamoto (1997).
3. In the fall of 1997, the Japan Center for International Exchange launched a multinational study project to undertake six case studies on transnational civil society. The results will be published in late 1999.
4. This section draws heavily on C's Book Series No. 2 (Coalition for Legislation to Support Citizens' Organizations 1996).
5. The results of this research were reported in National Institute for Research Advancement (1988).

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