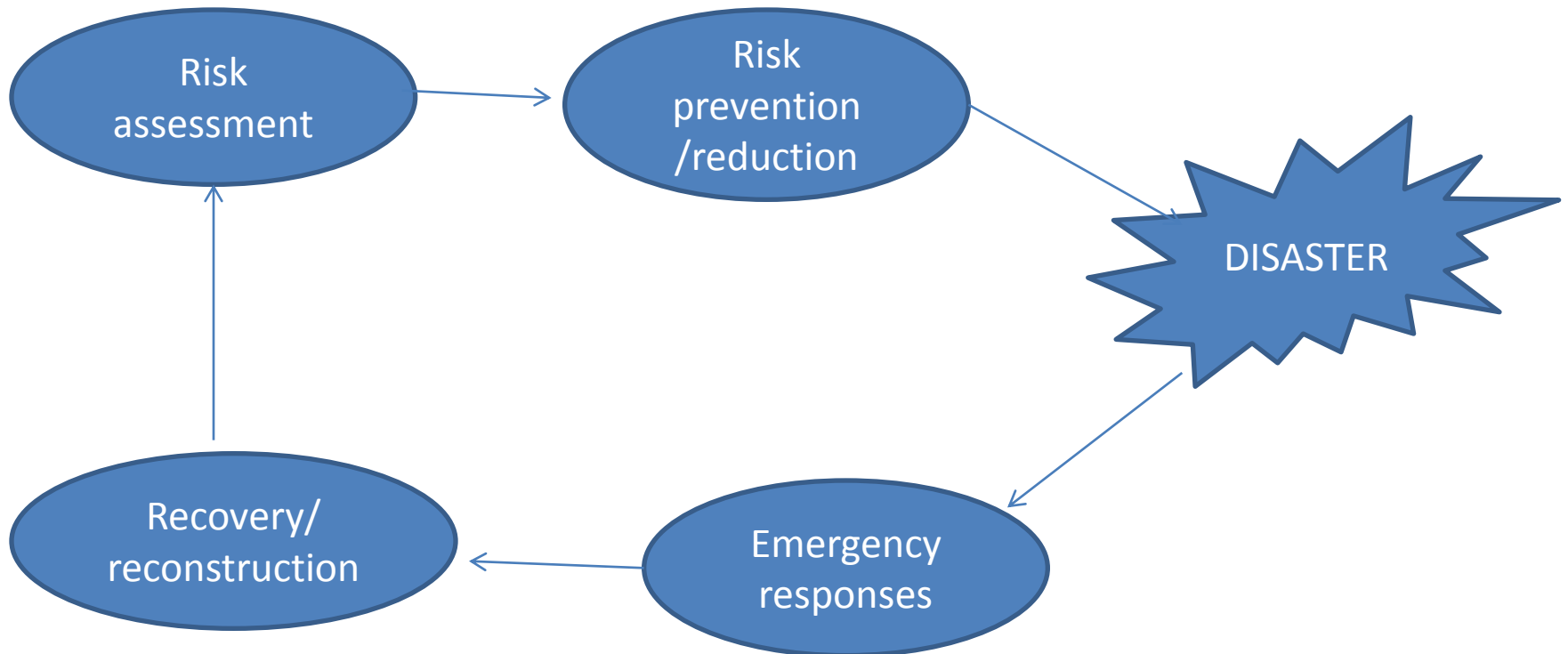


Legal Frameworks for Disaster Management in Japan

KADOMATSU Narufumi (Faculty of
Law, Kobe University)

Policy Cycle of Disaster Management



Outline

1) Legal frameworks for disaster management

2) Risk assessment/reduction

→to what extent should we be prepared?

3) Disaster emergency responses

→issues surrounding emergency relief

4) Recovery/Response

→Keyword: *Fukkyu/Fukko*

→"individual compensation" issue

1. Legal frameworks for disaster management

Disaster Countermeasures Basic Act (1961)

- Enacted after *Isewan* Typhoon (1959) (5098 death toll)
- Basic Act, however
 - disaster management relevant laws not systematized
 - range of “disaster management relevant laws” unclear
e.g. Building Standard Act=disaster management??
- Setting up organizations
 - Central/Local/Municipal Disaster Management Council
 - Major Disaster Countermeasures Headquarters
 - Extreme Disaster Countermeasures Headquarters
- Basic Plan /Local (prefectural/municipal) Plan for Disaster Management
- Initial Disaster Response

2. Risk assessment/reduction

Against which /to what extent should be prepared for risk?

- Buildings after 1981 (new seismic design method)
=relatively safe



- Older buildings : tolerated
 - Act for Promotion of Renovation for Earthquake-Resistant Structures of Buildings(1995)
 - public access buildings owners’
 - “duty to endeavor” seismic diagnosis & renovation
 - financial loan/informational assistance for renovation
 - possibility of easing other building regulations

Protection of evacuation roads against Tsunami

- Tokyo Metro. G: ordinance (Mar.2012)
 - High buildings over certain height alongside “designated emergency transportation roads”
 - obligation to get seismic diagnosis
- Wakayama Pref. G: ordinance discussed
 - Buildings alongside designated evacuation roads
 - subject to recommendation/order to renovate/demolish



Is the protection of private property (Constitution Art. 29) or the “prohibition of retrospective law” barrier?

3. Disaster emergency responses

Disaster Emergency Responses

- Disaster Countermeasures Basic Act, Fire Protection Act, Flood Prevention Act etc.
- Warning
- Evacuation recommendation/instruction
- Fire fighting/rescue/transfer
- Evacuation Shelters

Disaster Relief Act

- Enacted in 1947
- In-kind service principle (Art.23)/local principle
- Evacuation Shelters
- Temporary Housings

In-kind principle/local principle

- In-kind service principle (housing, food, clothing, medical service...)
 - may not fit for longer period
- Local principle
 - No assistance for residents moved outside the prefecture

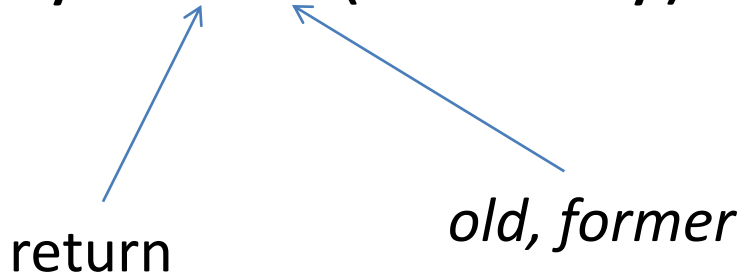
○ Attempt for flexibility

- “temporary housing” loaned from private persons
- temporary housings over prefectural borders
- Gov’t reluctant against providing cash/voucher (*Art.23 para2: cash exceptionally possible when the deemed necessary by the Governor*)

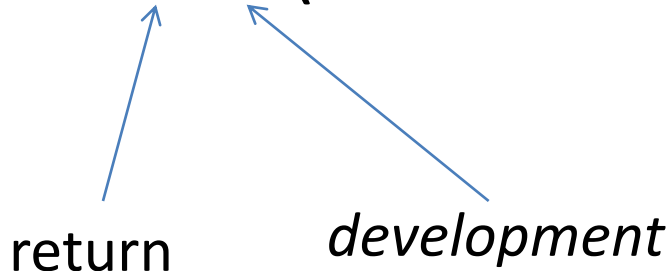
4. Recovery/Reconstruction

Fukkyu? Fukko?

Fukkyu 復旧(recovery) = restore to former state



Fukko 復興(reconstruction)



Basic Act on Reconstruction in response to the Great East Japan Earthquake

Art. 2 (basic philosophy) Item 1

communities will be restored with the vision of Japan appropriate for mid-twenty-first century. Such will be accomplished by promoting dramatic measures with the perspective of revitalizing vibrant Japan which does not limit itself to recovery from disaster which simply restores affected facilities to its original state, as well are construction measures which aim to facilitate each individual to overcome the disaster and lead prosperous lives.

Measures for recovery/reconstruction

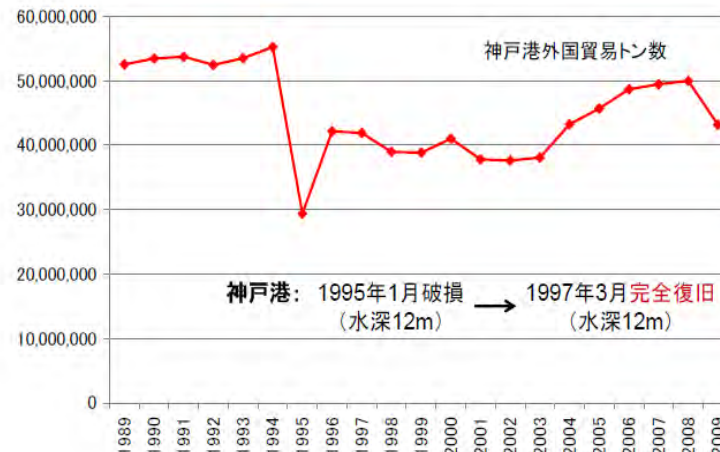
- Infrastructure recovery
 - Road, River, Coast, Park, Airport, School, Welfare facility, Agricultural facility(including farmland)
 - Special Financial Aid Act for Heavy Disasters(1962)
- No measure for recovery of “private property” such as housings (except farmland)
- “Recovery to the original state principle”
 - National Government Defrayment Act for Recovery of Disaster Stricken Public Facilities (Art.2 para.2)
 - No *Yakebutori* (profit from disaster)

Fukkyu or Fukko?: Kobe Harbor(1)

- Amount of cargo world ranking
- 1994(Nr.6)
(1995 earthquake)
1998(Nr.17)
2008 (Nr.44)



http://kobe-mari.maxs.jp/kobeport/earthquake_memorial.htm



http://www.rieti.go.jp/jp/events/11110701/pdf/L-1_fujita.pdf

Fukkyu or Fukko?: Kobe Harbor(2)

- What if the harbor had not been restored to former size(Fukkyu?) (water depth 12m) but to the international standard (16m) as an international hub harbor(Fukko?) as a national project
- National Government subsidy=only for the recovery to the original state



Fukkyu principle as a barrier?

“creative reconstruction” in Kobe -positive and negative- (1)



HAT Kobe

http://www.ur-net.go.jp/profile/disaster_01.html



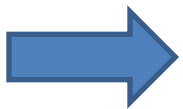
Rokkomichi City Re-
development project

<http://www.jcarb.com/SearchPortfolioResult.jsp?WH=304>

“creative reconstruction” in Kobe -positive and negative- (2)

Nagata re-development project

- inner city district chemical shoes industry
- city re-development project decided 2months after the earthquake
- shop arcades: vacant lots still exist, litigation over management fee filed (Jan.2012)



Can “creative reconstruction” be attained without restoring community and human livelihood recovery?

“Individual compensation” issue(1)

<Until the Great Hanshin/Awaji Earthquake>

(Disaster Condolence Money Act)

- Condolence money
- Low interest loan

(Public Donation)

Japan Red Cross etc.

“Individual compensation” issue(2)

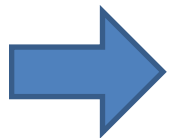
- Citizens’ demand for “individual compensation” after the Hanshin earthquake
- Gov’t negative
 - “compensation for the lost individual property” prohibited under the Constitution?
 - Were the victims demanding “livelihood assistance” or “compensation for the property”?

Act on Support for Livelihood Recovery of Disaster Victims(1998)

- Purpose: livelihood assistance
- Maximum 1mil. Yen provided to households whose housings are destroyed
- Complete destruction/partial destruction
- Age restriction/income restriction
- Spending purpose restriction (basic necessities, not for housing rebuilding or reform)

Prefectural assistance measures

- West *Tottori* Earthquake (2000)
- The Prefecture (Governor *Katayama*) provided immediate subsidies up to 3mil. Yen for housing reconstruction
- Fund established based on an ordinance enacted in 2001



“Public interest in the maintenance of communities in depopulated areas”

“no express article in the Constitution forbids the subsidies”

- *Miyagi* and some prefectures adopted similar schemes 24

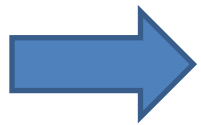
Act on Support for Livelihood Recovery of Disaster Victims (Amendment 2004)

- Support system for ensuring stable residences
- Assistance for “expenses related to stabilizing living conditions” such as (up to 2 mil. Yen)
 - Tearing down collapsed houses
 - Interest for housing loan
 - Rent for private apartments

(Still no assistance for housing construction)

Act on Support for Livelihood Recovery of Disaster Victims (Amendment 2007)

- Spending purpose restriction abolished
- Age/income restriction abolished



nature of the law has changed to
condolence money?(Prof. Ikuta)

Issues (1)

property and self-responsibility

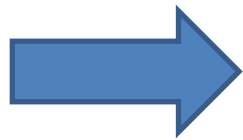
- No *Yakebutori* (profit from disaster) principle
- Less incentive for self-help?(e.g. insurance)
 - 2mil.yen assistance \leftrightarrow 25mil. Yen (average) for reconstruction
 - asset increase unlikely, will not necessary hamper the incentive
 - Asset increase as an indirect result of livelihood assistance should be tolerated
- No income restriction
 - Management cost and disruption of community relationship also a problem

Issues(2) equality

- Natural disaster victims $\leftarrow \rightarrow$ other victims (e.g. lightning)

natural disaster=more than 10 houses in a municipality destroyed or 100 houses in a prefecture

- Home owner $\leftarrow \rightarrow$ tenants
- Home destroyed $\leftarrow \rightarrow$ occupation lost



Unsolved issue, but “inequalities” inevitable in any kind of categorization

Public interest in housing recovery?

- Assistance for housing reconstruction not prohibited by the Constitution but a matter of legislative policy
- However, “public interest” of the policy must be demonstrated
 - e.g. Community maintenance (Tottori)
 - OK (social capital important)
 - but will it work in the era of “shrinking cities”?
- Prohibition of “individual compensation” might in turn lead to another ineffectiveness

Community maintenance as a public interest

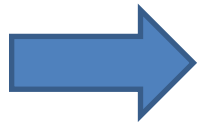
- Discussion over “transfer to higher ground”
 - Old and new problem
- how can we reduce the fire risk in densely built-up wooden houses without destroying community?

Preservation of *Roji* dwelling Residential environment plan system (Kobe)



Komagabayashi district

<http://www.gakugei-pub.jp/judi/semina/s0702/ro010.htm>



Roads narrower than 4 meter tolerated also in the future when a plan to improve residential environment (including risk prevention) established by the neighborhood

Summary

- Risk assessment and public discussion necessary for risk prevention/reduction
- Property protection issue difficult:
 - risk reduction phase
 - recovery/reconstruction phase
- Flexibility necessary for emergency relief measures
- Fukkyu and Fukko
 - Fukkyu may not be enough for future development
 - Fukko may not be possible without restoration of community
 - discussion over the future prospect essential in order to decide what kind of recovery/reconstruction we seek