

# Japan's Illegal Environmental Impact Assessment of the Henoko Base 辺野古基地への日本政府の不法な環境影響判断

Sakurai Kunitoshi

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Translated by John Junkerman

### *The "Surprise Attack" Delivery of the Assessment*

Before dawn on December 28, 2011, with the end of the year looming, the Okinawa Defense Bureau (ODB) delivered a load of cardboard boxes to the office of the Okinawa Prefectural Government. The boxes contained copies of the environmental impact statement (EIS) for a base in the Henoko district of Nago that is planned as the replacement for the US Marines Corps Air Station Futenma.

The delivery was made before dawn to skirt a concerted blockade by citizen groups opposed to the construction plan, and this "surprise attack" sent anger on the island soaring to new heights. Both of the local daily newspapers published extra editions, and the front pages and inside sections of the papers the next morning were devoted to the incident. Exactly one month earlier, reporters at an informal gathering asked the chief of the Okinawa Defense Bureau when the EIS would be delivered. He sparked a scandal by remarking, "Would you say 'I am going to violate you' before you violated someone?" Now the violation has been carried out as a surprise attack, redoubling the anger of the islanders.



**Protestors block delivery of the EIS on December 27, 2011 (Sumida Chiyomi)**

Meanwhile, the metropolitan dailies in Tokyo gave the incident extremely limited treatment, focused on the bureau's inept attempts to deliver the EIS. One write-up even portrayed opposition activists as bullies, harassing innocent drivers from a private delivery service that was hired to make one of the several attempts to deliver the documents. They downplayed the fact that the Henoko environmental impact assessment (EIA) is the most unlawful of its kind ever, and this superficial treatment will come back to haunt us. It will lead to a tolerance of unlawful assessments and undermine the environmental impact assessment system, which is essential to building a sustainable society. To reduce this system to an empty shell is to rob Japan of its very future.

### **Japan as a Lagging Nation in Environmental Assessment**

Environmental impact assessment (EIA) as a system originated in the United States, after

the enactment of the National Environmental Policy Act in 1970. More than forty years have passed since that act was passed, and EIA systems are now an extremely important, globally shared method for building sustainable societies. The adoption of an EIA system in Japan was considered at an early date in the early 1970s, but industry strongly resisted institutionalizing the system; Japan was the last developed country to pass EIA legislation, in 1997. Sad but true, Japan is a less-developed country when it comes to EIA.

In the US, the federal government alone administers 30,000 to 50,000 EIAs annually; even in China, some 30,000 EIAs are carried out each year. But in Japan, only about 20 EIAs are conducted under the national EIA act; even when assessments carried out under local ordinances are included, the total is no more than 70 cases per year. The gap is astounding.

The Japanese law came into effect in 1999, and after a decade of practice, a review was conducted and the law was partially revised in April 2011. The key reform was the introduction of the concept of strategic EIA (where environmental assessment considerations are incorporated into project planning, etc), but even after this revision, Japan must still be called a lagging nation. That the most unlawful EIA in history, which has generated intense alarm in Okinawa, has caused but a lukewarm response in mainland Japan, is evidence of this.

In a 2010 review of the record of Japanese EIA, the founding chairman of the Japan Society for Impact Assessment, Nagoya University professor emeritus Shimazu Yasuo listed the Henoko EIA as the very worst in Japanese experience. An environmental assessment consists of three stages: the scoping document (defining the scope and methodology of the assessment); the preliminary assessment; and the final impact statement. At the time of Shimazu's critique, the Henoko EIA had

completed the first two stages. Setting aside its surprise attack delivery, the final impact statement of the Henoko EIA took its sorry performance to a new level, particularly with the significant late inclusion of the basing of MV-22 Ospreys in Henoko, against the wishes of the Okinawan people. With that, it cemented its status as the "worst EIA in history."

### **The Late Add-on of Osprey Deployment**

The MV-22 Osprey tiltrotor aircraft is the successor to the CG-46 helicopters that are now stationed at the Futenma airbase. The US military's intention to base Ospreys at Futenma was indicated as early as a November 1996 draft of the Special Action Committee on Okinawa (SACO) agreement.

The SACO agreement was negotiated by the US and Japanese governments in the face of surging Okinawan opposition to the bases, sparked by the September 1995 rape of a schoolgirl by three US soldiers. The agreement called for the return of all US facilities located south of Kadena Air Base, including Futenma. At a later date, relocation to Henoko became a condition for the return of Futenma, and the struggle of Okinawan residents to prevent the construction of a new base has continued for the past 15 years.

Deploying Ospreys to Futenma means they will be deployed to Henoko as well. However, the Osprey has suffered frequent accidents since its development stage, to the extent that it has been nicknamed "The Widowmaker." Fearing that its deployment would spur local opposition, the Defense Agency (now the Defense Ministry) requested the US to conceal the deployment plans.

The course of these developments was revealed in documents submitted by the US Department of Defense during hearings on a suit filed in a US federal court to protect the dugongs that frequent the waters around Henoko (filed by three Okinawa citizens, along with Japanese

and American environmental groups, with then-Secretary of Defense Donald Rumsfeld as the defendant).

During the scoping and preliminary assessment phases of the EIA, opponents of the base construction insisted that the deployment of the Ospreys be included in the assessment, since a plan to deploy the aircraft was presumed to be in place. They did so under the provision of the EIA law that guarantees the rights of “people whose opinions are from the perspective of the protection of the environment” to submit comments.

The Okinawa prefectural governor also requested, albeit mildly, that “aircraft that are planned to be deployed in the future also be considered,” which was clearly a reference to the Osprey. On this matter, the Defense Ministry repeatedly responded to the effect that, under the Status of Forces Agreement (SOFA), the Japanese side builds the bases, and the US side uses them; and that there had been no formal notice about the deployment of the Osprey. Then, on June 6, 2011, as the deadline for the final EIA statement approached, a one-page fax was sent to the governor of Okinawa and the mayor of Ginowan (where the Futenma base is located), announcing that Ospreys would be deployed to Futenma in 2012.

Article 28 of the Japanese EIA law sets the procedure for amending a project during the course of the assessment process. The intent of this article is to prevent “dummy proposals.” A document prepared by the Environmental Agency (now Ministry of the Environment) explains, “If midway through the process, changes are allowed that increase the environmental impact of a project, by increasing the scope or changing the site of the project, prior steps in the procedure will lose their meaning. This provision is intended to prevent the possibility of using dummy proposals to circumvent important stages in the process.”

Through the scoping and preliminary assessment stages, CH-46s were to be deployed to Henoko, but these aircraft were switched to Ospreys in the final assessment stage. The EIA law guarantees citizen input during the first two stages of the process, but not during the final stage. The only party that can express an opinion on the final impact statement is the governor of Okinawa, as the party that must approve the landfill on publicly owned waterfront. The late inclusion of the Ospreys meant that the project plan in the preliminary assessment was a dummy proposal, swapped for another plan in the final stage when the public has no opportunity to voice an opinion. This too was an unforgivable “surprise attack.”

With the switch to the Ospreys in the final EIA statement, the estimated noise levels at all of the 15 spots in Henoko that were included in the preliminary assessment were revised upward. The low frequency noise particular to helicopters, which interferes with sleep and causes other health complications, is estimated to reach levels that can cause physical and psychological effects in the nearby village of Abu.

The overall project assessment acknowledges that the environmental impact on the area is greater than the estimate in the preliminary assessment. However, “the degree and extent of that impact fall within the various indexes that are the standards for assessment, and we conclude that the project, when carried out, will not create particular obstacles to the protection of the environment.” The same preordained conclusion is reached on each item in the assessment. Ordinarily, final assessments reflect analyses that incorporate the various opinions offered by the government, specialists, and citizens during the preliminary assessment stage, and thereby result in reduced environmental impacts. The Henoko assessment was the opposite, and quite abnormal.

## Suit against the Unlawful Henoko Assessment

As part of the effort to prevent the transfer of the Futenma base to another site within Okinawa, a suit filed by 622 plaintiffs that challenges the unlawful Henoko assessment is currently being heard in the Naha district court. Evidence was examined from January 11 to 13, 2012, and expert witnesses and nine of the plaintiffs testified. I appeared as the first specialist to testify for the plaintiffs.

I believe there are many grounds on which the Henoko assessment is unlawful, but one example is the environmental survey that was carried out before the scoping document was prepared. This survey took place before the August 2007 release of the scoping document, which presents the plan for the assessment and allows for citizen input. Beginning in May 2007, more than ¥2.6 billion of taxpayer funds were used for the survey of the dugong and coral in the area; the Maritime Self Defense Force minesweeper Bungo was mobilized for the effort, which swept aside citizens who were engaged in nonviolent protest activities.



**Early morning on May 18, 2007, protesters on canoes set out to the sea, trying to stop the Defense Bureau’s assessment by the Bungo**

In the natural world with complex ecosystems, it is not only the construction of a project itself that has an impact on the environment. A survey, depending on the scope and the method used, can also have a negative impact. In fact, when divers from the Bungo placed instruments to monitor the coral reefs, the process itself damaged the coral, as was reported in the local newspapers. Likewise underwater cameras intended to film the dugong were placed in positions that would be a threat to the animals.

On December 25, 2006, a meeting was held at the Prime Minister’s Office to discuss the relocation of the Futenma airbase. Vice Defense Minister Moriya Takemasa—the government spokesman—told the Okinawa delegation, led by Governor Nakaima Hirokazu and Nago Mayor Shimabukuro Yoshikazu that the environmental status survey would only be carried out after deliberation over the



methodology in the scoping document phase, as provided for by the EIA law.

But no sooner were the words out of his mouth than the waters off of Henoko were churned up for the status survey, probably chasing the dugong away—before the scoping document process took place.

As a result, when the survey was made after the scoping process, dugongs were not observed in the Henoko waters, and thus the preliminary and final EIA statements concluded that there would be little impact on the dugong if a base were built and operated in those waters.

### The US Dugong Case

However, the contrived conclusion of the Henoko assessment that “the project will not create particular obstacles to the protection of the environment” is entirely unconvincing as a scientific thesis.

There is no relationship to the clear succession of steps that comprise a scientific thesis. These include 1) an explicit statement of the subject of study; 2) planning a method of study suited to the subject; 3) gathering data according to the plan; 4) consideration and analysis of the data; and 5) conclusion. In particular, the fourth step, consideration and analysis of the data, is nearly entirely missing.

For example, the final assessment notes that a dugong was observed in the waters off of Henoko and Ginoza in 2010, after the preliminary assessment was submitted; this is an instance of 3) data gathered under the plan. However, 4) consideration and analysis of this data is entirely lacking, and in 5) conclusion, the reason this observation was ignored is stated as: “The range of activity of this dugong was the eastern part of Oura Bay, and it is predicted that the loss of sea surface due to the existence of the facility would result in virtually no reduction of the dugong’s habitat.” An

assessment based on this kind of opportunistic, foregone conclusion would never withstand the evaluation of a proper scientist.

In the dugong court case in the US, the federal court issued an order on January 23, 2008, requiring the Department of Defense to “take into account” the effect that construction and use of the Futenma Replacement Facility would have on the Okinawan dugongs, under the provisions of the National Historic Preservation Act. The process of “taking into account” includes gathering information on the effects, and the DoD has seen the Japanese government’s Henoko EIA as a means of gathering that information. If the Henoko EIA statement is adopted, the issue of whether or not the assessment provides a clear scientific explanation of what effects the construction and use of the Futenma Replacement Facility will have on the Okinawan dugongs will be subject to examination by the courts in the United States, the birthplace of environmental impact assessment.

The upshot of this is clearly evident. Just as the 3.11 nuclear disaster revealed to the world the brain freeze on nuclear energy in Japan, the Henoko assessment will expose to the light of day the shallowness of the Japanese EIA system. For Japan’s honor, it is essential to win a judgment declaring the Henoko assessment illegal. To say nothing of the fact that the transfer of the Futenma base to another location on the island, against the wishes of ninety percent of the people of Okinawa, is an outrage that cannot be accepted in a democratic society.

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**Destruction**,” November 10, 2008 and **“The Fatally Flawed EIS Report**,” January 7, 2012. This article was published in Sekai March 2012.

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