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Albert H. Solomon

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# FAR EASTERN SECTION

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## REVISION OF THE JAPANESE MINING LAW UNDER THE OCCUPATION\*

ALBERT H. SOLOMON†

IN LINE with the policy of the Supreme Commander for the Allied Powers to democratize the mining industry of Japan, a study of existing mining law was undertaken in 1946 by a National Mining Law Revision Committee<sup>1</sup> appointed by the Minister of Commerce and Industry (now Minister of International Trade and Industry). After four years of investigation, drafting, and redrafting of a revised Mining Bill, with technical assistance from a visiting mineral law expert from the United States<sup>2</sup> and from lawyers and agricultural and forest economists employed in the Japanese government and in the Headquarters of SCAP,<sup>3</sup> as well as public hearings throughout Japan, the Japanese government on December 20, 1950, promulgated the finished product, a revised Mining Law (Law No. 289, 1950) effective January 31, 1951.

Behind the remaking of the mining code of this phenomenal country, which in size is somewhat smaller than the state of California, lies a story worth telling. It cannot be read in the quaint mixture of kanji, hiragana, and katanaka characters that run top to bottom and right to

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†Member of the Bar of the state of Washington; Deputy Chief, Mining and Geology Division, Natural Resources Section, General Headquarters, Supreme Commander for the Allied Powers.

<sup>1</sup>This Committee included Professors Jiro Tanaka, Sakae Wagatsuma, and Sanji Suenobu, Faculty of Jurisprudence, Tokyo University, Chiefs of the Forestry Agency and Agricultural Land Bureau, Ministry of Agriculture and Forestry, and of the Mining Bureau, Ministry of Commerce and Industry, and representatives of the Attorney General's Office, Japan Mining Ass'n, Coal Ass'n, Forestry Ass'n and Imperial Oil Co.

<sup>2</sup>Mr. Royal R. Duncan, retired, formerly of the Solicitor's Office, United States Department of Interior, visited Japan March 10 to July 16, 1949.

<sup>3</sup>The legal assistance force comprised Messrs. Robert H. Neptune, formerly of the Legal Section, GHQ, SCAP, a member of the Bar of the state of Oklahoma; John L. Cooper, Agriculture Division, Natural Resources Section, a member of the Minnesota and Wisconsin state bars; Iwao Iida, member of the Bar of Japan, consultant, Natural Resources Section; Messrs. Takeo Kobayashi, Chief, Masanori Takeda, Masayuki Serikawa, Hide Osono, and Masao Beppu, legal advisers, Mining Policy Section, Mining Bureau, Resources Agency, Japanese Ministry of International Trade and Industry; and the writer. Notable contributions to the work of revision were made by Messrs. Frank A. Ineson, forest economist, B. M. Jensen, S. Takahashi, and Miss Dorothy Goodwin, agricultural economists, Natural Resources Section, and Messrs. Kihachi Sanuki, Chief, and Susumu Hara, liaison, Mining Policy, Resources Agency, Ministry of International Trade and Industry.

left in the Japanese version of the law, nor even in the labored English translation.

### HISTORICAL BACKGROUND

Although mining dates back more than 1,200 years in Japan, and scrolls are extant showing native miners laboriously extracting gold ore by hand pick at the famous Sado Island mine off Niigata some 240 years ago, modern mining had its start with the Meiji Restoration (1868). The new government, succeeding the weakened Tokugawa Shogunate, took over the management of all important mines, including the Sado gold mine, the Ikuno and Kosaka silver operations, and the Miike, Takashima, and Poronai coal mines. Large capital investment was made in the most modern imported machinery and mining engineers were brought in from Europe and America at high salaries to improve techniques, in a manner not unlike the flow of technicians and latest machinery and equipment from the United States to Japan during the Occupation. But there was this difference: The Meiji government took this action to meet the demands of the military and the "preservation of peace" by expansion of the war machine, while the Occupation is doing it to enable Japan to restore her industrial economy and become self-sustaining.

The Mining Direction and Pit Laws enacted in 1872-3 (Ordinances No. 100, March 1872 and No. 259, July 1873, respectively) were based on the principle of national monopoly of mining and declared the ownership of the Emperor in all unmined minerals, even though the lands were owned by private individuals. All mining concessions were government-owned.

The years 1884-96 saw a drastic turn in events for the mining industry. The industrialists and moneyed class, which had lent the weight of their influence to unseat the Shogunate, eventually capitalized on their support of the restoration. And when the government encountered one of its frequent financial crises, the first break in government ownership occurred by disposition of one of its mines to a private individual—the sale of the Kosaka silver mine to Fujita-gumi in 1884. Other industrialists also took advantage of the need of the government for funds to build its military strength for the two tests with China and Russia which lay ahead: In 1886 Mitsui acquired the rich Iwaonobori sulfur mine in Hokkaido and the silver, lead, and copper deposits at Kamioka; 1888 saw the transfer of the Ani copper and Innai silver

mines to Furukawa, and the Miike colliery, today Japan's largest coal producer, also went to Mitsui; Poronai (now Horonai) coal mine, one of the largest Hokkaido producers from an early date, in 1889 went to a group organized as the Hokkaido Coal Mining Co.; and the fabulous Sado gold mine and Ikuno copper mine became the property of the Iwasaki family (Mitsubishi) in 1896.<sup>4</sup>

The Ani silver mine is typical of the chain of title to some of the older mining operations. According to its present owners, the deposit was discovered in 1575 and worked spasmodically until 1701, when Lord Satake, the Daimyo (feudal baron), took possession. In 1868, under the Meiji Restoration, it became the property of Akita prefectural government by succession from the local ruler. In 1875 the Japanese imperial government took over under the then recently enacted Pit Law. In 1880 German engineers were brought in and introduced new mining and metallurgical practices. Later in the 80's the imperial government sold the mine to Ichibei Furukawa, who operated it for copper until it was closed by the depression in 1931. In 1934 it was reopened by the Furukawa Ringyobu (Forest Industry Branch) Co. Ltd. and worked for copper and gold until 1943. It is still owned and operated by the Furukawa Mining Co., and recent exploration work has developed excellent prospects for new ore bodies rich in gold content.

In 1890, shortly after the private acquisition of most of these valuable deposits, the Pit Law was revised to protect the new ownership and established the system of priority of claims, strongly entrenching private enterprise in mining. The Mining Act (Law No. 87, September 1890, effective June 1892) subsequently replaced the Pit Law and the Mining Direction Law, reasserting the principle of priority of mining claims, but definitely excluding government monopoly and making the government itself subject to the same rights and obligations as a private person if it undertook to engage in mining. It was a complete about-face in policy. The government retained the right to permit the mining activity and superintend the mining enterprise. This reservation later became a valuable asset to the mineral barons, because government control inevitably brought with it government subsidy.

Other salient features of the Mining Act included permission to litigate rulings of the government granting or rejecting permission to

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<sup>4</sup> DEVELOPMENT OF MINING LAW IN JAPAN, by Toshimasa Sugimura, Assistant Professor, Law Faculty, Kyoto University, translated by Mr. Chuzo Kondo.

mine. The old law did not permit smelting or refining of certain metals apart from mine ownership and operation, primarily to simplify accounting and inspection of the output in finished metal, because all went either into the national coffers to finance military activities or into the munitions of war needed for the Sino-Japanese War of 1894-95 or the Russo-Japanese War of 1904-05. However the new Mining Act released the miner from the obligation to refine his own ores and gave strong impetus to setting up of central smelters and refineries. This opened direct markets for sale of mineral ores and greatly stimulated mining development.

#### THE MINING INDUSTRY LAW OF 1905

The first complete mining code for Japan was the Mining Industry Law (Law No. 45, March 1905) which supplanted previous enactments. It contained eight chapters: (1) General Rules; (2) Mining Rights; (3) Use of Land; (4) Mining Police; (5) Mine Workers; (6) Mine Taxes; (7) Appeal; (8) Lawsuit, Decision, and Punishment. The chapter on Mine Workers was particularly significant. At the start of the Meiji era most of the coal mines employed prison labor. Later, poor farmers were recruited for mining and the status of mine labor approached that of forced labor, largely under feudal conditions. These conditions became so notorious that even under feudal vassalage the mine workers struck and rioted throughout Japan. Concern over this problem led to inclusion of protective measures for labor in the new law.

The period following the wars with the Chinese and the Russians saw a consolidation of holdings; management grew in scale and in capital invested, and a revision in the previous Mining Act even permitted foreigners to participate through the formation of corporations able to acquire mining rights. The same story was to repeat itself in World War I, in which Japan took a relatively insignificant part as far as fighting was concerned. With mineral raw material imports at a relative standstill, demand rose both for the domestic market and from abroad. Prices skyrocketed. Again mines expanded their scale of operations, new mines were exploited, and Japanese mining experienced an unprecedented prosperity. The relation between the mining industry and the military was emphasized even more strongly with the sudden collapse of mine product prices and markets following World War I.

Revisions of the Mining Industry Law were made in several of the years intervening between its enactment in 1905, and 1935. These changes included amendments for mining registration, mining police, regulations for control of coal mine explosions (forerunner for the Mine Safety Code of 1949), a mortgage law, and miner's aid regulations.

The mining law existing prior to the revision of December, 1950, then, was basically the law enacted in 1905, with a few changes, far from fundamental, made subsequently. The period commencing about 1937 to the end of hostilities is another chapter in the history of Japanese mining legislation.

#### MINING LEGISLATION FOR AGGRESSION

The marshalling of the mineral industry of Japan to support the aggressive designs of the imperialistic military clique is clearly reflected in the laws enacted from 1937 to 1943. The Imperial Fuel Industry Company Law (Law No. 53, 1937) and the Gold Production Law (Law No. 59, 1937) gave special attention to consolidating, controlling, and subsidizing the development of the nation's petroleum and gold resources. The Imperial Petroleum Company Law (Law No. 73, 1941) formed the 50 per cent government-owned company which took over 95 per cent of the national production of petroleum. The mobilization of most of the country's mineral resources, however, started in earnest with the Act to Promote the Production of Important Minerals (Law No. 35, March 1938), which later was strengthened and revised (Law No. 35, March 1941 and Law No. 34, March 1943). This law gave government sweeping powers of control over mining operations. That the plan was not a temporary measure is indicated in the ten-year duration provided. This law froze mineral prospecting by suspending the termination of prospecting rights, fixed at four years under the existing Mining Law. Those who had covered likely mineral areas thereafter continued to hold them until the expiration of the act in June, 1948.

The alignment of Japan's mineral resources for the Pacific War was continued with the passage of the Imperial Mining Development Company Ltd. Law (Law No. 82, April, 1939) which consolidated small and medium marginal mining operations under a single corporate management, with fifty-fifty government and private ownership, and profits guaranteed to the private shareholders.

The Distribution of Coal and Coke Law (Law No. 104, April, 1940) was another mechanism for subsidizing the coal industry through a 50 per cent government-owned corporation, the Japan Coal Co., which exclusively bought coal output, financed the mines, and distributed the coal to consumers.<sup>5</sup>

The Major Industries Organization Ordinance of September 1, 1941, was the last important preparatory step prior to the culmination of events in Pearl Harbor in December. This ordinance granted broad powers of control over production and price-fixing to the industrial control associations, which in the case of minerals included the Coal Control Association and the Mining Control Association. The Munitions Company Law of October 28, 1943, pinpointed government control down to the individual company and mine, smelter, or refinery.<sup>6</sup> To buttress her international credit and encourage prospecting and mining of strategic minerals, Japan issued the Mining Encouragement Ordinance No. 18 (Ministry of Commerce and Industry, April 1, 1943), which provided authority for subsidizing mine operators in such prospecting, construction of mills and smelters, and purchase and installation of mining equipment.

The regimenting of Japan's Home Island mineral production for the war effort, however, was not enough. Obviously the effort would be extended to other parts of the Empire and, as soon as the armies took over, to occupied territories. The expansion into overseas territories started very early; many mining men who were repatriated to Japan during the Occupation had worked in mines and smelters in Manchuria, China, and southeastern Asiatic countries for ten years or more. The large mining companies, too, had their investments in these countries and sent some of their best engineers and other technicians to exploit the mineral raw materials for export to Japan's largest processing capacity smelters and refineries.<sup>7</sup>

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<sup>5</sup> Solomon, *Economic Controls in the Japanese Coal Industry*: Natural Resources Section Report No. 52, Tokyo, August, 1946.

<sup>6</sup> Solomon, *Wartime Administration of the Japanese Mineral Industry*: Natural Resources Section Report No. 17, Tokyo, January, 1946.

<sup>7</sup> Subsidiaries and affiliates of some of the major mining companies abroad: (a) Mitsubishi Mining Co.: Shin-Tai Coal Mining Partnership, Shang-Tung Gold Mine Development Partnership, Ta-Wen-Kou Colliery Ltd., Hwai-Nam Colliery Ltd., Shotoku Mining Co. Ltd., Korean Anthracite Colliery Co.; (b) Nippon Mining Co.: Chosen Flourspar Co. Ltd., Nichinan Iron Ore Co. Ltd., South Japan Mining Co. Ltd. (southerly islands), Nippi Mining Ltd. (Philippines), Pacific Mining Co. Ltd., Oceanic Phosphate Rock Co. Ltd., Ocean Mining Co. Ltd.; (c) Mitsui Mining Co.: Kawakami Colliery (Karafuto), Naikawa Colliery (Karafuto), West Sakutan Colliery (Karafuto), Chio Colliery (Karafuto), Sansei Mining Co. (Korea), Kiiung Coal Mining Ltd. (Formosa), Toa Mining Co. Ltd. (Manchuria), Sampo Mining Co. Ltd. (Man-

Even the rabid militaristic group in the Cabinet Planning Board realized the limitations of the Home Islands in minerals necessary to the war munitions industries, although high quotas fixed for production of indigenous minerals during the war sometimes resulted in dangerous and wasteful mining methods being used. But when, in the fall of 1943, severe shipping losses curtailed the supply of minerals and ores from the colonies and occupied territories, a production crisis occurred. The country's native resources were then taxed to the limit.<sup>8</sup> Japan itself at that time was, and still is, poor in resources of such essential minerals as iron, manganese, tin, and lead, and she has barely enough copper to meet civilian requirements. Metallurgical grade coking coal needed for manufacture of iron and steel also is lacking, although advances have been made in processing techniques under guidance of American scientists in GHQ, SCAP, utilizing a blend of domestic and imported coking coal. Japan has no phosphate rock for her fertilizer, and she imports about 90 per cent of her petroleum requirements and all of her bauxite for alumina.

The point of all this is that Japan's Home Island paucity of mineral resources, due to lack of adequate known reserves, poses a threat to future peace unless through development of additional reserves she can become self-sustaining at least to the extent of her normal civilian requirements. If, by some miracle, Japan could again attain the peak output which she reached in the period 1940-44 in most of her minerals, with some help from outside she can support an industrial economy. But she cannot even begin to accomplish this without searching for and finding additional reserves, and developing them. This brings us to a review of some of the more pressing problems encountered in a proposed revision of the Mining Law of Japan.

#### PROBLEMS OF REVISION

The mining business is in some ways unique. A merchant must move his commodities, even at a loss, to stay in business. A mine

churia), Tempozan Mining Co. Ltd. (Manchuria), Fukushima Mining Co. Ltd. (Palau Group), Mitsui Light Metal Mining Co. (Korea), Wainan Coal Mining Co. (China), Chuko Coal Mining Co. (China); (d) Onoda Cement Co.: Chosen Onoda Cement Co. Ltd. (Korea), Kantosha Onoda Cement Co. Ltd. (Dairen, Kwantung), Manshu Onoda Cement Co. Ltd. (Manchuria), Shanghai Cement Managing Corp. (China), Cebu Portland Cement Co. Ltd. (Philippines); (e) Nitetsu Mining Co.: Mitsuzan Coal Mine Co. Ltd. (Manchuria), Bado Mining Co. Ltd. (Korea, limestone), Kitashina Mining Ltd. (North China, iron ore, coal, limestone); (f) Showa Mining Co.: Chosen Showa Mining Co. Ltd., Chrome Mining Co. Ltd., Sobol Mine (Philippines, copper), Karafuto Coal Mining Co. Ltd.

<sup>8</sup> Natural Resources Section Report No. 17, *op. cit.*

operator has a limited stock of goods, so to speak—his reserves—and often can be ahead by conserving them in place. As already indicated, the mining industry in Japan in the past has been largely under the control of a very few family companies—the Mitsui, Mitsubishi, Sumitomo, Furukawa, Nippon, and a few smaller companies. One method of effecting a virtual monopoly of mining is to blanket prospecting and mining claims over potential mineralized areas. An example: The Mitsubishi Company in November, 1947 held eighty-eight coal and 197 metal and nonmetallic mining lots, comprising a total of 181,875,960 tsubo (1,210 tsubo per acre), and 454 coal and 318 metal and nonmetallic prospecting permits covering a total of 545,180,711 tsubo.<sup>9</sup>

A survey made by the Mining Bureau, Ministry of Commerce and Industry, early in 1949, showed that as of December 31, 1948, out of 44,503 approved prospecting rights for mineral deposits, only 2,017 or 4.5 per cent were reported as actively being prospected; of a total of 6,030 mining concessions (based on discovery of minerals in commercial quantity) only 2,108 or 34.9 per cent were being worked. Subsequent surveys made by the writer confirmed this pattern right up to December 1950. The expiration of the Act to Promote the Production of Important Minerals in June, 1948, reinstating again the four-year limitation on prospecting permits under the old Mining Law, did not alter the situation. It merely caused a reshuffling of claims during 1949, but the notorious inactivity still continued. In addition, investigation showed that in several of the major mining districts 70 to 80 per cent of prospecting permits were in the hands of brokers and speculators.

Another problem that confronted the Revision Committee was absence of any legislation protecting the mining of several nonmetallic minerals important to the economy: dolomite, pyrophyllite, feldspar, silica sand, limestone, talc, and fire clay. Producers were generally at the mercy of landowners and in many instances had to purchase outright the land on which their deposit was located; if this was impractical, a rental, varying from time to time, had to be paid by the operator. In such cases, tenure was not certain, the operator could not follow his deposit with any assurance into adjoining lands, and investment in costly equipment and machinery necessary for large-scale mining or quarrying was almost out of the question. The importance of these

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<sup>9</sup> Source: Company statement.

minerals to the iron and steel, cement, fertilizer, and chinaware industries justified their recognition under the Mining Law, with the same privileges accorded other minerals in the allocation of transport, materials, and subsidies in times of emergency and shortage, as well as permanence of tenure of lands chiefly valuable for these minerals.

Japan's limited area of cultivable land (about 15 per cent of total land area) posed another serious problem—a conflict between agricultural and mining interests. Under the old law, mining prospectors and operators damaged surface rights largely with impunity against being made to pay just compensation. Farmers complained bitterly, especially in the important coal producing area of Fukuoka Prefecture. Coal mining caused subsidence of many rice paddy lands to a point below sea level, causing partial or total loss as farm land owing to the lack of drainage. Total damage as of 1950 was estimated by Ministry of Agriculture and Forestry officials at 22.5 billion yen.

The sweeping powers granted to the government agencies dealing with mining by the Act to Promote the Production of Important Minerals, the rigid controls exercised by the control associations under authority of the Major Industries Organization Ordinance, the law creating the Japan Coal Company as a monopoly for the purchase and distribution of coal, and the Munitions Company Law,<sup>10</sup> had set the pattern of normal procedure for such agencies. Even during the Occupation the Mining Bureau, despite the repeal of these wartime measures, continued administrative procedures which set up priorities based on vague, arbitrary standards of "urgent need of the economy" and "importance to the national rehabilitation." The return to a peacetime economy demanded the release of the industry from stringent bureaucratic control which was also authorized by many provisions of the existing Mining Law. Nor did the old law call for "due process," in the American sense, which implies a hearing, decision, and right of appeal, either in passing on the rights of mining claimants or in the taking of lands for mining purposes. The new Constitution of Japan (Article 29) guaranteed these rights in property.

#### BASIC CHANGES IN THE LAW

While many differences appear between the Revised Mining Code and the old Mining Law, the basic changes only will be discussed. In view of the strong conflict of interest between agriculture and mining,

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<sup>10</sup> Citation for these laws under the section, "Mining Legislation for Aggression."

after much debate the idea of a high-level board with authority for adjudicating the question of land use was adopted. A board within the Ministry of Commerce and Industry, as originally suggested, was rejected, and a companion law prepared and passed coincidentally with the revised Mining Law (Land Coordination Establishment Law, Law No. 292, 1950) was the final acceptable solution. Article 15 of the new Mining Law assumes the authority of the Land Coordination Commission to designate lands not proper for mining as compared to public interest or the interests of agriculture, forestry or other industries, and in such instances prevents allowance of a mining right. Article 187 of the new Mining Law permits an appeal from action by the Chief of the Bureau of International Trade and Industry (formerly Bureau of Commerce and Industry) rejecting an application for a mining right, approving a mining lease, or disposing of an application for decrease of a mining area, or from action by the Bureau Chief or under the Land Expropriation Law (Law No. 29, 1900, now under revision) on application for use or expropriation of land for mining purposes.

The Land Coordination Commission Establishment Law sets up a commission of five, appointed by the Prime Minister, and makes the commission independent of the ministries so as to avoid conflicting interests between the two pertinent ministries affected. Thus the machinery has been established for placing the land use and expropriation on a basis of national good, rather than the interests of one or the other of several economic groups.<sup>11</sup>

A second major change in the Mining Law involves the reduction of the prospecting period from four to two years. Renewals are possible twice for most minerals, three times for petroleum prospecting permits. This provision was necessary to meet the demand of mining operators who have developed a spirited interest in geologic exploration as a result of technical guidance furnished by geologists on duty with Natural Resources Section, and who find four years inadequate in view of the shutting down of exploration activities in winter in most mountainous areas of Japan. In petroleum exploration, where modern, large-scale, and costly methods are used, the total period may extend to eight years, while other mineral exploration may extend for a period of six years. However, Article 19 denies the renewal in the first instance

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<sup>11</sup> The chairman of the newly appointed Commission is Professor Sakae Wagatsuma, Faculty of Jurisprudence, Tokyo University, who was a member of the National Mining Law Revision Committee.

“unless it is evident that the applicant has conscientiously prospected and the necessity of continued digging is recognized for ascertaining the conditions of the mineral deposit.” This contingency, if properly and firmly administered, is intended to eliminate the holding of such claims in a dormant state and the blanketing of lands by large mining companies merely as “protection.” The opportunity is thus furnished legitimate mining operators to take up claims on lands previously kept idle. Of course, any law has loopholes, and this one is no exception, but the spirit and the intent of the law to require diligent prosecution of the prospect to a discovery are clear. A great deal will depend on the enforcement of this provision.

At this point, the importance of efficient and prompt administration should be mentioned. A survey of procedures in the district mining offices by the writer as late as March, 1951, revealed that the backlog of prospecting and mining claims pending was such that it required from two to three years on the average to process a claim. Inadequate budget for personnel and travel was indicated as the chief reason. Obviously, however, no matter how fair and effective a mining law is enacted, failure to administer it in accordance with the spirit and intent will defeat the legislative purpose. There is room for much improvement in this respect, and the Japanese government agencies concerned are now seriously studying the problem, with a view to expediting all claims on the basis of revised regulations.

A third basic change in the law added the minerals not previously covered. Here again the protection given to these minerals will be purely theoretical unless the backlog of pending claims is disposed of so that the newly filed claims for prospecting or mining of the added minerals may be acted upon promptly.

The acceptance of “due process” is found as a pattern throughout the revised Mining Law. Article 40, for example, provides that:

The Chief of Bureau of International Trade and Industry, when he intends to give an order under the provisions of Article 37, paragraph 1, Article 38, paragraph 1, or the preceding Article paragraph 1, shall hold a public hearing, requesting beforehand the presence of the mining applicant concerned.

2. The Chief of Bureau of International Trade and Industry shall, when he intends to hold the hearing under the preceding paragraph, notify the mining applicant concerned the purport of the case and the date and the place of the hearing, and make public the same not later than 1 week prior to the date.

In the hearing, the mining applicant and the persons interested shall be given an opportunity to present evidence and opinions concerning the case. Other provisions cover notice of decision and right of appeal to the Minister, the courts, or the Land Coordination Commission.

Two or three of the recommendations of American mining lawyers did not receive a warm reception from the Japanese. Their exclusion from the final draft indicates the attitude of SCAP personnel giving assistance and guidance, and the objective: that this revision should be the free and voluntary act of the Japanese lawmakers themselves.

Article 5 of the old law provided that: "No person other than subjects of Empire or juridical person duly formed in accordance with the laws thereof, are entitled to secure mining rights." At a time when the Japanese government was calling for foreign investment, those drafting the revised law felt that a provision giving foreigners reciprocal rights in mining would encourage such investment. However, the Foreign Ministry insisted that the giving of reciprocal rights should be included in future treaties rather than become a part of the fundamental mining law. Article 17 of the proposed draft covering the subject merely stated that "no one other than the Japanese people or the Japanese juridical person shall become a mining right owner" and seemed to lay down a policy of exclusion which might prevent future separate agreement between Japan and other countries. It was finally agreed that this Article should be amended to add condition, "provided that, this shall not apply when otherwise provided in a treaty."

American lawyers suggested a general definition of minerals coming under the law as being those of economic value, with some means set up for determining the classification of the land as more valuable for mineral than, for example, for agricultural purposes. The old mining law specified by name the minerals to be included, and the Japanese lawmakers felt that this system could not be disturbed without serious hazard to the mining system in general. The creation of a high-level Commission to decide the question of the value of the land for mining or other purposes was a compromise suggested and readily accepted by the Japanese.

A third important suggestion by American lawyers in the framing of a revision was the reduction of the prospecting period from four to two years, with provision for only one renewal. This was coupled with a requirement that the applicant for such a permit set forth facts indicating that he was a bona fide mining operator or had the means and ability to actually do prospecting work. The Japanese drafting the

revision considered this provision too drastic. First, the four-year period was considered too short in view of the mountainous character of much of the country which was snowed in during winters. As to the requirement for the prospector to show evidence of good faith in advance, the Japanese felt that the authority of the Bureau Chief to later control his operations would be ample protection against fraudulent filings. Article 63 of the revised law requires the prospecting right holder to submit an operation plan and any revisions to the Bureau Chief; Article 69 also calls on him to report progress of his work; and Article 193(1) places a penalty on the prospector for failure to report such progress to the Bureau Chief.

A rather unusual view of criminal and tort liability of the principal for the acts of an employee appeared in an early draft. Several penalty provisions are included in the old as well as the revised Mining Law. Following these it was proposed that "When a representative of a juridical person or a proxy, an employee or any other worker of a juridical person or natural person has committed the violation of the provisions of the preceding three articles in connection with the business of the juridical person or the natural person, the juridical person or the natural person shall be punished with a fine under the respective Articles, in addition to that the offender shall be punished."

Although the Japanese framers contended that the Civil Code would limit liability to only such cases where the acts done by the employee were authorized and came within the scope of employment of the employee or other worker, sufficient doubts were raised by the American lawyers to satisfy the Japanese that an additional clause should be included as follows: "provided that this shall not apply to the cases where there are proof that sufficient caution and supervision over the representatives, employees and other workers of the juridical person or individual have been exercised to prevent such acts of violation in the business." (Article 194.)

The revised Mining Law is by no means a perfect document. It represents the effort of both Japanese and Americans to accept mining conditions in Japan as they are and have existed for many years, but to meet new concepts which are gradually developing, and to shape the law to meet new needs. For instance, Japan is a well-mineralized country, but in the matter of exploration she is far behind most other countries of the world both in the acceptance of the basic importance of this phase of mining activity and in the techniques of successful exploration.

As pointed out by staff geologists of SCAP:

Failure to employ modern geological methods in the search for ore, as well as the lack of good geologic maps, has hampered the mineral exploration program. In addition, geologic training in Japanese universities is not well adapted to the practical requirements of the mineral industries. Basic field experience is lacking among many geologists, who are inclined to pursue academic research without regard for the pressing need to find new ore to support Japan's recovering economy.<sup>12</sup>

This points up the importance of exploration in Japan's future.

#### OUTLOOK

As previously indicated, Japan in the past depended on mineral raw materials outside the borders to which she is now restricted under the Potsdam Declaration. However, she is still eyeing these sources with considerable interest. When a treaty is signed, it goes almost without saying that her mining companies will endeavor again to mine and utilize critically needed minerals in Southeast Asia and in Japan's former colonies and occupied territories. This time, however, it will be on the invitation of those countries, many of them anxious to have the technological assistance of Japanese scientists and engineers, and probably in the form of technological assistance contracts. Japanese companies would agree to furnish technicians to explore and mine the minerals of the underdeveloped countries, and would process the concentrates either there or in Japan. Thereafter Japan could furnish the finished products to these countries in the form of iron and steel, and machinery and equipment, which they require for development of their own industrial economies.

The advantages of such mutual arrangements, however, will tend to distract the Japanese from the basic need for exploration of their own mineral resources. Aside from this, such procedure will be looked upon with suspicion by those nations which suffered from Japan's aggressive designs in the past. Nor will concentration on outside sources of mineral raw materials to the exclusion of domestic mineral deposits help in making Japan self-sufficient.

A sensible course for Japan, in order to increase the meager mineral reserves she now has, would be to take the utmost advantage of the great strides she has made in the direction of utilizing the new concepts and techniques which have been offered by Allied geologists and mining

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<sup>12</sup> Grant, *Japanese Mining and Petroleum Industries: Programs under the Occupation*, 112 SCIENCE 577-588 (November 17, 1950).

engineers. In this task, the revised Mining Law, with its enhanced protection of minerals of economic value, its greater opportunity to individual citizens to explore and mine, its curbing of monopolistic tendencies, its insistence on diligent prosecution of the search for minerals by those filing prospecting permits, its constitutional protection to the individual against arbitrary bureaucratic action directed either against the mining applicant or against the owner of the surface—this new Mining Law, will prove a bulwark of the new Japan in her struggle for survival in the highly competitive and industrialized era in which we are now living. As so well put by the *Nippon Times* in its comment on the promulgation of the New Mining Law (December 29, 1950): “The door is opened, and the future of the mining industry has received a new modern lamp to light the way toward increased production and, as an end result, toward a better standard of life for the whole of the nation.”