

The Polluter-pays “Principle” —— In Light of International Trends on a Global Pact for Environment ——

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The polluter-pays principle is a fundamental principle of environmental law generally, but its function has not yet been clearly established. In Japan, although no statutes explicitly provide for the polluter-pays principle, it is at least considered a guideline for legislation regarding environmental issues. When the term “principle” is used in legal context, it typically means “legal principle.” However, principles in environmental law such as the polluter-pays principle are not necessarily “legal principle” but may instead be “political principle.” Then, what does “principle” mean? Due to the lack of a uniform definition, the term “principle” has been used in inconsistent ways and is still vague as a norm. This is one of the reasons that the polluter-pays principle is obscure. Ronald Dworkin tried to define “principles” by distinguishing them from “rules.” Robert Alexy also explained limitations on constitutional rights through principles theory, which stems from Dworkin’s theory. The distinction between “principles” and “rules” based upon these theories has also had significant effects on the interpretation of principles in environmental law. Recently, some authors have discussed whether or not the polluter-pays principle constitutes a “rule” rather than a “principle.” Article 8 of the Draft Global Pact for the Environment in 2017 appears to provide the polluter-pays principle as a legal norm that might be regarded as

a "rule." Thus, in recent years, there has been an international trend to restructure the polluter-pays principle into a stricter legal norm. However, whether the polluter-pays principle falls into the category of principle or rule depends on the definitions of "principle" and "rule" being applied, and a more detailed analysis is required for these definitions.