

Attachment
to
Promoting Effective Measures on Various Issues
Deriving from Military Installations
(Concerning Japan-U.S. Status of Forces Agreement)

October 2011

Okinawa Municipal Council
for
Military Land Conversion and Base Problem
(Gunttenkyo Council)

(1) Provisions Related to Article II (Permission, Determination, Return, and Special Usage of Facilities and Areas)

Proposed Changes:

(1)-1. Clearly stipulate that when requests are made by the concerned local authorities regarding the agreements related to the details of specific facilities and areas, these issues will be examined and reviewed.

(1)-2. Clearly stipulate that upon the review of the issues stated above, the views of the local authorities shall be heard and their interests respected, and that these same procedures will be applied in reviewing the return of facilities.

(1)-3. Clearly stipulate the range of use, purpose, conditions, etc., regarding the agreement(s) related to each and specific facilities and areas.

The vast presence of the U.S. military bases in Okinawa Prefecture greatly limits the promotion of growth such as urban development plans, and incidents/accidents and environmental issues also affect the lives of the residents.

To resolve the issues arising from the bases, the Council believes that gaining the understanding and cooperation of the local governing bodies, together with the local residents who are forced to live side by side with the U.S. military bases, are indispensable.

In order to achieve this, it is necessary to clearly define a structure where local interests will be reflected when requests are made by the concerned local authorities regarding the agreements related to the details of specific facilities and areas. Such structure and procedures should also apply regarding the return of facilities and areas.

Furthermore, it is necessary to specify the details related to each facility and area including the range of use, purpose, and conditions.

Notably, when facilities are provided to NATO Forces in Germany, the scale, type, conditions, length of the provision, and other terms are to be stated in the agreement, based on Section 3(a), Article 48 of the supplementary agreement concluded in the Bonn Supplementary Agreement, and Section 4 of the Protocol of Signature referring to Article 48.

(2) Provisions Related to Article III (Safeguarding and Control Within and Outside of the Facilities and Areas)

Proposed Changes:

(2)-1. Clearly stipulate that the U.S. Forces shall accommodate the local governing bodies with necessary and appropriate support for their performance of duties, including access to the facilities and areas upon prior notification. Additionally specify that in cases of emergency, immediate access shall be permitted to the local governing bodies without advance notice.

(2)-2. Clearly stipulate that information on incidents and accidents, such as aircraft accidents and forest/field fires which occur within the U.S. Forces facilities and areas, shall be promptly provided to the concerned local governing bodies, and that appropriate preventative measures shall be taken to limit the extent of damage.

(2)-3. Clearly stipulate that Japanese domestic laws and regulations shall be applied to the operations of U.S. Forces including exercises/training and facility management and maintenance.

Every time incidents and accidents deriving from U.S. military bases occur, when needed, the Council has requested for the access to the facilities and areas to conduct on-site investigations, and asked for prompt provision of information concerning the incidents and accidents in order to dispel the fears of the public and other such purposes.

In the SACO Final Report issued in December 1996, and in the agreement of the Japan-U.S. Joint Committee, the governments of Japan and the U.S. have set procedures concerning access permission to the facilities and areas as well as reporting system in case of incidents and accidents. However, the smooth and prompt access requested by local governing bodies has not been fully attained.

To that end, we believe that swift access permission to the local governing bodies needs to be granted without exception, taking into consideration the intention to fulfill official duties.

Furthermore, in regards to the notification of incidents and accidents to the local governing bodies, we believe it is necessary to further review the procedures in

order to disclose accurate information in a timely manner from the perspective of alleviating anxiety among the local residents.

Moreover, in Japan, U.S. Forces aircraft are exempt from regulations including Article 80 (No-Fly Zone) and Article 81 (Minimum Safety Altitude) of the Civil Aeronautics Act, based on the so-called Act of Special Provision. Yet, in Germany, relevant German laws are applied to the NATO Forces training and exercise, based on Paragraph 2 of Article 45, and Paragraph 2 of Article 46 of the Bonn Supplementary Agreement.

To reduce noise pollution and the risks of aircraft accidents, we believe it necessary to follow this precedent in Germany and apply relevant domestic laws to U.S. Forces aircraft, just as commercial aircraft.

In addition, we believe that the Vehicle Regulation Order based on Article 47 of the Road Act, Act on Special Measures concerning Nuclear Emergency Preparedness, and Cultural Assets Preservation Act should be applied to the various operations of the U.S. Forces including its training and exercises as well as facility management and maintenance.

(3) Provisions Related to Article III-A (Environmental Conservation, etc. of the Facilities and Areas) * Recommended Addition

(3)-1. Clearly stipulate that environmental clauses with the following specifications shall be newly established.

(3)-1-1. Clearly stipulate that the U.S. Forces shall be responsible for the prevention of pollution arising from the U.S. Forces operations and to implement necessary measures to protect the natural environment. Additionally specify that the Japanese environmental preservation laws and regulations shall be applied to the activities conducted by the U.S. Forces.

(3)-1-2. Clearly stipulate that when developing plans related to the facilities and areas, the U.S. Forces shall make all efforts to minimize adverse impacts on people, flora, and fauna. Furthermore, the impact of the concerned projects shall be reviewed and assessed before and after the projects are undertaken and the results of these reviews shall be made available to the public. Moreover, both the governments of Japan and the U.S. shall discuss measures for environmental preservation based on the said review results.

(3)-1-3. Clearly stipulate that the U.S. shall be responsible for taking appropriate restorative measures concerning environmental pollution stemming from the activities of the U.S. Forces. The governments of Japan and the U.S. shall discuss on the costs of such measures.

Environmental issues deriving from U.S. Forces installations are matters of grave concern as these issues have direct impact on the safety of lives and properties of the people of Okinawa, who have no choice but to live adjacently to the bases. These issues include noise pollution by U.S. Forces aircraft, noise and vibration accompanied by live-firing exercises and disposal of unexploded shells, destruction of the natural environment by forest and field fires and red clay run-off, fuel and polluted water outflow, and disposal of hazardous waste such as PCBs.

In Germany, based on Article 53, Paragraph 1 of the Bonn Supplementary Agreement, German laws are applied in principle, regarding the use of facilities by NATO Forces. Additionally, based on Article 54A, Paragraph 2, NATO Forces are to conduct environmental impact assessments, and "where detrimental effects are

unavoidable, offset these impacts by taking appropriate restorative or restorative measures."

We believe that it is necessary for our country to follow the abovementioned example of Germany and in order to prevent any serious destruction to the environment, apply Japanese environmental preservation laws to the U.S. Forces.

In particular, we believe it is necessary to establish a system concerning the environmental issues. This system shall include conducting environmental impact assessments and regular environmental monitoring on projects conducted by the U.S. Forces when these projects correspond to projects that are subject to Japanese laws related to environmental impact assessments. Under this system, both the Japanese and U.S. governments shall consult on environmental preservation measures based on the survey results, as well as conducting surveys and implementing cleanup measures when environmental pollution is confirmed.

Moreover, we believe it is necessary to specify the responsibilities of the U.S., as the party responsible in causing the environmental pollution, so that prompt and appropriate restorative measures can be taken in the event environmental pollution is confirmed.

(4) Provisions Related to Article IV (Return, Restoration and Compensation of Facilities and Areas)

Proposed Changes:

(4)-1. Clearly stipulate that in regards to the return of the facilities and areas used by the U.S. Forces, the governments of Japan and the U.S. shall conduct joint environmental surveys in advance. If environmental pollution has been confirmed, the governments of Japan and the U.S. shall take necessary measures to restore the land to its original state and discuss the cost burden.

Under the existing Japan-U.S. SOFA, the U.S. is exempt from responsibilities to restore the facilities and areas to their original condition when returning to Japan, and there are no clear regulations concerning procedures to conduct environmental surveys and cleanups as well.

In order to smoothly develop and use the return areas, it is necessary to conduct environmental surveys and cleanups prior to the return.

To do so, cooperation from the U.S., which has been using the facilities and areas, is indispensable. Further, in order to fulfill the responsibility as the party responsible for the pollution, we think it is necessary for the U.S. government to jointly address the issues with the Japanese government, which is the provider of the facilities and areas.

Particularly, in our prefecture, approximately 66% of the land area of the U.S. Forces installations is owned by bodies other than the central government. Therefore, it is necessary to clearly establish procedures concerning environmental surveys and cleanups as well as to implement sufficient restorative measures so that the landowners may use their returned land without worry, and also to facilitate the smooth development of these areas.

(5) Provisions Related to Article V (Access and Movement of Vessels and Aircraft)

Proposed Changes:

(5)-1. Clearly stipulate that the use of civilian airports and ports by the U.S. Forces shall be restricted to cases of emergencies.

(5)-2. Clearly stipulate that the terms "access to" and "movement" stated in this Article do not include activities that are considered as part of training and/or exercises.

In regards to the use of civilian airports and ports by U.S. military aircraft and ships under Article 5 of the Japan-U.S. SOFA, we have consistently requested the U.S. Forces to refrain from using them except in emergency situations. However, in September 2010, a U.S. Forces vessel docked at the Hirara Port for their goodwill and friendship mission, and in December 2010, a U.S. Forces aircraft used Miyako Airport for the transportation of U.S. Navy's musical band and their instruments and equipment. The aircraft was unable to takeoff due to problems with the aircraft tire, which was damaged at the time of landing.

Since our prefecture is comprised of many remote islands, aircraft and ships are important means of transportation not just in the daily lives of the people of the Prefecture, but also from the perspective of industrial development in Okinawa, which aims to be a tourism-oriented prefecture. Thus, to ensure safe and smooth operations of aircraft and ships, it is necessary to prohibit the use of civil airports and ports by the U.S. Forces except in cases of emergency, such as inclement weather, malfunction of the aircraft/ship, and transporting patients in need of medical attention.

Further, it has been reported that activities involving "access to" and "movement" between facilities and areas of U.S. Forces are being conducted on the grounds of Article 5 of the Japan-U.S. SOFA, and it is inevitable that these activities are seen as nothing but training or exercises in actuality.

We believe that training and exercises of U.S. Forces should be conducted within the provided facilities and areas, and it is necessary to clarify the definition of "access to" and "movement" between facilities and areas. In addition, any "access to" and "movement" between facilities and areas, which involve training and/or exercises in reality, should be clearly prohibited.

(6) Provisions Related to Article IX (Entry into or Departure from Japan by Members of the United States Armed Forces, the Civilian Component, and Their Dependents)

Proposed Changes:

- (6)-1. Clearly stipulate that Japanese laws and regulations relating to public health and quarantine shall be applied to SOFA-related personnel, animals, and plants.

The SACO Final Report states that newly agreed procedures shall be followed when U.S. Forces-related personnel enter Japan or when they bring in plants or animals into Japan. A certain degree of progress has been made with the new procedures established for quarantine of plants, which had not been specified in the agreement of the Japan-U.S. Joint Committee in the past.

However, in Germany, according to Article 54, Paragraph 1 of the Bonn Supplementary Agreement, German laws are applied to NATO Forces concerning prevention and extermination of contagious diseases of persons, animals, and plants as well as prevention of propagation and extermination of insects that are harmful to plants.

In order to dispel anxiety of the residents who live in the vicinity of the bases with concerns of contagious diseases from overseas, we believe it is necessary that U.S. the Forces be subject to quarantine by relevant Japanese authorities, based on Japanese laws concerning quarantine of persons, animals, and plants as well as public health.

(7) Provisions Related to Article XIII (Taxation)

Proposed Changes:

- (7)-1. Clearly stipulate that private vehicles owned by SOFA-related personnel are subject to the same tax rates as private vehicles owned by Japanese nationals.

In regards to vehicle tax on private vehicles owned by members of the U.S. Forces and related persons, tax rate has been raised since April 1999, after the amendment to the "Special Vehicle Tax Regulation on Private Vehicles Owned by Members of the U.S. Armed Forces and Related Persons," upon the notification issued by the Administrative Vice-Minister for Home Affairs, based on the conclusion of the Japan-U.S. Joint Committee agreement in February, 1999.

However, even after this revision, the vehicle tax rate on private vehicles owned by U.S. Force-related persons is markedly low, compared to that of Japanese nationals. This difference in tax rate can be said with light-weight vehicles as well.

As of April 1, 2010, the number of vehicles owned by U.S. Forces-related persons in Okinawa Prefecture is approximately 25,000 excluding light-weight vehicles. The traffic of these vehicles greatly increase demand for public services, and the financial burden on the prefectural government is also notable.

If such private vehicles owned by U.S. Forces-related persons are subject to the same tax rate as vehicles owned by Japanese nationals, the tax revenue will increase by approximately ¥700 million annually. Since our prefecture has a weak financial footing, raising the tax rate on private vehicles owned by U.S. Forces-related persons is an issue of great importance and urgency, in order to expand the revenue resources of the prefecture.

(8) Provisions Related to Article XV (Non-Appropriated Fund Organizations)

Proposed Changes:

- (8)-1. Clearly stipulate that Japanese citizens are restricted from receiving services provided by U.S. organizations within the facilities and areas.

In regards to the sale and disposal of goods by U.S. organizations, specified in Article 15 of the Japan-U.S. SOFA, details of restrictions, procedures of disposal, etc., have been concluded in the agreement of the Japan-U.S. Joint Committee, based on Paragraph 3 of Article 15.

However, there are no clear specifications on the restrictions and procedures for Japanese citizens in the use of services and facilities, such as playing golf and taking flights on Cessna aircraft, etc.

Based on Paragraph 1(a) of Article 15 of the SOFA, these organizations are exempt from Japanese taxes. Hence, from the viewpoint of fair taxation, we believe it is necessary to establish clear and specific restrictions and procedures on the sale and disposal of goods for the Japanese citizens to use the services and facilities of these organizations.

(9) Provisions Related to Article XVII (Criminal Jurisdiction)

Proposed Changes:

- (9)-1. Clearly stipulate that when requested by relevant Japanese authorities, the U.S. side will comply to transfer the custody of the suspect(s) prior to indictment.

There has been a certain degree of progress in regards to the custody of accused member(s) of the U.S. Forces or the civilian component, over whom Japan is to exercise jurisdiction. It has been decided by "the Japan-U.S. Joint Committee agreement regarding criminal justice procedures" in October 1995, that in specific cases of heinous crimes of murder or rape, the U.S. shall "give sympathetic consideration to any request made by Japan for the transfer of suspect's custody to Japan's jurisdiction before indictment."

However, to implement the procedures based on this agreement, Japan is required to submit requests to the Japan-U.S. Joint Committee for discussion, projected to take a substantial amount of time.

Meanwhile, for "specific cases other than heinous crimes," Japan's request for pre-indictment transfer of custody is also stipulated as, "the U.S. will take full account of any special views Japan may put forward," and it was confirmed at the Joint Committee meeting in April 2004 that Japan can request pre-indictment transfer of custody in any criminal case in which Japan has a particularly great concern. However, custody transfer is still dependant on the discretion of the U.S.

In November 2002, there was an attempted sexual assault case involving a U.S. Marine Corps Major on the main island of Okinawa. This incident stirred a sense of resentment among the people of the Prefecture when the U.S. authorities rejected without concrete reasons, the request from the Japanese authorities to transfer the custody prior to indictment.

Subsequently, the accused servicemember was indicted, and custody was transferred to the Japanese police. However, in the past, there have been cases in which the accused in the custody of the U.S. Forces, fled to the U.S. from military installations. With such precedence, the residents of Okinawa have voiced their concerns that the contents of the agreement reached at the Japan-U.S. Joint Committee in October 1995 are insufficient, and have persistently called for the revision of the Japan-U.S. SOFA so that the custody of the accused can be transferred promptly to the Japanese authorities prior to indictment in all cases.

In Germany, Article 22 (II), Paragraph 2(b) of the Bonn Supplementary Agreement stipulates that, "in the event of a special case, in which the German authority requests for the transfer of custody, sending country (NATO Forces) shall consider the request in a spirit of goodwill." Hence, from the perspective of protecting fundamental human rights such as lives and properties, we believe it is necessary to revise the Japan-U.S. SOFA to reflect the abovementioned items.

Furthermore, in regard to the fatal traffic accident caused by a U.S. Forces civilian employee in Okinawa City in January of this year, the Japanese courts dismissed the case based on the Japan-U.S. Consultative Committee Agreement that considers a person on the job as being 'on official duty.' The range and scope of a person's 'on official duty' status needs to be stringently applied in these cases, and thus, it is necessary for the GOJ to disclose the reasons as to how and why each of the cases are determined to have happened while 'on official duty.' It is also necessary for the GOJ to form a framework that notifies the victims, the bereaved families, and the local municipalities of the punishments handed down by the judiciary proceedings conducted by the U.S.-side, as well as the formalities and the proceedings of the trials and/or inquiries.

(10) Provisions Related to Article XVIII (Civil Claims)

Proposed Changes:

(10)-1. Clearly stipulate that if damages arise due to acts or negligence by those members of the U.S. Armed Forces, the civilian component, and their dependents, and the amount of compensation does not meet the reparations ruled in the final court decision, the governments of Japan and the U.S. shall bear the responsibility in covering the amount of difference, and the two governments shall discuss the cost burden.

(10)-2. Clearly stipulate that if and when an order is issued by the Japanese courts, the U.S. authorities shall seize salaries, etc., to be paid to those members of the U.S. Armed Forces and the civilian component in question and turn these assets over to the Japanese authorities.

In regards to compensation to the victim suffering injury and/or damage in an incident or accident caused by those under the SOFA during off-duty hours, there has been a certain degree of progress with stipulations in the SACO Final Report indicating the review of the SOFA procedures on damages for mental suffering and consolation money, request for advance payments, and no-interest loans system.

However, even with this review of the SOFA procedures, responsibilities of the governments of Japan and the U.S. to pay for damages are not recognized as legal obligations, instead, it states that “efforts will be made for payment.”

Similarly, the procedures for advance payment and no-interest loans system for the victims are also not established as legal obligations.

Therefore, in order for the victim suffering from injury or damages caused by the members of the U.S. Forces, civilian employees, or their dependents, to receive sufficient and prompt compensation, we believe that the indemnification right of the victim should be addressed clearly, by establishing a legal system which includes establishment and improvement of Japanese domestic laws, so that the governments of Japan and the U.S. will supplement the damage based on their legal responsibilities.

Meanwhile, there are cases in Okinawa where a woman with a child/children fathered by those under the SOFA, have a hard time making a living as a single-mother not receiving any child support from the father.

In addition, there are many cases where extreme difficulties arise in filing

lawsuits or processing for compulsory seizures to seek for solutions on status issues such as divorce and/or recognition of a child, as well as on property distribution issues including financial support for the child/children, when U.S. Forces-related persons who had been assigned to Okinawa, leave behind his wife and cut off communications after retiring or transferring outside of Japan.

Article XVIII, Paragraph 9 (b) of the SOFA stipulate that, "in case any private movable property, which is subject to compulsory execution under Japanese law, is within the facilities and areas in use by the U.S. armed forces, the U.S. authorities shall, upon the request of Japanese courts, possess and turn over such property to the Japanese authorities." Yet, there are no provisions concerning matters such as seizing receivables of those under the SOFA, which includes seizing salaries paid by the Government of the U.S.

In Germany, Article 34, Paragraph 3 of the Bonn Supplementary Agreement stipulates that, "a payment due to a member of a force or of a civilian component from his Government shall be subject to attachment, garnishment or other form of execution ordered by a German court or authority to the extent permitted by the law applicable in the territory of the sending State." Thus, it is necessary to specify, in our country as well, that compulsory seizures ordered by the Japanese court shall be made possible, including the seizure of salaries paid to those under the SOFA, and prohibition of payment.

The Council believes that a new bilateral agreement, similar to the so-called "Child Support" system, needs to be established in order to secure the subsistence rights of mother and child. In this system, authorities will claim for and collect child support on behalf of the mother and child who are no longer under the Japan-U.S. SOFA, from the father who has retired or transferred outside of Japan. At the same time, to accommodate this system, Japanese domestic laws and regulations need to be established or improved as well.

(11) Provisions Related to Article XXV (Joint Committee)

Proposed Changes:

- (11)-1. Clearly stipulate that the agreements made by the Japan-U.S. Joint Committee shall be promptly made available to the public.

In the SACO Final Report, issued in December 1996, the governments of Japan and the U.S. have improved the procedures of the SOFA to make efforts in publicizing the agreements of the Japan-U.S. Joint Committee, stating that the both governments “seek greater public exposure of Joint Committee agreements.”

However, the agreements made thereafter in the Joint Committee have not always been released sufficiently.

We believe that prompt release of the Joint Committee agreements will contribute to build and strengthen the relationship of trust between the U.S. Forces in Okinawa and the local residents as well as the local governing bodies. Therefore, we believe it is necessary to clearly stipulate that disclosure of agreement items will be promptly made, and at the same time, conduct reviews of undisclosed agreements of the Joint Committee, and make positive efforts in releasing such information to the public.