

National Discussion regarding the Japan-US Status of Forces Agreement

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There are several aspects of the Japan-US Status of Forces Agreement (hereinafter referred to as: SOFA) that ought to be revised. There is not enough space here to expand upon these problems in detail, therefore I defer lengthy discussion on the requests for revision made by Okinawa Prefecture, the Governors' Association for Public Relations and the National Governors' Association. However, the following is an overview of issues I have been requesting a review for in recent years.

1) There is no proper regulation in place regarding quarantine when entering or leaving the military base, despite US military personnel moving in and out (Although the Japan-US Joint Committee agreed to the American side carrying out quarantine measures as its own responsibility).

2) Initially, military training out of the assigned area was conducted, which the Japanese government had not allowed under the SOFA and related arrangements. However, the interpretation of this drill has been changed to allow for out-of-area training that does not include firing practice with live ammunition.

3) The agreements of the Japan-US Joint Committee are kept confidential, despite directly involving the lives and safety of residents around the military base. Further issues include the pros and cons of adding resident representatives to the committee, entrance into the military base where the American side has exclusive regulatory authority, and application of Japanese laws and regulations to the US forces in Japan.

Comparative perspective

From the time of World War II leading up to recent times after the collapse of the Cold War regime, the United States has built out a "military base empire" across the world.¹ Therefore, for those who seek some insight into the arrangements that are meant to regulate US military bases, as well as the military personnel and civilian employees alike, comparatively examining the agreements between one's own country and the US, also the arrangements made between other countries and the US can provide perspective.

In the case of Japan, it was the Supplementary Agreement signed at Bonn 1959 that served as an example throughout the negotiations to conclude the administrative agreement preceding the SOFA itself, and later for revisionary measures. This Supplementary Agreement is related to the NATO Status of Forces Agreement (1951)

and the status of NATO troops stationed in former West Germany. Afterwards, the National Diet Library Research and Legislative Examination Bureau, Status of Forces Agreement Research Group, Hiroshi Homma and others translated and introduced the Bonn Supplementary Agreement and practical agreements regarding the actual situation of US military base use.²

Furthermore, Kenji Isezaki and Yujin Fuse conducted a thorough comparison of the status of forces agreements of South Korea, the Philippines, Afghanistan, Iraq and the Japan-US Agreement, in addition to Germany and Italy. Through this comparison, they concluded that Japan's sovereign right to make its own decisions as a state has been "greatly undermined".³

When it was found out thanks to their work that the agreements regulating NATO forces (including US forces) stationed in Germany and Italy and the arrangements of the Japan-US SOFA were considerably different - especially with regards to entry into the military base located in the host country, regulatory authority over the base, and application of the host country's legislations -, reporters from Ryukyu Shimpo and Chugoku Shimbun conducted interviews in Germany and Italy. They revealed that there were indeed significant differences compared to Japan in terms of operation.⁴

Okinawa Prefecture: "Status of Forces Agreement Survey of Other Countries"

Whereas the contents and operations of the status of forces agreements in NATO countries became clear, the Japanese government's response to SOFA-related issues has been something akin to "operational improvement": revising the agreements of the Japan-US Joint Committee or drawing up new ones, without actually touching upon the SOFA itself. Okinawa Prefecture - which hosts many US military bases and as a result, its residents have suffered the most damage to their lives -, said that such a response alone was "insufficient" and called for a drastic review of the agreement. (Although in recent years, the US and Japanese governments have displayed a tendency to make supplementary agreements as a "third method", many have questioned their effectiveness). Okinawa Prefecture emphasized on spreading the understanding of and sparking debate about the necessity of revising the SOFA on a national level. The prefectural assembly pointed out the need to investigate the SOFA in July 2017, but earlier that year in June, the so-called Research Group on US Military Base Burden from the National Governors' Association had already mentioned that it was necessary to gain a wider perspective by comparing the Japan-US SOFA with the agreements of other countries.

The survey, which Okinawa Prefecture has been working on since 2017, can be seen as a response to recent political demands while relying on the classical method of comparative survey. The terms of agreement, domestic laws, and official directives and regulations based on domestic laws in other countries would have been difficult to investigate in great detail for the survey. However, incidents caused by the US military, similar to those happening in Japan, do occur in other countries, and the status of forces agreements, domestic laws and regulations, bilateral agreements etc. are reflected throughout the process of responding to those incidents. By comparing the responses (cases), clarifying the differences in SOFA operations in Japan and other countries became the focal point of the survey. A response (case)-centered survey was chosen instead of a complicated law-based investigation, in order to make it accessible for public debate.

Rights to military base entry and regulatory authority in the host country

One of the major achievements of the "Status of Forces Agreement Survey of Other Countries" conducted by Okinawa Prefecture in 2017 was that the right of both Germany and Italy to enter the US military base was reconfirmed. According to the work of Homma, the authorities of the German Federal Republic and local authorities not only enter the base after prior notice to "protect the interests of Germany", but also "without prior notice" in case of an emergency. In addition, Ryukyu Shimpo and Chugoku Shimbun reporters uncovered that the head and staff members of the military base where the entry permit was issued were "always allowed to enter" without prior notice in order to carry out their official duties. Okinawa Prefecture also obtained testimonies from officials in the city of Rammstein, where a US air force base is located. According to these accounts, although there is a limit to the people who can enter at once and to the time spent inside, as long as there is an appropriate reason, "the city has never been refused entry so far" and "it is possible to enter the base without prior application for permission."

Homma's work also confirmed that the US military base in Italy was, in principle, under the jurisdiction of an Italian commander.⁵ In this regard, Okinawa Prefecture obtained testimonies from former NATO Air Force Commander and former Prime Minister, saying: "whenever the Americans intend to launch into action, they must ask the commander of the Italian Army" and "the operations of the US military requires the permission of the Italian commander". Thus, due to the strong regulatory authority of the host country, the Italian commander, "as an advocate of Italian sovereignty", is free to enter all areas and facilities of the military base "to attend to his duties". The Ryukyu Shimpo coverage made it clear that except for "confidential areas" where prior notice and a list of visitors are required, the Italian commander can enter all facilities unrestricted, which is a "completely different" practice compared to the situation in Japan.

In the 2018 Status of Forces Agreement Survey of Other Countries, it was confirmed that in addition to Germany and Italy, the right to enter the US military base is acknowledged in other countries as well. "I naturally have the right to enter the base," said the mayor of the city of Chièvres (Belgium), where a US Air Force base is located. "If something happens there, I need to go in and check to make sure my citizens stay safe, and even during normal times, I have the right to know what is going on inside." The public relations officer from the host country also claimed the reason why "not only the mayor but also staff members of the municipal office can enter the base without problem" is "because the base is on the territory of Belgium".

Japan-US SOFA limited to "Respect" enlisted in Japanese laws

The Japan-US SOFA stipulates the obligation of US military personnel, civilian employees, and their families to respect Japanese laws. It also states that military operations must be conducted "with due consideration for public safety." However, it is a problem that is defined only to this extent.

The government's (Ministry of Foreign Affairs) position on this matter is the following: based on international law, the laws and regulations of the host country are "not applicable" to foreign troops, and therefore, regarding the US military, unless the application of laws and regulations on specific matters is agreed between Japan and the United States, "in principle, Japanese laws do not apply" inside or outside the base. This is seen as a "natural consequence" of the fact that armed forces, which are foreign national institutions, are not subject to the sovereignty of the host country.

What if domestic laws do not apply to the US military? For example, the Aviation Law, which prohibits rough maneuvers (Article 85) in Chapter 6, is not applied in its entirety to US military aircraft under the Special Aviation Law based on the SOFA - so, to be precise, it is a special law excluded from the domestically applied Aviation Law. Even in such a situation, the Japanese government stated that the rational response is SOFA operational improvements. The stance Okinawa Prefecture took, however, stresses that it is not enough to merely improve operations by entrusting judgment to the American side. Rather, it is necessary to apply domestic laws to the US military and establish Japan's sovereignty by radically re-examining the Japan-US SOFA.⁶ In addition, the Japan Federation of Bar Associations and opposition lawmakers have also found that most of the rights infringement incidents involving residents around the base are caused by "exemption from the application of Japanese law" and questioned the grounds for international law. Moreover, in recent years, even members of the US government and military have expressed the view that foreign troops should comply with the laws of the host country under international law. However, although the Japanese government deleted the wording "international law" (with no specific foundation to rely upon) from the "US-Japan SOFA Q&A" on the Ministry of Foreign Affairs website, it has not changed its stance on international law being grounds for not applying domestic laws to US troops.⁷

Applying domestic laws and regulations in the host country

Belgian and British experts who responded to the 2018 Status of Forces Agreement Survey have provided a number of important ideas regarding the application of domestic laws and regulations in the host country.

There are three ideas in particular that I have been focusing on,

The first is "territorial sovereignty". It is the idea that the host country has legislative jurisdiction and law enforcement rights over all people and goods within its territory; it is among the "fundamentals of international law". Therefore, generally speaking, unless there is a special agreement, the domestic law of the host country ought to apply to the troops stationed there. It is the exact opposite of the idea espoused by the Japanese Ministry of Foreign Affairs. (Incidentally, the principle described above is exactly the basis upon which the Japan Federation of Bar Associations requests the government to apply domestic law. Also, Japan joined the Vienna Convention on the Law of Treaties in 1981 to support this very principle.

Next is the idea that "citizen's rights" must be protected above all, as well as the value of land and the environment. For example, there was a growing concern about the noise among the citizens in Belgium when the country accepted to host NATO flight training operations in 1990. Therefore, in order to obtain agreement from the locals, the Belgian government raised the lower limit of flight altitude by amending domestic laws to regulate low-altitude flight. "It is not something that we have to consult about with another country," came the reasoning. The Belgian government's priority for "local agreement" over "other countries" is different from the attitude of the Japanese government, which is still reluctant to respond to the repeated demands of Okinawa Prefecture.

Finally, the idea that "the military is stationed in Belgium for a variety of reasons, so it is not possible in Belgium for the military to withdraw its presence due to restrictions imposed by –domestic law" is also suggestive. We often hear the argument that calling for a revision of the Japan-US SOFA could lead to a decrease in US involvement in Japan and the Asia-Pacific region alike. However, the US military is stationed in Japan for "various reasons". Japan as a logistics base is said to have received a "rating close to the highest score". In addition, Japan is "very generous"

in terms of shouldering stationing expenses⁸ In recent years, the Cabinet has also decided to approve of collective self-defense.

Given this situation, the Cabinet should not hesitate to apply domestic law - especially Okinawa Prefecture's highly demanded Aviation Law - to the US military to restore a quiet and safe sky to Okinawa. The problems Okinawa is facing, outlined in the survey from the previous year, are difficult to solve unless Japanese politicians step up and seal the pact.

Looking at the current global situation, it is clear that the United States needs Japan as a strategic partner, so we should make good use of it and maneuver smartly, to recall the words of former Prime Minister Lamberto Dini. In order to rouse politicians into action, I hope that a true national debate about the issue of the Japan-US Status of Forces Agreement will take place.

¹Dower, J. W. (2010). *Showa: Senso to Heiwa no Nihon (Japan in War and Peace)*, translated by Toru Akutagawa. Misuzu Shobo.

²Homma, H. (2004). 'Foreign Legislation No.221 (Some Considerations on the Supplementary Status Agreement for NATO Forces stationed in Germany)', National Diet Library, Research and Legislative Review Bureau; Homma, H. et al (2003). *A Comparative Study on the Application of Status Agreements between Countries*. Naigai Shuppan.

³Isezaki, K. and Fuse, Y. (2017). *Pacifist Country without Sovereignty: Japan's Status of Forces Agreement from an International Comparison Perspective*. Shueisha.

⁴Ryukyu Shimpo, 'The Realities of Garrisoning: Status of Forces Agreements Violate Sovereignty' (November 19, 2017); Chugoku Shimbum, 'Iwakuni Region and US Military Bases: From Germany and Italy (1 -10)' (May 20-29, 2018)

⁵Homma, H. et al (2003). *A Comparative Study on the Application of Status Agreements between Countries*. Naigai Shuppan.

⁶Answer by the Director of the Governor's Office to a Question by Councilor Osamu Toguchi at the 2nd Okinawa Prefectural Assembly in 2019.

⁷Asahi Shimbum, "Government Deletes 'International Law' from Explanation, Basis for Non-Application of Domestic Law to U.S. Forces" (January 13, 2019).

⁸Haruna, M. (2015). *Disguised Japan-U.S. Alliance: The Truth Revealed by U.S. Diplomatic Secret Documents*. Bunshun Shinsho.

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