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## ASIA'S CITIZENS AND AMERICA'S SOLDIERS: POLICY INTERSECTIONS ON THE GROUND

The impact of the U.S. military presence is often seen in the specific interests of host communities, or in the broader assessment of the debate over government accountability and protection of citizen rights. Several policy issues in particular illustrate the strains between local and national governments, as well as the contest over rights and obligations between citizens and state that are codified and renegotiated through legislation and law. For national governments, the policy of hosting U.S. military forces in Japan, South Korea, and the Philippines involves an array of national policies—from criminal prosecution to urban development planning to the complex task of conflict resolution and post-conflict reconstruction. These intersections with domestic governance institutions and practices can best be seen in three very different dimensions of the U.S. presence.

### **CRIMINAL JURISDICTION AND THE STATUS OF FORCES AGREEMENTS**

The first and most obvious arena is in the implementation of the Status of Forces Agreement (SOFA) that details terms of the U.S. military presence. Each country that hosts U.S. forces as part of bilateral defense treaty arrangements has such an agreement, and there is a basic model fashioned in the early years of the Cold War that provides a framework. Broadly speaking, the SOFA covers such topics as responsibilities for the maintenance and provision of facilities to house American troops, customs and immigration practices for military personnel, and judicial jurisdiction in the event of accidents or crimes. While this agreement sets forth an administrative sharing of responsibilities for the management of U.S. forces in the host country, the marriage between U.S. operational needs and domestic law is often an uncomfortable one. In many cases, government and military officials of both the U.S. and host governments must negotiate the details of how to handle these issues on a case-by-case basis. A joint military committee brings together local commanders, embassy representatives, and national host government officials from the defense and foreign affairs bureaucracies to iron out problems on a regular basis.

The most sensitive aspect of the SOFA has been the issue of criminal jurisdiction and host government responsibility for the arrest and custody of suspected criminals. As noted earlier, both the island-wide protest in Okinawa in 1995 and the national protests in Seoul in 2002 were triggered by public empathy for the victims of violence by U.S. military personnel, but it was also the process of determining judicial responsibility under the terms of the SOFA that motivated the mass demonstrations. In Okinawa, a schoolgirl was brutally raped by three military personnel, and in the latter, a U.S. military vehicle on a civilian road accidentally killed two young Korean girls. Despite the fact that one was a premeditated crime and the other an accident, the issue for citizens in Okinawa and South Korea was the same: the equal treatment and accountability of those responsible for accidents and crimes that resulted in civilian injury and loss of life.

In the former case, the U.S. and Japanese governments jointly sought to manage the investigation and indictment of the three men suspected in the rape. Since this was a crime committed while the suspects were off duty, the Japanese government could claim the right to prosecute in Japanese courts. Past practice in the U.S.-Japan alliance was to transfer custody of military personnel or their dependents at the point of indictment, when both governments deemed there was sufficient evidence against the suspect to warrant trial. But as public outrage grew in Okinawa in 1995, tensions also rose regarding the transfer of custody of these suspects, enhancing the impression that these suspects were unaccountable to the laws of Japan. The three suspects were ultimately transferred to Japanese custody for trial. In the months that followed, the U.S. and Japanese national governments agreed on a new principle for the transfer of custody prior to indictment in cases of “heinous crimes” when both governments agreed the evidence warranted indictment. This principle was then adopted in subsequent cases of alleged criminal behavior by U.S. forces.

In the case of the deaths of the two Korean girls, however, the SOFA outlines a different process. Any U.S. service member charged with a crime, including negligence, while on duty remains under the jurisdiction of the U.S. military. In fact, the treatment of on-duty crimes and accidents is specifically the domain of U.S. military law, and there are special procedures involved in the prosecution of that law. Despite the fact that the accident happened on a civilian road in South Korea, the terms of the SOFA precluded any accountability by the driver or his commander under Korean law. U.S. military court hearings are not open to the public, and the victims’ families were not given access to the proceedings. This separate process of military justice governing American military personnel creates additional pressures on an already sensitive political process. The U.S. government argues that its military personnel must be subject to military law, and thus must be judged by members of the U.S. military. The lack of transparency for South Korean or Japanese citizens is even greater as there is little public access to or understanding of the processes and procedures for handling an investigation and prosecution under U.S. military law even in the United States.<sup>38</sup> In 2002, when the hearings on the accident that resulted in the deaths of the two girls produced a not-guilty verdict on the charge of negligence for the U.S. soldiers in charge of the vehicle, there was widespread disbelief and shock among the Korean public that no one was held accountable for the deaths.

Criminal jurisdiction issues involve a complex web of interpretation of judicial practices and protections, and in the laws of many host countries there are significant differences compared with U.S. law. For example, in Japan, suspects are not allowed to have lawyers

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present during interrogation, and this has been a major sticking point in the discussions on how to facilitate speedier and more cooperative investigations into criminal allegations. In 2004, the two governments reached a compromise allowing a U.S. military representative to attend any interrogations of SOFA-related suspects while in Japanese police custody. But even this presents problems. According to Kanetoshi Yoseda, president of the Okinawa Bar Association, this creates a double standard in the practice of Japanese law. By giving this special treatment to U.S. military personnel and their families, it violates the Japanese constitutional provision that all must be “equal under the law.”<sup>39</sup>

### BASE CONSOLIDATION AND RELOCATION

A second set of issues engages local and national policymakers in the host countries, and reveals the multiple and often conflicting economic and social interests at stake over the presence of U.S. forces. Local communities in the Philippines, South Korea, and Japan have all faced the need to accommodate national government decisions regarding the relocation of U.S. forces. The impact on local communities continues long after the American troops have left. Subic Bay Metropolitan Authority was created to organize the former U.S. naval base in the Philippines into an industrial complex that could sustain the livelihoods of many residents of Olongapo City that depended so heavily on the U.S. military in the Philippines. Towns and cities throughout South Korea are just beginning to consider how to regroup as the U.S. Army closes significant facilities in the area near the DMZ. And, in Japan, the mayor of Ginowan City began a community-level planning process in anticipation of the return of Futenma Marine Corps Air Station to civilian use.

*The anticipated closure of Futenma Marine Air Station in Ginowan City has instigated complex negotiations within the community and between city and national governments on a development plan that will transform this 1,200-acre military facility in the city's center.*



Often the terms of base closure involve finding alternative sites. Okinawa continues to confront this approach for closing Futenma Marine Corps Air Station, a controversial base situated in the midst of a residential area. In 1996, the U.S.-Japan Special Action Committee on Okinawa (SACO) announced it would return 12,360 acres of land used by the U.S. military, roughly one-fifth of the total acreage on Okinawa. The centerpiece of the SACO initiative was the return of Futenma Marine Corps Air Station in Ginowan City. With a 2,800-meter runway at its core, Futenma occupies around 1,200 acres in the center of the city. But this plan was contingent on finding another site to house the U.S. Marine Corps on the island, and the Japanese government set out to convince Okinawans to accept a new base in Nago, a municipality in the less populated northern region.

Local opposition to building new bases or accepting large numbers of new forces can almost be guaranteed, but the lure of national government economic incentives can also be persuasive. In the Okinawa case, the Japanese government offered considerable incentives to Nago residents, including tax breaks, economic investment in infrastructure, and subsidies, to offset the impact of the new base. Yet no clear endorsement of the national government's initiative emerged. In 1997, a local referendum movement developed in response that narrowly rejected the new base proposal for Nago City. The referendum was not binding under Japanese law, leaving the ultimate decision in the hands of local politicians. In an election weeks later, the residents of Nago elected a new mayor, defeating the man who had sought to find a compromise solution in the base talks, and the new mayor deferred to Okinawa's Governor Ota. In early 1998, Ota decided in favor of the referendum outcome, and refused to approve Tokyo's base construction plan. A stalemate resulted in negotiations between Okinawa and Tokyo, and the promised economic assistance to the prefecture evaporated. Ota was then defeated in the gubernatorial election later that fall, and the new governor, Keiichi Inamine, argued for a more pragmatic stance on base relocation. Thus, local political change signaled another opportunity for the national government to persuade Okinawa's political leaders to accept their offer to construct a new facility for the U.S. Marine Corps. Even now, Tokyo is still trying to convince Okinawans to accept this relocation plan.

Relocation has also stirred considerable opposition in South Korea. The closure of Yongsan in Seoul means the relocation of USFK command to Camp Humphreys, an Army facility to the south. The government of South Korea has promised to purchase about 2,000 acres of land in and around Pyeongtaek City, and is offering local landowners considerable economic incentives to sell. But it, too, is encountering opposition locally, as farmers teamed up with other activists, including student groups, environmental NGOs and others to demonstrate their opposition to U.S. base expansion. The national government's draft legislation, the Special Law for Economic Development of Pyeongtaek, is designed to help the city government plan for the relocation effort. Again, as in the Japanese case, the national government is offering the Pyeongtaek government considerable subsidies for urban development, special legislative exemptions for community facilities, and tax exemptions. But unlike Japan, the South Korean government has the legal authority to initiate procedures for the expropriation of land. For the moment, however, there are few national policymakers in favor of this option. The political costs of forcing residents to leave their homes would be high.<sup>40</sup> Government incentives to local communities to accept U.S. force relocation projects are often directed at individual landowners, local governments, and businesses, and the potential for opposition protest and legal challenge is high where there is no community

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consensus. Economic incentives offered by national governments, however, privilege some residents over others, and thus very few communities speak with one voice on the issue of accepting new U.S. forces. Whether the national governments of Japan and South Korea will be able to realize their plans for U.S. force consolidations remains to be seen.

The larger and more complex challenge for local governments is the conversion of former U.S. military bases to civilian use. Economic loss for these communities can be high, especially in communities that have no readily available alternative sources of revenue. In Okinawa, the rents paid by the Japanese government for base land are considerable (see Table 1), and thus for individual landowners the return of base land can mean a significant drop in household income. More than 32,000 Okinawans have property claims on U.S. military base land. Since 1972, rents have been periodically renegotiated as urbanization has increased the market price for land. Today, the Japanese government pays over US\$290 million a year for Kadena Air Base, the largest and most strategically valuable U.S. military base on the island.<sup>41</sup> Moreover, since the U.S. and Japanese governments agreed to relocate Futenma Marine Corps Air Station in 1996, the Japanese government has continued to pay over US\$50 million a year for the land while trying to find an alternative site for the U.S. Marines.

**Table 1: Japanese Government Compensation to Landowners for the Largest U.S. Military Bases in Okinawa**

Facility	Unit: US\$ Million							
	1972	1975	1980	1985	1990	1995	2000	2003
Camp Schwab	0.5	1.7	2.9	3.4	7.7	19.0	20.9	20.2
Camp Hansen	2.1	6.0	10.9	13.0	27.0	63.3	62.5	58.3
Kadena Ammunition Storage Area	3.0	7.7	14.8	17.7	37.1	99.9	93.0	85.8
Kadena Air Base	10.5	23.3	41.3	46.2	92.4	225.6	220.6	206.2
Camp Zukeran	4.7	9.3	15.8	16.6	32.6	77.6	75.4	70.3
Futenma Air Station	3.1	6.5	10.4	12.1	24.4	57.8	57.1	53.3
All U.S. Bases in Okinawa	41.0	87.7	143.1	154.3	293.2	711.7	692.2	640.2

Source: Japanese Defense Facilities Administration Agency data, compiled by the Military Affairs Office of the Okinawa Prefecture government.<sup>42</sup>

In South Korea, U.S. base land has been claimed as national land, and in communities vacated by American forces the land will be sold to municipalities. While it is too early to judge whether this formula will be acceptable to local residents, there are already signs that municipal governments will seek to challenge the idea that they should pay the national government for this land.<sup>43</sup> Moreover, in some areas, individuals whose families once resided on the land expropriated for these bases are already beginning to develop the case for a return of their property.

The burden on each locality to attract an equally lucrative private investor is high. Host communities rely most heavily on government transfer payments associated with the military

*Like local leaders in Okinawa, Korea's local politicians are beginning to behave more like activists than civil servants*

presence, as well as the business revenue generated by the troops themselves. Tongducheon, South Korea, has long been home to the U.S. Army, and with a reduction of several thousand American troops reassigned to Iraq, local businesses have already felt the economic impact, with many closing up shop. As larger numbers of U.S. troops leave South Korea, Tongducheon will be even harder hit. Local concerns can only be addressed by changes in national law. Specifically, these revisions must relax industrial development restrictions and allocate funds necessary for new economic initiatives that will generate replacements for the jobs being lost with the U.S. military departure. Without regulatory and fiscal assistance from the South Korean government, Tongducheon will be hard pressed to find ways to make up the difference on its own.

Like many local political leaders in Okinawa, Korea's local politicians are beginning to understand that they need to behave more like activists than civil servants. Soo Ho Park has become a new face in local policy advocacy for Tongducheon.<sup>44</sup> A former city council member, Park now chairs the city's USFK Relocation Policy Response Committee. He has organized local residents, raised money, and worked on drafting legislation that will help Tongducheon gain more national government attention. With few allies in the National Assembly to take up Tongducheon's cause, local leaders like Park began to draw media attention to the impact of relocation planning on his city. Raising money and recruiting supporters, he walked the long road to Seoul where he shaved his head in front of the Blue House and called attention to the plight of his city.

There are other, longer-term obstacles to turning bases into towns and cities. In many Okinawan and South Korean communities, local and national governments must also address the need for environmental assessment and cleanup before the land can be deemed safe for civilian use. Toxic chemicals, fuel runoff from airfields, and other sorts of problems associated with more than a half-century of use by the U.S. military require careful evaluation for their potential impact on public health.

For many, the closure of U.S. bases opens up new prospects for urban development and economic growth. The closure of Futenma, for example, is widely seen as a positive development, and one that can only benefit the community. First and foremost, residents will be relieved of the noise pollution and the fear of accidents in this highly populated residential community. Helicopters fly day and night over schools, hospitals, and other community facilities in Ginowan. In August 2004, a U.S. Marine helicopter crashed off base, landing on the grounds of a local university. There were no civilian casualties, but this latest accident raised considerable fears about the safety of operating a military base in the midst of a city. Second, with the return of the base, Ginowan's 88,000 residents will be able to take full advantage of the land in the center of the city—25 percent of which is now part of Futenma Air Station. The final plan for Ginowan's new urban concept is to be announced in March 2006.<sup>45</sup>

#### **LOCAL PEACE AND STABILITY: POST-9/11 MILITARY COOPERATION IN MINDANAO**

Citizen contact with the U.S. military has lessened considerably in the Philippines since the United States was asked to close its bases there in the early 1990s. While the U.S. bases at Clark and Subic were operational, up to roughly 20,000 American military personnel were on the ground in the Philippines with about 8,000 of those deployed in naval vessels visiting Subic naval base. Today, U.S. troops visit the Philippines under the terms of the Visiting Forces Agreement (VFA), and are only in-country temporarily under restricted terms of

reference agreed to by the U.S. and Philippine governments. Moreover, they are “guests” of the Philippine military, and thus reside on bases and facilities managed by the AFP.

Originally intended as a mechanism for peacetime training and exercises, the VFA today is the key instrument guiding U.S.-Philippine military cooperation in counterterrorism in the southern Philippines. After the September 11 attacks, President George W. Bush and President Gloria Macapagal-Arroyo met to announce their agreement on common counterterrorism goals in 2002. Shortly thereafter, U.S. forces joined the AFP for a bilateral exercise on Basilan Island, a small island off the coast of Mindanao known to be a base of operations for the Abu Sayaff Group (ASG). Washington and Manila agreed to very specific terms of reference for the Basilan-based Balikatan exercise, allowing 660 U.S. personnel and 3,800 AFP forces to work together for up to six months in a “mutual counter-terrorism advising, assisting and training exercise relative to Philippine efforts against the ASG.” However, only 160 U.S. troops, organized in 12-man special forces teams, were to be deployed with AFP field commanders. U.S. participants were not to engage in combat nor were they to operate at any time independently within Philippine territory.

The Basilan Balikatan exercise was deemed an overwhelming success by the two governments and by local residents, prompting calls by many within Mindanao for similar exercises in other localities. The combined operation was successful in ridding the island of the ASG, but it also became a showcase for the new potential for American military forces to work alongside their AFP counterparts in civic development projects. During their six-month stay on the island, American forces helped construct a perimeter road around the island and develop water and electricity supplies, and carried out other projects that were possible with U.S. economic aid. The behavior of the forces was widely praised. And the job opportunities for local residents offered considerable income to a small island that had experienced little real stability or economic opportunity for decades.

Marites Danguilan Vitug, a leading Manila-based journalist and long-time analyst of the internal conflict in Mindanao, observed that the success of the Balikatan exercise in Basilan had a “demonstration effect” on other communities plagued by violence. Vitug pointed out that it was not long before other Mindanao localities ridden with conflict began to consider the possible benefits of U.S. assistance.<sup>46</sup> In fact, almost immediately there was speculation that a similar type of Balikatan exercise was being considered for Sulu Province, another infamous ASG stronghold.<sup>47</sup> Governor Parouk Hussin of the Autonomous Region in Muslim Mindanao reportedly asked the Philippine defense secretary to consider Sulu as the next site for a Balikatan.<sup>48</sup>

Sulu Province remains a challenge. Unlike on Basilan, an island where there are divisions between Christians and Muslims, the Tausug people of Sulu are famous for their unity against outsiders. Not only does Sulu have much more difficult terrain for a combined exercise, but there was also a sense that the United States would need to be directly involved in fighting there because of the hostile environment. In February 2003, the Pentagon announced that it was sending 1,700 troops to Sulu in combat operations to “disrupt and destroy” the ASG, catching national policymakers in Manila as well as local leaders in Mindanao by surprise. The effort to consider and plan for a possible Sulu Balikatan had to be postponed because of the political fallout within the Philippines, and while the possibility for a combined U.S.-AFP Balikatan remains, the two governments have had to take a very different approach to gaining local support.

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*Governor Benjamin Loong welcomes U.S. Ambassador to the Philippines Francis Riccardione to Jolo Island in Sulu Province in April 2005. The ambassador commemorated a number of USAID projects on the island and talked with community leaders about a possible U.S.-Philippine military exercise on this Muslim island, home to the Abu Sayaff Group.*



AP/World Wide Photos

Since then, U.S. economic assistance to Sulu has been increasingly visible. Philippine defense officials have suggested the idea of front-loading civic, humanitarian, and socio-economic assistance to Sulu before moving forward on military training and operations there. A variety of assistance programs there, including the electrification of villages, road building, water improvement projects, and educational assistance for local schools, have proceeded. Governor Benjamin Loong, elected in 2004, is also committed to the humanitarian and civic improvement approach in thinking of U.S. involvement in his province, but he is adamant that any American military role must be clearly defined and have the support of his community. In April 2005, U.S. Ambassador to the Philippines Francis Riccardione made his second trip to the province, visiting schools and other community centers that have benefited from this assistance. But the task of ending the violence remains, and the presence of several key U.S. Pacific Command officers as well as the AFP southern commander in the ambassador's entourage indicated a Sulu Balikatan might not be far behind.

Sulu is not the only area interested in hosting the U.S. military. In Cotabato Province in Central Mindanao, home to some of the fiercest fighting between the AFP and Moro Islamic Liberation Front (MILF),<sup>49</sup> Governor Emmanuel "Manny" Piñol, in consultation with his local Peace and Order Council and other local leaders, petitioned President Arroyo to hold a Balikatan exercise in his province. In many ways, Central Mindanao is more politically sensitive for the Philippine government than the more remote and hostile islands off the western coast of Mindanao. The MILF has long had camps there, and the AFP's effort to close these camps has been criticized as ineffectual by local leaders, including Piñol. Arroyo has committed her government to peace talks with the MILF, and a ceasefire has been in effect since 2003. Although there is some operational cooperation between the United States and the AFP in Central Mindanao, it is very small-scale, and more focused on implementing intelligence-sharing initiatives that will assist the AFP in monitoring activities by the MILF and other groups identified as being in the area.

Domestic criticism of the U.S. military presence in the Philippines is more muted now, in part because there is no large-scale permanent presence in the country and in part because

there are now mechanisms in place that ensure transparency and accountability regarding the terms for U.S. military visits. In negotiations between the United States and the Philippines, the terms of reference for each exercise provides, in theory, greater latitude to Manila for setting the terms of the U.S. presence. But just as important are the two independent commissions that oversee implementation of the VFA. The first is under the office of the president, and the second is housed within the legislature.

There remains great sensitivity to the role of U.S. forces on the ground. Many in the southern Philippines welcome the Arroyo government's emphasis on working with the United States to gain access to economic development resources and to end the violence. But the U.S. "war on terror," and in particular the targeting of Muslims, have many in Mindanao worried about the role of U.S. forces. While the government has been very careful to ensure that there is no operational role for U.S. forces independent of their AFP hosts, questions still remain about command and control issues and the actual oversight when U.S. Special Forces are on the ground. In February 2005, Riccardione told *MindaNews*, an Internet-based publication about Mindanao, that there are "about 70 soldiers temporarily [stationed] in Zamboanga," an AFP military facility at the southwestern tip of the island. Riccardione identified their mission as "Ops-Intel fusion," or operations and intelligence fusion with the AFP. This new aspect of U.S.-Philippine military cooperation is directly linked to the global war on terrorism, and connects sophisticated U.S. global and regional intelligence-gathering capabilities with local AFP intelligence-gathering activities.<sup>50</sup>

Yet in Mindanao, where violence and poverty afflict a large proportion of the Muslim population, there has been considerable support for this new form of cooperation between the U.S. military and the AFP. While political leaders welcome any effort that will alleviate poverty and stabilize their communities, the idea that the U.S. military, like its AFP counterparts, can or should be embraced as an agent of development remains suspect. In the areas that comprise the Autonomous Region in Muslim Mindanao, there are still divided views on accepting U.S. military help. The overlap of the U.S. "war on terror" in Southeast Asia has many Muslims nervous about the ultimate aims of the American military in their region. There are also concerns about the social impact of more U.S. troops on the



*Wahida Abtahi, executive director of the Federation of United Mindanawan Bangsamoro Women, shares her concerns with the Shifting Terrain research team about the potential impact on Muslim communities of a larger U.S. troop presence.*

ground. Wahida Abtahi, executive director of the Federation of United Mindanawan Bangsamoro Women, put it succinctly when she told the Shifting Terrain project team that more U.S. soldiers would be "morally damaging" to the Muslim communities:

American soldiers are not sensitive to the culture of Moros. They are fun driven, drink liquor, and consider women as recreation. Their presence will only increase prostitution and endanger the lives of women.<sup>51</sup>

Clearly, the U.S. military's reputation has been established by the troops' social impact in former base towns such as Olongapo and Angeles City. Despite widespread desire for an end to the violence, there is concern still within most communities in the southern Philippines at the prospect of having U.S. forces introduced on the ground. Questions remain about the Philippine government's ability to control the behavior of the American military.

Japanese, South Korean, and Philippine citizens are demanding increased scrutiny of the privileges afforded the U.S. military. Government handling of crimes and accidents by U.S. forces continues to be a sensitive issue, as are plans for U.S. force restructuring and base consolidation. The impact of these policies falls directly on the communities that host the U.S. military. And the task of implementing policy falls most often on local governments that must mediate with the variety of citizen interests engaged directly in the task of living alongside a foreign military presence. Citizen concerns range from enhancing the transparency and accountability of the SOFA to the economic and social impact of base closings. In some cases, such as in the southern Philippines, concerns focus on the U.S. role in conflict reduction and post-conflict reconstruction in local communities.

Domestic legal and administrative practices now also have a considerable bearing on the implementation of U.S. force relocation plans. National governments must conform to national land expropriation procedures, environmental law, and changes in local autonomy provisions that govern urban development. Localities need both the fiscal and regulatory assistance of the national government to transform themselves from U.S. military base communities or camp towns into viable, self-reliant civilian communities. For the national governments of Japan and South Korea, in particular, the policy of hosting foreign troops is not simply a security policy decision, but continues to be a complex set of policies that reflect the growing expectations of citizens for equity and compensation for those who bear a particular burden on behalf of the state.