

研究論文

United States Forces in Japan (USFJ) and Extraterritoriality

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I . Introduction

United States Forces have been stationed in Japan since the end of August 1945, first as Occupation Forces of the Allied Powers between 1945 and 1952, and later as United States Forces in Japan (USFJ) since 1952. In 1951, Japan signed the San Francisco Peace Treaty and the United States-Japan Security Treaty (hereafter referred to as the Security Treaty). Under the Security Treaty, the United States government is to provide Japan with security while Japan supplies land and the existing facilities to USFJ. Therefore, the Security Treaty is not supposed to be “a one-sided” treaty, but “a give and take” treaty.

Over the last sixty years, there have been many accidents and crimes committed by USFJ (In this paper, USFJ include their family members and civilians who work for USFJ). As many statistics show, USFJ hurt the local people, instead of protecting them under the Security Treaty. The number of the average incidents is more than 10 cases per day during 1952-2008. Moreover, the Japanese government pays huge amounts of money to USFJ for Host Nation Support (HNS) every year, even though Japan has no obligation to pay such money to the United States under the Status of Forces Agreement between the United States and Japan (SOFA). In other words, the Japanese people are so generous that they are paying to the people who hurt them. The real problem in this issue is that Japan cannot exercise sovereignty over USFJ. Many crimes

and accidents are not tried by either a Japanese court or a United States military court in Japan. Conversely, the Japanese law does not control USFJ. Therefore, one can argue that USFJ enjoy “extraterritoriality” under SOFA. As a result, crimes and accidents by USFJ are repeated.

According to the *Asahi Shimbun*, 59% of those Americans who participated in a survey in the United States in 2010 thought that the main reason for keeping USFJ was United States world-wide strategy while only 9% said the reason was to defend Japan¹⁾. In fact, in January 1970, United States Undersecretary of State Alexis Johnson stated that it is Japan’s Self Defense Forces (SDF) that has primary responsibility to defend Japan, not USFJ. USFJ do not have either ground or air forces to defend Japan against a conventional attack²⁾. A part of USFJ since 2001 has been transferred to other areas such as Afghanistan and Iraq. In other words, Japan has been used as a supply and training base for the wars in Afghanistan and Iraq³⁾.

Some Americans argue that United States Marine Corps in Okinawa are not needed in a conflict either near the Taiwan Strait or in the Korea Peninsula. Barney Frank, United States House of Representative of the Democratic Party, states that 15,000 Marine Corps troops from Okinawa would not fight against several million Chinese troops in the mainland China⁴⁾. A military official says that the tactics of the Marine Corps are to force their way through the enemy’s lines and occupy small islands. Therefore, Marine Corps troops would not play an

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important role in the event of a large-scale war against China⁵⁾. In a possible war with North Korea, it is well known among the experts that South Korea is strong enough to easily win a war, since North Korean fighters and tanks are obsolete with little oil and their soldiers lack training.

Then, why does Japan keep 13,000 to 18,000 Marine Corps troops in Okinawa? As about 60% of Americans mentioned above accurately point out, USFJ play an important role in conducting United States world-wide strategy. Marine Corps troops in Okinawa are not there to support the Japanese interests, but for the United States and its interests. Nevertheless, the Japanese government pays up to 75% of the cost to keep USFJ. No nation in the world pays more HNS than Japan does. The Japanese people are the most generous people in the world from the viewpoint of the United States.

With the above information in mind, the paper looks into crimes and accidents caused by USFJ. I try to answer the following questions: Why are crimes and accidents by USFJ repeated? Why does the Japanese judiciary not enforce laws against USFJ? Why does the Japanese government continue to pay HNS to USFJ that hurt the Japanese people? Is HNS a social cost to deal with the United States? In conclusion, this paper argues that Japan should reduce HNS as a first step, and eventually eliminate it. It also contends that Japan should ask the United States to revise SOFA and reduce USFJ. It is because USFJ do not protect the Japanese people. On the contrary, it harmed the local people.

II . Review of the Literature

Concerning USFJ and crime, many studies have been published over the last ten or so years. Nihon Bengoshi Rengokai (1998) compiled a book on SOFA, crime caused by USFJ, and Japan's sovereignty. The book contends that USFJ brought about many problems such as accidents, crime, and damage to the environment. As a result, Japan's security is in

danger because of USFJ. It points out that the real issue over SOFA is the fact that Japan does not have sovereignty over USFJ. That is the essence of the Security Treaty, the book argues. From the beginning, the Security Treaty was designed to secure United States national interests, which were to use USFJ for the defense of a free world during the Cold War. Although the study does not state a secret agreement, it shows the true nature of the Security Treaty, whose main purpose is not to defend Japan.

Gavan McCormack (2007) describes Japan as a client state depending on the United States. He talks about Okinawa and relocation of Futenma United States Marine Corps Air Base as a symbol of Japan's subordination. McCormack argues that Japanese economic and social reforms in the 2000s were designed to fulfill United States requests, and as a result, Japan became a client state or a vassal state. He concludes that the United States has maintained decisive control over Japan since 1945, and Japan's submission and the United States' exploitation have increased in recent years. Since the end of the war in 1945, Japan has been a United States vassal state. As a client state, it is necessary for Japan to give priority to United States national interests over Japan's. As a result, the Japanese government has not revised SOFA and the people in Okinawa continue to suffer.

Karel van Wolferen (April 2011, May 2011) describes the United States-Japan relations as abnormal and contends that there is no other similar relationship in history. He continues to point out that the Japanese bureaucrats exercise enormous influence and power and try to faithfully obey the desires of the United States as if it were an American colony. The United States acts like a probation officer toward Japan, checking whether Japan can continue to behave well. Wolferen states that the United States would wish to maintain the status quo in keeping the current level of USFJ even though the North Korean threat has virtually disappeared. Wolferen has been watching the Japanese politics and the

United States-Japan relations for the past forty years. In his many studies, he argues that there is no central authority which takes responsibilities in Japan and that as a result, the Japanese bureaucrats control Japan. These bureaucrats' primary concern is how to satisfy the United States government or how to fulfill the United States demands. Therefore, it is necessary for them not to antagonize the United States and to keep good relations with the United States. This bureaucrats' attitude toward the United States was clearly shown in the case of the relocation of the Futenma Marine Corps Air Base.

Toshihiro Yoshida (2010) argues that there was a secret agreement between the United States and Japan over SOFA. Under the agreement, Japan abandons the primary right to try suspects of USFJ except for very important Japanese interests. Using the Japanese Justice Ministry's Secret Practical Documents, which are difficult to obtain in Japan, Yoshida presented many statistics and cases in relation to crime and accidents brought about by USFJ personnel, showing how the Japanese people suffer from accidents and crime. Many of these accidents and crime have not been tried by either a Japanese court or a United States military court in Japan. He reveals how Japanese Ministry of Foreign Affairs and Ministry of Justice try to hide the secret agreement. The bureaucrats of the Ministries of Foreign Affairs and Justice seem not to care as much about the Japanese people's lives or properties, but to more care about USFJ personnel. They are the Japanese civil servants, but these elite bureaucrats are not working for the Japanese people, but for USFJ. The Liberal Democratic Party's (LDP) politicians and the bureaucrats of the Justice Ministry and the Foreign Affairs' Ministry had not protected the Japanese people from USFJ over the last sixty years. Since September 2009, the Democratic Party of Japan (DPJ) came to power, but the situation has not changed. The Japanese government continues to ignore the requests of the people in Okinawa to revise SOFA so that the Japanese

judiciary has more authorities to control accidents and crime by USFJ.

Yujin Fuse (2010) also asserts that the United States and the Japanese governments reached a secret agreement concerning SOFA and the cases of crime committed by USFJ. He states that USFJ violate human rights of the victims in Japan and SOFA prevents the Japanese judiciary from prosecuting suspects of USFJ. What is even worse from the victims' point of view is that the Japanese police and prosecution do not protect the Japanese victims due to the secret agreement, he argues. As a result, many suspects walk free. The study presents many examples that the Japanese victims suffer when accidents and crime take place in relation to USFJ. In this respect, Okinawa is still under the United States occupation, and the Japanese government has not taken any effective legal actions against USFJ personnel, who enjoy "extraterritoriality." Moreover, the Japanese government has no intention of revising SOFA.

Akahata Seijibu Anpo Gaiko Han (2010) discusses a secret agreement over nuclear weapons and SOFA and discloses unequal characteristics of the Security Treaty. Akahata Seijibu describes diplomatic negotiations between the United States and Japan over the Security Treaty and maintains that Japan has been subordinate to the United States since 1951 when the Security Treaty was signed. Seijibu concludes that Japan should abandon the Security Treaty since it does not fit international relations in East Asia in the 21st century. Relations between the United States and Japan have not changed over the last sixty years. The United States is master and Japan is servant. SOFA clearly shows this relationship. Yukio Hatoyama, then Prime Minister of Japan, tried in vain to change this relationship from 2009 to 2010 and to regain Japan's sovereignty when his government endeavored to find relocation of the Futenma Marine Corps Air Base. However, he was not able to achieve his goal due to opposition from not only the United States, but also from within Japan. The

bureaucrats of the Japanese Foreign Ministry and Defense Ministry who cooperated with USFJ successfully kept a status quo and prevented Hatoyama from regaining Japan's sovereignty. For these Japanese bureaucrats, keeping good relations with the United States was more important than regaining Japan's sovereignty. As the Japanese government in the 1950s gave in to the demands of the United States, the Hatoyama Administration could not hold Japanese national interests.

The studies mentioned above show that basic relations between the United States and Japan have not changed over the last sixty years. Japan has been subordinate to the United States as a vassal state or a protectorate state. USFJ still exist as occupation forces in Japan. The secret agreement is the major reason why accidents and crime committed by USFJ do not decrease, and SOFA provides USFJ with "extraterritoriality" in Japan. An amazing situation is that the Japanese police and prosecution do not help the Japanese victims in many cases. Instead, they let suspects of USFJ go free or turn the suspects to the USFJ even when Japan has the primary right to try cases because the Japanese judiciary deals with the cases according to the secret agreement.

Ⅲ . Crime and Accidents Caused by USFJ

Between 1952 and 2008, the total number of accidents and criminal cases caused by USFJ (excluding Okinawa before 1972) was 206,892. There were 1,084 Japanese deaths. Among them, 48,060 cases with 518 Japanese deaths were on duty and 158,832 with 566 deaths were off duty⁶⁾. On average, about 3,700 cases occurred per year. In other words, about ten cases take place every day. Nonetheless, the United States government contends that USFJ are to protect the lives and properties of the Japanese people, which is one of the main purposes of the Security Treaty. However, the statistics and the United States statements clearly contradict each other.

Even before 1952 when Japan regained its sovereignty, crime committed by United States soldiers was high. For example, for eight months between 28 April 1952 when Japan became an independent state and the end of 1952, there were 1,612 criminal cases reported⁷⁾. On average, about 200 crimes took place per month. One can easily assume that there were more American soldiers in Japan between August 1945 and April 1952 than after April 1952, which means there were more crimes committed by them during the United States occupation of Japan. The Japanese government has never disclosed the figures concerning crimes committed by American soldiers in Japan (i.e. both during and after the American occupation). As a result, it is extremely difficult to describe the complete spectrum of crimes committed by American soldiers in Japan.

According to the *Dayton Daily News*, the average number of the accused among all United States Marine Corps personnel between 1988 and 1994 was 0.16%. Camp Pendleton of California was 0.20%, Camp Lejeune of North Carolina was 0.17%, Norfolk of Virginia was 0.08%, San Diego of California was 0.12%. But, Okinawa was 0.42%. Sex crime cases committed by United States Navy and Marine Corps personnel between 1988 and 1995 were as follows: 10 in the United Kingdom, 12 in Iceland, 16 in Italy, and 24 in Spain. In comparison, there were 216 in Japan⁸⁾. The United States is notorious for having a high crime rate and ranks first in the world in terms of prison population. On the other hand, Japan is one of the safest countries in the world. Nevertheless, the crime rate mentioned above for Okinawa is much higher than any other bases in the United States or any foreign countries that host United States military bases. These statistics show that the situation in Okinawa is extraordinary, and SOFA does in fact give special privileges to USFJ, which are beyond the Japanese law.

According to SOFA, in the case of accidents or crimes which took place when a suspect was officially on duty, the

United States has the primary right to try a case. When a suspect was off duty and the Japanese judiciary holds the suspect, Japan has the primary right to try a case. However, even if a suspect were off duty, if he were in the United States custody, the United States would be allowed to keep him or her until the Japanese judiciary indicts the suspect⁹). SOFA also gives another advantage to USFJ. The Japanese government must inform USFJ of the Japanese judiciary's intentions as to whether to indict a suspect or not within a certain amount of time. The time is within ten days for minor crimes of less than a six-month sentence, and twenty days for over a six-month sentence¹⁰). According to the Justice Ministry's Secret Practical Documents, the reason why a short period of time on indictment was decided was to facilitate the transfer of United States military personnel. In other words, the desire of the military takes precedence over the exercise of the Japanese sovereignty¹¹).

This SOFA gives the United States an advantage over the Japanese judiciary. For example, if Japanese law enforcement officers cannot hold a suspect, how can they investigate a crime? If they are not allowed to ask the suspect questions, the Japanese police cannot even collect facts of the case. Without collecting information, the prosecution cannot indict the suspect. As a result, the majority of cases are handed over to United States authorities. In this respect, the system is in favor of USFJ personnel. Under the current system, the Japanese judiciary does not have enough time to indict a suspect either. Only ten or twenty days are not sufficient to determine whether a suspect should be charged or not.

In fact, Yoshio Shiga, House of Representative of the Japan Communist Party, clearly indicated in August 1962 that the Japanese judiciary had difficulty investigating a case due to lack of time¹²). Particularly, when a suspect runs into a United States base, the Japanese police cannot interrogate him or her without the permission of the commander of the base. In a meantime, time is running out, since the police cannot freely

interrogate the suspect. As a result, the greater part of the cases will be automatically handed over to USFJ. In this respect, SOFA itself inherently involves a system that benefits USFJ.

Yoshida argues that USFJ personnel are aware of the fact that when a suspect runs into a United States base, the Japanese police cannot detain him. He also points out that a low rate of indictment among suspects of USFJ personnel leads to their disrespect of Japanese law. This consciousness and the fact of a low rate of indictment are a hotbed of crime, which escalates into more serious crime such as murder and robbery, he continues. SOFA, which gives USFJ priority over Japanese sovereignty, stands as a wall against investigation of crime committed by USFJ¹³). People in Okinawa have been asking the Japanese government to revise SOFA so that the Japanese judiciary can break this wall and investigate crime. However, the concern of the Japanese government is not how to protect the Japanese people, but how not to antagonize the United States. Therefore, the Japanese government has never asked the United States government to negotiate revision of SOFA.

In 1953, a secret agreement was signed between the United States and Japan. According to this agreement, Japan gives up the right to try a case even when Japan has the primary right to try the case. Japan relinquishes its right *except for cases which are very important to Japanese interests*. Even though USFJ do not request Japan to abandon the primary right, Japan voluntarily gives it up¹⁴). This is the real problem. In other words, the system that the Japanese judiciary would not indict suspects of USFJ personnel is one of the main reasons why so many crimes and accidents took place. For the Japanese government, a rape or a murder is neither a national crisis nor a matter of national interests although it is a serious issue for a victim. One can clearly see the attitude of the Japanese government which does not help or protect its own citizens. The Japanese bureaucrats and politicians give USFJ

personnel priority over the Japanese people. Relations with the United States are of the utmost importance to the Japanese government. In other words, Japan gave USFJ “extraterritoriality” since USFJ are in fact beyond the Japanese law.

Many statistics show that Japanese law does not control USFJ. For example, between 1973 and 2009, the total number of criminal cases against the Japanese people caused by USFJ was 7,334. Among them, there were 39 murders, 454 robberies, 36 arson, and 184 sexual assault¹⁵⁾. The average number was 203 cases per year. That is, criminal cases brought about by USFJ take place almost every other day in Japan. USFJ disturb the peaceful life of the local people rather than protect them. USFJ personnel violate the Security Treaty or neglect their duties, which are supposed to defend Japan and protect the Japanese people.

If we take a look at all “off duty” and “on duty,” cases, it is obvious that USFJ are beyond the Japanese law. Between 1952 and 1977, the total number of all cases that were on duty was 36,075 and 486 Japanese lost their lives. However, none was tried at the USFJ military courts. In addition, between 1978 and 1995, none involved in the cases was tried in the USFJ military courts. Between 1996 and 2004, only one person was tried. Between 2006 and 2008, 1,058 USFJ personnel, who committed crimes (including traffic accidents), were not indicted. Only ten people were indicted. These 1,058 people were comprised of all the people, whom Japan had the primary right to try the case, but did not exercise its right. In the same three-year period, there were 434 USFJ personnel, who committed crimes (including traffic accidents) and whom USFJ had the primary right to try a case. However, none of these 434 people were tried at the USFJ military courts¹⁶⁾. These figures do not include cases in Okinawa before 1972. Okinawa was under the United States military occupation from 1945 to 1972. If we include cases in Okinawa before 1972, the number will certainly increase. For

twenty-seven years, 486 Japanese were killed by USFJ. However, none of USFJ personnel took responsibility of 36,000 cases of accidents and crime including the 486 deaths in Japan. From the point of view of many victims, where is justice? Americans often say that the United States is based on justice and law, but I must assume that their justice and law do not apply to the Japanese victims.

Between 2001 and 2008, the total number of all cases that were off duty including traffic accidents was 3,827 and 645 people were indicted and 3,182 people were not indicted. In other words, only 16.9% of all cases were tried by a court and 83.1% were not tried. If we exclude traffic accidents, the total number was 1,260 cases with indictment of only 218 people or an indictment rate of only 17.3%. More than 82% of those who committed crimes walked away without punishment or 1,042 people were not tried¹⁷⁾. This is an extraordinary situation. These statistics clearly show that USFJ are lenient with the suspects, whose fact in turn leads to the repeat of many crimes and accidents.

In general, military organizations have a strong sense of comradeship. Military personnel have a tendency to stick up for each other. Moreover, many Americans think that their law is the best in the world, and therefore, they do not want other countries to try their citizens. Americans also consider themselves and their society as exceptional. As a result, many Americans do not accept law in other countries¹⁸⁾. Therefore, the United States government has not signed or ratified the Rome Statute of International Criminal Court yet.

According to the secret agreement, which was found in the United States National Archives in 1987, there are many unofficial arrangements or secret agreements that protect the rights of USFJ personnel¹⁹⁾. These arrangements or agreements, however, do not protect the Japanese victims. In the past, the following example took place many times. An American soldier hit a Japanese citizen with his car, and the Japanese police arrested him on the spot. However, the

Japanese police had to hand over him to USFJ since the suspect said he was on duty. The Japanese judiciary cannot even try the suspect. Fuse argues that today a principle is internationally established that a domestic law in a country must apply to a crime committed within the country regardless of nationalities. Therefore, Japan does not have to give USFJ personnel a favor when a crime takes place during off duty. However, in reality, the Japanese government continues to follow the old custom of the 1950s²⁰. This is an excellent example of Japan's subordination to the United States. USFJ are in fact beyond the Japanese law and Japan is an American vassal. Japan suffered from the unequal treaties imposed by the Western Powers including the United States from the end of the 19th century to the early 20th century. Japan is now an independent country and a constitutional state. It is natural for the people including foreigners living in Japan to abide by Japanese law except for foreign legation personnel. USFJ are not a foreign legation.

Fuse also points out that the Japanese Justice Ministry does not want to disclose or does not keep statistics concerning crime and accidents caused by USFJ, except for the year of 2007. Fuse tried to get information, but the Justice Ministry official stated that they could not find any information about this issue²¹. In other words, the Justice Ministry keeps the record concerning crime and accidents caused by USFJ for just one year! This is an unbelievable situation. The Justice Ministry is responsible for all the crimes and accidents that took place in Japan. The ministry, however, did not keep the record concerning USFJ. This attitude indicates that the Justice Ministry does not concern about crime and accidents caused by USFJ. Therefore, the ministry has no statistics. It is certain that the Justice Ministry keeps the record on crime and accidents caused by foreigners in Japan. But, there is no record committed by USFJ. The attitude of the Justice Ministry bureaucrat mentioned above also clearly indicates that the Japanese government does not want to inform the

Japanese people of information on crime and accidents caused by USFJ. The bureaucrats of the Ministries of Foreign Affairs and Justice think that if they disclose that the secret agreement was reached, the relations between the United States and Japan would be marred. However, the United States government has already disclosed such agreement.

The secret agreement states that USFJ do not have to provide Japanese civilian courts with information that would harm United States interests or with a witness if there is a possibility that information against United States interests would be disclosed²². Conversely, if USFJ decide that certain information would damage United States interests, USFJ have no obligation to provide documents, proof, or any information even though such information might lead to the solution of a crime. This is another example in which USFJ personnel are heavily protected from a lawsuit against them. In other words, a Japanese victim cannot win a lawsuit or cannot reveal causes of crime or accidents. The system does not allow a plaintiff to win a case. Neither the system allows the Japanese victims to sue the United States government or USFJ.

IV . Crime and Accidents that Took Place "On Duty"

According to the agreement, it is the Japanese court that decides whether a suspect is on duty or not. However, the agreement says that unless there is a piece of evidence to the contrary, a document, which states that a said person is on duty, issued by a United States base commander, constitutes enough evidence. Therefore, in reality, whatever USFJ say "on duty," it becomes "on duty." It is because since 2001 when the Freedom of Information Law became effective in Japan, no case was disputed over this issue between the United States and Japan at a Japanese court²³. Under the agreement, a United States base commander issues the above mentioned document, stating that a said person is on duty, *after the suspected member of the USFJ is indicted*. In fact, however,

such document is issued even *before indictment*, and the Japanese judiciary accepts the document²⁴⁾

When a member of the USFJ has a traffic accident and says “he is on duty,” the Japanese police would have difficulty confirming whether he is actually on duty or not. As a result, even though he was off duty, the Japanese police have to hand him over to USFJ. Once the Japanese police turn him over to USFJ, even after the police found out that he was actually off duty it would be very difficult for the police to investigate the accident since USFJ have the right to detain a suspect until indictment. As a result, the Japanese judiciary cannot exercise its right to try the case, and the case would often lead to non-indictment²⁵⁾. In this way, it is extremely difficult for the Japanese judiciary to challenge the proof of “on duty.” In many cases, the Japanese police hand over a suspect to USFJ, which in turn gives a lenient sentence or does not even try the case.

The agreement also states that even though a suspect caused a traffic accident while intoxicated, he is considered to be on duty if he had a drink at an official event. Or, even when he attended a private event, he is on duty unless he lost his ability to drive a car²⁶⁾. In this way, SOFA is very tolerant of drunken driving for American soldiers, civilian officials who work for USFJ, and their family members in Japan. Conversely, USFJ want to stretch the meaning of “on duty” so that USFJ, not the Japanese judiciary, can deal with traffic accidents. In the United States, unless blood alcohol concentration reaches 0.08%, (0.08g of alcohol in 100ml of blood) it is generally legal to drive. In fact, many people drive a car after they had one or two glasses of wine or a couple of small beer cans depending on their weight. Therefore, for many USFJ personnel, it is natural to drive after a few drinks. As a result, they cause many traffic accidents. In Japan, on the other hand, it is absolutely forbidden to drive a car after drinking alcohol. If a Japanese person were to drink and drive, the person would not only lose his/her driver’s license but also in many cases his

/her job even though the person did not cause a traffic accident. Moreover, in the United States, people drive on the right hand side whereas in Japan on the left hand side. This difference easily causes an accident when he/she drives a unfamiliar road and turns into a one-way road at night or under the influence of alcohol. Many Marine Corps troops move around a different base for every twelve to eighteen months. By the time USFJ personnel get used to driving a car in Japan, it is time for them to transfer to another base. A short tour of duty, a different social custom on drinking, and a different driving law all contribute to many traffic accidents caused by USFJ.

In August 2004, a helicopter from the Futenma Marine Corps Air Base crashed on the campus of the International University of Okinawa. According to SOFA, USFJ have a right to investigate the accident and the Japanese judiciary can investigate the accident scene only if USFJ agree. The Japanese judiciary, however, could not get consent from USFJ. Moreover, the military police of USFJ did not allow the Japanese police or the Japanese government officials to enter the accident scene although the campus is a part of Japanese territory, not a part of the United States military base²⁷⁾. However, according to the agreement, when the accident takes place outside a United States military base, it is the Japanese authority that can decide who enters the scene of an accident, except for the USFJ personnel. Therefore, USFJ violated the agreement by not allowing the Japanese authority to enter the accident scene. However, the Japanese government did not protest against USFJ. After the helicopter accident, it was agreed in April 2005 that future decisions regarding who can enter the scene of an accident would be decided mutually. Now, the Japanese government must consult with USFJ over who enters an accident scene except for the USFJ personnel²⁸⁾. This case is one more example of Japan being a United States protectorate. This incident shows that SOFA clearly violates Japanese sovereignty. The Japanese judiciary should be given

the right to cooperate with USFJ in such cases as mentioned above since the accident happened outside of the United States military base.

As for the potential detention of USFJ suspects, the agreement states that the Japanese police have to hand over the suspect to USFJ *when the police are not sure* whether the suspect is on duty or not. As a result, Fuse assumes that quite a number of cases would be handed over to USFJ. According to the Security Treaty Criminal Special Law (hereafter referred to as the Criminal Special Law), however, the Japanese police would hand over a suspect to USFJ *when the police clearly determine* that the suspect is on duty. Fuse points out that the Justice Ministry instructs the police and the prosecution to abide by the 1965 handbook, which says that they should follow the agreement. As a result, the Justice Ministry itself ignores the Criminal Special Law that the Japanese Diet legislated. In other words, the Justice Ministry gives USFJ priority over the Criminal Special Law, which means that the logic of the military takes precedence over the exercise of the Japanese sovereignty²⁹. Yoshida contends that the fact that the Justice Ministry itself ignores the Criminal Special Law is unbecoming to a constitutional state. He states that the agreement is not open to the public; therefore, it is secret. The Criminal Special Law is, however, passed by the Diet, which is the highest decision-making organ in Japan, and becomes a law³⁰.

It is clear that there is contradiction between the agreement and the Criminal Special Law in this respect. Even though the Criminal Special Law stipulates that the Japanese police do not have to turn the suspect over to USFJ *when the police are not sure* whether the suspect is on duty or not, the Justice Ministry, whose utmost responsibility is to obey and enforce the Japanese law, itself simply disregards the law. It shows how important for the bureaucrats of the Justice Ministry to protect USFJ personnel, more important than to obey the Japanese law. This is another case in point that Japan is

United States vassal, and the Japanese bureaucrats control Japan.

In fact, the Japanese bureaucrats are beyond the law. For the Japanese bureaucrats in the Ministry of Foreign Affairs and the Ministry of Justice, keeping good relations with the United States is their primary task. They do not pay much attention to the important point; whether Japan exercises sovereignty or not. Their fundamental concern is that Japan does not disturb the United States. Instead of protecting the Japanese people according to the Criminal Special Law, the Japanese bureaucrats protect USFJ personnel. These bureaucrats do not want the Japanese people to know the existence of the Japanese Justice Ministry's Secret Practical Documents. Therefore, they instructed Japan's Diet Library not to open the documents to the public in June 2008³¹. Now that Japan has a new party in power. It would be, however, very difficult for the politicians of DPJ to fight against the Japanese bureaucrats, who have monopolized information and have kept it secret for many decades, and to allow information to be made open to the public.

SOFA states that when USFJ personnel hurt a person in Japan while being on duty, it is the Japanese government that compensates for the damage. SOFA does not allow a victim to sue USFJ in a Japanese court³². This is also another aspect of Japan being a United States vassal. Moreover, under SOFA, USFJ have no obligation to clean up or return a military base to its original state when it is returned to Japan. It is the responsibility of the Japanese government to clear up the base. The Japanese people as taxpayers have to pay a huge amount of money for the Japanese victims and the damage caused by USFJ.

V . Conclusion

This paper discussed crime and accidents caused by USFJ and showed that USFJ personnel hurt the local people. More

than 80% of USFJ personnel who caused accidents or committed crimes are not tried in Japan. Nevertheless, the Japanese government pays USFJ a huge amount of HNS every year since 1978. Why are crimes and accidents by USFJ repeated? It is because SOFA and a secret agreement protect the suspects of USFJ. It is because USFJ personnel are beyond the Japanese law. The current situation allows USFJ personnel to ignore or not to respect the Japanese law. USFJ personnel know that when they commit a crime or are involving an accident in Japan, they would not be tried by the Japanese law.

Why does the Japanese judiciary not enforce the law against USFJ? It is because SOFA and the secret agreement prevent the Japanese judiciary from implementing the Japanese law. SOFA itself guarantees USFJ personnel a comfortable life. Therefore, the Japanese bureaucrats are not keen to revise SOFA, which would disturb the lives of USFJ personnel and antagonize the United States government. In the past, the Japanese government has tried to cope with the situation by improving the use of SOFA rather than revise SOFA itself. However, such a technique does not lead to a fundamental solution of the problems, which is to protect the Japanese victims and to regain Japan's sovereignty.

Why does the Japanese Government continue to pay HNS to USFJ that hurt the Japanese people? It is because the Japanese bureaucrats and politicians give relations with the United States priority over the Japanese people's lives. Keeping good relations with the United States is the most important job for them, not protecting the Japanese people. The major reason why USFJ do not decrease is because the Japanese government pays HNS. It is much cheaper for the United States to keep forces and bases in Japan than in the mainland United States. HNS prevents USFJ from reducing its troops and bases.

Since Japan does not face any imminent threat, the Japanese government should reduce HNS, which would make it

difficult for the United States government to maintain a large number of troops and bases in Japan due to high appreciation of the Japanese yen. Eventually, HNS must be abolished. The Japanese government must also negotiate with the United States government to revise SOFA and to abolish the secret agreement because it is SOFA that protects suspects of USFJ personnel. The Japanese government must protect its own people, not the personnel of USFJ and regain Japan's sovereignty.

Notes

- 1) *Asahi Shimbun*, 24 December 2010.
- 2) Akahata Seijibu Anpo Gaiko Han (2010), *Jyuzoku no Domei* (An alliance that is dependent on the United States), Shin Nihon Shuppansha, pp. 56-57.
- 3) *Ibid.*, p. 26.
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