

President's Statement Calling for the Amend of the U.S.-Japan Status of Forces Agreement

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Hyogo Bar Association

President Susumu Tsukui

1. Purpose of the Statement

We, Hyogo Bar Association strongly urges governments of Japan and the United States to stipulate the following items in the U.S.-Japan Status of Forces Agreement (SOFA) in order to prevent and control the spread of infectious diseases:

- That all individuals connected to U.S. Forces Japan comply with the quarantine law and other domestic laws of Japan
- That the Government of Japan has the authority to investigate the facilities of U.S. Forces Japan

2. Reasons for the Statement

- 1) The spread of the Novel Coronavirus Disease (COVID-19) in Japan was gradually subsiding, and around the end of 2021 the number of daily infections did not go beyond several hundred on the country level.

However, there was an outbreak of the coronavirus cluster at Camp Hansen in Okinawa on December 17, 2021. Since January 2022, coronavirus infection has spread rapidly, especially in areas adjacent to U.S. military bases and facilities in Okinawa, Yamaguchi and Hiroshima prefectures. Furthermore, the number of infected persons increased with unprecedented speed across Japan, including Hyogo Prefecture.

- 2) Due to the spread of the COVID-19 around the world, the Government of Japan has suspended entry of foreign nationals into the country for about 2 years since March 2020. These overly strict “waterfront” border control measures evoked criticism from the international community as exclusionist, and were called “National isolationism of Reiwa period”.

However, even in such situation, the personnel of U.S. Forces Japan took COVID-19 tests only prior to the departure from their country, and no tests were carried out upon their arrival to Japan. In addition, on September 3, 2021, U.S. Forces Japan stopped testing their personnel for novel coronavirus infections even prior to their departure from the United States. In other words, individuals connected to U.S. Forces Japan were entering Japan since September 3, 2021 without taking any tests, either prior to the departure or upon the arrival.

The Government of Japan finally made this information public on December 24, 2021, four months after U.S. Forces Japan stopped testing their personnel for novel coronavirus infections. Consequently, from December 26, U.S. Forces Japan resumed testing their personnel 72 hours prior to the departure from the United States. From December 30 they started PCR testing within 24 hours upon the arrival to Japan. Nevertheless, this means that starting from September 3, during the period of about 4 months, there was a big leakage in Japan’s “waterfront” border control measures caused by U.S. military in Japan. We can say that the spread of the coronavirus infections from U.S. basis and other military facilities was an occurrence that was bound to happen.

The heads of local governments in Okinawa Prefecture and other areas in which U.S. military facilities are located have repeatedly demanded from U.S. Forces Japan and from governments of Japan and the United States cooperation and infectious disease control measures. However, in the statement of the Government of Japan of January 9, 2022, the personnel of U.S. Forces Japan were only ordered a two-week restriction on activities starting from January 10, and compulsory use of facial masks when outside of their homes.

Subsequently, the infection rapidly spread, but the U.S. military personnel in Japan did not fully comply with the obligation to wear masks. Despite requests by the governor of Okinawa and others to extend the period of restrictions on activities of the U.S. military personnel, these restrictions were lifted on January 31, 2022.

- 3) According to Japan's Quarantine Act, anyone who intends to enter Japan must be tested for novel coronavirus infection prior to the departure from their country of origin, present the COVID-19 test certificate, and take another test upon arrival to Japan. In addition, those who intend to enter Japan from countries where coronavirus infection is spreading are required to quarantine at specified facilities for a certain period of time.

Despite this, for about four months the U.S. military personnel was entering Japan without taking any tests at all, which was made possible by the following agreements, understandings and special provisions between Japan and the United States. In other words, on the one hand, the compliance of U.S. Forces Japan with Japan's Quarantine Act is not specified (Article 9 of the SOFA), and on the other hand, in cases where U.S. military personnel directly enters U.S. military bases in Japan, it is sufficient for them to apply quarantine procedures of the U.S. military (U.S.-Japan Joint Committee, December 2, 1996). The application of quarantine procedures of the Japanese government is limited to cases when U.S. Forces Japan notify the Japanese government that they will apply quarantine measures (Article 5 of the Special Provisions of the Quarantine Act Concerning Foreign Military Vessels etc.). In addition, the reason why the Japanese government was unable to immediately apply effective infection prevention measures to the U.S. Forces Japan personnel after the spread of infection is because the U.S. military in Japan has exclusive control over its facilities (Article 3, Paragraph 1 of the SOFA). Therefore, the Japanese government could not collect information inside the U.S. military bases, and had to comply with the policies of the of U.S. Forces Japan, as the U.S. military has management authority over those bases.

- 4) Regarding other countries that host U.S. military bases, Australia has stipulated in its SOFA that the U.S. military must comply with Australian quarantine laws. The NATO SOFA stipulates that military forces of NATO member states must comply with country entry and departure procedures of receiving states. The German SOFA clearly stipulates application of domestic quarantine laws, whereas Italy has a provision that Italian commanders shall intervene in cases when there is a danger to public health and alike. The Philippines specifies the obligation of U.S. military to comply with the country's environmental laws and regulations, and stipulate the obligation of the U.S. military to comply with requests for quarantine from the Philippine authorities. Regarding management of military bases, Germany clearly specifies that federal, state and local governments have the right to enter U.S. military facilities, and Italy stipulates that the Italian military commanders have management authority over the U.S. military facilities.

In accordance with the above, with regard to quarantine for individuals connected to the U.S. military and the management of U.S. military facilities, many countries that host U.S. military bases have a certain degree of equal authority, whereas Japan has a significantly unequal relationship with the U.S. military compared to these countries.

- 5) On February 21, 2013, the Association issued the “Chairman’s Statement Calling for a Halt to the Deployment of Osprey”. In the statement, the Association pointed out the danger of U.S. Forces Japan not being in obligation to comply with Japan’s Civil Aeronautics Law under the SOFA and the Civil Aeronautics Law Special Provisions Act, and called on the Japanese and U.S. governments to revise and review the SOFA and the Civil Aeronautics Law Special Provisions Act.

Similarly, due to the agreements and special laws based on the U.S.-Japan SOFA, the Government of Japan was unable to apply Japan’s quarantine laws and regulations to persons connected to U.S. Forces Japan, was unable to collect information on designated infectious disease at U.S. military facilities in Japan, nor was it able to take effective infectious disease control measures. Consequently, the infection spread, causing serious adverse effects on the lives and health of many people living in Japan.

In December 2021, a large-scale joint exercise was held at Camp Itami in Itami City, Hyogo Prefecture. About 1,500 U.S. troops and the Ground Self-Defense Forces personnel participated in this exercise. The people of Hyogo Prefecture are also very concerned about measures for the prevention and control of infectious diseases among the U.S. military personnel in Japan, and they are calling for prompt action to prevent recurrence of such incidents from the standpoint of the right to peaceful existence guaranteed by the Constitution of Japan as well.

Therefore, our Association urges the governments of Japan and the United States to stipulate in the U.S.-Japan Status of Forces Agreement the compliance of the U.S. military personnel stationed in Japan with quarantine law and other domestic laws, with the objective to prevent and control the spread of infectious diseases, as well as to stipulate the authority of the Japanese government to investigate facilities of U.S. Forces Japan.