

Provisions of U.S.-Japan SOFA ("Status of Forces Agreement") (excerpt)	Points of the Opinion
<p>ARTICLE II</p> <p>1. (a) The U.S is granted, under Article VI of the Treaty of Mutual Cooperation and Security, the use of facilities and areas in Japan. Agreements as to specific facilities and areas shall be concluded by the two Governments through the Joint Committee[...]</p> <p>(b) The facilities and areas of which the U.S. has the use at the time of expiration of Administrative Agreement 1 under Article III of the Security Treaty between the U.S. and Japan shall be considered as facilities and areas agreed upon between the two Governments in accordance with subparagraph (a) above.</p> <p>2. At the request of either Government, the Governments of Japan and the U.S. shall review such arrangements [...]</p> <p>3. The facilities and areas used by the USAF shall be returned to Japan whenever they are no longer needed for the purposes of this Agreement, and the U.S. agrees to keep the needs for facilities and areas under continual observation with a view toward such return.</p> <p>4. (a) When facilities and areas are temporarily not in use by the USAF, the Government of Japan may make, or permit Japanese nationals to make, interim use of such facilities and areas [pursuant to the agreements made at] the Joint Committee [...]</p> <p>(b) With respect to facilities and areas which are to be used by USAF for limited periods of time, the Joint Committee shall specify in the agreements covering such facilities and areas the extent to which the provisions of this Agreement shall apply.</p>	<p>I PROVISION AND RETURN OF FACILITIES AND AREAS (in relation to Article II of the Status of Forces Agreement)</p> <p>1. Provision of Facilities and Areas</p> <p>With respect to the provision of facilities and areas based on “[a]greements as to specific facilities and areas,” Article II of the Status of Forces Agreement (hereinafter referred to as the “SOFA”), the procedure and contents thereof should be prescribed as follows (hereinafter referred to as the “Provision Agreement”). The same shall apply as to any provision of facilities and areas and any extension of duration as prescribed in Article II, Section 4 (b) of the SOFA.</p> <p>(a) Conditions on providing facilities and areas; such as the scope of facilities and areas, purposes of use, duration of use, conditions of use, directions for use, deployment and equipment of the United States Armed Forces (hereinafter referred to as the “USAF”), measures to secure public safety, measures to take in the areas adjacent to or in the vicinity of the facilities and areas and responsibility for maintenance and management should be expressly prescribed in the Provision Agreement.</p> <p>(b) When the Provision Agreement is concluded, and in every period of provision thereafter, the United States (hereinafter referred to as the “U.S.”) shall submit to Japan an implementation plan, in which the conditions are enumerated.</p> <p>(c) The government of Japan, upon receiving the implementation plan, shall make a decision on approval and conditions. In this case, the Japanese government shall conduct hearings with relevant local public entities and shall respect their opinions.</p> <p>(d) The Provision Agreement prescribed in clause (a) of this section and the implementation plan prescribed in clause (b) of this section shall be published.</p> <p>(e) As there lies an essential problem in SOFA in the fact that provision of facilities and areas are to be concluded solely by the agreement by governments, some sort of mechanism should be considered in light of the participation of the Diet of Japan.</p> <p>2. Return of Facilities and Areas</p> <p>The following provisions shall be prescribed in relation to the return of facilities and areas;</p> <p>(a) Facilities and areas shall be returned to Japan immediately: (i) when the durations prescribed in the Provision Agreement and the implementation plan expire; (ii) whenever they are no longer needed for the purposes of the agreement; and (iii) when the conditions are found not to be fulfilled.</p> <p>(b) The Japanese government, in order to secure the interests of Japan, local public entities and local residents, or in order to totally or partially eliminate adverse effects or harmful influences thereon, may request the return of facilities and areas or the change of conditions. The U.S. government shall respect such requests.</p>
<p>ARTICLE III</p> <p>1. Within the specified facilities and areas, the U.S. may take all the measures necessary for their establishment, operation, safeguarding and control. In order to provide access for the USAF to the facilities and areas for their support [...] the Government of Japan shall, at the request of the USAF [...] take necessary measures within the scope of applicable laws and regulations over land, territorial waters and airspace adjacent to, or in the vicinities of the facilities and areas. [...]</p> <p>2. [The U.S.] agrees not to take the measures referred to in paragraph 1 in such a manner as to interfere unnecessarily with navigation, aviation, communication, or land travel to or from or within the territories of Japan. [...]</p> <p>3. Operations in the facilities and areas in use by the USAF shall be carried on with due regard for the public safety.</p> <p>ARTICLE XVI</p> <p>It is the duty of members of the USAF, the civilian component, and their dependents, to respect the law of Japan and to abstain from any activity inconsistent with the spirit of this Agreement, and, in particular, from any political activity in Japan.</p>	<p>II APPLICATION OF THE LAWS AND REGULATIONS OF JAPAN TO THE UNITED STATES ARMED FORCES, AND CONTROL OVER INSTALLATIONS (in relation to Article III and Article XVI of the SOFA)</p> <p>1. Application of the Laws and Regulations of Japan</p> <p>It should be clarified that the laws and regulations of Japan, without regard to whether the location is inside or outside of the installations or areas, shall apply to the USAF, its service members, its civilian components and their dependents, unless the issue is an internal matter such as those relating to their organs, functions and administration, or unless otherwise prescribed in the treaties or the laws and regulations of Japan.</p> <p>2. Inspection by the Japanese Authorities</p> <p>It should be prescribed that, in the case of it being indispensable for official duties, such as securing the application of Japanese laws and regulations, pursuing an administrative objective, deterring injury of Japanese nationals and residents, conserving the environment, the authorities of Japan or of applicable local public entities may conduct on-the-spot inspections in the facilities and areas, and may take other necessary measures.</p>
<p>(The SOFA provides no provision concerning environmental problems)</p> <p>ARTICLE IV [related provision]</p> <p>1. The U.S. is not obliged, when it returns facilities and areas to Japan on the expiration of this Agreement or at an earlier date, to restore the facilities and areas to the condition in which they were at the time they became available to the USAF, or to compensate Japan in lieu of such restoration.</p> <p>2. Japan is not obliged to make any compensation to the U.S. for any improvements made in the facilities and areas or for the buildings or structures left thereon on the expiration of this Agreement or the earlier return of the facilities and areas.</p> <p>3. The foregoing provisions shall not apply to any construction which the Government of the U.S. may undertake under special arrangements with the Government of Japan.</p>	<p>III ENVIRONMENTAL PROBLEMS (new provision)</p> <p>The following provisions should be introduced to the SOFA;</p> <p>1. An environmental clause which reflects the recent achievements on environmental preservation theory should be introduced. The laws and regulations of Japan or those of the U.S. as to environmental protection shall apply, whichever laws are stricter.</p> <p>2. In the case of contamination outbreaks from the use of the facilities and areas, the U.S. is obliged to restore the facilities and areas to the condition in which they were at the time they became available to the USAF based on the “polluter-pays principle”.</p> <p>3. In the case of there being an incident or an accident which may result in adverse effects being caused to the environment within the facilities and areas, or in the case of the same being predicted to occur, a notification shall be made to the Japanese government and related local public entities by the USAF. On-the-spot inspection shall be admitted to the authorities of Japan.</p> <p>4. An environmental assessment shall be conducted and published whenever the USAF constructs a new facility within the facilities and areas.</p> <p>5. In order to conduct an environmental inspection, “the committee on environmental issues,” which in part consists of experts in the field, shall be established with regard to each installation. The committee shall conduct on-the-spot inspections and environment assessments at regular intervals.</p>

<p>ARTICLE V</p> <p>1. United States and foreign vessels and aircraft operated by, for, or under the control of the U.S. for official purposes shall be accorded access to any port or airport of Japan free from toll or landing charges. [...]</p> <p>2. The vessels and aircraft mentioned in paragraph 1, United States Government owned vehicles, including armor, and members of the USAF, the civilian component, and their dependents, shall be accorded access to and movement between facilities and areas in use by the USAF and between such facilities and areas and the ports or airports of Japan. Such access to and movement between facilities and areas by United States military vehicles shall be free from toll and other charges.</p> <p>3. When the vessels mentioned in paragraph 1 enter Japanese ports, appropriate notification shall [...] be made to the proper Japanese authorities. [F]reedom from compulsory pilotage, [...]</p>	<p>IV ENTRY AND DEPARTURE OF VESSELS AND AIRCRAFT (in relation to Article V of the SOFA)</p> <p>1. Restriction on the Use of Civilian Ports and Airports In order to clarify that the use of civilian ports and airports by the USAF pursuant to Article V of the SOFA is interim and exceptional, the following clause should be prescribed in Article V of the SOFA; "limited to the case of there being an emergency need to deter a present danger."</p> <p>2. Application of the Laws and Regulations of Japan It should be clarified that, as a general rule, the laws and regulations of Japan shall apply to the USAF when it makes use of ports, airports and roads other than the provided facilities.</p> <p>3. Prohibition of Off-base Exercises and Training It should be expressly prescribed that the access to and movement between facilities prescribed in Article V of the SOFA does not include activities which constitute exercises or training in nature. It should also be expressly prescribed that, as a general rule, off-base exercises or training by the USAF are prohibited. As to off-base flight training, conditions on the applicable area and type of aviation should be clarified through agreement by the joint committee of Japan and the U.S (hereinafter referred to as the "Joint Committee").</p>
<p>ARTICLE VI</p> <p>1. All civil and military air-traffic control and communications systems shall be developed in close coordination and shall be integrated to the extent necessary for fulfillment of collective security interests. [...]</p> <p>2. Lights and other aids to navigation of vessels and aircraft placed or established in the facilities and areas in use by the USAF and in territorial waters adjacent thereto or in the vicinity thereof shall conform to the systems in use in Japan. [...]</p>	<p>V AIR TRAFFIC (in relation to Article VI of the SOFA)</p> <p>1. Air Traffic Control As to air traffic control, it should be expressly prescribed that the USAF's control over aviation is limited to the airports within the provided facilities and that all other air traffic control, including approach control, shall be conducted by Japan.</p> <p>2. Amendment of the Act on Special Provisions of the Civil Aeronautics Act The Act on Special Provisions of the Civil Aeronautics Act should be amended to impose minimum security restrictions, such as a minimum safe altitude and the prohibition of acrobat flights, etc., on the USAF.</p>
<p>ARTICLE XVII</p> <p>1. Subject to the provisions of this Article, (a) the military authorities of the U.S. shall have the right to exercise, within Japan, all criminal and disciplinary jurisdiction [...] over all persons subject to the military law of the U.S.;</p> <p>(b) the authorities of Japan shall have jurisdiction over the members of the USAF, the civilian component, and their dependents, with respect to offenses committed within the territory of Japan and punishable by the law of Japan.</p> <p>2. [Each state has respective exclusive jurisdiction over persons who are not punishable by the law of the other State]</p> <p>3. In cases where the right to exercise jurisdiction is concurrent, the following rules shall apply: (a) The military authorities of the U.S. shall have the primary right to exercise jurisdiction over members of the USAF or the civilian component in relation to (i) offenses solely against the property or security of the U.S., or offenses solely against the person or property of another member of the USAF or the civilian component or of a dependent; (ii) offenses arising out of any act or omission done in the performance of official duty. (b) In the case of any other offense the authorities of Japan shall have the primary right to exercise jurisdiction. (c) If the State having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other State[...]. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities [...] for a waiver of its right in [particular] cases [...]</p> <p>4. The foregoing provisions of this Article shall not imply any right for the military authorities of the U.S. to exercise jurisdiction over [Japanese] nationals [...].</p> <p>5. (a) [Both] authorities [...] shall assist each other in the arrest [and handing over] of members of the USAF, the civilian component, or their dependents [...]. (b) The authorities of Japan shall notify promptly the military authorities of the U.S. of the arrest of any of [its service members, civilian component or their dependents] [...]. (c) The custody of an accused member of the USAF or the civilian component over whom Japan is to exercise jurisdiction shall, if he is in the hands of the U.S., remain with the U.S. until he is charged by Japan.</p> <p>6. (a) [The] authorities of [both States] shall assist each other in the carrying out of all necessary investigations into offenses, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offense. [...] (b) [The] authorities of [both States] shall notify each other of the disposition of all cases in which there are concurrent rights to exercise jurisdiction.</p> <p>7. (a) A death sentence shall not be carried out in Japan by the military authorities of the U.S. if the legislation of Japan does not provide for such punishment in a similar case. (b) [S]ympathetic consideration [shall be given] to a request from the military authorities of the U.S. for assistance in carrying out a sentence of imprisonment pronounced by the military authorities of the U.S. [...]</p>	<p>VI CRIMINAL LIABILITY (in relation to Article XVII of the SOFA)</p> <p>1. Custody of Accused Members of the USAF or the Civilian Component As to any case in which the Japanese authorities have the primary right to exercise jurisdiction over a service member of the USAF and the civilian component (hereinafter referred to as a "service member, etc."), the Japanese authorities may have the right to take an accused service member, etc. into custody without the consent of the USAF, notwithstanding that he or she is already in the hands of the U.S.</p> <p>2. Determination of "official duty" It should be clarified that: (i) the USAF has the burden to prove the fact of "official duty" status as to service members, etc.; and (ii) service members, etc. are treated as if they are on "non-official duty" when the USAF is not able to fulfill its burden of proof. The provision of the Agreed Minutes which prescribes that "this certificate will be sufficient evidence of the fact of official duty status unless the contrary is proved" should be set aside. Moreover, it should be clarified that: (i) the certificate of official duty alone is not sufficient to prove the fact of official duty status; and (ii) the law enforcement and courts of Japan may determine, comprehensively and based on all the evidence, the fact of "official duty" status or the lack thereof.</p> <p>3. The Scope of "Official Duty" The Agreed Minutes (March 28th, 1956) and the circular notice issued by the Acting Director-General of the Criminal Affairs Bureau of the Ministry of Justice (April 11th, 1956), both of which prescribe that commuting service members shall be treated as being in "official duty" status, should be set aside, and such members should be treated as being on "non-official duty".</p> <p>4. Criminal Jurisdiction over Civil Components on Official Duty It should be prescribed that Japan shall have the primary right to exercise jurisdiction over crimes committed by any member of the civil component, irrespective of whether he or she is on official duty or not.</p> <p>5. The Agreed Minutes and the Circular Notice as to The Waiver of Jurisdiction The Agreed Minutes (October 28th, 1953) and the circular notice issued by Director-General of the Criminal Affairs Bureau of the Ministry of Justice (October 7th, 1953), both of which prescribe that Japan will exercise jurisdiction over cases which are deemed to be of particular importance to Japan, should be set aside.</p> <p>6. Off-Base US Military Aircraft Crashes, etc. In the event of any US military aircraft crash taking place outside of US facilities or areas, the Japanese authorities may, except in cases where there is a necessity to avert a clear and present danger to the life of service members, etc., exercise: (i) control over the accident site; and (ii) the right to search, seize and inspect fuselages, remains, components and detritus.</p>

8. [Double jeopardy clause with exception for disciplinary actions taken by the USAF
 9. Whenever a member of the USAF, the civilian component or a dependent is prosecuted under the jurisdiction of Japan, he shall be entitled:
 (a) to a prompt and speedy trial; b) to be informed [...] of the specific charge [...] against him;
 (c) to be confronted with the witnesses against him; (d) to have compulsory process for obtaining witnesses in his favor [...]; (e) to [have the assistance of counsel]; (f) [...] to have the services of a competent interpreter; and (g) to communicate with a representative of the Government of the U.S. and to have such representative present at his trial.
 10. (a) The USAF has the right to police any facilities or areas [...] under Article II of this Agreement. The military police [...] may take all appropriate measures to ensure the maintenance of order and security within such facilities and areas.
 (b) Outside these facilities and areas, such military police shall be employed only subject to arrangements with [Japanese] authorities [...] and in liaison therewith [...].
 11. In the event of hostilities to which the provisions of Article V of the treaty [...] apply, either [Government] shall have the right, by giving sixty days' notice to the other, to suspend the application of any of the provisions of this Article. [Both Governments shall engage in consultation to determine replacement provisions.]
 12. [Prohibition of ex post facto application of the provisions of this Article]

ARTICLE XVIII

1. Each Party waives all its claims against the other Party for damage to any property owned by it and used by its land, sea or air defense services, if such damage [was caused in the performance of official duties][...]
 2. In the case of damage caused or arising as stated in paragraph 1 to other property [...], the issue of the liability of the other Party shall be determined and [...] assessed [...] by a sole arbitrator [...]
 3. For the purposes of paragraphs 1 and 2 of this Article, the expression "owned by a Party" in the case of a vessel includes a vessel on bare boat charter [...]
 4. Each Party waives all its claims against the other Party for injury or death suffered by any member of its defense services while [he was on duty].
 5. Claims [...] arising out of acts or omissions of members or employees of the USAF done in the performance of official duty, or out of any other act, omission or occurrence for which the USAF are legally responsible, and causing damage in Japan to third parties [...] shall be dealt with by Japan in accordance with the following provisions:
 (a) Claims shall be filed, considered and settled or adjudicated in accordance with the laws and regulations of Japan with respect to claims arising from the activities of its Self-Defense Forces.
 (b) Japan may settle any such claims, and payment of the amount agreed upon or determined by adjudication shall be made by Japan in yen.
 (c) [The final adjudication of the case by a competent tribunal of Japan] shall be binding and conclusive upon the Parties.
 (d) Every claim paid by Japan shall be communicated to the appropriate United States authorities together with full particulars and a proposed distribution in conformity with subparagraphs (e) (i) and (ii) below. In default of a reply within two months, the proposed distribution shall be regarded as accepted.
 (e) The cost [...] shall be distributed between the Parties as follows:
 (i) [In the event of the U.S.] alone being responsible; [25 percent to Japan, 75 percent to the U.S.]
 (ii) [In the event of both parties] being responsible; [equal distribution between the Parties]. [In the event of it not being possible to attribute responsibility to either Party]; [equal distribution between the Parties].
 (iii) [Every half-year, a statement of the sums paid by Japan shall be sent to the U.S. authorities together with a request for reimbursement.]
 (f) Members or employees of the USAF [...] shall not be subject to any proceedings for the enforcement of any judgment given against them in Japan in a matter arising from the performance of their official duties.
 (g) [Exclusion Clause]
 6. Claims against members or employees of the USAF [...] arising out of tortious acts or omissions in Japan not done in the performance of official duty shall be dealt with in the following manner:
 (a) The authorities of Japan shall consider the claim and assess compensation to the claimant [...] and shall prepare a report on the matter.
 (b) [Upon delivery of the report] the appropriate U.S. authorities [...] shall then decide [...] whether they will offer an *ex gratia* payment, and if so, of what amount.
 (c) If an offer of *ex gratia* payment is made and accepted by the claimant in full satisfaction of his claim, the U.S. authorities shall make the payment themselves and inform the authorities of Japan of their decision and of the sum paid.
 (d) Nothing in this paragraph shall affect the jurisdiction of the courts of Japan to entertain an action against a member or an employee of the USAF unless and until there has been payment in full satisfaction of the claim.

VII CIVIL LIABILITY (in relation to Article XVIII of the SOFA)

1. Liability for Off-duty Torts by Service Members, etc. and their Dependents
 It should be expressly prescribed that the Japanese government shall compensate victims for the whole of their damage caused by any off-duty tortious conduct of service members, etc. and their dependents.
 2. Burden of the Payment Amount for On-duty Torts
 (a) Where the U.S. Alone is Responsible for the Damage
 Where the U.S. alone is responsible for any on-duty tortious conduct by service members, etc., the entire amount awarded or adjudged shall be borne by the U.S.
 (b) Where both Japan and the U.S. are Responsible for the Damage
 Where both Japan and the U.S. are responsible for the damage as to any on-duty tortious conduct by service members, etc., the amount awarded or adjudged shall be distributed between them and borne in proportion to their liabilities.
 3. Obligation of the USAF to Cooperate in Civil Proceedings in the Japanese Courts
 (a) Initiation of Proceedings
 It should be expressly prescribed that the USAF is under an obligation to identify the name, unit, rank and address of responsible service members, etc. and their dependents, in order to support civil proceedings by victims.
 (b) Proof
 It should be expressly prescribed that: (i) the USAF is under an obligation to cooperate in civil proceedings initiated by victims as to preservation of evidence by courts, pretrial disposition as to collection of evidence, inquiries to opponents, examination of parties and witnesses who are service members, etc. and their dependents, commissions to send documents, commissions of examinations and orders to submit documents; and (ii) the USAF shall provide legitimate reasons when it refuses to cooperate with the courts so that the courts may determine whether such refusal is legitimate.
 (c) Execution
 It should be expressly prescribed that: (i) when victims have obtained a decree from a court with the right to garnish a responsible service members' salary, the U.S. government shall cooperate in the proceedings as a third party obligator; (ii) the courts may garnish such member's salary under the Civil Execution Act; and (iii) in such case, the U.S. government shall pay the garnished salary to the victims.
 4. Civil Jurisdiction over the U.S. Government
 Japan may exercise civil jurisdiction over the U.S. government as to tortious conduct by the USAF.

7. Claims arising out of the unauthorized use of any vehicle of USAF shall be dealt with in accordance with paragraph 6 of this Article, except insofar as the USAF are legally responsible.

8. If a dispute arises as to whether a tortious act or omission of a member or an employee of the USAF was [conducted on] duty or as to whether the use of any vehicle of USAF was unauthorized, the question shall be submitted to an arbitrator appointed in accordance with paragraph 2(b) of this Article [...]

9. (a) The U.S. shall not claim immunity from the [civil] jurisdiction of the courts of Japan for members or employees of the USAF [...] except to the extent provided in paragraph 5(f) of this Article.

(b) In case any private movable property [...] which is subject to compulsory execution under Japanese law, is within the facilities and areas in use by the USAF, the U.S. authorities shall, upon the request of Japanese courts, possess and turn over such property to the Japanese authorities.

(c) The authorities of [both Parties] shall cooperate in the procurement of evidence for a fair hearing and disposal of claims under this Article.

10. Disputes arising out of contracts concerning the procurement of materials, labor [and so on] by or for the USAF [...], may be submitted to the Joint Committee for conciliation, provided that the provisions of this paragraph shall not prejudice any right which the parties to such contract may have to file a civil suit.

11. The term "defense services" used in this Article is understood to mean, for Japan, its Self-Defense Forces and, for the U.S., its armed forces.

12. Paragraphs 2 and 5 of this Article shall apply only to claims arising incidental to non-combat activities.

13. [Prohibition of ex post facto application of the provisions of this Article]