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ARTICLE

The Politics of Stalemate: Local Power, U.S. Military Bases, and the Japanese Courts

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The continued controversy over the presence of American bases in Okinawa has once again raised the question of whether the issue will ultimately be resolved by the Japanese courts. An examination of the history surrounding the judiciary's involvement in previous base-related disputes in mainland Japan suggests that the court is itself deeply conflicted over its proper role in mediating these cases, leading to continued uncertainty over the ultimate legal status of the U.S. military presence. Unwilling to take a strong position in support of either the state or of increasingly active local officials, the court's rulings have repeatedly given way to stalemate, which has ultimately benefitted local opponents to the bases. Local politicians such as mayors and prefectural governors have successfully used anti-base rhetoric to their advantage, promoting local resistance as legitimate expressions of Japan's postwar democratic ideals, and local and national identities of peace.

Keywords: Japan; Okinawa; U.S. Military Bases; Protest; Prefectural Governors; Law; Judiciary

Introduction

The suspected murder in May 2016 of an Okinawan woman by a former U.S. Marine, and the election in November 2014 of Onaga Takeshi as Governor of Japan's Okinawa prefecture has once again elevated the issue of the U.S. military in the Ryukyu islands, and raised several pressing questions about the legal standing of the military bases, as well as the powers of governors and other local officials in the process of sanctioning their presence. Onaga, who campaigned as a strong opponent of continued U.S. military presence in Okinawa, has consistently resisted long-standing efforts by Tokyo to build an off-shore heliport at Henoko, in northern Okinawa, to replace Futenma Air Base, and he recently took the dramatic step of formally revoking prefectural permission for landfill work necessary to the new base's construction. Despite these moves at the local level, the central government has declared its intention to move ahead with the project, rejecting the legitimacy of Onaga's actions and appealing the matter to the courts.

Administrative and court rulings have typically deferred to central government interpretations of Japan's national security interests, and have generally recognized the validity of central government uses of administrative appeal law and mandamus proceedings to support its positions (Marumo 2009, Okumura 1998, and Sugihara 1999). This was the case with most recent rulings, as Japan's Supreme Court ultimately ruled in favor of the central government's plans for base construction in December 2016. Given what seems to be the dominant legal position of the state, why are observers predicting a legal "quagmire" and a continuation of the stalemate over the base relocation that has now lasted nearly 20 years? (Harner 2015) Despite the image of the Japanese judiciary as a reliable supporter of the national government, the language of the court's decisions suggests some ambivalence about the fairness of government policy even as it upholds its legal validity. The courts have historically been unpredictable in their responses to base controversies, and the risks for both sides in litigating these disputes may be one reason why there has been a general preference for seeking to resolve the issues through political negotiations rather than in court. Governor Onaga suggested as much in the prefecture's response to the court's ruling, promising a protracted legal battle; Onaga was, he said, "convinced that the construction of a new base will

not go according to the plan laid out by the Japanese and U.S. governments due to the various legal procedures needed for its construction and the opposition of the people of Okinawa.” He predicted that the base “will not be completed within the originally scheduled 10 year construction period no matter how forcibly the national government tries to proceed. It will instead take 15 or even more than 20 years” (Okinawa Prefectural Government 2017).

These patterns extend beyond the most recent controversies in Okinawa to include earlier disputes on the Japanese mainland, most prominently the so-called “Sunagawa Incident” of the mid- and late-1950s, surrounding the attempted expansion of Tachikawa Airbase in the Tokyo suburb of Sunagawa. The reasons for local opposition to the expansion—pollution, noise, crime, vice—are very similar to the complaints that have driven protests in Okinawa. There are strong similarities, too, in the role the courts came to play in these controversies; while on points of law they would support the government’s supreme position in matters of national security, judicial opinions would also raise concerns about the fundamental fairness of a system that gave local populations little say in matters that so directly affected their lives. Even as the court ruled in the national government’s favor, it amplified key political questions about the nature of state-local relations, and about the unequal burdens placed on local communities by the U.S.–Japan security regime. These cases have served as a regular reminder of Japan’s wartime past, and the legacy of bureaucratic authoritarianism that is seen as a major cause of Japan’s militarism and defeat. Thus acts of local resistance, led by elected local politicians and supported by a wide coalition of local interests motivated by a variety of localist, environmentalist, and feminist ideologies, take on a particular significance, and have made it difficult for the courts to lend their unqualified support to the state in base disputes.

Military Bases, Local Resistance, and the Courts

While academic and popular discourse on Okinawa tends to emphasize the uniqueness of its position within the Japanese state, and the particularly heavy burden it bears within the U.S.–Japan security relationship,¹ it is important to also

¹ See, for example, Masamichi Inoue’s *Okinawa and the U.S. Military: Identity Making in the Age of Globalization* (New York: Columbia University Press, 2007).

note the history and relevance of base disputes in mainland Japan, particularly in the early postwar period when the U.S. military presence there was at its greatest. In the case of Sunagawa, the dispute first developed with Sunagawa town mayor's refusal to take the legally required steps to initiate the process of seizing land for the base expansion. The mayor's actions highlighted a crucial ambiguity in the procedures for seizing land for bases; while allowing local leaders a say, the law left it unclear if they had independent power over the presence of military bases in their community, or whether theirs was a "delegated power" that could be reassigned if a local politician refused to carry out his or her "duty."

Such questions were framed by interpretations of Japan's postwar "Local Autonomy Law" (*Chihō jichi-hō*), which had been initially drafted in 1947 to codify the new relationship between the state and empowered local governments. Given the weak position of local governments and officials within the Imperial Japanese order, there was little legal precedent for the court's public role in mediating disputes between local officials and the state. Until early postwar reforms, prefectural governors had served within the Home Ministry as appointed bureaucrats—a potent symbol of the state's authority in local affairs, with the power to enforce state dictates over local opposition. With the postwar introduction of the new Local Autonomy Law, however, these governors now became locally elected officials, significantly changing the balance of power between state and locality, and considerably limiting the state's direct bureaucratic reach at the local level (Kunugi 2001). These laws set the stage for new challenges to state authority, most notably over the support and development of U.S. military bases, where state and local interests collided most dramatically.

As Muramatsu Michio has noted, the emergence of the postwar local government system occurred in a context in which the competing desires for "democratization," "decentralization," and administrative efficiency were never resolved, and this uncertainty encouraged some local politicians to test the new limits of their authority (Muramatsu 1997, 24). The Sunagawa case illustrated the power of elected officials of even small municipalities to disrupt and delay military-related construction. In response to local concerns about recent nearby crashes of military aircraft and regular complaints about noise, in 1955 the mayor of Sunagawa town refused to

authorize further extension of Tachikawa Airbase into the town's territory. This set off a series of legal confrontations that led to confusion over the ultimate legal status of the U.S. military installations, and to continued uncertainty about the meaning of "local autonomy" in postwar Japan. In its initial 1958 ruling, the Tokyo district court found that local officials could be bound by the legal directives of "higher officials," but that the court did not have the authority to determine whether this directive was, in fact, legal. In its hearing of the appeal of this ruling, the Supreme Court ruled that the judiciary did, in fact, have this authority, and sent the case back to the lower courts for rehearing, where the directives of higher officials were found to be legal and binding on local officials, seemingly resolving the case in the state's favor.

Meanwhile, however, increasing social unrest surrounding the base expansion had led to the birth of other court cases, including the trial of seven people accused of "trespassing" on U.S. base grounds as part of a demonstration. In a 1959 ruling that sent shock waves throughout the Japanese and international legal and political establishment, Judge Date Akio of the Tokyo District Court, found the U.S. military base presence in contravention of Article 9 of the Japanese Constitution, thereby rendering null and void the laws used to prosecute the defendants. The government viewed this attack on the constitutionality of the U.S.–Japan security relationship with great alarm, and sought a quick ruling on its appeal to the Supreme Court. While the Supreme Court did, in fact, rule in favor of the constitutionality of the U.S. military presence and against the defendants, the so-called "Date Judgement" (*Date hanketsu*) provided clear evidence that local base opponents had allies within the judiciary. Protests continued throughout the late '50s and '60s, leading the United States to eventually abandon the runway extension in 1968, and hand over the entire Tachikawa airfield to Japan in 1977.

Governor Ota Masahide's Supreme Court Appeal

The 1996 Okinawa Supreme Court case played out somewhat differently than Sunagawa. In this and later disputes the prefectural governor has emerged as the leading voice of local opposition to the national government, creating a strong divide between state and local interests, and raising again the question of whether local elected officials, acting on behalf of their constituencies, could

legally refuse to carry out the duties assigned to them under the “Special Measures Concerning Land for U.S. Armed Forces Law,” which had been enacted as part of the U.S.–Japan Status of Forces Agreement. This case also reached the Supreme Court as a “Mandamus Proceeding,” in which the court was asked to determine the legality of an administrative order compelling Ota to carry out an “assigned duty” and renew base land leases as proxy for those landowners who refused to do so. Such “Mandamus Proceedings” (*shokumu shikkō meirei soshō*), the most famous of which are the Sunagawa and Okinawa cases, centered on the question of how to define local elected officials’ roles in the military land use law. The central government’s interpretation was that, in this case, local officials really had no discretion whatsoever, but were obligated to sign lease renewals as an “assigned duty” to them by the “competent minister”—in this case, the prime minister. For many, this rang as a throwback to an authoritarian vision of politics in which local officials had little meaningful power.

Prefectural governors, who had been at the heart of Japan’s democratizing transformation, have since become caught in the middle of the postwar push and pull between popular and bureaucratic approaches to politics (Steiner 1965). While some have cultivated close ties to the state bureaucracy, others have sought to provide a stronger voice for local constituencies, and gubernatorial campaigns have provided a new venue for the articulation of common prefectural interests (Iio 2007). Through the electoral process, prefectural governors have become some of the most prominent and legitimate voices of critique against state policies; during Japan’s pollution crises of the ’60s and ’70s, Tokyo’s Socialist governor Minobe Ryokichi led a campaign to strengthen local environmental regulation, eventually leading to national-level policy despite initial resistance by the national government to such local initiatives. More recently, the so called “reformist clique” (*kaikaku-ha*) of governors that took office during the early 1990s and into the 2000s have challenged state authority in local affairs across a range of issues, including promoting greater transparency, tackling the corruption and cronyism that characterized center-local administrative ties, and lifting restrictions on the hiring of foreign nationals for local government work (Dunlop 2011, 281–318). This increasing prominence and

importance of governors has been particularly evident in Okinawa, where effective resistance to the combined power of Japan and the U.S. has required a unified local “voice,” which governors have come to represent (Funabashi 1997).

In regard to the base-dispute issue, Governor Ota was empowered by his role as governor, but also by his status as an Okinawan; in his testimony before the Supreme Court Ota spoke on behalf of “my people,” whose “cultural heritages from our ancestors—valuable national treasures—were totally destroyed” during World War II (Ota 1999, 206). Ota’s appeal also gained powerful support from a growing feminist movement that used the September 1995 rape incident in which 3 U.S. servicemen abducted and raped a 12-year-old Okinawan girl as a symbol of the violence against women that had long accompanied the U.S. base presence. Already mobilized by the recent 1995 UN Beijing World Conference on Women, prominent Okinawan politicians such as Takazato Suzuyo pushed Ota to provide an aggressive voice to their concerns through a discourse of protest that explicitly linked women’s issues to broader grievances over Okinawa’s wartime destruction and its continued domination by both Japanese and American interests. Takazato, who led the Okinawan women’s delegation to Beijing, recounted her group’s efforts to call attention to the “structural violence” associated with the U.S. military presence, and its position that “peace and the army cannot coexist” (Takazato and Kutsuzawa 1999, 66). In the wake of the rape incident, some of the leading voices of protest were female, including Takazato and Sugako Nakamura, an 18-year old student attending Futenma High School. Nakamura’s speech, electrifying an estimated crowd of 85,000 at the height of the protests, called upon Japan and the United States to “give us back the peaceful island without the military bases, without the tragedy”² (Lee 1995). Ota, also in attendance and speaking at the event,

² The importance of women’s groups to recent anti-base protests has been noted by recent studies on Okinawa; Miyume Tanji, for instance, documented the activities of Okinawan women activists who had been actively campaigning for international recognition since the 1980s, and effectively laid the groundwork for the rapid mobilization of the 1995 protests. (2006, 150–161) Studies by Inoue (2007), Enloe (2000), and Angst (2003) discuss in particular Takazato’s longtime advocacy for women’s interests in Okinawa, and against the military base presence both before and after the 1995 rape incident.

proclaimed that “we cannot go on like this anymore,” defending his decision not to sign the base leases (Lee 1995). Throughout his career, Ota had cultivated his own reputation as a progressive political historian and activist, and echoed this anti-military language before Japan’s Supreme Court when his refusal to sign the base leases finally reached it on appeal in July 1996 after passing through the lower courts. Ota described an indigenous Okinawan culture that was rooted in a “longing for peace,” and at odds with its current place within the U.S.–Japan security regime (Ota 1999, 206). Ota also went to great lengths to cast Okinawa’s current circumstances as a continuation of a long history of exploitation and disregard by stronger outside powers in which the 1995 rape incident clearly fit, although Ota made no explicit reference to it in his comments before the court. He did, however, refer to Okinawa’s “feminine culture” and a “culture of moderation,” which stood in contrast to Japan’s “warrior culture” and to the “bayonets and bulldozers” that confronted Okinawans when American forces seized further land after the end of World War II (Ota 1999, 206–210).

Ota had arrived before the court with some signs of advantage; as land leases began to expire in 1996, Ota’s refusal to renew the leases in solidarity with protesting Okinawan landowners had produced a legal crisis that allowed activists like Chibana Shōichi to lay claim to their own land, if only for a very short time.³ Ota connected the current base presence with a pattern of forced land acquisition that dated back to Japan’s annexation of the Ryukyu Kingdom in 1879 and its subsequent “fortification” (*kichika*) as part of Japan’s “military state” (*gunkoku*). According to Ota, the postwar American presence was an extension of the prewar pattern: “The expropriation of land continued by ordinances and decrees of the American military as if the war had never ended” (Ota 1999, 210). Ota pointed out the particularly disruptive effects this pattern of land acquisition had on Okinawan economic and religious life, noting that in the most densely populated areas of Okinawa 75% of the land occupied by

³ The relevant law, the “Special Measures for Land Used by Military Forces,” provided no provisions for the continued military use of land in the event that both land owners and local officials refused to agree to an extension of the lease. A revised version of the law, which included such provisions, was approved by large margins by the Japanese Diet in April 1997.

military bases was privately owned, in contrast to mainland Japan where only 13% of base occupied land was privately held (Ota 1999). Ota ended his speech by calling on the Supreme Court, “as the guardian of the Constitution, to render a positive (*sekkyokuteki*) judgment concerning the military base issue in Okinawa” (Ota 1999, 214). Interestingly, in his speech Ota did not engage with the precise laws in question before the court—specifically the “Special Measures Law”—choosing instead to attack the fundamental constitutionality of the entire U.S. military presence in Okinawa. He asked the Supreme Court to “examine the past and present of my people who, denied the benefits of the Constitutional principles, have been living under the oppression of military bases, and to grant a judgment that may open up a future filled with the broad possibilities for Okinawa, a future that may generate dreams and hopes for its youth” (Ota 1999, 214).

By advancing no alternative interpretations of the Special Measures Law to substantiate his refusal to renew military land leases, or the propriety of a system that required the active assent of local officials in a legal process while providing them little real discretion, Ota’s argument before the court on July 10, 1996, sought to shift the focus of attention from the specific legal grounding to the broader inequities that underlay the U.S. military presence in Okinawa. This meant that the court’s unanimous verdict on August 28 dismissing the governor’s appeal, thereby requiring him to comply with government orders to renew the lease, did not represent the defeat for Ota that it may have first appeared. While on the specific questions of law the national government had prevailed, in their individual rulings several justices expressed sympathy with Ota’s position and concern that Okinawa’s burdens under the current security agreements were unfair. These concerns were particularly relevant to the proposed transfer of Futenma Airbase to northern Okinawa, which seemed to be at odds with the opinion expressed by a number of justices that the military burden on the prefecture should be reduced. Justice Sonobe Itsuo argued that the court “should decide whether it is clear that there exists a serious defect in the approval of utilization” in order to determine whether a local official could legally refuse to comply with government orders (Supreme Court of Japan 1996). Sonobe also identified “serious problems in Okinawa Prefecture

caused by the concentration of military bases" (Supreme Court of Japan 1996). In a joint opinion, six justices (Ono Masao, Takahashi Hisako, Ozaki Yukinobu, Kawai Shinichi, Endo Mitsuo, and Fujii Masao) further developed this point, noting that lower courts had acknowledged the concentration of military bases in Okinawa, and the failure of the central government to achieve "good results" in reducing the military base presence in Okinawa, while achieving much better results in mainland Japan over the same period (15% reduction in Okinawa, 59% in mainland Japan from 1972–1994) (Supreme Court of Japan 1996). While ultimately determining that Ota's call for invalidation of the law as unconstitutional was "beyond the power of a judicial branch"—a curious argument for the Supreme Court to make, but an argument based on the law's relationship to international agreements made with the U.S. —these justices agreed that "Okinawa prefecture and citizens there have a great burden because of the U.S. military bases in Okinawa," and that the government should seek to achieve a "balance between easing of the burden on Okinawa Prefecture and its people on the one hand and the necessity of the bases on the other" (Supreme Court of Japan 1996).

Conclusion: The Virtues of Stalemate

Initially, the 1996 Supreme Court verdict did seem to strengthen the state's hand against Okinawa and other localities in disputes involving so-called "assigned duties," and Ota Masahide's defeat by the more conservative Inamine Ken'ichi suggested that Okinawan popular opinion had turned against Ota's more confrontational style and toward active negotiation with Tokyo. In the intervening years, however, popular opposition to the relocation of Futenma Airbase has hardened, and Okinawa's governors have found taking this position politically strategic, at least locally. Close connections with Tokyo, viewed as an asset for gubernatorial candidates in earlier eras, can now be seen as a liability. Nakaima Hirokazu, who Onaga defeated in November 2014, was such a politician; an engineer by training, he attended the elite University of Tokyo and held a variety of bureaucratic positions in the Ministry of International Trade and Industry (MITI) and the Okinawa Development Bureau (*Okinawa shinkō kyoku*) before

becoming president and chairman of Okinawa Power Company. He famously opened himself to criticism when he backtracked on his pledge to oppose relocation of Futenma to Henoko in 2013, and allowed the government to begin land reclamation off the Henoko coast. Onaga, who himself had spent most of his years as a conservative-leaning politician in the Naha municipal government, serving as its mayor from 2000–2014, publicly declared his opposition to base relocation and defeated Nakaima by a large margin. His campaign slogans, “From Ideology to Identity” (*ideorogii yori aidentiti*) and “All Okinawa” (*Ouru Okinawa*), suggest the power of such appeals to local cultural and ethnic identity, and an increasing awareness of the power of such language in negotiations with the state. Like Ota before him, Onaga seeks to cast the base relocation issue as one that will not be resolved by typical transactional politics, but rather only through addressing the deep structural problems that have troubled the Japan–Okinawa relationship throughout the modern period. As Ota’s earlier encounters with the courts illustrate, the Japanese judiciary is unable and unwilling to throw its weight fully behind one side or another in this dispute, preferring instead to allow this process to play out through political and administrative channels. Thus the dispute is likely to drag on, and as it does, it seems more probable that both Tokyo and Washington will ultimately relent in the face of such sustained and creative forms of local opposition. Daniel Aldrich, whose scholarship has focused on the ability of local populations to shape decisions on land use (Aldrich 2008), argued that in the case of Okinawa localities and the state had reached a kind of stalemate; localities, given the right circumstances and an adequate amount of leverage, could say “no” to government directives, but did not have the power to make the state say “yes” to their own initiatives (Aldrich 1999, 61). Aldrich’s prediction in 1999 that “the floating base of Nago...will more than likely be blocked by the Okinawans when they say ‘no’ to the central government” (Aldrich 1999, 67) has proven largely correct until now, though recent events suggest the possibility that the courts may be shifting toward more clear-cut support of Abe’s hard-line stance. Nevertheless, the promise of ongoing legal action, and the possibility of stalemate in the face of continued Okinawan opposition, is a form of victory since it keeps the eyes of the

nation and the world on the base issue, and holds out the promise of an eventual reduction in the military base presence in the prefecture.

Competing Interests

The author has no competing interests to declare.

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