

# INTERNATIONAL LAW FOR ARMY IN JAPAN - INFORMATION SERIES

## NUMBER 1

### 1. Reference materials:

USFJ INSTRUCTION 31-203, LAW ENFORCEMENT PROCEDURES IN JAPAN, 22 SEPT 2011.

USARJ REGULATION 27-50, CRIMINAL AND DISCIPLINARY JURISDICTION UNDER THE STATUS OF FORCES AGREEMENT, 23 JUN 2000.

AR 27-50, STATUS OF FORCES POLICIES, PROCEDURES, AND INFORMATION, 5 DEC 1989.

US-GOJ STATUS OF FORCES AGREEMENT (SOFA) AND AGREED VIEWS (AVs) located on the S Drive under 10<sup>th</sup> SG/SJA/International Law

JAPANESE JURISDICTION HANDBOOK, OSJA, MARINE CORP BASES JAPAN, 2005, located on the S Drive under 10<sup>th</sup> SG/SJA/International Law

### 2. US – JAPAN SOFA:

The SOFA which consists of 28 Articles is a fairly concise document. However, this is misleading, because in addition to the SOFA you have **52 Agreed Views** (AV) which add meat and detail to the SOFA, probably the most prominent being AV 40, which sets out the procedures on how each side notifies the other of offenses of Japanese laws committed by US Forces personnel and establishes the time limits under which Japan has to determine whether or not to exercise jurisdiction over the offense. The USFJ Instructions contains additional guidance which may not be apparent in the SOFA or the AVs.

In addition, the SOFA established a **US-Japan Joint Committee (JC)** which meets several times a year and which issues JC minutes that contain decisions of the JC which sometimes clarifies provisions of the SOFA. One such minute explains the definition of “dependent” for purposes of identifying what dependents are entitled to SOFA status. These minutes are contained in several volumes covering 50 plus years and are not indexed, making it difficult to research. With the exception of a few minutes,

we do not have these minutes locally available. Probably the only place that has all of these minutes would be USFJ.

### 3. SOFA Status

In order to be covered and protected by the SOFA, an individual has to have SOFA status. Without SOFA status individuals would have to comply with Japanese visa requirements to stay in Japan, would need to have a Japanese driving license to drive in Japan, would have to pay Japanese customs duty on items brought into Japan, and would not be afforded various protections afforded in the SOFA if suspected of committing a crime.

In accordance with Article 1 of the SOFA the following have SOFA status:

- a. US military members who are in Japan. They do not have to be assigned to a unit in Japan to have SOFA status. We had a case where a 2ID Soldier was in Okinawa and committed a theft of a taxi driver. He had SOFA status, which meant GOJ had to follow AV 40 procedures in notifying us and allowing us access to the Soldier.
- b. US citizen civilian employees of the US Armed Forces assigned to Japan and US citizen contractors who support the US Armed Forces in Japan **who are not ordinary residents of Japan**. These civilians must be working for a US Armed Forces Unit in Japan and not merely “in Japan”.
- c. Dependents (Family members) of the above. Dependents do not have to be US citizens to have SOFA status. Even a family member (except for parents and parent-in-laws) who is a Japanese citizen has SOFA status. The definition of what is a dependent as defined in the SOFA and later clarified in Minutes of the 49<sup>th</sup> Meeting of the JC (16 April 1953) and is limited to the following: spouse; children (legitimate adopted and stepchildren) under age 21; children 21 or over if dependent on the SOFA member sponsor for over 50% of support; parents and parent-in-laws, who are not ordinary residents of Japan, and who are dependent for more than half of their support from the SOFA member sponsor. Thus, other relatives such as brothers, sisters, nephews and nieces, even if a ward by order of a US court, cannot have SOFA status, unless adopted by the SOFA status member.

### 4. SOFA Status Certification

Often GOJ immigration will request certification that a person has SOFA status, for example, when a Family member departs Japan and returns without having a SOFA exit/reentry stamp in their passport, the GOJ immigration will put a 90 day tourist visa in their passport. The family member will need to get a SOFA certification to cancel the 90

day visa and get a SOFA stamp. The Marine Driving License office also requires SOFA certification before they will issue a USFJ driving permit to a contractor or their family member. These SOFA certifications are prepared by the OSJA, usually by the International Law Legal Assistant or the Legal Assistance administrative assistant. Information on the certification process and what documents are required are contained on the S Drive under 10<sup>th</sup> SG/SJA/International Law.

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