

MISSION PERMANENTE DU JAPON

AUPRÈS DES ORGANISATIONS INTERNATIONALES
GENÈVE-SUISSE

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The Permanent Mission of Japan to the International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, with reference to the Note Verbal ref: AL JPN 1/2015, dated 15 June 2015, has the honour to transmit herewith the reply from the Government of Japan to the request for information through the communication of the Special Rapporteurs of the United Nations Human Rights Council.

The Permanent Mission of Japan to International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 27 July 2015

Enclosure mentioned



Reply of the Government of Japan to the request for information through the
communication of the Special Rapporteurs of the United Nations Human Rights
Council

Regarding the request for information dated June 15, 2015 concerning the incidents that happened in Okinawa which was sent to the Permanent Mission of Japan to the United Nations and Other International Organizations in Geneva, while it is not clear what information the request was based on, at any rate the information that the four Special Rapporteurs obtained is not accurate. The Government's handling of the incidents is not inconsistent with Japan's international legal obligations, including those under Article 19 of the International Covenant on Civil and Political Rights (ICCPR) that was mentioned in the request, or the Constitution of Japan which guarantees freedom of expression to substantially the same extent as set out in the ICCPR.

Responding to protests against the project of the construction of the Futenma Replacement Facility, the Okinawa Prefectural Police and the 11th Regional Coast Guard Headquarters of the Japan Coast Guard have taken legitimate and necessary measures in the light of duties of the police organizations, namely protecting people's life, body and property and maintaining public safety and order.

In protest against the project, some protesters lay down on a national road and stand in the way of moving motor vehicles, causing serious risks and situations of violating laws and regulations. Some of their protest activities have significantly affected general traffic. Protests staged at sea have also been very dangerous, with some of the protesters entering waters prohibited under law by using canoes or motor-powered vessels in defiance of oft-repeated warnings by the authorities. Some of their vessels have navigated the waters around the construction site at high speed in a zigzag line repeatedly. In response to such activities, which are very dangerous and illegal, the authorities have taken legitimate and necessary measures from the viewpoint of ensuring safety and enforcing laws and regulations.

The Okinawa Prefectural Police and the 11th Regional Coast Guard Headquarters of the Japan Coast Guard will continue to take necessary measures as police organization in line with relevant laws and regulations in order to ensure the safety of the parties concerned at the site.

In response to the request for information, a chronological explanation of what actually happened regarding the incidents in Okinawa is given below.

Facts regarding the incidents inquired through the communication, and the handling of the incidents

"August 2014" case

On August 22, 2014, the protester on a canoe attempted to enter waters prohibited under Japanese law inside the U.S. Marines Corps Camp Schwab in defiance of oft-repeated warnings by Japan Coast Guard officers without no justifiable ground, and intentionally approached the water around the construction site. It was dangerous situation. In response, Japan Coast Guard officers tried to stop the dangerous action of the protester for the safety reason and moved him to a safer place in accordance with Paragraph 1, Article 18 of the Japan Coast Guard Law. In the process, no injury was found and he did not complain about his injury to a Japan Coast Guard officer..

Following the incident, the protester lodged a criminal complaint with a public prosecutor, accusing the Japan Coast Guard officers who responded this incident on the site of violating the Penal Code provision that bans special public servants from committing an act of assault in performing their duties. The public prosecutor received the complaint on September 9, 2014 but decided not to indict the Japan Coast Guard officers on March 27, 2015, saying that the Japan Coast Guard officers' action was based on Paragraph 1, Article 18 of the Japan Coast Guard Law and did not constitute a crime because it was a justifiable act taken in accordance with Article 35 of the Penal Code.

"January 2015" case

On January 16, 2015, the protester on a canoe entered waters prohibited under Japanese law inside the U.S. Marines Corps Camp Schwab in violation of Article 2 of the Special Penal Code (Special Penal Code Law pertaining to the Enforcement of the Agreement under Article VI of the Treaty of Mutual Cooperation and Security between Japan and the United States of America, regarding Facilities and Areas and the Status of United States Armed Forces in Japan) in defiance of repeated warnings by Japan Coast Guard officers, and intentionally approached the water around the construction site. It was dangerous situation. In response, Japan Coast Guard officers tried to stop the dangerous action of the protester for the safety reason and moved him to a safer place in accordance with Paragraph 1, Article 18 of the Japan Coast Guard Law. In the process, no injury was found and he did not complain about his injury to a Japan Coast Guard officer.

Following the incident, the protester lodged a criminal complaint with a public prosecutor, accusing the Japan Coast Guard officers who responded this incident on the site of violating the Penal Code provision that bans special public servants from

committing an act of assault in performing their duties. The public prosecutor received the complaint on February 6, 2015. As of August 25, 2015, the case is under investigation.

"20 January 2015" case

On January 20, 2015, a vessel carrying protesters approached a construction site in defiance of oft-repeated warnings by Japan Coast Guard officers, which was deemed dangerous. In response, Japan Coast Guard officers moved the vessel to a safer place in accordance with Paragraph 1, Article 18 of the Japan Coast Guard Law. While the vessel was being moved to a safer place, a woman aboard the vessel was found to be holding a large camera with both hands while standing in an unstable position to take a shot, with part of her body protruding from the vessel. It was dangerous situation. In order to prevent the woman from falling into the sea, Japan Coast Guard officers held her body to stop her from falling. In the process, no injury was found and she did not complain about her injury to a Japan Coast Guard officer.

As of August 25, 2015, it was not confirmed whether the protesters aboard the vessel and others had lodged a complaint with a public prosecutor over the Japan Coast Guard officers' action.

Case of Mr. Isa

In the morning of February 13, 2015, Mr. Isa committed an act of assault on a police officer on duty of maintaining public order and protecting facilities by deliberately pulling him down backward in front of the construction gate of the U.S. Marines Corps Camp Schwab, located in the Henoko district of Nago City, Okinawa Prefecture. By the act, he obstructed the performance of duties of the police officer and violated Paragraph 1, Article 95 of the Penal Code.

Following the incident, the Okinawa Prefectural Police arrested Mr. Isa on the spot in accordance with Article 213 of the Code of Criminal Procedure and referred him to the Naha District Public Prosecutor's Office in the afternoon of February 14.

Mr. Isa and other persons have not lodged a complaint with authorities regarding the action taken by the police.

Later on February 14, 2015, a public prosecutor at the Naha office released Mr. Isa. On March 31, 2015, the public prosecutor, in accordance with Article 248 of the Code of Criminal Procedure, decided not to indict Mr. Isa, seeing no need for indicting Mr. Isa, although his act on February 13, 2015 constituted a crime.

Case of Mr. Yamashiro and Mr. Tanimoto

In the morning of February 22, 2015, Mr. Yamashiro and Mr. Tanimoto, despite having no justifiable ground, trespassed intentionally through the main gate of the U.S. Marines Corps Camp Schwab, located in the Henoko district of Nago City, Okinawa Prefecture, which is part of the facilities and areas used by the United States and to which entry by others is prohibited. By the act, Mr. Yamashiro and Mr. Tanimoto violated Article 2 of the Special Penal Code.

On February 22, 2015, the Okinawa Prefectural Police were notified by the U.S. forces authorities that they had apprehended Mr. Yamashiro and Mr. Tanimoto for their action at the main gate of Camp Schwab earlier in the day. In the afternoon of February 22, the U.S. forces authorities handed Mr. Yamashiro and Mr. Tanimoto over to the Okinawa Prefectural Police. The Okinawa Prefectural Police immediately arrested the two in accordance with Paragraph 2, Article 12 of the Special Penal Code. In the afternoon of February 22, a district court judge issued arrest warrants for the two persons. In the afternoon of February 23, the Okinawa Prefectural Police referred them to the Naha District Public Prosecutor's Office.

Mr. Yamashiro, Mr. Tanimoto and other persons have not lodged a complaint with authorities regarding the action taken by the police.

On February 23, 2015, a public prosecutor at the Naha office released the two persons. On June 26, 2015, the public prosecutor, in accordance with Article 248 of the Code of Criminal Procedure, decided not to indict them, seeing no need for indicting the two, although their act on February 22, 2015 constituted a crime.

Case of Mr. Nakasone

In the morning of March 31, 2015, Mr. Nakasone committed an act of assault on a police officer on duty of maintaining public order and protecting facilities by deliberately headlocking the officer with one of his arms on the sidewalk facing the main gate of the U.S. Marines Corps Camp Schwab, located in the Henoko district of Nago City, Okinawa Prefecture. Furthermore, Mr. Nakasone committed a further act of assault on another police officer who was trying to stop the first-mentioned assault by intentionally grabbing him by the lapel and tearing off a button. By the acts, he obstructed the performance of duties of the police officers and violated Paragraph 1, Article 95 of the Penal Code.

In the morning of March 31, 2015, the Okinawa Prefectural Police arrested Mr. Nakasone on the spot in accordance with Article 213 of the Code of Criminal Procedure and referred him to the Naha District Public Prosecutor's Office in the afternoon of April 1, 2015.

Mr. Nakasone and other persons have not lodged a complaint with authorities

regarding the action taken by the police.

Later on April 1, 2015, a public prosecutor at the Naha office released Mr. Nakasone after acknowledging that his act constituted a crime. As of August 25, 2015, the case is under investigation.

Relations with international human rights laws and standards

- As the facts about the incidents are described above, the actions taken by the authorities were not meant to infringe on “the right to freedom of opinion and expression” nor “the rights to freedom of peaceful assembly”. Therefore, there is no ground for such concerns as the four Special Rapporteurs raised in the request for information.
- “The right to hold opinions without interference” and “the right to freedom of expression” provided for in Article 19 of the International Covenant on Civil and Political Rights (ICCPR), are guaranteed under Articles 19, 21 and 23 of the Constitution of Japan.
- “The right of peaceful assembly” provided for in Article 21 of the ICCPR, is guaranteed under Article 21 of the Constitution of Japan. Article 21 of the ICCPR is meant to guarantee the right to assemble peacefully, but not to guarantee the right to assemble with violent activities. The Government of Japan understands that this is why Article 21 of the ICCPR uses the word “peaceful” in referring to the right of assembly.
- Paragraph 2, Article 98 of the Constitution of Japan stipulates that “The treaties concluded by Japan and established laws of nations shall be faithfully observed.” In accordance with this article, Japan has observed international agreements, including the ICCPR.

[Reference]

Penal Code

(Justifiable Acts)

Article 35 An act performed in accordance with laws and regulations or in the pursuit of lawful business is not punishable.

(Obstructing or Compelling the Performance of Public Duty)

Article 95 A person who commits an act of assault or intimidation against a public officer in the performance of public duty shall be punished by imprisonment with or without work for not more than three years or a fine of not more than 500,000 yen.

Code of Criminal Procedure

Article 213 Any person may arrest a flagrant offender without an arrest warrant.

Article 248 Where prosecution is deemed unnecessary owing to the character, age, environment, gravity of the offense, circumstances or situation after the offense, prosecution need not be instituted.

Japan Coast Guard Law 【Provisional Translation】

Article 18 A coast guard officer may take the following measures, in addition to the provisions of other laws and regulations, in case where he/she finds that a crime is about to be committed at sea or in case of act of providence, marine accident, destruction of work, explosion of a dangerous article, or in any other dangerous situations, where human life or body could be threatened, or property could be materially damaged, and an urgent action shall be necessary:

- (1) To start or stop the progression of, or suspend the departure of a vessel;
- (2) To change a sea route or have a vessel move to a designated place;
- (3) To have crews, passengers and any other people in a vessel (hereinafter collectively referred to as the "crews, etc.") leave a ship or restrict or prohibit them from leaving a ship;
- (4) To have the crews, etc. unship cargo, or restrict or prohibit unshipping of cargo;
- (5) To restrict or prohibit any communication with other vessels or land;
- (6) Other than measures listed in the each of the preceding items, to deter any actions that could threaten human life or body or could cause a serious damage to property.

2 (omitted)

Special Penal Code (Special Penal Code pertaining to the Enforcement of the Agreement under Article VI of the Treaty of Mutual Cooperation and Security between Japan and the United States of America, regarding Facilities and Areas and the Status of United States Armed Forces in Japan) [Provisional Translation]

(Crime committed through infringement of facilities or areas)

Article 2 A person who enters, without justifiable ground, facilities or areas in Japan permitted to be used by the United States armed forces but whose use by other parties is prohibited (facilities and areas stipulated under Paragraph 1, Article 2 of the Agreement) or a person who does not leave such facilities or areas despite a request to do so being filed shall be punished by imprisonment with work for not more than one year, or a fine or forfeit of not more than 2,000 yen. If a provision pertaining to the matter is stipulated under the Penal Code (Law No. 45 of 1907), the Penal Code will be applied.

(Receipt of handover of a person arrested by the United States armed forces)

Article 12 When prosecutors or judicial police officers are notified by the United States armed forces of a plan to hand over to them a person who has committed crime under Japanese law, they must receive the handover of the accused while presenting an arrest warrant issued by a judge or they must make the public prosecutor's assistant officers or judicial police officials receive the handover.

2 When there is sufficient reason to suspect that the person to be handed over to Japanese authorities has committed a crime under Japanese law and it is necessary to immediately hand over the accused but it is impossible to have a judge issue an arrest warrant before the planned handover, prosecutors or judicial police officers must receive the handover of the accused or make the public prosecutor's assistant officers or judicial police officials receive the handover while explaining to the United States armed forces why prior issuance of the arrest warrant is impossible. After the handover, prosecutors or judicial police officers must immediately take procedures to have a judge issue an arrest warrant for the accused. If issuing the arrest warrant after the handover is impossible, the prosecutors or judicial police officers must immediately release the accused or make the public prosecutor's assistant officers or judicial police officials release the accused immediately.

3 (omitted)

4 (omitted)

[end]