

OKINAWA REVERSION TREATY

NOVEMBER 2, 1971.—Ordered to be printed

Mr. MANSFIELD for Mr. FULBRIGHT, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Ex. J, 92d Cong., first sess.]

The Committee on Foreign Relations, to which was referred the Agreement Between the United States of America and Japan Concerning the Ryukyu Islands and the Daito Islands, signed at Washington and Tokyo on June 17, 1971, having considered the same, reports favorably thereon without reservation and recommends that the Senate give its advice and consent to ratification thereof.

BACKGROUND

Under Article 3 of the 1951 Peace Treaty between the United States and Japan, the United States assumed all powers of "administration, legislation and jurisdiction" over, *inter alia*, the Ryukyu Islands and the Daito Islands (hereinafter sometimes referred to as "Okinawa"). However, John Foster Dulles, the U.S. delegate to the Peace Treaty Conference, stated that the United States did not regard the Peace Treaty as transferring to the United States residual sovereignty over these islands which was instead retained by Japan. This U.S. disclaimer of sovereignty was reaffirmed by all subsequent Administrations and in 1967 President Johnson and Prime Minister Sato in substance agreed that reversion should take place within a few years.

In November of 1969, at the conclusion of negotiations, President Nixon and Prime Minister Sato issued a communique in which they agreed to commence negotiations for the early reversion of Okinawa, to be achieved by 1972 provided agreement on the necessary specific arrangements and the required "legislative support" were obtained. The communique also formally confirmed the intention of the two countries to maintain the U.S.-Japan Mutual Security Treaty. Prime Minister Sato officially stated for the first time that the security of

Japan could not be maintained without peace and security in the Far East, that in order to achieve that end the United States should be in a position to fulfill its treaty obligations in the area and that reversion should not hinder effective discharge by the United States of its defense commitments in Asia. Following protracted detailed negotiations, the Agreement between the United States of America and Japan concerning the Ryukyu Islands and the Daito Islands (hereinafter called the Agreement) was signed on June 17, 1971, in Washington and Tokyo.

Okinawa is now administered by a U.S. High Commissioner, who is a member of the U.S. armed services. The office is currently held by General Lampert who is also the representative of the Commander in Chief, Pacific, and is the commanding general of the U.S. Army in Okinawa. There is a unicameral legislature elected by the Okinawans which has authority covering legislation of domestic application. A Chief Executive, also elected by the Okinawans, exercises domestic executive authority. The legislature is now controlled by the Liberal Democratic Party (which also controls the Japanese Diet), but the Chief Executive is Chobyō Yara, an independent candidate elected with the support of a variety of moderate and left opposition groups. Although elections would normally have been held in November 1971, they have been postponed until after reversion. The U.S. High Commissioner has the authority to promulgate laws himself if he deems it necessary for the fulfillment of his mission. He also can veto and annul laws passed by the legislature and remove public officials from office if such action is deemed important in its effect on the security of Okinawa, on foreign relations or on the security, property or interests of the United States or its nationals. Following reversion Okinawa would become another prefecture (or province) of Japan, and the presence of U.S. forces on Okinawa would be subject to the same terms and conditions applying to U.S. forces in Japan proper.

SUMMARY OF PROVISIONS

The Agreement consists of a preamble and nine articles. A summary of its major provisions, as set forth by the Secretary of State in his Letter of Submittal dated September 5, 1971, is set forth below.

Under paragraph 1 of Article I the United States relinquishes in favor of Japan its rights and interests with respect to the Ryukyu Islands and the Daito Islands under Article 3 of the Peace Treaty, and Japan assumes full responsibility and authority for the exercise of all governmental powers over these islands. Paragraph 2 of Article I defines these islands for the purpose of the Agreement. An agreed minute to Article I describes the territory by geographical coordinates.

Article II confirms that treaties and other agreements between the United States and Japan become applicable to the Islands upon reversion.

Paragraph 1 of Article III commits Japan to grant the United States upon reversion the use of military facilities and areas in Okinawa in accordance with the 1960 United States-Japan Treaty of Mutual Cooperation and Security and its

related arrangements. By a Memorandum of Understanding concerning Article III, the two Governments have agreed upon the specific facilities and areas to be granted for use by the United States Armed Forces upon reversion, pursuant to the provisions of the Agreement under Article VI of the Treaty of Mutual Cooperation and Security, regarding Facilities and Areas and the Status of United States Armed Forces in Japan (the so-called SOFA).

Paragraph 2 of Article III refers to the provision of the SOFA which exempts the United States from any obligation to restore facilities and areas to their original condition upon their return and which exempts Japan from any obligation to compensate the United States for any improvements made by the United States on facilities and areas which are returned to the Government of Japan. This paragraph fixes the condition of the property for purposes of these exemptions as that existing at the time United States armed forces first used the facilities and areas. It also clarifies that Japan need make no specific compensation to the United States for improvements in facilities and areas made prior to reversion.

Under Article IV Japan waives all claims of Japan and its nationals against the United States and its nationals and against local authorities arising out of the United States administration of the Islands, except for certain claims specifically recognized under United States law or local laws applicable during the United States administration (which include the claims set forth in the Agreed Minute to Article IV). Paragraph 2 of Article IV grants authority to the United States to maintain a claims office on Okinawa to settle any claims remaining after reversion. Paragraph 3 of Article IV provides that the United States will make *ex gratia* contributions to Japanese nationals whose lands in the Islands were damaged prior to July 1, 1950, and were released from the use of United States authorities after June 30, 1961. In paragraph 4 of Article IV Japan recognizes the validity of all official acts and omissions of the United States during the period of its administration.

Article V concerns civil and criminal jurisdiction. Paragraph 1 provides Japanese recognition of the validity of final judgments rendered before reversion in civil cases. It obligates Japan to continue such judgments in full force and effect. Paragraphs 2 and 3 provide for the assumption by Japan of jurisdiction over civil and criminal cases pending at the time of reversion without in any way affecting the substantive rights involved. Paragraph 4 provides that Japan may continue the execution of any final criminal judgments rendered prior to reversion. An agreed minute to Article V deals with the question of exercise of criminal jurisdiction over members of United States armed forces with respect to offenses committed prior to reversion; Japan will not exercise jurisdiction over such cases.

Article VI transfers to the Government of Japan certain properties of the United States. The major part of such

properties consists of public utility corporations. During the period of its administration the United States created certain new lands by reclamation from the sea, or otherwise acquired such lands. These reclaimed lands will also become the property of the Government of Japan upon reversion. The United States is not obliged to compensate Japan or its nationals for any alteration made prior to reversion to lands upon which properties to be transferred to the Government of Japan are located.

Article VII constitutes the payment provision of the Agreement. Considering, *inter alia*, the transfer of assets to the Government of Japan under Article VI, the fact that reversion will be carried out in a manner consistent with the policy of the Government of Japan as described in paragraph 8 of the Joint Communiqué of November 21, 1969, and certain extra costs borne by the Government of the United States resulting from reversion, the Japanese Government will pay the United States \$320 million in stated installments within five years of reversion. The first installment of \$100 million is to be paid within one week after reversion.

Article VIII contains authority for the Voice of America relay station on Okinawa to continue in operation for a period of five years after reversion, with consultations regarding future operation of the station to begin two years after reversion. Additional details regarding the operation of the Voice of America station are contained in an exchange of notes concerning the Voice of America facility on Okinawa.

Article IX provides for ratification of the Agreement and for its entry into force two months after the instruments of ratification are exchanged. In accordance with Article I, reversion will take place on the date the Agreement enters into force.

Certain important arrangements involved in Okinawa reversion are dealt with in the other documents submitted with the Agreement. These include arrangements concerning the treatment of foreign nationals and firms on Okinawa, the assumption by Japan of the responsibility for the immediate defense of Okinawa, and commercial air services to and through Okinawa.

The arrangement concerning the treatment of foreign nationals and firms is contained in a letter of June 17, 1971, from then Foreign Minister Kiichi Aichi to Ambassador Meyer. The letter sets forth the policies decided upon by the Japanese Government respecting points that were of major concern to American business and professional interests in Okinawa.

The Arrangement concerning Assumption by Japan of the Responsibility for the Immediate Defense of Okinawa, signed on June 29, 1971 on behalf of the United States Department of Defense and the Japan Defense Agency, sets forth the agreed modalities for necessary coordination in connection with the deployment of Japanese Self Defense Forces in Okinawa after reversion. The Arrangement provides for

Japanese takeover or joint use of certain installations or sites now used by United States forces on Okinawa, describes generally the missions and strengths of the Japanese forces to be deployed to Okinawa following reversion, and sets timetables for full assumption of the missions described.

A Memorandum of Understanding of June 17, 1971 concerning air services to and through Okinawa after reversion preserves existing traffic rights for American commercial air carriers now serving Okinawa. In addition there will be a five year "no charge" period following reversion during which the benefits American carriers receive by serving Okinawa will not be taken into account in calculating the overall balance of benefits which the United States receives under the bilateral air transport agreement with Japan.

COMMITTEE ACTION

The Committee on Foreign Relations held public hearings on the Agreement on October 27, 28, and 29. On October 27 Secretary of State William P. Rogers initiated the presentation of the Administration's position on the Agreement. On October 28 David Packard, Deputy Secretary of Defense, and Lt. Gen. James B. Lampert, High Commissioner of the Ryukyu Islands, discussed the military security implications of the Agreement. On October 29 the Committee heard the following persons: Senator John V. Tunney, Mr. C. N. Yang, Maj. Gen. Dale O. Smith (Ret.), Edward Reeves, Robert Morris, Shien-Biau Woo, Mark Selden, E. Raymond Wilson, Thomas C. Dunn, and Professor John Fincher. Additional statements from persons unable to appear personally were included in the record.

On November 2 the Committee met in Executive session and ordered the Agreement reported favorably to the Senate for advice and consent to ratification. This action was taken by a unanimous vote of 16-0 with all members of the Committee represented either in person or by proxy.

COMMITTEE COMMENTS

In an agreed Minute to Article I, the parties specify the geographical coordinates defining the territory covered by the Treaty. These coordinates make it clear that the Senkaku (Tiao Yu Tai) Islands are included as part of the territory administered. In addition, two of the military facilities listed as being retained by the United States are in the Senkakus. The Republic of China, the People's Republic of China and Japan claim sovereignty over these islands. The Department of State has taken the position that the sole source of rights of the United States in this regard derives from the Peace Treaty under which the United States merely received rights of administration, not sovereignty. Thus, United States action in transferring its rights of administration to Japan does not constitute a transfer of underlying sovereignty (which the United States does not have), nor can it affect the underlying claims of any of the disputants. The Committee reaffirms that the provisions of the Agreement do not affect any claims of sovereignty with respect to the Senkaku or Tiao Yu Tai Islands by any state.

A number of legislative and other steps must be taken by Japan in order to implement the provisions of the Agreement and the other arrangements involved in the Okinawa reversion which are dealt with in the documents submitted with the Agreement to the Senate. These steps include steps required to carry out the intent of the letter dated June 17, 1971, from then Foreign Minister Aichi to Ambassador Meyer. The Committee notes that Secretary Rogers stated on October 27 that "the provisions of the Agreement will not become effective until the President has deposited the instrument of ratification. He will not take such action until after the Japanese Diet has enacted the necessary implementing legislation." The Committee understands that the instrument of ratification will not be deposited by the United States until the Government of Japan has taken, to the extent appropriate, all important steps, including legislative action, required to carry out the Agreement and the related arrangements.

By recommending that the Senate consent to the ratification of the Agreement, the Committee does not imply its approval of maintaining the existing level of U.S. troops or bases on Okinawa for an indefinite period. The Committee approves the policy of reducing, over a period of time, the American presence in that area to the extent appropriate in light of developments in U.S.-China relations and other developments in Asia. The Committee notes with approval that the Agreement contemplates that the United States would not store nuclear weapons on Okinawa after reversion.

RECOMMENDATION

The Committee unanimously urges that the Senate give its prompt advice and consent to ratification of the Agreement. The Agreement represents the end of an era in U.S.-Japan relations. It settles the last remaining major issue between the two countries arising out of World War II, returning to Japan the remaining occupied territory which has been promised it. Ratification of the Agreement would remove the last vestige of occupying power status now held by the United States and would formalize a relationship of equality between the two states. As the President stated in his letter transmitting the Agreement to the Senate, the return of Okinawa "is essential to the continuation of friendly and productive relations between the United States and Japan." Particularly at this time, as the new U.S. China policy evolves, it is imperative that sound relations between the United States and Japan be firmly maintained. Prompt action by the Senate, demonstrating our commitment to these objectives, will be an important step to that end.

TEXT OF RESOLUTION OF RATIFICATION

Resolved, (Two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Agreement between the United States of America and Japan concerning the Ryukyu Islands and the Daito Islands, signed at Washington and Tokyo on June 17, 1971, (Ex. J, 92-1).

STATEMENT OF ROBERT MORRIS, COUNSEL FOR MISS GRACE HSU, BEFORE THE UNITED STATES SENATE FOREIGN RELATIONS COMMITTEE BEARING ON HIS CLIENT'S CLAIM TO THE ISLANDS OF THE TIAO-YU-TAI GROUP THAT LIE APPROXIMATELY 100 MILES NORTHEAST OFF TAIWAN, OCTOBER 29, 1971.

I would like to present for the record of this committee the documents that make up the claim of Grace Hsu of New York City, a United States citizen, to the islands of Tiaoyutai, Huang Wei Yu and Chih Yu and two small surrounding islets. These islands lie approximately 100 miles northeast of Keelung (Chi-lung), a northern port of Taiwan. Tiaoyutai is the largest of the three and its dimensions are two and one half miles in length and one mile in width.

The islands are uninhabited but are used by fishermen and collectors of herbs which abound on the islands. Other plants that grow on the islands are rattan, palm trees and banyan trees).

In 1893 the Dowager Empress of China, Tze Shih, made a grant of the islands to Miss Hsu's grandfather, Sheng Huan Wai. The latter willed them to Miss Hsu. (Four documents introduced)

Japan acquired Taiwan in 1895 but returned it to the Republic of China in 1945. Miss Hsu has believed that with the return of Taiwan to the Republic of China, the islands which had come under Japanese sovereignty with Taiwan, would have reverted back with it.

However, the treaty before this committee provides that these islands of the Tiaoyutai group, whose Japanese name is the Senkaku Islands, will be returned to Japan.

The State Department explanation for this action is set forth in a letter to me from Robert I. Starr, Acting Assistant Legal Advisor for East Asian and Pacific Affairs, dated October 20, 1971.

The relevant paragraph of that letter reads:

"Under Article III of the 1951 Treaty of Peace with Japan, the United States acquired administrative rights over "Nansei Shoto" south of 29 degrees north latitude. This term was understood by the United States and Japan to include the Senkaku Islands, which were under Japanese administration at the end of the Second World War and which are not otherwise specifically referred to in the Peace Treaty."

My client is not raising the question of sovereignty here. That is an action to be taken by the respective governments involved.

But she would like to offer for the record the basis of her claim to ownership of the islands and to ask the committee to affirm that the treaty causes no change in her right thereto.