

# “Ceasefire” on Oura Bay: The March 2016 Japan-Okinawa “Amicable Agreement” Introduction and Six Views from within the Okinawan Anti-Base Movement

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## Contributors

This compilation is designed to offer an account and interpretation of the recent, sometimes perplexing events surrounding the March Agreement and its implications. It introduces a set of comments by Okinawans prominent in one or other part of the anti-base movement, as follows:

**Sakurai Kunitoshi**, "How is the 'Amicable Settlement' to be Understood?"

**Nakasone Isamu**, "Henoko: the 'Amicable Settlement'"

**Ashitomi Hiroshi**, "After the 'Amicable Settlement': For a True Solution to the New Base Construction Issue"

**Miyagi Yasuhiro**, "On the 'Amicable Settlement' between the Japanese State and Okinawa Prefecture"

**Urashima Etsuko**, "The 'Amicable Settlement': One Citizen's Reflections"

**Yoshikawa Hideki**, "The 'Amicable Settlement': Statement from 'Okinawa Citizens' Network for Biodiversity"

## Stalemate



Much has been written on the government of Japan's determination to provide a new base for the United States Marine Corps at Henoko on Oura Bay in northern Okinawa and to transfer the existing, obsolescent, dangerous and inconvenient Futenma Air Station to it.<sup>1</sup> When the agreement to "return" the Marine Corps' Futenma Air Station to Japan was first reached (April 12, 1996), it was to occur "within five to seven years." As the 20<sup>th</sup> anniversary of that agreement loomed early in 2016, the Marine Corps' "Marine Aviation Plan 2016" amended the already several times pushed back transfer/reversion date to "fiscal year 2025" (October 2024-September 2025).<sup>2</sup> Admiral Harry Harris, Commander-of US Pacific forces presented that date in evidence to Congress early in 2016.<sup>3</sup> But even as that 2025 date was being reluctantly accepted in Washington, at the beginning of March 2016, Japan despatched its top security official, Yachi Shotaro, to Washington to seek the Obama government's understanding (and presumably

also its permission) for a further substantial delay.<sup>4</sup> Once the US consented, the Abe government came to an "out-of-court" March 4 agreement (discussed in this paper and in the following opinion essays by Okinawans) with Okinawa Prefecture, that involved a complete and indefinite suspension of site works at Henoko. Lt. General Robert Neller, commander of the US Marine Corps, told a Senate military affairs committee meeting that that suspension could be expected to last a further 12-months.<sup>5</sup> President Obama, advised of the impending delay, merely responded with "So there will be nothing happening for a while then."<sup>6</sup>

Despite the presidential calm, anger in Washington is palpable as the date for fulfilment of the Japanese pledge keeps being pushed back, and as the most pro-American government of recent times fails to deliver on its repeated promises of closure. As Admiral Harris noted, of 200 base transfer-related items carried in Japan's 2015 budget, just nine had been completed with eight more still underway, and the situation at the Henoko site was not improving but rather protest was "continuing to escalate."<sup>7</sup> On the Japanese side too, as Abe and his circle found their plans for base construction blocked by stubborn Okinawan opposition, frustration mounts. Both Washington and Tokyo recognize that there is no end in sight to that struggle. The world's major powers had been unable, for almost two decades, to impose their will on the 1.4 million people of Okinawa. It is inconceivable that the head of any other local self-governing body in Japan should refer, as Okinawa's Governor Onaga did in 2015, to the government of the country as "outrageous" (*rifujin*) or "depraved" (*daraku*) and (as he did before the United Nations Human Rights Commission) as "ignoring the people's will."<sup>8</sup>



**Protest against Henoko base, February 2015.**

The "Futenma return" promise was conditional upon construction of new, substitute facilities, and those facilities, the Government of Japan insisted, could not be anywhere else in Japan but Okinawa, specifically at Henoko on Oura Bay, around 50 kilometres to the north of Futenma. In December 2013, then Okinawan Governor Nakaima Hirokazu issued the national government the authority it needed to commence construction - the license to reclaim a large swathe of Oura Bay. Nakaima gave his consent without explanation, despite an electoral pledge to the contrary and despite overwhelming prefectural opposition, following a week of intensive meetings closeted with government leaders in Tokyo on pretext of needing hospital treatment. His consent became the central issue in the gubernatorial election of November 2014. Nakaima was overwhelmingly defeated (by 100,000 votes) by Onaga Takeshi, who campaigned on the promise that he would "do everything in my power" to stop Henoko construction.

In July 2015, much of the Bay was declared off-limits and preliminary survey works at the site began, with state forces (Coastguard and Riot Police) mobilized to impose the project in the teeth of strong Okinawan opposition. In August

an Okinawan Experts' ("Third Party") Committee advised Onaga that the reclamation license was legally "flawed" and should not be allowed to stand. On October 13 he cancelled it.

The license thus withdrawn, the state had to call a halt to the works. However, it almost immediately ordered Onaga's order suspended and two weeks later, ignoring a massive (950 page) Okinawan prefectural statement of its case, in a few brisk paragraphs declared that there was no "legal flaw" in the Nakaima license and so work could resume.<sup>9</sup> After both its "advice" (October 27) and then its "instruction" (November 6) to Governor Onaga to withdraw the cancellation order failed to elicit submission, on November 17 the national government (through the Minister of Land, Infrastructure, Transport and Tourism, or MLITT) filed suit against the prefectural government under the Administrative Appeals Act, alleging administrative malfeasance and seeking to have Onaga's order set aside and a "proxy execution" procedure adopted. As I noted earlier on this suit,

"Overall, the national government appears to be engaged on a constitutional coup: stripping the governor and prefectural government of powers vested in them by the constitution and the Local Government Act and seeking at all costs to justify the MLITT minister's reinstatement or 'proxy execution' of the land reclamation approval."<sup>10</sup>

On November 2, 2015, Okinawa prefecture launched a complaint against the Abe government with the Central and Local Government Disputes Management Council, a hitherto relatively insignificant independent review body set up in 2000 by the government's Department of General Affairs. That complaint was rejected on December 24. On December 25, the prefect launched a separate counter-suit against the government in the Naha branch of the Fukuoka High Court.

## Court Recommended Resolution



**Lawyers representing the state (left) and Okinawa (right) in court, February 29, 2016.**

On January 29, 2016, in the suit launched by the Government of Japan against Governor Onaga, Judge Tamiya Toshiro of the Naha Branch of the Fukuoka High Court advised the disputing parties to consider an out-of-court settlement, offering two alternative scenarios.<sup>11</sup> He began with the following exhortation:

"At present the situation is one of confrontation between Okinawa and the Government of Japan. So far as the cause of this is concerned, before any consideration of which is at fault both sides should reflect that it should not be like this. Under the 1999 revision to the Local Autonomy Law it was envisaged that the state and regional public bodies would serve their respective functions as independent administrative bodies in an equal, cooperative relationship. That is especially desirable in the performance of statutory or entrusted matters. The present situation is at odds with the spirit of this revised law.

The situation that in principle should exist is for all Japan, including Okinawa, to come to an agreement on a solution and to seek the cooperation of the United States. If they did this, it could become the occasion for positive cooperation on the part of the US too, including

broad reform.<sup>12</sup>

Instead, if the issue continues to be contested before the courts, and even if the state wins the present judicial action, hereafter it may be foreseen that the reclamation license might be rescinded or that approval of changes accompanying modification of the design would become necessary, and that the courtroom struggle would continue indefinitely. Even then there could be no guarantee that it would be successful. In such a case, as the Governor's wide discretionary powers come to be recognized, the risk of defeat is high. And, even if the state continued to win, the works are likely to be considerably delayed. On the other hand, even if the prefecture wins, if it turns out that the state would not ask for Futenma return because it insists that Henoko construction is the only way forward, then it is inconceivable that Okinawa by itself could negotiate with the US and secure Futenma's return."

Judge Tamiya offered the parties two alternative scenarios for resolution, referring to them simply as "A" and "B" (sometimes referred to as "basic" and "provisional" though the document itself does not use these words).<sup>13</sup> The tone and content of the Tamiya exhortation was remarkable, and legal specialists suggested that it constituted a rebuke, and a plain warning to the state that it was heading towards defeat and needed to fundamentally change its strategy. The full implication of this warning only became clear later when the state withdrew its existing suits under the Administrative Appeals Act (for which purpose it had been acting "as if it were a private individual") and, in accord with the advice from Judge Tamiya, shifted its case to the Local Autonomy Act, which fundamentally revised the relationship between central state and prefectures from vertical, superior/inferior, to "equal and cooperative," and stipulated that in the event of disagreement, the national government should first ask the local government body to revise its action and only

as a last resort seek redress by asking a court to verify the illegality of the local government body's action. Clearly the court saw such a suit as more appropriate to the newly equalized relationship and therefore more appropriate than the execution-by-proxy suit that the Abe government had chosen. The *Ryukyu shimpo* described the methods the Abe government had adopted as "a blatant denial of local autonomy ... and ... counter to legal principles."<sup>14</sup>

Under "Plan A," the defendant (Okinawa) would withdraw the order cancelling the reclamation license and

"The plaintiff [the Japanese government] enter into negotiations with the United States at an appropriate time to negotiate for the new airfield to be either returned to Japan or converted into a joint military-civilian airport at some point within thirty years from the time it becomes operational."

After that reversion (or other disposition), the state would operate the facility as a civil airport. The state was also to make maximum effort for environmental conservation and provide prompt compensation for any damage caused in the reclamation and subsequent works. To the extent that these things were done, the defendant [prefecture] and the plaintiff [the state] were to cooperate in the reclamation and subsequent operation [of the base].

Under Plan "B," both parties would withdraw their court actions, the Okinawa Defense Bureau [i.e., the Government of Japan] would immediately stop site works, and the parties would open discussion to achieve a satisfactory resolution (*enman kaiketsu*) pending outcome of a judicial determination as to illegality. Defendant and plaintiff would jointly commit to promptly respecting the outcome of such judgement and to carry out steps in accordance with it. This formula amounted basically to a substitution of fresh judicial proceedings for the existing ones, though it refers to that in the

most oblique way only, calling for resumption of negotiations in quest for "satisfactory resolution" pending the outcome of fresh court proceedings. Since the contradiction was to remain unresolved and absolute in this "amicable settlement," negotiations in 2016 would be unlikely to accomplish more than those of the "intensive negotiations" of August-September 2015.<sup>15</sup> How such fresh court proceedings would overcome the problems the judge referred to in the existing ones was not clear.

While the national government initially rejected both proposals, the prefectural government expressed "forward-looking" interest in "B," presumably because it involved a stoppage of works during negotiations.<sup>16</sup> As for Plan "A," since it was predicated on the contested base at Henoko actually being built and provided to the Marine Corps, probably until at least the year 2045, there was nothing conciliatory or amicable about it. Judge Tamiya thus combined formal, procedural critique of the Abe government' with support for its case, evident in this recommendation of a "solution" that involved construction of the very base that Okinawa was determined to stop.

### "Out-of-Court Settlement"

On March 4 an "out-of-court" settlement between the national and prefectural governments was announced.<sup>17</sup> Following, and drawing upon the court's January proposals, both parties agreed to withdraw their respective suits, the Okinawa Defense Bureau [the government] was to call a halt to site works, and the state to ask the prefecture under Article 25 of the Local Autonomy Act to cancel the order cancelling the reclamation license, with that matter being referred to the Central and Local Government Disputes Management Council in the event of prefectural refusal to comply. The parties

would discuss and seek "satisfactory resolution" pending the final outcome of judicial proceedings, and both would then abide by that final outcome; in other words, the Governor would promptly carry out whatever the court ruled, even if he thought it wrong, and would revoke his October 2015 order without further ado.



**Announcement of "Amicable Agreement,"  
March 4, 2016.**

While rejecting applications by the prefecture to call expert witnesses on military and defense matters (who might dispute the need for a Marine Corps presence in Okinawa) or on the environment or environmental assessment law (who might challenge the compatibility of Okinawa's unique bio-diversity with large-scale reclamation and militarization), the court showed exceptional interest in one matter: securing an explicit statement from Governor Onaga that he would abide by its ruling.<sup>18</sup>

Paragraph 9 of the "Amicable Agreement" read:

"The complainant and other interested parties and the defendant reciprocally pledge that, after the judgment in the suit for cancellation of the rectification order becomes final, they will immediately comply with that judgment

and carry out procedures in accord with the ruling and its grounds, and also that thereafter they will mutually cooperate and sincerely respond to the spirit of the ruling."

The tortuous prose of this clause (confirming several courtroom oral exchanges to the same effect) left no doubt of the intent. During his appearances before the court he was repeatedly asked for assurances. "Will you abide by the judgement?" asked the judge, to which Onaga replied, repeatedly "*Shitagau*" (I will follow it.) Yet the wording of the paragraph that in due course incorporated this pledge, especially the commitment to "cooperate and sincerely respond to the spirit of the ruling," was problematic. It suggested a "spirit" or "essence" (*shushi*) that was somehow more than the core content (*shubun*) of the judgment, which was simply a ruling on Governor Onaga's October 2015 striking down of his predecessor's reclamation license.

Challenged in the Okinawa Prefectural Assembly on March 8 as to what this meant, Governor Onaga explained his understanding that Paragraph 9 signified consent to comply with a court ruling should the case go against him. As an elected official he had little alternative but to reply in such terms. However, he went on to explain (through his staff) that he understood it to mean simply that his October 2015 order would be cancelled, i.e. the Nakaima license would be restored, while in respect of all other matters he would make "appropriate judgement in accord with the law."<sup>19</sup> Though he did not go into detail, that would seem to mean that, even if defeated in court, he could still, should he choose, issue a fresh revocation of the Nakaima reclamation license and he could refuse or obstruct requests from the state for detailed adjustments to the reclamation plan or engineering design. Onaga supporters hope and believe he will do this, playing, so to speak, a decisive trump card if and when the state wins a judicial victory. They expect or hope that

he would then, as he promised at an electoral campaign speech on 21 October 2014 (and elsewhere), revoke the Nakaima license even if the court ruled that there were no legal flaws in the process.<sup>20</sup>

The Abe government, however, is bound to insist that Paragraph 9 of the Agreement means pledging comprehensive and thoroughgoing cooperation under the rubric of the "spirit of the ruling," and that it therefore transcends Onaga's pledge to do "everything in my power" to resist the Henoko base plan.

There is a peculiar irony about the focus of this case on the "rule of law" which Chief Cabinet Secretary Suga has repeatedly said is beyond question in Japan. While the state in its dealings with Okinawa has often adopted perverse or arbitrary readings of law and constitution, Onaga has been ever scrupulous and exhibits a naïve faith in Japanese institutions and in the certainty of his Okinawan cause triumphing if only it is given a fair hearing. While the Governor has been repeatedly subjected to grilling over his readiness to abide by a final court decision on the Henoko matter, the government itself has throughout the Henoko case relied on superior force and intimidation. It is this government that in 2014 manipulated the constitution by the simple device of adopting a radically new interpretation of it (setting aside the understanding followed by all previous governments, embodied in a decision of the Cabinet Legislative Bureau, that the Constitution's Article 9 forbade the exercise of the collective right of self-defense) and then in 2015 adopted a raft of security legislation that many – almost certainly a majority – of constitutional specialists saw as unconstitutional.

Large and potentially very serious allegations now circulate as to the process by which the "Amicable Agreement" was negotiated.<sup>21</sup> They remain unconfirmed, and so need to be treated

with caution, but in the context of the Abe government's known policies and actions in regard to Okinawa, plausible. They suggest that the Abe government orchestrated the March settlement through a high-level, secret planning group set up early in February (comprising Suga Yoshihide, Chief Cabinet Secretary and head of the group, Foreign Minister Kishida Fumio, Defense Minister Nakatani Gen, and Tezuka Makoto, head of the Justice Ministry's Litigation Bureau and a specialist in "out-of-court" settlements, including that in 2015 of the long-running Narita Airport dispute). It may be significant that the judge on that occasion was Tamiya Toshiro, the same judge who, following transfer by the Ministry of Justice from the Tokyo High Court to the Fukuoka High Court, Naha branch, on October 30, 2015, became presiding judge in the "proxy execution" suit launched by the government against Okinawa prefecture on November 17, 2015.<sup>22</sup> It now appears that Tezuka may have colluded with Judge Tamiya to arrive at the most certain way to exact Okinawan submission to the base construction plan and to remove all possibilities of further judicial obstruction.

The result was the agreement reached on March 4, avoiding the potential perils of the "Proxy Execution" suit already noted above and "baiting the hook" to induce Okinawan submission by including the suggestion (in Plan B) of works stoppage and resumption of talks (to both of which Okinawa could respond positively), and adding the further sweetener of reference (in the January 29 Recommendation to Settlement), to a renegotiation with the US of the SOFA arrangements governing USA forces in Japan. Meanwhile, however, the real barb was hidden in Plan B, whose key component was the superficially innocuous "sincerity" provision in Paragraph 9, designed to remove any possible further recourse to the courts once the Supreme Court's decision is reached (presumably later in 2016 and assumed by almost all observers to be a

decision favorable to the state).

What this suggests is a conspiracy at the centre of the Abe state to deny the division of powers and the independence of the judiciary and to entrap Okinawan prefecture into submission.

Though Onaga's support level remains high in Okinawa, there is a nagging doubt as to how he will respond when or if faced with a Supreme Court ruling and how exactly he will then interpret his pledge under paragraph 9. This is fed by Onaga's inclination to engage in "secret negotiations" with the Abe government (as during the month's "intensive negotiations" of late 2015, for which it seems that no record was kept), or during the weeks leading to the March 4 agreement),<sup>23</sup> by his refusal to criticize Abe's controversial constitutional 2014 interpretation of collective self-defense and subsequent 2015 security legislation package, and by his support for the US base system in general (obviously with the exception of the Futenma substitution project),<sup>24</sup> his failure to oppose the construction of landing pads for Marine Corps "Osprey" aircraft in the middle of villages in Northern Okinawa, and his silence on projects to expand Japanese Self-Defense Force presence through the Southwest (or Frontier) islands of Ishigaki, Miyako and Yonaguni.

As noted in a previous essay, the Governor has also persistently declined to take any step to "cancel" the license for rock and coral crushing in Oura Bay issued by his predecessor in August 2014.<sup>25</sup> It is clear that his attention has focussed on the "main game" – the reclamation license – but as the Okinawa Defense Bureau readied hundreds of massive concrete blocks early in 2016 for dropping into Oura Bay many believed that any steps in defense of the bay that could be taken should be taken, especially by a Governor who had promised to do "everything in my power" to stop reclamation and base construction.

## "Rectification Order"

Paragraph 8 of the agreement reads:

"Until such time as a finalized court judgement on the proceedings for cancellation of the rectification order is issued, the plaintiff and other interested parties and the defendant will undertake discussions aimed at 'satisfactory resolution' (*enman kaiketsu*) of the Futenma airfield return and the current [Henoko] reclamation matter."

However, no sooner had the "Amicable Settlement"" with Okinawa promising those "discussions aimed at satisfactory resolution" been reached than Prime Minister Abe insisted anew that Henoko was "the only option," implying that there was nothing to negotiate but Okinawa's surrender.<sup>26</sup> Just three days after agreeing to engage in discussions, and without so much as a preliminary meeting, MLITT Minister Ishii (for the government) sent Governor Onaga a formal request that he retract his cancellation of the Oura Bay reclamation license (i.e. that he restore the license granted by Nakaima in December 2013).<sup>27</sup> It was exactly as prescribed under Paragraph 3 of the agreement, committing the parties to proceed in accord with Article 245 of the Local Autonomy Law, but it was plainly at odds with the prescription under Paragraph 8: that they negotiate.

On March 14, Governor Onaga responded, refusing, pointing out that, contrary to the procedure spelled out in the Local Autonomy Law, the Government had given no reason for its request and therefore his cancellation order could not be seen as a breach of the law.<sup>28</sup> Submitting the matter to the Disputes Management Council, he referred to Ishii's act as "an illegal intervention by the state."<sup>29</sup> It was, he said, a "pity" that the government had seen fit to issue such a Rectification Order immediately after entering the Amicable Agreement.

The Disputes Management Council thus assumes centre stage in a major constitutional crisis. Till now an obscure and almost irrelevant bureaucratic appendage, since its establishment in 2000 it had only twice been called upon to adjudicate a dispute and on neither occasion – both matters of relatively minor importance – had it issued any ruling against the government.<sup>30</sup> The fact that in December 2015 it dismissed out-of-hand the then Okinawan submission, without so much as a statement of its reasons, made it seem a singularly unpromising avenue for Okinawa.

## While the Wheels Grind

As lawyers in Tokyo and Naha pore over documents and issue writs or other court documents, it is already clear that the March 4 "Amicable Settlement" or "out-of-court" settlement was neither "out-of-court" nor a "settlement." It was drawn up and agreed in accord with court directives (and conceivably in secret negotiations between government and court), and under it the government shifted its case against Okinawa from the Administrative Appeals Act, where its position was procedurally weak, to the Local Government Act, where it might be stronger.

As the Asahi noted,

"The Abe government has acted as if it were backing off, only to push harder. This suggests the arrogance that comes from Tokyo regarding Okinawa as an inferior. And this is despite the High Court's statement that the central government and all local governments are 'equals'."<sup>31</sup>

Large issues – not least of course the fate of Oura Bay and the expansion of the overwhelming US base presence on Okinawa – are at stake. These include constitutional interpretation (distinction of central and local government powers, relation of treaty-based

defense and security relations with the United States to constitutional principle, and environmental protection. As I wrote earlier,

While the prefecture insists it is a breach of its constitutional entitlement to self-government for the state to impose the Henoko construction project on it by unilateral, forceful decision, the state, for its part, argues that base matters are its prerogative, a matter of treaty obligations not subject to any constitutional barrier, and have nothing to do with local self-government.<sup>32</sup>

The "settlement" merely concentrated court proceedings into a single suit, from which a preliminary judgement is expected around mid-May. The heavy responsibility of making that judgement falls to a completely untried quasi-judicial organ, whose finding is then almost certain to be referred to the Supreme Court. At that level it is almost inconceivable that the state could lose. The separation of powers is weak. Prime Minister Abe inclines to see courts, especially the Supreme Court, as organs of state subject in the last resort to him, and the precedent has been clear since the December 1959 "Sunagawa case" that the judiciary does not pass judgement on matters pertaining to the security treaty with the US. This is because they are "highly political" and concern Japan's very existence, hence are to be left to the Prime Minister.



**Medoruma Shun**

Estimates of the overall time the judicial process might now take range from six to twelve months. Even then, however far from necessarily signifying an end to the problem, that presumed "final" and "irreversible" judgement, regardless of Governor Onaga's response to the ruling, might simply spark a more intense level of political and social crisis, affecting in turn the Japan-US relationship and the frame of regional order. One of Okinawa's most respected figures, the prize-winning novelist Medoruma Shun, who as a Henoko canoeist has formed part of the non-violent civic blockade designed to block reclamation works, recently commented, pregnantly,<sup>33</sup>

"It seems very unlikely that the Henoko new base construction problem can be solved solely by the administration, the law, or the parliament. Public opposition will keep delaying the construction. And the Japanese government will probably only give up on construction if public protest extends beyond Camp Schwab to US bases throughout the prefecture, and comes to affect the functioning of Kadena Air Base, with the US government and military only then realizing the seriousness of the situation."

That, Medoruma adds, is a far from impossible prospect.

Governor Onaga, too, looks beyond the Abe government to the ultimate arbiter, the government of the United States. He detects a possibly fatal weakness in the Abe government's stance:

"The Abe government looks strong, but it seems to me that it is a government that possesses a fragility that makes it liable to crack under pressure. As for what it is that constitutes that weakness, it is that this government is completely lacking in ability to say anything to America."<sup>34</sup>

Okinawa too, however, possesses a certain fragility, especially in the "All-Okinawa"

formulation favoured by Governor Onaga. In this crisis of the 21<sup>st</sup> century Japanese state and the Okinawan people, Onaga Takeshi, in so many respects the quintessential, conservative local government Japanese politician, poses a major challenge, rooted not in ideology but in identity politics, to the government of Japan (and beyond it, to that of the United States). Many wonder how far such an unlikely figure can go down the path of resistance to his conservative colleagues and counterparts at the helm of the nation state on the one major issue on which he differs from them. The unpredictable factor is his claim that his Okinawan identity is the crucial determinant of his policies, his moral and political compass. The question, ultimately, is whether identity can in fact trump ideology.

What follows is a series of six short comments by Okinawans active in one or other aspect of the movement opposing construction of the new base at Henoko, offering their understanding of the March 4<sup>th</sup> agreement.



**Planned site for relocation, May 2015.**

## How is the "Amicable Settlement" to be Understood?

**Sakurai Kunitoshi**

## Professor Emeritus and Former President, Okinawa University



The March Amicable Settlement means in the first instance that the state avoids defeat in the proxy execution suit. The chief judge's recommendation of settlement was a message to the national government that it was likely to lose the suit. The chief judge believed the forceful steps for proxy execution that the state had adopted abruptly, without going through proper procedures, were in breach of the Local Autonomy Law.

However, in the judgement that was to have been delivered on April 13, the chief judge did not want to rule against the state. The implication of his advice was that the likelihood of the state winning would be very high if it went back and restarted proceedings for cancellation of the rectification directive in accord with this law. The Abe government could swallow the "Amicable Settlement" deal because by doing so it avoided the damage of defeat and overcame the image of a strong-arm

government. It also had its eye on the forthcoming June [Okinawa] Prefectural Assembly and July national House of Councillors elections.

It was a significant accomplishment for the Okinawan movement that under the agreement, work stopped and the natural environment of Henoko and Oura Bay and people's livelihood could enjoy at least a temporary respite. This was thanks to the years of struggle at the Henoko site, the involvement of the "All Okinawa" [prefecture-wide] movement backing it, and the support of people of conscience in Japan and around the world. The problem now is: how to get the government to give up the construction of a new base at Henoko.

Abe insists that foreign affairs and national defense are exclusive prerogatives of the nation state, and he has not the slightest inclination to listen to the Okinawan proposals. The fact that the government issued the rectification directive without bothering to resume the discussions that were supposed to be held [with Okinawa] provided eloquent testimony of this. All that Abe can think of is his pledges to the US, not Okinawa.

There is high probability that the prefecture will lose in the suit against the prefecture for rectification. Paragraph 9 of the Amicable Settlement states:

"The complainant and other interested parties and the defendant reciprocally pledge that, after the judgment in the suit for cancellation of the rectification order becomes final, they will immediately comply with that judgment and carry out procedures in accord with the ruling and its grounds, and also that thereafter they will mutually cooperate and sincerely respond to the spirit of the ruling."

However, defeat for the prefecture just means the cancellation of the order by Governor Onaga nullifying former Governor Nakaima's

reclamation license. The reclamation license issued by Nakaima would then be restored and the Okinawa Defense Bureau (ODB) would resume works. But, as it presses ahead with works various design changes will become necessary. Each time that happens, the consent of the Governor of Okinawa, as the authority granting the license, becomes necessary and Governor Onaga has declared that he will exercise to the full his authority as Governor to prevent any new base being built.

The problem is the existence of the sincerity clause in the latter part of Paragraph 9, by which the parties "reciprocally pledge" that (after implementation of procedures prescribed in the judgment) "thereafter they will mutually cooperate and sincerely respond to the spirit of the ruling." The Abe government will want to enforce this sincerity clause. The question is whether or not we can construct a public opinion capable of blocking it.

(Translated by Gavan McCormack)

## Henoko: the "Amicable Settlement"

**Nakasone Isamu**

**Co-representative of the Uruma Gushikawa "Article 9 Association" and the "All-Okinawa" Council Uruma branch.**



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A settlement to a lawsuit is not a ruling that decisively declares victory or defeat based on each side's assertions and evidence regarding the civil dispute at issue. Rather, it is a method of voluntary dispute resolution chosen by the parties involved when both parties have determined that they can be satisfied by a conclusion involving mutual concessions. A written settlement has the same legally binding force as a judge's ruling. While in the case of administrative lawsuits, which differ from civil lawsuits, settlements are generally uncommon,

there are rare exceptions to this rule.

On March 4, the Japanese government and the Okinawa prefectural government agreed to a settlement in the proxy execution lawsuit. From the start, I voiced my concerns with various elements of the related legal process on the internet and in other public forums. Aspects I found problematic included the court's supervision of the lawsuit, from the progression of the oral proceedings to the timing and method by which a settlement was advised as well as the details of the court's settlement proposal.

The court initially proposed two settlements. The first was referred to in the media as the "fundamental proposal" and by the court as "proposal A." The terms of proposal A stipulated that

"The plaintiff [the Japanese government] enter into negotiations with the United States at an appropriate time to negotiate for the new airfield to be either returned to Japan or converted into a joint military-civilian airport at some point within thirty years from the time it becomes operational."

From my experience dealing with numerous settlements in court, I instinctively felt this paragraph to be particularly unnatural.

Requisite for the conclusion of a settlement are

- (1) that both parties make some concession, and
- (2) that the terms refer to actions the parties have the authority to execute freely, or that can be executed by application of the law.

However, the success or failure of diplomatic negotiation with the United States as described in the above paragraph is contingent on the cooperation of a third party, namely the United States. In other words, the paragraph does not describe something that the Japanese

government has the authority to execute freely. Thus, it fails to adhere to the requisites of a term of settlement, and thus the settlement proposal as a whole lacks validity from a legal standpoint.

It is inconceivable that, under ordinary circumstances, a judge would insert such a paragraph into a proposed settlement. For such a paragraph to be included, the United States, as an interested party, would need to become involved in the settlement procedure in order for the settlement to be concluded (Supreme Court ruling of 9 August 1938). The inclusion of such a paragraph in a settlement proposal would render the entire settlement invalid. Furthermore, for two settlement proposals to be recommended simultaneously is inconceivable in ordinary judicial practice. The inclusion of proposal A, which was highly disadvantageous to the Okinawan side, may well have been no more than a distraction cunningly used as a form of psychological manipulation in order to entice the Okinawan side to accept the provisional proposal (proposal B).

Neither proposal A nor B even slightly resembled the sort of settlement ordinarily proposed by a court. From the start, I suspected that both proposals were political instruments written jointly by Ministry of Justice bureaucrats and officials from the Prime Minister's office unaccustomed to court practice and theory, which would explain the inclusion of wording that would invalidate the settlement. Sure enough, there have since been shocking reports that the government accepted the settlement after behind-the-scenes talks were held between the Prime Minister's office and top Ministry of Justice officials.

If these reports are true, they seriously call into question the independence of Japan's judiciary.

The most serious problem faced by the Okinawa prefectural government lies in the wording of Paragraph 9 of the settlement,

which stipulates that

"The complainant and other interested parties and the defendant reciprocally pledge that, after the judgment in the suit for cancellation of the rectification order becomes final, they will immediately comply with that judgment and carry out procedures in accord with the ruling and its grounds, and also that thereafter they will mutually cooperate and sincerely respond to the spirit of the ruling."

Since the settlement fails to specify either the time period or length of time during which the two parties must engage in talks, the government will likely bypass talks altogether and aim to hurry the proceedings of the future lawsuit.

The seemingly innocent language of Paragraph 9 of the settlement devises a trap to utterly circumvent any methods the Okinawa prefectural government could otherwise potentially use to prevent the Henoko base construction in the event that it loses the future lawsuit. Article 114.1 of the Civil Proceedings Law states that "*Res judicata* will only apply to the contents of the main text of a final judgement." This is accepted to mean that *res judicata* and executory power only arise from the main text of the verdict, or the verdict's conclusion. With the sole exception of cases in which the verdict is offset by an appeal as described in article 114.2, the text of the "verdict reasoning," which describes the facts considered and the decision-making process leading up to the verdict, cannot be grounds for asserting *res judicata*. (There do exist legal doctrines, such as the collateral estoppel doctrine, that recognize binding force arising from the "verdict reasoning.")<sup>35</sup>

Regardless of this accepted interpretation of the Civil Proceedings Law, however, in the settlement between the national government and Okinawa prefectural government, the wording of Paragraph 9 means that the Okinawan side will inevitably be bound by the

contents of the "verdict reasoning" in addition to the main text of the verdict. The Okinawa prefectural government has "pledged" that even after the lawsuit is over it will "mutually cooperate and sincerely respond to the ruling's spirit." This means that if the governor of Okinawa attempts to exercise his authority, for example by denying authorization of future changes to the construction plans that will inevitably arise as the construction proceeds, the national government could use this as grounds to bring Okinawa to court once again, arguing that the governor's actions go against determinations described in the "verdict reasoning." Thus, hidden in Paragraph 9 is the secret behind the government's strategy to use the settlement to press forward with the base construction while using the temporary suspension of construction as a scheme to gain Okinawa's trust.

The oral proceedings in the proxy execution lawsuit also showed the government's meticulously thought-out scheme to manipulate the court proceedings in such a way as to preclude future difficulties. Detailed reports of the proceedings show that when the lawyers representing the national government cross-examined Governor Onaga Takeshi, they questioned him over and over as to whether he would abide by the court's final ruling. After the settlement was concluded, Prime Minister Abe also made repeated reference to Paragraph 9 when speaking to the press. The paragraph is a maneuver designed to preemptively thwart any form of opposition that the Okinawa prefectural government could potentially attempt to utilize.

The court battle up until this point centered on the current governor of Okinawa nullifying the land reclamation permit authorized by his predecessor on the grounds that the authorization contained legal flaws or defects. In addition to the act of nullification, the governor could also potentially revoke the permit. Nullification and revocation are two

separate administrative actions, with revocation being permissible when necessary to protect the public good. Revocation is thus another card which the governor could potentially play, but Paragraph 9 of the settlement could act as a hindrance in the event that he chooses to do so.

(Translated by Sandi Aritza)

## After the "Amicable Settlement": For a True Solution to the New Base Construction Issue

Ashitomi Hiroshi

Co-Representative, Council Against the Heliport



On March 4, a settlement was concluded in the lawsuit over the proxy execution of the Henoko land reclamation authorization brought by the Abe administration against the governor of Okinawa. The settlement contained the following terms:

(1) The Japanese government and the Okinawa prefectural government will withdraw all

lawsuits they have brought against each other regarding the nullification of the land reclamation permit.

(2) The Japanese government will withdraw the formal objection and stay of execution it enacted in response to the permit nullification, and immediately suspend all construction work related to the project.

(3) On the basis of the Local Autonomy Law, the Japanese government will issue a rectification order to the governor of Okinawa, ordering him to reinstate the land reclamation permit. If the Okinawa prefectural government rejects the order, it will file a lawsuit to have the order withdrawn. Both sides will accept the outcome of the ensuing trial.

(4) Until a court verdict is reached, both sides will continue to hold talks aiming to find a mutually acceptable solution to the issue of Futenma's return and the Henoko land reclamation.

It is difficult to fathom the true intent behind the government's sudden decision to accept a settlement in the lawsuit it initiated. Nonetheless, after being subject to regular violence by the Coast Guard at sea and the police and riot police on land, we welcome even a temporary suspension of work on the ground that will provide us with a brief respite from our continued struggle.

However, even while announcing his acceptance of the settlement, Prime Minister Abe reconfirmed his insistence that "Henoko is the only solution." Only three days later, on March 7, the Minister of Land, Infrastructure, Transport and Tourism issued an order demanding that the governor withdraw his nullification of the permit. This forceful invocation of power clearly shows that the government's "settlement" signifies not a readiness to listen earnestly to what Okinawans have to say but is rather an expedient used to promote the new base construction by avoiding

a loss in the proxy execution lawsuit and setting the stage to its own advantage in a future lawsuit.

One week after the settlement was reached, we protestors on the ground are still unable to let our guard down. Even though the governor's order to nullify the permit has regained its legal force and construction has been stopped, construction vessels remain stationed on the water, and floats and oil fences remain fixed in place around the construction area. The riot police from the Tokyo Metropolitan Police Agency are still stationed at the protest site on land.

We believe the following premises represent the minimum conditions needed for the Japanese government and the Okinawa prefectural government to negotiate toward a mutually acceptable solution.

(1) Withdrawal of the Tokyo Metropolitan Police Agency riot police, Coast Guard personnel, and private security company personnel both on land and at sea;

(2) Removal of security vehicles and corrugated metal blockade in front of the Camp Schwab construction gate;

(3) Removal of the "temporary restricted area" in Henoko Bay and Oura Bay;

(4) Removal of floats, oil fences, and concrete blocks demarcating the restricted area, as well as of all construction vessels;

(5) Suspension of all works on land related to the new base construction.

We call on the Japanese government to earnestly carry out all of the above actions. The Abe administration must realize that without fulfilling the above conditions, there can be neither a "settlement" nor a "mutually acceptable solution" to the matter.

We hereby reaffirm that the "only solution" from the perspective of Okinawa's history and future prospects, as well as for the future of Japan, is for the government to abandon the Henoko base construction plan. We furthermore declare our determination to join Governor Onaga and Nago Mayor Inamine Susumu in fighting for a true solution.

Statement Adopted, March 13, 2016

(Translated by Sandi Aritza)

### **On the "Amicable Settlement" Agreement Between the Japanese State and Okinawa Prefecture**

**Miyagi Yasuhiro**

**Author, Activist, Former Nago City Councillor**



The government of Japan launched a court action to challenge Governor Onaga Takeshi's cancellation of the license for Oura Bay reclamation as part of the Henoko base construction plan. Okinawa prefecture then

launched an action against the government seeking to cancel its cancellation of the license, so that state and prefecture were locked in judicial battle.

The court hearing the dispute issued a "Recommendation for Amicable Settlement" to the state and the prefecture and the two parties deliberated on it subject to a court order that they not publish the conditions attached and not reveal the contents to the people of either nation or prefecture.

The impression one gets from the media is that the nation state was negative about "amicable settlement" and persisted in talking about enforcing the works, while the prefecture was inclined to take a positive view of the settlement so long as it involved a stoppage of the works. March 4 brought a sudden change. The state accepted the court's call for "amicable settlement," both state and prefecture came to agreement, works stopped, and proceedings in accordance with the "amicable settlement" commenced. At that point, for the first time the content of the "amicable settlement" became clear: state and prefecture would withdraw their respective suits, the state would halt reclamation works forthwith, proceedings concerning the prefecture's cancellation of the reclamation license would be referred under the Local Autonomy Act to the Central and Local Government Dispute Resolution Council and if either party did not accept the outcome at that point they would contest it in court.

What only became clear from later reports (*Nihon Keizai Shimbun*, March 12 2016) was that the head of Japan's National Security Council had visited the US, explained its inclination to accept the "amicable settlement" to US President Obama's National Security adviser Susan Rice at the White House, and got the impression that that position would be respected. Chief Cabinet Secretary Suga Yoshihide had been engaged in ongoing

discussions with Ministry of Justice officials and what seems to have led the government of Japan to switch its position and accept "amicable settlement" was the judgment that the state could win, even though it might take up to one year to secure a Supreme Court judgment.

Paragraph 9 of the "Amicable Settlement" reads:

"The complainant and other interested parties and the defendant reciprocally pledge that, after the judgment in the suit for cancellation of the rectification order becomes final, they will immediately comply with that judgment and carry out procedures in accord with the ruling and its grounds, and also that thereafter they will mutually cooperate and sincerely respond to the spirit of the ruling."

The "thereafter" reference may be seen as indicating the Abe government's understanding of the agreement as "irreversible" and its resolve to win the court case and to deprive Okinawa prefecture of any means of resistance.

For Okinawa prefecture, this "Amicable Agreement" is a settlement of the suits on reclamation license cancellation. Even if it were to lose in the court proceedings envisaged under the settlement, the prefecture would still be able to exercise Governor's powers in relation to subsequent design changes and such matters.

Blatantly ignoring the will of the Okinawan people, the governments of Japan and the United States issued a joint statement on April 25, 2015 that "the combination of early transfer of Futenma Airfield to Camp Schwab and the consolidation of Okinawan bases will ensure a long-term, sustainable US military presence." The plan of the Japanese and US governments to preserve Okinawa as a base island for the long term is now stalled before the determined struggle of the non-violent, direct action of the people of Okinawa.

Among the activists blocking construction of the new base, whether at the gate in front of Camp Schwab or at sea, no one looks optimistically on the present situation and the future prospects, but neither are we pessimistic. The will of the people of Okinawa to absolutely reject "war" is a reminder that there is a straight line between the hell of the Battle of Okinawa [in 1945] and the Okinawa of today.

(Translated by Gavan McCormack)

## The Amicable Settlement - One Citizen Activist's Reflections

Urashima Etsuko

Poet, Historian, Activist



The sudden March "Amicable Settlement" astonished us, but at least for those of us on the harsh and demanding frontlines it meant that we could take some rest.

In principle, it is clear that nobody connected with the [Henoko] frontline trusts the Abe government and that the government's focus is on "best way forward is the roundabout way" following the court's suggestion that it might lose its hasty proxy execution suit and on electoral policies for the June [Okinawan]

prefectural assembly and the July [national] House of Councillors elections. It has not the slightest intention of stopping Henoko base construction.

I do not for one moment doubt that Governor Onaga remains unwavering in his stance of stopping Henoko construction, though at first I felt some concern and anxiety that he might find himself bound hand and foot and unable to resist under the "Amicable Settlement" words about "both sides to submit and sincerely cooperate in accord with its [the judgment]'s spirit" However, as also is evident from the Governor's explanation to the prefectural assembly, to "comply with the judgment" refers to the suit on cancelation of the reclamation license. Even if Okinawa loses that suit, there are many things he can still do that would be within the scope of governor's powers, including "revocation of the reclamation license."

I think the question is how well, over the next year or so, while maintaining our watch over the site and keeping up our guard, we can succeed in shifting national and American opinion.

There are some things we find difficult to understand about the approach of Governor Onaga. He is a man who built his career within the LDP (Liberal Democratic Party) and of course we do not support everything he does. But what we must avoid at all costs is the sort of fear and mistrust that could cause internal splits among us (the sort of thing that would give most delight to the Abe government). At very least, I have not the slightest doubt about the resolve of Governor Onaga, as an "Uchinanchu" [Okinawan native] to [in his words] "stake my life on stopping the Henoko base construction, for the sake of the future of Okinawa and of future generations."

In the anti-base movement over nearly twenty years, the present phase, in which prefectural and city governments and the citizens and

people of Okinawa stand up resolutely against state power, is unprecedented and epochal. Along with gratitude that we have come so far, I feel the desire to treat this unity as precious. I refrain from any casual assessment of the prospects for the future, but all we can do is continue demanding cancellation of the Henoko base plan. To accomplish that goal I think there is nothing for it but for we Okinawans and our Governor to trust each other and support each other in opposing the state power of Japan and the United States.

(Translated by Gavan McCormack)

### **The "Amicable Settlement" - Statement from "Okinawa Citizens' Network for Biodiversity"**

**Yoshikawa Hideki**

### **"Okinawa Citizens' Network for Biodiversity" Representative**



On March 4, 2016, the Japanese government and the Okinawa prefectural government accepted the "provisional settlement proposal" (hereinafter "the settlement") set forth by the Naha branch of the Fukuoka High Court in the trial regarding the plan to build a U.S. military base in Henoko/Oura Bay. The Japanese government agreed to immediately suspend all construction work, and both sides agreed to engage in talks to try to find a solution to the Henoko base construction issue. Both sides further agreed to consolidate the three lawsuits brought against each other in the past several months into one single lawsuit. Lastly, both sides agreed that if talks do not lead to an agreement, they will respect the court's final ruling in the ensuing trial.

Three days after accepting the settlement, however, on March 7, the Japanese government's Ministry of Land, Infrastructure, Transport and Tourism issued an order to

Okinawa Governor Onaga Takeshi demanding that he reinstate the Henoko land reclamation permit.

The Okinawa Citizen's Network for Biodiversity believes that the settlement and related moves by the Japanese government and Okinawa prefectural government must be carefully observed with caution and firm resolve. Our view of the situation is as follows.

We are extremely troubled by the Japanese government's dogged insistence that building a new base in Henoko is the "only way" to solve the problems posed by U.S. Marine Corps Air Station Futenma. Some are saying that the government's acceptance of the settlement was a political maneuver with an eye toward the House of Councilors election and the Okinawa Prefectural Assembly election coming up this summer. We are concerned that once the elections are over, the government may come up with some justification to resume construction on the Henoko base. Just three days after accepting the settlement, on March 7, the government issued an order for Okinawa Governor Onaga to reinstate the land reclamation permit. This clearly indicates the government's intention to push forward with the new base construction, not a willingness to engage in discussion. The government must realize that insisting on the Henoko plan will only lead to a deadlock, making a breakdown in negotiations inevitable.

We are also deeply apprehensive regarding the fact that the government has not clearly stated that "suspending construction" actually means stopping *all* construction related to the Henoko base. For instance, because the new base will be built on reclaimed land in Henoko Bay and Oura Bay, many tons of soil and gravel will need to be excavated and accumulated from various areas in Okinawa and other parts of Japan in order to carry out the land reclamation. The Japanese government has not clearly stated that it will stop all work related

to the excavation and accumulation of soil and gravel. The Japanese government, the Okinawa prefectural government, and the court must clarify that "suspension of construction" refers to the suspension of *all* works related to the construction of the base.

Furthermore, we are concerned by the likelihood that the planned talks between the Japanese government and the Okinawa prefectural government will lack transparency, and by the lack of clarification about the manner in which the opinions of the Okinawan people will be reflected in these talks. The Okinawa prefectural government must remember that the Henoko base construction plan has been stalled due in large part to the efforts of the people of Okinawa. The Japanese government and the Okinawa prefectural government must both recall that by holding previous talks behind closed doors, they aroused even greater mistrust on the part of Okinawans, which led to even stronger resistance to the base construction. Both the national and the local government must ensure transparency in future talks and guarantee a method for the views of the Okinawan people to be reflected in these talks.

We are also concerned as to whether the final ruling by the court in the event that talks break down between the Japanese government and the Okinawa prefectural government will be one that protects the natural environment in Henoko and Oura Bay, and the lives of the people who reside there. We fear that the decision may not be one that the Okinawan people will be able to accept and comply with. We fear that Okinawa's right to local autonomy as defined by the Local Autonomy Law may not be guaranteed. Our fears are based on numerous precedents in which the Japanese courts have tended to err in favor of the central government. In finding a solution to the Henoko base construction problem, democracy must be respected as a principle, as a value, and as a process. The Japanese government

must acknowledge that every democratic and administrative process available, including potential future lawsuits, may be utilized to protect the natural environment in Henoko and Oura bay, and the lives of local residents.

We believe that the Japanese government, the Okinawa prefectural government, and the court must ensure that in implementing the terms of the settlement, the natural environment in Henoko Bay and Oura Bay be returned to their original state. The responsible parties should immediately remove the vessels and oil fences that were being used for the drilling surveys done to prepare for the land reclamation. They must also remove the floats and buoys put up to demarcate the "temporary restricted zone" established in order to keep out protesters in kayaks and other boats. They must return the richly biodiverse ocean environment to the various forms of marine life, including the endangered dugongs and sea turtles that reside there.

Furthermore, in implementing the terms of the settlement, the Japanese government and Okinawa prefectural government must ensure that citizens are able to express their opposition to the Henoko base construction and related ongoing works without fear of violent retribution from the police and Coast Guard.

We believe that as a basis for future talks, the Japanese government and the Okinawa prefectural government must conduct a thorough review of scientific reports and assessments regarding the natural environment in Henoko and Oura Bay, and the impact of the base construction on that environment. Scientific reports and assessments subject to review should include those provided by NGOs.

As an Okinawan environmental NGO, we resolve to spread awareness of the righteousness of our assertions regarding the environment. The natural environment of Henoko and Oura Bay is a treasure, not only for Okinawa, but for the whole world. The planned

base construction would unequivocally destroy this environment. In order to protect the natural environment in Henoko and Oura Bay, as well as the lives of the local people, we resolve to continue our struggle until the new base construction plan is abandoned.

Adopted, March 10, 2016

(Translated by Sandi Aritza)

## Contributors

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**Nakasone Isamu.** Nakasone graduated in 1965 from the University of Tokyo's law department and worked in the court system under the Government of the Ryukyu Islands to 1972 and after reversion of Okinawa as judge of a summary court in Tokyo (retiring 2010). He is currently co-representative of the Uruma Gushikawa "Article 9 Association" and the "All-Okinawa" Council Uruma branch.

**Ashitomi Hiroshi.** Ashitomi is co-representative of the Council Against the Heliport; a key figure in the Henoko protest movement.

**Miyagi Yasuhiro.** Miyagi is a former Nago City Assembly member (1998-2006) who was instrumental in the 1997 Nago citizens' plebiscite that resulted in a vote against the new base plan. Currently activist, author, and Ginowan City resident).

**Urashima Etsuko.** Urashima is a Nago City writer and environmentalist, involved from the outset in 1997 in the movements opposing the construction of a new military complex in Henoko. She is the major chronicler and historian-participant of struggles in Northern Okinawa during the past two decades, author of a series of books and articles on them (in Japanese). She is also a poet of some distinction.

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## Notes

<sup>1</sup> For three recent texts, see "To the Courts! To the Streets! Okinawa at December 2015," (December 7, 2015), "Battle Stations - Okinawa in 2016," (January 18, 2016), and "The Ginowan Mayoral - Okinawan Currents and Counter-Currents," (February 10, 2016).

<sup>2</sup> See "The Ginowan Mayoral," op. cit.

<sup>3</sup> Admiral Harry Harris, Commander-in-Chief US Pacific Forces, Congressional evidence quoted in "Beigun no honne, hirogaru hamon, Bei shireikan no Henoko isetsu okure hatsugen," *Okinawa taimusu*, March 3, 2016.

<sup>4</sup> Shimada Manabu, "Henoko isetsu 'isogaba maware' kuni, sosho ipponka e Okinawa-ken to wakai shikirinaoshi ni 'shosan,' Bei mo rikai," *Nihon keizai shimbun*, March 14, 2016.

<sup>5</sup> "Henoko koji ichinen chudan, Bei kaiheitai toppu ga shogen," *Ryukyu shimpo*, March 17, 2016.

<sup>6</sup> Heianna Sumiyo, "Obama daitoryo Henoko okure o yonin 'shibaraku ugokanai no da na," *Okinawa taimusu*, March 20, 2016.

<sup>7</sup> Quoted in Heianna Sumiyo, "Harisu Beigun shireikan 'hantai undo kakudai shite iru' Nakatani shi ni Henoko okure ken-en tsutatsu," *Okinawa taimusu*, February 25, 2016.

<sup>8</sup> See discussion in my (forthcoming) "Ryukyu/Okinawa's Trajectory - From Periphery to Center, 1600-2015," in Sven Saaler and Chris Szpilman, eds., *Routledge Handbook of Modern Japanese History*, Routledge, 2016.

<sup>9</sup> On the 950 page document, Miyamoto Kenichi, "Okinawa no jichi to Nihon no minshushugi," *Sekai*, January 2016, pp. 75-83, at p. 76. For other details see my previous texts, especially "Battle Stations."

<sup>10</sup> "Battle Stations," op. cit.

<sup>11</sup> Major documents, in Japanese only, are to be found on the Okinawa prefecture home page, including both the January 29 conciliation proposal and the March 4 agreement. See (for the former) Chiji koshitsu Henoko shin kichi kensetsu mondai taisakuka, "Heisei 28 nen 1-gatsu 29 nichi ni saibansho ga teishi shita wakai-an."

<sup>12</sup> It is not clear what Judge Tamiya meant by this, but he may be understood as referring

obliquely to the need to get the United States to agree to a revision of the SOFA (Status of Forces Agreement).

<sup>13</sup> My previous essays, using these terms, were written based upon newspaper reports of the conciliation process, before I could refer to the actual documents.

<sup>14</sup> "In Henoko lawsuit, court ruling must respect local autonomy and legal principles," *Ryukyu shimpo*, March 1 2016.

<sup>15</sup> Discussed in Takahashi Tetsuya, "[Kenja no chie - Henoko, kichi isetsu mondai 'chi no shototsu' wa kaihi kano ka](#)," *Gendai visinesu*, November 19, 2015.

<sup>16</sup> See my "[The Ginowan Mayoral - Okinawan Currents and Counter-Currents](#)," *The Asia-Pacific Journal - Japan Focus*, February 10, 2016.

<sup>17</sup> Chiji koshitsu Henoko shin kichi kensetsu mondai taisakuka, "[Wakai joko](#)," March 4, 2016.

<sup>18</sup> "Dai shikko sosho dai yon kai koto benron," *Ryukyu shimpo*, February 16, 2016. See also discussion in Kihara Satoru, "Henoko saiban judai kyokumen (2) 'mizukara torikesu wa riteki hanshin koi,'" *Ari no hitokoto*, February 17, 2016.

<sup>19</sup> "Chiji, haiso demo kengen koshi, Henoko sесеi shiji, keiso-i ni uttae e," *Ryukyu shimpo*, March 9 2016.

<sup>20</sup> Quoted in Kihara Satoru, "'Chiji kengen koshi' no shikinseki wa shonin no 'tekkai,'" *Ari no Hitokoto*, March 10, 2016.

<sup>21</sup> The following paragraph is based on reports from Kyodo news agency published in *Chugoku Shimbun*, *Okinawa Times* and other papers, on March 24, under the heading (*Chugoku Shimbun*) "Henoko wakai no butaiura, Suga-shi shudo, gokuhi no chosei, sosho furi no kyu tenkai," and taken up again in articles or editorials in *Okinawa Times* and other papers. For a convenient resume, Kihara Satoru, *Ari no hitokoto* - "Wakai no butaiura - Abe seiken to saibancho ga gokuhi ni sesshoku?" *Ari no hitokoto*, March 25, 2016.

<sup>22</sup> "Zetsumyo? Henoko dai shikko mae ni jinji ni okusoku tobu, Kosai Naha shibu no saibancho," *Okinawa taimusu*, November 17, 2015.

<sup>23</sup> Deputy Governor Ageda Mitsuo appears to have been engaged in secret negotiations in Tokyo with the Abe government from February 18 till the March agreement. See Kihara Satoru, "Henoko mitsuyaku wa yurusenai - 'wakai' kyogi no kokai, gijiroku wa saitei gimu," *Ari no hitokoto*, March 7 2016.

<sup>24</sup> See inter alia on this question Kihara Satoru's "Senso 'ampo-ho'-ho haishi ni sansei shinai Onaga chiji," *Ari no hitokoto*, February 27 2016.

<sup>25</sup> "The Ginowan Mayoral," op. cit.

<sup>26</sup> Reiji Yoshida, "Tokyo settles lawsuits, halts landfill at Henoko," *Japan Times*, March 4, 2016.

<sup>27</sup> The Agreement was reached on Friday March 4. The order was issued on Monday March 7.

<sup>28</sup> "Ken, keiso-i ni fufuku moshide 'zesei shiji' no torikeshi kankoku motome," *Ryukyu shimpo*, March 14, 2016.

<sup>29</sup> "Henoko isetsu, keiso-shori i ni shinsa moshide hasso, Okinawa ken," *Asahi shimbun*, March 14, 2016.

<sup>30</sup> "Keiso-i handan wa yosoku konnan," *Okinawa taimusu*, November 2, 2015.

<sup>31</sup> "Vox Populi: Abe looks down nose at Okinawa despite court's advice on issue," *Asahi shimbun*, March 10, 2016.

<sup>32</sup> "Battle Stations - Okinawa in 2016," op. cit.

<sup>33</sup> Medoruma Shun (winner of the 1997 Akutagawa Prize and the 2000 Kawabata Yasunari prize for literature), "'Wakai' o kangaeru - fukutsu no shimin undo kuni ugoku," *Okinawa taimusu*, March 21, 2016.

<sup>34</sup> Onaga Takeshi, "Okinawa wa shinkichi o kobamu," *Sekai*, (Tokyo: Iwanami shoten), January 2016, pp. 66-74 at p. 73.

<sup>35</sup> Translator's Note: When making a ruling, a judge presents a document stating the court's decision ("main text") and a separate document explaining the rationale behind the decision. *Res judicata*, or claim preclusion, indicates that a claim has been settled and cannot be relitigated. Collateral estoppel, or issue preclusion, indicates that an issue has been settled and is used to prevent relitigation of the same issue.