

The Ryukyuanist

A Newsletter on Ryukyu/Okinawa Studies

No. 78

winter 2007-2008

In this issue, we first celebrate Professor HIGA Masao's winning of the HIGASHIONNA Kanjun Prize. Then we applaud the decision in favor of Okinawa reached by the Federal District Court, Northern California in the Case of the Okinawa Dugong.

The 25th Annual HIGASHIONNA Kanjun Prize Goes to Professor HIGA Masao

Professor HIGA Masao (1936-), social anthropologist, professor emeritus at the National Museum of Japanese History [and Folklore], and currently professor at Okinawa University, is awarded the 2008 HIGASHIONNA Kanjun Prize. The HIGASHIONNA Kanjun Prize was inaugurated in 1983 by the Ryukyu Shimpōsha for the dual purpose of commemorating the achievements of the late Professor HIGASHIONNA Kanjun (1882-1963) and honoring outstanding research achievements of new generations in fields of learning related to Okinawa. One recipient is selected annually by a nominating committee on the basis of his or her lifelong activities and publications.

Professor Higa's academic career began at the University of the Ryukyus with the study of dialects of Okinawa under the tutelage of the late Professor NAKASONE Seizen (1908-1995), authority of Japanese language and literature. Nakasone trained Higa in the methods of field work, laying the foundation for Higa's lifelong research activities.

After a year at the University of Tokyo, Higa moved to Tokyo Metropolitan University and earned his Master's and Doctor's degrees. The Metropolitan University offered him a congenial ambiance in the department of social anthropology where a number of front-line social anthropologists such as MABUCHI Toichi, OKA Masao, and others were teaching. They were also seriously interested in studies of Okinawa. When they launched a group research project on Okinawa, they invited Higa to join them. Here Higa authored his first academic publication on the Munchū (kinship organization) of Tamagusukuson Nakandakari.

Higa's research ranges widely as to sites (villages, islands, countries – Okinawa, Japan, Korea, China, Thailand) and subjects (village life, Munchū, family structure, gender relations, patriarchy, matriarchy, status and power, belief systems). The diversity of sites and subjects is integrated by common methods of fieldwork, resulting in comparative analyses of variations in structural configurations within and between societies. Utilizing his vast data base, Higa has developed his own system of comparative social anthropology centered on Okinawa's ethnological realities and theories. After numerous writings over many years, he confidently declared "One Can See Asia from Okinawa" (1999). Recently, he is increasingly occupied with philosophical and methodological questions regarding possibilities of a general system of Ryukyuan ethnology (*Ryukyu minzokugaku*).

On Professor Higa's retirement from the National Museum of History, his colleagues, friends and former students honored him with a festschrift, *Ryukyu•Aija no minzoku to rekishi* (2002). We were privileged to publish Professor Erika Kaneko's review of this book in *The Ryukyuanist* No. 57.

We heartily congratulate Professor HIGA Masao on his Higashionna Kanjun Prize and sincerely wish him continuing good health and further research achievements.

Okinawa Dugong Now Less Endangered Thanks To U.S. Court

The case: a synopsis

On September 25, 2003, in San Francisco, a coalition of U.S. and international conservation groups filed a lawsuit (Okinawa Dugong v. Rumsfeld C-03-4350) in U.S. District Court against the U.S. Department of Defense plans to construct a new air base on reclaimed land over a coral reef that would destroy the remaining habitat of the endangered Okinawa dugong, a marine mammal of cultural and historical significance to the Okinawa people. This new air base, known as “Futenma Replacement Facility” (FRF), is an initiative of central importance proposed in “United States-Japan Roadmap for Realignment Implementation” (“2006 Roadmap”).

The plaintiffs alleged that the defendants had approved the plans for the construction of the FRF without **taking into account** the effect of the facility on the Okinawa dugong that was required under the National Historic Preservation Act (NHPA) of the United States. In Japan, because of its cultural significance, the dugong is listed as a “protected natural monument” on the Japanese Register of Cultural Properties. Henoko Bay of Okinawa, the dugong habitat, would be gravely affected by the construction of the FRF.

The NHPA, in Section 402, says:

Prior to the approval of any Federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country’s equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over such undertaking shall ***take into account the effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effects.*** (Emphasis added)

On January 24, 2008, the U.S. District Court in San Francisco granted the plaintiffs summary judgment that “defendants have failed to comply with the requirements of NHPA Section 402” and that “this case is held in abeyance until the information necessary for evaluating the effects of the FRF on the dugong is generated and until defendants take the information into account for the purpose of avoiding or mitigating adverse effects to the dugong.” Further, “defendants are ordered to submit to the court, within 90 days, documentation describing what additional information is necessary to evaluate the impacts of the FRF on the dugong”. (Selectively quoted from “Conclusion,” which is reproduced in full later)

The plaintiffs:

Originally, there were three groups of plaintiffs: (1) Okinawa Dugong, the lead plaintiff, (2) three individuals, and six associations. When the requirements of “standing” for litigation were examined, the dugong and two of the associations were found lacking “standing” and dismissed. (Further reference to “standing” in the next section) This left the following individuals and associations as plaintiffs with standing in the case:

Individuals: Takuma Higashionna (with Save the Dugong Foundation, Okinawa),
Yoshikazu Makishi (with Okinawa Environmental Network), and
Anna Koshishi

Associations: Save the Dugong Foundation, Okinawa,
Center for Biological Diversity,
Turtle Island Restoration Network, and
Japan Environmental Lawyers Foundations

The defendants:

Robert Gates, et al., U.S. Department of Defense (DOD)

Arguments:

Since the NHPA does not provide an independent basis for judicial review of Federal agency actions, an aggrieved party must pursue its remedy under the Administrative Procedure Act (APA). This procedural requirement gave the DOD an opportunity to claim that the case of the Okinawa Dugong be dismissed. The DOD asserted five bases for barring the court's review of this case such as: (1) lack of "final agency action" as required under the APA; (2) plaintiffs' lack of standing; (3) non-ripeness of the claims for judicial review; (4) act of state doctrine, and (5) failure to join the Government of Japan as a necessary and indispensable party. According to the thinking of the DOD, in the absence of standards or regulations directly applicable to foreign undertakings, the DOD might determine, in the reasonable exercise of its discretion, what requirements were necessary to comply with Section 402 of the NHPA.

The court analyzed each of the five bases and rejected them all. The Governments of the United States and Japan adopted the idea of FRF in 1996. Subsequently the DOD and its counterpart agency of Japan had closely cooperated in all stages of conceptualization and implementation of the project culminating in the 2006 Roadmap. According to the court, "the Roadmap was approved by the Secretary of Defense and embodies DOD's formal decision concerning final plans for the FRF." The DOD's "action approving the 2006 Roadmap ... provides finality triggering the court's review now."

The DOD's objection to the plaintiffs' standing caused the court's examination of the standing of each plaintiff. To demonstrate standing, the plaintiffs had to show that they had suffered an injury traceable to the defendants' actions and that the injury would be redressed by the court's favorable decision. Moreover, a precedent conferred standing on "persons" such as individuals, partnerships, corporations, associations or public or private organizations. This definition of standing denied it to the dugong because it was an animal. The challenging individuals and associations (with the exception of one of them) easily proved injuries they would suffer in various forms as a consequence of the defendants' failure to comply with the NHPA. They therefore had standing in this case.

On the question of ripeness raised by the defendants with respect to the plaintiffs' claims, the court denied its relevance in this case on grounds of the merits of the plaintiffs' claims.

Invoking the act of state doctrine, the DOD argued that "the court should not enjoin ... the [Government of Japan's] ability and sovereign right to site and construct the FRF" to satisfy the treaty requirements agreed upon between Japan and the United States. The court pointed out the intertwined nature of decision-making in the process of site selection and construction. The working relationship of the DOD and Japan involved the DOD in the design and site selection for the FRF and allowed them to monitor and oversee the construction of the facility to ensure that it met their operational requirements. The court's jurisdiction had to do only with that part of the activities that involved the DOD as a U.S. federal

agency and did not extend to any part that was under Japanese control. The act of state doctrine therefore had no role in this case.

As for the DOD's attempt to deny the merits of this case on grounds that the Government of Japan was not included as "a necessary and indispensable party," the court pointed out that "relief requiring DOD to take into account under section 402 can be fashioned without ... interfering with any decision by the Government of Japan."

Conclusion

Below, the conclusion of the Case: No. C 03-4350 MHP is quoted in full.

Plaintiffs' motion for summary judgment is GRANTED. Defendants' motion for summary judgment is DENIED. It is hereby ADJUDGED and ORDERED that:

1. Defendants have failed to comply with the requirements of NHPA section 402, 16 U.S.C. § 470a-2, and this failure to comply is agency action that is unreasonably delayed and unlawfully withheld, 5 U.S.C. § 706(1).
2. Defendants are ordered to comply with NHPA section 402, and this case is held in abeyance until the information necessary for evaluating the effects of the FRF on the dugong is generated, and until defendants take the information into account for the purpose of avoiding or mitigating adverse effects to the dugong.
3. Defendants are ordered, within ninety (90) days of the date of this order, to submit to the court documentation describing what additional information is necessary to evaluate the impacts of the FRF on the dugong; from what sources, including relevant individuals, organizations, and government agencies, the information will be derived; what is currently known or anticipated regarding the nature and scope of Japan's environmental assessment and whether that assessment will be sufficient for meeting defendants' obligations under the NHPA; and identifying the DOD official or officials with authorization and responsibility for reviewing and considering the information for purposes of mitigation.
4. If plaintiffs desire to respond to this submission, they shall file their response within forty-five (45) days of defendants' filing.

Dated: January 23, 2008

/s/ Marilyn Hall Patel
United States District Court Judge
Northern District of California

The contents of the court document, "Memorandum & Order"

The document is a substantial 46-page statement written in daunting legalese in accordance with rigorous legalism. General readers should be aware of the risks of misunderstanding what the document is really about. An unguided interpretation of what looks like readable English might result in false hopes or disappointments. The summary and extracts presented above are by a layman, who though with good intentions to serve as a messenger for news of major importance, may have erred in the selection of topics and quotations. Professional readers of the original document may therefore rate his

presentation as missing the point and conducive to wrong impressions. Since we cannot reproduce the whole document, we offer below a quick overview of its contents by assembling the text's major and minor headings. The table of contents will at least show how the court document looks. The source of the text is Earthjustice, an American environmental law firm, whose lawyers have helped litigate the Case of the Okinawa Dugong:

http://www.earthjustice.org/library/legal_docs/dugong-decision-12408.pdf.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

OKINAWA DUGONG (Dugong Dugon), et al.,
Plaintiffs,

No. C 03-4350 MHP

v.

ROBERT GATES, et al.,
Defendants.

MEMORANDUM & ORDER
**Re: Cross-Motions for Summary
Judgment**

BACKGROUND

- I. The Okinawa Dugong
- II. The Futenma Replacement Facility ("FRF")
- III. Procedural History

LEGAL STANDARD

- I. Summary Judgment
- II. National Historic Preservation Act
- III. Administrative Procedures Act

DISCUSSION

- I. Limitations on Judicial Review [*Thinking that this section is a good indicator of the DOD attitudes toward Okinawa's "base problem" and of how the DOD argues for a maximum freedom of discretion regarding its Okinawa bases, we summarized it in our presentation above under the heading "arguments."*]
 - A. Final Agency Action Under the APA
 - B. Standing
 1. Okinawa Dugong
 2. Individuals
 3. Associations
 - C. Ripeness
 - D. Act of State
 - E. Necessary and Indispensable Party
 - F. Conclusion
- II. Applicability of NHPA Section 402 [*See the quotation early in our presentation above.*]
 - A. "Undertaking"
 - B. Compliance with "Take Into Account"

CONCLUSION

ENDNOT

Comments

In Okinawa, the Japanese Ministry of Defense (JMOD) and the Government of Okinawa Prefecture are negotiating the siting of the FRF and the terms of methods and procedures of environmental impact assessment (EIA). As of the date of the U.S. District Court's summary judgment respecting the case of the Okinawa Dugong, the JMOD had not produced documentation of the EIA methods and procedures (*hōhōsho*) required by the Prefecture. EIA work will not begin unless the JMOD and Prefecture agree on the *hōhōsho*. Once begun, EIA will take about a year. When this phase is over, the elaboration and review of construction plans will follow. Actual construction work will start when all the paperwork is done and all conditions are agreed upon between JMOD and Okinawa Prefecture. Curiously, the JMOD has already embarked on an extra-legal preliminary environmental investigation, hoping to incorporate its results into the EIA proper to be undertaken later. Okinawa Prefecture has objected to the JMOD idea of incorporating the results of the legally dubious preliminary investigation in the legally required IEA proper. Although in the 2006 Roadmap, the U.S. DOD and JMOD agreed on a deadline for the completion of the FRF, wrangles between the JMOD and Okinawa may delay the work on the FRF.

In matters of US-Japan military alliance, America calls the shots; Japan follows; and Okinawa bears the brunt. One shudders to think that this structure of injustice to Okinawa has been in effect for more than 60 years since the Battle of Okinawa, and shows every sign of remaining in effect for many more decades. Okinawa wishes to be rid of the nightmare of "permanent" U.S. military bases. How to prevent the bases from becoming permanent has been top priority for the Government of Okinawa Prefecture under both conservative and reformist governors. In contrast, how to force Okinawa to learn to live with the bases has been the center piece of the joint U.S.-Japan policy toward Okinawa. An unending "Okinawa Problem" keeps spinning out endless human rights violations and environmental disasters. The Dugong decision of the U.S. District Court of Northern California sheds dazzling light over the darkest corner of the U.S.-Japan Empire of Bases that is Okinawa. Peter Gavan, Conservation Director for the Center for Biological Diversity (one of the association plaintiffs in the Dugong case) said in the wake of the court decision:

We are hopeful that the court-ordered review and public airing of the impacts of the project [the FRF construction] will cause the U.S. and Japanese governments to halt expansion plans and avoid driving the Okinawa dugong further toward extinction.

Unfortunately, the JMOD is hell bent on the pursuit of the project regardless of its cultural and environmental consequences. At present, there is no firm agreement between Okinawa and JMOD on the precise siting of the FRF facility. Nor has information been made public on the types of aircraft that will be used at the facility. Despite such uncertainties, the JMOD is engaged in a potentially illegal "preliminary investigation" into the environment and trying to force Okinawa to accept its flawed EIA methods and procedures. Since the U.S. DOD depends on the JMOD for information and documentation, the DOD may soon be submitting to the court piles of biased and misleading papers.

For background information,

"Futenma replacement: Okinawa's long winter, SCC (October 29, 2005) to SCC (May 1, 2006)." *The Ryukyuanist*, No. 70.

"MCAS Futenma Relocation Plans: From SACO (1996) to SCC (2005)." *The Ryukyuanist*, No. 69.

Publications (LVI)

We gratefully acknowledge the gifts of the following publications:

Hosei University Institute of Okinawan Studies. 2007. *Okinawa Bunka Kenkyū* (Studies of Okinawan Culture), Vol. 33. Tokyo. 29 + 287pp. The first four articles belong to the most venerable genre of orthodox Ryukyuan studies, i.e., review and reinterpretation of Old Ryukyu classics such as *Omoro Sōshi*, *Ryukyukoku Yuraiiki*, etc. These articles deal with Old Ryukyu's idiosyncratic social organization, thought, religion, institutions, state functions and personnel. The lead article by MAKISHI Yoko is given a long helpful title: "A basic probe into the functions of court ladies, priestesses, etc. related to the religious rites of the royal castle – centering on the Great Hall of the Main Palace in the Shuri Castle and the Great New [detached] Palace." FUKU Hiromi combs the *Omoro Sōshi* for verses referring to the Amami islands and reconstructs the Amami cosmology and Shuri-Amami relations of the Omoro era. SATO Kiyoshi deciphers two controversial *Omoro* words, "sue" and "mase," and depicts the image of how the Omoro-era people perceived the spiritual interaction of this (human) world and the other (divine) world. KOSHINO Mariko performs a content analysis of stories assembled in the *Ryukyukoku Yuraiiki* (cultural geography of Ryukyu Kingdom) and detects several folk tales that seem to reflect imported story lines such as the Crucifixion of Jesus Christ, the Kumano Gongen manifestation of the Buddha, etc. Koshino's analysis indicates that Old Ryukyu was an open society susceptible to external cultural influences.

Idem. 2007. *Ryukyu no hōgen* (Dialects of Ryukyu), Vol. 31. Tokyo. 190pp. A majority of pages are devoted to a new installment in the series of articles from a draft dictionary of the Kudaka Island dialect that began in Vol. 29, co-authored by KAJIKU Shin'ichi (professor emeritus at the Okinawa University of Arts) and FUKUJI Yūhō (retired lawyer and native speaker of the Kudaka dialect). Other articles in Vol. 31 are (1) on the accent data for the dialect of Ōki no Erabu Island by IWANO Zendō, and (2) on *joshi* (postpositions) like "ga," "nu," and "gā," "nū" in the dialect of Ō Island by NAKAMOTO Ken.

Idem. 2007. *Shohō* (Institute Report), No. 60 (March). Tokyo. 38pp. In the lead essay, YAKA Munehiko (economist of Okinawan descent) inquires into what lies in the space between economics and culture. He sees the possibilities for a special kind of tourism that allows tourists to soak in Okinawa's popular culture by staying at economical *minshuku* (a private residence offering temporary accommodation to travelers, somewhat like a "b&b"). This level of accommodation is not only good economics, but a meaningful cultural experience for tourists interested in everyday activities of ordinary people. In the "Forum" section, two travelogues trace the footprints of YANAGITA Kunio and SASAMORI Gisuke respectively. Other contributions include two essays in memoriam of Professor OKAMOTO Keitoku, who passed away on August 6, 2006 at age 71, and three book reviews.

IKEMIYAGUSHIKU, Syui. 1996. *Hankotsu no jaanarisuto: IKEMIYAGUSHIKU Syui serekushon* (A non-conformist journalist IKEMIYAGUSHIKU Syui: Selections). Naha: Niraisha. 533pp. Photos. Preface by OTA Masahide (governor of Okinawa). Afterword by MORIGUCHI Katsu, who hailed from Tokyo and became one of Ikemiyagushiku's most trusted younger colleagues. Despite his reputation as a nonconformist, anti-establishmentarian, anti-Yamato Okinawan journalist, Ikemiyagushiku (1907-1989) was also a pragmatist. He completed his career as president and chairman of the Ryukyu Shinpōsha. Ikemiyagushiku graduated from Waseda University with a degree in German literature. Early in his job experience, he was picked up by the Japanese thought police, convicted of a thought crime and imprisoned (later transferred to a prison in Okinawa, where he finished his term). During the Battle of Okinawa, he was drafted into service for the Japanese army on Okinawa and taken prisoner by the U.S. army. Part I of this posthumous volume is a collection of a select dozen or so of Ikemiyagushiku's essays. Part II reprints his autobiography. Part III reproduces one of his plays: *Shima no hitobito* (Folks of the Island). Part IV demonstrates Ikemiyagushiku's background in German literature as well as his humanitarian concerns. He co-translated an anti-Nazi work: Wolfgang Langhoff, *Die Moorsoldaten. 13 Monate Konzentrationslager* (Zürich: Schweizer Spiegel Verlag, 1935). *Hankotsu* also contains a full list of Ikemiyagushiku's writings and a detailed chronicle of his life from birth to death.

International Research Center for Japanese Studies. 2008. *Nichibunken Newsletter*, No. 69 (February). Hugh DeFerranti, "Osaka and the Hanshin Region as a Site of Musical Modernity" outlines the author's research project and refers to the Okinawan diaspora community as a factor, along with the Korean community, that extended and enriched the range of musical activities in the Hanshin region in the interwar era.

Johnson, Chalmers. 2008. "The 'Rape' of Okinawa" *Asia Times On-Line*. On February 10, 2008, a 14-year-old Okinawan schoolgirl was sexually violated by a 38-year-old U.S. Marine sergeant, who was arrested, but eventually released because the girl and her family chose not to press charges further, fearing how terrible the legal proceedings would be to the young victim and what ignominy the whole family would have to suffer. Professor Johnson recalls some of the previous incidents, on which he had written extensively, and analyzes why such heinous military crimes against Okinawan women and girls keep happening and nothing ever changes.

Professor Johnson concludes:

As long as Japan remains a satellite of the United States, women and girls in Okinawa will continue to be slugged, beaten and raped by heavily armed young Americans who have no other reason for being there than the pretensions of American imperialism. As long as the Japanese government refuses to stand up and demand that the American troops based on its territory simply go home, nothing will change. <http://atimes.com/atimes/Japan/JC05Dh01.html>

University of the Ryukyus, Faculty of Law and Letters, Department of Human Sciences. 2007. *Ningen Kagaku* (Human Sciences Bulletin), No. 20 (September). 105pp. One of the three articles in this issue is on an Okinawan topic: "A Study on the Activities of Fukusi-Iin in Okinawa from the point of Peoples' Participation in the Field of Social Welfare." It deals with the history and achievements of a welfare work volunteer system during the U.S. Occupation era of Okinawa. Understandably, the United States Civil Administration did not want an official welfare institution. As a consequence, welfare work was organized and carried on under purely (though increasingly nominally) private initiatives. Despite the official opposition, the associations of welfare work volunteers, in cooperation with the Government of the Ryukyu Islands, were able to help the people in need to a remarkable degree. This is an excellent introduction to a neglected aspect of the Occupation-era administration of Okinawa.

YOSHIDA, Kensei. 2007. *'Gunji Shokuminchi' Okinawa – Nihon hondo tonno 'Ondosa' no shōtai* ('Military Colony' Okinawa: Truths About the 'Temperature Difference' vis-à-vis Japanese Mainland). Tokyo: Kōbunken. 261pp. ¥1900 + tax. The book is the latest offshoot of Professor Yoshida's research over many years into all aspects of the U.S. – Japanese military alliance. It goes over the entire history of postwar Okinawa: the War, U.S. occupation, reversion, and post-reversion continuity of Okinawa's military colony status. This history is full of gross injustices endlessly suffered by Okinawans on account of the two governments' arrogant, devious, and hypocritical Military-Alliance-Above-All attitudes and policies. Okinawa's basic bad luck is that it is a part of Japan whose top national priority is unwavering subordination to the United States, the country obsessed with world military hegemony. Professor Yoshida mobilizes and deploys convincing evidence, fact, documents, analyses and arguments. Finally, he asks whether there is any hope for Okinawa's getting out of this inferno. The answer is in the affirmative. The way out should begin with a total withdrawal of the military bases from Okinawa. He rejects the usual knee-jerk reaction of skeptics saying "impossible." He points to examples of base closures in many parts of the world.

While his work on this book was in progress, Professor Yoshida had a stroke. He survived and finished the book on his laptop in the hospital during his period of convalescence and rehabilitation. We are saddened by his encounter with a major health crisis. We admire his valiant fight against it and celebrate his triumph. We sincerely wish him a full and speedy recovery.

The Ryukyuanist is edited by Koji Taira at the Institute of Labor and Industrial Relations, University of Illinois, 504 E. Armory Avenue, Champaign, IL 61820; e-mail, <k-taira@uiuc.edu> Free e-mail subscription. Hard copy: U.S.\$10.00 per year. Back issues are available at Okinawa Peace Network, Los Angeles, CA. www.uchinanchu.org/uchinanchu/ryukyuanist.htm.