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WHY CIVIL-MILITARY INTEGRATION OF YOKOTA AIR
FORCE BASE MAKES SENSE FOR PURPOSES OF
PROMOTING MUTUAL COOPERATION BETWEEN
THE UNITED STATES AND JAPAN

ALLAN I. MENDELSON

INTRODUCTION

MR. ALLAN I. MENDELSON, a former Deputy Assistant Secretary of State (Transportation Affairs) for the U.S. State Department, a long-standing member of this Journal's Advisory Board, an Adjunct Professor at Georgetown Law Center, and currently Of Counsel in the Washington, DC offices of Cozen O'Connor, presented the following remarks as one of several speakers at a seminar that took place in Tokyo, Japan on December 17, 2010.¹ The seminar was arranged by Shintaro Ishihara, the Governor of Tokyo, to encourage progress on opening Yokota Air Force Base for dual military-civilian use. The base is a U.S. air base in western Tokyo currently used exclusively for U.S. military air operations.

It is both an honor and a pleasure to be able to speak before you this afternoon, especially before such a distinguished audience and on a subject as interesting as Yokota Air Force Base. I have never been sure why I was among those chosen by Tokyo's Governor Ishihara and his advisor, Professor Takase, to work on this project. But I have a suspicion that it may go back some forty years ago to the mid-1960s, when I was a young lawyer in the U.S. Department of State. My area of work at the time usually involved aviation, maritime, and other similar transportation-related subjects. But one day, the Legal Adviser asked me if

¹ The speech has been edited for publication and only for purposes of readability. It has not been checked for accuracy. Any statements made herein are based solely on the author's own knowledge and experience.

I would be willing to work on what he called a much more difficult problem. Always willing to accept a challenge—and having no idea what he had in mind—I immediately replied, “Yes, I’d be delighted.” And it was then that I was assigned the almost overwhelming task of doing all the legal work with the Department of Defense and others for the post-war transfer of sovereignty of Okinawa back to Japan. I can truly assure you that it was a herculean effort that continued for several years. But it was ultimately, and at the time, a successful effort by all of us.

There are also today some well-publicized problems in Okinawa involving issues of U.S. military and Japanese civilian concerns. I will say only two things about this situation. First, I am pleased and relieved to be able to say that these problems all seem to have happened long after the successful work that I did years ago. And second, I cannot help but think, to the extent we can make progress on dualizing the use of Yokota Air Force Base, that may well be an excellent example for the Okinawa situation of how the U.S. military and Japanese civilian interests can today work cooperatively together and adjust their individual needs in ways that continue to preserve the very successful balance that our two countries have maintained over the years in both the military and economic spheres. In any event, I think it is fair to say that if I could have worked back in the 1960s on a project as difficult as the return of Okinawa to Japanese sovereignty, there is no reason why I cannot work today on the Yokota project with the same hope for a resolution that promotes the military and economic interests of both of our countries.

I. THE GROUND RULES

Before getting into the details of how I would like to see Yokota used for civilian purposes, let me first discuss what I would like to call the “ground rules” for making progress in this area.

There are three such rules. First, I am almost sure there will be little or no progress on dualizing the use of Yokota until and unless the Japanese Foreign Ministry can be persuaded to look upon the project as its own and make the issue one of very high visibility both at the U.S. Department of State and between our two countries. Having endured the pain of working out the details for the return of Okinawa, I can say with almost absolute certainty that the Department of Defense is not likely to be moved on the issue of opening Yokota until and unless there is a healthy number of political and diplomatic reasons—or ex-

cuses—for it to do so. And that can, and will, only happen if the Japanese Foreign Ministry really goes to work and, if I may use the expression, pounds its fist on the table.

Second, we are in an international political climate today in East Asia that does not appear to be conducive to projects that can be characterized as in any way reducing U.S. military responsiveness or effectiveness. To be sure, we are not in a period of history as serious as that of the Vietnam War. But there are, unfortunately, an escalating number and variety of signals of danger in this area of the world—from China to North Korea and even recently Russia. These escalating signals of danger are more than enough to persuade all of us that if progress on opening Yokota is to be made at all, it will have to be done with slow and measured steps that are not inconsistent with the objectives and concerns of the U.S. military. I will suggest to you in the second part of this speech how that can be done. But for the moment, it is useful to keep this limitation very high in our minds.

Third, and finally, we must also keep in mind what appears to be the quite strict requirement of Article 15 of the Chicago Convention. This provision requires that if an airport in a country is open to “public use” by the country’s “national aircraft” it must then also be “open under uniform conditions to the aircraft of all the other contracting states.” I am well aware that there is one other U.S. military airport in Japan that has been opened for limited civilian use (Misawa), and it too seems to have limited that civilian use only to Japanese carriers. I have often wondered, however, whether such limited use is consistent with Article 15.

It seems to me that it more than likely is not inconsistent with Article 15, simply because when military authorities agree, however unwillingly, to open a military airport for any use by civil aircraft, they should be able to do so under conditions that are consistent with the degree of military security *they* believe is essential. And if *their* belief regarding Yokota is that military security considerations dictate that it can only be open for limited use by Japanese and U.S. aircraft or Japanese and U.S. air carriers, that limitation, in my modest view, should trump the Article 15 requirement. But we should keep in mind that the issue has never been tested—at least so far as I am aware. And given the scarcity in the past of what we in the aviation profession call “slots” at both the Haneda and Narita airports, it may well be that when Yokota is opened, there could be a challenge if, as I

will be recommending, the civilian use of Yokota is limited only to U.S. and Japanese aviation interests.

II. HANEDA AND NARITA

Having just mentioned Haneda and Narita, I think it would be extremely useful to say a few words about the fact that Haneda recently opened an international terminal and dedicated a fourth runway. It is expected that this development will allow for a doubling of the international flights at Haneda before the end of this year. Moreover, passengers using Haneda are expected to increase from some five million to almost eight million by the end of 2011. Now, what is the effect of this very important new expansion at Haneda on our project of opening Yokota?

It is no secret that slots for international scheduled air services into and out of Tokyo have been extremely limited during past years. Also, unlike Haneda with its proximity to downtown Tokyo, flying into and out of Narita has never been the most rewarding experience from the point of view of time or expense. Now, however, with the opening of Haneda to scheduled international flights, there will be no pressing need for the next few years to think of further airport expansion for international scheduled services in and around Tokyo. At least I would hope that, for purposes of Yokota, Haneda's expansion means that we will be able to enjoy at Yokota the luxury of planning for a limited civilian use that will not include the types of broad international scheduled air services that have always sought slots anywhere in or around Tokyo. International air carriers seeking Tokyo destination slots will now, for the first time and for the immediate foreseeable future, be using the new and greatly expanded facilities at Haneda. There will also be an increasing use of Narita—both because it too is planning several significant expansions in coming years, and because airlines currently using Narita may well be switching some of their arrival and destination services to Haneda. In short, if we were to want to pick a most propitious moment to dualize Yokota on a limited basis without the "invasion" of hundreds of scheduled international flights and air carriers, no time could be better than right now.

III. POSSIBLE CIVILIAN USES OF YOKOTA

There are at least three possible uses of Yokota that I believe would not significantly or in any major way interfere with contin-

ued use of the facility by the U.S. military and that, at the same time, would be very helpful for purposes of enhancing U.S.-Japanese mutual cooperation in aviation.

A. LOW-COST DOMESTIC CARRIER

The first and perhaps most important is the possibility of opening Yokota to a Japanese low-cost or discount carrier providing air transportation wholly within Japan. I appreciate that we already have a relatively small Japanese discount carrier, Skymark, operating out of Haneda with a fleet of some twelve Boeing 737-800s. Also, Skymark just recently ordered as many as six Airbus A-380s—apparently signaling its intention to expand into international routes. But I see no reason why Skymark or a new low-cost carrier could not easily and readily operate only domestic Japanese air services out of Yokota.

Such a low-cost, purely domestic airline probably could be modeled, for example, after Southwest Airlines Co. in the United States or easyJet Airline Co. in the United Kingdom. EasyJet started off with modest intentions, using Stansted airport outside of London as its main base. It has now expanded to what I understand are some 150 destinations throughout Europe. Though it flies to that many points within Europe and has extensive “beyond services” from those points—most of them likewise within Europe—it continues to use Stansted as its main base.

There is no reason why a Japanese low-cost carrier could not easily follow easyJet’s example, using Yokota as its main base. Moreover, I recently read that, although Japan Airlines (JAL) is not interested in starting a low-cost carrier, All Nippon Airlines (ANA) is interested and has in fact announced plans to start a low-cost carrier (LCC) as early as next year. I cannot predict whether ANA would be interested in setting up its new LCC at Yokota or whether it would prefer to have it connecting up with its other flights out of Haneda or Narita. But even if ANA would not be interested in locating its new LCC in Yokota, there is no doubt in my mind that Yokota could and would serve as an excellent airport location where any new or established Japanese carrier could easily and readily begin very competitively priced domestic services.

I might also mention that starting a new LCC at Yokota would allow for, and more than likely involve, a measured and relatively moderate rate of expansion or growth. This would be absolutely consistent with the several limitations or ground rules

that I mentioned earlier and that we should appreciate are essential if we wish quickly to open Yokota for dual military-civilian use. Because expansion by a domestic LCC of its flights and flight services would be measured, especially in the early years, this would allow more than adequate time and opportunity for the progressive adjustments that will be required over time between military and civilian services for their joint use of the airport.

At the same time, starting an LCC at Yokota would likewise involve a relatively modest initial ground infrastructure investment to handle the air services at the outset, followed by a measured expansion of that infrastructure as the LCC air services at the airport become more popular. Again, this should work to assure minimum interference—at least in the early phase—with the military and its use of the airport for military purposes.

In addition, and again at the outset, there would be little or no need at all for the types of facilities that become essential when and once international air services are provided. I am thinking, for example, of facilities like customs and immigration controls, which require increasingly large and intensive investments of manpower and physical facilities. Similarly, while security precautions are always necessary, it would seem that in the case of purely domestic services within Japan, the usual security precautions need not be as extensive or pervasive as they are in the case of international air services. Again, the fact that customs, immigration, and security requirements would be minimized at least at the outset should provide ample time for the adjustments that will ultimately be necessary to transition from purely military to military-civilian use.

Furthermore, allowing the airport to be used by a limited, even if slowly increasing, number of civilian aircraft engaged in air services would pave the way for the progressive creation of civilian aviation and maintenance-related facilities that would make the airport more readily available and accessible for the other types of modest use that I shall next discuss.

B. GENERAL (PRIVATE OR BUSINESS) AVIATION

The second possible use I would like to suggest for the civilian portion of Yokota is what we call general or business aviation. I am aware that, given the serious limitations of space at both Haneda and Narita in recent years, the climate has not been at all attractive at either airport for general aviation purposes. And there is also almost a uniform belief on the U.S. side of the

ocean that Japanese government authorities have been less than enthusiastic in the past about welcoming business aviation aircraft of any nationality—Japanese, American, or others.

So, to the extent that there can be some positive changes in the Japanese outlook and its policies towards business aviation, opening Yokota for general or business aviation use would not only be a step in the right direction from the point of view of aviation, but it would also be a commercial step forward that would be very welcomed in the United States. I am aware, of course, that with its new runway now open, Haneda Airport has recently announced that it will be open for general aviation use twenty-four hours daily. I am also aware that the highly restrictive limitation that previously existed at Haneda—requiring private aircraft to schedule their arrival more than fifteen hours in advance—has now also been relaxed. Both of these changes have been enthusiastically welcomed within the U.S. business aviation community. Both may also suggest a quiet, yet significant, evolution in Japanese policy toward business or general aviation.

We should also be aware that in the greater world of aircraft manufacturing, an increasing number of aircraft of less than 100,000 pounds are currently being designed and built for long-range distances, upwards of 7,000 to 7,500 nautical miles. So it is fair to say that, if and to the extent that Japanese regulatory authorities can be moved to welcome, rather than simply tolerate, business aviation aircraft, we should begin to see much greater use of airports in and around Tokyo by U.S.-registered general aviation aircraft. And as Haneda becomes more popular among commercial users in the aviation industry, it is inevitable that Yokota, once open to dual use, will become more popular among business and other private users. With the growing number of U.S. corporations using privately owned or chartered business jets, there can be no question that Japan, and Tokyo in particular, will become a far more popular destination point than it is today.

What I am suggesting is that if the Japanese authorities can see their way clear to adopting a more welcoming regulatory policy for general and corporate aviation, and if they can focus their attention in this respect on the civilian side of Yokota—even to the point of considering the use of very reasonable introductory landing fees, as well as planning for reasonably available and accessible customs and immigration facilities—Yokota could easily become a very popular airport for use by U.S. busi-

ness and other private aircraft. And as the skies and landing possibilities over and in Haneda become more saturated, as will certainly happen in future years, Yokota is almost guaranteed over time to become the preferred airport for aircraft whose owners or charterers want to land in an airport proximately located to Tokyo's downtown.

I also believe that, consistent with our objective of respecting the military's security concerns, we should limit the general aviation use at Yokota, as I proposed for its commercial aviation use, only to U.S. and Japanese-registered general aviation aircraft. This limitation need not be permanent. But it should be a limitation that begins with the opening to dual use of Yokota and continues until such time as the governments of both of our countries feel sufficiently comfortable with the security situation in this part of the world so as to be willing to lift the limitation and allow use by general aviation aircraft from other nations.

C. INTERNATIONAL SERVICES TO AND FROM HAWAII AND GUAM

The third and final use I would like to see for Yokota is that of international air services—again limited to Japanese and U.S. carriers, both scheduled and charter—between Yokota and both Hawaii and Guam. I shall not spend a great deal of time discussing this area of possible use, as I do not think it is likely to be started in the early phases of opening Yokota. I would envision such services starting only after both the low-cost domestic carrier and business aviation have become reasonably well established at the airport and there is sufficient infrastructure built to also accommodate the needs of a modest international air service—whether scheduled or chartered—by the air carriers of both of our nations. I would think of such international services being inaugurated perhaps in the third or fourth year—again, only after the initial opening to the low-cost Japanese carrier and after the customs, immigration, and other facilities have been established on the civil side of the airport to accommodate whatever may be necessary for the domestic service and what will certainly be necessary for purposes of fully meeting the needs of general or business aviation use. This type of approach would also be totally consistent with what I view as the need for a very measured transition of the airport from exclusively military to dual military and civilian use.

IV. CONCLUSION

The original draft of my remarks that was distributed earlier specifically did not include a conclusion. This is because I wanted first to hear the things my predecessors on this program had to say and, based on that, to formulate an equally thoughtful conclusion. Having heard the excellent and incisive remarks made by my predecessors, I think I am left without much to add. But I will add a few thoughts that I believe appropriately follow up on what has been said.

First, I personally believe that there are very few things the Japanese government could have done to better promote U.S.-Japanese mutual cooperation in the economic sphere than to have agreed with the United States, as Japan did quite recently, on an “open skies” bilateral civil aviation agreement. Not only did this decision by the Japanese Government work to firm up the positions of ANA and Japan Airlines in two of the major international airline alliances—Star and One World—that enjoy anti-trust immunity, but it also worked to assist Japan in the goal expressed by Governor Ishihara of making Tokyo and Japan into much stronger and more attractive civil aviation destinations than they have been in the past.

But what I would really like to see the Government of Japan do now is to join the U.S. multilateral open skies agreement—often called the APEC or MALIAT Agreement (Multilateral Agreement on the Liberalization of International Air Transportation). I myself had the pleasure of negotiating that multilateral agreement when I was in the State Department some ten years ago. During that negotiation, the Japanese Government was represented by a very knowledgeable four or five member observer delegation. The Government of Japan showed no interest at that time, however, in joining any sort of open skies agreement with anyone.

But all of that history is well in the past. I have heard very recent reports that since its open skies agreement with the United States, Japan is now looking to negotiate similar open skies agreements with Korea, Singapore, and Indonesia. I am obviously not aware of the details of those negotiations. But if, instead of negotiating individual open skies agreements with each of these countries, Japan were to become a party to the APEC or MALIAT multilateral open skies agreement, such a step by Japan would most certainly provide a huge stimulus and boost to the popularity of that agreement. And in so doing, it

would also work to establish Japan and the United States not only as true global aviation partners, but also as two of the leading aviation powers in the world. Let me add also that it would likewise make certain that the newly expanded facilities at Haneda and Narita would be put to their best use for purposes of enhancing Japan's position as a well-deserved premier destination city in the world.

Were Japan to join the open skies multilateral agreement and were the United States to agree to the opening of Yokota for the kind of phased-in dual U.S.-Japanese civilian use that I have described, Governor Ishihara and all of us would then know that this meeting did indeed succeed. More importantly, it would ensure that U.S.-Japanese mutual cooperation would enjoy the all-important economic boost that is so essential for both of our countries, particularly in these days of escalating military and quasi-military threats throughout this part of the world.

Case Notes

