



Path to an Agreement:
The U.S.–Republic of Korea
Status of Forces Agreement
Revision Process

A CSIS International Security Program Report

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PATH TO AN AGREEMENT: THE U.S.- REPUBLIC OF KOREA STATUS OF FORCES AGREEMENT REVISION PROCESS

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Strong U.S.- Republic of Korea (ROK) relations are a key force for stability in East Asia. Along with the U.S.-Japan alliance, the U.S.- ROK alliance has stood as a bulwark of peace and security for 50 years. The alliance serves as a critical deterrent to a North Korean invasion, ensuring stability on the peninsula and giving the U.S. military a geographically important pre-positioned location. Strong U.S.- ROK ties will be crucial in the coming decades to address North Korean nuclear, missile, and conventional threats still looming over the horizon as well as a range of regional security issues requiring close cooperation.

Signed on January 18, 2001, the recent changes to the U.S.- ROK Status of Forces Agreement (SOFA) represent an important step toward creating an equal partnership between the United States and Korea. Covering issues ranging from criminal prosecutions to environmental protection and labor rights, the agreement ends five years of on-again, off-again negotiations that began in November 1995. While the stability of the alliance was never at serious risk during the revision process, rising anti-American protests throughout the negotiating cycle, especially after the revelation of the Nogun-ri

incident in 1999, gained momentum and threatened to harm relations and undermine Korean support for a continued U.S. military presence.

The United States needs to promote transparency and close cooperation with the Republic of Korea on SOFA issues in order to diffuse domestic opposition. At the same time, the ROK government also must enhance its efforts in defending the alliance. For example, some Korean civic groups are already calling for stricter environmental regulations on U.S. forces than those contained in the revised SOFA. Consultation toward resolving the remaining issues will be critical to quieting those groups and short-circuiting their efforts to gain public credibility and build support for U.S. troop removal.

To the degree that it sustains support for continued U.S. military presence on the peninsula, revision of the SOFA was critical to the future of alliance relations and to the maintenance of regional stability. The following report is the product of a roundtable discussion with U.S. and ROK diplomats intimately involved with recent SOFA revision negotiations and a year-long research project by the Center for Strategic and International Studies. Thanks to the funding and support of the Korea Foundation, CSIS organized this study to gain a better understanding of the major issues involved in the negotiations and to help inform future policymakers of lessons learned to apply to similar discussions in the future.

II. History

Following the conclusion of the Korean War, the United States and the Republic of Korea signed the Mutual Defense Treaty in 1953. The U.S. pledged to protect the ROK from invasion, and the Republic of Korea agreed to an extended deployment of U.S. forces on its soil.¹ Initially, negotiations on a Status of Forces Agreement were slow to progress. Political instability in the Republic of Korea, including the overthrow of President Syngman Rhee and the military coup that elevated General Park Chung Hee to power, delayed the start of SOFA negotiations until 1962. After 82 negotiating sessions over a period of four years, the U.S.-ROK Status of Forces Agreement was signed on

July 9, 1966. After ratification by the Korean National Assembly and the completion of due procedures in the U.S., the U.S.-ROK SOFA came into legal force on February 9, 1967.ⁱⁱ

Status of Forces Agreements govern the relationship between a host country and U.S. forces deployed on its soil, protecting the legal rights of U.S. personnel and establishing procedures for dealing with complaints and legal issues. In the agreement, the ROK Government granted facilities and areas to the U.S. The U.S.-ROK SOFA includes 31 separate articles defining and regulating the presence of U.S. military forces in the Republic of Korea. On the prosecution of U.S. soldiers accused of committing crimes in the Republic of Korea, while Korea had the right to prosecute U.S. personnel to the full extent of ROK law, they could not obtain custody until the accused was convicted. This primarily stemmed from differences between the ROK and U.S. legal systems, including safeguarding rights of the accused. Korean civic groups heavily criticized the initial agreement as a violation of Korean sovereignty. Although any U.S. soldier accused of committing a crime was tried and convicted if found guilty, these civic groups maintained the perception that U.S. soldiers essentially had a free pass in terms of criminal and other types of conduct. Nonetheless, U.S. cooperation overall on presenting accused servicemen for trial helped to diffuse complaints.

On February 1st, 1991, after two years of intense negotiations, the United States and the Republic of Korea signed a renegotiated SOFA. The renegotiated SOFA created relatively minor changes governing the 43,000 U.S. troops (soon cut and stabilized at about 37,000 troops) stationed in the ROK on such issues as customs procedures, labor rights, health precautions. The 1991 revisions also clarified jurisdictional issues surrounding custody of American forces accused of committing crimes in the Republic of Korea, while maintaining jurisdictional divisions. For example, the agreement spells out the requirements for an act to be considered ‘official duty’. It also protects the rights of the accused to a prompt and speedy trial, legal representation, and re-examination of evidence. The revision reasserts that Korean authorities will “retain full control over the arrest, investigation and trial of a member of the United States armed forces or civilian

component or dependent.” According to the Ministry of Foreign Affairs and Trade, the agreement made it possible for Korean authorities to better undertake judicial actions against nearly all crimes committed by U.S. servicemen.

However, the new agreement soon faced domestic criticism of violating Korean sovereignty and failing to equalize the relationship. Groups charged that it was merely a minor revision that locked in Korea’s status as a “junior partner” in the alliance. Korea’s inability to obtain SOFA custody provisions that cover about 95 percent of criminal accusations against U.S. service members, and growing accusations of U.S. environmental contamination in the ROK, induced popular protests over the new SOFA. Korean civic groups claim that these limitations are unfair, especially when compared with increasing financial contributions for U.S. forces in the Republic of Korea (amounting to 41.9 percent of total stationing costs in 2000). They feel that since they are providing greater financial concessions, the United States should yield to other Korean demands.

The legacy of colonial domination at the hands of Japan during the early part of this century, and a natural sense of national pride, may explain the heightened sensitivity in the Republic of Korea in the latter half of the 1990s to the issue of a fair and equal alliance partnership. A perception that the U.S. was treating the Republic of Korea as a junior partner, especially in relation to U.S. treaties with Japan and Germany, offended Korean sensibilities. Korean politicians from all sides of the political spectrum called for the situation be resolved expediently.

Several accusations of criminal misconduct by U.S. forces also led to political pressure for change. In May 1995, a fight between four U.S. servicemen and a Korean man led to criminal assault charges against two of the U.S. soldiers. However, under the SOFA, the U.S. troops could not be turned over to Korean authorities until a conviction had been obtained in Korean courts. This highly publicized incident focused public attention on the “custody upon indictment” issue and underscored Korea’s desire to have

broader prosecution provisions governing U.S. troops accused of committing crimes while in the Republic of Korea.

Following the massive furor in Japan resulting from the Okinawa rape incident in September 1995 and subsequent moves by the United States to revise the SOFA with Japan, political pressure for U.S.-ROK SOFA revisions reached a new high. In a trip to East Asia in November 1995, U.S. Defense Secretary Perry met with Korean Foreign Minister Gung Ro-Myung and announced in a joint press statement dual track negotiations on a new round of SOFA revisions. The proposal came as a surprise to U.S. forces stationed in Korea and to the U.S. military establishment: after visiting Japan and dealing with the prospect of a SOFA renegotiation there, Perry had decided that renegotiations should begin with Korea as well. “Track I” negotiations were to commence immediately on the issue of criminal custody for U.S. soldiers accused of committing crimes in Korea. Simultaneously, the rest of the SOFA agreement was to be examined in a longer term, “Track II” forum.ⁱⁱⁱ

III. Stumbling Blocks to a New Agreement

Negotiations on a revised SOFA soon faltered due to several stumbling blocks. Initially, the Korean side wanted to address the full range of SOFA-related issues, including environment and labor issues, simultaneously initiating Track I and II negotiations; the U.S. side was primarily interested in initiating Track I negotiations on custody and prosecution procedures for U.S. suspects. Upon substantive discussion, disagreements emerged over the protection of the rights of U.S. defendants, liability for environmental damage allegedly caused by U.S. military presence, and labor rights of Koreans employed by the U.S. military.

Custody and Prosecution Procedures

Obtaining custody over U.S. troops accused of committing crimes in the Republic of Korea was a key issue in the SOFA negotiations from the beginning. The ROK sought provisions similar to the U.S.-Japan SOFA. That SOFA covers all crimes, grants Japan

post-indictment, pre-conviction custody, and provides Japan investigators wide latitude to detain U.S. suspects. The U.S.-ROK SOFA, on the other hand, covered only certain crimes, forced investigators to notify U.S. military officials and immediately hand over the accused soldier(s), and allowed the United States to maintain custody of accused service members until conviction and all appeals are exhausted. In addition, if a U.S. service member is found not guilty, according to the U.S.-Japan SOFA, prosecutors can appeal to a higher court (although this kind of appeal has yet to occur); a not guilty verdict for a U.S. soldier in a Korean court may not be appealed.

The Republic of Korea also sought greater jurisdiction over crimes committed in the course of a U.S. service member's official duties. A provision under the U.S.-Japan SOFA allows the court to intervene on behalf of the victim if the U.S. supervisor does not release the service member to face criminal charges. In practice, however, such circumstances are resolved through consultation in the U.S.-Japan Joint Committee. Under the Korea SOFA, the soldier's immediate supervisor determines whether or not to release him/her for a criminal trial and does not allow a Korean court's intervention into the process.^{iv}

U.S. negotiators were also concerned about preserving U.S.-style legal protections for accused U.S. servicemen. Conflicting legal traditions between the U.S. and ROK presented a formidable barrier to an agreement. Korean law does not contain some of the legal protections embedded in the U.S. constitution. For example, under the Korean legal proceedings the right to defense counsel is less emphasized than in American proceedings, and individuals can be held in custody for some time without having formal charges filed against them.

During an early stage of the SOFA negotiations, the United States agreed to transfer criminal suspects to Korean authorities early in the legal process. However, the conditions of that custody transfer became a key sticking point later in the talks. The United States requested that both a representative of the U.S. government and legal counsel should be present during ROK interrogations of the accused, as are guaranteed in

the U.S.-Japan SOFA. Furthermore, the United States insisted on the right of cross-examination of witnesses against the accused in the presence of the accused and counsel.

Finally, the two sides disagreed over the types of crime that would be subject to Korean jurisdiction. The U.S. wanted to decriminalize such misdemeanors as traffic violations, while the Koreans sought to extend jurisdiction over all illegalities, citing data showing that most of the offenses committed by U.S. forces were minor. The ROK balked at the U.S. limitations, and negotiations came to an impasse.

As the Republic of Korea's chief negotiator Min-Soon Song summed up: "Our legal systems are quite different and require compromise."^v

Environmental Issues

Although environmental issues were not a key issue of concern when the first SOFA renegotiations concluded in 1991, they became a crucial issue in the recent negotiations. The primary reason was enhanced attention to the issue of Korean civic groups in the intervening years. Environmental allegations against the U.S. military in the Republic of Korea intensified in particular after the first round of discussions ended in 1996. In July 2000, Korean environmental activists claimed that at least 10 cases of contamination in Korea were the responsibility of the U.S. military due to either diesel fuel leaks or construction waste. They also alleged that U.S. military forces had released formaldehyde into the Han River outside of Seoul. In September 2000, civic groups again accused the U.S. military of leaking untreated aviation fuel at a U.S. military installation in Wonju, Kangwon Province, while a former U.S. base in the Mount Munhak area was accused of contaminating almost 800,000 square meters of land with oil.^{vi} However, some of the incidents were notably exaggerated. In one case, an alleged 'oil spill' was the result of a U.S. aircraft crash, rather than negligence.

Korean civic groups sought to insert a clause into the revised SOFA that dealt with alleged environmental degradation committed by the U.S. military. Even though U.S. officials apologized for any environmental damage that may have resulted from U.S.

presence, they were hesitant to accept official liability for contamination in Korea, afraid of setting a precedent for environmental liability that would affect its SOFA agreements worldwide. As a result, negotiations over environmental provisions in the SOFA broke down.

Other SOFA Issues

A plethora of other issues, including the labor rights of Koreans employed by U.S. military forces, and the handling of agricultural products for U.S. troops, also occupied SOFA negotiators. Labor rights were the easiest issue to resolve; the two sides agreed on provisions to shorten cooling-off periods during labor disputes, and allowed for Korean workers to be subject to Korean labor laws by introducing the process of mediation by local labor commissions.

Agricultural products were more difficult. Although agricultural products shipped into Korea specifically for U.S. troops are inspected by the U.S. Department of Agriculture before leaving U.S. soil, they were not subject to inspections by Korean authorities upon arrival in the ROK. This arrangement led to charges within Korean society that the ROK was exposing itself to agriculturally-based epidemics. As a result, Korean authorities pressed the U.S. for the right to inspect such products under the SOFA. The U.S. resisted, saying its domestic inspection standards were extremely high, and that it did not want to bog down the import process with a lengthy inspection procedure.

The initial SOFA discussions also addressed the possible consolidation or return of U.S. military facilities and areas to the ROK. The increased urbanization of Korea has made formerly desolate territory occupied by the U.S. bases prime real estate for commercial development. The Republic of Korea pressed the U.S. to consider returning land that was no longer essential or whose training and operations activities may be consolidated elsewhere to allow for greater industrial development around the country. This issue was eventually set aside from the SOFA talks, but continued on a separate, less formal track.^{vii}

Continued U.S. use of bombing ranges close to Korean civilian areas also provoked protests. The bombing ranges at Maehyang-ri, fifty miles south of Seoul, were denounced as especially disruptive after a U.S. plane with engine problems was forced to make an unplanned drop of six live bombs within a designated emergency area near Maehyang-ri in June 2000. Environmental problems resulting from exploded and unexploded ordnance led local citizens to wage protests. Moreover, accusations that stray bombings over the area in the 1950s and 1960s killed Korean civilians contributed to a public outcry.^{viii} However, while some villagers claimed extensive property damage due to their proximity to the bombing, investigators concluded otherwise. Nonetheless, bowing to public demands, the U.S. Air Force suspended bombing at the Koon-ni strafing range near Maehyang-ri, but continued overall bombing in the Maehyang-ri area.^{ix}

Finally, U.S. and ROK observers noted that internal disagreements within both the ROK and U.S. bureaucracies hindering cohesive negotiating positions, as well as the seeming lack of urgency to conclude a deal displayed by U.S. leadership and negotiators, led to an indefinite postponement of further negotiations in September 1996. Neither side felt overwhelming pressure to open what would most likely be long and difficult negotiations to revise the SOFA.

IV. Path to Successful Negotiations in 2000

Ultimately, developments in public opinion played a very important role in the resumption of talks by creating a sense of urgency to resolve the dispute before opposition to U.S. forces in Korea grew. Changes in public opinion, prompted by revelations of U.S. actions during the Korean War, threatened to turn a majority of the public against U.S. troop presence in general. Past anti-American movements primarily emanated from radical students sympathetic to North Korea or popular suspicions of the historic role the United States played in bolstering anti-democratic leadership in the Republic of Korea. After allegations surfaced in 1999 that U.S. soldiers deliberately

massacred Korean civilians at Nogun-ri in the early days of the Korean War, a new wave of anti-Americanism swept across the Republic of Korea. The new movements were led by members of both sides of the political spectrum, including increasingly powerful civic groups. In some instances, these groups sought not to reform U.S. military behavior, but to expel U.S. forces from the peninsula. Joint protests between a range of civic groups illustrated the potential for opposition to grow. The fear was that anti-American protests by a few groups could gain momentum in the absence of a serious and substantive SOFA revision, and spread throughout the Republic of Korea.

Improving relations with North Korea also contrasted with continuing irritations related to the U.S. military presence. In June 2000, the first ROK-DPRK Summit took place with great fanfare, further bolstering ROK groups opposed to the U.S. military presence or angered that the United States seemed reluctant to revise the SOFA. Some Koreans even openly wondered why a U.S. military presence was necessary as North-South tensions ease.

A poll taken in August of 2000 indicated that 78 percent of Koreans polled felt the SOFA needed revision, while 73 percent supported the presence of U.S. forces in the Republic of Korea. There was a sense of concern among Korean government officials that failure to resolve the imbalance in the SOFA could eventually turn the numbers against U.S. forces. They pointed out that the majority of today's Korean public did not experience the Korean War, and therefore do not have the same emotional investment and instinctive good will towards the United States as the older generation.

In an attempt to restart the stalled talks, the United States provided the Republic of Korea a new SOFA proposal on May 31, 2000. The proposal focused solely on the criminal custody issue. Korean political leaders and activists expressed some disappointment with the narrow focus, preferring a more sweeping SOFA review.

In late June, U.S. officials and U.S. military lawyers provided an official briefing describing the proposals contained in the May 2000 memorandum. Both sides agreed to re-open SOFA negotiations in August.

On August 2, 2000, an American delegation led by Frederick Smith, U.S. Deputy Assistant Secretary of Defense for Asian and Pacific Affairs, traveled to Seoul and met with the Korean negotiating team, led by Director-General for North American Affairs Min-Soon Song. However, little substantive progress was made during the two days of talks. U.S. negotiators arrived with authority only to deal with the Track I criminal procedure issue, while Korean interlocutors wished to discuss a full range of SOFA issues. Nonetheless, both sides issued a joint statement at the conclusion of talks on August 3 that announced that the two sides had agreed on a basic framework to resolve the custody issue, and planned to continue talks in Washington on other important agenda items, such as environmental and labor issues.

Both sides later agreed that despite the lack of substantive progress, this meeting and the joint statement were important markers that led to the final agreement. Deputy Assistant Secretary Smith, new to the negotiations, felt it was a good sign that the two sides were even able to issue a joint statement at the conclusion of talks on August 3. The two sides agreed that it reflected good faith and common purpose, and ultimately built personal trust between the chief negotiators. The statement also created a positive public tone in an increasingly tense ROK political environment, defusing some of the negative momentum in the overall bilateral relationship.

The U.S. subsequently provided its negotiators authority to deal with the full range of SOFA issues in subcommittees under the umbrella of the larger SOFA renegotiations. Talks resumed in October 2000 when the Korean delegation came to Washington. During a private side meeting, Mr. Smith and Director-General Song agreed on the broad outlines of a final settlement. In the formal talks, the two sides reduced the Track I legal issues to a single draft document. Consolidating the legal issues

onto a single text focused the discussion considerably. Track II issues were still discussed separately.

When the talks resumed on December 1, 2000, both sides made a concerted effort to reach a final agreement. The United States dispatched a large delegation of experts, and postponed their departure from Seoul for more than 12 days, indicating an earnest desire to reach an agreement and ensuring that the necessary people were present to conclude a far-reaching agreement. For its part, the Republic of Korea mobilized its seven SOFA-concerned ministries at the subcommittee level and suggested to them that a deal would be worked out, so either they get on board or risk being left behind. A critical factor was a breakthrough on the final wording concerning when the ROK could take custody prior to indictment. A deal came together on Christmas Eve. The revised SOFA was approved on December 28, 2000, and signed on January 18, 2001, by ROK Foreign Minister Lee Jung-Binn and U.S. Charge d' Affaires, Evans Revere. One hundred twenty of 160 Korean National Assembly members present voted to ratify the revised SOFA, which went into effect on April 2, 2001.^x

V. Details of the Revised SOFA

The revised SOFA addresses some, though not all of the ROK's concerns over the status of U.S. forces. On the issue of legal jurisdiction, U.S. and Korean authorities agreed that in 12 major crimes, such as rape and murder, SOFA personnel could be taken into custody at the time of indictment instead of following conclusion of all judicial proceedings. In return, U.S. personnel are entitled to legal assurances, including legal representation at all stages, and the right to a speedy trial. Concerning environmental protection, a provision of the revised SOFA states that U.S. forces in Korea will respect Korean environmental regulations. The implementation details of the environmental provision have been tasked to a SOFA subcommittee within the U.S.-ROK Joint Committee.

On labor issues, the revised SOFA reduces the cooling-off period of labor disputes by Koreans employed by U.S. forces in Korea (meaning they can organize strikes more quickly), strengthens regulations ensuring stable employment, and secures Korean employees' right of collective action. The new agreement also allows qualified SOFA dependents from the U.S. to be employed in the ROK.

The two countries agreed on several other issues. They include establishment of procedures for joint inspections of animals, plants and their products imported for U.S. forces in Korea, prior consultation on the construction of facilities within U.S. military bases, joint survey of existing facilities and areas in pursuit of the unused facilities and areas to the ROK, establishment of procedures for serving legal documents, and establishment of a new procedure for controlling access by Koreans to the facilities such as U.S. military clubs and golf courses.

On April 2nd, 2001, the day the new SOFA officially took effect, U.S. and ROK officials, led by Lieutenant General Charles R. Heflebower, deputy commander of U.S. forces in Korea, and Kim Sung-hwan, Director-General of the Foreign Ministry's North American Affairs Bureau, held a SOFA Joint Committee meeting. At that meeting, the ROK and U.S. adopted the Supplementary Procedures for Operation of the ROK-U.S. Joint Committee that established procedures for informal meetings in addition to formal ones of the Joint Committee. Under the new procedure, the number of formal meetings of the Joint Committee is increased to twice a year, while informal meetings are to be held once every two months. The new procedures also simplified the way that meetings were to be conducted to foster constructive and candid dialogue between the ROK and U.S. on SOFA issues.

During the April 2nd Joint Committee, the two sides assigned 14 subcommittees follow-up tasks specified by the revised SOFA, discussed timely completion of the Environmental Incident Notification Procedures (EINP) agreement to help deal with environmental compliance issues, and agreed to set up a specific Animal and Plant Health Inspection Subcommittee to deal with the quarantine and inspection issue. The Joint

Committee also covered additional issues of concern not specifically covered under the SOFA agreement including a revision of rules governing Koreans employed by USFK. U.S. Forces in Korea now extend insurance privileges to Korean workers employed for longer than a month.

VI. LESSONS FOR FUTURE SOFA NEGOTIATIONS

U.S. and Korean negotiators identified several lessons learned from the recent SOFA discussions that may guide future diplomacy between the two sides and for others engaged in future such talks.

First, *strong political ties and high level attention contribute strongly to the likelihood of successful negotiations.* President Clinton and President Kim Dae Jung enjoyed good relations during their respective terms and met three times between August 2000 and January 2001, discussing SOFA negotiations each time. Secretary of Defense William Cohen and Korean Defense Minister Cho Seong Tae met for the annual U.S.-ROK Security Consultative Meeting on September 21, 2000, where, in addition to discussing North Korean military threats, the two defense ministers both pledged to complete revision of the SOFA. This level of attention played an important role in setting the appropriate atmosphere for talks, assuring the Korean public that the United States attached significance to SOFA discussions, and put positive pressure on U.S. and ROK officials to make progress. On the Korean side, Director-General Song received full support and a broad mandate from Cheong Wa-Dae (“the Blue House”) and key ministries including Foreign Affairs, Justice and Defense. Fred Smith noted that he, as the head of the U.S. delegation, felt a turning point came during a discussion he had with Secretary Cohen during a trip to Asia. In a discussion about on-going SOFA discussions, Cohen turned to Smith, told him revising the SOFA was a priority for him, and said “Get it done. You have my full support.” Smith commented later that this commitment

expressed from the highest authority in his department assured him of the kind of support he would need to get his people in line, and provided him a greater sense of personal confidence that an agreement would indeed be concluded.

Second, *both sides need to carefully coordinate their respective priorities, and have the personnel and negotiating mandate from home to conclude an agreement.* It is understandable for nations to have different priorities during negotiations. However, these need to be aligned and managed throughout to ensure good faith attention to the issues central to each side. During the 1996-2000 negotiations, the positions of both sides were largely unformulated and focused differently. The Smith/Song negotiations beginning in August 2000 narrowed the discussions, and laid out a single draft document from which to work, focusing the talks efficiently.

Also, in coordinating the issues that would be covered, both sides were able to have on hand all the necessary staff to complete the negotiations. This concerted effort to coordinate was a key element in success.

Third, *negotiations should be kept low profile and largely out of the public realm.* When negotiators discuss issues publicly, a matter becomes politicized and can even escape the control of negotiators as the public and media may demand particular results. In addition, positions tend to harden, public expectations can be raised, and compromise becomes more difficult. The ROK sought to manage the Korean press by refraining from commenting on NGO and press claims about the discussions, noting that to do so would by suggestion validate other press statements. The ROK negotiating team sought to keep expectations reasonably low and maintain confidentiality in the face of an aggressive and sometimes irresponsible media environment. While U.S. negotiators may not have fully appreciated the difficulties of managing the ROK media, they did recognize the heavy pressure under which ROK negotiators labored. For that reason, the U.S. side was ultimately very complementary about how the ROK handled its media, despite some frustration at the time.

Fourth, *each side must demonstrate to its domestic constituencies that every effort is being made to address their concerns.* A Korean official noted that public sentiment concerning SOFA discussions were not as positive in 1996 as they were in 2000 despite the tense domestic environment last year. He contended this was due to public confidence that “no stone was being left unturned” in the 2000 talks. He advised negotiators in such discussions to demonstrate this seriousness in its statements and demeanor. He further advised that they should not expect or even seek to resolve especially thorny issues quickly, as it may induce expectations in the public that every demand will be fulfilled or promote concern that any concessions were granted too readily. Both sides need to nurture domestic constituencies along in a gradual process, he counseled.

On the U.S. side, the military is the critical domestic player when dealing with SOFA talks. U.S. negotiators clearly need military support for successful discussions and must work closely with the military leadership to demonstrate due recognition and respect of military interests during negotiations. In this case, the military was supportive overall of the process. Because the leadership appreciated the benefits of a strong alliance with the ROK, it accepted the political need for SOFA revisions, and required only that the legal rights of U.S. servicemen be suitably protected.

Fifth, *initial positions need to be carefully crafted to be reasonable and negotiable, with any gaps between the two sides bridgeable.* The May 2000 U.S. presentation to the Republic of Korea made proposals that were considered out of step after a one-year hiatus and not relevant to current conditions. Similarly, Korean interlocutors admitted that ROK ministries initially brought their entire wish list to the table, which made it very difficult for Korean negotiators to compromise. Such an opening position can undermine the establishment of good faith between the two sides at the outset of discussions.

Sixth, *it is extremely important to build personal trust between delegation leaders.* Deputy Assistant Secretary Smith and Director-General Song met many times

privately aside from formal meetings, and both cited these meetings as extremely helpful in reaching a final agreement. The personal, informal interaction allowed both sides to look at the big picture, clarify issues driving the positions of each side, envision the outlines of a final agreement, and enabled maintenance of a constructive, cordial tone throughout the proceedings. ROK officials in particular noted their appreciation for the collegial tone in the discussions as evidence of the seriousness with which the U.S. side considered its ROK interlocutors as equal partners in the process.

Lastly, *the leadership of each negotiating team needs to have firm control over its members so a uniform position is put forth in discussions.* During the final round of discussions in December 2000, Fred Smith kept up the pressure and focused the U.S. side to reach a workable consensus. On the Korean side, Min-Soon Song convinced the various ministries to prioritize their requests and accept a compromise. At other points in prior SOFA discussions, the lack of focus of the delegations impeded progress, according to U.S. and ROK negotiators. Strong discipline within one's delegation and a focused, agreed-upon approach toward a common agenda will prevent this development and serve the interests of both sides in reaching resolution.

VII. Issues for the Future

Skillful management on both sides enabled the U.S. and ROK to avoid an unnecessary rupture in its historic alliance. It is unrealistic to believe, however, that alliance management will ever be easy or that SOFA-related tensions will disappear. Indeed, despite the boost in relations that occurred following conclusion of the new SOFA, some SOFA-related problems still exist. The remaining SOFA issues to be handled by the 14 subcommittees include key criminal procedure and environmental concerns not fully resolved in the revised SOFA.

Regarding criminal procedure, the new provisions allowing authorities to take U.S. soldiers into custody before conviction occurs applies only to 12 categories of the most serious crimes.^{xi} Korean civilians have continued to protest this arrangement,

arguing that the majority of criminal complaints against U.S. troops are minor crimes. With regard to continued environmental complaints, although the U.S. and ROK agreed to SOFA revisions to address environmental issues, Korean civic groups call these measures inadequate and continue to allege new cases of environmental damage. Green Korean United (GKU), the leading environmental lobbying group in the Republic of Korea, has announced its strong opposition to the results of the SOFA revision due to their failure to include stronger environmental provisions.”^{xii} Pressures from such groups will continue, gaining strength whenever new evidence surfaces or a new environmental allegation is made against U.S. forces.

It is important that U.S. and Korean officials take valid citizen concerns seriously and find effective ways in upcoming subcommittee meetings to implement new SOFA provisions. Overall, USFK and DoD officials need to adhere closely to the letter of the SOFA, and approach all tensions involving its military presence according to the spirit of its “good neighbor” policy. For its part, ROK government officials need to similarly view SOFA implementation as a partnership with implications for alliance maintenance, and thus strategically important.

In the end, both U.S. and ROK negotiators agreed that the success of SOFA talks reflected a maturation of the U.S.-ROK alliance relationship and left the alliance stronger than before. Both sides displayed the capacity to manage a highly sensitive public issue in a cooperative and ultimately successful manner. If the United States and the ROK can build upon the lessons of success from the recent SOFA process, the future of the alliance may look bright for years to come.

ⁱ Larry A. Niksch. 2001. “Korea: U.S.-South Korea Relations – Issues for Congress.” *CRS Issue Brief for Congress*. March 1: 1.

ⁱⁱ In the U.S. legal system, a SOFA does not require the Congressional ratification.

ⁱⁱⁱ John C. Roper. 1995. “U.S.-S. Korea agree to review SOFA.” *United Press International*. November 2: nexis.

^{iv} “Critics say SOFA in Korea More Unfair Than Those Elsewhere.” 2000. *Korea Times*. July 20: nexis.

^v “US-South Korean status of forces talks end without agreement.” 1996. *Agence France Presse*. September 12 : nexis.

^{vi} "GKU strongly against revised SOFA." 2001. *Green Korea Report #5*. March 8: <http://www.greenkorea.org/english/english.html>. Also see "Ethical Obligations." 2000. *The Korea Herald*. July 17: nexis.

^{vii} Recently, the two sides have made significant progress on this issue. As early as this fall, the U.S. and ROK are expected to agree to a consolidation of U.S. land in Korea. The U.S. is likely to give back 30,000 acres of land in stages over the next 10 years and receive about 600 acres to create space for the relocated troops.

^{viii} Jonathan Watts. 2000. "Korean fury explodes over US bombing tests." *Manchester Guardian Weekly*. November 22: nexis.

^{ix} Kang Seok-jae. 2000. "S. Korea, U.S. militaries stop using controversial Koon-ni strafing range." *The Korea Herald*. August 19: nexis. Since the 2001 SOFA was signed, Korean courts have stepped into the land use debate, ruling that residents of the coastal village of Maehyang-ri in Hwasong County, Kyonggi-do are entitled to compensation for damages caused by U.S. bombing. fourteen residents were awarded a total of \$100,000. The suit will influence further damage claims against U.S. forces. The SOFA allows Korean residents to sue the U.S. military in Korean courts for damages accumulated during illegal operations by U.S. forces. "Maehayang-ri villagers will receive a Compensation for Damage From US Bombing Exercises. 2001. *Green Korea Report #7*. May 11: <http://www.greenkorea.org/english/english.html>.

^x Shin Yong-bae. 2001. "New SOFA takes effect." *The Korea Herald*. April 3: nexis.

^{xi} The new agreement applies to pre-indictment custody in cases of to murder, rape, kidnapping for ransom, drug trafficking, production of illegal drugs, arson, robbery with dangerous weapons, attempts to commit these offenses, assault resulting in death, driving under the influence of alcohol, as well as resulting in death, fleeing the crime scene after committing a traffic accident resulting in death and offenses which include one or more of the above offenses. "Reactions to Revised SOFA Mixed." 2000. *Korea Times*. December 30: nexis.

^{xii} "GKU strongly against revised SOFA." 2001. *Green Korea Report #5*. March 8: <http://www.greenkorea.org/english/english.html>.