

Regarding Indictment of Japan

Factual background to the charges against individual defendant:(provisional version as of September 1, 2000)

1. Regarding establishment and management of "comfort stations" or institutionalized "comfort stations": sexual enslavement of women and girls in established set-ups

1-1. The case of the plaintiffs: HA Sang-Suk, SONG Sin-Do, et.al., pressed into service at "comfort stations" in the **Hankou-Wuchang area**, China

The Defendants:

- HATA Shunroku (Commandant of the Central China Expeditionary Army; February---December, 1938)
- OKAMURA Yasuji (Commandant of the 11th Army from June, 1938 to March, 1940; Commandant of the 6th Area Army from August to November, 1944; Commander-in-Chief of China Expeditionary Army from November, 1944 until the war's end)
- OKABE Naosaburo (Commandant of the 6th Area Army from November, 1944 until the war's end):

As has been stated previously, in 1932, defendant OKAMURA Yasuji, along with defendant OKABE Naosaburo established what is said to be the Japanese Army's first comfort station. In June, 1938, defendant Okamura took the post of Commandant of the 11th Army, a newly formed section of the Central China Expeditionary Army, under the command of defendant HATA Shunroku, and with the 2nd Army (Commandant: Prince Higashikuni-no-miya Naruhito), led the invasion of Wuchang (see figure 1).

On October 26, 1938, the 11th Army occupied Hankou, with the 2nd Army following on November 3, and as of December 15, excepting two divisions, the entire 2nd Army came under the command of the 11th Army. Thus having become the largest group in the Japanese Army, comprised of seven divisions, the 11th Army established its headquarters in Hankou, placing the area along the Yangzi River, including the Wuhan district, under its control. On October 27, immediately after the occupation began, under the pretext of "prevention of a recurrence of the Nanking Incident," Staff Officer Muranaka of the 11th Army ordered the establishment of "comfort stations." Jiqingli, in Hankuo, was chosen as an appropriate location and around November 25 thirty "comfort stations" were opened, serviced by about 300 "comfort women." Furthermore, it is said that "about 20 'comfort stations,'" serviced by "around 200 'comfort women,' both Japanese and Korean" were established in Wuchang at the same, "managed and supervised in the same way as in Hankou" by the 11th Army. It was here, to Wuchang, that 16-year-old SONG Sin-do (born in Chungchongnam-do Province, Korea, in 1922), was brought from Korea under false pretences. After first being put to work in the comfort station known as

"The World" in Wuchang, she was successively taken to Hankuo, Yuezhou, Chang-an, Yingshan, and Puqin and forced to endure life as a "comfort woman" for a total of seven years.

SONG Sin-do remembers soldiers from "the 6th division, the 9th division and others" frequented them. Both of these divisions took part in the massacre and rape of Nanking. The Central China Area Army and the 11th Army not only established comfort stations in Hankuo and Wuchang, they were directly involved in providing special transportation rights for "comfort women" and the traders who brought them, selecting and providing facilities for, as well as managing and regulating "comfort stations" and traders. They also arranged for "comfort women" to receive regular examinations for venereal disease by the military medical staff. As Commandant of the 11th Army, defendant Okamura was in charge of the entire operation (see figure 2).

Relieved of his post as Commandant of the 11th Army in March, 1940, Okamura served as Military Councilor, Army General, and Commandant of the North China Area Army. In August, 1944, he took up the post of Commandant of the 6th Area Army, and led the "Operation no. 1" (Operation for opening up a continuous line of communication between North China and South China). As a result, Hankou came under the command of the 6th Area Army while the 11th Army was deployed to Guanghsi Province. Three months later, in November, Okamura became Commander-in-Chief of China Expeditionary Army, a post he was to hold until the war ended. It was defendant Okabe Naosaburo who succeeded Okamura as Commandant of the 6th Army (Headquarters: Hankou; see figure 3).

Soon after Okabe assumed his new post late in 1944, plaintiff HA Sang-suk (born in Chungchong nam-do, Korea in 1928), then 16, was "duped" and brought to Hankou. Until the war ended she was forced to work as a "comfort woman" in the "comfort station" known as "Sansei-ro". It is said that at the time there were 20 "comfort stations" in Hankou, serviced by 130 Japanese and 150 Korean "comfort women." HA Sang-suk was forced to stay in Wuhan after the war ended and she is still there, unable to return to her homeland. After Japan's defeat, defendant Okabe died in a prison in Shanghai. Defendant Okamura was tried as a war criminal by the National government in Shanghai, but although as Commander-in-Chief he bore the greatest responsibility, through a government arrangement he escaped execution for his war crimes and was allowed to return to Japan, where he lived out the rest of his life. As in the case of defendant Hata Shunroku, since the war's end no judgment whatsoever has been passed on either of these two defendants for the responsibility they bore for the systemized sexual slavery conducted by the Japanese military.

MINAMI Jiro and ABE Nobuyuki (Governor-Generals of Korea)

Defendants MINAMI Jiro and ABE Nobuyuki both served as Governor-General of Korea, a post directly connected to the Emperor. Defendant Minami held this post from August, 1936 until 1942, during which time plaintiff SONG Sin-do was taken from Korea to Wuchang, China. Defendant Abe served in this capacity from July, 1944 until the war's end. During his term of service, plaintiff HA Sang-suk was taken to the comfort station in Hankou. The recruitment of Korean "comfort women" and their transportation to China could not have been carried out were it not for the circular "Concerning the Prevention of the Entrance of Undesirable Elements into China," which was issued to the Governor of each district by the Government-General of Korea, Public Safety Division, Police Bureau (see figure 4) after full-scale war broke out between China and Japan in September, 1937. This circular shows that not only were the "identification cards" allowing passage to China issued by individual police stations under the jurisdiction of the Government-General, but that when they were issued, the occupation, family, general conduct, period and purpose of stay of "comfort women" and other passengers was duly recorded. In addition, if the purpose of travel was deemed unacceptable permission could be denied, and the Chief of Police exercising jurisdiction over the port of embarkation had the power to keep anyone without an identity card from leaving. Concerning Hankou, where plaintiffs Song Sin-do and Ha Sang Suk were taken, three circulars concerning transportation to China were sent from the Government-General of Korea, Public Safety Division, Police Bureau to each District Chief of Police. It is particularly noteworthy that the circular dated March 10, 1939 states that, since "military 'comfort stations' are now completely full" the number of passages should be limited. In other words, the Government-General was not only in a position to be informed about forced recruitment, but also played an active role in regulating the transport of "comfort women" in accordance with the intentions of the military and the Ministry of Foreign Affairs.

1-2. Case of South Korean Plaintiffs (From the Korean Indictment)

1) The case of the victim, Kim Bok-Dong

Defendants:

- Hata Shunroku (General Commander of the Expeditionary Army into China, March 1941-November 1944).
- Imamura Hitoshi (Commander of the 23rd Army, stationed in Guangdong and Hong Kong, June 1941-November 1944).
- Sakai Takashi (Commander of the 23rd Army, stationed at Guangdong and Hong Kong, November 1941-March 1943).
- Tojo Hideki (Secretary of the Army Ministry, July 1940-July 1944, promoter of the

establishment of "comfort stations" in the Southern Region).

- Terauchi Hisaichi (General Commander of the Southern Regional Army, November 1941-August 1945).
- Yamashita Tomoyuki (Commander of the 25th Army, November 1941-July 1942, stationed in Singapore, Malay Peninsula and Sumatra).
- Dohihara Kenji (Commander of the 7th Regional Army, March 1944-April 1945).
- Itagaki Seishiro (Commander of the 7th Regional Army, April 1945-August 1945).

The defendant Imamura Hitoshi and (June 1941-November 1944) and Sakai Takashi (November 1941-March 1943) were the commander of the 23rd Army stationed in Guangdong area, when the victim Kim Bok-Dong (born in Kyonsan Bukuto in 1926) was deceived to be taken away from Korea through Shimonoseki in Japan and Taiwan to Guangdong, and was made a "comfort woman" in "spring or autumn" of 1941.

The 21st Army (commanded by Ando Toshikichi lieutenant-general, comprised of the 5th, 18th and 104th Division) which later became the 23rd Army invaded and occupied Guangdong in at the end of 1938, and in November, immediately after the occupation, the Army requested collection of "comfort women" to the Home Ministry and the Taiwan Government House, as we have stated above. Later in June 1941 under the Expeditionary Army into China (commanded by the general Hata Shunroku), the 23rd Army (including the 18th, 38th and 104th Division) was newly established commanded by the defendant Imamura Hitoshi. The 23rd Army was responsible for guarding Guangdong and the surrounding area. On December 8, 1941, at the outbreak of the Pacific War, the 23rd army commanded by the defendant Sakai Takashi (its main force was the 38th division commanded by Sano Tadayoshi) invaded Hong Kong and occupied on December 25th. The Army started its military government on December 29th. In January 1942, Hong Kong Occupationary Consulate General was formed (under the Governor General Isogai Rensuke), and Hong Kong Guarding Regiment was stationed there. In June 1942, "comfort women" were transported from Guangzhou to Hong Kong. In Hong Kong, there were fourteen "comfort stations" in March 1942.

Three months later in June 1942, the victim Kim Bok-Dong was taken with the moving army to "comfort stations" in Singapore and the mountain areas in the Malay Peninsula. It was the 25th Army commanded by the defendant the general Yamashita Tomoyuki that occupied and guarded the Malay Peninsula including Singapore and Sumatran districts (see Figure 7).

The divisions under the 25th Army (including the Imperial Guard Division, the 5th, 18th, and 56th Division etc.) started massacring the Chinese residents immediately after its occupation

of Singapore on February 15th, 1942. Amid the massacre or immediately after the massacre, "comfort stations" were opened one after another in Singapore and major cities of the provinces in the Malay Peninsula, where the Korean and Chinese women were transported and made "comfort women". What is important here is the fact that from the start of the Pacific War in 1941, the Army Ministry itself carried out establishing "comfort stations" and governing and controlling the transportation of "comfort women" into Southeast Asia and the Pacific islands (see Yoshimi Yoshiaki's comment "The Command Network (or chain of commands?) of the Japanese Military Authorities and Government"). In other words, the defendant Tojo Hideki was directly responsible as the Secretary of the Army Ministry during the Asia Pacific War for establishing "comfort stations" and governing and controlling the transportation of "comfort women" into South East Asia and the Pacific.

The victim Kim Bok-Dong was transported by ship and lorry to "Sumatra, Indonesia, Malaysia, Java" and so on, where she was forced to become a "comfort woman". On the other hand, when the Army judged that the invasion of the Southern regions was successfully attained, the military government principally aiming at "safe-guarding the important sites of the Southern regions" was established in July 1942 (see Figure 8). It was the 25th Army that governed the Malay Peninsula and Sumatra, and Kim Bok-Dong was transported from one "comfort station" to another within the area under the control of the 25th Army.

Another fact to be noted is that at least in Singapore and the Malay Peninsula the military authorities such as the Military Government Supervisor and the Provincial Governor carried out establishment and management of the "comfort stations" and collection and supervision of the "comfort women". In 1944 the Headquarter of the South Area Army was moved from Singapore to Manila, and in July 1944 the 7th Regional Army was newly formed under the defendant the general Dohihara Kenji in Singapore (see Figure 9). Under that Army, the 25th Army (commanded by the lieutenant-general Tanabe Moritake) was stationed in Sumatran region, and the 29th Army (commanded by the lieutenant-general Ishiguro Teizo[?]) in Malay region. From around May 1945, the Allied Forces' counterattack gained momentum, but even at the final periods of the war, "comfort stations" in Singapore were frequented as they said "Burma was a hell, Singapore was a paradise".

At the end of the war, the victim Kim Bok-Dong was in a "comfort station" in Singapore, and at that time the commander of the 7th Regional Army was the defendant Itagaki Seishiro.

2) The case of the victim, Kim Gun-Ja.

Defendants:

- Umezu Yoshijiro, the General Commander of Kanto Army.
- Yamashita Tomoyuki, the Commander of the 1st Regional Army stationed in Huichun.
- Kouzuki Yoshio, the Commander of the 2nd Army and the 21st Division, stationed in Huichun.
- Yamada Otozo, General, the General Commander of Kanto Army, stationed in Wujiazi.
- Kita Seiichi, General, the Commander of the 1st Regional Army stationed in Wujiazi.
- Murakami Keisaku, lieutenant-general, the commander of the 3rd Army, stationed in Wujiazi.

Kanto Army was the name of the unit stationed in North East China, so-called "Manchuria", and its origin went back to the Russo-Japan War (1904-05). Kanto Army expanded its forces at the time of Manchurian Incident in 1931, and the fabrication of "Manchukuo" in 1932. In July 1941 when they carried out a large-scale army mobilization called Kanto Army Special Exercise, three thousand Korean "comfort women" were collected. The commander of Kanto Army at that time was the defendant Umezu Yoshijiro (on duty from September 1939 to July 1944).

In 1942 under Umezu's command, Kanto Army reformed its structure according to the "Military System Reform" plan (sanctioned on June 6th). The 1st Regional Army Headquarter and the 2nd Regional Army was newly established to increase its forces (Its headquarter was renamed the General Headquarter). Then, under the command of the 1st Regional Army Headquarter (at Botanko[?]) commanded by the defendant Yamashita Tomoyuki (July 1942-September 1943), the Second Army (stationed at Yanji) was newly formed under the command of the defendant Kouzuki Yoshio (July 1942-May 1943). The main force of the 2nd Army was the newly formed 71st Division in Huichun (developed from Huichun Stationary Regiment) commanded by Toyama Noboru (from 1942 to the end of the war (see Figure 10).

The victim Kim Gun-Ja (born in Kanwon-do in 1926) was deceived to be taken away to Huichun in "Manchuria" at the age of 17 (either in 1942 or 1943), and made a "comfort woman" in a "comfort station" housing Korean "comfort women".

From around 1943 Japanese Army repeatedly suffered defeats and the divisions under Kanto Army were transported to the Southern regions one after another (in October 1943, the 3rd Regional Army was newly formed when the 2nd Regional Army was moved away). In July 1944, the defendant Yamada Otozo replaced the accused Umezu as the General Commander of Kanto Army. In January 1945, the 71st Division stationed in Huichun was moved to Taiwan (the 10th Regional Army), and immediately after that in February 1945, the 9th Border Guard stationed in Wujiazi was reformed into the 127th Division under

the command of Koga Ryutaro. The "comfort station" in Wujiazi in which Kim Gun-Ja was put in was most likely under the control of the 127th division. Wujiazi was an important station near the border of the Russia (see Map). The Japanese Military Sex Slavery was exercised even in those remote border areas. The victim Kim Gun-Ja was left over without being informed the Japanese Army's defeat (that is to say the liberation), and had to walk back to her native country without any money.

1-3. Case of the North Korean survivor PAK Yung Sim

Defendants:

- HATA Shunroku (Commander of the Central China Expeditionary Army from 1938.2-38.12)
- YAMADA Otozo (Same as the above, from 1938.12-39.9)
- NISHIO Toshizo (Commander-in-Chief of China Expeditionary Army from 1939.9 -41.3)
- HATA Shunroku (Same as the above, from 41.3-44.11)
- (the above mentioned are related to Nanjing Case)
- The defendant TERAUCHI Hisaichi (General, the Commander-in-Chief of the Southern Area Army)
- IIDA Shojiro (Lieutenant General, Commander of the Fifteenth Army)
- KAWABE Masakazu (1943.3-44.8)
- KIMURA Heitaro (1944.8-the War lost) (Commander of the Burma Area Army)
- MUTAGUCHI Ren'ya (1943.3-44. 8)(Commander of the Fifteenth Army)
- WATANABE Masao (1940.8-42.12) and MATSUYAMA Yuzo (1942.12-the War lost) (Commanders of the 56th Division)

(the above mentioned are related to Burma)

After committing the Massacre and Mass Rape of Nanking, (from December 1937 on), the Central China Area Army (Commander : MATSUI Iwane) was newly organized into the Central China Expeditionary Army in February 1938, which stationed in the entire area covering from Shanghai to Nanjing (a force 200,000 strong).

Beginning from September 1939, the Headquarters of the Central China Expeditionary Army was abolished and the Headquarters of the China Expeditionary Army, under the defendant Commander-in-Chief NISHIO Toshizo, was established in Nanjing to take full command of the entire Japanese Army stationed in China.

The defendants HATA Shunroku, YAMADA Otsuzo and the defendant NISHIMURA Toshizo were in the position of the Commanders of the Central China Expeditionary Army and the Commander-in-Chief of the China Expeditionary Army, during the period when PAK Yung Sim (born in 1921, Kanso-gun County, Pyongyannam-do Province (now Nampo City), Korea) was deceived with the words "at a factory, you can make more money," thus taken away from

Pyongyang in Korea to Nanjing, China, in around March 1938, and was used as a sex slave for almost 3 years.

In Nanjing, right after its fall on 13 December, 1937, "comfort stations" of the Japanese Army were established, and it is said that there were 17 or 25 "comfort stations" inside Nanjing City in 1938. PAK Yung Sim was used as a sex slave for three to four years at one of the "comfort stations", called "KINSUI-Ro", inside the walls of Nanjing city.

After the Asia-Pacific War broke out, PAK Yung Sim was taken to Shanghai by train along with 7 other Korean "comfort women" under the close surveillance of 2 Japanese soldiers, in around 1942. From there, they were taken to Rangoon, Burma, by ship through Singapore, and put into a "comfort station" in Lashio. (In Lashio, the existence of four of the "comfort stations" has been confirmed at this point.) Moreover, PAK Yung Sim was given the assumed name of "WAKAHARU" [a Japanese name that would only be used for professional women entertainers] ever since she was put into the rape center in Lashio).

At the end of January, 1942, the 55th Division and the 33rd Division of the 15th Army (Commander: Lieutenant General IIDA Shojiro), which was under the Southern Area Army, led by the defendant Commander Hisaichi, invaded Burma by land and on March 8th, they occupied Rangoon. Consecutively, the 56th Division and the 18th Division also arrived in Rangoon by sea, and on May 18th, the 15th Army had gained full control over the entire land of Burma. The 56th Division landed in Rangoon on March 26th, 1942 and made their advance toward north continually through Lashio, Bhamo, Salwin River and Myitkyina. They further forced their way into Tengyue, Yunnan Province, China, built up a strong point in Lameng, and they dispersed into several places, where they stationed until the war was lost.

As PAK Yung Sim was sent to Lahio, where she stayed for about 2 years, then to Lameng in 1944, she must have been allocated to the 56th Division. In March 1943, the Burma Area Army, under the defendant KAWABE Masakazu as its commander, was newly established and the 56th Division (Commander: MATSUYAMA Yuzo) was put under the 15th Army, whose commander was the defendant MUTAGUCHI Ren'ya.

In April 1944, as the 33rd Army was established, under the command of defendant HONDA Masaki (until the War was lost), the 56th Division (Commander: same as the above) was put under the 33rd Army. At the time of the forced taking of PAK Yung Sim in 1944, to a "comfort station" in Lameng (built by the army around 1942), the Lameng Garrison was the 133rd Infantry Regiment of the 56th Division. This Lameng Garrison fought with China's Yunnan Expeditionary Army and was completely destroyed on September 7th, 1944. A few days prior to the annihilation of the Garrison, PAK Yung Sim went into hiding in a trench, along with other Korean sex slaves, but they were caught by the Chinese Army and sent to the

Prisoner of War's camp in Kunming. Out of those Korean women who had been kept at the "comfort station[s]" in Lameng, only four of them survived, including PAK Yung Sim herself. After being detained at the Prisoner of War's camp in Kunming for 7 months, PAK Yung Sim arrived in Inchon, South Korea by ship in February 1946, and finally returned to her hometown after 9 years' absence.

1-4. Case of Taiwanese Plaintiffs (draft under review)

1-5. Case of Indonesia (draft unfinished)

1-6. Other Areas

The Japanese Army set up comfort stations at nearly all areas under Japanese occupation. According to numerous documents, Japanese "comfort stations" were established in Malaysia, Singapore, Burma, Vietnam, Thailand, India(Andaman-Nicobar islands), Papua New Guinea, Guam(USA), Micronesia and other Pacific islands in addition to the six countries and areas mentioned above. It is likely that there were also comfort stations in Laos and Cambodia, although this has not yet been confirmed. Dutch and Eurasians were also forced to be comfort women. All the above-mentioned areas were invaded and occupied by the Southern Expeditionary Army(1). As for Vietnam, immediately after the Japanese occupied the northern part of Indochina in September 1940, General Nishimura Takuma, Commander of the Indochina Expeditionary Army, consulted his Chief of Staff on the matter of setting up "comfort stations" as soon as possible. Indochina was probably the first place in South-east Asia where Japanese "comfort stations" were established. After the breakout of the Asia-Pacific War, "comfort stations" were established in Alorstar, Malaya in December 1941, in Hat Yai and Singora, Thailand in January 1942, and in addition, in Singapore after the Japanese occupation in February 1942. It has been confirmed so far that "comfort stations" were in operation in at least in 24 cities in Malaya. In Kuala Lumpur alone, there were sixteen comfort stations were in seven different areas. The majority of "comfort women" in Kuala Lumpur were Overseas Chinese, others being Korean, Thai, Javanese, Indian and Eurasian. In March, 1942, in Kuala Pilah, a town in Negeri Sembilan, Malaya, the garrison commander ordered the leader of the town to recruit women. The leader recruited eighteen Chinese women and handed them over the Japanese garrison. While recruitment in this area was in progress the Japanese army was conducting a clean-up operation, massacring large numbers of natives they regarded as anti-Japanese elements. According to the testimony of a woman who was then a girl of sixteen, living in a suburb of Kuala Lumpur, Japanese soldiers forced their way into her house and carried her off, along with her brother. While her brother never came back, she was repeatedly gang-raped and then forced to become a "comfort woman". Several recruitment methods were employed in South-east Asia; such as ordering local leaders to recruit women, forcible

abduction (especially common in the Philippines), recruitment by fraud on the pretext of offering jobs as office girls, nurses and so on. In the early stages of the war, while Quartermaster Corps were in charge of establishing "comfort stations", individual troop units also set up "comfort stations" of their own. The military administration later took charge of them. In Indonesia, the Japanese army picked up two or three hundred young Dutch women from internee camps and forced them to become "comfort women". In Palembang, Sumatra, the army tried to intimidate thirty-two Australian nurses into becoming "comfort women" for Japanese officers but they refused. After they registered their complaints with the Red Cross, Japanese intimidation ceased⁽²⁾. Although the Japanese army at least made a show of trying to obtain the consent of Dutch and Australian women (though these efforts often took the form of fraud or deception), in the case of Asian women "consent" was not an issue. It is likely that the majority of Japanese "comfort women" in South-east Asia and the Pacific areas were local women. In addition, not a few women were kept as mistresses by Japanese officers. With the exception of the Philippines and Indonesia, where there are organizations supporting former "comfort women", throughout South-east Asia former "comfort women" are still neglected, unable to come forth. Their physical and mental suffering must be extremely grave.

footnote

1 This section is based on Yoshimi Yoshiaki & Hayashi Hirofumi ed. *Nihongun Ianfu* (Japanese military comfort women), Tokyo: Otsuki Shoten, 1995, and Hayashi Hirofumi, *Japanese Comfort Women in Southeast Asia*, Japan Forum, Vol.10, No.2, 1998.

2 Tanaka Yoki, *Hidden Horrors: Japanese War Crimes in World War II*, Colorado: Westview Press, 1996, pp88-92.

2 Tanaka Yoki, *Hidden Horrors: Japanese War Crimes in World War II*. Colorado: Westview Press, 1996, pp88-92.

2. Conventional Mass Rape

2-1. Case of Nanking (Draft unfinished)

2-2. The Case of Mapanique Village, the Philippines

Defendants:

- General YAMASHITA Tomoyuki (Commander of the 14th Area Army)
- Lieutenant General IWANAKA Yoshiharu (Commander of the 2nd Tank Division, 14th Area Army)

- Colonel MORI Iwao (Chief of Staff to the 2nd Tank Division))
- Lieutenant Colonel KAWAI Shigeo (staff officer responsible for operations)
- Major KANOE Buhei (commander of the punitive force that attacked the village of Mapanique)

According to the mission orders found at the Ministry of Defense in 1999 [note 1], the unit that attacked the village of Mapanique was identified as the 2nd Tank Division. At the time, the 2nd Tank Division prohibited its soldiers from entering village houses, as a means of preventing rape.[note 2] This prohibition, however, applied only to "good villagers", while Mapanique village, which was considered to be a nest of guerillas at the time, was attacked and destroyed by fire on November 23, 1944. The documents show that Major KANOE Buhei, the commander of the punitive force, was instructed by Colonel MORI Iwao that the victimization of some women and girls on this occasion might be inevitable.[note 3] Under such a policy, the men in the village were tortured and finally executed on the suspicion that they might be guerillas . Many of the women and girls of the village were treated by the Japanese soldiers as war trophies and taken to "the Red House" where they were raped. Now it is impossible to determine the exact number of the victims of this atrocity, but it is estimated that more than 30 villagers were killed in Mapanique on November 23, 1944, including victims of non-discriminatory shelling, and the number of women who suffered rape then is thought to be more than 30. One of the staff officers has acknowledged the punitive mission on guerillas in Mapanique to be a fact, but not the mass rape of women and girls. There is nothing to indicate that any effort was made within the division to hold anyone accountable for the atrocities, and nobody was punished for it. The attack on Mapanique took place immediately after the 2nd Tank Division arrived in the Philippines and before it had any battles with United States forces. As the 2nd Tank Division had just arrived in the Philippines, it was still well-disciplined. Considering the large number of soldiers who took part, this incident of mass rape in Mapanique would not have been possible without orders from the staff to incite or condone such actions. It is also a fact that the 14th Army issued directions, or orders for punitive actions, to its units, including the 2nd Tank Division concerned, to destroy or clean up guerilla bases before United States forces landed in the Philippines.[note 4] Given this, the Commander of the 14th Area Army cannot escape responsibility for results that arose from such directions or mission orders.

notes:

2-2-1. Four different official documents have been found regarding the punitive mission against the village of Mapanique:

- a) "Operational order of the 2nd Tank Division, A No 46: issued under the name of Division Commander Iwanaka"
- b) "Directions issued under the name of Chief of Staff Mori based on the operational order of the 2nd Tank Division, A46" By the name of Chief of Staff Mori
- c) "Order for the punitive force" under the name of Commander Kanoe of the punitive mission
- d) "Special directions for punitive action"

All were issued on 22 November. Item 4 seems to have been attached to Item 3.

"Circular of the 2nd Tank Division No.3: Circular on establishing discipline (issued 30 Oct 1944)

Directions of Chief of Staff Mori, based on the operational order of the 2nd Tank Division, A46. "Although the victimization of women and children found in close proximity to guerillas may be inevitable, the harming or killing of women and children should be avoided as much as possible."4. Guidelines for operations on the island of Luzon, issued 14 Nov 1944. "Regarding groups in communication with enemy guerrillas, seize any opportunity to clean up their bases at once." Operational order of the 14th Area Army, A No. 217 issued on 8 December 1944 "The 2nd Tank Division should guard and clean up within the operation area."

3. Cases of intermediate form between established "comfort stations" and conventional mass rape

3-1. Shanxi Province, China (Draft unfinished)

3-2. Case of the Philippines: Case of Philipino Plaintiff Tomasa Salinog (Draft unfinished)

4. Factual background to Defendant H's Criminal Responsibility

4-1. The Emperor's legal power and responsibility for Japan's military sexual slavery

The issues of the Emperor Showa's legal power and liability for Japan's military sexual slavery can be discussed both from the viewpoint of legal functions of the Emperor and from the viewpoint of the actual practices of the Emperor as the head of the state.

a. Legal functions of the Emperor---the powers and liabilities of the Emperor under the Meiji Constitution

- sexual slavery as part of the military operations---scope of the supreme command of the military First of all the Emperor had the supreme command of the Army and Navy (Article 11 of the Meiji Constitution) and he determines their organization (Article 12 of the Meiji Constitution). Judging from its purposes and functions, Japan's military sexual slavery can be seen within the scope of the Emperor's supreme command of the military. The purposes and functions of the sexual slavery were the prevention of rape (preservation of the discipline of soldiers and public order), the boost of the soldiers's morale, the prevention of venereal diseases, and the prevention of espionage and it was clear that the sexual slavery was part of the military operations.

The Emperor cannot escape criminal liability when the military operations or battles he knew violate international law governing armed conflict. At the same time the Emperor cannot escape criminal liability when he knew or could have known, had he been careful, the military sexual slavery, which constituted the crime under international human rights law and international humanitarian law at that time.

There has been an argument that denies the Emperor's liability on the ground that the Meiji Constitution provides "the respective Ministers of State shall give their advice to the Emperor, and be responsible for it" (Article 55 Clause 1) and it was the ministers who were responsible. But it should be emphasized that the fact that the Emperor has the supreme command of the Army and Navy (Article 11 of the Meiji Constitution) was characteristic and important under the Meiji Constitution.

The Emperor under the Meiji Constitution was not wholly a constitutional monarch (the "he reigns but does not rule" type). It is true that in the areas of general affairs of state and the military affairs outside of the supreme command the ministers are responsible and the Emperor functions as a constitutional monarch. In the area of the supreme command of the Army and Navy, however, the Emperor functions as if he were an absolute monarch, being independent both of the parliament and the administration, and there is nobody who assumes the liability except the Emperor under the Meiji Constitution.

The argument that denies the Emperor's war responsibility based on the Emperor's legal function is not persuasive enough because the Meiji Constitution gives the war powers only to the Emperor.

The argument is wrong in that it incorrectly presupposes that the Emperor is a constitutional monarch under the Meiji Constitution. The Japanese government itself denied the constitutional monarchy under the Meiji Constitution and the Emperor's prerogative of supreme command played a vital role in the prewar Japanese politics.

The argument denying the Emperor's liability under the Meiji Constitution is not persuasive and cannot be sustained outside of Japan. In fact just after Japan was defeated some of the Allied Powers demanded that the Emperor be held responsible for the war. For example, the first list of the major Japanese war criminals, submitted by the Australian bureau on war crimes, enclosed in the letter dated 1 March 1946 from Chairman Wright of the allied commission on war crimes sent to the chairman of the Allied Council of Japan, contained the following section.

Hirohito: crimes against peace and humanity

The above gave permission for, and took part in, the planning and conducts of war of aggression. He also encouraged and promoted the setting up of the puppet governments in conquered territories, and consented to and condoned conducts of crimes against peace and humanity. He thus failed to take measures within his powers to prevent crimes against peace and humanity. Other states besides Australia also demanded that the Emperor be prosecuted and punished.

In considering the Emperor's liability for the war, particularly for the military operations, it is important to notice that the Emperor was the supreme commander of the Army and Navy and only he could issue the supreme commands (commands of the Imperial Headquarters) to the military, and that the supreme commands could not be issued without the permission of the Emperor. The Imperial Headquarters were the organ of the supreme command of the Army and Navy during war and they were the sole organ of issuing the supreme commands. The roles of the Chiefs of Staff of the Army and the Navy, who constitute the Imperial Headquarters, were to plan the operations, report them to the Emperor, and promote the cooperations between the Army and the Navy. The Emperor's permission was always necessary in advance to issue the supreme command of the Imperial Headquarters. In case the Emperor's permission cannot be obtained, the issue of the command would be delayed. There was the case that the military operation was suspended because the Emperor did not give permission (Changgufen Incident,

1938) . This case demonstrates that the Emperor was not a robot rubber-stamping the commands prepared by the military (see Yamada's "Brief" above).

- Sexual slavery as part of logistic activities (an administrative function concerning the military)—scope of the Emperor's prerogative of state affairs

Secondly, the Emperor was "the head of the Empire, combining in himself the rights of sovereignty" (Article 4 of the Meiji Constitution), namely he was the sovereign. Although the Meiji Constitution provides that "the respective Ministers of State shall give their advice to the Emperor, and be responsible for it" (Article 55 Clause 1), it was the Emperor alone who appointed the Ministers and the Governors General of Korea and Taiwan (Article 10 of the Meiji Constitution) and delegated his powers to them. Because such activities Japan's military sexual slavery involved as issuing the order to set up the "comfort stations" to expeditionary armies, recruiting, transporting and allocating women, and setting up and operating the "comfort stations" had a nature of logistic support for the military, Japan's military sexual slavery can be seen as part of logistic activities (in other words an administrative function concerning the military) and it fell within the scope of the Emperor's prerogative of state affairs.

The Emperor cannot escape criminal liability when the logistic activities (in other words an administrative function concerning the military) he knew violate international law governing armed conflict. At the same time the Emperor cannot escape criminal liability when he knew or could have known, had he been careful, the military sexual slavery, which was manifestly against principle of humanity

b. actual practices—actual roles the Emperor played as the head of the state

The researches on the actual practices of the Emperor Showa as the head of the state revealed that he frequently played vital roles in making national policies, especially in deciding military strategies and operations. As the Supreme Commander of the Japanese Army and Navy the Emperor did not rubber-stamp the strategies and operations prepared by the Chiefs of Staff but rather he deeply involved in making national policies (directing wars and operations) through his instructions based on the information provided by the military staffs and his own strategic decisions (See Yamada's "Briefs" above, especially the part "The Emperor's influence on military strategies and operations"). The Emperor made the "sacred decision" to begin the war against the United States and Britain. He also demanded several military operations and emphasized the importance of the battle of Okinawa.

The Emperor deeply involved in the process that the military gradually gained controls in

politics after the great old politicians retired and the expeditionary armies began acting out of governmental control. "The independence of the Emperor's supreme command of the military" made the Emperor's political will very important.

The Emperor's influence on the general affairs of state was also strengthened. The Emperor sometimes went beyond the constitutional limitations prescribed in the Meiji Constitution and influenced the resignation of Prime Ministers. The actual practices of the Emperor Showa as the head of the state deviated from the Meiji Constitution itself, going further away from an ideal constitutional monarch. This is related to the Emperor's liability for the sexual slavery. It was the Emperor alone who could control Japan's military sexual slavery that was a major state project concerning both the military (supreme command and organization) and the state affairs (logistic activities).

4-2. [Necessary conditions under which the emperor becomes liable for the Japanese military sexual slavery (1): recognition, or possibility of recognition]

The emperor was in a position to be able to know about "the comfort women" system and mass-scale raping.

- a) Expansion of the battle zone in Central China during the all-out Sino-Japanese War which started on July 7, 1937 exposed extreme deterioration of military disciplines, which reached its peak in the Rape of Nanking's dreadful massacres of Chinese soldiers and civilians, and mass-scale raping. The China Expedition Army established the "comfort station" system especially in order to solve this problem, but the number of rape cases committed by Japanese officers and soldiers did not decrease. In September 1940, the Army Ministry sent a document titled "measures for improving military disciplines examined from the experience of Sino-Japanese Incident" (abbreviated as "measures for improving disciplines" below here) to the concerned army troops as the aide's communication. The document above concretely notes of the deterioration of military disciplines that occurred as the war prolonged, stating that "numerous criminal acts that do not fit the quality of the imperial army such as looting, raping, setting fire on people's properties, massacring of captives." And the document implores the military leaders to educate soldiers and to reinforce the management and control of the "comfort stations." That is, even though the "comfort stations" that were set up for preventing rape actually did not fulfill its purpose, the Army Ministry proposed to further strengthen the management of the "comfort stations" simply because it lacked any viable alternatives. As the deviant behaviors such as rape and looting continued on, the military authorities took measures that are discussed below, and the

emperor himself became involved in these measures. There is a strong possibility that the emperor gained knowledge of the comfort stations through his involvement in the measures.

b) First, on January 8, 1941, the Army Minister Tojo Hideki announced "Senjinkun" (address for instructions in battlefields) to the Army as guidelines of soldiers' behavior in the battlefield. It is clear now that, this address that is known for its phrase "you should choose to die rather than live in shame as a captive," was actually drafted also as one of the measures for preventing rape in the battlefield. According to Shirane Takayuki (then first lieutenant) who participated in drafting the address, this address was originally "written directly and clearly for the exclusive purpose of correcting the lowly and illegal acts such as beating up of the superiors, resistance to orders, fights, killing and wounding of the colleagues, drinking, escaping, raping, setting fire and looting on people's properties." The day before the announcement of the address, Army Minister Tojo visited the Imperial Palace and presented the address to the emperor, and received his majesty's permission. The emperor thus had recognized the problems with public peace and order in the occupied territories, so he must have fully realized the significance of the announcement of "Senjinkun," the address for instructions in battlefields. Moreover, it is remarkable that the emperor himself came to involve himself directly in the measures and consequently formed a part of them. Next, the amendment of the Army Criminal Code in February 1942 which was done one year after the announcement of "the address" continued to take up the issues discussed in "the address." Thus, the emperor must have recognized that maintenance of military disciplines was considered an urgent task. In February 1942 the Army Criminal Code was amended to establish wartime rape as a criminal act. Up to then, rape was considered a subcategory to the crime of looting, but it was amended as follows: "those who rape women in war zones and/or in the Imperial Army's occupied territories will be sentenced from one year to life" (Article 88-2). Rape was no longer an offense subject to prosecution only upon complaint, and the extent of sentencing was broadened, but here again, the reason for amendment of definition of rape crime was NOT from the viewpoint of protecting women's human rights in war zones and occupied areas, but because "it would tarnish the authority and reputation of the Japanese military and also would greatly damage its strategies and pacification operations." Thus, it is implausible that the emperor did not know of the existence of problems with public peace and order in the occupied areas. On February 12, 1942, the emperor refers to military disciplines in his remarks to Prime Minister Tojo Hideki, that "the quality of the army will deteriorate naturally when the battle prolongs...." The statement above matches the account in the "measures for improving military disciplines" of 1940 which stated that "prolongation of war situation contains

causes that may loosen military disciplines.” Also on May 29, 1942, the emperor refers to the problem of maintenance of public peace and order in the occupied areas in his remarks to Army Chief of Staff Sugiyama: “. . . it must be important to maintain public peace and order in the occupied territories. . .” This statement shares a perspective with the main points of the above-mentioned “measures for improving military disciplines” issued in 1940, with objectives of drafting and distributing the “Senjinkun” (the address) in 1941, and with the “explanation of reasons” for amendment of the Army Criminal Code in 1942.

- c) There is also a strong possibility that the emperor was acquiring information from members of the Imperial family who were on military duty. Before the war, adult male members of the Imperial family were obliged to be on military duty. For example, Prince Takamatsunomiya Nobuhito, who worked in the the Naval General Staff when the war was declared, refers to “comfort women” in his diary in the field. Prince Kan-innomiya Kotohiko was the Army Chief of Staff when Marco Polo Bridge Incident broke out. And Prince Asakanomiya Yasuhiko-ou was appointed the commander of the Shanghai Expedition Army around when the Second Shanghai Incident broke out. Prince Nashimotonomiya Morimasa was arrested after the war as a war crime suspect. Furthermore, the emperor must have had more private opportunities to acquire information about the loosening of military disciplines and about counter-measures from other members of the Imperial family who were on military duties. In fact, it is reported that, Prince Mikasanomiya Takahito who were posted in the command headquarters in Nanking for one year from 1943 recently remarked: “during the war, I felt terrified upon witnessing closely the Japanese military’s dreadful acts in China. I reported it to emperor Showa (H) as well.” The emperor’s second younger brother Prince Takamatsunomiya even notes of the shortage of “comfort women” in his diary. The emperor must have acquired information about the situation in the battle zones also from other members of the Imperial family who are not mentioned above.
- d) As stated above, in the face of a prolonged war against China, it is clear that the emperor had known about the loosening of military disciplines and problems with public peace and order just as well as the military authorities did. And it is quite natural that his recognition of and interest in the problems would influence the measures for improving military disciplines. And naturally, the emperor who was aware of his position and capacity as the supreme commander and of his prerogatives which constitutionally included military disciplines recognized and endorsed the Japanese military sexual slavery, a system that is attributed importance in the “measures.” That is, the Japanese military “comfort women” system expanded over the whole Asia-Pacific region, and meanwhile, rape cases including

the ones in Nanking were dealt with as problems by the military itself. So there is a strong probability that the emperor knew about them, or at least was in a position to know of them easily.

e) Also, "the emperor's actual execution of his prerogative of supreme command" includes "issuance of supreme commands (issuance of the Imperial headquarters' orders)," "instruction of war strategies in forms of consultation" and "boost of soldiers' morale." Not to mention military flags and armaments, supplies such as bandages, just as the cigarettes of imperial grace, were all branded with an emblem of a chrysanthemum which symbolized the emperor. The Japanese military was thus literally and spiritually belonged to the emperor. And so loyalty to the emperor and morale of the soldiers were aroused in all corners of the army that was then called "the Japanese Imperial Army (Kogun)." The Japanese military sexual slavery which served to "boost soldiers' morale" was a facility that was meant to maintain public peace and order through prevention of rape in occupied territories. It was expected to prevent espionage and spread of venereal diseases, as well as to facilitate execution of war strategies formulated through the emperor's commands. The "comfort women" system was therefore inseparable from the emperor's exercise of his prerogatives. We could hypothetically assume that setting up of "comfort stations" was an act for the purpose of maintaining the Japanese military's fighting forces through its function (i.e. prevention of venereal diseases), and that it was not related to exercise of the emperor's prerogatives of supreme command because it was run by the Quartermaster Division of the military. But even so, the emperor is not exempt from his criminal liability, given that the act offended international humanitarian law of the time, and that the emperor knew of this fact or at least there was a possibility for him to know it.

4-3 . [Conditions that establishes the emperor's criminal liability for the Japanese military's sexual slavery (2)...possibility of blocking it(=the military sexual slavery)]

4-3-1. The possibility of blocking [the sexual slavery] that is established by the emperor's positions and legal powers

It was the emperor who appointed the commanders of the whole army (Kanto Army, China Expedition Army and Nanpo Army), expedition army and the military who directly commanded the measures needed for setting up and management of "comfort stations" (i.e. recruitment of women, transportation, distribution to "comfort stations"). Formally, decisions on appointment of the commanders were first made inside the military and then received the emperor's approval. However, because there were examples of the emperor's intervention in high level military personnel matters, it means that the emperor's will influenced the personnel

management matters in the military. In other words, it is clear that the commanders who did not follow the emperor's will and commands would have been demoted from the position. The fact that staff officer (Chief Staff of Depot Division) of each expedition army which was subject directly to the emperor was in charge of distributing "comfort women" shows that distribution of the "comfort women" was part of general acts of military operations. That is, it resulted from exercise of the emperor's prerogative of supreme command. Unlike the affair of "serving the emperor by giving him advice in matters pertaining to the affairs of the state," the prerogative of supreme command is not something that was entrusted to the institutions of military command or to the military commanders. So heads of these organizations were not issuers of the orders but were in a position of messengers who communicated the emperor's orders. Judging from the position the emperor occupied and the legal functions he possessed as described above, it would have been possible to stop putting many women into sexual slavery, if only the emperor decided to abolish the "comfort station" system and then issued an order to block it according to his decision.

4-4. The possibility of blocking (the sexual slavery system) established from the emperor's spiritual positioning in the minds of Japanese soldiers.