

Japan's Indictment Summary

July 2000

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Confidential

Summary of indictment drafted by the Japanese team as of 23 July 2000

1. Historical Background to Japan's Military Sexual Slavery

1-1. History from Introduction to End of Japanese Military's System of "Comfort Women"

1-1-1. The First Stage: 1932~First Shanghai Incident: Introduction of Systematic Military Sexual Slavery

On January 28, 1932, anti-Japanese activities in Shanghai culminated in a skirmish between a Japanese naval landing party and the Chinese army. In February, Prime Minister Inukai and his cabinet decided to dispatch the Army forces. The presence of the Japanese military forces increased to 17,000 including troops already stationed in Shanghai. At the time of the first Shanghai Incident, displeased by the frequency of rape committed by the Japanese military, OKAMURA Yasuji, Vice-Chief of the Staff of the Shanghai Expeditionary Army, requested that the Governor of Nagasaki Prefecture send a group of "comfort women".¹ This information is also verified in the personal diary of Naosaburo OKABE, Chief Staff Officer of the same Expeditionary Army.² As the army practice of establishing "comfort stations" was modeled on that of the navy; it is thought that the Navy had already had military "comfort stations" from a much earlier time.³ As far as we can confirm from existing data, the establishment of "comfort stations" by the Japanese military had begun at the very latest in 1932. In the same year, Japan created the puppet state of Manchukuo in northeastern China, and according to official documents, in 1933 there was already a comfort station (No 14 composite brigade, stationed in Hiraizumi).⁴

1-1-2. The Second Stage: 1937 - Japan's all-out war against China: Full-scale Operation of the systematic military sexual slavery

The full-scale operation of military "comfort stations" started around the time when Japan entered the all-out general war against China after troops clashed at Marco Polo Bridge on July 7, 1937. When the Second Shanghai Incident began on August 13, the Japanese military was again expanded and advanced on the capital of Nanjing (Nanking). From around this time until the fall of Nanjing on December 13 and for weeks afterward, rape committed by Japanese soldiers continued unabated. The military took this situation seriously and made an effort to set up new "comfort stations" and expand already existing ones. Even after the major operations in Hankou and Guangdong in the fall of 1938, Chinese resistance continued and the war in China stagnated. With Japanese troops being stationed for a long time in one location, the variety of "comfort stations" increased. For instance, some "comfort stations" made as part of Depot Divisions, while others were operated by troops for themselves. In addition, there were irregular traveling ones and temporary ones. This makes it difficult to trace the development of the system and the reality of sexual slavery later on. Initially, women from mainland Japan and Korean women residing in Japan were recruited and sent to China to be put in those "comfort stations." When demand exceeded the supply, however, women in the colonies were made focus of

recruitment as well. At that time, Korea was suffering from poverty that was brought about by Japanese colonization. Poverty forced many of the Koreans to immigrate to Japan and Northeast China. Under such harsh conditions, many girls and young women "applied" to "job opportunities", cruelly enticed and deceived by sweet words ("There are good jobs," "You'll make good money"), or taken under the power the Government-General of Korea. In Taiwan, another colonized territory, not only were Chinese women recruited, but there are also cases of women of indigenous ethnicity taken by low-ranking police officials working under the auspices of the Government-General. In China, recruitment took place in various forms: women were deceived; powerful locals were made to supply women; and prostitutes were forcibly taken away from local brothels. In many battle zones where "comfort stations" did not exist, as in the case of Wu Prefecture, Shanxi Province, local women were kidnapped from villages during counter-guerrilla attacks and taken to where the troops were stationed, where they suffered continuous rape.

Zenshirou HARA, Staff Officer with the Guandong Army planned to collect 20,000 "comfort women" from the Korean Peninsula to prepare for the Guandong Army Special Exercise in July, 1941. Sadao MURAKAMI (impedimenta team, 3rd section, the Staff of Guandong Army), who was took care of the clerical matters for the plan, wrote in a letter to Hara (now owned by SENDA Kako) that he was only able to collect 3000 women. This was an important turning point for the military to start full-scale establishment and full operation of "comfort stations".

1-1-3. The Third Stage: 1941-1945 (the Asian-Pacific War).

On December 8, 1941, Asian-Pacific War started with the bombing of Pearl Harbor. Southern Expeditionary Army and Japanese forces under its wing established "comfort stations" one after another throughout the Southeast Asia and Pacific islands that they occupied. Around May 1942, when the operation for Southern Expansion Doctrine was settled temporarily, Japanese controlled territory line was at its largest in the time of war. In Malaya, "comfort stations" were established during the Malayan War. The establishment of them in Singapore followed, right after the fall of the city on February 15, 1942. In the Philippines, a "comfort station" was set up in Iloilo, Panay Island as early as May 12, 1942. In Burma they were set up shortly after the fall of Mandalay on May 1, and the fall of Myitkyina on May 8. "Comfort Stations" were also established at most of other territories occupied by Japanese military such as Indonesia, Andaman Islands, Nikobal Islands, Rabaul, Kavieng, Saipan, Truk Islands, Palau, Guam, etc.⁶ In those occupied territories, Japanese women and Korean, Taiwanese and Chinese women taken from occupied territories were brought for the establishment. Local women were also put in there, as well as suffering more conventional rape.

As indicated in the above, Japanese military increased the number of "comfort stations" along with expansion of war front and expanded systematic collection of "comfort women" in these 3 periods; First Shanghai Incident, after Japan's total invasion to China and after beginning of Asia-Pacific Phase of War.

1-2. The Historical Background of the System of Military Sexual Slavery

The initial rationalisation and background for establishing the system of military sexual slavery stemmed from the practice of civilian sexual slavery under public license in Japanese society and its introduction through Japan's expansion to the colonised regions including Taiwan and Korea. During the Meiji Era, prostitution was modernised into the licensing system in Japan following the examples of European systems of licensed prostitution as its model. This industry incorporated Japanese women from the lowest economic classes, who were bound by debt bondage, kept in brothels and practically almost at the proprietor's disposal. As the Imperial State and military proceeded its aggression and colonisation over Korea, Taiwan, "Manchuguo" etc, the Japanese system of licensed prostitution or de fact civilian sexual slavery were also transplanted in those regions. Local women in the colonies were put at the bottom of the pyramid within the sex industry of the Japanese Empire.⁷ Furthermore, a cross-national syndicate route was created for trafficking of women. It was this existing prostitution system which became the foundation and motive for the establishment of military sexual slavery. In addition, had there been no colonisation into the Asian region by the Japanese Imperial army, there would not have been making of Korean and Taiwanese women into sex slaves on a massive scale. The Imperial Military and Government of Japan had very racist attitudes, to think that it was all right to put women of the colonies into sexual slavery while it was not to do the same to Japanese women.

2. Facts That Constitute Criminal Responsibility

2-1. Chain of Command of the Japanese Government and Military

2-1-1. From the first Shanghai Incident in early 1932 to the outbreak of the Asia-Pacific War in December 1941

During this period the Japanese Military established many "comfort stations" in war zones and occupied territories in China (including northeastern China). Expeditionary Army Headquarters, divisional, regimental and battalion commanders and so on decided to set them up and ordered that women be recruited. The rear staff officers and adjutant of the unit at each level drew up concrete plans and comptroller divisions or others implemented them. Some of the major examples are as follows:

A. In March 1932, the Shanghai Expeditionary Army established a "comfort station" in Shanghai. Deputy Chief of Staff OKAMURA Yasuji and Adjutant General OKABE Naosaburo formulated a plan, and Staff Officer NAGAMI Toshinori implemented it.⁸ For this case, General Shirakawa Yoshinori, Commander of the Shanghai Expeditionary Army should also be held responsible.

B. In December 1937, the Central China Area Army issued directions concerning the establishment of a military "comfort station". According to these directions, the Second Section of the General Staff of the Shanghai Expeditionary Army made a draft plan and Staff Officer CHO Isamu and others were in charge of setting up the comfort station.⁹ The responsibility for this case is shared by General MATSUI Iwane, Commander of the Central China Area Army.

C. In June 1938, Lieutenant-General Okabe Naosaburo, Chief of Staff of the North China Area Army, directed the units stationed in North China to set up "comfort stations".¹⁰ The responsibility for this case also lies with General TERAUCHI Hisaichi, Commander of the North China Area Army.

D. In May 1939, 21st Army that had occupied southern parts of China tried to increase comfort women under their control from 1,400 to 1,600.¹¹ The responsibility for this case also lies with Lieutenant-General ANDO Rikichi, Commander of the 21st Army.

In recruiting women from local residents in China, accounting officers, military policemen and others were in charge of this task. They "entrusted" the puppet government or municipal governors with the recruitment of local women. In this case, the word "entrust" virtually meant to order. Some of the major examples are as follows:

E. In December 1937, Lieutenant-Colonel TERADA Masao, Staff Officer of the 10th Army, directed military policemen to recruit Chinese women and set up a comfort station in Huzhou.¹² The responsibility for this case also lies with Lieutenant-General YANAGAWA Heisuke, Commander of the 10th Army.

F. In August 1940, the Second Battalion of the Independent Mountain Artillery Second Regiment, which was stationed in a village in Hubei Province, "entrusted" the village mayor with the recruitment of women.¹³ Forcibly recruited women burst out crying when they were made to undergo a venereal inspection. The medical officer wrote in his diary that "they might have unwillingly come here probably because they were finally persuaded (by an influential man of the village) that their recruitment would help save the village."¹⁴ The responsibility for this act must go to General HARADA Tsurukichi, Commander of the Independent Mountain Artillery Second Regiment.

When recruiting comfort women in Korea, Taiwan and Japan, the Japanese military forces in China either selected civilian agents and sent them to recruit women, or asked the Korean and Formosan Governments-General and the Home Ministry to do so.

G. As to the former recruitment procedure, the War Ministry approved it.¹⁵

H. With regard to the latter procedure, there is a clear example of recruitment in Japan. In November 1938, the 21st Army headquarters decided to establish comfort stations in the southern part of China. Then the Army entrusted that task to the Home Ministry, which directed the police authorities of five prefectures to select civilian agents to recruit 400 women.¹⁶

It is Major KUMON Arifumi, Staff Officer of the 21st Army, and Colonel KOMATSU Mitsuhiro, Appointments Section Chief of the War Ministry's Personnel Bureau, that asked the Home Ministry to recruit comfort women. Within the Home Ministry, Police Bureau Chief HONMA Kiyoshi gave directions to prefectural governors. Moreover, the 21st Army also requested the Formosan Government-General, which recruited 300 women.¹⁷ The responsibility for this case goes to Lieutenant-General Ando Rikichi, Commander of the 21st Army, War Minister ITAGAKI Seishiro, Lieutenant-General, Home Minister and Admiral SUETSUGU Nobumasa, and KOBAYASHI Seizo, Formosan Governor-General.

Given this case, even in Korea and Taiwan, selected agents seem to have recruited

comfort women under the control of the Government-General.

I. In July 1941, the Japanese Army drew up a plan for invading the Soviet Union and tried to place forces of about 800,000 in "Manchuguo" near the Soviet border. These operations were canceled in September 1941. However, the Kwantung Army, which had promoted the operations, is said to have tried to recruit 20,000 women through the Korean Government-General.¹⁸ Though only about 3,000 women were actually recruited, the responsibility for this case would go to Lieutenant-General Umezu Yoshijiro, Commander of the Kwantung Army, and Korean Governor-General Minami Jiro.

2-1-2. From the outbreak of the Asia-Pacific War to the defeat of Japan

In this period, the core organs of the Japanese Military came to control the establishment of "comfort stations" and the recruitment of the women. With regard to the Imperial Army, the War Ministry's Aide-de-camp Division, Awards Section and others were in charge.¹⁹ Concerning the Imperial Navy, the Navy Ministry's Military Affairs Bureau and Military Preparations Bureau were in charge.²⁰ This means that even in Korea and Taiwan, it became common to recruit women through headquarters of Korea Army and Taiwan Army (area armies), not through the Governments-General. The following cases indicate this fact.

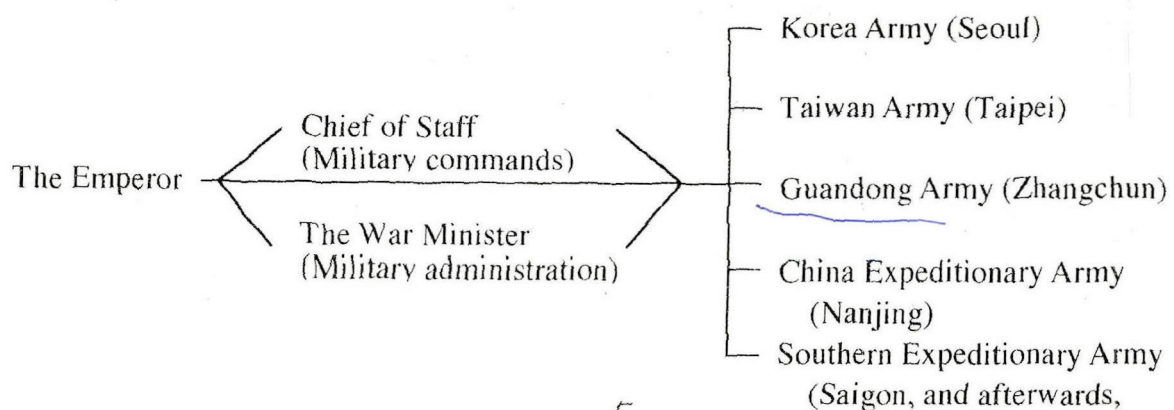
J. In 1942, the Southern Expeditionary Army that occupied vast areas of Southeast Asia and the Pacific Region were setting up "comfort stations" in various places.

For example, in order to set them up in Borneo, the Southern Expeditionary Army Headquarters asked the Taiwan Army Headquarters through the War Ministry to recruit 50 women. Under the directions of the War Minister, the Taiwan Army selected three civilian brokers and made them recruit 50 women. Then the Taiwan Army Headquarters asked the War Minister's approval for these brokers and women to travel to Borneo, and got the permission from the adjutant of the War Minister.²¹ The responsibility for this case goes to General Terauchi Hisaichi, Commander of the Southern Expeditionary Army, Lieutenant-General Ando Rikichi, Commander of the Taiwan Army, and General Tojo Hideki, War Minister, who was also the Prime Minister.

Given these facts, it can be said that the responsibility of the Japanese Military, especially its core organs, became heavier after 1942.

Reference

The Japanese Army's Chain of Command for Expeditionary Armies (1942)



Note 1: China Expeditionary Army (Shina haken gun) was set up in September 1939, with the former Expeditionary Army for Central China at the core, and with the former Northern China Army (Beijing) and the former 23rd Army (Guangzhou) also under its command.

Note 2: Each Expeditionary Army came under direct jurisdiction and supreme command of the emperor. The Chief of Staff issued military commands, and the War Minister administrative orders, that were within their assigned discretion. The matters regarding military "comfort women" were dealt with by the Staff of each Expeditionary Army (especially staff in rear).

[source: YOSHIMI Yoshiaki and HAYASHI Hirofumi 1995 (eds.) Collaborative Research: Japanese Military Comfort Women. Otsuki shoten, Tokyo]

2-1-3. During the period of the all-out war between Japan and China from 1937 to 1945

In the case of the Army, the War Ministry's Military Administration Bureau and Medical Affairs Bureau were involved in the establishment and management of "comfort stations". The former was required to maintain military discipline and morale and the latter to prevent the spread of venereal disease. The War Ministry's Intendence Bureau and the Army Quartermaster Depot were also involved in providing condoms and preventive medicine. ²³

2-1-4 General absence of initiative or efforts to abolish military sexual slavery

The "comfort station" system was nothing but military sexual slavery. Nevertheless, the Japanese Military, from top officers to the lowest ranks, did not oppose this system. The directions for establishing "comfort stations" were issued, but there were no orders issued to abolish them, except in the few cases with the war situation growing very badly and in the case in Semarang, Indonesia (in which Dutch women were made sex slaves).

2-1-5. Background to the widespread use of sexual violence

"Comfort stations" were established against the following background. Soldiers in war zones were put in extremely poor living conditions and abused. They were completely deprived of their human rights. As a result, their repressed emotions often exploded against local residents, which typically took the form of violence against women and rape. Such explosion of violence of to an extraordinary level were commonly seen in areas occupied by the Japanese Military, including China, the Philippines and Indonesia in particular. The core agencies of the Japanese Military, though knowing these facts, did not take active measures to prevent such crimes. The provisions of the Army Criminal Code applied to rape only when done along with looting, before it was amended in 1942.²⁴ Rather, the Japanese military forces tolerated soldiers' violent behavior against women in war zones and occupied areas so that their repressed emotions and indignation might not explode at superiors. In some cases, the officers even induced soldiers to

practice violence on female residents.²⁵

Note: The total number of the women victims put to military sexual slavery (including Korean, Chinese, Taiwanese, Filipino, Indonesian, Japanese and other women) is extremely difficult to obtain. The effort to obtain very rough estimates demonstrated by Dr. YOSHIMI Yoshiaki is as follows:

A. Minimum

- a. The Army had a standard of access to one "comfort woman" for every hundred soldiers to be provided by the Army.
- b. The total number of military personnel overseas (both Navy and Army) when it was largest was about 3,500,000. The forces at the utmost forefront were not very often with such women, and even the forces elsewhere were not necessarily with them. So the total number of soldiers can be set at 3,000,000 as a base for calculation.
- c. It is hard to know the alternation rate of "comfort women", but let us tentatively call it at 1.5.

Then:

$$3,000,000 \div 100 \times 1.5 = 45,000$$

If we add the number of women that was not grasped by the core of the military, headquarters of armies and area armies, the estimation will be about 5,000,000. This would be the minimum.

B. maximum

- a. There was another standard, which was seen by brokers and proprietors in sex trade of the time as the ideal ratio for brothels, of one woman per thirty men [potential clients?]. This is a rather unrealistic ratio for this case.
- b. Let us increase the rate of alternation to 2. Then:

$$3,000,000 \div 30 \times 2 = 200,000$$

This would be the maximum.

[Please note that the total number of the women victims put to military sexual slavery is yet to be estimated, presenting reasonable grounds to the calculation.]

2-2. Facts to support the responsibility that senior government and military officials and the Emperor had for the institution of military sexual slavery

2-2-1. Facts to support the responsibilities of the army and the government senior officials -- responsibility for conducts

(1) the institution for rape: the "comfort stations" or rape centers establishment

<Origination of "comfort stations" - examples of rape center establishment in the Hankou-Wuchang area, China> (11th Army, 6th Area Army) - Ha Sang-suk, Son Shin-do

<(from indictment by other countries)> Identify the names of perpetrators in each case of the women survivors below.

--South Korea (Commander of 21st Army, etc) - KIM Pok-tong(taken to Guangdong, Hong

Kong, Singapore, Malaysia, Indonesia) (Chief of 71st Division, Commander in Chief of Guandong Army, etc) - KIM Kun-ja (taken to Hunchun and Wujiazi in northeastern China)

--North Korea(perpetrator to be identified) - LEE Ge-wol (taken to Mulan Prefecture in north-western China) (perpetrator to be identified) -PAK Yong-shim (taken to Nanjing, Singapore, Burma, then detained in the Allies' Kunming POW camp in China)

--Taiwan (perpetrator to be identified) - Lu Manmei (taken to Hainan Island, China) (perpetrator to be identified) - Iang Abbai (locally within Taiwan)

--Indonesia (perpetrator to be identified) - Mardiyem (taken to Telawang near Banjarmasin, Borneo) (perpetrator to be identified) - Suhanah (locally taken to Chimahi near Bandung)

(2) conventional mass rape (refer to relevant indictment of the victimised countries)

<example of Nanjing or Nanking, China>

<example of Mapanique, the Philippines>

(3) intermediate form between established rape centers and conventional mass rape (refer to relevant indictment of the victimised countries)

<example of Shanxi Province, China>

<example of case in the Philippines>

2-2-2. Facts to support the Emperor's responsibility: Examining the responsibility of the Emperor for control and supervision

2-2-2(1). The emperor did have authority over the war

How responsible Emperor Showa was, and how much authority he had over, World War II, is clearly shown by the legal function of an emperor and the role the emperor played in reality as the ultimate leader of Japan.

2-2-2(1)a. The legal function of the emperor's role

According to the old constitution in effect before and during World War II (the Meiji Constitution), an emperor was the head of the State and presided over the rights of sovereignty of the State of Japan (Article 4). Although it was provided that cabinet ministers were to be responsible for serving the Emperor by giving him advice in matters pertaining to the affairs of State (Article 55-1), the Emperor alone had the prerogative of supreme command of both the Army and the Navy of Japan (Article 11). In other words, the Meiji Constitution explicitly falls out of the system of constitutional monarchy, in which the sovereign only "reigns but does not rule" as a general principle. The prerogative of supreme command was exclusively owned and exercised by the emperor, independent either from the parliament and the government, just like a despotic monarch, and no party but the emperor was responsible under this constitution.

The prerogative of supreme command is the authority over dispatching of and operation of the military, and, ultimately, the authority over planning and conducting of a war, ruling of colonies

and other such matters. Therefore, Emperor Showa's responsibility cannot be shifted off from him for the damage suffered by different States and their nationals as the result of conducts of war and ruling that violated their rights, carried out in his name and authority under the constitution of Japan of the time.

The particular argument denying the emperor's responsibility for the war on the ground of the legal function of his role is groundless, for the emperor was the only party with the ultimate authority for according to the Meiji constitution. This kind of argument fails where it tacitly takes up the general model of constitutional monarchy as its prerequisite, which is unsuitable for this case. Also, this argument cannot be justified in the

light of the true nature or reality of the political system of Japan prior to the end of WW2, where the Japanese government itself denied the understanding of an emperor as a mechanism or organ of the State and where "the independence of the supreme command (of the emperor)" exercised an overwhelming power and authority.

The argument denying his responsibility for the war on the ground of provisions in the Meiji constitution is neither seen as convincing nor has it no universal quality to it anywhere outside Japan. Other countries demanded that the Emperor be held responsible for the war right after Japan was defeated. 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, included the following:

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 on an on-going basis consented to and condoned conducts of crimes against peace and humanity. He thus failed to take measures within his authority to prevent crimes against peace and humanity. [NB: re-translated from Japanese translation; to be replaced by original quote in English] Other countries besides Australia also demanded the Emperor be prosecuted and punished.

2-2-2(1)b. The role Emperor Showa played in reality as the ultimate leader of the State

When looking at the historical facts and examining the actions that the emperor took as the ultimate leader of the State of Japan, it is very clear that the late Emperor Showa in fact played a very important role often during World War II in forming the policy of the State, in decision-making in general and with regard to military strategies and tactics in particular. Emperor Showa as the Japanese military's supreme commander did not just unconditionally accept policies and means of implementation of the high command of the military regarding war strategies and tactics. Rather, historical facts show that he Emperor was deeply involved in the formation of national policy of war (leading the war and missions) by asking particular questions and giving particular comments or opinions to the military, based on his own judgement on war

strategy and the information he was kept provided by the military leaders.²⁶ He made the final decision,²⁷ one of his "divine decisions", to begin war against the United States and Britain, encouraged the military regarding various operations, ²⁸ and emphasised the importance of the Okinawa War.²⁹

2-2-2(2). the Emperor's responsibility for supervision: his involvement in the system of military sexual slavery

2-2-2(2)a. The legal function of the role of the emperor

The Emperor had the ultimate responsibility as the Japanese supreme commander for Japanese military's operative actions. As any order from the Imperial Headquarters was accepted formally and substantially as an order from the Emperor, the ultimate responsibility for any operation *following those orders resides with him. Also, the Emperor had the final responsibility for supervision of matters regarding impedimenta (regarding matters to support operations or maintaining war-making capacity), which included the establishment of military sexual slavery.*

It has not been possible to obtain evidence at this point to prove that the Emperor himself gave an order regarding establishing or managing the military sexual slavery system. However, that the placing of "comfort women" was dealt a part of the job of the staff (staff for impedimenta) of headquarters of dispatched forces (armies, area or expeditionary armies) indicates that placing of such women was seen as a part of war activities, as a result of the exercise of the prerogative of the supreme command that presided only with the emperor. Neither the military commands nor commanders were delegated the prerogative of supreme command. They could not issue orders in their own name, but rather, did so in their capacity as transmitters of the commands of the emperor.

The placing or distribution of the women was seen as a necessary activity to maintain Japan's war-making capacity, a necessary tool to facilitate combats and thus a part of "combat actions" and a necessary activity to carry out the operations ordered in the name of the emperor. Just as the activity to supply guns was necessary for the war, establishing and managing military sexual slavery, to the extent it was seen and done as an inextricable part of military operations as an exercise of the supreme command, the ultimate responsibility belongs to the emperor as the highest commander of the country. This can also be said of more conventional types of rape committed by Japanese forces in the war zones and occupied areas.

The exercise of the prerogative of supreme command by the emperor himself included: to issue orders of the highest level (such as Imperial Headquarters orders); to direct operations through "his majesty's questions" etc; and to encourage officers and soldiers for a higher fighting spirit.³⁰ All the military supplies, from battle flags and firearms to such expendables as bandages, bore the Imperial chrysanthemum crest, the use of which was strictly prohibited but only to be understood as that the commodity was directly provided from the emperor himself.

2-2-2(2)b. The role Emperor Showa played in reality as the ultimate leader of the State

The emperor was in a position and capacity to be able to know about the system military sexual slavery and the occurrences of mass rape.

In 1937, the expansion of invasion activities into the middle parts of China showed the horrendous decay of morality and discipline within the Japanese forces, including the Nanking Massacre, in which countless acts of massacre and rape were committed. In order to respond to the situation, the military authorities issued the 'Senjikutun' (address for instructions in battlefields) on January 8, 1941.³¹ This address had been presented to Emperor Showa in person by War Minister Tojo, who in turn received his approval for it. The introduction in full-scale of the system of military sexual slavery after the Nanking Massacre came from the same motive as the 'Senjikutun.' This overall trend in the military was witnessed by some of the members of the imperial family who were closest to Emperor Showa. His second brother Prince Takamatsu mentioned in his diary such things as the lack of "comfort women".³² His third brother Prince Mikasa reported to the Emperor on the atrocities committed by Japanese forces in China during World War II that he had witnessed.³³

The system of Japan's military sexual slavery was exercised throughout the Asia-Pacific areas. The frequency of (conventional) rape, with what was done in Nanjing as the leading example, was seen as a problem within the military itself. It is highly possible that Emperor Showa knew these. At the least, he was clearly in the position and capacity he could easily have known them.

2-3. After the War: Facts of neglect and allowing things to grow worse

2-3-1. insufficient investigation

On August 15, 1945, the Japanese government accepted the Potsdam Declaration and made unconditional surrender. Article 11 of the Declaration provided the prosecution of war criminals. Around this time, many official government and military documents were burned by a decision of the Cabinet. The Army Staff and the War Ministry sent a note to all army units ordering them to destroy all confidential documents. They even pressured the House of Representatives and newspaper companies to destroy records of confidential meetings and photographs of prisoners of war. The similar order was dispatched within the Navy. The Department of Interior also decided to burn official documents. HARA Bunbei (he became a chairperson of the House of Councilors and a director of trustees of the Asian Women's Fund), OKUNO Seiryu (he later became a member of the House of Representatives, the Minister of Education, and a Minister of Home Affairs), and KOBAYASHI Yosaji (he later became a Vice Minister of Home Affairs and the president of the Yomiuri newspaper) all shared the responsibility of notifying police departments and local governments of this order. These facts show clearly that those actors were thinking about the war crime tribunals that would be held after the war, and that they burned documents in order to destroy the evidence of war crimes they had committed. Such conducts of theirs hiding or destroying documents in relation to war crimes may well constitute violations of international obligation that Japan accepted by its surrender.

For a long time after the war, the Japanese government had long made no effort to investigate or even acknowledged the existence of the so-called "comfort women," the "731 Military Unit" and so on. To this day, it denies even the existence of basic official documents regarding the "731 Military Unit". In 1992, the Japanese government at last promised to investigate the issue of "comfort women" as a result of being pressured by the international community. However, the first report of this investigation denied the Japanese government's involvement in the matter. In August 1992, in the second report, the Japanese government finally admitted the involvement of the military and the government and police, and that there was coercion in recruiting and using of the women.

However, both these reports were very vague about the roles that the government and military had played. At the time of investigation for these reports, the Japanese government did not look at certain archives saying that there were no related documents. But at the archives at the Department of Health, Police and the prewar Supreme Court, which were amongst those archives that the government had not looked, later some important documents related to Comfort Women issues were found. These documents were discovered by non-officials and by accident. Even today, the Japanese government does not show interest in finding truth of this issue. But many academics and others are certain that at places including the Library of the Institute of Defense must still be many relevant documents that have not been disclosed or even organized.

2-3-2. Non-fulfillment of obligations for apology, compensation, or punishment

The Japanese government has purposely used a discourse of falsehood and distortion which openly denies the victims' status. These acts have been done repeatedly and continuously, and have hurt many victims' self-esteem. Not only the facts were denied, but also, comments and policy made by the Japanese government officials against the legal status and rights of the victims -- all of which hurt the victims deeply. In particular, these officials keep to the technical defense, and ignore its duty to punish war criminals and compensate the victims. They have also tried to force the victims to accept the "resolution through charity funds. An examination of the issues regarding the legal rights of the victims includes the following:

First, Japan has a duty to punish crimes under international law, but keeps neglecting to fulfill the duty. There is no such bilateral or multilateral agreement that might remove this duty from Japan. Therefore, that any international agreement or treaty that Japan has ratified is no defence for Japan to say that the issue of duty for punishment has already been settled through international agreements. This duty is not subject to a statute of limitations. When a state is in breach of this duty, then it is liable to pay compensation. Therefore, Japan is liable to compensate for its failure to duly prosecute and punish war criminals.

Second, in 1972, when Japan settled the peace issue with China, Japan agreed to the condition that China does not waive the claims of its nationals. Therefore, whatever Article 14 (b) of the San Francisco Peace Treaty may mean, one must understand that Article 26 of the same treaty is applied and that no individual rights are waived to claim compensation of victims who are national to any country that is a party to the San Francisco Peace Treaty. Japan cannot claim

that the issue of compensation to individual victims has been settled by international agreements in this way.

2-4. The characteristics of the "comfort women" crimes that are different from other war crimes

The victims who had been put in "comfort stations" or rape centers have suffered physical and psychological pain which is different from other war crimes because it comes from sexual violence. They had been confined to particular places and raped constantly by many soldiers for a long period of time. Constant sexual violence brought them so grave physical injuries that many of them were died of illness at the time. The survivors have also undergone vast range of illnesses including venereal diseases, sterility and different kinds of ill health including palpitation, headache, physical pain of different parts of the body, gastroenteric trouble, etc.

An experience of a grave event, the pain and agony of which brings is so serious to overcome, remains with the person after the event as trauma and often causes PTSD (post-traumatic syndromes). Many cases of suicide or mental trouble under the confinement are reported by the survivors of the "comfort women" and they themselves show serious PTSD. Survivors themselves report their symptoms and examples of such reports are found in various sources including the testimonies made by the women survivors themselves, the descriptions in the indictments for and examinations of plaintiff at court hearings of various civil lawsuits in which the survivors are suing the Japanese government, the testimonies at different occasions including for the United Nations Human Rights mechanisms, and at international public hearings.³⁴ The medical diagnoses of thirty plaintiffs of the lawsuit of the Filipino women by Christine R. GATES,³⁵ of two of them by MITSUHASHI Junko,³⁶ and six plaintiffs of the case of China's Shanxi Province by KUWAYAMA Norihiko,³⁷ they manifest how serious the survivors' symptoms are. Many women raped violently in their teens, which can be also considered in respect of child abuse, and they have suffered strong fear and insomnia, fright, or depressed state until today even after over fifty years.

The psychiatrists who diagnosed the women point out that it is taking very long a time for them to recover from PTSD. The patriarchal social system lies in the background to their obstructed recovery. In a patriarchal society where being made subject to sexual violence is thought to be the shame of the family or clan as well as the victim herself, she is branded an "impure" or "dirty" woman. She is, therefore, unable to speak out of her injury, is deprived of her own rights to self-esteem and to seek for happiness, and obliged to be keep silent with pain and agony, without any care and support of the people around her. One of the diagnoses points out that the victims' PTSD may have influence on the next generation as some of the victims may hurt themselves and their children with sudden violence as a result of her grave trauma.³⁸

Consequently, for the victims to recover from such serious mental and emotional wounds, providing them with an environment the safety of which they can rely on, to speak about their experiences, sincere apologies and compensation from their perpetrators, prosecution and

punishment of the perpetrators are crucial. The Japanese government has, however, never tried to meet the cries of the survivors, consistently denied its own legal responsibility, never put serious efforts to fact-finding and disclosure of the truth or providing proper redress to victims, and ignored their PTSD. The psychological injury of the survivors has thus multiplied, and the PTSD has been continuing.

3. Legal Assessment

3-1. Accounts of each accused individual (facts that may constitute the crime)

- a. crimes against humanity for establishment and management of rape centers and sexual enslavement of women and girls
- b. conventional war crimes and crimes against humanity for mass rape (widespread or systematic rape)
- c. war crimes and crimes against humanity for abduction, detention, and raping of women and girls that do not belong to the two categories above
- d. accounts of H the Accused (facts that may constitute his crime)
- e. responsibility of the State of Japan
 - e-1. grounds for its state responsibility
 - e-2. content of its state responsibility

3-2. Legal assessment of the facts of the damage (HIGASHIZAWA Yasushi)

- 3-2-1. The characteristics of the damage
- 3-2-2. Prohibition of slavery
- 3-2-3. Prohibition of widespread and/or systematic rape
- 3-2-4. War crimes and crimes against humanity in respect of the present case
- 3-2-5. The damage in the colonised areas

3-3. Legal assessment for the responsibility

- 3-3-1. Planning, instigating, soliciting, ordering, and aiding and abetting
- 3-3-2. The legal doctrine of command responsibility
- 3-3-3. Concealment of the facts and negligence of damage of the crimes

3-4 Responsibilities of the Japanese Government during and after the war

- 3-4-1. its responsibility during the war
- 3-4-2. its post-war responsibility

Notes:

- ¹ 稲葉正夫編『岡村寧次大将資料』(1970年、原書房)、302頁。
- ¹ 岡部直三郎『岡部直三郎大将の日記』(1982年、芙蓉書房)、1932年3月14日付。
- ¹ 吉見義明『従軍慰安婦』岩波新書、1995年参照。
- ¹ 国立公文書館所蔵・混成第14旅団司令部「昭和8年(1933年)4月自11日至20日衛生業務旬報」
- ¹ 笠原十九司『南京事件』岩波新書、参照。
- ¹ 吉見義明『従軍慰安婦』岩波新書、1995年参照。朴潤南・池田恵理子作成「慰安所MAP」参照。
- ¹ 日清戦争の結果1895年に台湾を領有した日本は、台湾に1906年公娼制を確立させ、日露戦争(1904-1905)を契機に関東州、そして「満州」にも移植した。朝鮮を1905年に保護国に、1910年に植民地にした日本は1916年に日本式公娼制度を確立させた。公娼制度の下で植民地の女性はいずれも劣悪で非人間的な扱いを受けた。それは、朝鮮等に導入された公娼取締規則等が年齢・自由廃業の点で日本国内の制度より劣悪だったこと、1921年の「婦女売買に関する条約」(日本加盟1925年)で植民地朝鮮、台湾、関東州を適用除外地域にしたことからわかる。
- ¹ 稲葉正夫編『岡村寧次大将資料』1巻(戦場回想編)原書房、1970年、p.302。岡部直三郎『岡部直三郎大将の日記』芙蓉書房、1983年、p.23。
- ¹ 飯沼守(いぬま・まもる)上海派遣軍参謀長の日記、南京戦史編集委員会『南京戦史資料集』かいこう社、1989年、p.211、p.220、p.280。
- ¹ 岡部直三郎北支那方面軍参謀長「軍人軍隊の対住民行為に関する注意の件通牒」1938年6月27日、防衛庁防衛研究所図書館。
- ¹ 金原節三(きんばら・せつぞう)陸軍省医事課長「陸軍省業務日誌摘録」1939年4月15日、防衛庁防衛研究所図書館。
- ¹ 山崎正男第10軍参謀の日記、『南京戦史資料集』p.411。
- ¹ 山口時男軍医の回想、溝部一人(みぞべ・かずと)編『独山二(どくさんに)』(独立山砲兵第2連隊を意味する)、私家版、1983年、p.55。
- ¹ 山口時男軍医の日記、同上、p.58。
- ¹ 陸軍大臣副官「軍慰安所従業婦等募集に関する件」1938年3月4日、防衛庁防衛研究所図書館。
- ¹ 内務省警保局事務官「支那渡航婦女に関する件問」1938年11月4日、警察大学校。
- ¹ 同上。
- ¹ 島田俊彦『関東軍』中央公論社、1965年、p.176。千田夏光(せんた・かこう)『従軍慰安婦』正編、三一書房、1978年、pp.103-104。
- ¹ 金原「陸軍省業務日誌摘録」1942年9月三日。
- ¹ 重村実「特要員という名の部隊」『特集文芸春秋』1号、1955年2月、pp.224-225。
- ¹ 台湾軍司令官から陸軍大臣への電報(1942年3月12日)、陸軍大臣副官から台湾軍参謀長への電報(1942年3月16日)、防衛庁防衛研究所図書館。
- ¹ 西浦進「西浦進回想録」(1947年7月記す)p.86、防衛庁防衛研究所図書館。
- ¹ 林博史(はやし・ひろふみ)「陸軍の慰安所管理の一側面」『戦争責任研究』1号、1993年2月、p.17。
- ¹ 陸軍省法務局「陸軍刑法中改正法律案質疑応答資料」1942年1月、国立公文書館。
- ¹ 早尾席雄(はやお・とらお)軍医中尉「戦場に於ける特殊現象とその対策」1939年6月、防衛庁防衛研究所図書館。早尾中尉は精神神経科の医者であった。
- ¹ 山田朗『大元帥 昭和天皇』新日本出版社、1994年、87頁以下。「第 章 大陸への膨脹と昭和天皇 三 日中全面戦争と大本営の設置 4 天皇の「御下問」「御言葉」の効き目」。
- ¹ 前掲山田135頁以下「第 章 アジア太平洋戦争における天皇の戦争指導 一 開戦決定と天皇とのかかわり」。
- ¹ 前掲山田169頁以下「同章二 天皇による積極作戦の要求以下」
- ¹ 前掲山田289頁以下「第 章 敗戦と天皇 三 本土決戦方針と聖断シナリオ 1 決戦後講和論への執着」
- ¹ 前掲山田26頁「第 章 大元帥への道 3 大元帥としての天皇の役割」
- ¹ 和田盛哉「戦陣訓及び派遣軍将兵に告ぐ」に関する研究」1972年11月10日、同「戦陣訓及び派遣軍将兵に告ぐ」に関する研究のまとめ」1973年2月20日。後者の文書には戦陣訓の作成に関与した白根孝之氏(当時中尉)の「私と戦陣訓の関係」は軍紀の頹廃について以下のとおり言及している。
- 私共の第一案は専ら、上官暴行、抗令、喧嘩、同僚殺傷、飲酒、逃亡、強姦、放火、略奪等の低次の非違不法を矯正するために、単刀直入、直截簡明に記述されました。しかし出来上がったものは、「戦場でこの訓集が敵手に入った場合に不都合を生ずる」という顧慮から、あのような美辞麗句の陰に、僅かに前述の項目

〔本訓 其の三 第一 戦陣の戒 第二 戦陣の嗜〕が名残りを止める結果となり、今村中将の「相済まなかったと反省する」という一句に、私は今更ながら、この武人の深い心に敬服します。

また上記文書には「戦陣訓についての回想」と題する岩畔豪雄將軍に対する放送記者のインタビューが含まれている。

振り返って、満州事変における、日本軍の行動を見るに、虐殺等憂慮すべき事件もなく、また支那事変の当初の北支においても、同様であったが、戦線が中支に移るや、家を焼いたり、人を殺したり、色々と乱暴な、忌まわしい情報が頻々として中央部に聞こえるようになり、更に戦線が南支方面に拡大すると、益々ひどくなって来た。

本来勅諭は、天皇の命令であり、陸軍大臣の命令とは性質を異にする。天皇のお訓へとしては、えげつないことは言えない。

忠節を尽くせと言っても、之が直ちに強盗をやめよということにはならない。又大臣訓令ならば「余り女色に耽ってはいけない」と言えるが、天皇のお言葉としてはまずい。こうしたことで、戦場でしてはならないことを一切切取り上げて、当面の実情に注射して、改善を図るというのが本来の趣旨だったのです。

また島貫重節（中支派遣軍四師団参謀）は以下のとおり述べている。

軍隊の犯し易い欠陥に、戦場における略奪、放火、強姦、殺人の四悪のあることも、昔からのならわしである。これを知らない者は指揮官（将校）とは言えない。問題は、このような軍紀違反の事案に対する監督者たる上級指揮官の責任を如何に問うかである。この点こそは、戦場における軍紀確立の第一要件である。ましてや、戦線近くに日本料理屋や特殊慰安婦が随伴した、支那事変中期以降の態勢や、司令部高級将校の居住施設、クラブの設置等が行われる状況では、如何なる上部からの監督指導も効果の挙るう筈がない。

『高松宮日記』第4巻。

『2000年6月16日朝日新聞記事』。

『ほとんどすべての被害証言がこれに該当する。代表的なものでは、『証言 強制連行された朝鮮人軍慰安婦たち』（韓国挺身隊問題対策協議会・挺身隊研究会編 1993年）、『国際法からみた「従軍慰安婦」問題』（国際法律家協会 1995年）の中の「犠牲者の証言」、『宋さんといっしょに』（在日の「慰安婦」裁判を支える会 1997年）の宋神道さんの本人尋問、『訴状 中国・山西省性暴力被害者損害賠償請求事件』（1998年）の中の「原告らの被害の実情」、『台湾元「慰安婦」損害賠償・謝罪請求事件 訴状』（1999年）の中の「原告らの被害事実」など。

『Cristina R.Gates 「WARTIME TRAUMA:LONG TERM EFFECTS ON PSYCHOSOCIAL FUNCTIONING AMONG WOMEN SURVIVORS OF MILITARY SEXUAL SLAVERY」 23 August 1997

Cristina R.Gates 「MAKING MEANING OF WAR AND TRAUMA:A PHENOMENOLOGICAL STUDY OF COMFORT WOMEN AND VICTIMS OF VIOLENCE」

『三橋順子「フィリピン従軍慰安婦問題に関する意見書」（2名の被害者の心的外傷後ストレス障害に関する診断を含めて）2000年3月2日フィリピン人「従軍慰安婦」補償請求裁判中第85号証。』

『桑山紀彦「中国人元「慰安婦」の心的外傷とPTSD」『戦争責任研究』第19号、1998年春季号。』

『桑山紀彦「中国山西省 性暴力被害者におけるPTSDの検証 第2次報告」『戦争責任研究』第25号、1999年秋季号。』