



[Draft only – Part II Joint Indictment of Korea as of 26 October 2000]
(Part II: State Responsibility)

**THE WOMEN'S INTERNATIONAL WAR CRIMES TRIBUNAL ON
JAPANESE MILITARY SEXUAL SLAVERY IN 2000**

APPLICATION AGAINST THE GOVERNMENT OF JAPAN

**[The PROSECUTORS OF THE TRIBUNAL
(NORTH AND SOUTH OF KOREA)]**

AGAINST

GOVERNMENT OF JAPAN

The Prosecutors of North and South Korea [on behalf of victims] request the Tribunal to adjudge and declare:

[(i) the Japanese government is responsible for the Japanese military sexual slavery in violation of international law, and is under the obligations to provide reparations including, but not limited to, a formal apology, compensation, and punishment of those responsible for crimes above referred to].

[(ii) the Japanese government is also under the obligations to take measures necessary to prosecute international crimes related to the Japanese military sexual slavery, to respect and ensure human rights of the victims of these crimes, and to take steps for the full realization of their human rights.

Allegation of Facts

[Insert brief summary of facts highlighting the government involvement in consideration of applicable law: The Japanese government incurs international responsibility as will be alleged in the following as it is in violation of international treaties and customary law that are applicable to the Japanese military sexual slavery.]

1. Japan has been denying so far its international legal responsibility ever since the establishment of the Japanese military sexual slavery. With respect to the request to investigate military 'comfort women' by Motooka Shozi, member of the Socialist Party at the budget committee of the House of Councilors of Japan on June 6, 1990, the Japanese Government replied that "military comfort women has nothing to do with the Military and the State, but was done by civilians". In April 1994 when the list of names that appeared to be those of Korean 'comfort women' was found at the Parliamentary Library of Japan, an official of the Ministry of Labor stated that



“having heard from the relevant authorities of that time, neither the Labor Bureau of the Welfare Ministry nor the Department of the National Labor Mobilization was involved as to Korean comfort women.” Further, when it was reported that Yoshida Seichi, the former Director of Mobilization of the Labor of Yamaguchi Prefecture confessed the forced draft of military ‘comfort women’, an official of the Ministry of Foreign Affairs said that there was no backing material.¹

2. On 4 August 1993, however, with the opening of documents by the civil society and strong demands from the victims, the Japanese government came to acknowledge the direct involvement in establishing and managing rape camps called comfort stations during the Second World War, and confirmed that ‘comfort women’ were mobilized against victims’ will.²
3. Accordingly, the Japanese government made apologies several times about the ‘comfort women issue’. For instance, in July 1995, on the occasion of the fiftieth anniversary of the end of the Second World War, Japanese Prime Minister Tomiichi Murayama stated that the “problem of the so-called ‘wartime comfort women’ is one such scar, which, with the involvement of the Japanese military forces of the time, seriously stained the honour and dignity of many women. This is entirely inexcusable. I offer my profound apology to all those who, as wartime comfort women, suffered emotional and physical wounds that can never be closed.”³
4. Nevertheless, this ‘apology’ was not premised on legal responsibility and the Japanese government continues to deny its legal responsibility for the establishment and maintenance of comfort stations. Specifically, it strongly denies its legal responsibility on the following substantive grounds.

(i) The recent developments or advances of international criminal law may not be applied retroactively;

(ii) the crime of slavery does not accurately describe the system established through the comfort stations and that the prohibition against slavery was not, in any event, established as a customary norm under applicable international law at the time of the Second World War;

(iii) acts of rape in armed conflict were not prohibited by either the Regulations annexed to the Hague Convention No. IV of 1907 or by applicable customary norms of international law in force at the time of the Second World War; and

(iv) the laws of war would only apply, in any event, to conduct committed by the Japanese military against nationals of a belligerent State and would not, therefore, cover the actions of the Japanese military with respect to Japanese or Korean nationals, since Korea was annexed to Japan during the Second World War.⁴

5. Moreover, the Japanese government has repeatedly made the argument that the problem of post-war compensation has been completely settled with the conclusion and implementation of the San Francisco Treaty and other reparation agreements or peace treaties made in pursuance of the former. In particular, with regard to Korean ‘comfort women’ Japan claimed that, with the conclusion of the 1965 agreement between Korea and Japan, the right of the Korean government to seek compensation, including claims of individuals, was abandoned completely and finally, leaving no basis for further claims.
6. Consequently, the Japanese government argues that there no longer exists



responsibility to make compensation apart from the payment of monies for condolence or resettlement on humanitarian grounds. In addition, the Japanese government asserts that any civil or criminal case concerning military 'comfort women' would now be time-barred by the application of statutory limitations.

7. Based on this position, the Japanese government set up Asian Women's Fund "to protect women's human rights in Japan and the world". Particularly with respect to the 'comfort women', the Japanese government made the AFW convey to these women 'the sincere apologies and remorse felt by the Japanese people' through 'atonement' funds that are raised directly from donations made by the Japanese public.
8. [Insert critique of relevant activities of Asian Women's Fund.]

Application of International Law

General Requirements for the State Responsibility of Japan

9. The thesis that the sovereign State can do no wrong does not obtain in international law as well as in domestic law. Although there is no codified law, i.e. general treaty dealing with State responsibility under international law, this is left to international customary law universally accepted by States or general principles of law.
10. States are held internationally responsible for any internationally wrongful act of its own, according to the 'Draft articles on State responsibility' tentatively adopted by the UN International Law Commission in 1996.⁵ In other words, if an action, comprised of acts or omissions, is attributed to a State under international law and the action constitutes a violation of international obligations of that State, then international responsibility of that State arises.⁶
11. Acts giving rise to State responsibility under international law are normally done by State organs.⁷ Yet the answer to the question of which is an organ of State in matters of international responsibility of States does not always correspond to that under domestic law. It does not matter whether State organs are central government or local government, what function of a State, such as legislative, executive or judiciary, they perform nor their position.⁸ Further, even an act lawful under domestic law may still be evaluated unlawful under international law.⁹
12. First, as to whether the establishment and management of Japanese military sexual slavery is regarded as acts of Japan, it is evident as has been clarified in Part I above that related acts of the Japanese Emperor, Prime Minister and other Ministers of the Cabinet, officials and the police of both the Japanese government and the Government General in Korea, and officers, soldiers and military civilians of the Japanese Imperial Army including Army Ministers were acts of Japanese state organs. For example, the Women Voluntary Labor Order (Edict No.159), which became the legal basis for recruitment and management of Japanese military 'comfort women', was signed by the Japanese Emperor together with the countersignature of the Prime Minister and 3 other Ministers dealing military supplies, internal affairs and welfare. It is undeniable that there were instructions and involvement by the Japanese government and the military not only in the establishment and management of Japanese military comfort stations, which began to be set up well before the enactment of that Order, but also in the recruitment and



transportation of military 'comfort women'. It is also clear that the direct control and supervision over them has been exercised with the national and institutional support. The Japanese government acknowledged the involvement of former Japanese Empire in Japanese military sexual slavery.¹⁰

13. Acts of civilian operators involved in the recruitment of military 'comfort women' and management of comfort stations should also be acknowledged as acts of State Japan. The subjects of acts attributable to a State under international law are not limited to State organs such as the army: a State may also be held responsible for acts where it instructs or authorizes a person without the capacity of a State organ to perform a specific act. Acts of individuals or groups may be attributed to a State when they act *de facto* on behalf of the State. This can be exemplified by the case where the Headquarter of the Korean Army requested civilian managers to recruit Korean 'comfort women' bound to Burma as referred to in Part I above.
14. Moreover, even in the case where there is no evidence to show any instruction or authorization of the State relating to their acts, the State responsibility of Japan cannot be denied when there exists an 'effective or overall control' over these acts by the Japanese government and the military.¹¹ Considering this principle of international law, it is clear that Japan is responsible for the act of civilians involved in Japanese military sexual slavery.
15. Second, for the establishment of the State responsibility of Japan concerning Japanese military sexual slavery, those acts attributed to Japan should be in breach of international law. There is no question of retroactive application of international law as developed after the Second World War, as alleged by Japan, since there existed applicable rules of international law, both conventional and customary, at the time when the Japanese military sexual slavery was established and managed.¹²

Violation of International Humanitarian Law

[To be supplemented]

Violation of International Law on Slavery and Slave Trade

16. Japan is in violation of the customary principle of international law relating to the abolition of slavery and the prohibition of slave trade by recruiting and victimizing Korean women as Japanese military sexual slaves.
17. The widely accepted definition of slavery is found in the 1926 Slavery Convention.¹³ While Article 1 of the Convention defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised", it provides that slave trade include "all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and in general, every act of trade or transport in slaves".
18. This prohibition of slavery and slave trade has been firmly established from the 1815 Declaration relative to the Universal Abolition of the Slave Trade¹⁴ through the General Act of Berlin of 1885¹⁵ and General Act of the Brussels Conference of 1890.¹⁶ These efforts led the League of Nations to adopt the 1926 Slavery Convention and have continued under the United Nations. It is evident that the

Lieber
(during wartime)



prohibition of slavery and slave trade, one of the oldest human rights norm on human dignity and freedom has already established its status as international customary law and *jus cogens*.¹⁷ Slavery has also been made an international crime in times of war or peace well before the Second World War.

19. Japan had punished a slave trader as early as 1872¹⁸ and it implemented, albeit partially, domestic legislation concerning slavery by criminalizing acts of kidnapping and procurement at the relevant time. Although Japan is not a party to the 1926 Slavery Convention, it is clearly bound by international customary law prohibiting slavery and the conflicting assertion of the Japanese government is groundless.
20. From victims' testimonies and various material, it is clear that Japan subjected Korean women to slavery conditions by establishing comfort stations, forcibly recruiting them through deception or abduction and treating as chattels, not human beings, 'comfort women' who had been systematically and repeatedly raped and whose human rights including their right to life had been negated and violated in a thoroughly and complete manner. Accordingly, Japan violated international legal norms prohibiting slavery by establishing an unprecedented sexual slavery system created and run by the State. Moreover, the direct involvement of the Japanese government and the military in the transportation of forcibly drafted 'comfort women' to comfort stations in war theaters indicates that the State of Japan itself engaged in slave trade in flagrant violation of international law.

Violation of International Law on Traffic in Women and Children

21. Japan violated a series of international treaties which it acceded in 1925 and international customary law relating to the prohibition of traffic in women with respect to the implementation of the system of Japanese military sexual slavery.

These treaties came to be concluded by European states under pressure from civil groups which were concerned with the widespread abductions of women for the purpose of prostitution in the latter part of the 19th century. The International Agreement for the Suppression of the White Slave Traffic, signed in Paris on March 18, 1904 and acceded to by Japan on 21 October, 1925, is the first such treaty.¹⁹ [...]

Violation of International Law on Forced Labour

Violation of International Criminal Law

Continuing Violations of Human Rights of Victims of the Japanese Sexual Slavery

The Obligation to Respect and to Ensure Human Rights of Victims

The Obligation to Take Steps for the Full Realization of Human Rights of Victims

Responsibility/Obligations of Japan for the Japanese Military Sexual Slavery

Apology

Truth Finding

Restitution - Restoration of Honour, Repatriation of Survivors and the Return of the Bones of the Deceased

Rehabilitation

Memorial, Museum, Archive Center, History Books and Other Measures

Compensation

US recent development

Prosecution of Those Responsible

The Allied Policy regarding the Japanese War Crimes and the 'Comfort Women'
Recent Developments

Notes

¹ Won Soon Park, 438 and UN Commission on Human Rights, Statement of Japan (Right of Reply), UN Doc. E/ CN.4/ SR.34, p. 16 (1992).

² UN Doc. E/CN.4/1996/137, annex I.

³ Gay J. McDougall, Systematic rape, sexual slavery and slavery-like practices during armed conflict, UN Doc. E/CN.4/Sub.2/1998/13 (22 June 1998), Appendix: AN ANALYSIS OF THE LEGAL LIABILITY OF THE GOVERNMENT OF JAPAN FOR "COMFORT WOMEN STATIONS" ESTABLISHED DURING THE SECOND WORLD WAR, para. 3.

⁴ Radhika Coomaraswamy, Special Rapporteur of the Commission on violence against women, UN Doc. E/CN.4/1996/53/Add.1.

⁵ Report of the ILC on the work of its forty-eighth session, 6 May to 26 July 1996, UN Doc. A/51/10 (1996), ch. 3, D.

⁶ Art. 3 of the Draft articles.

⁷ Art. 5 of the Draft articles.

⁸ Arts. 6 and 7 (1) of the Draft articles.

⁹ Art. 4 of the Draft articles.

¹⁰ UN Doc. E/CN.4/1996/137, annex I.

¹¹ *United States Diplomatic and Consular Staff in Tehran*, Judgment, *ICJ Reports* 1980, para. 74; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, *ICJ Reports* 1986, para. 115. See also *Prosecutor v. Tadic*, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the



Territory of the Former Yugoslavia since 1991, Trial Chamber II, Judgment of 7 May 1997, para. 595 and *Prosecutor v. Dusko Tadic*, ICTY, Appeals Chamber, Judgement of 15 July 1999, para. 124.

¹² It is sometimes argued that it is also required that acts should be done with *dolus* or negligence and should incur damage. However, there is no need to treat this question in any detail here as the Japanese military sexual slavery is evidently intentional.

¹³ Signed in Geneva on 25 September 1926, entered into force on 8 March 1927, *League of Nations Treaty Series*, vol. 60, p. 253.

¹⁴ Declaration of the Eight Courts (Austria, France, Great Britain, Portugal, Prussia, Russia, Spain and Sweden) relative to the Universal Abolition of the Slave Trade, signed in Vienna on 8 February 1815, C. Parry (ed.), *Consolidated Treaty Series*, vol. 63 (1815), p. 473.

¹⁵ General Act of the Conference of the Plenipotentiaries of Austria-Hungary, Belgium, Denmark, France, Germany, Great Britain, Italy, the Netherlands, Portugal, Russia, Spain, Sweden-Norway and Turkey (and the United States) respecting the Congo, signed in Berlin on 26 February 1885 in Parry, op. cit. (1985), p. 485.

¹⁶ General Act of the Brussels Conference relating to the African Slave Trade between Austria-Hungary, Belgium, Congo, Denmark, France, Germany, Great Britain, Italy, the Netherlands, Persia, Portugal, Russia, Spain, Sweden-Norway, Turkey, the United States and Zanzibar, signed on 2 July 1890, Parry, op. cit. (1890), p. 293.

¹⁷ *Barcelona Traction, Light and Power Co, Ltd. (Belgium v. Spain)*, Judgment of 5 February 1971, *ICJ Reports*, 1970, p. 32. See also *Yearbook of the International Law Commission* 1963, vol. II, II, pp. 53, 98-199; Human Rights Committee, General Comment No. 24, *Official Records of the General Assembly*, Fiftieth session, Supplement No. 40 (A/50/40), annex V, para. 8.

¹⁸ See International Fellowship of Reconciliation, Recommendations to Japan on "sexual slavery", 7 February 1994 (communication to the Government of Japan) cited in McDougal report of 1998, annex, para. 13.

¹⁹ *League of Nations Treaty Series*, vol. 1, p. 84.