

(Part II: State Responsibility)

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

**PROSECUTORS OF THE TRIBUNAL
(NORTH AND SOUTH OF KOREA)**

APPLICATION AGAINST JAPAN

1. The Prosecutors of the North and South of Korea of the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery (hereinafter the 'Tribunal'), pursuant to the authority granted under Article 11 of the Charter of the Tribunal, submit the following: "Application of the North and South of Korea against Japan for Japan's Military Sexual Slavery".

I. Statement of Facts

2. States are held responsible for any internationally wrongful act by their organs under international law. International responsibility of Japan is incurred by, *inter alia*, the 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, relating to the establishment and management of Japanese military sexual slavery.

3. Further, acts of civilian operators involved in the recruitment of military 'comfort women' and management of comfort stations are also attributed to Japan as they acted *de facto* on behalf of the State. The Japanese government and the military exercised an 'effective or overall control' over these acts.⁹¹

⁹¹ *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*, International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Judgment of 15 July 1999, para. 124.

4. From the facts and evidence as will be submitted before the Tribunal, it is undeniable that there had been instructions and involvement by the Japanese government and the military not only in the establishment and management of Japanese military comfort stations, which were established from at least 1937, but also in the forcible recruitment and deportation of military 'comfort women'. Direct control and supervision over these women was exercised with national and institutional support. After denial for almost 50 years, the Japanese government itself acknowledged the involvement of the former Japanese Empire in Japanese military sexual slavery,⁹² yet without accepting its responsibility.
5. These acts or omissions constitute violations of international obligations of Japan giving rise to State responsibility under the then existing international law.
6. Japan continued to deny its involvement in the establishment and maintenance of the Japanese military sexual slavery despite strong demands from the victims and the public release of documents by civil society. It was not until 4 August, 1993 that the Japanese government acknowledged 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.⁹³
7. Although 'apologies' were made from time to time,⁹⁴ this 'apology' falls short of accepting legal responsibility. The Japanese government continues till today to deny its legal responsibility for the establishment and maintenance of comfort stations.

II. Denial of Responsibility by the Japanese Government

8. Japan argues the following substantive grounds for denying its international legal responsibility concerning Japan's military sexual slavery:

- (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

⁹² UN Doc. E/CN.4/1996/137, annex I.

⁹³ UN Doc. E/CN.4/1996/137, annex I.

⁹⁴ 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." 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.

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.⁹⁵

9. 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.

10. 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 pursuant to the former. With regard to Korean 'comfort women', Japan claimed in particular that, with the conclusion of the 1965 agreement between South 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.

11. Based on this position, the Japanese government set up the 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.

III. Legal Grounds for the Responsibility of Japan Concerning Japan's Military Sexual Slavery

12. 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.

Violation of International Humanitarian Law

13. The provisions of the 1907 Hague Convention No. 4 and Regulations Respecting the Laws and Customs of War on Land, entered into force in 1911 in relation to Japan, apply to acts of the Japanese government and the military against Korean 'comfort women'. As stated in Part I of the Korean

⁹⁵ Radhika Coomaraswamy, Special Rapporteur of the Commission on violence against women, UN Doc. E/CN.4/1996/53/Add.1.

Indictment, Korea had been under military occupation since 1904 till the end of the Second World War.⁹⁶ Although Korea acceded to the 1899 Hague Convention, it could not do so under Japanese rule. The provisions of the Hague Convention were established as customary international law at least by 1939 as affirmed by the International Military Tribunals at Nuremberg, and for the Far East.

14. Customary international law of war prohibits, *inter alia*, rape, slavery, wilful killing, murder, mass killing, wilfully causing great suffering, mutilation, unlawful detention, kidnapping, deportation, outrages upon personal dignity and other inhuman and cruel treatment against civilians.⁹⁷

15. Japan as well as other States is under the international legal obligation to prosecute and punish war crimes.

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.⁹⁸ 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 also 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. The prohibition of slavery and slave trade, one of the oldest human rights norms on human dignity and freedom, already established its status as international customary law and *jus cogens* well before the establishment of the system of Japanese military comfort stations. Slavery has also been made an international crime in times of both war and peace well before the Second World War.

19. Japan had punished a slave trader as early as 1872⁹⁹ 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

⁹⁶ Article 42 of the 1907 Hague Regulations, stipulates that “Territory is considered occupied when it is actually placed under the authority of the hostile army.”

⁹⁷ Article 46, the Hague Regulations, provides: “Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.” See also the so-called ‘Martens clause’ in the Preamble of the Hague Convention.

⁹⁸ Signed in Geneva on 25 September 1926, entered into force on 8 March 1927, *League of Nations Treaty Series*, vol. 60, p. 253.

⁹⁹ 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.

customary law prohibiting slavery and the conflicting assertion of the Japanese government is groundless.

20. From victims' testimonies and evidence put before the Tribunal, it is clearly established 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, as '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 is in violation of the following international treaties relating to traffic in women and children:

- (i) International Agreement for the Suppression of the White Slave Traffic of 18 March 1904;¹⁰⁰
- (ii) International Convention for the Suppression of the White Slave Traffic of 4 May 1910;¹⁰¹ and
- (iii) International Convention for the Suppression of the Traffic in Women and Children.¹⁰²

Japan acceded to these treaties on 21 October, 1925. The sexual exploitation of girls and women, and the enticement, procurement and abduction by forcible means became part of customary international law by the 1930s.¹⁰³

22. In recruiting Korean women for Japanese military comfort stations, Japan acted in a manner prohibited by conventional and customary principles of international law.

Violation of International Law on Forced Labour

23. Japan violates the ILO Convention No. 29 Concerning Forced or Compulsory Labour, signed and ratified by the Japanese government on 21 November 1932.¹⁰⁴

¹⁰⁰ *League of Nations Treaty Series*, vol. 1, p. 84.

¹⁰¹ *British and Foreign State Papers*, vol. 103, p. 244; Martens, *Nouveau recueil général de traités* (3d ser.), vol. 7, p. 252.

¹⁰² *League of Nations Treaty Series*, vol. 9, p. 416.

¹⁰³ For the non-applicability of the Japanese declarations under these treaties which excluded Korea and other territories from its territorial scope, see Legal Memorandum on the Issue of State Responsibility (submitted before the Tribunal by the International Prosecutor, Tina Dolgopol), p. 8. More specific arguments on other issues will be made in a supplementary memorandum.

¹⁰⁴ Adopted on 10 June 1930, *UNTS*, vol. 39, p. 55.

24. Article 2 of the Convention defines forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. Article 11 prohibits particularly the forced labor of women.

25. As held by the ILO Committee of Experts, Japanese sexual slavery is nothing less than forced labor even during wartime and emergency situations.¹⁰⁵ The Japanese government does not comply with the recommendations by the Committee to take concrete measures on Japanese military ‘comfort women’ issue.

Violation of International Criminal Law

26. Japan is in breach of the principles of international criminal law prohibiting crimes against humanity some of the perpetrators of which are indicted in Part I above.

27. Crimes against humanity are defined, for example, in the Charter of the International Military Tribunal for the Far East: “murder, extermination, enslavement, deportation, and other inhumane acts committed before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated”. Other inhumane acts cover the crime of rape. This provision became established as part of customary international law well before the Second World War and Japan accepted its obligation under the Peace Treaty of 1951.

28. Japan is responsible for its systematic involvement in the commission of crimes against humanity by individuals. Japan is obliged under international law to prosecute and punish perpetrators of crimes against humanity.

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

29. Japan violates the fundamental human rights of Korean women by forcing them into Japanese military sexual slavery. These rights include the right to human dignity, gender equality, life, physical security, movement, speech, and so on. Japan does not observe its obligation to respect and to ensure the human rights of victims of Japanese military sexual slavery.

30. Japan does not fulfil the obligation to take steps for the full realization of the human rights of victims of Japanese military sexual slavery.

¹⁰⁵ Individual Observation concerning Convention No. 29, Forced Labour, 1930: Japan, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, Part 4A, International Labour Conference, 84th Sess., 1996; Individual Observation concerning Convention No. 29, Forced Labour, 1930: Japan, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III, Part 4A, 85th Sess., International Labour Conference (1997); Report of the Committee on the Application of Standards, International Labour Conference, 87th Session, Geneva, June 1999, para. 8.

31. Japan continues to be in violation of the fundamental principles of international human rights law by not giving justice to the victims of Japanese sexual slavery till today.

Questioning Related to the 1965 Claims Agreement between South Korea and Japan

32. The Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Co-operation between Japan and the Republic of Korea does not absolve the international legal responsibility of Japan relating to Japanese sexual slavery.¹⁰⁶

33. The Agreement purports to deal only with existing 'property' claims and disputes affecting commercial relations between the two countries.¹⁰⁷ No express provision is made on claims relating to the so-called 'comfort women' issue.

34. Being a treaty resolving issues between States, the Agreement does not affect claims against the Japanese government for damages by individuals arising from Japanese military sexual slavery.

35. States cannot waive individuals' claims for damages. The right to an 'effective remedy' is guaranteed under international law as may be exemplified by Article 8 of the Universal Declaration of Human Rights.¹⁰⁸

36. Japan continues to fail to meet its obligations to the victims of Japanese sexual slavery under international law, even today. In particular, the activities of the Asian Women's Fund cannot be accepted as a form of reparations nor a sincere apology. Rather, the Asian Women's Fund further aggrieves the anguish and suffering perpetrated by the Japanese against the women under Japanese sexual slavery, over the past Fifty years.

IV. Judgment Requested

37. Accordingly, while reserving the right to revise, supplement or amend this Application, and subject to the presentation to the Court of the relevant evidence, testimonies and legal arguments, the Prosecutors of

¹⁰⁶ Signed on June 22, 1965, *UNTS*, vol. 583, p. 173.

¹⁰⁷ *In re World War II Era Japanese Forced Labor Litigation*, Declaration of Professor Kohki Abe in support of Plaintiffs' Oppositions to Motions to Dismiss, filed before the United States District Court, Northern District of California, relating to *Sun Yoon Kim v. Ishikawajima Harima Heavy Industries Co., Ltd., et al.* and *Jae Sik Choe v. Nippon Steel Corp., et. al.*

¹⁰⁸ See, e.g., Study concerning the right to restitution, compensation and rehabilitation for victims of human rights and fundamental freedoms: Final report submitted by M. TheoBoven, UN Doc. E/CN.4/Sub.2/1993/8, 2 July 1993; UN Doc. CN.4/1997/104, 16 January 1997, Appendix; Question of the impunity of perpetrators of violations of human rights (civil and political rights): final report prepared by Mr. L. Joinet, pursuant to Subcommission resolution 1995/35, UN Doc. E/CN.4/Sub.2/1996/18, 20 June 1996; Report of the independent expert on the right to restitution, compensation, rehabilitation for victims of grave violations of human rights and fundamental freedoms, Mr. M. Cherif Bassiouni, submitted pursuant to Commission on Human Rights resolution 1998/43, UN Doc. E/CN.4/1999/65, 8 February 1999.

North and South of Korea of the Tribunal requests the Tribunal to adjudge and declare as follows:

- (a) that Japan, in forcibly recruiting, transferring, and enforcing Korean women to be subjected to sexual slavery in countless Japanese military comfort stations established throughout the Asia-Pacific region at least from 1937 until 1945, in building, furnishing, operating, financing, and supplying these comfort stations and other facilities of sexual slavery, and in directing, encouraging, aiding and supporting Japanese soldiers to commit various crimes against 'comfort women' by means of its agent and surrogates, has violated its legal obligations toward the women of the South and North of Korea under the customary international laws of war including the Hague Regulations on Land Warfare of 1907, and other fundamental principles of international humanitarian law. These crimes include such acts as sexual slavery, kidnapping, illegal detention, forcible deportation and transfer, rape, torture, mutilation, willfully causing great suffering, enforced sterilization, excessive incidental death, killing, murder, mass killing, inhuman and cruel treatment, and outrages upon personal dignity as indicted in Part I above.
- (b) that Japan has violated the customary principle of international law relating to the abolition of slavery and the prohibition of slave trade;
- (c) that Japan has violated its legal obligations under a number of international treaties and international customary law relating to the prohibition of traffic in women;
- (d) that Japan has violated its legal obligations under the ILO Convention on Forced Labor;
- (e) that Japan is responsible for acts constituting war crimes and crimes against humanity for Japan's sexual slavery under international law;
- (f) that Japan has an obligation to provide reparations including, but not limited to, a formal apology to victims of Japan's sexual slavery, compensation for damage done them, and punishment of those responsible for crimes referred to in Part I above;
- (g) that Japan is to make restitution for the harms incurred by victims of Japanese sexual slavery by such measure as restoration of honour, repatriation of Survivors and the return of the bones of the deceased;
- (h) that Japan should take such measures as to prevent repetition of the crime of sexual slavery (these may include memorials, museums, archive centers, writing and recording history and other educational measures.)
- (i) that Japan is under the obligation to take necessary measures to prosecute international crimes related to the Japanese military sexual slavery;
- (j) that Japan has violated and is continuing to violate its legal obligations to respect and ensure the human rights of the victims of Japan's military sexual slavery, and to take steps for the full realization of their human rights under conventional and customary international law.