

**Mass Rape, Enforced Prostitution and the Japanese Imperial Army:
Japan Eschews International Legal Responsibility?**

DRAFT: April 18, 1994. Please do not cite, distribute or photocopy without the author's permission. Forthcoming in the *Columbia Journal of Transnational Law*.

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"[T]he iniquity of the father [will be visited] upon the children to the third and fourth generations." **Exodus 20:5**

"Persons who close their eyes on the past cannot watch the present." West German President Richard von Weizsäcker, 1985

Ask an American what first comes to mind when thinking about the Pacific Theater of World War II and most likely the response will be the Japanese attack on Pearl Harbor. The "date which will live in infamy" is still very much branded into the psyche of many Americans.¹ Guilt over the atomic bombing of Japan does not seem to loom large.

Conversely, pose a similar question to a Japanese and probably the dropping of the atomic bomb on Hiroshima and Nagasaki will be the response.² The attack on Pearl Harbor is still considered in some circles of Japanese scholarship to have been a *fait accompli* because the United States had backed Japan into a corner by imposing an embargo.³ Echoing this view, one former Japanese soldier has stated he does not condemn the Japanese attack on Pearl Harbor because "we had no choice but to attack."⁴ Thus, proponents of this interpretation maintain that United States had already, in essence, declared war and Japan was merely exercising her right of self-defense.⁵

Again, ask the same question to an Asian and most likely the brutal occupation of their homeland by the Japanese Imperial Army will appear as the answer. In China, the conquest of Nanking on December 13, 1937, was followed by a period of terrible violence and terror which is now referred to as "The Rape of Nanking." It is estimated that 40,000 persons were slaughtered in "a week-long orgy of looting, rape, burning and murder."⁶ Similarly, in the Phillipines, the notorious "Bataan Death March" from Bataan to San Fernando, is often referred

to as indicative of the brutal treatment the Japanese used towards the native population and prisoners. In this case, 16,000 to 20,000 persons are estimated to have died due to malaria and starvation during the march.⁷

As we approach the 50th anniversary of the end of World War II, it is indeed disconcerting that such divergent views of the war remain and that between many nations and Japan, most especially between Japan and her Asian neighbors, so much distrust lingers.⁸ Remarks by a former Prime Minister questioning whether or not Japan was indeed the aggressor in the war contributes little to the diffusion of such suspicion.⁹ In stark contrast to his predecessors who often sought to obfuscate responsibility for Japan's belligerence, former Prime Minister Morihiro Hosokawa made national headlines when he unequivocally termed the war as one of "aggression."¹⁰ That it is now the twilight of the 20th Century and Japan is still wrestling with whether the war was one of "aggression" sustains the perception that the Japanese are reluctant to atone for past sins.¹¹

Likewise, the Japanese Ministry of Education's heavy-handed editing of high school textbooks reflected in its approval of the term "*shinshutsu*" or "advancement," instead of "*shinryaku*" or "attack," to describe Japan's occupation of China has resulted in predictably harsh criticism from several countries who argue such an interpretation as a white wash of the reality.¹² It is estimated that roughly 200,000[?] persons were killed during the attack on Shanghai, thus, to term such behavior as a mere "advancement" is ludicrous.¹³

Yet another example of Japan's struggle to come to grips with the war has been revealed in the discovery of human bones that Japanese scholars think are the remains of victims of torture committed during the war by the notorious Unit 731, of the then Imperial Army's

medical school, who used prisoners for germ warfare experiments. Reflective of the callousness that many associate with Japan's historical amnesia in regard to war-time atrocities, instead of releasing the bones for further research, the ward that has custody over the remains is making attempts to have them cremated. Furthermore, the national government refuses to investigate. Only ensuing litigation has prevented the destruction of this evidence of Japan's dark past.¹⁴ Examples such as these have led one frustrated Japanese historian to complain, "I have lived here all my life, and I know that Japan only talks about half of its history . . . [t]he half where Japan is victimized."¹⁵

Nonetheless, perhaps no issue underscores the brutal nature of Imperial Japan's occupation of her Asian neighbors than the recent surfacing of the so-called "comfort women" or "*ianfu*". *Ianfu* is the euphemism used in Japanese to indicate those women who were forced to "comfort," (that is, provide sex) the Imperial soldiers during World War II. Rape as an instrument of terror was also utilized in the Second World War by Nazi Germany and Moroccan mercenary forces who battled with Free French forces in Italy on terms that would give the victor "license to rape."¹⁶ As the dissolution of Yugoslavia has shown such behavior is not wholly uncommon even in the 1990s. The rape of thousands of women has been alleged by Bosnia and Herzegovina against Yugoslavia (Serbia and Montenegro) before the International Court of Justice.¹⁷ However, some consider the systematic forced prostitution by the Japanese Imperial Army unparalleled in history¹⁸ "in that the government itself systematically planned, ordered, conscripted, established and controlled the army brothels, and forcibly abducted the women from the occupied territories and countries using the entire army apparatus."¹⁹

This Note will attempt to analyze the prospects for recovery of damages against the

Japanese government for the forced prostitution and mass rape of these women. Part I will provide the historical background of the issue as it presently stands. Part II will set out and evaluate the suits filed in Japanese court by forty-five Koreans, three of whom were allegedly forced into prostitution during the war, and eighteen Filipino women. In addition to the legal basis relied upon in the actual complaints, the government's response, weaknesses in the plaintiffs' claims, the Japanese courts' posture towards past similar claims, and other potential grounds for compensation will be examined below.

It is the author's view that the Korean and Filipino women's claims will most likely not prevail in Japanese court. However, it is also believed that increased international pressure teamed with the present litigation campaign, and the fact that now incontrovertible evidence exists implicating the Japanese government's role in establishing such a system of mass rape, will ultimately force the government to capitulate and pay additional reparations to these victims, irrespective of the judicial outcomes. Indeed, a precedent has already been set by a claim for war reparations made by Taiwanese nationals who were forcibly conscripted into the Japanese Imperial Army.²⁰ Although it must be underscored that the enacted reparations bill appropriated substantially less monies to the Taiwanese nationals than had been appropriated to similarly situated Japanese war veterans and their bereaved families.²¹ Consequently, a similar "solution" in the comfort women case would further undercut the already weak credibility of the Japanese government in its posture towards past war-related behavior.

Thus, although there is ample room for doubt regarding the probability that the former comfort women plaintiffs will prevail in Japanese courts, a concerted litigation campaign, linked with international pressure and perhaps increased pressure from Japanese civil liberties and

women's rights organizations, will play a key role in ratcheting up the pressure upon the Japanese government to equitably and justly right one of the most egregious human rights abuses in history.

1. Historical Background

The systematic forced prostitution of women by the Japanese government began as early as 1932 and continued to the war's conclusion in 1945.²² It is estimated that between 80,000 to 200,000 women were forced to serve the Japanese military and their numbers, up to present, have included the following acknowledged nationalities: Korean, Filipino, Chinese, Indonesian, Burmese, Dutch, and Japanese.²³ Conscripted women ranged in age from 13 to middle 20s, and of these it is thought that Korean women made up about 80% of those enlisted.²⁴ Historians estimate that less than 30% of the comfort women survived the war.²⁵

Instituted after the Shanghai Incident in 1932, the Japanese government's three justifications for necessitating such a system: (1) to prevent the Japanese soldiers from raping the occupied areas' citizens, thereby ensuring public peace in these places; (2) to prevent a venereal disease epidemic; and (3) to counter potential espionage activity that might be implemented by having women from the native population become involved with Japanese soldiers, thereby obtaining secret information in return for sexual services and then turning that information over to the enemy.²⁶ Initially Japanese women were sought, but they were reluctant to go to the frontlines where fighting was fierce and those who seemed interested wanted money for their services. Also, these women on the whole were older, and some already had contracted sexually transmitted diseases so they were deemed to be less appealing to the

soldiers. The Korean women, however, did not present these problems. Because most young Korean women had not before engaged in sexual intercourse there was less danger of disease and their youth made them more appealing sexually.²⁷ Additionally, because Japanese did not consider a Korean to be of the same status as a Japanese national, there was less of a social conscience preventing them from forcing the women to go to the battlefield where they might be killed.²⁸ Lastly, because most young Koreans did not understand the Japanese or Chinese languages (the policy was initially adopted during the invasion of China), the probability of effective espionage was greatly diminished.²⁹ Most historians regard 1937 as the year from which the comfort houses began to be systematically instituted. It was in this year that Japan began its full-scale war against China, when roughly 800,000 Japanese soldiers moved into their neighbor.³⁰

The accounts of what these women endured is bone-chilling. One former comfort woman recalled that on some days "she was required to have sex with 30 to 40 Japanese soldiers, interrupted at times to witness the beheading of Chinese soldiers."³¹ Although the Korean women sent were to be "gifts to soldiers of the Imperial Army",³² soldiers referred to the women as "public toilets," and recorded them on military supply lists under the heading of ammunition.³³ According to "comfort station regulations," use of the comfort stations was limited to military personnel, condoms were used, and time was limited to 30 minutes per person.³⁴ Fees were often based on nationality: "one yen for a Chinese woman, one and a half for a Korean woman and two yen for a Japanese woman."³⁵ Not surprisingly, any woman who resisted was beaten.³⁶ To suppress the symptoms of venereal disease, women were given weekly injections, yet despite these precautions many victims contracted diseases and lost the

ability to conceive children.³⁷ Those who ultimately contracted venereal disease were left like rubbish or they were killed. As a consequence of such behavior, many present-day Korean activists have interpreted Japan's behavior to have been one of systematic and intentional genocide.³⁸

It is important to recognize that the discovery of the former Korean comfort women occurred against the backdrop of already-strained and at times antagonistic relations between Japan and Korea. Much of the present tension owes its origins to Japan's 1910-1945 brutal occupation of Korea.³⁹ As is well-documented, the Japanese expected nothing less than complete subjugation and attempted to wholly assimilate Korea into Japan. Thus, Japanese became the official language of Korea, Koreans were forced to adopt Japanese surnames, and Korean culture was for all intents and purposes abolished during this time period.⁴⁰ Additionally, the pervasive discrimination against long-time Korean residents of Japan has been a constant political irritant. The colonization policy of complete assimilation was still, until just recently, manifest in Japanese domestic naturalization practices. Although Japanese law has certain requirements like other nations to become a citizen (such as a residency requirement), the naturalization law required as a precondition to naturalization the applicant adopt a Japanese surname. This provision of the Nationality Act was interpreted to violate Japan's international obligations and thus recently revised.⁴¹ However, the government still "suggests" that when one applies for citizenship that one should adopt a Japanese surname.⁴²

Another point of extreme contention has been the Japanese legal requirement that all resident aliens above the age of sixteen years old be fingerprinted for registration and this must be updated every five years. Not surprisingly, because fingerprinting is required for criminal

suspects, many legal residents have been highly critical of this practice.⁴³ Thus, in part due to such nefarious practices, "Although almost ninety percent of Korean residents in Japan are second-, third- or fourth-generation Koreans, the overwhelming majority do not possess Japanese nationality."⁴⁴ Additionally, continued discrimination by Japanese against the Korean minority residing in Japan has marginalized Koreans into manual labor jobs and illegal activities.⁴⁵

Against this history of tense relations, on March 29, 1993, the Korean government announced a compensation plan for about 140 surviving former comfort women. Those who are still residing in South Korea will receive a \$6,400 lump sum plus \$250 a month, while those residing abroad will only receive the \$6,400 lump sum.⁴⁶ This gesture may in part be due to the fact that the Korean government arguably bears some responsibility for the failure to pay compensation. Notwithstanding actual knowledge of these atrocities, the Korean government did not publicly raise the issue of compensation for these women during the fourteen years of normalization negotiations that ultimately consummated the 1965 reparations agreement.⁴⁷

Because the Korean comfort women issue has received the bulk of the media attention, the Filipino experience is not as well known. Two days after the Japanese attack on Pearl Harbor, the Japanese invaded the Philippines. Just as in Korea and China, "comfort stations" were set up where Filipino women were forced into prostitution.⁴⁸ However, when efforts began to locate victims of Imperial Army atrocities, most of those who responded were victims of rape or had witnessed the murder of their family. Hayashi Yoko, one of the Japanese lawyers representing the Filipino claimants, notes she has only spoken with one victim who was forced to serve at a military comfort station.⁴⁹ Takagi Kenichi, leading attorney for both the Korean and Filipino claims, notes that there are two significant differences between the former Korean

and Filipino comfort women: (1) in Korea (at that time a colony of Japan's) the Korean women were sent throughout China and Southeast Asia as "comfort women;" whereas in the Filipino women's case, the women were forced to serve as "sex slaves" only in the occupied Philippines; (2) the Filipino women in addition to being raped were often witnesses to the murdering of their families and other atrocities. Continued fierce resistance by Filipino guerilla forces, brazen opposition by Filipinos against Japanese rule, and the subsequent recapturing of the islands by the Allied Forces meant that the islands were under persistent siege despite Japanese occupation. Thus, the Filipino women were subjected to crimes more common to what might be expected in the battle field - an experience much less common among the Korean women who had been under complete subjection by Japanese from 1910.⁵⁰ Sadly enough, despite the testimony of Ester Garcia Moras, a Filipina, and others who testified to the International Military Tribunal for the Far East (IMTFE), the issue was not taken up by the Tribunal.⁵¹ The only tribunal that punished perpetrators of sexual slavery was a Dutch Military Tribunal set up in Indonesia and often referred to as the Batavia trial. Here, ten Japanese soldiers were prosecuted for treating 35 Dutch women as sex slaves in the Dutch East Indies which is now Indonesia.⁵² Although there was evidence of similar actions directed towards Indonesian women only the crimes committed against the Dutch women were prosecuted.⁵³

For a number of years after World War II the existence of the comfort women issue was widely known among Japanese.⁵⁴ Nonetheless, it was not until the mid-1970s that two Japanese writers [names] wrote books on the comfort women entitled "Military Comfort Women" and "The Emperor's Army and Korean Comfort Women," respectively; thereafter this well-kept secret came to the forefront.⁵⁵ Thereafter, [Korean writer], a Korean professor, who had

conducted ten years of research on the comfort women had the results of her work published in a Korean newspaper in January, 1990. These publications teamed with increasing independence among Asian women and demands for more equal rights combined to bring the issue to the forefront. The Japanese women's movement, which enjoyed one of its most notable victories in the Spring of 1992, when a plaintiff prevailed for the first time on a "hostile environment" legal basis for a sexual harassment claim,⁵⁶ also teamed-up with other Asian women to push for recognition of this atrocity. Several prominent female Japanese Diet members, including former Socialist Party leader Doi Takako who was the first female leader of a political party in Japan, vigorously began to question various ruling party cabinet leaders during question time in the Japanese Diet.⁵⁷

Over the past few years as the account of such actions unfolded the Japanese government consistently stonewalled, acknowledging in May, 1990, that such brothels indeed existed but maintaining that they bore no imprimatur of government action.⁵⁸ The official government response to calls for examination of this issue had been that previous investigations uncovered no credible evidence and the general consensus was that all incriminating evidence had been burned by those involved.⁵⁹ Notwithstanding government denials, having stumbled across evidence implicating the government's involvement in running the brothels, a Japanese historian Yoshimi Yoshiaki was able, in a matter of days, to marshal enough evidence to force the Japanese government to recognize what for six decades had been a buried fact: responsibility for the forced prostitution of thousands of women.⁶⁰ Certain evidence also links Emperor Hirohito to the government brothels; he promulgated Imperial Ordinance No. 519 in 1944 which established a legal basis for recruiting comfort women.⁶¹

Coupled with Yoshimi's evidence are confessions by former soldiers, most notably Yoshida Seiji, who were involved in the rounding up and transferal of the women. Noting that he often separated women from their screaming children before shipping them off to the brothels he has stated, "It was just like kidnapping. It may be the worst abuse of human rights in Asia in this century."⁶² Confronting this growing mountain of evidence, the Japanese government finally recognized that many comfort women "were recruited against their own will . . . and that, at times, administrative/military personnel directly took part in the recruitments."⁶³ Despite this acknowledgment, the government still maintains that the issue of reparations was settled in the 1965 normalization treaty where Japan provided Korea \$300 million in economic development and \$500 million in so-called soft loans.⁶⁴ With respect to the Filipino comfort women the government has made the same argument pointing to the reparation agreement between the two nations. Former Prime Minister Miyazawa in one of his last official acts recognized government condonation of the brothels but stopped short of describing the systematic rape of these women as a war crime.⁶⁵ In addition to the Japanese and Korean governments' reluctance to discuss these war crimes, another reason the issue has remained clouded for six decades is that in the strictly rigid Confucian society of Korea the virginity of a woman is considered to be sacrosanct. Consequently, these victims, perceived as stained, often did not rejoin their families, marry or discuss the horror they had endured.⁶⁶

To date, there have been at least three law suits filed in Japanese courts demanding payment of war reparations for these atrocities of mass rape.⁶⁷ The one which has received the most publicity was filed by 45 Korean war victims, including at least 3 former comfort women, demanding \$5.6 million in damages.⁶⁸ Also, on April 2, 1993, 18 Filipino women

filed suit demanding from the Japanese government an apology, an admission of guilt, and \$175,000 for each victim.⁶⁹

II. Present Litigation in Japan

As is well known, "full-blown internationalization of human rights came in the wake of Hitler and World War II."⁷⁰ Indeed, that the plaintiffs must even be forced to wrestle with a legal basis to undergird a claim that rape violates international law is strong testament to the sorry state of affairs during the prewar period. As two writers have noted, sexual atrocities have been "inadequately prosecuted and [have been] largely invisible in the history of international law."⁷¹ Even now, the solidification of rape as an egregious violation of international humanitarian law is arguably still incomplete.⁷²

Thus the first hurdle the comfort women litigants must overcome is the powerfully appealing argument that it is unjust to apply postwar human rights legal norms to prewar conduct. As result, the Filipino plaintiffs, but interestingly not the Korean ones (for reasons that will be made clear later), have sought to undergird their claims on a 1907 prewar international humanitarian law convention, which Japan was a signatory to and may be construed to proscribe rape, torture, kidnapping, forcible deportation and the like. Likewise, the legal doctrine of "crimes against humanity," relied on principally by the Korean plaintiffs arguably provides a legal grounding for a compensation claim.

Assuming a substantive legal basis can be pinpointed, the litigants must then get over another hurdle: their individual civil claim must be proven to survive subsequent peace treaties entered into by their respective governments with Japan. This indeed, frankly speaking, will be an arduous task especially when these factors are teamed together with potential procedural

South Sakhalin and the Kuriles and other islands. Japanese prisoners of war were detained thereafter and dispersed in about 2,000 camps located within the U.S.S.R. Most were repatriated in 1946, but some were detained to as late as 1958. It is estimated that of the 700,000 POWs in Siberia roughly 60,000 perished due to malnutrition, starvation, and the severe cold.²¹⁴

In this case, former POWs detained in Siberia brought a claim against the State of Japan for damages [based on what law?] suffered during their period of detention. The court, after examining the practices of other countries in regard to measures for compensation, rejected the plaintiff's contention that customary international law obligated a State to pay compensation to its wounded war veterans.²¹⁵ The POW case was also considered a matter only within the purview of the legislature; thus, even in with its own nationals, the Japanese judiciary has shown a clear reluctance to entertain cases demanding damages that flow from its World War II atrocities.

There is a plausible argument that if in the comfort womens' case the Japanese judiciary were to find the system of forced prostitution employed by the state of Japan during World War II to be a violation of *jus cogens*, then application of the political question doctrine is proscribed because "peremptory norms are mandatory and do not allow courts to decline judicial review. . . . [It] is *ipso jure* a legal, not a political question."²¹⁶ The advocates of this view argue further that "[e]ven under unusual circumstances (national security, war), *jus cogens* norms are not subject to derogation."²¹⁷ Despite the power of this argument, it is unlikely that the Japanese Supreme Court, in the wake of its recent opinion refusing to adjudicate the denationalized Taiwanese soldiers' claim, that a lower court would be willing to adopt such an

independent approach.

Of course there is always the remote possibility that a judge hearing such a case of egregious human rights violations may abandon obdurate legal doctrine and judge from the perspective of equity. There is at least one notorious case in modern Japanese legal history where judges have employed such a technique. Japan's so-called Big Four Pollution cases that began in the late 1960s and continued through the 1970s offer lessons to the comfort women litigants. The plaintiffs in those cases, all the victims of pollution, faced formidable legal obstacles and at that time "few lawyers were optimistic"²¹⁸ about their prospects for compensation. However, the judiciary significantly relaxed the tort doctrine of causation to provide a legal cause of action and awarded judgments valued at nine times the amounts stipulated in prior mediated agreements.²¹⁹ The lawyers attributed this surprising success not only to a concerted legal campaign but also to continued political action that was manifested in Japan's vigorous anti-pollution movement in the 1970s. Japanese legal scholar Frank Upham states: "[T]o them legal victory would have been impossible without the strength and vigor of the extrajudicial activity accompanying the litigation."²²⁰ Moreover, he suggests that the judiciary was compelled by the litigation's moral dimension and concludes that "the judges too were caught up in the moral momentum of these cases."²²¹ Thus, the combined forces of the current litigation campaign, a growing sense of moral outrage among Japanese citizens, and stepped-up international pressure²²² may indeed propel the litigants over otherwise insurmountable legal obstacles. Government-sponsored mass rape of thousands of women would surely provide an otherwise reluctant Japanese judge with the paradigmatic case to jettison rigid legal doctrine for considerations of fairness and decency.²²³

Notwithstanding this glimmer of hope, it must be recognized that the Big Four Pollution cases are the exception that proves the rule and if the forementioned national security and war compensation judicial opinions are a harbinger of things to come, the comfort women plaintiffs will be destined to seek justice from the Japanese Diet rather than from the judiciary. Unfortunately, based on the Taiwanese condolence money precedent, the Japanese Diet's notions of "justice" merit extreme skepticism.

III. Conclusion

As can be seen from the above discussion, an objective analysis of the Filipino and Korean comfort women's complaints leads to the unsatisfying conclusion that these plaintiffs encounter a number of potentially insurmountable substantive and procedural legal obstacles to their quest for compensation from the Japanese courts.²²⁴ That the contemporary international legal regime is inadequately equipped to provide such a remedy to these women is surely one of its single greatest failings this century. An international legal system that makes piracy a violation *erga omnes* but fails to provide redress for mass rape - which has been a perennial problem during war or occupations²²⁵ - is a moral outrage. To dismiss this tragedy as simply a quirk of history would be a great mistake. Rape as an instrument of terror is not only a matter of the past, it still occurs today. Likewise, contentions that these women unfortunately slipped through the cracks solely because their pre-World War II suffering occurred in absence of a hardened corpus of international human rights law and that contemporary international legal remedies would support such claims should be greeted with skepticism, because even now the international criminalization of enforced prostitution and mass rape does not unambiguously sustain a cause of action.²²⁶ That this state of affairs has continued for so long underscores

and bolsters the arguments of feminist legal scholars who have criticized international law for its implicit male bias and lack of empathy toward the plight of women.²²⁷

Special Rapporteur Theo van Boven in a recent study evaluating the right to compensation for victims of gross violations of human rights made the following concluding comments:

A common trend in this review [has been] the wish of the nations concerned to disassociate themselves from the serious assaults on human dignity perpetrated under previous regimes and to undertake responsibility for providing redress of the wrongs committed and reparation to the victims. At the same time national law and practice also show some fundamental shortcomings because of the limited scope of the measures taken. It appears that large categories of victims of gross violations of human rights, as a result of the actual contents of national laws or because of the manner in which these laws are applied, fail to receive the reparation which is due to them. . . . [R]estrictions in the definition of the scope and nature of the violations; the failure on the part of authorities to acknowledge certain types of serious violations. . . . the restrictive attitude of the courts; the incapability of certain groups of victims to present and to pursue their claims; lack of economic and financial resources: the consequence of all these factors, individually and jointly, is that the principles of equality of rights and due reparation of all victims are not implemented.²²⁸

This report covers nations with such horrendous human rights records as Guatemala, El Salvador and Uganda, but what is striking is how appropriate the comments are with respect to Japan's posture towards the comfort women. One would think that Japan would not want to become a member of this club of countries, but if the present attitude of the Japanese government continues the parallels are undeniable.

Unfortunately, these litigants are most likely destined to seek payments from a Japanese Diet that has displayed stingy characteristics (what Japanese term as *ketchi*) when appropriating funds to non-Japanese victims of conscription. If the Diet takes a similar approach in the

comfort women case, one could predict that its resolution of this unconscionable injustice may itself perpetuate the injustice and engender more distrust from Asian countries occupied by the Japanese. So, as pointed out earlier, although a recent survey of Japanese national politicians showed overwhelming support for legislation to appropriate monies for the comfort women, the real test will be to see *how much* is appropriated.²²⁹

It bears mentioning at this point that on issues of gender equality, Japan in the past has displayed acute sensitivity to international criticism and pressure. For example, the passage in 1985 of the Equal Employment Opportunity Law (EEOL) was in large part attributable to international pressure. The forces of the United Nations International Women's Year in 1975, the United Nations Decade for Women (1976-1985), and Japan's signing of the United Nations Convention concerning the Elimination of All Forms of Discrimination Against Women in 1980 together impelled the ultimate passage of the EEOL.²³⁰ As one author pointed out, "International pressure - or, more accurately, what Japan perceived to be international pressure - was a direct stimulus to the passage of the EEOL."²³¹ Thus, the fear of being branded a pariah by the international community will do much to hasten the passage of a compensation package, if such pressure is applied concertedly by the European nations and the United States. The crucial role international pressure is likely to play in leading to a favorable settlement for the former comfort women is evinced in attorney Takagi Kenichi's writing on this issue: "I urge you, the members of the international community, to cooperate with us by putting pressure on the Japanese Government to take appropriate action."²³²

Additionally, another significant factor coupled with continued international pressure contributed to spur enactment of the EEOL: a concerted and successful sex-discrimination

litigation campaign. The sex discrimination plaintiffs, like the comfort women plaintiffs, faced tremendous legal barriers yet ultimately prevailed. As Frank Upham notes, "In spite of daunting doctrinal problems, the plaintiffs attacked progressively more subtle and indirect methods of discrimination. . . . The process culminated in 1985 when the Diet passed without serious amendment the . . . Equal Employment Opportunity Act, which statutorily prohibits a wide range of practices. . . ."233

Consequently, the comfort women cases are strikingly similar to the campaign to enact an EEOL as well as the earlier-mentioned Big Four Pollution cases.²³⁴ Undoubtedly, continued coverage and dissemination of information about these war atrocities and the specter of becoming an international outcast will push Japan towards enactment of compensation legislation. The present litigation, while unlikely to be as successful as the sex-discrimination campaign or pollution cases (unless the judiciary, perhaps compelled by a moral dynamic of the case, markedly eases its standing requirements), nevertheless plays an important role in expediting a political solution as well as educating the Japanese citizenry - and the world - about this long-kept dark secret.

A legal maxim states "*ubi jus ibi remedium*" or "There is no wrong without a remedy."²³⁵ To deny these women compensation would be a perverse twist on this maxim.²³⁶ Further, to run the risk that these types of crimes - occurring even today in other parts of the world - might go unredressed is callous and must not be tolerated by our contemporary international legal system.

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[san fran dispute process; korean gov't could invoke arb process; seize assets; stare decisis]

Endnotes

* The author wishes to express his thanks to Lori Damrosch, Lisa Pruitt, Paul Schwartz, and Michael Young for their thoughts and comments on earlier drafts of this paper. Also, the author would like to thank Higashizawa Yasushi, Iwamoto Yoshimi, Kuwahira Tomiko, and Ozaki Mayumi for their assistance in locating the Japanese materials cited.

1. **Walter Lord, Day of Infamy** (1957).

2. Yoshimi Yoshiaki, *Japan Battles Its Memories*, **New York Times**, Mar. 11, 1992, at 23, available in LEXIS, Nexis Library, Major Papers and Magazines File (trans. by Jane Nishi Goldstone). See also **Haruko Taya Cook & Theodore F. Cook, Japan at War: An Oral History** (1992). In *Japan at War*, the authors note that "instead of the nation gathering to explain how defeat had come, or working to understand the war in all its terrible diversity and horror, Japan drew no larger lesson or conclusions and engaged in no real national debate. Each individual found himself or herself alone with only a private obligation to remember the dead, to sustain their memories of those years of war." quoted in Brad Glosserman, *War without the romance*, **The Japan Times Weekly International Edition**, Jan. 17-23, 1994, at 18. See also Katō Shūichi, *Nihon Shakai * Bunka no Kihonteki Tokuchō* (*Fundamental Distinguishing Characteristics of Japanese Society and Culture*) appearing in **Takeda Kioko, Nihon Bunka no kakureta katachi** (*Hidden Aspects of Japanese Culture*) 27-8 (1984) (discussing, in the context of the International Military Tribunal for the Far East (IMTFE), the tendency of Japanese to hold the group responsible thereby obfuscating individual responsibility).

3. **The Tokyo War Crimes Trial [:] An International Symposium 202-3** (1986) (eds. Hosoya, C., Andō, N., Onuma, Y., Minear, R.) [hereinafter **War Crimes Trial**].

4. William Branigan, *Japanese Veterans Visit Burma*, **Washington Post**, Wed. March 16, 1994 at A24.

5. One Japanese law professor, while agreeing that Japan was not the only criminal state, has argued that one cannot explain away Japanese aggression by invoking self-defense, because such a defense was not recognized in international law at that time. **War Crimes Trial**, *supra* note at 106.

6. **Reader's Digest Illustrated Story of World War II** 92 (1969). Takigawa Seijirō, defense counsel at the Tokyo Trial, has stated "I do not recognize the so-called Rape of Nanjing." **War Crimes Trial**, *supra* note at 58.

7. **Panel of Lawyers for the Philippine "Comfort Women," Philippine "Comfort Women" Compensation Suit: Excerpts of the Complaint** 9 [hereinafter *Philippine "Comfort Women"*]. See also Donald Knox, **Death March: The Survivors of Bataan** (1981). In *Death March*, the

author interviews primarily American survivors of the battle for the Bataan peninsula of the Philippines, who were then forced to march to San Fernando 60 kilometers away. Thereafter, these soldiers were imprisoned and subject to systematic mistreatment which included accounts of torture, starvation and murder. See also Kawabata Tai, *American Narrowly missed death march, A-bomb*, **The Japan Times Weekly International Edition**, Jan. 17-23, 1994, at 17.

8. In contrast to Japan, Germany have been much more forthright in squarely confronting its checkered war-time past. See Stephen Kinzer, *A Climate for Demagogues* **The Atlantic Monthly** Feb. 1994 21, 34. In the aftermath of World War II, Germany unlike Japan instituted a comprehensive statutory scheme to pay compensation to victims of the war. Kurt Schwerin, *German Compensation for Victims of Nazi Persecution*, 67 **N.W.U.L. Rev.** 479 (1972) cited in *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*, U.N. Doc. E/CN.4/Sub. 2/1993/8 July, 2, 1993 at 44-5 n.75-84 [hereinafter *Compensation Report*]. In regard to prosecution of war crimes and crimes against humanity, taking only the case of the former German Democratic Republic, 16,572 persons were indicted for war crimes and crimes against humanity from May 8, 1945 to the end of 1964. Won Soon Park, *A Consideration on the Probability of Possible Punishment of Japanese War Crimes and Crimes against Humanity* at 4.

Other nations have taken measures to prosecute war criminals as well. To punish Nazi war criminals in 1990 Australia enacted legislation and in 1991 the United Kingdom passed the War Crimes Act. In similar fashion, the United States, not innocent of war-time infringements on liberties, in 1988 passed special legislation to apologize and compensate Japanese-Americans who were interned during World War II. Korean American Coalition on Jungshindae, *Japan's Responsibility for the "Military Comfort Women"* 1 [hereinafter Korean American Coalition].

9. David Sanger, *Takeshita Now Admits World War II Aggression*, **New York Times**, March 7, 1989 at 12, available in LEXIS, Nexis Library, Major Papers and Magazines File.; Likewise, the Japanese government is planning to build a Peace Memorial Hall near the Yasukuni Shrine, which commemorates Japanese soldiers killed during the war, exclusively in honor of 3 million Japanese war victims. The cost will be 10 billion yen. Because this shrine is only dedicated to the Japanese war victims, one Japanese lawyer has commented, "The insensitivity of this plan borders on ignorance and goes against the times." Takagi Kenichi, *The War Compensation Issue of Japan: Its Development and Assignments* at 16.

10. Clayton Jones, *Japan's New Leadership Begins with Atonement*, **Christian Science Monitor**, Aug. 13, 1993, at 1, available in LEXIS, Nexis Library, Major Papers and Magazines File. Prime Minister Hosokawa's forthrightness brought the following comment from Ishihara Shintaro, a right-wing Liberal Democrat Party member and most recently the author of the controversial *No to Ieru Nippon* (*The Japan that Can Say "No"*): "Those indiscreet remarks, without a solid historical viewpoint, deserve death." *Ishihara says Hosokawa 'deserves to die'*, **The Japan Times Weekly International Edition**, Oct. 18-24, 1993 at 2.

Also, Hosokawa's apology in November of 1993 to South Korean President Kim Young Sam brought criticism from the Japanese families of the war dead and increased anxiety that

such statements will hasten more compensation claims from the Asian countries. Uchida Kenzo, *War responsibility issue still not resolved*, **The Japan Times Weekly International Edition**, Nov. 22-28, 1993, at 9. In a recent article interviewing Japanese citizens regarding their feelings towards Prime Minister Hosokawa, one person stated the following about the Prime Minister Hosokawa's statement: "Regardless of one's personal point of view, as a statement from the prime minister of the nation, it is hard to accept. For people like me who lived before and during the war, [his statement] was very sad." *Gekiron Kōnā Hosokawa Ryu (Debate Corner [:] Hosokawa's Style)* **Yomiuri Shimbun** Jan. 20, 1994, at 12.

11. Koreans, Taiwanese, and Chinese still evidence great distrust towards the Japanese due to the atrocities committed during World War II. For example when asked "Do you think that Japan self-reflects on World War II?", 36% of the Koreans, 50.5% of the Taiwanese, and 31% of the Chinese polled answered, "It doesn't at all." On the issue of compensation, 23% of the Koreans, 44% of the Taiwanese, and 38% of the Chinese answered that they did not think Japan had fully compensated "at all" for damage done to Asia during World War II. Finally, in answer to the question, "Do you like Japan or its people?", 49.3% of Chinese males, 45.2% of Chinese females, 43.4% of Korean males, and 41.6% of Korean females answered "No". American Embassy, Tokyo, Office of Translation Services, *Daily Summary of Japanese Press*, Thursday, November 18, 1993, at 10-11 (translating an article from the morning November 10, 1993, edition of the **Sankei Shimbun** at 10).

12. See, e.g., *Kyōkasho Kentei to wa dō iu mono no ka (What is the Nature of Textbook Certification?)* 464 *Hōgaku Seminā* 46, 47 n.2 (1993). A recent Tokyo High Court opinion has ruled that the Education Ministry overstepped its bounds recently with regard to requiring that the account of the 1937 Nanking Massacre be rewritten. However, the court upheld the power of the Ministry to edit the books and even upheld the Ministry's deletion of the characterization of the Japanese military action in Asia as that of an "invasion." *Author wins damages suit; court rules text screening by state is constitutional*, **The Japan Times Weekly International Edition**, Nov. 1-7, 1993 at 4.

For a discussion of the textbook editing practice and the cases that have litigated the issue see see **Lawrence W. Beer, Freedom of Expression in Japan** 254-73 (1984); Lawrence W. Beer, *Freedom of Expression the Continuing Revolution*, 53 **Law & Contemp. Prob.** 39, 65-6 (1990); Lawrence W. Beer, *Education, Politics and Freedom in Japan: The Ienaga Textbook Review Cases*, 8 **Law in Japan** 73 (1975).

13.

14. *Construction Workers Uncover Bones From 100 Bodies* (National Public Radio/Morning Edition radio broadcast, Oct. 7, 1993) [hereinafter *Construction Workers*]. Many consider Japanese to be uncomfortable with legalistic thinking and litigation as a dispute resolution mechanism. See e.g., **Kawashima Takeyoshi, Nihonjin no Hōishiki (Japanese Legal Consciousness)** (1967); Kawashima Takeyoshi, *Dispute Resolution in Contemporary Japan in Law in Japan* (von Mehren ed. 1963); Kawashima Takeyoshi, *The Legal Consciousness of Contract in Japan*, 7 **Law in Japan** 1 (1974) (transl. Stevens) (translating Chapter 7 of Kawashima's **Japanese Legal Consciousness**); Rokumoto, *Legal Problems and the Use of Law*

in *Tokio and London - A Preliminary Study in International Comparison*, 7 *Zeitschrift für Soziologie* 229, 229 (Aug. 1978). But see John O. Haley, *The Myth of the Reluctant Litigant* 4 *J. Japanese Stud.* 359 (1978) (responding to the generally accepted notion that the Japanese are nonlitigious). However, in this case the government officials involved have adopted a peculiarly rigid legalistic approach. The ward office that has possession of the remains notes that the police have no obligation to investigate crimes that took place over 20 years ago. Likewise, bones that are found to be in excess of 100 years might be preserved as cultural assets. Thus, the discovered remains fit within neither of these categories and may be destroyed. See *supra* *Construction Workers*. Of course, that the police has no affirmative obligation to investigate does not equate with the notion that they are *proscribed* from investigating.

15. David Sanger, *History Scholar in Japan Exposes a Brutal Chapter*, *New York Times*, Jan. 27, 1992, at 4, available in LEXIS, Nexis Library, Major Papers and Magazines File.

16. Theodor Meron, *Shakespeare's Henry the Fifth and the Law of War* 86 *Am. J. Int'l. L.* 1, 30 (1992) quoted in The Center for Reproductive Law & Policy, **Recognizing Forced Impregnation as a War Crime Under International Law** 10 (1993) [hereinafter *Forced Impregnation*].

17. See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 8 April 1993*, I.C.J. Reports 1993, p.3, 4-8; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Order of the Court on provisional measures*, No. 93/28bis, 13 September 1993 at 2.

On October 6, 1992 the Security Council adopted unanimously resolution 780 which established an "impartial Commission of Experts . . . with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia." U.N. Doc. S/Res/ 780 at 3 (1992).

Subsequently, the special second session of the U.N. Commission on Human Rights adopted by 45 in favor with two abstentions a resolution which stated, among other things:

2. *Condemns* in the strongest terms all violations of human rights in the former Yugoslavia, including killings, torture, beatings, rape, disappearances, destruction of houses and other acts or threats of violence aimed at forcing individuals to leave their homes. . . .

Thereafter, on December 18, 1992, the Security Council unanimously adopted resolution 798 which "strongly condemn[ed]" reported "massive, organized and systematic detention and rape of women, in particular Muslim women, in Bosnia and Herzegovina" as "acts of unspeakable brutality." U.N. Doc. S/Res. 798 (1992). See also U.N. Doc. S/Res. 808 (1993).

For a compilation of the events in the former Yugoslavia and the United Nations' reactions see *Background Paper, Prosecuting Ethnic Cleansers: United Nations Trials for Balkan War Crimes*, The Association of the Bar of the City of New York, Thurs., Sept. 30, 1993.

18. Kuriki Chieko, *Cruel "comfort" Koreans sue for damage for wartime disgrace*, **Chicago Tribune**, March 29, 1992, at 11, available in LEXIS, Nexis Library, Major Papers and Magazines File.

19. Lourdes Sajor, *Women in Armed Conflict Situations*, MAV/1993/WP.1, Sept. 21 1993, at 2.

20. *Japanese "Condolence Money" for WWII Taiwan Draftees*, **Central News Agency**, Dec. 28, 1987, available in LEXIS, Nexis Library, News File cited in Comment, *supra* note at 128 n.216. See *infra* notes and accompanying text.

21. See *infra* notes and accompanying text.

22. *Japan Now Admits Military Kept Sex Slaves*, **Sacramento Bee** August 5, 1993, at A1, available in LEXIS, Nexis Library, Major Papers and Magazines File.

23. *Id.* Of former comfort women who have been located "there are 140 in South Korea, 131 in North Korea, 55 in Taiwan, 80 in [the] Phillipines, 8 in Indonesia, 2 in Malayasia, and some in China as well as in the Netherlands." Takagi, *supra* note , at 49.

24. John Lee, *Ex-"Comfort Girls" End Silence on War Horrors; Human Rights: Japan has admitted to the Conscription of Asian Women for Sex during World War II, but some of the Survivors are Pressing for Reparations*, **Los Angeles Times**, April 25, 1992, at 2, available in LEXIS, Nexis Library, Major Papers and Magazines File; *Filipinos Sue Japan over Sex Slavery, Seeking Admission of Guilt*, **Arizona Republic**, April 4, 1993, at A16, available in LEXIS, Nexis Library, Major Papers and Magazines File.

For an interview with a Korean university professor who has researched the "comfort women" issue extensively, in Japanese, see *Jyūgun Ianfu Mondai wa Kako no koto dewa nai (The Military Comfort Women Issue is Not One of the Past)* **Mainichi Shimbun**, Dec. 9, 1991 at 6. For other general discussions in Japanese law journals see Fukushima Mizuho, *Jyūgun Ianfu Soshō (Military Comfort Women Litigation)* 452 *Hōgaku Semina* 65 (1992); Totsuka Esturo, *Sengo Baishō * Hōshō Mondai Kaiketsu no tame no Daiyon no Michi (The Fourth Path towards Resolving the Post War Reparation * Compensation Issue)*, 458 *Hōgaku Semina* 20 (1993); *Naniga Jyūgun Ianfu o unda no ka (What gave rise to the Comfort Women)* 448 *Hōgaku Semina* 1 (1992); Abe Kōki, *Sengo sekinin to Kokusai Hō (Post War Responsibility and International Law)*, Vol. 44 Issue 9 *Jiyū to Seigi (Liberty and Justice)* (Sept. 1993).

25. Sajor, *supra* note at 3.

26. See *Philippine "Comfort Women"* *supra* note at 63.

27. Hayashi Yōko, *Jyūgun Ianfu Mondai no Genzai (The Current Military Comfort Women Issue)* **Nichi Bei Josei Jyānarū (The Japan/America Women's Journal)** No. 15, 1993, at 33, 34-5.

28. For a discussion of the marginalization of the Korean minority in Japan see Onuma Yasuaki, *Interplay Between Human Rights Activities and Legal Standards of Human Rights: A Case Study on the Korean Minority in Japan*, 25 **Cornell Int'l L.J.** 515 (1992).
29. Phillipine "Comfort Women" *supra* note at 63.
30. See Korean American Coalition, *supra* note .
31. David Sanger, *Japanese Veteran Presses War-Time Brothel Issue*, **New York Times**, Aug. 8, 1992, at 3, available in LEXIS, Nexis Library, Major Papers and Magazines File.
32. Tanaka Hiroshi, *Review of Post War Compensation in Japan*, in **Japan Civil Liberties Union, Report on Post War Responsibility of Japan for Reparation and Compensation** April, 1993 [hereinafter **War Responsibility**] at 9.
33. Lee, *supra* note . [22]
34. Hayashi, *supra* note at 34.
35. Sam Jameson, *Japan Admits Sexual Slavery in WWII, Expresses Remorse*, **Los Angeles Times**, July 7, 1992, at 1, available in LEXIS, Nexis Library, Major Papers and Magazines File.
36. Steven Weismen, *South Koreans Express Pent-Up Anger at Japan*, **New York Times**, Feb. 23, 1992, at 10, available in LEXIS, Nexis Library, Major Papers and Magazines File.
37. Lee, *supra* note 19.
38. Lee, *supra* note 19; Dottie Enrico, *The New York Newsday Interview with Hyo-Chae Lee*, **Newsday**, March 9, 1992, at 37, available in LEXIS, Nexis Library, Major Papers and Magazines File; Mark O'Neil, *Koreans forced into Prostitution by Japan Army Demand Payment*, **The Reuter Library Report**, Dec. 2, 1991, available in LEXIS, Nexis Library, Major Papers and Magazines File. In the Bosnian context, feminist legal scholar Catherine McKinnon has noted that what is portrayed as rape or genocide is in reality rape as a form of genocide. Adrien Wing & Sylke Merchan, *Rape, Ethnicity and Culture: Spirit Injury from Bosnia to Black America*, 25 **Colum. H. Rts. L. Rev.** 1, 17 (1993).
39. However, among Koreans the fact that Japan invaded and plundered Korea in 1592 is still widely known and considered to be indicative of Japanese brutality. Yung-Woo Chun & Ugaya Hiro, *Koreans and Japanese: Are the neighbors reconcilable?*, Discussion conducted at Columbia University School of International Public Affairs, East Asian Center, Wed. Feb. 16, 1994. It bears mention that the secret Taft-Katsura agreement of 1905 approved Japan's military protectorate of Korea and then "the 1908 Root-Takahira Accord entrenched the status quo in East Asia." **Harold Hongju Koh, The National Security Constitution** 89 (1990).

40. *The Association of Pacific War Victims and Bereaved Families, The Issue of Korean Human Rights During and after the Pacific War* 6-7 (1993).

41. Kenneth Port, *The Japanese International Law "Revolution": International Human Rights Law and Its Impact in Japan*, 28 **Stanford Journal of International Law** 139, 158 (1991).

42. Paul Lansing & Tamra Domeyer, *Japan's Attempt at Internationalization and its Lack of Sensitivity to Minority Issues*, 22 **Calif. W. Int'l L.J.** 135, (1991). In rural areas of Japan, the word "foreigner" in Japan can still equate with "thief." For example, Tokushima University on the island of Shikoku "agreed to build a 7-foot fence around a residence for foreign students after local people complained foreigners might steal their pumpkins and cucumbers." **The Japan Times Weekly Internat'l Edition**, March 14-20, 1994, at 2. See also **Yomiuri Shimbun** June 13, 1991, at (a survey revealing that 44.1% of those Japanese polled felt that a negative influence from accepting foreign workers would be the degradation of morality and public order).

The increase of *gaikokujin rōdōsha* (foreign workers) within the past years has become a major political issue in the eyes of many Japanese. However, according to one writer, the total number of foreign workers is still "less than one-fourth of one-percent of the total Japanese population." John Lie, *Foreign Workers in Japan*, **Monthly Review**, May, 1992, 35, 40.

43. Onuma, *supra* note at 516.

44. *Id.* at 522.

45. *Id.* Japan's record on issues of racial sensitivity is admittedly checkered and owes its roots to the mid-1800 Meiji Restoration period in Japanese history when Japan considered Western culture to be *the* model for wholesale adoption. Along with the positive aspects of the Western model Japan also embraced a "Eurocentric view of the world including the idea of white supremacy." *Id.* Thus, "Asians and Africans have been despised and regarded with contempt, considered underdeveloped and uncivilized." *Id.* For a sharply critical review of the Japanese lack of sensitivity towards minority issues see Lansing & Domeyer, *supra* note . The Japanese, interestingly, are not beyond perniciously discriminating against their own, too. For a discussion of the discrimination against the so-called *burakumin* see Frank Upham, *Law and Social Change in Postwar Japan* 78-123 (1987).

46. *S. Korea will compensate women enslaved by Japanese*, **Chicago Tribune**, March 30, 1993, at 4, available in LEXIS, Nexis Library, Major Papers and Magazines File.

47. Jake Doherty, *Conference to focus on Plight of Wartime "Comfort Women"*, **Los Angeles Times** Feb. 20, 1993, at 3, available in LEXIS, Nexis Library, Major Papers and Magazines File; Lee, *supra* note 25; *Seoul to Waive Compensation claims for Comfort Women*, **Japan Economic Newswire**, March 29, 1993 available in LEXIS, Nexis Library, Major Papers and Magazines File.

Also, there is evidence that the Allied Powers at the conclusion of World War II knew about the Japanese Imperial Army's system of enforced prostitution. Nonetheless, they failed

to raise the issue at the IMTFE. Hayashi, *supra* note at 40.

48. Hayashi, *supra* note at 41.

49. Hayashi, *supra* note at 41.

50. *Id.* at 44. See also Takagi, *supra* at 7.

51. Sajor, *supra* note at 6.

52. *Id.*

53. *Id.* at 6-7.

54. Hayashi, *supra* note at 35.

55. *Id.*

56. See Nancy Patterson, *No More Naki-Neri? The State of Japanese Sexual Harassment Law: Judgment fo April 16, 1992, Fukuoka Chihō Saibansho, Heisei Gannen (1989) (wa) No. 1872, Songai Baishō Jiken (Japan)*, 34 *Harv. Int'l L.J.* 206 (1992). *Quid pro quo* sexual harassment is present today in Japanese corporate culture. In a phonathon to take calls dealing with sexual harassment, of the 137 formal complaints resulting from the campaign calls, 40 percent were from women compelled to have sex with their superiors. *Id.* at 209.

57. Hayashi, *supra* note at 36-7.

58. *Id.* at 37. Arguably, the primary reason the Japanese government has been able to suppress this issue for over forty years is because Japan has no national information disclosure law (what is referred to United States as freedom of information laws), thereby giving the national government complete control over information flow from the respective ministries. See Yoshimi Yoshiaki, *Historical Understanding on the "Military Comfort Women" Issue*, in **The Executive Committee International Public Hearing, War Victimization and Japan** 89 (1993). However, recently there has been an explosion of Information Disclosure Ordinances on the local government level with 215 local governments enacting such provisions. See *Jyōhō Kōkai Seikyū 15 Manken Okosu (Information Disclosure Requests Surpass 150,000)*, *Asahi Shimbun*, Monday, Dec. 21, 1992 at 1. Prime Minister Hosokawa in his first major policy speech underscored the importance of enacting a national information disclosure law. It would seem the suppression of evidence of massive crimes against humanity by the Japanese government would provide supporters of the law the paradigmatic case underscoring the importance of codifying citizens' right to know.

59. O'Neil, *supra* note .

60. Sanger, *supra* note [29]; Sanger, *supra* note [3]; David Sanger, *Japan Admits Army Forced Koreans to Work in Brothels*, **The New York Times**, Jan. 14, 1992, at 8, available in LEXIS, Nexis Library, Major Papers and Magazines File.

61. *Hirohito OK'd Sex Slaves*, **Korea Newsreview**, Feb. 15, 1992, at 6, cited in Comment, *supra* note at n.52.

62. Sanger, *supra* note 29.

63. Korean American Coalition, *supra* note .

64. Lee, *supra* note . Also, notwithstanding acknowledgement of the comfort women brothels, the Japanese government has not mentioned how it is seeking to resolve this issue in its reports to the United Nations Committee on the Elimination of Discrimination Against Women as required under Article 18 of the Convention on the Elimination of all Forms of Discrimination Against Women, G.A. Res. 180, 34 U.N. GAOR Supp. (No. 46) (107th plen. mtg.), U.N. Doc. A/34/830 (1979), which Japan signed on July, 17, 1980. The notable absence of this issue speaks volumes in regard to the Japanese government's attitude. See Consideration of Report Submitted by States Parties under Article 18 of the Convention [:] Third Periodic Report of States Parties Japan, U.N. Doc. CEDAW/C/JPN/3 Nov. 2, 1993. Japan was admonished by members of the Committee on the Elimination of Discrimination against Women as they examined Japan's report on its implementation of the Convention on the Elimination of All Forms of Discrimination against Women. Salma Khan, from Bangladesh, stated: "Japan must meet its commitments to the women of Asia." Another expert stated that the former comfort women should not be forced to seek justice on a case-by-case basis. *Experts at Committee on Elimination of Gender Discrimination urge Japan not to Ignore Legacy of "Comfort Women"*, U.N. Doc. WOM/721. Likewise, in the March 14, 1994, statement of Sakai Makiko, the representative of Japan to the Commission on the Status of Women, did not include reparations to the comfort women as one of its "priority themes." *Statement by Ms. Makiko Sakai Representative of Japan to the Commission on the Status of Women*, March 14, 1994.

65. *Japan Admits Army Forced Women Into War Brothels*, *supra* note .

66. Lee, *supra* note 25. The same social ostracism is a consequence of rape in Muslim society. Wing & Merchan, *supra* note at 4-5, 20-5, 31.

67. As of January 25, 1994, one Dutch former comfort woman had brought a claim against the Japanese government along with former prisoners of war and civilian internees. *Eight Dutch Citizens Sue Japan Over War*, **The New York Times** January 26, 1994, at A9. Also the Korean Council for Women Drafted for Sexual Slavery by Japan filed a complaint with the Tokyo District Prosecutor's Office on December 8, 1993, arguing for prosecution of unknown defendants for war crimes and crimes against humanity carried out against the Korean comfort women. *Korean Council for Women Drafted for Sexual Slavery by Japan v. Names Unknown*, complaint filed December 8, 1993. Despite this attempt to attach criminal responsibility, the Tokyo District Public Prosecutor's Office rejected the complaint because the names of the

accused were not indicated. *Comfort Women Complaint Rejected*, **The Japan Times Weekly Int'l Ed.**, Feb. 21-27 (1994).

Interestingly, no Chinese nationals have sued despite the government having identified 40 former comfort women. Hayashi Yōko, *supra* at 46. There seems to be evidence that the Chinese government may be suppressing potential plaintiffs from suing. One former comfort woman of Chinese nationality attended a Japanese Bar Association Conference to testify on her experiences but was unable to speak because she fainted out of nervousness. She stated privately that although she wanted to sue for damages the Chinese government was preventing her from filing a claim. Hayashi Yōko, Address at the *New York University Law School Asia Law Society* (Jan. 26, 1994) [hereinafter *NYU Address*]. See also Takagi, *supra* note at 3 (noting that although China was the country most severely damaged by the Japanese military, "the victims have never been able to file suit because of China's social structure.")

68. Kuriki, *supra* note ; *Kankokujin Moto Ianfura Soshō (Former Korean Comfort Women Sue)* **Yomiuri Shimbun** (Evening Ed.) Dec. 6, 1991, at 19. See also *Kōtō Benron Hajimaru (Oral Questioning/Argument Begins)* **Yomiuri Shimbun** (Evening Ed.) June 1, 1992 at 18; *Moto Ianfu kara Chōshu (Hearing Former Comfort Women's Accounts)* **Mainichi Shimbun**, June 3, 1992, at 3. In Japan, like most civil law countries, legal proceedings are not concentrated in one time period because there is no jury which must be impaneled. Thus, oral proceedings are set episodically usually once a month. Katō Masanobu, *The Role of Law and Lawyers in Japan and the United States*, 1987 **B.Y.U. L. Rev.** 627, 632.

The Korean American Coalition on Jungshidae has made the following demands: (1) Conduct a thorough search of all government documents on the comfort women issue and make them available to the public; (2) the Emperor and the Diet should offer a sincere apology to the comfort women victims; (3) the Diet should pass a special law to pay just compensation to the comfort women victims; (4) all school textbooks should be revised to teach students the full truth about Japan's past war crimes; (5) build a memorial monument and museum for the comfort women and other wartime victims; and (6) prosecute the war criminals responsible for the military sexual slavery and other horrendous war crimes or crimes against humanity. Korean American Coalition, *supra* note at 2-3. A representative for the Filipino women has made similar demands. Sajor, *supra* note at 11. With regard to school textbooks, one new world history high school textbook published by Hitotsubashi Shuppan "covers for the first time details about such controversial issues as the Nanking massacres in China in 1937 by the Japanese army, the use of Asians as "comfort women" or sex slaves in World War II and current Japanese sex tours to Southeast Asia." Oishi Nobuyuki, *Emergence of neo-Asianism reflects Japan's identity search*, **The Nikkei Weekly** Jan. 17, 1994, at 1, 22.

69. 'Comfort Women' sue for compensation, **The Japan Times**, Saturday, April 3, 1993, at ; *Hikoku Jyosei 18 Nin ga Soshō (18 Women Sue)* **Yomiuri Shimbun** (Evening Ed.) April 2, 1993.

70. Henkin, *The Internationalization of Human Rights, Proceedings of the General Education Seminar*, Vol. 6, No. 1 (Fall, 1977) at 7-9 reprinted in L. Henkin, R. C. Pugh, O. Schacter, Hans Smit, *International Law Case and Materials* at 691-2 (1993).

71. *Forced Impregnation*, *supra* note at 3.

72. Theodor Meron, *Rape as a Crime under International Humanitarian Law*, 87 *Am. J. Int'l L.* 424 (1993). See also Theodor Meron, *The Case for War Crimes Trials in Yugoslavia*, *Foreign Affairs* Summer, 1993 at 122, 131-132.

73. See *infra* notes and accompanying text.

74. Despite the writings of many leading academics who have urged that individuals have legally cognizable international human rights not dependent on derivation from their respective state, international law in this case arguably provides no relief. For a representative sampling of these writers' arguments see Phillip C. Jessup, *Responsibility of States for Injuries to Individuals*, 46 *Colum. L.Rev.* 903 (1946); S.N. Guha Roy, *Is the Law of Responsibility of States for Injuries to Aliens a Part of Universal International Law?* 55 *Am. J. of Int'l L.* 863 (1961); Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 *Am. Univ. L. Rev.* (1982).

75. *NYU Address*, *supra* note. The language of Article 46 of the 1907 Convention is substantially similar to the 1899 Convention on the Laws and Customs of War on Land, which Japan signed on October 6, 1900. Convention Respecting the Laws and Customs of War on Land, with Annex of Regulations, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631 [hereinafter *Hague Convention*]. However, Article 3, which imposes on violators of the Convention liability to pay compensation was absent in the 1899 version. Thus, although one could argue that Japan was subject to the 1899 language before annexing Korea and consequently in violation of the Convention upon instituting the comfort women system, no compensation claim could be sustained. *Hague Convention*, *supra* note.

76. Genkoku Seikyū, Hōshō Seikyū no Riyū, Jindō ni taisuru Tsumi (Plaintiffs' Claim, Basis for Compensation Claim, Crimes against Humanity) at 109 [hereinafter *Plaintiffs' Brief*].

77. *Id.*

78. *Id.* In the domestic law arena, it is quite common for crimes to have a statute of limitations, however, for war crimes and crimes against humanity there exists a convention proscribing application of statute of limitation analogs. Convention on the Non-Applicability of Statutory Limitation to War Crimes and Crimes Against Humanity, U.N.T.S. 74. See Robert H. Miller, *The Convention on the Non Applicability of Statutory Limitations to War Crimes and Crimes against Humanity*, 65 *Am. J. Int'l L.* 477 (1977). The gist of this convention is that a municipal law statutory provision is inapplicable to any of the enumerated international crimes. U.N. Doc. E/CN.4/906. Although Japan, nor the United States, has ratified this convention it may be considered to now be within the corpus of international customary law. Similarly, one lawyer has argued that because rape may be considered to be a *jus cogens* violation, normal statute of limitations norms are rendered inapplicable. Karen Parker, *Jus Cogens and Compensation for War Crimes* at 4, 9 (paper prepared for the *Symposium on War and Human Rights: Legal Analysis of Post-war Disposition*, Japan Federation of Bar Associations, December

10, 1992.

79. *Plaintiffs' Brief* at 110.

80. *Id.* at 111.

81. *Id.* at 111.

82. *See supra* notes and accompanying text.

83. *Plaintiffs' Brief* at 113.

84. *Id.* at 113-4.

85. *Id.* at 114.

86. *Id.* at 114.

87. *Id.* at 115.

88. *Id.* at 115-16.

89. *Id.* at 116-17.

90. *Id.* at 130-31.

91. *civ pro* rules

92. Kūni no Tōben (State's Answer) at 8.

93. *Id.* at 8-9.

94. Hague Convention. It has been maintained that because the 1907 Convention is part of international humanitarian law which also falls under the rubric of *jus cogens* or "peremptory norm" that violation of international humanitarian law is a *jus cogens* violation. Karen Parker & Lyn Beth Neylon, *Jus Cogens: Compelling the Law of Human Rights*, 12 **Hastings Int'l & Comparative L. Rev.** 411, 432-35 (1989). If held to be so, this could provide the Filipino plaintiffs a number of procedural advantages. *Id.* at 443-456.

95. Article 3 Hague convention

96. *See Forced Impregnation, supra* note at 7.

97. *Philippine "Comfort Women"* *supra* note at . It has been noted that this honor component is a problematic concept as the notion of honor has not usually been the victim's honor but the victim's husband or male relative's honor which is violated by the act of rape. To continue to use the rubric of honor is unsatisfying because it implies "that rape somehow

stains (dis-honours) its victims." *Forced Impregnation supra* note at 19-20.

98. The 1949 Geneva Convention No. IV Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 27, U.S.T. 3516, 75 U.N.T.S. 287.

99. *Id.* at art. 27 (emphasis supplied).

100. 1977 protocol Geneva Convention

101. *See also* Meron, *supra* note at 425-6. The Korean American Coalition on Jungshindae has argued that the United States government bears "a heavy responsibility for the current attitude of the Japanese government." Due to the impending Cold War the United States government shortened the Tokyo Military Trial, focusing on the war crimes committed against Americans and Europeans while "ignoring deliberately the vast war crimes committed against Asian people. Notorious Japanese war criminals were left untouched and allowed to emerge as leading members of the Japanese society after the War." Korean American Coalition, *supra* note at 2. Likewise, with regard to the Allied Nations' responsibility, one human rights advocate has noted, "[m]ost of the revealing documents detailing the existence of comfort stations and the conditions of the comfort women were taken by historians and researchers to the Washington War Archives." Sajor, *supra* note at 4. This advocate correctly concludes, "[I]t is distressing to know that the Allied Nations did nothing for the comfort women when they clearly knew of their existence." *Id.*

102. *Philippine "Comfort Women" supra* note at 58.

103. Hague Convention art. III.

104. *Id.*

105. *Philippine "Comfort Women" supra* note at 58. Notably, in the present form of the complaint, the plaintiffs fail to raise two other provisions of the convention that would bolster their case. For example the so-called "Martens Clause" specifically incorporates customary international law into the treaty, and thus by ratifying the convention Japan obliges itself to follow customary international law norms. The Clause states:

Until a more complete code of laws of war has been issued . . . in cases not included in the Regulations . . . the inhabitants and belligerents remain under the protection and the rule of principles of the law of nations, as the result from the usages among civilized peoples, from the law of humanity and the dictates of the public conscience.

Hague Convention, 8th preamb. para. (emphasis supplied) Additionally, the plaintiffs do not cite language in article IV which states that prisoners of war "must be treated humanely." *Id.* at Article IV. This oversight may be in part due to the fact that Japanese courts permit liberal

amendment of complaints and answers. [young]

106. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948. 78 U.N.T.S. 277.

107. International Convention on the Suppression and Punishment of the Crime of Apartheid, Nov. 30, 1973, 1015 U.N.T.S. 244., G.A. Res. 3068 (XXVIII), UN GAOR, 28th Sess., Supp. No. 30, at 75 U.N. Doc. A/9030 (1970).

108. Hayashi, *supra* note at 44.

109. *Id.* See also *Compensation Report*, *supra* note at 16, stating, "It is in this perspective that States may claim reparation from the offending State but the victims themselves have no standing to bring international claims."

110. Henkin, Pugh, Schachter, Smit, *supra* note , at 375; *Compensation Report*, *supra* note at 17 (noting that especially this norm has hardened with respect to violations *erga omnes*).

111. See Antonin Scalia, *Originalism: The Lesser Evil*, 57 U.Cin.L. Rev. 849 (1989). For arguments rejecting originalism see Lawrence Tribe, *American Constitutional Law* 771 (2d ed. 1988); Paul Brest, *The Misconceived Quest for the Original Understanding*, 60 B.U.L. Rev. 204 (1980).

112.

113. *Philippine "Comfort Women"* *supra* note at 59 (emphasis supplied).

114. *Forced Impregnation*, *supra* note at 7-8.

115. See *supra* notes and accompanying text.

116. Theodor Meron, *supra* note at 425 (1993). Unfortunately, Professor Meron provides no actual examples where Article 46 has been interpreted in this fashion. *Id.* at 425.

117. Wing & Merchan, *supra* note at 14.

118. maintained treaties extinguished claims; now not; says go to court - but courts say go to diet - vicious cycle

119. Agreement on the Settlement of Problem Concerning Property and Claims and on the Economic Co-operation Between Japan and the Republic of Korea, June 22, 1965, 5 I.L.M. 111 (1966) (Sung Yoon trans.), reprinted in 10 *Japanese Ann. of Int'l L.* 284 [hereinafter *Settlement of Claims*].

120. *NYU Address*, *supra* note .

121. Comment, *supra* note at 102. See also Takagi, *supra* note at 11 (stating "[the] Japan-Korean Treaty only settled nations' rights and its diplomatic rights concerning individuals") The Korean American Coalition on Jungshindae has argued: "[The Japanese] are either blind or deliberately ignoring the fact that the comfort women issue was not known and never discussed at the time the treaties were negotiated. Besides, the comfort women never delegated or waived their right to compensation, and thus the treaty is void to the extent that the individual claims were allegedly settled by the treaty." Korean American Coalition on Jungshidae, *supra* note at 2.
122. Settlement of Claims, *supra* note at art. 2, para. 1. cited in Note, *supra* note at 102.
123. Comment, *supra* note at 102.
124. *Id.* at 103-4.
125. *Id.* at 104-5.
126. *Id.* at 104-5.
127. *Id.* at 118.
128. See *supra* notes and accompanying text.
129. L. Henkin, *Foreign Affairs and the Constitution* at 262-6 (1972).
130. L. Henkin, R. C. Pugh, O. Schacter, Hans Smit, *International Law Case and Materials* at 692 (1993).
131. L. Henkin, *supra* note at 262-263.
132. *Blagge v. Balch*, 162 U.S. 439, 459 (1896).
133. L. Henkin, *supra* note at 263.
134. *Gray v. United States*, 21 Ct. Cl. 340, 392-93 (1886)
135. 453 U.S. 654 (1981). See also *Restatement 3rd Foreign Relations Law of the United States* § 721 n.8.
136. *Dames & Moore*, 453 U.S. at 679 (quoting Louis Henkin, *Foreign Affairs and the Constitution* 262 (1972). For a criticism of *Dames & Moore* see Koh, *supra* note at 138-140.
137. *Id.* at 688-9.
138. *Id.* at 691 (Powell, concurring).

139. the const before the treaty **The Constitution of the Republic of Korea** art. 22(3) (1980) states: "Expropriation, use or restriction of private property for public necessity may be made by law, but compensation thereof shall be paid. Compensation shall be determined by law in fair assessment of the common benefit and of the interests of persons involved." **The Constitution of the Republic of the Phillipines** art. 3, § 9 (1990) provides: "Private property shall not be taken for public use without just compensation."

140. **E. Allan Farnsworth, Contracts** § 4.28 (1990). "unreasonably favorable" terms "an absence of meaningful choice" see U.C.C. 2-302 (1) and Comment

141. *See supra* note and accompanying text.

142. *See infra* note and accompanying text.

143. Vienna Convention On the Law of Treaties, May 23, 1969, U.N. Doc. A/Conf. 39/27 (1969), *reprinted in* 63 **Am. J.Int'l L.** 875 (1969) *and in* 8 **I.L.M.** 679 (1969) [hereinafter Vienna Convention].

144. **Henkin, Pugh, Schachter, Smit**, *supra* note at 492.

145. **Parker & Neylon**, *supra* note at 443-45.

146. Vienna Convention art. 53.

147. *Id.* art. 71.

148. The level of generality with which a "fundamental right" should be characterized in American constitutional law has become the topic of a rather spirited debate in the wake of Justice Scalia's opinion in **Michael H. v. Gerald D.**, 491 U.S. 110 (1989). Here Justice Scalia articulated the view that the Court should adopt "the most specific level [of generality] at which a relevant tradition protecting, or denying protection to, the asserted right can be defined." *Id.* at 127-8 n. 6. For a detailed criticism of Scalia's methodology see **Lawrence Tribe & Michael Dorf, On Reading the Constitution** 73-4, 97-117 (1991).

149. In response to the claim the Japanese government could argue that the 1969 Vienna Convention rules are inapplicable to Japan's postwar treaties, **Laura Parker** cites **Oppenheim** 1909 at 555 and quotes: "Just as treaties have no binding effect when concluded with reference to an illegal object, so they lose their binding force when through the progressive development of International law they become inconsistent with the latter." **Parker**, *supra* note at 8-9.

150. **Reparations Agreement between Japan and the Republic of the Philippines**, 1 **The Japanese Ann. of Int'l L.** 132 (1957).

151. **Settlement of Claims**, *supra* note at (emphasis supplied).

152. *Id.* at art. II, para. 1.

153. *See supra* note and accompanying text.
154. Webster's New Twentieth Century Dictionary 1532 (1976). reparation talk
155. Meiji Kenpō (Meiji Const.)
156. 1 L.N.T.S. 83.
157. Meiji Const. art. 28.
158. Meiji Const. art. 31.
159. Comment, *supra* note at .
160. *See supra* note at 6. [korean h rights]
161. 1 L.N.T.S. 83.
162. Subcommission Discusses Contemporary Forms of Slavery, U.N. Press Release Doc. HR/CN/470 10 August 1993. *See also* U.N. Doc. E/Sub. 2/1993/8 at 12. Similarly, in August 1993 the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a resolution that appointed a Special Rapporteur to undertake a comprehensive study of systematic rape, sexual slavery, and slave-like practices during war. U.N. Doc. E/CN.4/Sub. 2/L.12/Rev.1.
163. 1 L.N.T.S. 83. *See* M. Cherif Bassiouni, *Enslavement as an International Crime*, 23 N.Y.U.J. Int'l L. & Pol'y 445, 464-466 (1990). *See e.g.*, Nina Lasser, *Slavery & Slave-like practices: United Nations Standards and Implementation*, 57 Nordic J. of Int'l L. 197 (1988).
164. 1 L.N.T.S. 83 (*quoted also in* Comment, *supra* note at 107).
165. 9 L.N.T.S. 415, *reprinted in* 18 Am. J. Int'l L. 130 (supp. 1924).
166. *Id.* at 135.
167. *Id.* at 136.
168. Comment, *supra* note at 108.
169. 75 U.N.T.S. 287 (1950).
170. *Id.* at 282. ?
171. For a full-frontal attack on the IMTFE's legitimacy, use of international law, use of process, and interpretation of the historical facts see **Richard Minear, Victors' Justice** (1971). Justice Radhabinod Pal was the primary dissenter to the judgment of the IMTFE. In essence, he considered the charge of crimes against the peace to fail because Japan was fighting "a war

for liberation of Asia" in reaction to Western colonization. **War Crimes Trial**, *supra* note , at 152. In the same vein, with regard to war crimes, he felt war crimes in war were inevitable and it was unfair to only punish war crimes committed by the defeated. *Id.* [woo soon park]

172. *See supra* notes and accompanying text.

173. Parker, *supra* note at 6-7. *See also* Parker & Neylon, *supra* note at 443-456 for other ostensible procedural advantages that flow from the use of *jus cogens* as a cause of action.

174. cite to articles

175. Port, *supra* note at 152.

176. **Kenpō (Constitution)** art. 48(2).

177. Port, *supra* note 152-155.

178. *Id.* at 153.

179. *Id.* at 155.

180. *See supra* notes and accompanying text.

181. It is clear for the Islamic Republic of Iran, in the early 1980s, the United States was hardly an ideal forum. After the Islamic Revolution in 1979, the American courts asserted jurisdiction over roughly 400 law suits against the government of Iran. One writer has implied that United States courts were motivated by the emotional component of the cases, stating that "the American courts . . . demonstrated an all-too-willing disposition in dismantling the Iranian defences." **Rahmatullah Khan, The Iran-United States Claims** (1990). *See also* William N. Eskridge, Jr., *The Iranian Nationalization Cases: Toward a General Theory of Jurisprudence over Foreign States*, 22 **Harv. Int'l L.J.** 525 (1981).

182. Robert Dzuibla, *The Impotent Sword of Japanese Justice: The Doctrine of Shobunsei as a Barrier to Administrative Litigation*, 18 **Cornell J. Int'l L.** 37 (1985).

183. 13 Keishū 3225 (1959) *translated in* **John Maki, Court and Constitution in Japan** 298 (1964). *See also* **Hideo Tanaka, The Japanese Legal System** 709-711 (1976)

184. *Sunakawa* is discussed in Note, *Japan's Constitution an U.N. Obligations in the Persian Gulf War: A Case for Non Military Participation in U.N. Enforcement Action*, 25 **Cornell Int'l L.J.** 363, 380-1 (1992).

185. *Japan v. Sakata*, 1 Kokeishū 776 (1959) (discussed in Wada Hideo, *Decisions under Article 9 of the Constitution - The Sunakawa, Eniwa and Naganuma Decision*, 9 **Law in Japan** 117 (1976). Article Nine of the Japanese Constitution states in part: "[T]he Japanese people forever renounce war as a sovereign right of the nation nad the threat or use of force as means

of settling international disputes . . . land, sea, and air forces, as well as other war potential, will never be maintained."

186. **Maki**, *supra* note at 303.

187. **Maki**, *supra* note , at 305.

188. **Maki**, *supra* note at 305-6.

189. 298 Hanrei Taimuzu (The Law Times Report) 140 *translated in Tanaka*, *supra* note , at 712, 714. *Itō* is also discussed in Donald deKieffer, *Exercise of Force by the Japanese Self-Defense Force*, 16 N.C.J. Int'l L. & Comm. Reg. 69,73 (1991).

190. 27 Gyōshu 1175 *rev'g* Judgment fo Sept. 7, 1973, Sapporo Dist. Ct., 712 Hanji 24.

191. See Kokkai Giin wa Sengo Hōshō Mondai o dō kangetiru no ka (*What do National Diet members think about post war compensation?*), 467 Hōgaku Seminā 27, 28 (1993). For example, 75 of 100 members surveyed expressed the opinion that additional compensation was necessary. *Id.* at 29.

192. Hashiba Shun, *Report on Problem of Restitution to Dead and Wounded Non-Japanese Soldiers and Civilians Serving Japanese Armed Forces During World War II and Sino-Japanese War (1937-1945) in War Responsibility*, *supra* note at 12.

193. U.N. censures Tokyo's human rights performance, **The Japan Times Weekly Int'l Edition** Nov. 29 - Dec. 5, 1993 at 3.

194. Hashiba, *supra* note at 15.

195. *Id.* at 15.

196. *Id.*

197. **Japan Civil Liberties Union 1993 Report**, *Post War Settlements: Compensation of the War Dead and Wounded from the Former Japanese Colonies*, at 65 [hereinafter *Post War Settlements*]. For the Tokyo High Court Decision delivered in 1985 see Hong Kun Zhen v. State, 1163 Hanrei Jihō (Judicial Reports) 41 (1985) *reprinted in* 29 **The Japanese Ann. of Int'l L.** 216 (1986). For the Japanese Supreme Court opinion see

198. Hashiba, *supra* note at 13.

199. *Id.* at 16.

200. *Id.* at 17.

201. *Id.* at 19. See also Japan Civil Liberties Union, **Universal Principle Human Rights Report** from JCLU Number 3, Spring 1992 at 1 [hereinafter JCLU].
202. Hashiba, *supra* note at 20.
203. *Id.* at 20.
204. *Id.* at 21.
205. *Id.* at 21.
206. *Id.* at 21. See JCLU, *supra* note at 1, 2.
207. *Id.* at 15.
208. *Id.*
209. *Id.*
210. *Post War Settlements*, *supra* note at 68.
211. Hashiba, *supra* note at 22.
212. *Id.* at 22. opinion
213. 703 Hanrei Taimuzu 63 (1989). For a partial English translation, see 32 **The Japanese Ann. of Int'l L.** 125 (1989).
214. *Id.* at 125-6.
215. *Id.* at 139.
216. Karen Parker & Lyn Beth Neylon, *Jus Cogens: Compelling the Law of Human Rights*, 12 **Hastings Int'l & Comparative L. Rev.** 411, 447 (1989).
217. *Id.*
218. *Id.* at 58.
219. *Id.* at 58-9.
220. *Id.* at 59.
221. *Id.*

222. The Korean American Coalition on Jungshindae has had a petition campaign urging that Japan should not be admitted into the United Nations Security Council until properly addressing the issue of compensation for the former comfort women. Korean American Coalition on Jungshindae, *An Appeal to the United Nations*. An advocate for the Filipino women has made this demand as well. Sajor, *supra* note at 11. For every Wednesday since January 8, 1992, 20-30 persons demonstrate in front of the Japanese Embassy in Seoul demanding resolution of the compensation issue. Korean Council for the Woment Drafted for Military Sexual Slavery by Japan, *International Activities Against Military Sexual Slavery*, Vol. 2, No. 1 at 5.

Additionally, a group of twenty-four United States Congressmen and women sent a letter to Prime Minister Morihiro Hosokawa urging that "the Japanese Government . . . take additional steps to ensure justice for women compelled to work as prostitutes in the military brothels." The letter urged cooperation with the United Nation special rapporteur and underscored that the Japanese government was presently facing a situation similar to that of the United States government's payment of compensation to Japanese-Americans interned during World War II. Letter to Prime Minister Morihiro Hosokawa, November 3, 1993.

223. However, frankly speaking, the author remains dubious that the Japanese judiciary will choose this groundbreaking approach. Moreover, assuming a lower court were to hold for the plaintiffs, the likelihood that the appellate courts would overrule such a courageous opinion is high. *See supra* notes and accompanying text.

224. One advocate for the former Filipino comfort women candidly recognizes the mountain these plaintiffs must climb in order to prevail. Along with noting that the legal processes could take 20 years she also concludes: "We know of no precedent where any plaintiff won in Japanese court by invoking international human rights law. Therefore, the Japanese domestic court procedures are not effective remedies for victims." Indai Lourdes Sajor, *Oral statement of Third World Movement Against the Exploitation of Women*, United Nations Commission on Human Rights, Fiftieth Session, Agenda item 17, Report on the Sub-Commission on Prevention of Discrimination and Protection of Minorities at 2. Thus, she concludes that, "For these reasons, the UN system should be improved to address this international problem, in particular, to achieve punishment of responsible persons and reparations for victims expeditiously." *Id.* The Economic and Social Council Resolution 1503 (XLVIII), 48 U.N. ESCOR (No.1A) at 8, U.N. Doc. E/4832/Add. 1 (1970) authorizes complaints by individuals who have evidence of a "consistne pattern of gross and reliably attested violations of human rights and fundamental freedoms." Pursuant to this resolution a number of public interest groups have filed a petition on behalf of the former Filipina comfort women. A Petition Filed with the United Nations Commission on Human Rights Pursuant to Resolution 1503, *Filipina Victims of Military Sexual Slavery During World War II v. The Government of Japan*, Oct. 26, 1993. They petition the U.N. to take action because "there is no prospect of swift and effective remedy within the framework of the Japanese domestic legal system." *Id.* at 21 (quoting Statemetn fo International Educational Development to the Sub-Commission on Prevention and Protection of Minorities Working Group on Contemporary Forms of Slavery, Seventh Session, May 4-13, 1992).

225. Rape as a weapon of war is well-documented. Wing & Merchan, *supra* note , at 6.

226. See Meron, *supra* note at ; Meron, *supra* note at .
227. See, e.g., Khushalani, **Dignity and Honour of Women as Basic and Fundamental Human Rights** 63-4 (1982); Charlesworth, Chinkin, and Wright, *Feminist Approaches to International Law*, 85 A.J.I.L. 613, 615-29 (1991); Holt, *Women's Rights and International Law: The Struggle for Recognition and Enforcement*, 1 **Colum. J. Gender & L.** 117 (1991); A. Fraser, *Women in International Law*, 11 **Harv. Women's Law Journal** 171-75 (1988).
228. *Compensation Report*, *supra* note at 49.
229. See *supra* note .
230. Note, *Japan's Equal Employment Opportunity Law: An Alternate Approach to Social Change*, 89 **Colum. L.Rev.** 604, 614-16.
231. *Id.* at 614. One former United States trade negotiator, Merit Janow, has characterized Japan in the following manner: "*Gaiatsu ga nai to, hatarakanai kuni*" (*A country that cannot run without foreign pressure*). *Shūkan Bun?* Aug. 5, 1993, at 51.
232. Takagi, *supra* note at 17.
233. Upham, *supra* note at 19; 144-165.
234. See *supra* notes and accompanying text.
235. Herbert Broom, **Legal Maxims** 118 (1969).
236. As of this writing, it appears there is reason to believe that the International War Crimes Tribunal set up by the UN Security Council may soon be disbanded, thereby failing to reinforce the norm that mass rape is an intolerable violation of international law. Sadruddin Aga Khan, *War Crimes without Punishment*, **N.Y. Times**, Feb. 8, 1994, at A23. In light of this development, one Japanese author's recommendation that a special tribunal be set up to deal with the comfort women litigants' claims becomes less attractive. Totsuka, *supra* note at 23.

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