

REPORT ON POST WAR
RESPONSIBILITY OF JAPAN FOR
REPARATION AND COMPENSATION

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By JAPAN CIVIL LIBERTIES UNION


JCLU 社団法人自由人権協会

REPORT ON POST WAR RESPONSIBILITY OF JAPAN
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This English report is prepared to set forth an analysis from human rights point of view on the problems concerning military comfort women, soldiers or civilian employees of the former Japanese armed forces, coming from the former Japanese colonies (Taiwan, Korea), for whom the Japanese government has not yet discharged its post war responsibility for reparation and compensation.

JCLU is a group of citizens formed in 1947 for the purpose of protection and enhancement of the human rights of people, regardless of his or her belief, religion or political position. JCLU is as a member of International Commission of Jurist (ICJ) and International League for Human Rights (ICHR), both are very influential non-governmental organizations, engaged actively in not only for improvement of the domestic situation of human rights in Japan but also for enhancement of international human rights.

How and to what extent the Japanese government fulfill its post war responsibility is an essential touchstone for Japan to rectify its discrimination against ex-colonial countries and is to be viewed as one of critical human rights issues of international concern, for the dissemination of which this English report is published.

Articles contained in this report are prepared by members of JCLU, active in the post-war responsibility issues, and edited by the JCLU sub-committee on Post-War Responsibility.

The following authors are responsible for their respective articles;

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by Kenichi TAKAGI (Attorney-at-law)

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April, 1993

Respectfully submitted by

Japan Civil Liberties Union
Takao YAMADA
Prof. Yokohama National Univ.
Representative Director of JCLU

Takehiro UCHIDA
Attorney-at-law
Representative Director of JCLU

CHAPTER 1 INTRODUCTION

By Hiroshi TANAKA
Prof. Hitotsubashi Univ.

REVIEW OF POST WAR COMPENSATION IN JAPAN

Colonial administration and the policy of aggression by Japan over Asian countries ceased to operate at the time of the acceptance of the Potsdam Declaration. The Cairo Declaration, quoted by the Potsdam Declaration, stated, in November 1943, that Japan should be expelled from all other regions occupied by its force and greediness, and that aforesaid three powers (the USA, China and the Great Britain), by taking notice of the slavery situation of the Korean people, have determined that Korea become free and independent.

As an introductory remark, this article reviews whether or how the Japanese government dealt with the matters left after the war as the result of its previous colonial administration and aggression policy and issues underlying such matters.

1. Abolishment of Soldier's Pensions under the occupation by the General Headquarters of the Allied Forces (GHQ)

One of various reforms demanded by GHQ against the Japanese government was the reform of the monetary aid system to victims of war, including the pension for ex-soldiers. In November 1945 GHQ pointed out, in the Memorandum, that it is not agreeable to have a system which treats ex-soldiers or their family more favorably than those in need for aid in general. Despite the resistance by the government, in February 1946, Soldier's Pension, except the pension for those seriously invalid, was repealed. Ex-soldiers became entitled to welfare benefit only under the social security system.

The Potsdam Declaration also provided "All war criminals who treated cruelly with prisoners of war of our allies shall be punished severely." (Paragraph 11).

In connection with criminal liabilities of the war leaders 228 persons were indicted with charges of A class war criminals. In November 1948 ex-Prime Minister Hideki Tojo and other six defendants were sentenced to death by

hanging, and all other defendants were found guilty, except that two died of illness and one was found insane during the trial and were dismissed. The trials of A class war criminals were held in Tokyo. Military courts set up in various Asian cities tried 5700 B or C Classes war criminals and sentenced 984 defendants to death by hanging.

However, in the East-West tension after the end of the Second World War when the Korean War outbreak, the United States initiated the policy of the early peace settlement with Japan and the peace conference in San Francisco was held in September 1951. However, China and Korea, both were the most serious victims of the Japanese aggressions, were not invited to participate the conference.

2. Effectuation of the peace treaty with Japan and the revival of the aid system

On April 28, 1952 upon the effectuation of the peace treaty with Japan, Japan regained its sovereign independence. Said treaty dealt with the "War Crime" in Article 11 and the "Compensation" in Article 14. As to the "War Crime" it provided "Japan should accept judgements rendered by the International Military Tribunal for the Far East and other war crime tribunals of the Allied Powers sitting in or outside Japan." As to the "Compensation" provided was "it is recognized that Japan should pay reparations to the Allied Powers for damage and sufferings caused by it during the war. It is, however, also recognized that should Japan maintain economics enabling its existence, the resources of Japan is currently not enough to pay the full reparations for said damage and sufferings.

As a consequence, all compensation issue became subject to bilateral negotiations. As stated previously, China, the most serious victim country, was not invited to the San Francisco peace conference. The Japanese government, pursuant to the directions by the United States, before the effectuation of the peace treaty with Japan, executed the "Japan-China Peace Treaty" with the government of the Nationalist Party which occupied Taiwan, which became effective on August 5, 1952. Upon the execution of said treaty the Taiwan government released Japan from the responsibility for compensation (Protocol of said Treaty, Article 1(b)). Other matters concerning the compensation will be discussed later.

Upon revival of the sovereign independence the Japanese government initiated a new policy to resume the aid system for the war invalids and the bereaved families of the war dead, which was once suspended by the order of GHQ.

The first among them was the enactment of the Law Aiding the War Invalids, the Bereaved Families of the War Dead Etc. (Law 127, 1952, hereinafter the Aid Law) on April 30, 1952, two days after the revival of the sovereign independence. The purpose of said law is to "aid the wounded or the family of the dead soldiers or civilians in the light of the spirit of national redress" (Article 1). This provision is interpreted to mean that the national redress for the sufferings caused by the war for which the government is responsible should be accomplished by the government.

In 1953, the following year, the military pension which was suspended by the order of the GHQ, was also resumed (Law 155, 1953). Though the former Japanese forces were completely dissolved, the ranking of the former military systems was restored in the revived military pension plan and the amounts of the pensions were set according to the pecking orders of the ranking. There have been a total of 13 statutes enacted concerning aid for the former soldiers and civilian employees and their families since the enactment of the Aid Law in 1952 through that of the Law of Special Fund for Prayer for World Peace (Law 66, 1988), under which approximately 2 trillion yen has been expended out of the national budget each year. The persons qualified for the receipt of the payment could be categorized into two types. One is the person who was employed by the government, such as soldiers or civilian employees of the former Japanese forces, etc. Persons in this type include 2 million war dead. The other is the person who used to reside in ex-Japanese colonies, persons either repatriated or not yet repatriated. About 3.5 million civilian repatriated persons are classified into this type. Accordingly, civilians who used to reside in home land Japan are excluded from and outside the aid system. As contrast, it is noted that the former West Germany provides with the aid equally between the military and civilian persons under the Federal Aid Law (enacted in 1953). Further, in the application of various aid laws of Japan the fact that one is convicted as war criminal has not been taken into account. Apparently such application is a direct conflict with the provision of Article 11 of the peace treaty that Japan should accept the judgements rendered by the war crime tribunals.

excluding foreigners from the aid has been closely related to Japanese attitude toward the post war settlement with foreign countries.

To understand fully the Japanese attitude towards the discharge of the post responsibility, it is helpful to have the overview of foreign payment as provided in the peace treaty with Japan, such as reparation (Article 14), compensation for assets of the Allied Powers (Article 15), relief for prisoners of the war of the Allied Powers (Article 16), compensation for the debts owed to the Allied Powers (Article 18). Though, as discussed previously, China (Taiwan) waved its claims for compensation against Japan, Japan paid the war compensation to four Asian countries, Burma, Philippines, Indonesia and Vietnam (South), in the total of 364,348,000,000 yen. Japan paid the quasi-compensation (free aid instead of compensation) in the amount of 271,167,600,000 yen, including 108,000,000,000 yen paid to the Republic of Korea. Additionally, payments in the total amount of 21,070,000,000 yen, including the payment under Article 14, were made to settle various claims. The sum of the above three types of payments is 656,586,400,000 yen. If the loss of assets located abroad in the amount of 355,220,000,000 yen and the interim compensation of 165,160,000 yen which were made under the occupation were added to the above sum, the total of payments reaches merely 1,011,971,560,000 yen.

On the other hand the total payment made under the above 13 laws and the two special laws for victims by the atomic bombs from 1952 through 1990 reached approximately 31,000,000,000,000 yen. The another significant difference between the foreign payment of about 1,000,000,000,000 and the domestic payment of about 31,000,000,000,000 lies in the contrast that while all the domestic payments were made directly to individuals, almost all the foreign payments were made for the benefit to the society in general and not directly received by individuals.

One could view that the distinctive feature of the post war compensation system of Japan consists in the contrasts that the bigger domestic payment to individuals and the smaller foreign payment to the society in general. As a result the symbolic words "No More Hiroshima" reflected the Japanese conscious that it was the Japanese who suffered seriously from the war.

The case of the compensation for the Taiwanese ex-Japanese soldiers posed a kind of unique question outside of the post war compensation system as explained to above.

disqualified from both Japanese and Korean aids. To date at least three war-injured ex-soldiers who are ROK nationals residing in Japan have filed suits for compensations with courts in Japan. In another case one ROK nationals residing in Japan who was detained by the USSR with Japanese after the end of the war and returned to Japan in 1953, but has been denied the reward money of 100,000 yen because of his nationality. The Japan Federation of Bar Associations, with which the petition for human rights relief was filed, after investigation of the case, recommended in May 1991 that the measure to rectify discrimination should be taken by the Japanese government because the nationality clause is considered unreasonable discrimination. The government have ignored the recommendation to date.

4. Conclusion

After the revival of the sovereign independence Japan enacted a number of aid laws providing the aid to victims of the war and have paid to a wide variety of persons war compensations. However, all of these laws exclude victims of foreign nationals, including those coming from ex-Japanese colonies from the benefit under the laws because of the nationality clause contained in each law. This practice of exclusion was originated from the Pension Law (Law 48, 1923). Said law setting forth the payment of pensions to the military as well as civilian officials, provided that the person who loses the Japanese nationality should lose the right to receive the pension. During the occupation the pension to the military was suspended once, but later resumed after the revival of the sovereign independence. The pension Law have existed before and after the war. The policy concerning foreigners underlying the Pension Law were succeeded by the series of the aid laws enacted after the war.

As was above explained, the series of the aid laws were designed to provide with aid to the persons who used to be employed by the government. However, the nationality clause was incorporated by not only those aid laws but also laws concerning social security system. For example, the three law consisting of National Pension Law and the laws concerning a children's allowance exclude from their benefits all foreigners, including those with permanent residence. As a momentum with the acceptance of Indochina refugees, Japan ratified the International Covenants on Human Rights and Convention relating to the Status of Refugees (1979 and 1982, respectively) and eventually

Though the detail of the case will be discussed in the article on the case, one would say that the case is of great interest. As a result of various events and procedures, a special law was enacted in Japan which is the first provision with compensation to the individual residing abroad. Further, the compensation could be deemed to have the features of both the domestic payment and the foreign payments. To approximately 30,000 Taiwanese war dead (and serious invalids) of 2,000,000 yen per a person, the total of 60,000,000,000 yen were funded for payment. It should be pointed out that this figure of 2,000,000 yen per a person is still too small as compared to the payment to the Japanese.

According to the report prepared by the Ministry of Foreign Affairs entitled "Outline of the systems of US and European countries respecting the foreigners dead or injured because of the war." (1982), all countries, it investigated, the US, the Great Britain, France, Italy and then West Germany have paid to foreigner who used to serve for respective forces pensions or lump-sum grants in the same or similar amount as paid to its nationals. It is notable that if you add Canada and Japan to these five countries, you obtain the participants in the summit meetings. The US and Canada expressed the apologies and provided with compensation for the Japanese origins taken to the concentration camps during the war regardless of their nationality or residence. The Human Rights Committee adopted the opinion in response to the report submitted by Senegalese ex-French soldiers that because the payment of pension is based on the military services rendered by the soldier, the change in the nationality itself can not justify the different treatment of foreign ex-soldiers and resolved that the measure taken by France to fix the amount paid to Senegalese was in violation of Article 26 of the Convention. The nationality clause contained in each aid law of Japan does exclude, of course, Koreans residing in Japan from the benefit. As between Japan and the Republic of Korea, in 1965 the Agreement on the Settlement of Problems Concerning Property and Claims and On Economic Cooperation Between Japan and the Republic of Korea was executed, and 300,000,000 US dollars were paid by Japan to the Republic of Korea as free aid. Said Agreement provides that any disputes concerning claims is completely and finally settled. However, it provides also that it does not affect individual Koreans living in Japan. Korean law of application for civilian claims against Japan, relying on said provision, excludes Koreans residing in Japan from the qualifications for the application. Therefore, the citizens of the Republic of Korea residing in Japan is unreasonably

accepted the principle of equality regardless of nationalities by repealing the nationality clauses contained in the three laws concerning social security system.

In a strange order, the series of the aid laws have maintained the nationality clause but in the social security system designed to aid the members of the community the foreigner is entitled to the benefit. This implies that unless the abolishment of the nationality clause is accomplished we are not fully prepared to seek the "Settlement and Co-existence."

It is widely known that the President of then West Germany, Weizsacker, stated in the forty anniversary of the end of the war, 1985, "persons who close their eyes on the past cannot watch the present." Just three months after said statement Japanese Prime Minister Nakasone made the official worship at the Yasukuni Shrine enshrining A class war criminals, for the first time as a prime minister. That was echoed by strong oppositions from Asian countries which have resulted the self-imposed restraints from visiting to the Yasukuni Shrine on the Prime Minister, who presides the cabinet and on the Minister of Foreign Affairs, who administers foreign relationship. This practice of self-imposed restraint has been followed since then to date.

The reality of Japan concerning the post war reparation and compensation reflects not only the systematic violation of the human rights but also the distorted historical sense of overcoming the past. The historical sense of Japan is so distorted that a great number of claims for investigation and compensation as to the military comfort women have been raised and that the proposal for the civilian claims against Japan was made, even before the National Congress of Chinese People.

Facing with the number of suits to seek post war compensation for Asian residents, the government responds by saying that it should watch the judicial process while the judicial courts have tried to avoid resolutions by saying that such matters are to be subject to legislature's decisions. We should urge that this vicious cycle be terminated immediately.

By Kenichi TAKAGI
Attorney-at-law

MILITARY COMFORT WOMEN

1. An Outline of System of Military Comfort Women

The Japanese military authority was trying to introduce the military comfort women system about 1932, when the invention into China was commenced.

At the inception comfort women consisted mainly of such Japanese women as prostitutes, geisha and similar type of women. However, the number of assignment of women other than Japanese origin to the military comfort service had been gradually increased. Particularly, the women of Korean origin outnumbered those of Chinese origin or coming from other occupied areas. According to a report by ex-military doctor, Tetsuo ASO, there were comfort women in Shanghai in 1938 at the ratio of 80 of Korean origin per 20 Japanese women. Said report stated "Accordingly, the comfort women sent to the war front are to be younger age" and expressed its opinion that more women of Korean origin were to be sent as "gifts to soldiers of the Imperial Army." It is said that the total number of comfort women reached 200,000.

Women were brought to comfort service by various means. Many of them were gathered by traders using false promises. Traders contracted by the military deceived young women by soliciting for a job at a Japanese factory with high salaries and sent them to the military. If the truth had been found out, they would have committed suicide or escaped because of the strong sense of chasty of Korean women. Such traders engaged in such unlawful activities as the assignment of women to the comfort service in the guise of administrative action by the Governor-General of Korea or gathering women by forces of the police or military. There were cases where Dutch civilian women in a concentration camp were forcefully assigned to the comfort services.

Comfort women were stationed in association with the Japanese forces stationed in China and throughout Asia-Pacific regions. The Japanese forces administered and

managed the soldiers by utilizing the comfort services of these women, which were the only comfort given to soldiers with no return home or other off-duty activities. Comfort women were sent by military transportation (ship, train, truck and so on) and confined in civilian houses seized or facility built by the military and prohibited from going out under strict guard. The military authority adopted strict regulations concerning the comfort services for the receipt by soldiers. The regulations provided time sharing schedule, such as day time for common soldiers, evening for officers, and night through morning for high-ranking officers with the time and the fee for a unit service. Comfort women were considered as common properties for satisfaction of sexual desire through which the idea of common ownership of the military is understood "by soldiers." They were forced to have sexual intercourses with tens to a hundred or more soldiers and officers per one woman in a day. Many of them were infected with venereal or lung diseases and left neglected once suffered from the illness.

The comfort women were confined in military facilities and treated as civilian-employees of the military forces. Their food, clothing, shelter and all other daily activities were under strict control by the military, and they were sometimes forced to take part in combat with soldiers and were at the services for nursing wounded soldiers, burning dead bodies and gathering persons' ashes.

When the progress of the war became worse, the comfort women at the mercy of the military had to meet the tragic fates. They were massacred or forced to commit suicide because that they were treated like expendables after use and deemed merely as drags on the soldiers. The mortality rate of comfort women, including the rate of death from diseases, were said to be very high. Even if she was fortunate enough to survive such fatal situation, after the war she couldn't return home nor reunite her family and had to endure lonely and severe life.

2. The Attitude of the Japanese Government toward the Comfort Women

Post war Japan has maintained an indifferent attitude toward the comfort women. In May 1990, the government stated, at the Diet, that the comfort women were taken to the military by civilian traders without involvement by the Japanese forces. In January 1992 in the library of the Defense Agency documents were found to show that the

military had supervised and controlled facilities for comfort services and gathering comfort women. Because of said documents the Japanese government couldn't help maintain its previous denial of its responsibility and admitted its involvement with the military comfort service system, for the first time. In the same month at the time of the visit to ROK, Prime Minister Miyazawa said "I should express my sincere apology and regret." The Japanese government, however, has been reluctant in fulfilment of its obligation for the compensation by arguing that the compensation issue has been settled by the Japan-Republic of Korea Treaty and now awaiting the judicial decision on the pending suits.

On July 6, 1992, the government released, for the first time, relevant materials held at the government agencies, which showed, however, only "Involvement of the government" and were not enough to reveal in all the detail of the military comfort service women.

It is the established international law that at the time of the war the systematic persecution by a government of a race or group of people constitutes Crimes against Humanity. The conduct by the Japanese forces to force women of Korean origin or other than Japanese to serve as the military comfort women should be considered such crimes against humanity because of the discrimination against races and women. The government officers and other persons involved with the military comfort service system should have been subjected to criminal sanctions by a judicial court like Nuremberg trials and the compensation for the damages suffered by the victims should have been paid. The government has admitted that the Japan-Republic of Korea Treaty has not made null or void the right of individual victims to demand the compensation. Further, since the comfort women were forced to engage in the comfort service as civilian employees of the Japanese forces, they should be given the monetary aid as the Japanese ex-civilian employees are entitled to pursuant to the Japanese laws concerning monetary act. However, they have been denied the aid because of the clause in the acts of exclusion of foreigners from the aid. Such exclusion of foreigners should clearly be unlawful discrimination against foreigners.

We should call the Japanese government and citizens to initiate immediately an appropriate measure to compensate for the lives endured by those ex-comfort women.

CHAPTER 3 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)

By Shun HASHIBA
 Attorney-at-law

1. Points at issue

During World War II and the Sino-Japanese War starting prior to it, the then Japanese governments mobilized a great many non-Japanese people residing in the Korean Peninsula, Taiwan, etc. which Japan colonized, forcing them to serve the Japanese Armed Forces as Japanese soldiers and civilian employees in order to carry out the wars. The use of such colonials by the Japanese government varied greatly from such regular soldiers and civilian employees to workers in war industries or even to comfort women the case of whom has finally come to light just recently.

The colonials working for Japan in those days as such soldiers and civilians had Japanese nationality and joined the wars just as their Japanese counterparts did, whether they liked it or not. The wars produced heavy casualties among them. According to the statistics of the Japanese government (the Ministry of Health and Welfare), the Taiwanese serving in the wars totalled about 207,000, about 30,000 of which died, while the number of South and North Korean deaths was about 22,000 out of an approximate total of 242,000 brethren who served. After the end of World War II, the Taiwanese and Korean war dead and wounded and their families lost their Japanese nationality without regard to their own wills at the same time when Korea and Taiwan became independent from Japan.

Survivors who lost their husbands or sons as bread winners of their families were forced to live in poverty. Some widows could earn a bare living by prostitution. Even physically handicapped ex-soldiers had to work hard to get a living. Reportedly, among such demobilized soldiers, there was a handless war victim who worked in a field with a hoe tied fast to the end of his arm. It is apparent that the Japanese government is responsible to these people for their poverty-stricken lives. Despite this, in actual fact, the Japanese government has left them abandoned and neglected to make due restitution to them ever since the wars ended.

However, in striking contrast, since 1952 in which Japan completed its postwar recovery, the Japanese government has continued to make as full compensation as possible within its budget to the Japanese war casualties and their families each year. Such compensation measures have never been applied to the non-Japanese war victims residing in Japan's former colonies simply because they do not have Japanese nationality.

The story does not end there. In the wartime, it was imperative that all soldiers and civilian employees of the Japanese Armed Forces deposit their salaries in military post offices. After the end of the wars, however, the Japanese government did not permit any non-Japanese depositors to withdraw their such deposits. Because of this, the non-Japanese depositors could not use their own savings, or their remunerations for their military services offered, when they desperately needed it.

It can be said that, even nowadays, the Japanese government and Japanese people maintain a deep-rooted unreasonable sense of discrimination against the peoples of Asia and of the former Japanese colonies including South and North Korea, Taiwan and the People's Republic of China (PROC), just as they did in the prewar days and in the wartime. Perhaps the Japanese government's treatment of the non-Japanese people as stated above resulted from such sense of discrimination against Asians and other Third World nations.

This problem of the Japanese government's discrimination against the non-Japanese war victims residing in its former colonies is also persisting. It has remained difficult today for them and their families to make a living, and the Japanese government has not yet stopped discriminating between the Japanese war victims and the non-Japanese war victims in terms of compensation although such discrimination breaches the international laws on human rights. The non-Japanese war victims bear a deep indignation with the Japanese government. Even now, many of the Taiwanese and South and North Koreans, etc. suffering from that discrimination still desire the Japanese government to move to settle this compensation problem. Also, many lawsuits have been instituted against the Japanese government. In light of this situation, the Japanese government should promptly correct its existing compensation policy to the one not violating human rights and justice and, then, apologize to the non-Japanese people involved for having left them abandoned these many years without making adequate restitution and terminate the discrimination against them.

2. Japanese compensation plans for war casualties

(1) Prewar period

In prewar Japan, there existed various compensation plans for soldiers and civilian employees of the Japanese Armed Forces under which the government granted lump-sum payments or pensions to the wounded and the bereaved families of the dead.

Soldiers were granted pensions or compensation moneys by the government under the "Pension Law". Civilian employees of the armed forces working within the nation joined the Army's or Navy's mutual benefit association the members of which were paid pensions, etc. by the associations in case of injury or death in line of duty. However, such civilian employees working abroad were ineligible for membership in the associations, and, accordingly, there was no compensation plan for them. Under these circumstances, World War II ended in Japan's defeat in 1945.

(2) Postwar period

In February 1946, the Japanese government, suspended payment of soldier's pensions by order of the General Headquarters of the Allied Forces (GHQ). However, in August 1953, the government resumed payment of soldier's pensions at the request of the people concerned with the former Japanese Armed Forces and up to the present. In the case of ex-Army or ex-Navy civilian employees in the domestic service, their right to receive payment of pensions from the mutual benefit associations they joined were transferred to the Government Officials Mutual Benefit Association organized after the end of the war in accordance with the "Law Concerning Special Measures for Pensioners of Mutual Benefit Associations, etc. Under the Old Cabinet Order" which was enacted in 1950 (hereinafter the "special Measures Law") was newly laid down in 1952 and they also became entitled to receive pensions, etc. from the Japanese government.

The following is a summary of Japan's postwar compensation plans for the dead and wounded soldiers or civilians formulated in and after August 1953 and currently still in operation:

- i. To soldiers, the Japanese government pays compensation moneys under the Pension Law:

- ii. To domestic-service civilians, the Government Officials Mutual Benefit Association pays compensation moneys under the Special Measures Law:
- iii. To overseas-service civilians, the Japanese government pays compensation moneys under the Aid Law.

However, the amounts of such compensation moneys under these three different plans are substantially the same.

Taking up the cases of war widows whose husbands were soldiers and those whose husbands were overseas-services civilians as an example, the government has been paying both of them the same amount of pensions each year since 1952; as "allowance in aid of duty" under the Pension Law for the former and as "aid pension" under the Aid Law for the latter. The amounts of these pensions have been increased each year, arriving at 1,770 thousand yen in 1992.

Also, the government has been paying the same amount of pensions to both invalid soldiers and invalid civilians each year since 1952; for the soldiers, as "invalid soldier's pension" under the Pension Law and for the civilians, as "disability pension" under the Aid Law. However, the amounts of these pensions vary according to the degree of invalidity and are also raised each year. Pensions granted to suffers from the medium-degree disability (for instance, the loss of an arm), called "Paragraph 4 injury," has amounted to 2,830 thousand yen in 1992. At present, the accumulated total amount of such pensions paid to each pensioner for the past 41 years from 1952 to 1992 has reached about 24 million yen for a bereaved wife of a dead soldier, and about 40 million yen for a soldier or civilian suffering from the Paragraph 4 injury. (The annual total amount of pensions granted to the Japanese pensioners and the total amount of an annual budget for the pension plans are as described in the attached "List of Amounts of Pensions Paid to War Dead and War Wounded.")

Article 9 of the Pension Law stipulates that "a pensioner's right to receive pensions hereunder shall cease to exist when he has lost his Japanese nationality." Further, the Aid Law states in Paragraph 2 of the Supplementary Provisions to it that "for the time being, the Law shall not apply to the persons who are not covered by the Family Registration Law" (that is, the residents of the former Japanese colonies). Because of these Nationality Provisions, neither of the two laws is applicable to the ex-Japanese colonials.

Only the Special Measures Law is applicable to the colonials since it contains no such Nationality Provisions in it. Actually, there are some who are paid pensions by the Japanese government under the law. However, this Special Measures Law is applied only to a very limited number of the ex-colonial war victims because most of them were soldiers and civilians who worked overseas for the Japanese Armed Forces.

3. Japanese government's infringement on human rights of residents of the former Japanese colonies in terms of compensation measures

(1) Compensation measures

In the past, the Japanese government has intended to settle the problem of restitution to the non-Japanese war dead and wounded residing in the former Japanese colonies by means of bilateral arrangements with the governments of their countries.

Regarding restitution to South Korean war victims, the Japanese government paid their government a total of 500 million dollars in economic assistance funds when Japan restored its diplomatic relations with their nation in 1965; reportedly, it was understood between the two governments that the funds included such restitution. In or after 1975, the Korean government paid 300 thousand won (approximately 190 thousand yen at the then yen-won conversion rate) to the Korean bereaved families (excluding, however, those residing in Japan) of the war dead who served the former Japanese Armed Forces as soldiers or civilian employees and died before August 15, 1945 (on which Japan surrendered). However, no payment was made of the wounded or the bereaved families of the dead.

Regarding restitution to Taiwanese war victims, it is provided in the latter part of Article 3 of the Sino-Japanese Peace Pact which Japan and the then Republic of China ("ROC") signed in 1952 that "the disposal of (Taiwanese) residents' claims (including credits) against Japan shall be a matter to be resolved by the special arrangement of the two governments". Therefore, the Japanese government intended to dispose this matter by bilateral arrangement just as in the case of South Korean victims.

However, subsequent various events prevented Japan and the ROC (Taiwan) from making such bilateral arrangement and, finally, it became totally impossible as the ROC-Japan diplomatic ties were cut off as a result of restoration of such ties between Japan and the People's Republic of China ("PROC") in 1972. Between 1987 and 1988 the Japanese government enacted a special law under which, in or after 1989, it paid the Taiwanese war dead or wounded and their surviving families a sum of 2 million yen for each dead or wounded as solarium or condolence money. However, the payees were limited to those residing in Taiwan and therefore, those residing in areas outside Taiwan including Japan were excluded. Further, the law only covers the Paragraph 4 Injury sufferers and the more seriously injured, thus not applying to the sufferers from any less serious injuries (such as loss of three fingers).

Regarding restitution to North Korean victims, because, as of July 1992, Japan has had no national intercourse with it since World War II ended, the two nations have never had a talk on this problem, and anything related to it has remained pending.

- (2) Discrimination against war victims residing in the former Japanese colonies and infringement on their human rights

As described above, there is a great difference between the Japanese war victims and the non-Japanese war victims in amount of compensation payment.

"Paragraph 4 Injury" sufferers, for example, if they are Japanese, have received an accumulated total of 40 million yen from the government as of 1992 as pensions paid each year from 1952 until 1992. From 1993 on, they will further receive 2,830 thousand yen or more each year as long as they are alive. On the other hand, the Japanese government left Taiwanese sufferers abandoned for over 40 years after the war and finally paid them only 2 million yen as one time payment just recently. It has paid no penny to South and North Korean sufferers so far.

As another example, the total amount of pensions the Japanese government paid to Japanese war widows each year during 1952-1992 has come to 24 million yen as of 1992. It will further pay them 1,770 thousand yen or more each year in the rest of their lifetime. However, it left Taiwanese war widows abandoned more than 40 years and paid them only 2 million yen quite recently. Moreover, the

payment was merely a one-time payment, and no additional payment will be made in the future. To the South Korean widows, The Korean government paid only 300 thousand won, or 190 thousand yen. 30 years after the war, No penny has been paid to their North Korean (Democratic People's Republic of Korea) counterparts until today.

As a result, in the case of non-Japanese war victims who were residents of the former Japanese colonies, no compensation was made or, if made, the amount of it was much smaller than that for the Japanese victims. In the wartime, they had Japanese nationality and battled as Japanese soldiers and civilian employees, being injured or dead just like their Japanese colleagues. Despite this, simply because they lost Japanese nationality without regard to their own wills after the war, they have been discriminated against since then. There is no reasonable cause for such discrimination. Unlike Japan, the U.S. and European countries do not discriminate so greatly against foreigners in similar cases by paying no compensation money to them or making such an extreme difference in amount of compensation between their peoples and the foreigners only because they do not have the citizenship of their nations.

In a case taken up by the Human Rights Committee (Case of Ibrahim Gaye and other vs. France under Notification No.196/1985), in which the amount of pensions paid to Senegalese retired soldiers who had served the French army before the independence of Senegal was smaller than that paid to French retired soldiers, the Committee adopted an opinion that this is in violation of Article 26 of the International Covenant on Civil and Political Right (The opinion was adopted in the 35th session of the Committee held on April 3, 1989.) According to this opinion, Japan's discrimination against non-Japanese war victims in terms of compensation, which is a similar case to that case, may automatically be interpreted as breaching Article 26 of the Covenants which Japan rectified in 1979.

Japan's such discrimination against the non-Japanese war victims is not over. Even today, it is still persisting as a grave and extensive infringement on human rights. It is also breaching the principle of equality under the law which principle is guaranteed by Article 7 of the Universal Declaration of Human Rights. The Japanese government should promptly apologize to all non-Japanese war victims and surviving families of the dead for having left them abandoned and discriminated against them in terms of compensation for many years after the war and then, make such compensation to them as is equal to the compensation made in the past to the Japanese war victims.

4. Taiwanese lawsuits for restitution

(1) Events leading up to lawsuits

The development of the problem on restitution to the Taiwanese war victims is as described in the attached List of Past Events. The case of Taiwanese war victims was different from the cases of South and North Koreans in that, after the war, Taiwan was placed under the control of the then Republic of China which was an enemy nation they attacked during the war for its suzerain, Japan. Therefore, the Taiwanese ex-Japanese soldiers, etc. were compelled to conceal that they had served the Japanese Armed Forces while suffering the poverty in the postwar period. Naturally, the ROC government did make compensation to the war dead or wounded of the nation and their surviving families, but not to the people who fought for its former enemy.

Accordingly, many of the Taiwanese war victims demanded repeatedly that the Japanese government make restitution to them in their poverty-stricken postwar days. However, its reply to their demand was always the same, saying that they should wait until the problem would be solved by the arrangement of the ROC government and the Japanese government pursuant to the Japan-ROC Peace Pact. Thus, the problem remained unsettled and, the, the possibility of making such arrangement ceased to exist upon the termination of the Pact in 1972.

In 1975, the Group Concerned about the Problem of restitution to Taiwanese ex-Japanese Soldiers (headed by Shigeki Miyazaki, a professor at Meiji University) was organized in Japan. Although the group has conducted various activities to have the Japanese government move to make restitution to the Taiwanese ex-Japanese soldiers since its organization, the government has, so far, not made any move toward restitution. Then, the group decided to take a legal action against it as a last resort. Immediately after receipt of request for cooperation from the group, the JCLU (Japan Civil Liberties Union) formed a group of supporters composed mainly of the Union's member lawyers and started to prepare for filing a lawsuit. In August 1977, the Union brought the case before the Tokyo District Court with the 13 Taiwanese war dead and wounded residing in Taiwan (or their surviving families) as plaintiffs and claimed payment of 5 million yen per person as compensation money from the Japanese government. The causes for this claim were as follows:

- i. A claim for compensation to a soldier or civilian employee of the armed forces of a nation for any death or injury incurred in a war lies inherently in the legal relationships between the nation and the dead or wounded soldier or civilian employee;
- ii. Pursuant to Article 29, Paragraph 3, of the Constitution of Japan ("Private property may be taken for public use upon just compensation therefor."), the war dead and wounded have the right of a claim for losses;
- iii. The discrimination between the Taiwanese war victims and the Japanese war victims violates Article 14, paragraph 1, of the Constitution ("All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex social status or family origin.") and Article 26 of the International Covenant on Civil and Political Right. Consequently, the Taiwanese war dead and wounded should have the equal right of a claim for compensation with their Japanese counterparts.

(2) Court decision and special Legislation

However, in February 1982 the Tokyo District Court (the court of first instance) passed a judgement against the plaintiffs and gave the following reasons for it.

Concerning the first cause for the claim specified above in i., such claim for compensation does not come to exist automatically without being based on the prewar laws concerned.

Concerning the second cause for the claim in ii., as the Constitution became effective as of May 1947, it is not applicable to the facts prior to its enforcement.

Concerning the third cause for the claim in iii., the problem on restitution to the non-Japanese war casualties has been made a matter to be resolved through bilateral diplomatic negotiations between our nation and the foreign nations concerned or by the legislative policy of our nation.

Promptly after this, the plaintiffs' side lodged an appeal against the judgement of the Tokyo District Court with the Tokyo High Court (the appellate court). However, in August 1985, the appellate court rejected the appeal.

The reasons for rejection in respect to the first and second causes for the claim were almost the same with the ones rendered by the court of first instance. The reason given concerning the third cause was that "as, by virtue of the Japan-ROC Peace Pact, it was intended that the problem of restitution be disposed by the bilateral special arrangement, the Nationality Provisions are not violating the principle of equality of all of the people under the law as set forth in the Constitution." However, the appellate court stated in the reasoning of its ruling that "it is natural that the Appellee (the Japanese Government) is responsible, in terms of moral justice, for the delay caused in making restitution or giving relief to the Appellants (plaintiffs)" and further stated that "it is apparent that the Appellants are actually placed in a very disadvantageous position compared with the Japanese people in an almost similar situation, and, in addition, more than 40 years have already passed since they and their brethren died or injured in the battlefields; therefore, it is specially added that the government authorities concerned are expected to make efforts to promptly remove their disadvantages by overcoming the foreseeable diplomatic, financial and legal difficulties, thus enhancing our nation's international credibility."

Motivated by the campaigns of citizen organizations, such as the Group Concerned about the Problem of Restitution to Taiwanese Ex-Japanese Soldiers and the JCLU, or the demand of the Dietmen interested in this problem, or by the Tokyo High Court's special statement added to its ruling, the Japanese government finally moved to make compensatory payment to the Taiwanese war dead or wounded and their surviving families, and the Diet framed a special law for that purpose in September 1987. Under the Special law, in 1989 the government started to make such payment of 2 million yen for each Taiwanese dead or wounded as "solarium" or "condolence money" through the Japanese Red Cross Society and the Taiwanese Red Cross Society. As of July 1992, a total of 28,209 Taiwanese war casualties (or their bereaved families) have already been approved as eligible for receipt of this payment. All of the 13 plaintiffs in the above-stated litigation also received it.

After their appeal filed against the judgement of the Tokyo District Court was rejected by the Tokyo High Court, they filed a further appeal with the Supreme Court against the decision of the court of second instance. However, the Supreme Court also dismissed it in April 1992. (Its ruling is attached to this report.) The reasons for dismissal rendered by the Supreme Court respecting the first and

second causes were almost the same with the ones given by the court of first instance and the court of second instance. The reason given on the third cause was that "as it was intended that the problem of restitution to the Taiwanese war casualties be solved by the arrangement of the Japanese government and the government of the Republic of China, there is reasonable grounds for excluding them from the scope of application of the Aid Law and the Pension Law; thus the Nationality Provisions are not violating the principle of equality of all of the people under the law as set forth in the Constitution." However, among the four judges involved in this case, Judge Itsuo Sonobe, virtually supported the assertion of the appellants' side and stated in his opinion supplementing the court ruling that "the Nationality provisions may be said to have been violating the principle in question since the time when it became impossible to make such violateral arrangement upon termination of the Sino-Japan Peace Pact."

Finally, the case turned out against the plaintiffs in Japan, and there remain no measures to take for them in Japan. However, the plaintiffs and other Taiwanese people concerned are still dissatisfied with the compensation money of only 2 million yen per person paid by the Japanese government. This constitutes a very great discrimination against them when compared with the Japanese people in a similar situation who have been paid more than 20 million yen for war widows and more than 40 million yen for war wounded (Paragraph 4 Injury Sufferers).

AMOUNTS OF PENSIONS PAID TO EX-SOLDIERS AND
CIVILIAN EMPLOYEES OF THE JAPANESE FORCE OF
WAR INVALIDS AND FAMILIES OF WAR DEAD WITH
JAPANESE NATIONALITY

Found by the lawyers representing the
case by Taiwanese Ex-soldiers seeking
compensations for the war death or
invalids

YEAR * Note 1	PENSION FOR SURVIVORS OF THE WAR DEAD PER PERSON ¥ * Note 2	PENSION FOR THE WAR INVALIDS OF FOURTH RANK OF INJURY PER PERSON ¥ * Note 3
1952	10.000	36.000
1953	25.200	48.000
1954	27.600	48.000
1955	27.600	48.000
1956	31.005	48.000
1957	35.245	48.000
1958	35.245	48.000
1959	43.123	77.000
1960	43.123	77.000
1961	51.000	77.000
1962	51.000	79.000
1963	61.000	107.000
1964	61.000	107.000
1965	71.000	107.000
1966	81.500	147.000
1967	92.000	147.000
1968	111.000	190.000
1969	119.000	199.000
1970	135.000	214.000

YEAR

PENSION FOR SURVIVORS
OF THE WAR DEAD PER
PERSONPENSION FOR THE WAR
INVALIDS OF FOURTH
RANK OF INJURY
PER PERSON

	¥	¥
1971	160.300	253.000
1972	173.700	274.000
1973	240.000	510.000
1974	296.100	629.000
1975	366.600	778.000
1976	506.000	1.075.000
1977	639.700	1.282.000
1978	770.000	1.481.000
1979	984.000	1.592.000
1980	1.025.000	1.746.000
1981	1.184.000	1.935.000
1982	1.236.000	1.995.000
1983	1.320.000	2.130.000
1984	1.346.000	2.175.000
1985	1.415.000	2.277.000
1986	1.440.000	2.302.000
1987	1.539.000	2.472.000
1988	1.561.400	2.503.000
1989	1.596.300	2.554.000
1990	1.645.400	2.630.000
1991	1.706.700	2.728.000
1992	1.772.400	2.833.000
Total	24.035.241	40.006.000

NOTES

1. The amount is in Japanese yen per the year concerned based on the figure effective as of April 1 of each year
2. The amount is the pension amount paid under the Aid Law to the ex-civilian employed by the Japanese force died in the war. Payment is made to widow of the war dead. This amount is the same as the amount paid to the widow of soldiers died in the war under the Pension Law.
3. The amount is the pension amount paid under the Aid Law to the invalids of the ex-civilian employed by the Japanese force in the war. This amount is the same as the amount paid to the invalids ex-soldiers under the Pension Law.
4. In the fiscal year of 1992 the general budget of the Japanese government was in the amount of 72,218,011 000,000 yen, out of which 1,547,516,000,000 yen was applied to the payment of pension to ex-soldiers and their survivors, etc.

LIST OF PAST EVENTS

Problem on restitution to dead or wounded
Taiwanese ex-Japanese soldiers

Year/month	Events
1895 April	Shimonoseki Treaty (peace treaty) with China (ch'ing) signed; China ceded Taiwan to Japan by the terms of the treaty. Japan begun to colonize Taiwan.
1938 May	Japanese Armed Forces ("JAF") sent Taiwanese as "gunpu" (military servants) into battle on the Chinese Continent for the first time; later, it often sent Taiwanese as "gunzoku" (civilian employees of the armed forces.)
1941 December	Pacific War begun. JAF sent Takasago Volunteer Corps composed of Taiwanese "gunzoku" to the South Sea area for various uses, such as "gunpu" and interpreter.
1942 April	Japanese government operated the special volunteer system for the Japanese Army in Taiwan.
1943 August	Japanese government operated the special volunteer system for the Japanese Navy in Taiwan.
1944 September	Japanese government operated the draft system in Taiwan.
1945 August	Japan surrendered. Republic of China (Nationalist China government) seized Taiwan.
1946 February	Japanese government suspended payment of soldier's pensions by order of General Headquarters of Allied Forces.
1950 December	Law Concerning Special Measures For Pensioners of Mutual Benefit Associations, Etc. Under Old Cabinet Order enacted.
1951 September	San Francisco Peace Treaty with Allied Forces (excluding USSR) signed. Japan renounced all rights to Taiwan by the terms of the Treaty.

payment of 5 million yen per person from the government.

- 1982 February Tokyo District Court gave a judgement against plaintiffs. Plaintiffs immediately filed an appeal for annulment of the judgement with Tokyo High Court.
- 1985 August Tokyo High Court rejected the appeal but urged the Japanese government to solve the problem in question by an its unusual statement added to its judgement. Plaintiffs brought the case to the Supreme Court.
- 1987 September Law Concerning Solatia, Etc. offered to Bereaved Families of Taiwanese War Dead, Etc. enacted. Restitution to Taiwanese ex-Japanese soldiers, for the first time, resolved to be made by Japanese government.
- 1989 January Japanese government started to pay 2 million yen per person as solatia, etc. to the bereaved families of the dead Taiwanese ex-Japanese soldiers and the wounded under the law.
- 1992 April Supreme Court dismissed plaintiffs' appeal.

By Seita YAMAMOTO
Attorney-at-law

COMPENSATION FOR KOREAN PEOPLE

1. Mobilization of Korean people to the war

- (1) Policy to establish war supply basis and to convert Korean people into Imperial subjects

Japan opened the Japan-China war in 1937 to begin its full-scale aggression into China. To continue this war of aggression, Japan took the policy to set up basis in Korea of supply, for the aggression into China. Japan strengthened to its exploitation of food and industrial resources in Korea and tried to utilize the human resources of Korean people for the performance of the war. To implement such policies Japan promoted the policy of conversion of Korean people into the Imperial subjects by depriving them of racial identity, subjecting them to the Japanese Imperialism and forcing them to be loyal to the Emperor. Korean people were forced to repeat the Oath of Imperial Subjects swearing royalty to the Emperor, to worship Shin-to Shrines built by their labor contribution in various places and to call themselves under the Japanese style of name.

(2) Mobilization of forced laborer

As an emergent measure during the war to require citizens in general to serve as laborers, Japan enacted in 1938 the National General Mobilization Law. In Korea the labor mobilization was started in October, 1939. For the initial one year, the mobilization was accomplished in the manner similar to the conscription system where the body checking and send-off party were conducted.

When the war against US begun in 1941, causing the labor resources stiffened the Governor General of the Korea and its regional officials started to take forcibly Korean people at young and middle ages, and eventually they took even those walking street or sleeping in the house by a

sudden attacks and brought them to warehouses of the regional office or rooms of schools for custody, and loaded them on buses or trucks in crowded spaces to take to mines in various regions in Korea, Japanese mainland, occupied areas in pacific region, and Sukhalin for forced labors without letting them know where to be brought.

According to various statistics the number of Koreans brought to the mainland of Japan in such manner reached at least 11,000,000. Among them 114,000 were forcibly employed by the Japanese Armed Forces as civilian employees and the rest of them were forced laborers at mines or military industries. Almost all of them were forced to serve like coal miners slave, lost their lives, or suffered incurable injury mentally or bodily. About 300,000 Koreans taken to Japan were died or injured among which 60,000 were died.

(3) Volunteer System

At the inception of the war, the Japanese Government did not want Korean to be armed. It, however, as a result of the unlimited development of the war, decided to mobilize young Koreans as military personnel. The Army in April 1938, and the Navy in August 1943, started the volunteer system to recruit young Koreans. In addition, from 1943, students at colleges or universities were mobilized as Korean Students Volunteer to the war.

The number of Korean youth recruited in these volunteer system from 1938 through 1943 reached 23,681. On the other hand the applicants under the volunteer system were reportedly to be 805,513 Koreans, which the Governor General of the Korea propagated as due to the patriotic loyalty of these Korean youth. However, the volunteer was not in reality, and those volunteer soldiers were forcibly gathered by the officials of regional authorities or policemen according to the quota allocated to each region. Korean students studying in the mainland Japan were threatened that if they did not apply for the volunteer they would be brought to coal mines or such other areas as laborers. The existence of the number of the applicants more than 800,000 was the proof that the applications by students were made forcibly.

(4) The conscription system

After the opening of the war against the US which required more human resources for military force, the

Japanese government decided to introduce the conscription system to start from the fiscal year of 1944 to make the mobilization of Korean youth to the war, and established in May 1942 the preparatory committee for the enforcement of the conscription system to prepare the introduction. Since then, military officials were assigned to station at each high school or school senior to it. Graduates from national elementary schools compulsory were trained at young training centers and students at the elementary school at special training centers where they were at military training and educated the Imperial philosophy. All of those students were forced to apply for the conscription. Following those preparations, in April 1944 the conscription systems became effective in Korea pursuant to which 209,279 Korean youth were taken to the war.

(5) The treatment of Korean soldiers and civilian employees of the Japanese Armed Forces

Because of the fear that the Korean youth mobilized by the Japanese Forces would become rebellious, Japanese force authorities assigned those Korean to military units consisting primarily of Japanese soldiers instead of organizing a unit consisting only of Koreans. Because of such assignment Korean soldiers were subjected to severe abuses or private sanctions resulting from racial violences against them in the Japanese military, where violences were not uncommon practices. In addition those civilian employees of the Japanese armed forces assigned to the southern regions and were in charge of supervision and guard of the Allies Force's people of war were sentenced to death as B class or C class war criminals. As a consequence among 400,000 Korean soldiers or civilian employees taken to the war about 140,000 did not return home.

2. Movements for demands for apologies and compensations

(1) Despite said serious injuries and being denied at all any compensation, ex-soldiers or civilian employees of Korean origin have not actualized the movement for apologies and compensation for a long period of time since the end of the war for the reasons as follows;

- i. Because of the limitation imposed by either the Republic of Korea or the Democratic People's Republic of Korea on freedom of speech and freedom of travel abroad it have been difficult for the ex-soldiers, or

ex-civilian employees to demand, at their own will, apologies and compensations against Japan.

- ii. The Japanese government took the position that the post war compensation issues with the Korea was settled by the 500,000,000 dollars payment with or without consideration made under the Korea-Japan Treaty. The lawyers in Japan did not present effectively counter argument against that position.
- iii. Organizations consisting of Korean people living in Japan had tendencies to avoid raising the compensation issues because they considered ex-soldiers as cooperators with the Japanese Imperialism.

(2) The environment restricting ex-Korean soldiers from standing up for the demands were changed when the Taiwanese ex-soldiers and civilian employees of the former Japanese armed forces succeeded in causing Japan to enact a special law providing a certain compensation to them despite their failure in judicial procedure to pursue the responsibility of Japanese government. In about 1988, citizens' movement of calling the Japanese government to take the post war responsibility by judicial remedies in Japan started. In response to the citizens' movements organizations of Korean survivors did file a suit against the Japanese government with the Tokyo District Court on October 29, 1990. This suit was brought by Korean ex-soldiers and civilian employees to seek apologies and compensation. The 22 plaintiffs of this case were ex-soldiers, ex-civilian employees of Japanese forces, forced laborers mobilized to the war and their survivors calling the Japanese government to make official apologies and the declaration of the existence of the obligation to the compensate. However, this suit was designed only to make the Japanese public know about the existence of the post war compensation issues and not represented by lawyers and not yet heard at that court procedures. But the filing of this case as was intended originally educated Japanese public to be aware of the post war compensation issue and the victims of Korean origin to know that there is a way to file a suit against the Japanese government. Within two years since then there have come about 20 cases brought by Koreans to seek post war compensations. The words "Post War Compensation" which had never been talked about became popular and appeared repeatedly in daily newspapers in Japan. This suit performed the function to open the Box of Pandora for the Japanese government reopening its post war responsibility.

(3) The followings are the list of cases filed in Japan in relation to the Korean ex-soldiers and civilian employees seeking compensations against the Japanese government:

- i. B and C class War Criminals Case
(filed on November 12, 1991)

Koreans living in Japan or in Korea who are ex-civilian employees of Japanese armed forces mobilized to the war and assigned to serve as a supervisor and guard of the Allies forces' people of the war and their survivors brought the suit against the Japanese government to seek the compensation and apologies because after the war they were convicted as war criminals.

- ii. Military Comfort Women Case
(filed on December 6, 1992)

This is the case brought by 35 Korean ex-soldiers, civilian employees, military comfort women and their survivors as plaintiffs to seek compensations.

- iii. Declaration of Entitlement to Workman's Compensation Case (filed on December 12, 1991)

Korean ex-soldiers, civilian employees, forced laborers and their survivors as 13 plaintiffs brought the case against the Japanese government to seek the declaration that they are entitled to workman's compensation and official apologies.

- iv. 1,000 Koreans in Kwang Ju Case
(filed on February 17, 1992)

1,269 war victims and their survivors living in city of Kwang Ju or its neighborhoods in Korea brought this case against the Japanese government to seek official apologies and payment in the amount of 100,000,000 to each plaintiff. About half of the plaintiffs are ex-soldiers, civilian employees of the military forces and their survivors.

- v. Koreans living in Japan demanding the application of the Aid Law for War Invalids (filed on August 14, 1992)

Two Koreans living in Japan who suffered injury while

serving as civilian employee of the Japanese forces filed suit against the Japanese government to rescind the administrative disposition which denied their petition to receive the pension for the injuries under the Aid Law for the War Invalids because of their nationality.

- vi. Ukishima-maru Case
(filed on August 25, 1992)

This case was brought by 15 victims and their survivors who are on the ship of Ukishimamaru operated by the Japanese Navy's for shipping Korean civilian employees and forced laborers for the return from Aomori prefecture to Korea after the World War II, which was sunk with number of passengers for unknown explosion.

- vii. Korean Civil Legal Aid Association against the Japanese Government Case (filed on August 28, 1992)

369 Plaintiffs were organized by a group of Korean lawyers which consists of the lawyers themselves and victims of the war and colonial administration brought a suit to seek the declaration that the various treaties relating to the merger of Korea are null and void and official apologies as well as compensations for damages.

- viii. Koreans detained in Siveria Case
(filed on November 9, 1992)

A Korean living in Kyoto who was conscripted as a Japanese soldier and detained by USSR army in Siveria after the end of the war filed the case to seek the declaration that he is entitled to receive the military pension and other claims.

(4) Future Development

As various demands for post war compensation including those brought by ex-soldiers and civilian employees are presented before the court, and the actuality in Germany as to its post war compensation became known to Japan, it has become acknowledged that the 500,000,000 US dollars given to Korea by Japan with or without consideration was too small to compensate for the post war compensation responsibilities from the international view point.

Further, strong doubt about the deprivation of the claim by Korean individual victims of the war by the Japan-Korea Treaty have been raised to the extent that it became difficult for the Japanese government to maintain the position that the post war responsibility for compensation was resolved upon the execution of the Japan-Korea Treaty.

Unfortunately, however, under the current Japanese legal system operated by the judicial courts, there is almost no possibility for the cases currently pending, except a few causes, to succeed in the compensation claims. As is experienced in the 1,000 Kwang Ju cases, the number of ex-soldiers and civilian employees of the Japanese forces is too large for the judicial procedures to determine individual status each by each.

We should strongly urge the Japanese government to make official apologies and compensations through appropriate legislative and administrative measures.

APPENDIX

SUPRME COURT DECISION

Rendered on April 28, 1992

Appellants: (Translation Omitted)
Attorneys-at-law: (Translation Omitted)

Apellee : The Country of Japan
Representative for the Appellee:
(Translation Omitted)
Designated attorneys-in-fact for the Appellee:
(Translation Omitted)

Court: The Third Petty Bench of the Supreme Court

Judges: Chief Judge : Shoichiro Sato
Judge : Hisao Sakagami
Judge : Itsuo Sonobe
Judge : Tsuneo Kabe

With respect to a ruling delivered by the Tokyo High Court ("Appellate Court") on August 26, 1985 regarding the Case No.611 (ne) of 1982 concerning a claim for damages lodged by the Appellants against the Appellee, the Appellants have filed an appeal for the annulment of the ruling as a whole with the Supreme Court ("Court").

Thereupon, the Court has ruled as set forth hereunder.

Text:

The Court hereby dismisses the Appeal. The expenses incurred shall be borne by the Appellants.

Reasons:

1. Regarding the first reason for the Appeal rendered by the attorneys for the Appellants, Hideo Akimoto, Nobuo Yamada, Shoichiro Niwayama, Satoshi Nishigori, Shun Hashiba, Isomi Suzuki, Tetsuji Iwakura and Shoji Yanagawa, or the assertion that the Appellee committed a breach of the obligation to give due consideration to the safety of the Appellants which obligation the Appellee was required to discharge under the employment agreements made with the Appellants:

In light of the facts found by the Appellate Court, its judgement as to this point at issue is acceptable as reasonable and has no illegality in it with respect thereto. On the other hand, the assertion of the attorneys for the Appellants is merely a criticism against the judgement from their own point of view and, therefore, the first reason for the Appeal is unacceptable.

2. Regarding the second reason for the Appeal, [or the assertion that the Appellants have the right to lodge a claim for restitution against the Appellee pursuant to Article 29, Paragraph 3, and Article 13, of the Constitution of Japan]:

In such a state of national emergency affecting the fate of the nation, all of its people were equally forced to make such sacrifices or suffer such damages as the Appellants have asserted. In addition, compensation therefor falls outside the purview of the Constitution of Japan ("Constitution"). Accordingly, it should be understood that the problem of such damages or sacrifices may be addressed merely from a political standpoint. This is apparent from the tenor of the Court's precedent (see Supreme Court Decision No.417 (0) of 1965 rendered by the Grand Bench on November 27, 1968; Minshu, Vol.22, No.12, P.2808). Therefore, the claim of the Appellants for restitution pursuant to the provisions of Article 29, Paragraph 3, etc., of the Constitution lacks the prerequisites therefor, and there is no need to judge the meaning, nature, etc. of those provisions of the Constitution. In consequence, the judgement of the Appellate Court on this point at issue is acceptable, and the second reason for Appeal is unacceptable.

3. Regarding the third reason for the Appeal, [or the assertion that the Appellee has violated the principle of equality of all of the people under the law as provided for in Article 14, of the Constitution]:

The gist of this assertion is as follows. Under the Law Aiding the War Invalids, the Bereaved Families of the War Dead, Etc. (Law No.127 of 1952; hereinafter referred to as the "Aid Law") effective as of April 30, 1952, the ex-soldiers or ex-civilian employees of the former Japanese armed forces, etc. and their surviving families are granted pensions, such as disability pension and survivor's pension. Also, in accordance with the Law Amending Partially the Pension Law (Law No.155 of 1953; hereinafter referred to as the "Amendment to the Pension Law") effective as of August 1, 1953, the Japanese government resumed payment of pensions to ex-soldiers, etc. or the families of the dead. However, Paragraph 2 of the Supplementary Provisions to the Aid Law provides that, for the time being, the Aid Law shall not cover the persons not covered by the Family Registration Law. Further, Article 9, Paragraph 1, Item 3, of the Pension Law stipulates that a pensioner's right to receive payment of pensions thereunder shall cease to exist when the pensioner has lost his Japanese nationality (these two provisions will be hereinafter referred to as the "Nationality Provisions"). Because the Taiwanese ex-soldiers and ex-civilian employees serving the former Japanese armed forces are not excluded from the scope of application of the Nationality Provisions, it is considered that the Appellants who are Taiwanese residents are not entitled to the benefits pursuant to the Aid Law of Pension Law. This exclusion duly constitutes an unreasonable discrimination against the Appellants who had Japanese nationality before, thus violating Article 14 of the Constitution.

After a close examination of the foregoing assertion, the following conclusion has been drawn: The Constitution provides for the equality of all Japanese people under the law by Article 14, Paragraph 1, thereof. The purport of this provision is to prohibit discrimination without due grounds. Therefore, even if a person is treated differently from others under the law on account of his economic, social and other differences from the others, as long as such legal treatment is a reasonable one, it is not in breach of that provision. This is clear from the purport of the Supreme Court's precedents (see Supreme Court Decision NO927 (A) of 1962 rendered by the Grand Bench on November 18, 1964; Keishu, vol.18, No.9, p.579 and Supreme Court Decision No.1472 (O) of 1962 rendered by the Grand Bench on May 27, 1964; Minshu, vol.18, No.4 p.646).

Our nation renounced any and all rights, titled and claims to its former territories of Taiwan and Penghu Dao (the Pescadores) pursuant to the Treaty of Peace with Japan effective on April 28, 1952 (Article 2). As a result, it

was decided that the disposal of such claims as might be filed against Japan and its people by the administrative authorities and residents in those territories be a matter to resolve by the special arrangement of Japan and the authorities (Article 4). Further, it was intended that our nation make a bilateral peace treaty with other nations than the signatories to the Treaty of Peace with Japan upon the same or substantially the same terms and conditions (Article 26). Thereafter, our nation signed a peace treaty with the Republic of China ("ROC") (hereinafter referred to as the "Japan-ROC Peace Treaty"), taking effect on August 5, 1952. Article 3 thereof prescribes that the disposal of any claim filed against Japan and Japanese people by the ROC authorities concerned and the Taiwanese residents be a matter for a special arrangement between the Japanese government and the ROC government. The Taiwanese residents are deemed to have lost their Japanese nationality by virtue of the Japan-ROC Peace Treaty (Supreme Court Decision No.2109 (A) of 1958 rendered by the Grand Bench on December 5, 1962; Keishu, vol.16, No.12 p.1661).

Meanwhile, the Aid Law was established on April 30, 1952, Paragraph 2 of the Supplementary Provisions thereto states that, for the time being, the Aid Law shall not apply to persons not covered by the Family Registration Law. This provision purports that the persons entitled to benefits thereunder are limited to those who have Japanese nationality and that the loss of Japanese nationality constitutes a good cause for the termination of the right to receive such benefits. At the time when the Aid Law was formulated, it was unclear which nationality Taiwanese residents, etc. would finally acquire. Therefore, it may be understood that the purpose of the provision in question was to make it clear to those people that the Aid Law does not cover them. Thereafter, as required under the Amendment to the Pension Law effective as from August 1, 1953, the Japanese government resumed payment of pension [under the Pension Law] to ex-soldiers, etc. and the families of the dead. At this point of time, as the Taiwanese residents had lost their Japanese nationality, they were not entitled to such benefits in light of the subject matter of Article 9, Paragraph 1, Item 3, of the Pension Law.

Taking these events into consideration, the reason why the Taiwanese ex-soldiers and ex-civilian employees of the former Japanese armed forces were excluded from the scopes of application of the Aid Law and the Pension Law can be said to lie in the following facts. By virtue of the Treaty of Peace with Japan and Japan-ROC Peace Treaty it was expected that the disposal of any Taiwanese resident's claims against Japan and Japanese people would be a matter

for a special arrangement between the Japanese government and the ROC government. Therefore, it can be understood that the problem of restitution to the Taiwanese ex-soldiers and ex-civilians was also expected to be solved through the bilateral diplomatic negotiations. There are reasonable grounds for this understanding. Consequently, even if the Nationality Provisions cause discrimination between the Japanese ex-soldiers and ex-civilian employees of the former Japanese armed forces and their Taiwanese counterparts, as long as the discrimination is grounded on the facts explained above, it cannot be said that the Nationality Provisions are in breach of Article 14 of the Constitution in light of the tenors of the aforesaid Supreme Court precedents.

With respect to the bilateral special arrangement to be made under the Japan-ROC Peace Treaty regarding the Taiwanese residents' claims against Japan and Japanese people, it has yet to be made even after approximately 20 years have passed since the conclusion of the Treaty. During this period of time, on September 29, 1972, the Japanese government and the government of the People's Republic of China ("PROC") published a joint statement in which the Japanese government recognized the PROC as the sole legitimate government of China. Since then, it has been virtually impossible for the Japanese government to negotiate with the ROC government in respect of such arrangement. However, this does not offer any reason to conclude that the Nationality Provisions violate the Constitution. Considering this reality, the problem of what measures our nation should take towards the Taiwanese ex-soldiers and ex-civilians who served in the wars for Japan should be resolved by legislative policy. Up to now, our nation has established the two laws relating to the Taiwanese war victims: the Law Concerning Solatia, ETC. offered to the Bereaved Families of the Taiwanese War Dead, Etc. (Law NO.105 of 1987) and the Law Concerning Enforcement of Payment of Specific Solatia, Etc. (Law NO.31 of 1988). These laws require that, in accordance with the spirit of humanitarianism, our nation pay 2 million yen for each Taiwanese dead or wounded as solatium or compensation money to the bereaved families of the dead, etc.

In consequence of the foregoing, the judgement of the Appellate Court on this point at issue, is acceptable as in compliance with the subject matter of what has been discussed above. Therefore, there is no error in the judgement in terms of the interpretation or application of Article 14 of the Constitution, and thus the third reason for the Appeal is not acceptable.

4. Regarding the fourth reason for the Appeal, [or the assertion that the Appellee should approve the Appellants' claim for payment of moneys pursuant to Article 14 of the Constitution]:

As this assertion discusses the reasoning part of the judgement of the Appellate Court not affecting the conclusion thereof, the fourth reason for the Appeal is unacceptable.

5. Regarding the fifth reason for the Appeal, [or the assertion that it should be confirmed that the Appellate Court's judgement violates Article 14 of the Constitution]:

As explained above, the Nationality Provisions are not considered to be against the Constitution. Thus, it is apparent that the Appellants' suit related to their alternative claim is groundless, whether such suit is appropriate or inappropriate, because it is based upon the assertion that the Nationality Provisions breach the Constitution and is aimed at confirming that the legislators have acted against the Constitution through their omission to remove such state of being un-Constitution. And even if the part of the Appellate Court's judgment in question, which part refuses such suit of the Appellants as an unreasonable one, should be found unlawful, it would be impossible to cancel the part and then reject the Appellants' such alternative claim. Such Disposition would conflict the principle of prohibiting disadvantageous alternations and, therefore, there could be done nothing but dismissing the appeal relating to the part. Consequently, the fifth reason for the Appeal is unacceptable as the assertion as such reason merely purports the unlawfulness of part of the Appellate Court's judgement which does not affect the conclusion thereof.

Now, therefore, pursuant to Article 7 of the Procedural Code of Administrative Litigation and Articles 401, 95, 89 and 93 of the Code of Civil Procedure, all judges have unanimously given such ruling as set forth in the text, except that Judge Itsuo Sonobe has his own opinions as to the second, third and fifth reasons for the Appeal.

The opinions of Judge Itsuo Sonobe are as follows:

1. Regarding the second and third reasons for the Appeal

Generally speaking, when a nation introduces legislation to give compensation or relief only to its own people who were dead, injured or sick in a war, it cannot be said that such legislation causes undue discrimination against the foreigners in a similar situation if they are simultaneously given similar compensation or relief pursuant to the nation's another legislation or treaties with the foreign nations in question. At that time, Japan incorporated in the Aid Law the so-called "Nationality Provisions" stipulating that the Law shall, for the time being, apply only to Japanese citizens (Paragraph 2 of Supplementary Provisions of the Law), thereby making it possible to settle the problem of restitution, etc. to the Taiwanese war victims separately from the Japanese war victims. This is perhaps because Japan then considered it adequate to respect the intention of the then ROC government when the treatment of the Taiwanese was decided. At about the same time, Japan and the Republic of China ("ROC") included in Article 3 of the Japan-ROC Peace Treaty they concluded, a provision purporting that the disposal of any claims filed against the Country of Japan by Taiwanese residents including the Appellants "shall be a matter to be resolved by the special arrangement of the Japanese government and the ROC government." Therefore, considering these facts, it is difficult to say that, at that time, the Nationality Provisions brought about groundless inequalities. The same can be said of the similar Nationality Provisions of the Pension Law (Article 9, Paragraph 1, Item 3), just as explained in the judgement of the Appellate Court. Thereafter, as Japan and the People's Republic of China ("PROC") normalized their diplomatic relations, the Japan-ROC Peace Treaty lost its significance and it became impossible that Japan-ROC negotiations would be carried out in the future to make such bilateral arrangement as aforesaid. However, also as explained in the judgement of the Appellate Court, so far there has been no reported case in which Japan and the PROC had a talk on such bilateral special arrangement.

It is inevitable that Japan and the ROC has been prevented by such changes in the international situation as stated above from concluding the aforesaid special arrangement. However, it is an indisputable fact that the Nationality Provisions were enacted on condition of making such bilateral arrangement. Therefore, it must be frankly

admitted that, from the time when it became impossible to carry out negotiations to make such arrangement, the state of affairs resulting from the application of the Nationality Provisions has constituted the discrimination violating the principle of equality of all of the people under the law. However, today when Japan has maintained formal diplomatic ties with the PROC, matters related to restitution to the non-Japanese war victims have become the problems affecting the fundamentals of national administration (see Paragraph 5 of the Japan-PROC joint statement). Accordingly, I do not believe that it is possible to show a concrete legal judgement as to the such matters as the nature and substance of the claim of the Appellants on payment of aids or pensions to the Taiwanese ex-soldiers or ex-civilian employees of the former Japanese armed forces, necessity of legislation to provide concrete grounds for such claim and reliefs for war damages which Taiwanese residents including the Appellants have suffered.

From this viewpoint, I am, in the end able to support the judgement of the Appellate Court regarding the Appellants' claims under the provisions of Paragraph 3 of Article 13, and Article 14, of the Constitution.

Further, the judgement of the Appellate Court states that, apparently, the Appellants are actually placed in a very disadvantageous position compared with the Japanese people in an almost similar situation and that more than 40 years have already passed since they and their brethren died or injured in the battlefields. It adds that, therefore, the Japanese government authorities concerned are expected to make efforts so promptly remove their disadvantages by overcoming the foreseeable diplomatic, financial and legal difficulties, thus enhancing our nation's international credibility. After delivery of the judgement, through the efforts of the people concerned, the Law Concerning Solatia, Etc. Offered to the Bereaved Families of the Taiwanese War Dead (Law No.105 of 1987) and the Law Concerning Enforcement of Payment of Specific Solatia, Etc. (Law No.31 of 1988) were shaped in accordance with the spirit of humanitarianism. Emotionally, it can be fully understood that the [amounts of] payments made under these two laws were insufficient to satisfy the claims of the Appellants. However, again, I take this opportunity of indicating that, for the reasons already given, the [fundamental key to the] solution of this type of problem lies only in the further efforts of the government authorities concerned.

2. Regarding the fifth reason for the Appeal

Although I admit that the results of application of the Nationality Provisions lead to discrimination against the principle of equality of all of the people under the law, I consider it impossible to present any concrete legal judgement as to the needs of legislation to remove such discrimination. The reason for this is as stated in 1. above respecting my opinions on the second and third reasons for the Appeal. From this viewpoint, I see the Appellants' suit on alternative claim, whether appropriate or inappropriate, as lacking good reason. Further, respecting the part of the Appellate Court's judgement refusing such suit as an inappropriate one and the assertion contained in it, I am also of the opinion of the court relating to the fifth reason for the Appeal.

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