

7 February 1994

Your Excellency Morihiro Hosokawa
Prime Minister of Japan
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Chiyoda-ku, Tokyo 100
Japan

c/o Permanent Mission of Japan
Geneva, Switzerland
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Dear Prime Minister Hosokawa,

As a Non-Governmental Organization, which is granted the consultative status with the United Nations, the International Fellowship of Reconciliation has been gravely concerned with the plight of so called "comfort women" by the Japanese Imperial Force. We would like to respectfully submit this letter with our recommendations and the summary of the proposed draft law as a possible retrospective legislation to your government as regards this issue of international concerns for your personal consideration. We hope that these would be helpful in your considering a new policy as regards the issue of the military sexual slavery by the Japanese Imperial Forces.

We believe that the good will and faithfulness of Your Excellency would result in an expeditious, fair and just solution of this difficult issue in accordance with international law and justice. We also hope that our recommendations would be able to contribute not only for the victims but also for the bright future of Japan and the Japanese people, who may be able to live with all the neighboring nations with harmony and mutual trust.

Thank you very much for your consideration. We are looking forward to your favorable reply.

Sincerely Yours,

Rene Wadlow
Representative to the United
Nations, Geneva
IFOR (Category II)

RECOMMENDATIONS TO JAPAN ON IMPUNITY AND "SEXUAL SLAVERY"

International Fellowship of Reconciliation (NGO: Category II)

1. The International Fellowship for Reconciliation has been supporting the demands directed to the Japanese Government by the Korean Council for Women Drafted for Sexual Slavery by Japan since the Sub-Commission on Human Rights in 1992.

The IFOR focuses on the issue of so-called "comfort women", euphemism of the military sexual slavery by Japan and the question of impunity in the RECOMMENDATIONS.

2. On 4 August 1993 in Japan and 17 August 1993 at the UN Sub-Commission on Human Rights, Japan officially acknowledged the enslavement of the "comfort women" by the Japanese Imperial Forces and Government during the wartime towards 2 September 1945 including the period for the preparation of the war from 1 January 1928.

In its statements, Japan acknowledged that the Asian mainly Korean women were recruited directly by the Japanese Imperial Forces or those who were instructed by them; that the methods of the recruitment of the women were coercive or deceptive in general; that were transported or deported by the Japanese Imperial Forces, which used the various methods including deportation by the Japanese ships; that the victims were taken to the so-called "comfort houses", which were established by the Japanese Imperial Forces and that the victims were not allowed any freedom there to refuse sexual slavery and were forced into sexual exploitation by the Japanese Imperial Forces.

This admission by Japan was prompted by the findings made by the certain historians, NGOs and governments in the Republic of Korea, the Philippines, the Democratic People's Republic of Korea, Japan and others, although it was far from the whole truth. Among all, the victims themselves courageously came forward and testified the truth, without which no substantial fact-finding would have been achieved.

3. Legal analysis

It is necessary to analyze some of the legal points under international law to evaluate the State responsibility of Japan in terms of impunity in relation to this acknowledgement of the facts.

1) Customary international law

(1) Crimes against humanity

Crimes against humanity were defined by the Charter of the Nuremberg International Tribunal and the Charter of the International Military Tribunal for the Far East (IMTFE). The latter states that crimes against humanity are namely, murder, extermination, enslavement, deportation, and other inhumane acts committed before or during the war, or persecution on political

or racial grounds in execution of or in connection with any crimes within the jurisdiction of the Tribunal ... (Article 5 (c)). In this definition, which confirmed then international customary law, the IFOR believes that the facts admitted by Japan mentioned above fall within the meaning of "enslavement", "deportation", "inhumane acts" and "persecution on political or racial grounds". As a result, the IFOR has no hesitation to join a number of NGOs which have been condemning Japan at the UN human rights meetings as regards the conducts onto the "comfort women" committed by the Japanese Imperial Forces as crimes against humanity.

(2) Slavery and slave trade

The IFOR also believes that the conducts violates the prohibition of slavery and slave trade under international customary law. There would be no argument as regards the establishment of the prohibition of slave trade as crimes under international customary law well in advance of the time of the conducts, as it is one of the oldest crimes under international law.

In relation to this, the IFOR wishes to refer to the practice that was internationally taken by Japan itself in the 19th Century as regards the case of slavery and slave trade. A Peruvian ship entered into the Tokyo Bay in July 1872. The ship, Maria Luz was carrying 231 Chinese slaves who were captured in Macao, being disguised as immigrants. The newly established Meiji Government investigated the ship and established a special tribunal, which tried the case. The tribunal condemned those who were transporting the slaves and liberated the slaves relying on the legal ground that they committed crimes of slavery. Two judgments, namely one criminal and another civil in their nature were handed down under then Japanese law. The Japanese law and the practice in this case seemed to be compatible with international law of the time, which prohibited slave trade. Being criticized by the Peruvians as Japan itself had many prostitutes under slave-like servitude, such as bonded labour, the Meiji Government liberated all of them immediately after this case in October 1872 by issuing the Ordinances. In them, the Japanese Government declared that Japan had prohibited slave trade throughout its history.

(3) Duties of Japan under international customary law

Under these two categories, the conducts by the Japanese Imperial Forces have been punishable with no time limitation under international law. As a matter of natural justice, these require that Japan take necessary measures to punish those who were responsible for the crimes mentioned above.

2) Multilateral treaties

It is very important to look into some multilateral treaties that had been concluded by Japan before the conducts were committed, as they provide with explicit provisions for punishment and nobody including the Japanese Government might not be able to argue the existence of the international obligations under them.

(1) The ILO Convention (No.29) Concerning Forced Labour

The Convention was adopted by the International Labour Organization in 1930, was ratified by Japan in 1932 and became effective for it on 21 November 1933. The most of the conducts committed onto the "comfort women" took place before this date. Since then, Japan has been a Party to this Convention till today, including during the period of the time when Japan withdrew from the membership of the ILO.

The Convention generally abolished forced labour with certain exceptional cases with strictly defined requirements in the Convention (Article 1). The first sentence of Article 11, which stipulates "Only adults able-bodied males who are of an apparent age of not less than 18 and no more than 45 years may be called upon for forced or compulsory labour.", totally prohibits any forced labour of women.

The Japanese Government acknowledged that coercion was, in general, employed in recruitment and/or treatment of the "comfort women" victims by the Japanese Imperial Forces and Government in its statements in August 1993 mentioned above. Therefore, the IFOR is convinced that Japan admitted the facts that the personnel of the Japanese Imperial Forces and Government exacted the "comfort women" to illegal forced labour and thus, violated this Convention.

Although there is no explicit provision for compensation for the victims in the Convention, there is an explicit provision, which requires punishment of the perpetrators of the crimes defined by the Convention. Article 25 stipulates "The illegal exaction of forced or compulsory labour shall be punishable as a penal offense, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced." Therefore, it is clear that not only the past Japanese Governments but also the current Japanese Government led by Mr Morihiro Hosokawa have been bound by their international obligations under the Convention, which require legislation of a relevant domestic law for strict punishment and investigation, prosecution, trials and punishment of the perpetrators of the crimes committed onto the "comfort women" victims.

Emergency such as war may be a reason for derogation from the obligations under the Convention (Article 2-2(d)). It should be interpreted, however, that "emergency" situations are needed to such extent that they can really justify any derogation from the Convention's requirements even during war-time. For example, it may be allowed for officials such as policemen to order civilians relevant compulsory works, which are needed desperately when alternative measures are not available to rescue any victims of bombardment on the spot. As a matter of reasonable way of interpretation, one may consider the principles which were confirmed by Article 4 of the International Covenant on Civil and Political Rights, namely derogation may be made only "to the extent strictly required by the exigencies of the situation"; "provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion, or social origin"; and no derogation may be

made from prohibition of slavery and slave trade.

It appears to be impossible for the Japanese Government to prove that there existed the "emergency" situations to give "comfort" to the Japanese soldiers by sexually enslaving the Asian, mainly Korean children and women.

(2) The International Convention on Prohibition of White Slave Trade

The Convention was adopted in 1910 by the International Conference held in Paris, was acceded by Japan in 1925 and became effective for it on 21 April 1926. Since then, Japan has been a Party to this Convention. As a result, it seems that this Convention was introduced into Japan earlier than any conducts committed onto any of the "comfort women" victims.

This convention is not applicable for colonies and territories alike, unless the notice to do so was registered by a Member State (Article 11). Because of this provision, it has been widely misunderstood in Japan that any of the provisions of the Convention cannot be applied to any case of the "comfort women" victims captured in Korea, which was outside the Japanese main lands. It must be applicable, however, to the cases where any part of the conducts or omissions were committed in Japan or in the places considered to be under the Japanese jurisdiction and/or they were committed by those who were under the Japanese jurisdiction.

Although the direct conducts such as abduction of the "comfort women" took place in the colonies of Japan, in all of the cases of recruitment, enslavement, deportation, treatment and supervision of the "comfort women", the major elements of the crimes were committed inside Japan and/or committed by those under the Japanese jurisdiction.

In particular, the IFOR wishes to take note the following facts. The planning of the "comfort women" system was conceived and supervised by the Supreme Headquarters of the Japanese Imperial Forces and the Centre of the Japanese Government, seats of which were based inside Japan, namely in Tokyo, as the historians in Japan recently established. Thus, orders, authorizations and permissions of various kinds of conducts and omissions in relation to the "comfort women" were directed by them from the mainland Japan. In many cases, the "comfort women" were deported by the Japanese ships, which should be considered as the Japanese territory. In all of the cases, recruitment, enslavement, deportation, treatment and supervision of the "comfort women" were committed by the personnel of the Japanese Imperial Forces and/or those who were instructed by them. These personnel were under the jurisdiction of the Japanese Empire. In general, most of these facts except the chain of orders were admitted by the statements made by Japan in August 1993 mentioned above. The IFOR believes that the chain of orders, which came from Tokyo was established by the recent findings made by the historians in Japan, as mentioned above. As a result, it is clear that the Convention should be applied to all of the cases of the "comfort women".

Article 1 of the Convention explicitly provides that those who solicited, drew into or abducted a juvenile women (younger

than 21 year old) with the purpose for prostitution (even if they obtained the consent from the woman) should be punished. And Article 2 also explicitly provides that those who solicited, drew into or abducted an adult women using deception or means of violence, coercion, abuse of authorities or any other kinds of coercive measures should be punished. Furthermore, Article 3 provides the obligations of the State Parties to take necessary measures in order to ensure punishment of the perpetrators of the crimes defined by Articles 1 and 2 including relevant legislation.

According to an interim report dated August 1993 published by a committee in the DPRK (The Committee for investigation of the damages caused by the Imperial Japan during the time of its occupation of Korea), 81 women were taken when they were a juvenile (younger than 20 years old) among all of the 131 women who were found to be "comfort women".

Japan acknowledged that almost all of the "comfort women" were taken by deception or by any other means of coercive measures. Therefore, one must be able to conclude that these obligations for punishment still bind even the current Hosokawa Government.

3) Some legal issues

(1) Time limitation

The conducts onto the "comfort women" were punishable even by the domestic law at the time of the Japanese Empire. The problem is that it is not possible for the Japanese authorities to prosecute any perpetrator by applying the penal law of the time in order to fulfill their obligations under international law for punishment because of the time limitation under the Criminal Procedure Act.

It is important, however, to note that there is no time limitation as regards the obligations of Japan under the international customary law and the treaties mentioned above. As a result, the Japanese Diet as well has the duty to take necessary measures including legislation for punishment even today in order to fulfill the Japanese obligations under the treaties.

It should be noted that Germany has been punishing the war criminals during World War II by abolishing time limitation as such.

(2) Possibility for retrospective legislation

The Japanese legislature may face the legal issues under Articles 31 and 39 of the Japanese Constitution, which guarantees the due process of law and prohibition of a retrospective penal legislation. Therefore, we need to examine whether any retrospective legislation is possible for the said purpose, namely punishment of the past crimes.

Article 15 (1) of the International Covenant on Civil and Political Rights, to which Japan has been a Party since 1979 prohibits a retrospective penal law, in general, by stating "No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law." It should be noted,

however, that the said provision allows conviction on account of any act or omission which constituted a criminal offense under "international law". Furthermore, Article 15 (2) stipulates "Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations."

As a result, it is allowed for the State Parties to legislate retrospective domestic laws in order to punish perpetrators who committed a criminal offense according to the general principles of law under international law (see M. Novak, "UN Covenant on Civil and Political Rights CCPR Commentary", NP Engel, p.281.). One may find such examples in many countries including Israel, Australia, the U.K., Canada and Denmark.

4) De facto impunity

(1) Attempts to evade punishment

Despite the obligations under international law mentioned above, Japan has failed to punish even a single perpetrator of the crimes committed onto the "comfort women", who are estimated to have been about 200,000. It is astonishing for the IFOR to find that total neglect of the obligations for punishment has prevailed in the competent authorities in the Government, National Diet and even press, academic, and human rights circles in Japan. This state of non-punishment should be condemned as one of the worst examples of de facto impunity in the history of the World.

Moreover, the IFOR has been obtaining abundant information as regards the various attempts made by the Japanese Imperial Forces and Government to destroy the evidence in order to evade punishment of war criminals. It should be also noted that the Japanese Governments after WWII have refused to admit the facts as regards the crimes committed onto the "comfort women". They even lied. It is reported that many government offices including the Police Agency under the current Government have been still withholding many documents, which seem to be necessary for the fact-finding.

Many of these attempts to evade punishment should be considered as complicity.

(2) Discrimination against Asian women

There are some cases where Japan accepted the punishment of perpetrators of past war crimes and crimes against humanity, although it was not done by a Japanese court. The punishment by the IMTFE and other war crime tribunals of Allied Forces was accepted by Japan, when it accepted the Potsdam Proclamation in 1945 and the San Francisco Peace Treaty (Article 11) in 1951. This was mainly the punishment as regards war crimes and crimes against humanity committed onto the prisoners of wars of the Allied Forces. The punishment included the investigation, prosecution, trials and punishment (including a death penalty) carried out in 1948 of 10 personnel of the Japanese Imperial Forces who enslaved 35 Dutch "comfort women" victims in Indonesia.

In short, Japan admitted the principle that the conducts

committed by the Japanese Imperial Forces onto the "comfort women" constituted serious offenses, which deserved a death penalty and punishment of the perpetrators of the crimes had to be carried out where the "comfort women" victims were white women. In contrast, Japan has never acknowledged that the very same conducts committed onto the very same kind of victims constituted crimes, when it comes to Asian, mainly Korean "comfort women" victims (often the nature of the crimes in the Korean cases were much worse in terms of duration and the number of death than the Dutch cases). The IFOR is convinced that this different treatment between the white and Asian victims should be blamed as shameless contempt of and discrimination against Asian women. The IFOR wishes to request the Japanese Government to clarify the reason why no measure has been taken to redress this unreasonable discrimination. In this context, Japan should acknowledge that the enslavement of Asian victims of military sexual slavery by Japan constituted crimes and that it is bound by the obligation to ensure the punishment under international law.

5) Compensation on the ground of non-punishment

It is important to consider another face of the coin in the cases of victims of gross violations of human rights. Impunity can be a good ground for compensation for individual victims.

(1) The proposed UN principles on the right to reparations

In August 1993, the UN special rapporteur on the right to restitution, compensation and rehabilitation for the victims of gross violations of human rights and fundamental freedoms, Prof Theo van Boven submitted his final report to the Sub-Commission (E/CN.4/Sub.2/1993/8), which was warmly supported by not only the IFOR and many NGOs but also the Sub-Commission itself. This report is based on a number of important traditional principles in international law as regards state responsibility, which were developed by the International community for a long time and would be a substantial basis to resolve the issue of impunity and compensation for the victims.

In it, Prof van Boven proposed a set of Principles, which were meant to be adopted by the UN General Assembly in future. Article 2 of the proposed General Principles states "Every State has a duty to make reparation in case of a breach of the obligation under international law to respect and to ensure respect for human rights and fundamental freedoms. The obligation to ensure respect for human rights includes the duty to investigate violations, the duty to take appropriate action against the violators, and duty to afford remedies to victims. State shall ensure that no person who may be responsible for gross violations of human rights shall have immunity from liability for their actions." (para.137 of the report)

It should be noted that these obligations under international law include the obligation for punishment and that non-punishment is to be a good ground for compensation for the victims of crimes.

(2) Opinion of a learned scholar

Prof Ian Brownlie of Oxford University says in his "PRINCIPLES OF PUBLIC INTERNATIONAL LAW" (FORTH EDITION) (CLARENDON PRESS: OXFORD, 1990. pp. 464-465) as follows. "Thus a failure by Mexico to take adequate steps to apprehend the murderer of an American citizen. The award saw liability in terms of the damage caused to the individuals concerned rather than to the United States, and gave compensation to the relatives of Janes for the 'indignity' caused by the non-punishment of the criminal. However, the United States was making no claim apart from that 'on behalf of' the dependents of Janes, and the Claims Commission was concerned to translate the Mexican breach of duty into damages." This case in 1920s reflected the basic principle mentioned above.

(3) The state responsibility for compensation

One may find a number of other cases as regards the state responsibility for compensation for individual victims of crimes on the ground of non-punishment in international law than the Janes case, which confirmed such a principle that already existed at the time. There is no doubt that this principle was well founded under international customary law even before the time when the crimes committed onto the "comfort women". Thus, one may conclude that Japan is bound by this principle and should pay compensation on the ground of non-punishment to all of the "comfort women" victims. This obligation for compensation is based on a different legal reason other than the compensation claims from individual victims on the ground of the conducts of the crimes themselves.

(4) Counter arguments against the Japanese Government's defense

Responding to the IFOR's oral interventions at the UN Working Group on Contemporary Forms of Slavery in May 1993, the Japanese Government representative refused to admit any legal obligation for compensation for the "comfort women", although he did not respond at all on the obligation for punishment and compensation on the ground of non-punishment, and said as follows: "The Government of Japan has dealt with the issue of claims, including the question of compensation, in accordance with multilateral and bilateral treaties, as well as other relevant treaties, with the countries concerned. For example, the claims' issues between Japan and the Republic of Korea have been resolved by an agreement, signed on 27 June 1965, on the settlement of the problems concerning property and claims, and on the economic co-operation between Japan and the Republic of Korea.

One must be careful, however, to read the terms of the treaties concerned as regards the scope of the area that can cover. For example, the obligations for fact-finding and punishment were not at all resolved by the said Agreement in 1965 between Japan and the ROK, as the terms of the Agreement limits the scope within "the issues as regards properties, rights and interests ..." (Article 2 of the Agreement). The meaning of these terms is defined as "all kinds of substantive rights which are considered to have property value on legal basis and claims between both State Parties and their nationals" (Article 2 of the Protocol to the Agreement). It is clear that the scope of the

Agreement covers only something which has "property value" and does not include the obligation for fact-finding and punishment. This is the reason why Japan had to investigate the facts.

Therefore, Japan cannot argue that the obligation for compensation on the ground of non-punishment was resolved by the said Agreement, as the obligation for punishment, which has not time limitation and never be blocked by the Agreement, has been breached even after 1965.

(5) Need for expeditious dispute settling

Although it is clear for the IFOR and the victims to conclude as mentioned above, the Japanese Government may wish to argue in interpretation of international law. The legal procedures in Japan is, however, frustratingly slow and can never be an effective measure to settle these cases. Many experienced lawyers in Japan predict that the victims must spend more than 10 to 20 years to exhaust the three stage the Japanese civil law procedure up to a judgement of the Supreme Court. Considering the age of the youngest "comfort women", which is 63, the Japanese Government is to be invited to accept the demand for an expeditious arbitration, if they are requested to do so by the victims.

The IFOR wishes to point out the existence of the Permanent Court of Arbitration, which can offer their services for cases where one party is not State.

4. Recommendations

On the basis of the above mentioned reasons, the IFOR wishes to recommend the Japanese Government to immediately take necessary steps to abide by the obligations under international customary law and the treaties, which Japan ratified as follows.

(1) To faithfully face the demands being made by the organizations representing the "comfort women" victims such as the Korean Council and immediately take necessary steps to respond the demands in accordance with obligations under international law.

In particular, the following measures require immediate and compelling responses.

(2) To investigate all cases of impunity as regards the alleged "comfort women" cases and to make public all information obtained, unless the victims wish otherwise.

(3) To take all the necessary measures, including necessary legislation, investigation, prosecution, trials and punishment, in order to fulfill the obligations under international law for punishment of the perpetrators of the crimes committed onto the "comfort women" victims.

(4) To pay adequate compensation to all of the "comfort women" victims on the ground of the past non-punishment.

(5) To accept the demand to settle the disputes between the "comfort women" victims and Japan before any arbitration body, such as the Permanent Court of Arbitration, if any demand is made by any victim.

DRAFT PROPOSALS
FOR
LAW CONCERNING PUNISHMENT OF
CRIMES UNDER INTERNATIONAL LAW INCLUDING
WAR CRIMES AND CRIMES AGAINST HUMANITY

International Fellowship of Reconciliation

(Purpose) [To be explicitly stipulated in a provision in the law.]

(1) Japan, as perpetrators of the crimes under international law, express its remorse and apologize to the victims of the crimes in the Asian and Pacific Regions including the Japanese Main Lands, the Korean Peninsula and Taiwan, which were committed by the Japanese colonial rules and aggressive actions for their unbearable plight and grieve in the past towards 2 September 1945.

(2) Japan acknowledge that the rules and actions mentioned above in (1) include the crimes under international law and justice such as war crimes and crimes against humanity. Such international law includes international customary law established at the time and the treaties, to which Japan were a Party and were ratified and pledged to abide by them by Japan (such as the ILO Convention (No.29) Concerning Forced Labour and the 1910 International Convention on Prohibition of White Slave Trade).

Japan acknowledge that the civilized countries including Japan as well as the international community have authority and competence concerning the punishment of the perpetrators of such crimes. Furthermore, Japan accepted severe punishment of perpetrators of any war crimes including those who abused the prisoners of war of the Allied Powers when it accepted the Potsdam Proclamation and Japan also accepted the judgments of the International Military Tribunal for the Far East (IMTFE) and the war crime tribunals in Japan and other countries when it concluded Article 11 of the San Francisco Peace Treaty. Japan acknowledge, however, that the necessary punishment mentioned above has not been exhausted at all only by accepting the above mentioned measures. For some crimes, Japan concluded the treaties that made Japan responsible for punishment under the obligations in the treaty provisions and, for others, Japan owed the obligations for punishment under international customary law. As a result, Japan acknowledge that it owes the obligations for retrospective legislation, investigation, prosecution, trials and punishment of the perpetrators and that any time limitation concerning such crimes under international law should not be applied.

Such punishment by retrospective legislation is allowed under international law including Article 15 of the International Covenant on Civil and Political Rights.

Considering these circumstances, Japan legislate this law in order to make possible the punishment of such crimes in the past as well as future for the purpose to express its remorse

and apology and to prevent similar crimes in future.

[Above mentioned acknowledgements are to be explicitly stipulated.]

(Crimes to be punished)

(1) [Time span] Crimes to be punished are the conducts and omissions committed from 1 January 1928 onward.

(2) [Territories] As for the crimes committed till 2 September 1945 are the conducts or omissions committed in the territories of the Japanese Empire and those under the occupation of the Japanese Imperial Forces and as for the crimes committed from that day are the conducts or omissions committed in the territories under the sovereignty of Japan and those areas where the Japanese military units or personnel were dispatched.

(3) [Kinds of crimes] Kinds of crimes to be punished are three, namely war crimes, crimes against humanity and other crimes, which are the conducts or omissions that constitute crimes under international law.

(Definition of crimes)

(1) "War crimes" are to be based on the Charter of the IMTFE.

(2) "Crimes against humanity" are to be based on the Charter of the IMTFE.

(3) "Crimes of forced labour", which are to be based on the ILO Convention (No.29) Concerning Forced Labour, are the crimes defined by the Convention, namely "the illegal exaction of forced or compulsory labour" (There shall be a provision for exemption of the criminal responsibility, if the conducts or omissions were lawful under the Convention.); "crimes of white slave trade", which are to be based on the International Convention on Prohibition of White Slave Trade, are the crimes defined by the Convention, namely "the soliciting, drawing into or abducting a juvenile women (younger than 21 year old) with the purpose for sexual exploitation" (even if the consent from a woman is obtained for it) and "the soliciting, drawing into or abducting an adult women using deception or any other kinds of coercive measures with the purpose for sexual exploitation"; and other crimes under international law alike above mentioned in (1) and (2) that the National Diet considers necessary to be punished.

(4) There shall be the provisions for complicity.

These shall include the provisions that make punishable of those who helped the perpetrators escape; destroyed or hid evidence; or threatened or harmed the person who might be able to give evidence for the punishment as well as other provisions that make punishable for those whose conducts or omissions perverted justice in relation to those crimes in this law.

[Considering there existed a number of incidents, in which the accomplices, including many public servants, helped the perpetrators escape, destroyed documents, made false statements or hid evidence regardless of the time of committal, that is to say during the war-time or even recent time, these provisions for complicity is extremely important. These provisions may be effective not only to actualize justice but also to achieve the expeditious investigation and redress for the victims.]

(Penalty)

(1) War crimes and crimes against humanity shall be punishable with the severe penalties that include death, imprisonment with or without labour for life or longer than 3 years (These penalties are equivalent to the penalty for a murder in Japan. The IFOR considers a death penalty is not desirable, however, for any kind of crimes. This recommendation is due to the balance with the penalties for other crimes under the current Japanese Penal Code. When the Japanese National Diet abolishes a death penalty for other crimes, such as a murder, in accordance with the recommendations by the Human Rights Committee on 5 November 1993, the death penalty in this law shall be abolished as well.).

(2) As for other crimes, the National Diet shall decide the proper penalties in conformity with (1) and international law.

(Procedures as regards investigation and trials)

(1) The current Criminal Procedure Act shall be applied in principle.

(2) Considering the special nature of this law, there shall be the special provisions under the law as well as the special regulations, which may be made by the Supreme Court.

(Non-applicability of time limitation)

(1) There shall be no application of time limitation for prosecution in the provisions under the Criminal Procedure Act in accordance with international customary law.

(2) Although it is desirable for Japan to ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, it is not necessarily required to do so, as there shall be no time limitation for war crimes and crimes against humanity under international customary law.

(Defense)

(1) There shall be no defense on the ground that the conducts or omissions were lawful under the Japanese law of the time.

(2) There shall be no defense on the ground that the conducts or omissions were committed under the orders of superiors. The defense may be admissible for consideration of a sentence.

(3) Any defense established under international law shall be admissible.

(4) The diminished penalty shall be given for those who voluntarily surrendered themselves to the authorities.

There shall be amnesty, which shall be given by the Cabinet, if the perpetrators voluntarily surrendered themselves to the authorities or testified for the benefit of the victims faithfully admitting their guilt in criminal or civil courts or in the National Diet, and convicted; and if the Cabinet is satisfied that the perpetrators' remorse is clear enough on the basis of the opinion made by the Advisory body, which shall be established by this law and shall hear the views of the victims as regards amnesty. [By legislating this procedure, the perpetrators would be given the privilege for amnesty under

certain circumstances, which would help bring the fact-finding and expeditious redress for the victims. Considering the situation where the impunity without proper principles is under serious criticism in the international community, it is recommended to establish the proposed system in giving amnesty under the due process and justifiable requirements.]