

Law and Politics in Japan

Part II: Japan's Contemporary International Legal Problems



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Hashimoto says 'comfort women' necessary for soldiers

OSAKA (Kyodo) -- Osaka Mayor Toru Hashimoto, who co-heads the opposition Japan Restoration Party, said Monday he believes the system to recruit women into sexual servitude was "necessary to maintain discipline" in the Japanese military during World War II.

Hashimoto told reporters at Osaka City Hall that the women who were forced into sexual slavery for the Japanese military during the war, euphemistically referred to as "comfort women" in Japan, were "needed to provide rest to a group of brave soldiers who were exalted in the line of fire."

The mayor asked, "Why is the Japanese 'comfort women' system only blamed? Other countries had similar schemes at the time."

He denied the Japanese military had systematically abducted women, mostly from other Asian countries, to coerce them into sex slavery by assaulting and threatening them.

The mayor said Japan has been labeled "a nation of rapists" in Europe and the United States due to "campaigns by South Korea and other nations."

He said the system of "comfort women" was born "as a tragic consequence of war" and it is necessary to understand the feelings of such women and pay due consideration to them.

Hashimoto also said when he visited Okinawa to inspect the U.S. Marine Corps' Futenma Air Station in late April, he asked a senior U.S. military officer based in the prefecture to let Marines use local sex-related services.



Osaka Mayor and co-head of the Japan Restoration Party Toru Hashimoto is pictured in this April 22, 2013 file photo. (Mainichi photo)

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The Comfort Women Issue and the Asian Women's Fund

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デジタル記念館 慰安婦問題とアジア女性基金

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The so-called "wartime comfort women" were those who were taken to former Japanese military installations, such as comfort stations, for a certain period during wartime in the past and forced to provide sexual services to officers and soldiers.

Authors who wrote about these women in the postwar Japan called them "*jugun ianfu* (comfort women joining the army)". And when the Japanese government first faced the issue of these women, it adopted this term, "*jugun ianfu*," and the AWF, when it started in 1995, it used this term as well. But in historical wartime documents we only find the term "*ianfu* (comfort women)". Therefore, we now always use this term "*ianfu* (comfort women)".

Victims of military sexual slavery

19. Notwithstanding the information provided by the State party concerning some steps taken to acknowledge the abuses against victims of Japan's military sexual slavery practices during the Second World War, the so-called "comfort women", the Committee remains deeply concerned at the State party's failure to meet its obligations under the Convention while addressing this matter, in particular in relation to: (arts. 1, 2, 4, 10, 14 and 16)

(a) Failure to provide adequate redress and rehabilitation to the victims. The Committee regrets that the compensation, financed by private donations rather than public funds, was insufficient and inadequate;

(b) Failure to prosecute perpetrators of such acts of torture and bring them to justice. The Committee recalls that on account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them;

(c) Concealment or failure to disclose related facts and materials;

(d) Continuing official denial of the facts and re-traumatization of the victims by high-level national and local officials and politicians, including several diet members;

(e) The failure to carry out effective educational measures to prevent gender-based breaches of the Convention, as illustrated, *inter alia*, by a decrease in references to this issue in school history textbooks;

Recalling its general comment No. 3, the Committee urges the State party to take immediate and effective legislative and administrative measures to find victim-centered resolution for the issues of “comfort women”, in particular, by:

(a) Publicly acknowledge legal responsibility for the crimes of sexual slavery, and prosecute and punish perpetrators with appropriate penalties;

(b) Refute attempts to deny the facts by the government authorities and public figures and to re-traumatize the victims through such repeated denials;

(c) Disclose related materials, and investigate the facts thoroughly;

(d) Recognise the victim’s right to redress, and accordingly provide them full and effective redress and reparation, including compensation, satisfaction and the means for as full rehabilitation as possible;

(e) Educate the general public about the issue and include the events in all history textbooks, as a means of preventing further violations of the State party’s obligations under the Convention.

Report of the Human Rights Committee, UN Doc. A/64/40 (Vol. I) (2009)

(22) The Committee notes with concern that the State party has still not accepted its responsibility for the “comfort women” system during the Second World War, that perpetrators have not been prosecuted, that the compensation provided to victims is financed by private donations rather than public funds and is insufficient, that few history textbooks contain references to the “comfort women” issue, and that some politicians and mass media continue to defame victims or to deny the events (arts. 7 and 8).

The State party should accept legal responsibility and apologize unreservedly for the “comfort women” system in a way that is acceptable to the majority of victims and restores their dignity, prosecute perpetrators who are still alive, take immediate and effective legislative and administrative measures to compensate adequately all survivors as a matter of right, educate students and the general public about the issue, and refute and sanction any attempt to defame victims or to deny the events.



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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS
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THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE
UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE
ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Addendum

Report of the Special Rapporteur on violence against women,
its causes and consequences, Ms. Radhika Coomaraswamy,
in accordance with Commission on Human Rights
resolution 1994/45

Report on the mission to the Democratic People's Republic
of Korea, the Republic of Korea and Japan on the issue of
military sexual slavery in wartime

19. Photographs of the stations, and even of the "comfort women" themselves in various contexts, have been preserved, along with a number of different records of the regulations of comfort stations in different parts of the Japanese Empire. Though little documentation remains that bears witness to the recruitment methods, the actual operation of the system is widely attested in records which survive from the period. The Japanese military meticulously recorded the details of a prostitution system that appeared as to be regarded as merely another amenity. The rules for comfort stations in Shanghai, Okinawa, other parts of Japan and China and the Philippines still survive, detailing, inter alia, rules for hygiene, hours of service, contraception, payment of women and prohibitions of alcohol and weapons.

23. The most problematic aspect of attempting to write an account of the recruitment of military sexual slaves during the period leading up to the Second World War and during the war itself is the lack of remaining or disclosed official documentation concerning the actual recruitment process. Nearly all evidence concerning the recruitment of "comfort women" comes from the oral testimony of the victims themselves. This has made it easy for many to reject the testimonies of the victims as anecdotal or even created to implicate the Government in a matter which was essentially a private and, therefore, a privately run, system of prostitution. Yet the consistency of the accounts of women from quite different parts of South-East Asia of the manner in which they were recruited and the clear involvement of the military and Government at different levels is indisputable. It is wholly implausible that so many women could have created such similar stories about the extent of official involvement solely for their own purposes.

105. Basically, the Government of Japan takes the firm stand that all claims have been settled under bilateral treaties and that Japan is not legally bound to pay compensation to individual victims.

108. The Special Rapporteur is of the view that neither the San Francisco Peace Treaty nor the bilateral treaties were concerned with human rights violations in general or military sexual slavery in particular. The "intent" of the parties did not cover the specific claims made by "comfort women" and the treaties were not concerned with human rights violations of women during the conduct of the war by Japan. It is, therefore, the conclusion of the Special Rapporteur that the treaties do not cover the claims raised by former military sexual slaves and that the Government of Japan remains legally responsible for the consequent violations of international humanitarian law.

Statement by the Chief Cabinet Secretary Yohei Kono
on the result of the study on the issue of "comfort women",
4 August 1993,
<http://www.mofa.go.jp/policy/women/fund/state9308.html>

[I]t is apparent that there existed a great number of comfort women. Comfort stations were operated in response to the request of the military authorities of the day. The then Japanese military was, directly or indirectly, involved in the establishment and management of the comfort stations and the transfer of comfort women. The recruitment of the comfort women was conducted mainly by **private recruiters** who acted in response to the request of the military. The Government study has revealed that in many cases they were recruited against their own will, through coaxing coercion, etc., and that, at times, **administrative/military personnel directly took part in the recruitments**. They lived in misery at comfort stations under a coercive atmosphere.

**Treaty of Peace with Japan (with two declarations). Signed
at San Francisco, on 8 September 1951**

Article 14

(b) Except as otherwise provided in the present Treaty, the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war, and claims of the Allied Powers for direct military costs of occupation.

**8 AGREEMENT ON THE SETTLEMENT OF PROBLEM CONCERNING
PROPERTY AND CLAIMS AND ON THE ECONOMIC CO-OPERATION
BETWEEN JAPAN AND THE REPUBLIC OF KOREA**

ARTICLE II

1. The Contracting Parties confirm that problem concerning property, rights and interests of the two Contracting Parties and their nationals (including juridical persons) and concerning claims between the Contracting Parties and their nationals, including those provided for in Article IV, paragraph (a) of the Treaty of Peace with Japan signed at the city of San Francisco on September 8, 1951, is settled completely and finally.

**Treaty of Peace with Japan (with two declarations). Signed
at San Francisco, on 8 September 1951**

Article 4

(a) Subject to the provisions of paragraph (b) of this Article, the disposition of property of Japan and of its nationals in the areas referred to in Article 2, and their claims, including debts, against the authorities presently administering such areas and the residents (including juridical persons) thereof, and the disposition in Japan of property of such authorities and residents, and of claims, including debts, of such authorities and residents against Japan and its nationals, shall be the subject of special arrangements between Japan and such authorities. The property of any of the Allied Powers or its nationals in the areas referred to in Article 2 shall, in so far as this has not already been done, be returned by the administering authority in the condition in which it now exists. (The term nationals whenever used in the present Treaty includes juridical persons.)



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Note verbale dated 26 March 1996 from the Permanent Mission
of Japan to the United Nations Office at Geneva addressed
to the Centre for Human Rights

The Special Rapporteur's legal arguments, which the Government of Japan carefully studied, are not well founded in international law. The Government of Japan has serious reservation on major parts of her legal arguments.

As regards the issues of reparations and/or settlement of claims for the damage and suffering caused during the war, including the issue of "comfort women," Japan has sincerely fulfilled its obligations according to the San Francisco Peace Treaty, bilateral treaties and other relevant international agreements, and therefore, the issues have been finally and completely settled between Japan and the Parties to the above mentioned agreements. As for the obligation to pay compensation to individuals, it is the established rule that an individual cannot be a subject of rights or duties in international law unless his or her right is expressly provided in a treaty and the procedure for exercising the right is guaranteed under international law as well. Despite the Special Rapporteur's quotations, instruments such as the Universal Declaration of Human Rights, and the International Covenants on Human Rights have nothing to do with an individual's right to claim compensation under international law.

159. The Government of Japan is aware that the comfort women issue is an issue that has been a grave affront to many women's honor and dignity, and has expressed feelings of sincere apology and remorse to former comfort women through the issuance of a letter from the Prime Minister and in a speech by the Chief Cabinet Secretary (1993).

160. As the issues of compensation, property and the right to claim have already been legally solved in relation to the parties to a convention, the Murayama Cabinet determined that it was appropriate to take action through the "Asian Women's Fund", which was established through the cooperation of Japanese citizens and the government, in order to aim at a realistic remedy for former comfort women who had already grown old. Subsequently, the government has been providing maximum cooperation for the Fund's projects, including medical/welfare services for former comfort women and the payment of "atonement money."

Letter from Prime Minister Junichiro Koizumi to the former comfort women

The Year of 2001

Dear Madam,

On the occasion that the Asian Women's Fund, in cooperation with the Government and the people of Japan, offers atonement from the Japanese people to the former wartime comfort women, I wish to express my feelings as well.

The issue of comfort women, with an involvement of the Japanese military authorities at that time, was a grave affront to the honor and dignity of large numbers of women.

As Prime Minister of Japan, I thus extend anew my most sincere apologies and remorse to all the women who underwent immeasurable and painful experiences and suffered incurable physical and psychological wounds as comfort women.

We must not evade the weight of the past, nor should we evade our responsibilities for the future.

I believe that our country, painfully aware of its moral responsibilities, with feelings of apology and remorse, should face up squarely to its past history and accurately convey it to future generations.

Furthermore, Japan also should take an active part in dealing with violence and other forms of injustice to the honor and dignity of women.

Finally, I pray from the bottom of my heart that each of you will find peace for the rest of your lives.

Respectfully yours,

Junichiro Koizumi
Prime Minister of Japan

<http://www.mofa.go.jp/policy/women/fund/pmletter.html>

Nagoya High Court (Kanazawa Branch), Judgment, March 8, 2010;
not yet reported*

X *v.* State of Japan and Y

B. The appellants argue that, since the Agreement is nothing but an agreement between Japan and the ROK and regulates only inter-State relations between the two, they are unable to waive claims of individuals by the Agreement.

Nevertheless, it is generally accepted that a State may, by way of treaties, bring about certain effects onto its nationals' private rights, for example, by disposing of their properties or waiving their claims. Thus, the Treaty of Peace with Italy (February 10, 1947) provides that Italy waives all claims on behalf of Italian nationals against Germany and German nationals.¹²

Accordingly, the Court does not consider that the Agreement, as an agreement between Japan and the ROK, cannot waive or bring about certain other effects upon claims of nationals (Note that Article 2(3) of the Agreement stipulating that no contention shall be made with respect to any "claims" (falling under category (2) mentioned in (2)A above) shall not be understood to extinguish such claims, themselves, as substantive claims).'

Challenge against Act of Omission Involving

Article 3 of "Agreement on the Settlement of Problem concerning Property and Claims and the Economic Cooperation between the Republic of Korea and Japan"

August 30, 2011, 2006Hun-Ma788

Although the Korean government did not directly violate the fundamental rights of comfort women victims, the government is still liable for causing disruption in settling the payment of claims by Japan and in restoring the victims' dignity and value in that it signed the Agreement without clarifying details of the claims and employing a comprehensive concept of "all claims." Taking note of such responsibility on the part of the Korean government, it is hard to deny that the government has the specific duty to pursue elimination of the disrupted state in settlement of claims.

All the aforementioned factors considered, pursuing dispute settlement under Article 3 of the Agreement would be the only rightful exercise of power consistent with the state's responsibility to protect fundamental rights of citizens. As the failure of the respondent to intervene has resulted in serious violation of fundamental rights, the omission to act is in violation of the Constitution.

In Claims Agreement negotiation, Japanese government did not acknowledge colonial rule's unlawfulness and denied legal compensation for forced mobilization victims. ROK and Japanese government did not agree on the nature of Japanese Korean peninsula rule. In this circumstance, **claim rights for tort against humanity involving Japanese government power or colonial rule tort damages were not addressed in Claims Agreement.** Thus, Plaintiffs' damages claim rights have not expired due to Claims Agreement. ROK's diplomatic protection right was also not abandoned. Further, a country may not expire a citizen's individual right to claim without consent of an individual citizen by treaty where a diplomatic protection right is abandoned. It is against the principle of modern law. **If a country may expire citizen's individual right to claim by treaty under the international law, unless explicitly expressed in the treaty, citizen's individual right to claim cannot be seen as expired together with the country's diplomatic protection right since the country and individual citizen are separate legal entity.** Claims Agreement does not have a sufficient basis to show agreement between ROK and Japan government as to whether an individual right to claim expired.

ROK, Supreme Court Decision, 2009Da22549, Decided on 24 May 2012

The South Korean government has taken a more limited stance. A committee set up in August 2005 to look into compensation rights and made up of individuals from the private and public sectors recommended that \$300 million (23.89 billion yen) in grant aid from Japan, given as part of economic cooperation measures, should be considered as part of the money to resolve compensation claims by those who were forced to work for Japanese companies during World War II.

One South Korean government source said it would be difficult for the government to change that position.

Asahi Shimbun, 25 May 2012