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Comfort Women and Sexual Slavery in International Law: Seeking Justice and Reparations

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COMFORT WOMEN AND SEXUAL SLAVERY IN INTERNATIONAL LAW: SEEKING JUSTICE AND REPARATIONS

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ABSTRACT

During World War II, the Imperial Japanese Army forced over 200,000 women into sexual slavery in comfort stations across Asia. It is estimated that 80% of the 'comfort women' were from Korea, and the rest were from countries such as China, Japan, the Philippines, Taiwan, the Dutch East Indies and East Timor. The research carried out until now on the 'comfort women' has revealed the extent to which these women were deprived of personal freedom and control over their sexual autonomy and body and subjected to regulations on a chattel-like basis of their reproductive health. Despite this, the International Military Tribunal For the far East, established after the World War II, merely delivered the 'victor's justice', and it failed to sufficiently prosecute crimes related to the 'comfort women'. About 50 years later, in 1990s, the concern over the issue of the sexual violence in international law emerged from the prosecutions of sexual offenders tried in the ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda. In this context, the injustice for the 'comfort women' and its consideration as crimes of sexual slavery became an object of debate and was actively discussed within the international organisations. From 1991 to 2001, the 'comfort women' filed 10 lawsuits against the Japanese government before the domestic tribunals, but all the cases were eventually dismissed. In 1996, the Japanese government established an Asian Women's Fund to provide compensation, medical welfare and letters of apology to the 'comfort women'. However, the Asian Women's Fund has been criticised by the United Nations, because the reparations were implemented without the admission of the state responsibility. The debate over the 'comfort women', lasting more than 80 years since the end of World War II, has shown the complexity of the legal and political problems, causing continuing suffering and violation of human rights of the 'comfort women'. Therefore, this contribution will analyse to what extent the development of international law in relation to the crime of sexual slavery can contribute to promote the right to justice and the right to reparation of the 'comfort women'. To this end, I will investigate the Japan's international responsibility for the 'comfort women' as sexual slavery and examine the evolving principles of the international law in relation to the right to an effective remedy and the right to reparation. I argue that Japan has been in complete disregard for jus cogens norm of prohibition of slavery and should acknowledge that it bears

the state responsibility for the systematic sexual slavery of the ‘comfort women’. I also argue that not only material reparation, but also symbolic and transformative reparation together with structural changes should be provided for the ‘comfort women’, adopting victims-oriented and gendered approach which has lacked to date.

RESUM

Durant la Segona Guerra Mundial, l'exèrcit imperial japonès va obligar a més de 200.000 dones a ser esclaves sexuals en estacions de confort a tota Àsia. Es calcula que el 80% de les “dones de consol” eren de Corea, i la resta eren de països com la Xina, el Japó, les Filipines, Taiwan, les Índies Orientals Holandeses i Timor Oriental. La investigació realitzada fins ara sobre les "dones de consol" ha posat de manifest fins a quin punt aquestes dones estaven privades de la llibertat personal i del control sobre la seva autonomia sexual i corporal i sotmeses a les regulacions sobre la seva salut reproductiva sobre una base de tipus mobiliari. Malgrat això, el Tribunal Militar Internacional per a l'Extrem Orient, establert després de la Segona Guerra Mundial, es va limitar a lliurar la "justícia del vencedor" i no va processar prou els crims relacionats amb les "dones de consol". Uns 50 anys més tard, a la dècada de 1990, la preocupació per la qüestió de la violència sexual en el dret internacional va sorgir dels processaments dels delinqüents sexuals jutjats als Tribunals Penals Internacionals ad hoc per a l'antiga Iugoslàvia i Ruanda. En aquest context, la injustícia per a les "dones de consol" i la seva consideració com a delictes d'esclavitud sexual es va convertir en objecte de debat i es va discutir activament dins les organitzacions internacionals. Del 1991 al 2001, les "dones de consol" van presentar 10 querelles contra el govern japonès davant els tribunals interns, però finalment tots els casos van ser desestimats. El 1996, el govern japonès va establir un Fons de Dones Asiàtiques per oferir compensacions, benestar mèdic i cartes de disculpa a les "dones de consol". No obstant això, el Fons de Dones Asiàtiques ha estat criticat per les Nacions Unides perquè les reparacions es van implementar sense l'admissió de la responsabilitat de l'estat. El debat sobre les 'dones de consol', que ha durat més de 80 anys des del final de la Segona Guerra Mundial, ha posat de manifest la complexitat dels problemes legals i polítics, provocant un patiment continuat i la vulneració dels drets humans de les 'dones de consol'. Per aquest motiu aquesta tesi analitzarà fins a quin punt el desenvolupament del dret internacional

en relació amb el delicte d'esclavitud sexual pot contribuir a promoure el dret a la justícia i el dret a la reparació de les “dones de consol”. Amb aquesta finalitat, investigaré la responsabilitat internacional del Japó per les "dones de consol" com a esclavitud sexual i examinaré els principis en evolució del dret internacional en relació amb el dret a un recurs efectiu i el dret a la reparació. Argumento que el Japó ha ignorat completament la norma de jus cogens de prohibició de l'esclavitud i hauria de reconèixer que té la responsabilitat estatal de l'esclavitud sexual sistemàtica de les "dones de consol". També argumento que no només s'hauria d'oferir una reparació material, sinó també una reparació simbòlica i transformadora, juntament amb canvis estructurals, per a les "dones de consol", adoptant un enfocament orientat a les víctimes i de gènere que ha mancat fins ara.

RESMUEN

Durante la Segunda Guerra Mundial, el Ejército Imperial Japonés obligó a más de 200.000 mujeres a la esclavitud sexual en estaciones de confort en toda Asia. Se estima que el 80% de las 'mujeres de solaz' eran de Corea y el resto de países como China, Japón, Filipinas, Taiwán, las Indias Orientales Holandesas y Timor Oriental. Las investigaciones realizadas hasta ahora sobre las 'mujeres de solaz' han puesto de manifiesto hasta qué punto estas mujeres estaban privadas de libertad personal y de control sobre su autonomía sexual y corporal y sometidas a regulaciones sobre la base de bienes muebles de su salud reproductiva. A pesar de esto, el Tribunal Militar Internacional para el Lejano Oriente, establecido después de la Segunda Guerra Mundial, simplemente dictó la 'justicia del vencedor' y no procesó suficientemente los delitos relacionados con las 'mujeres de solaz'. Aproximadamente 50 años después, en la década de 1990, la preocupación por el tema de la violencia sexual en el derecho internacional surgió a partir de los procesos de los delincuentes sexuales juzgados en los Tribunales Penales Internacionales ad hoc para la ex Yugoslavia y Ruanda. En este contexto, la injusticia para las 'mujeres de solaz' y su consideración como delitos de esclavitud sexual se convirtió en objeto de debate y se discutió activamente en el seno de las organizaciones internacionales. De 1991 a 2001, las 'mujeres de solaz' presentaron 10 demandas contra el gobierno japonés ante los tribunales nacionales, pero todos los casos fueron finalmente desestimados. En 1996, el gobierno japonés estableció un Fondo de Mujeres Asiáticas para proporcionar compensación,

bienestar médico y cartas de disculpa a las 'mujeres de consuelo'. Sin embargo, el Fondo de Mujeres Asiáticas ha sido criticado por las Naciones Unidas, porque las reparaciones se implementaron sin la admisión de la responsabilidad del Estado. El debate sobre las 'mujeres de solaz', que dura más de 80 años desde el final de la Segunda Guerra Mundial, ha mostrado la complejidad de los problemas legales y políticos, causando continuo sufrimiento y violación de los derechos humanos de las 'mujeres de solaz'. Por este motivo, esta tesis analizará en qué medida el desarrollo del derecho internacional en relación con el delito de esclavitud sexual puede contribuir a promover el derecho a la justicia y el derecho a la reparación de las 'mujeres de solaz'. Con este fin, investigaré la responsabilidad internacional de Japón por las 'mujeres de solaz' como esclavitud sexual y examinaré los principios en evolución del derecho internacional en relación con el derecho a un recurso efectivo y el derecho a reparación. Argumento que Japón ha hecho caso omiso de la norma jus cogens de prohibición de la esclavitud y debería reconocer que tiene la responsabilidad estatal por la esclavitud sexual sistemática de las 'mujeres de solaz'. También sostengo que no solo debe proporcionarse una reparación material, sino también una reparación simbólica y transformadora junto con cambios estructurales para las 'mujeres de solaz', adoptando un enfoque orientado a las víctimas y de género del que ha carecido hasta la fecha.

LIST OF ABBREVIATION

ACHPR	African Charter on Human and People's Rights
ACHR	American Convention on Human Rights
ACTIP	Association of Southeast Asian Nations Convention Against Trafficking in Persons, Especially Women and Children
AQIM	Al Qaeda in the Islamic Maghreb
ASCENT	Asian Centre for Women's Human Rights
ASEAN	Association of Southeast Asian Nations
CAT	Committee Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
DEVAW	Declaration on the Elimination of Violence Against Women
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedom
ECOSOC	Economic and Social Council
GRETA	Group of Experts on Action against Trafficking in Human Beings Articles on Responsibility of States for Internationally Wrongful Acts
IACHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ILC	International Law Commission
IMT	International Military Tribunal
IMTFE	International Military Tribunal for the Far East

JES	Stichting Japanse Ereschulden
LBH	Lembage Butun Hukum
NGO	Non-governmental Organisation
NGOs	Non-governmental Organisations
NHK	Nippon Hoso Kyokai
NPO	Non-profit Organisation
OAU	Organisation of African Unity
PCIJ	Permanent Court of International Justice
PICN	Project Implementation Committee in the Netherlands
POW	Prisoners of War
SCSL	Special Court for Sierra Leone
SLTRC	Sierra Leone's Truth and Reconciliation Commission
TJP	Transitional Justice Project
TWRF	Taipei Women's Rescue Foundation
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
US	United States

CHAPTER 1

COMFORT WOMEN DURING WORLD WAR II

1.1 INTRODUCTION

In 1990s, the concern over the issues of sexual violence in international law has emerged from the prosecutions of sexual offenders during the Bosnian War and the Rwandan Genocide in the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) respectively.[1] In this context, injustice for the 'comfort women' became an object of debate and was actively discussed in the United Nations (UN) and other international organisations.[2] Regarding the term 'comfort women', which is 'Ianfu' in Japanese, is a euphemistic way of referring to women who provided sexual services to Japanese Imperial Army during World War II.[3] Contrary to the significance of the ICTY and the ICTR regarding the prosecutions of sexual offenders, the 'comfort women' has remained injustice for over 80 years since the end of World War II.[4]

During World War II, the Imperial Japanese Army forced several hundred thousand of women into sexual slavery in comfort stations throughout Asia.[5] It is estimated that 80% of the 'comfort women' were from Korea, and the rest were from countries such as China, Japan, the Philippines, Taiwan, the Dutch East Indies and East Timor.[6] The research carried out until now on the 'comfort women' showed the extent to which women were deprived of their liberty and their bodily and sexual autonomy, and were bound by regulations on their reproductive health,

[1] Kelly Dawn Askin, War Crimes against Women: Prosecution in International War Crimes Tribunals (Martinus Nijhoff Publishers, 1997): 298-371. See also, William A Schabas, "Genocide and the International Court of Justice: Finally, a Duty to Prevent the Crime of Crimes," Genocide Studies and Prevention 2, no. 2 (2007): 101–22., Doris E. Buss, "Rethinking 'Rape as a Weapon of War,'" Feminist Legal Studies 17, no. 2 (2009): 145–63. See also generally, M. Cherif Bassiouni and Marcia McCormick, Sexual Violence: An Invisible Weapon of War in the Former Yugoslavia (Chicago: DePaul University, 1996).

[2] UN Commission on Human Rights. An analysis of the legal liability of the government of Japan for "comfort women stations" established during the Second World War. Am J Chin Stud 6(1) (1999): 73-102.

[3] Gay J. McDougall, "Addressing State Responsibility for the Crime of Military Sexual Slavery during the Second World War: Further Attempts for Justice for the 'Comfort Women,'" Korean Journal of International and Comparative Law 1, no. 2 (2013): 137–65, https://doi.org/10.1163/22134484-12340018.

[4] ibid. See also, Nicola Henry, "Memory of an Injustice: The 'Comfort Women' and the Legacy of the Tokyo Trial," Asian Studies Review 37, no. 3 (2013): 362–80. Karen Knop and Annelise Riles, "Space, Time, and Historical Injustice: A Feminist Conflict-of-Laws Approach to the 'Comfort Women' Agreement," Cornell Law Review 102, no. 4 (2017): 853–928.

[5] The United Nations Commission on Human Rights, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, Fiftieth Session Item 6 of the Provisional Agenda," E/CN.4/Sub.2/1998/13," Fiftieth session (22 June 1998). See also generally, Yoshiaki Yoshimi, Jyugun Ianfu (Comfort Women) (Toyko: Iwanami Shinsho, 1995).

[6] Japanese Cabinet Councillors' Office on External Affairs, 'Iwayuru Jyuugun Ianhu Mondai ni tsuite', 'On the issue of wartime 'comfort women'' in English, 4 August 1993., accessed August 13, 2021, https://www.mofa.go.jp/mofaj/area/taisen/pdfs/im_050804.pdf See also, Ustinia Dolgopol and Snehal Paranjape, "Comfort Women: An Unfinished Ordeal" (Geneva, 1994): 15-28, https://www.icj.org/wp-content/uploads/1994/01/Japan-comfort-women-fact-finding-report-1994-eng.pdf. See also generally, Yoshimi, Jyugun Ianfu (Comfort Women).

remaining at disposal of Japanese soldiers.[7] However, the IMTFE, established in 1946, merely delivered the 'victor's justice', and it failed to sufficiently prosecute crimes related to the 'comfort women'.[8]

The 'comfort women' came into public only after the victim survivors started to speak about their experiences, with the support of the Korean Council for Women Drafted for Military Sexual Slavery by Japan (Korean Council).[9] Along with the democratisation of South Korea in the late 1980s, a group of progressive Christian Korean women began to raise concerns about 'comfort women'.[10] As a result, the Korean Council was founded by a coalition of feminist organisations, including the Korean Women's Hotline and the Korean Women's Association United, as well as some religious organisations such as the Buddhist Human Rights Committee and the National Council of Churches.[11] The Korean Council has been acting as an advocate for the rights of 'comfort women'.[12] The 'comfort women' have constantly urged the Japanese government to accept legal responsibility and issue a formal apology and reparations.[13]

During a press conference in 1991, Kim Hak-soon revealed her experiences as a 'comfort women', which encouraged other 'comfort women' to share their stories and prompted the Korean Council to set up a hotline for them.[14] Despite of the admission of 'moral responsibility', the Japanese government has continued to deny legal responsibility for the 'comfort women,' claiming that the victims' right to claim has been waived under the 1951 San Francisco Peace Treaty and the post-war bilateral agreements.[15]

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[7] ibid.
[8] Henry, "Memory of an Injustice: The 'Comfort Women' and the Legacy of the Tokyo Trial."
[9] Chunghee Sarah Soh, "The Korean " Comfort Women ": Movement for Redress," University of California Press 36, no. 12 (1996): 1226–40.
[10] Cheah Wui Ling, "Walking the Long Road in Solidarity and Hope : A Case Study of the " Comfort Women " Movement ' s Deployment of Human Rights Discourse," Harvard Human Rights Journal 22, no. 2000 (2009): 63–107.
[11] ibid.
[12] Gudrun Getz, "Honour and Dignity: Trauma Recovery and International Law in the Issue of the Comfort Women of South Korea," J*ournal of International Women's Studies* 19, no. 1 (2018): 63–77.
[13] Ibid. See also, Gay J. McDougall, "Addressing State Responsibility for the Crime of Military Sexual Slavery during the Second World War: Further Attempts for Justice for the 'Comfort Women,'" Korean Journal of International and Comparative Law 1, no. 2 (2013): 137–65.
[14] ibid.
[15] Conference for the Conclusion and Signature of the Treaty of Peace with Japan (1951: San Francisco, Calif.). Conference For the Conclusion and Signature of the Treaty of Peace with Japan, San Francisco, California, September 4-8, 1951: Record of Proceedings. Washington, D.C.: Department of State, 1951. The Treaty of Peace with Japan signed at San Francisco on September 8, 1951, by 49 countries has rightly been known as a 'treaty of reconciliation'. See also, Agreement on the settlement of problems concerning property and claims and on economic co-operation (with Protocols, exchanges of notes and agreed minutes). Signed at Tokyo, on 22 June 1965, Cornell Law Review and Stanley D Metzger, "Liberal Japanese Peace Treaty" 37, no. 3 (1952). The bilateral agreements include the 1952 Treaty of Peace Between the Republic of China and Japan, the 1978 Treaty of Peace

Furthermore, the 'comfort women' brought 10 lawsuits against the Japanese government in domestic courts of Japan between 1991 and 2001, but the Supreme Courts ultimately dismissed all of the claims.[16] Moreover, in 1996, the Asian Women's Fund was established by the Japanese government to provide compensation, medical welfare, and an apology letter from the then Japanese Prime Minister to the 'comfort women', however, the Asian Women's Fund has been criticised by the United Nations.[17]

Especially, the 1996 Coomaraswamy Report and the 1998 McDougall Report submitted to the UN Commission on Human Rights criticised that the projects were implemented without the admission of the state responsibility.[18] Besides, the continuing violations of human rights of the 'comfort women' have also been condemned in these Reports, arguing that the Japanese government should make full reparations by acknowledging the state responsibility for the 'comfort women' and all the consequences caused by the denial of its responsibility.[19]

More recently, in 2015, Japan and South Korea signed the Comfort Women Agreement, which aimed to resolve the 'comfort women' by offering an apology and one billion yen for a fund to support the 'comfort women' from Japan..[20] However, the Agreement was made in the form of joint press conference by former Japanese and South Korean Foreign Ministers, without expressing a clear admission of legal responsibility.[21] In the joint conference, the former

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and Friendship Between Japan and China, the 1956 Settlement Between the Government of the Kingdom of The Netherlands and Japan Concerning Certain Types of Private Claims of Netherlands Nationals, the 1956 Reparations Agreement Between the Philippines and the 1965 Agreement on the Settlement of Problems concerning Property and Claims and on Economic Cooperation between Japan and the Republic of Korea.

[16] Judgement of April 27, 1998, Yamaguchi District Court (Shimonoseki Branch), LXDB28033107.

[17] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)* (Asian Peace National Fund for Women, 2004), https://www.awf.or.jp/pdf/0169.pdf. See also, "Sengo Gojyu Nen Ni Mukete No Murayama Tomiichi Naikakusouridaujin No Danwa (Statement by Prime Minister Tomiichi Murayama on the 50th Anniversary of the End of the War)," 1994, accessed 5 August 2022, https://www.awf.or.jp/6/statement-04.html. See also, Ministry of Foreign Affair of Japan, "Measures Taken by the Government of Japan on the Issue of 'Comfort Women,'" accessed January, 14 2021, https://www.mofa.go.jp/policy/women/fund/policy.html.

[18] The United Nations Commission on Human Rights, "Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Fifty-Second Session Item 9 (a) of the Provisional Agenda," E/CN.4/1996/53/Add.1," Fifty-second session (4 January 1996). See also, The United Nations Commission on Human Rights, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, Fiftieth Session Item 6 of the Provisional Agenda," E/CN.4/Sub.2/1998/13," Fiftieth session (22 June 1998).

[19] ibid.

[20] Ministry of Foreign Affairs in Japan, Announcement by Foreign Ministers of Japan and the Republic of Korea at the Joint Press Conference, 28th December 2015, accessed May 22, 2022, https://www.mofa.go.jp/a_o/na/kr/page4e_000364.html.,.

[21] The Comfort Women Agreement 2015 between the government of Japan and Korea, without official documents signed by both governments. See also, Dai Tamada, "The Japan-South Korea Comfort Women Agreement: Unfortunate Fate of a Non-Legally Binding Agreement," International Community Law Review 20, no. 2 (2018): 220–51.

Ministry of Foreign Officer of South Korea, Yun Byung-se, held that '…Korean government confirms that the matter of the 'comfort women' is finally and irreversibly resolved', and once the promises that the Japanese government would 'steadily implement the measures it announced' would be completed.[22]

In this regard, there has been some debate about the intent and political nature of the decision not to discuss the matter in international forums.[23] Moreover, some of the 'comfort women' argued that what they truly have demanded was an official and sincere apology and reparations to the victims for the crime committed by Japan, accepting legal responsibility.[24]

Furthermore, the Comfort Women Agreement did not fully embrace a victim-oriented approach. The UN Committee on the Elimination of Discrimination Against Women reports that there has been a persistent lack of effective and comprehensive remedies for these victims, such as satisfaction and rehabilitative services other than monetary compensation.' [25] Furthermore, it required the Japanese government to refrain from making disparaging remarks about the 'comfort women' because the victims could be retraumatized.[26] Additionally, the UN Committee Against Torture (CAT) suggested that Japan and South Korea should revise the Comfort Women Agreement because it 'fails to provide redress and reparation…or to ensure the right to truth and assurances of non-repetition' while acknowledging the efforts made to the 'comfort women.'[27]

In addition, in the study on grave violations of human rights and international humanitarian law committed in colonial contexts, the UN Special Rapporteur, Fabián Salvioli, states that

[22] Ministry of Foreign Affairs in Japan, Announcement by Foreign Ministers of Japan and the Republic of Korea at the Joint Press Conference, 28th December 2015, accessed May 22, 2022, https://www.mofa.go.jp/a_o/na/kr/page4e_000364.html. Regarding the premises, it states that the Japanese government 'will now take measures to heal psychological wounds of all former comfort women through its budget…it has been decided that…the Republic of Korea…establish a foundation for the purpose of providing support for the former comfort women, that its funds be contributed by the Government of Japan as a one-time contribution through its budget…and that projects for recovering the honour and dignity and healing the psychological wounds of all former comfort women be carried out under the cooperation'.

[23] Klea Ramaj, "The 2015 South Korean-Japanese Agreement on 'Comfort Women': A Critical Analysis," International Criminal Law Review 22, no. 3 (2022): 475–509.

[24] Soh, "The Korean " Comfort Women ": Movement for Redress." See also, Getz, "Honour and Dignity: Trauma Recovery and International Law in the Issue of the Comfort Women of South Korea."

[25] United Nations Committee on the Elimination of Discrimination against Women, "Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Japan," CEDAW/C/JPN/CO/7-8 (10 March 2016): para 29, available at https://digitallibrary.un.org/record/833895?ln=en., accessed 9 March 2022.

[26] ibid.

[27] United Nations Committee against Torture, "Concluding Observations on the Combined Third to Fifth Periodic Reports of the Republic of Korea," CAT/C/KOR/CO/3-5 (30 May 2017): para 47.

Japan must implement transitional justice measures as reparations for the 'comfort women'.[28] It specifically criticised the negotiation process held until now for the 'comfort women,' claiming that it has consistently lacked a victim-oriented approach..[29]

The debate over the 'comfort women', lasting more than 80 years since the end of World War II, has shown the complexity of the legal and political problems, causing continuing suffering and violation of human rights of the 'comfort women'. Therefore, this contribution will analyse to what extent the development of international law in relation to the crime of sexual slavery can contribute to promote the right to justice and the right to reparation of the 'comfort women'. To this end, I will identify the Japan's international responsibility for the 'comfort women' as sexual slavery and examine the evolving principles of the international law in relation to the right to a remedy and the right to reparation.

The methodology used in this contribution will be a combination of a doctrinal research and applied legal research. This research involves a systematic examination of the statutory provisions and legal principles contained therein or derived therefrom, followed by the collection of information on all technical legal provisions and principles applied and forming opinions on the matter concerned.[30] Precisely, it will identify specific legal rules, analyse the legal meaning, underlying principles, and decision-making in pursuant to the rule, and apply the findings into the unsettled matter and provide opinions. In doing this, reliance will be placed on a variety of materials such as primary law, secondary law, law reports, case law, decisions of international, regional and national courts, international agreements, treaties, the UN resolutions, charters, literatures and newspaper articles. The resources will be collected from the libraries, museums and the internet including online legal databases. I believe that this research contributes to generating new insights on not only the right to justice and the right to reparation of the 'comfort women', but also the relevant subject of the rights to reparations for survivors of gender-based crimes.

This contribution will be divided in 5 Chapters. In Chapter 1, I will investigate historical background of the 'comfort women' and the characteristics of the 'comfort women' system during World War II. In Chapter 2, I will assess historical injustice for the 'comfort women'

[28] United Nations General Assembly, "Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabián Salvioli," A/76/180, Seventy-sixth session (19 July 2022).
[29] ibid para 91.
[30] Rattan Singh, Legal Research Methodology, 1st ed. (LexisNexis, 2013): 148. See also generally, Lina Kestemont, Handbook on Legal Methodology From Objective to Method (Intersentia, 2018), https://doi.org/doi:10.1017/9781839702389.

starting from the IMTFE to date. In Chapter 3, I will examine the developments on the prohibitions regulating sexual slavery in international law and analyse the application and interpretation of those prohibitions in the 'comfort women'. In Chapter 4, I will identify forms of effective reparations for the 'comfort women' by assessing the evolving international standards protecting the right to a remedy and reparation. Finally, in Chapter 5, I will provide overall conclusions.

I argue that Japan has been in complete disregard for jus cogens norm of prohibition of slavery and should acknowledge that it bears the state responsibility for the systematic sexual slavery of the 'comfort women'. I also argue that not only material reparation, but also symbolic and transformative reparation together with structural changes should be provided for the 'comfort women', adopting victims-oriented and gendered approach which has lacked to date.

1.2. DEFINITION OF GENDER-BASED CRIMES

For the usage of the term 'gender-based crimes' in this research, the definition will be clarified. In accordance with the 2014 Policy Paper on Sexual and Gender-Based Crimes issued by the International Criminal Court (ICC), Gender-based crimes are 'those committed against people, whether male or female, because of their sex and/or socially constructed gender roles.'[31] Gender-based crimes are not always expressed as sexual violence. Non-sexual attacks on women and girls, as well as men and boys, may be included.'[32] The significance of classification of gender-based crimes regarding sexual violence is that it can establish broader and more sensitive framework which suitable to the distinctive character of the crime.[33] Gender-based crimes include sexual violence such as rape, sexual slavery, forced prostitution, forced pregnancy, and any other form of sexual violence; however, gender-based crimes should not be limited to these crimes. Gender-based crime can include, for example, attacks on civilians or abductions with a specific gender-use mind.[34]

[31] International Criminal Court, The Policy Paper on Sexual and Gender-Based Crimes, June 2014.
[32] ibid.
[33] Rosemary Grey, "Gender-Based Crimes," in Prosecuting Sexual and Gender-Based Crimes at the International Criminal Court Practice, Progress and Potential, 2019, 37–66.
These crimes include rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity.
[34] Dianne Luping, "Investigation and Prosecution of Sexual and Gender-Based Crimes before the International Criminal Court," American University Journal of Gender, Social Policy & the Law 17, no. 2 (2009): 431–96., at 471-72.

In the prosecutions, a comprehensive understanding of gender is essential for prosecutors to describe what conducts make certain victims suffer and it result in assisting judges to understand such conducts in broader context.[35] For example, although international courts often use sexual acts as evidence of forced marriage which may contain the aspect of sexual slavery or other sexual violence, it also may involve a non-sexual aspect which establishes the exercise of powers attaching to the right of ownership, such as abduction, imprisonment and forced cooking.[36]

The classification of gender-based crimes is important because it can promote to exclude the gendered stereotypes regarding victims and perpetrators, to enhance the prosecutorial process of legal instruments related to sexual violence and to reduce the requirement of evidence of criminal liability for sexual violence.[37]

1.3. HISTORICAL BACKGROUND

During World War II, numerous women were forced into the 'comfort women' by the Imperial Japanese Army and placed in comfort stations throughout Asia.[38] The 'comfort women' were sexually enslaved daily under threat of severe abuse and exposed to sexually transmitted diseases.[39] It is said that the most of the comfort stations were formally managed by private owners, however, effectively controlled by the Imperial Japanese Army and specifically utilised by the military officers and its civilian employees.[40] The aim of the establishment of the comfort stations was originally to deter anti-Japanese sentiment stem from the outrage for mass rape against local people and to prevent the military personnel from the sexually transmitted diseases. However, it can be said that its institutionalisation reflected and reinforced a military culture in which gender-based crimes tended to be tolerated and sexual slavery was obscured from the outside.[41]

[35] Valerie Oosterveld, "Lessons from the Special Court for Sierra Leone on the Prosecution of Gender-Based Crimes," Journal of Gender, Social Policy and the Law 17, no. 2 (2009): 407–30.
[36] ibid.
[37] Grey, "Gender-Based Crimes."
[38] Dolgopol and Paranjape, "Comfort Women: An Unfinished Ordeal."
[39] Karen Parker and Jennifer F. Chew, Compensation for Japan s World War II War-rape Victims, 17 Hastings International and Comparative Law Review, 1994, 497-99.
[40] ibid.
[41] Dolgopol and Paranjape, "Comfort Women: An Unfinished Ordeal."

1.3.1. Invasion of the Asia-Pacific Region by the Imperial Japanese Army

The aim of Japan's invasion of the Asia-Pacific Region was to secure the military, naval, political and economic dominance over East Asia and of the Pacific and Indian Oceans, all countries and islands within or bordering them.[42] In order to accomplish this aim, Japanese military and political officers perpetrated and allowed inhumane atrocities against the civilians as well as the prisoners of war (POW) in the occupied territories.[43]

The first colony of the Empire of Japan was Taiwan.[44] Following the defeat of China in the 1894 Sino-Japanese War, Taiwan was ceded to Japan under Shimonoseki Treaty, as a part of compensation from China.[45] It remained colonised until the end of World War II.[46] Furthermore, following Japan's victory in the Russo-Japanese War between 1904 and 1905, Korea became a Protectorate of the Empire of Japan in 1905, and was officially annexed to Japan through the Treaty of Annexation in 1910.[47] The Korean Emperor ceded sovereignty over Korea to the Japanese Emperor as a result of the Treaty, and the Japanese Empire began to compel Koreans to adopt Japanese culture.[48] For instance, the Empire of Japan the Japanese Empire forced Koreans to change their names to Japanese ones and to learn Japanese.[49]

In China, as a result of the invasion of Northeast China by Imperial Japanese Army in 1931, Manchukuo was recognised as a state by the Empire of Japan through the 1932 Japan-Manchukuo Protocol.[50] Meanwhile, Imperial Japanese Army also began military aggression in Shanghai. The conflict in Shanghai intermittently continued for 5 years until Shanghai's surrender, resulting in serious crimes containing killing and rape.[51] In 1937, Imperial Japanese Army marched to the then capital of China, Nanking, where the most horrible atrocities, the

[42] Yoshinori Yoshioka, Nihon No Shinryaku to Bouchou (Tokyo: Shinnihon Shuppansya, 1996).
[43] Yoshioka.
[44] Seiji Shirane, "Introduction," in *Imperial Gateway: Colonial Taiwan and Japan's Expansion in South China* and Southeast Asia, 1895–1945 (Cornell University Press, 2022), 1–16.
[45] Treaty of Shimonoseki, signed at Shimonoseki, 17 April 1895. Entered into Force 8 May 1895 by the exchange of the instruments of ratification at Chefoo.
[46] Shirane, "Introduction."
[47] Toyokichi Iyenaga, "Japan's Annexation of Korea," The Journal of Race Development 3, no. 2 (1912): 201–23.
[48] Mark E. Caprio, "Korean Clitiques of Japanese Assimilation Policy," in Japanese Assimilation Policies in Colonial Korea, 1910-1945 (University of Washington Press, 2009), 171–97.
[49] Caprio.
[50] Louise Young, "Manchukuo and Japan," in Jap*an's Total Empire: Manchuria and the Culture of Wartime* Imperialism, 1st ed. (London: University of California Press, 1998), 3–20.
[51] Harumi Goto-Shibata, "Towards the Shanghai Incident," in Japan and Britain in Shanghai, 1925–31 (London: Palgrave Macmillan, 1995), 116–143.

'Rape of Nanking' were committed by them.[52] It is said that there were several thousands of victims of rape during the 'Rape of Nanking', which lasted over a period of around 6 weeks, starting with the fall of Nanking in December 1937.[53]

As for the Philippines, The Empire of Japan declared war on the United States (US) by attacking on Pearl Harbour, Hawaii, and other US military bases including the one in the southern Philippines in 1941.[54] The Imperial Japanese Army marched to the southern Philippines and formally established its military regime in the Philippines in 1942.[55] During the Battle of Manila in 1945, there was horrific atrocities called the 'Rape of Manila' committed by the Imperial Japanese Army against the civilians in Manila, the capital of the Philippines.[56] In addition to this, in the Bataan Death March, about 75,000 American and Filipino POW were forcibly transferred by the Imperial Japanese Army despite a large number of them dying on the journey.[57]

Concerning the Dutch East Indies, which was a Dutch colony throughout the war and included what is Indonesia at present, the aim of the invasion by the Empire of Japan was to secure the natural resources such as raw materials and oil.[58] As a result of the invasion of the island of Java, the Dutch sovereignty over that territory was overthrown.[59] During the invasion and occupation by the Imperial Japanese Army, horrifying gender-based crimes were committed by them including rape.[60] During the Imperial Japanese Army's occupation of East Timor, which was a Portuguese colony until 1975, such atrocities were also committed against civilians.[61]

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[52] Timothy Brook, "The Tokyo Judgment and the Rape of Nanking," The Journal of Asian Studies 60, no. 3 (2001): 673–700. See also generally, Iris Chang, The Rape of Nanking: The Forgotten Holocaust of World War II (Basic Books, 2014).
[53] Brook, "The Tokyo Judgment and the Rape of Nanking."
[54] Donald J. Young, The Fall of the Philippines: The Desperate Struggle Against the Japanese Invasion, 1941-1942 (North Carolina: McFarland, 2015): 14-47.
[55] Young: 154-191.
[56] Ricardo M. Zarco, Filomin A. Candaliza-Gutierrez, and Marlon R. Dulnuan, "Trends in Murder and Rape Incidents in the Philippines and Metro Manila, 1980 to 1994," Philippine Sociological Review 43, no. 1 (1995): 43–54.
[57] Lester I. Tenney, "The Bataan Death March," in Japanese War Crimes: The Search for Justice, ed. Peter Li (New Brunswick: Transaction, 2009), 81–106.
[58] Willem Remmelink, "Outline of the Operation," in The Invasion of the Dutch East Indies (Volume 3.0), ed. Willem Remmelink (Leiden: Leiden University Press, 2015), 1–9.
[59] Willem Remmelink, "Invasion of Java," in The Invasion of the Dutch East Indies, ed. Willem Remmelink (Leiden: Leiden University Press, 2015), 417–34.
[60] Katharine McGregor, "Emotions and Activism for Former So-Called 'Comfort Women' of the Japanese Occupation of the Netherlands East Indies," *Women's Studies International Forum* 54 (2016): 67–78, https://doi.org/10.1016/j.wsif.2015.11.002.
[61] Women's Active Museum on War and Peace, Higashi Thimoru: Sensou Wo Ikinuita Onna Tachi (East Timor: Women Who Survived the War) (Toyko: Women's Active Museum on War and Peace, 2007).

Thus, it can be said that Japan's invasion of the Asia-Pacific Region illustrates the horrific and inhumane atrocities committed against the civilian populations and the POW. Those atrocities included gender-based crimes such as a mass rape and, in a cruel paradox, such mass rape was a considerable motivation for the institutionalisation of comfort stations.[62]

1.3.2. Institutionalisation of the 'Comfort Women' System

The mass rapes of Chinese women in Shanghai and Nanking, ironically, were factors in the institutionalisation of the 'comfort women' system. These incidents influenced the decision to expand the system throughout Asia.[63] Precisely, although the mass rapes in Shanghai and Nanking assaults in 1930s were broadly criticised in international community, the then Japanese government was concerned about the damage control in relation to the reputation of the Imperial Japanese Army, rather than making amends.[64] For instance, a diary written by Naosaburo Okabe, the commander of the North China Expeditionary Army, reads that, in order to conciliate anti-Japanese sentiments of Chinese people stem from the outrage regarding the mass rapes and to prevent the Japanese soldiers from committing further rapes, the immediate establishment of comfort stations should be considered.[65]

As a result, the first confirmed military comfort station was established in northeast China, specifically in Pinquan, in 1933.[66] Regarding the purpose of the establishment of the comfort stations, the research report of the Japanese government issued in 1993 states as follows:

> '…[T]he need to prevent anti-Japanese sentiments from fermenting as a result of rapes and other unlawful acts by Japanese military personnel against local residents in the areas occupied by the then Japanese military, the need to prevent loss of troop strength by venereal and other diseases, and the need to prevent espionage.'[67]

[62] Dolgopol and Paranjape, "Comfort Women: An Unfinished Ordeal."
[63] Dolgopol and Paranjape.
[64] Dolgopol and Paranjape.
[65] Yoshiaki Yoshimi, Comfort Women: Sexual Slavery in the Japanese Military During World War II (New York: Columbia University Press, 1995): 45. In this book, an entry from the Diary of Naosaburo Okabe, Senior Staff Officer in the Shanghai Expeditionary Force, is quoted.
[66] Yoshimi: 47.
[67] United Nations Commission on Human Rights, "Note Verbale from the Permanent Mission of Japan," E/CN.4/1996/137 (27 March 1996).

Therefore, the purpose of the establishment of the comfort stations was not only to deter the anti-Japanese sentiment arising from outrage over mass rapes of the residents in the territory, but also to reduce their exposure to sexually transmitted diseases.

Furthermore, the Supreme Commander of the Allied Powers' research report, 'Amenities in the Japanese Armed Forces,' issued in 1945, describes the regulations governing the usage, management and operation of the comfort stations.[68] For example, the relevant excerpts of such regulations in relation to the use and operation of the comfort stations in the South Sector Billet state as follows:

> 'USE'…'2. Those, other than military personnel, civilian employees, and persons with special permission, those who commit violence through intoxication, those who annoy others, and are dangerous, are strictly forbidden to use this brothel.
>
> …
>
> 10. The Senior Medical Officer of Regimental Headquarters will conduct a venereal examination of the prostitutes and a physical inspection … on Thursday morning of each week.'
>
> 'OPERATION'…'4. Prostitutes found unfit by the medical officer will post a placard written "unfit" at the entrance to their rooms; they will rest and recuperate, and will be prohibited from making any contacts until permission is granted.
>
> …
>
> 7. Prostitutes will wash their private parts each time.'[69]

The report, 'Amenities in the Japanese Armed Forces', also describes the Mania regulations issued in 1943 by the Lieutenant Colonel Takijiro Onishi of the Manila District Line of Communication Squad which govern the forms of Manila brothels.[70] The Manila Regulations entitled 'Rules for Authorised Restaurants and Houses of Prostitution in Manila' and the relevant part remarks that:

> '1. In these regulations, authorised restaurants will be taken to mean those places designated by the Officer-in-charge of Manila Sector Line of Communications Duties, with the sanction of the Army Commanding General as eating places for soldiers and Army Civilian Employees. Houses of relaxation should be taken to mean those places designated by the sanction of the officer-in-charge…with the sanction of the Army Commanding-General, will maintain hostesses (geisha or waitresses) for the entertainment of soldiers and Army Civilian Employees

[68] Supreme Commander for the Allied Powers, Amenities in the Japanese Armed Forces (General Headquarters, Supreme Commander for the Allied Powers, 1945): 5-36. http://nadesiko-action.org/wp-content/uploads/2016/05/Manila_Feb1943_Amenities-in-the-Japanese-Armed-Forces_US-National-Archives-_AWF.pdf., accessed 6 May 2022.
[69] Supreme Commander for the Allied Powers.
[70] Supreme Commander for the Allied Powers.

…

4. Authorised Restaurants and Houses of Relaxation will be used only by soldiers and Army Civilian Employees.'[71]

Therefore, the regulations strictly governed the usage, management and operation of the comfort stations including the medical examination of the 'comfort women'. Additionally, the 'comfort women' were deprived of their freedom under the constant military control.[72] Such fact that the freedom of the 'comfort women' was restricted can also be seen from the regulations, which state as follows:

'29. For the purpose of maintaining good order, the officer-in-charge…will have officers (army physicians) carry out inspections of the establishment from time-to-time. When necessary, the assistance of the military-police will be enlisted.

30. Hostesses (Prostitutes and Waitresses) may not leave the designated area without permission from the line-of-communications officer.'[73]

Accordingly, the comfort stations have been systematically established across Asia, modelled after these regulations governing the forms of the comfort stations.

Furthermore, with regard to Korea, the institutionalisation of comfort stations can also be seen from a different perspective. After the Japanese annexation of Korea in 1910, the Empire of Japan began to consider Korea as a potential source of labour. In the 1930s, according to the allegedly voluntary mobilization programme, numerous Koreans were taken to Japan to work in mines, factories and fields.[74] Moreover, strict security measures prevented these Korean from leaving the workplaces.[75] In 1944, a compulsory labour mobilization programme was installed, and it is said that between 500,000 and 800,000 Korean men were forced to work in different places in Asia.[76]

Similarly, Korean women were also considered as a potential source of labour. Such programme for women started in 1937 and women and girls between 14 and 25 years old were to participate in the National Labour Service Corps for around 30 days per year, and it changed

[71] Supreme Commander for the Allied Powers.
[72] The United Nations Commission on Human Rights, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, Fiftieth Session Item 6 of the Provisional Agenda," E/CN.4/Sub.2/1998/13," Fiftieth session (22 June 1998).
[73] Supreme Commander for the Allied Powers, Amenities in the Japanese Armed Forces.
[74] Inter-Ministerial Working Group on the Comfort Women Issue, Republic of Korea, Military Comfort Women Under Japanese Colonial Rule, Intérim Report (Séoul, July 1992).
[75] ibid.
[76] ibid.

to 60 days per year in 1943.[77] In 1944, the range of ages was changed to those between 14 and 45 years old.[78] the Empire of Japan also created a 'volunteer corps' in order to implement the long-term mobilisation programme of women, generally for a period of 1 to 2 years. Those women were transferred to work in especially war industries in Korea and Japan.[79]

It was within this context the Empire of Japan deceived, threatened, or violently took away women to transfer to the comfort stations. The Empire of Japan have been forcibly recruiting both women and men as labour power tantamount to slavery. In this context, the Empire of Japan forced Korean women to submit to sexual slavery, when the decision to set up the comfort stations was made.[80] It should be noted that numerous women forced into the 'comfort women' have suffered from shame and stigma on their return to their societies after World War II.[81]

1.4. CHARACTERISTICS OF THE 'COMFORT WOMEN' SYSTEM

The Imperial Japanese Army systematically controlled the establishment, operation, and stuffing of the comfort stations.[82] There were also private-owned comfort stations, but they were functionally controlled by the Imperial Japanese Army and military police.[83] The 'comfort women' who were taken to the comfort stations were confined and forced into sexual slavery, and they suffered physical and psychological damage that lasted long after the war.[84]

1.4.1. Acquisition of Comfort Women

[77] ibid n74.
[78] ibid.
[79] ibid.
[80] Dolgopol and Paranjape, "Comfort Women: An Unfinished Ordeal." See also, Pyong Gap Min, "Korean 'Comfort Women': The Intersection of Colonial Power, Gender, and Class," Gender & Society 17, no. 6 (2003): 938–957.
[81] Michele Park Sonen, "Healing Multimentional Wounds of Injustice Intersectionality and the Korean Comfort Women," Berkeley La Raza Law Journal 22, no. 1 (2012): 269–300.
[82] Dolgopol and Paranjape, "Comfort Women: An Unfinished Ordeal," 29-54., Yoshimi, Comfort Women: Sexual Slavery in the Japanese Military During World War II.
[83] Dolgopol and Paranjape, "Comfort Women: An Unfinished Ordeal."
[84] Sung Kil Min et al., "Posttraumatic Stress Disorder in Former 'Comfort Women,'" The Israel Journal of Psychiatry and Related Sciences 48, no. 3 (2011): 161–69. See also, Getz, "Honour and Dignity: Trauma Recovery and International Law in the Issue of the Comfort Women of South Korea.", Jee Hoon Park et al., "Korean Survivors of the Japanese 'Comfort Women' System: Understanding the Lifelong Consequences of Early Life Trauma," Journal of Gerontological Social Work 59, no. 4 (2016): 332–48.

The 'comfort women' were taken into comfort stations by the Japanese military, military and civilian police and their private agents.[85] The extensive measures were taken by them such as abduction, threats, violence, purchase and deception.[86] The private agents often deceived women to take them to the comfort stations, but it generally turned into coercion with the involvement of the power of Japanese military and police.

The Japanese government's organisation of military control over the 'comfort women' can be seen in the official directive, 'Matters Concerning the Recruitment of Women,' which was unearthed in 1992 by professor Yoshimi Yoshiaki. A War Ministry of Japan Adjutant General issued the directive to the Chiefs of Staff of the North China Area Army and the Central China Expeditionary Forces on March 4, 1938.[87] It specifies that field armies are responsible for policing the recruitment of women and that this duty will be carried out in coordination with the local police force or military police.[88] The directive was made public thorough the publication of a Japanese newspaper.[89] This directive, as well as the diary written by Naosaburo Okabe, reveal not only that the private agents have recruited the 'comfort women' under the control of the Japanese military, but also that the recruitment process was under control of the Japanese military.[90]

Furthermore, there exists a telegraph written by Rikichi Ando, Commander in Taiwan, in 1942, which requests the issuance of travel permits to some recruiters selected at the request of the Japanese deployed force to send 50 comfort women to Borneo.[91] The telegraph was addressed to Hideki Tojo, the Japanese Minister of War at that time and this request was approved.[92]

Moreover, a report of the Allied Power which revealed by the Japanese newspaper company, Kyodo News Service, states under the heading of 'Recruiting' that:

> 'Early in May of 1942 Japanese agents arrived in Korea for the purpose of enlisting Korean girls for 'comfort service' in newly conquered Japanese territories in Southeast Asia. The nature of this 'service' was not specified but it was assumed to be work connected with visiting the wounded in hospitals, rolling bandages, and generally making the soldiers happy. The inducement used by these agents was plenty of money, an opportunity to pay off the family debts, easy work, and the prospect of a new life in a new land…'[93]

[85] Yoshimi, Comfort Women: Sexual Slavery in the Japanese Military During World War II. See also generally, Kumagai Naoko, Ianfu Mondai (Tokyo: Chikuma Shobo, 2014).
[86] ibid.
[87] Yoshiaki Yoshimi, ed., Jugun Ianfu Siryousyu (Tokyo: Otsukishoten, 1992).
[88] Yoshimi, Comfort Women: Sexual Slavery in the Japanese Military During World War II.
[89] ibid.
[90] Yoshimi, Jugun Ianfu Siryousyu.
[91] Dolgopol and Paranjape, "Comfort Women: An Unfinished Ordeal," 41.
[92] Dolgopol and Paranjape.
[93] Dolgopol and Paranjape, 44.

Hence, among the 'comfort women', there existed a large number of girls who were ignorant or deceived by the private agents and taken to the comfort stations. In some cases, military and civilian police accompanied the private agents to recruit the 'comfort women'.[94]

The Japanese government has denied acknowledging legal responsibility to date, partially because it has argued that none of the materials found by the Japanese government which contain any direct evidence of so-called forcible recruitment of the 'comfort women' by the military or authorities.[95] It should be noted, however, that the Imperial Japanese Army had primary control over the comfort stations' construction, administration, and securing personnel. Even those managed by private owners were also controlled by the Imperial Japanese Army and military police in their functions.[96]

Besides, although there existed women who were taken to military camps, soldiers' barrack or tents, rather than typical comfort stations originally developed in China, it occurred according to the policy of the Imperial Japanese Army favouring the establishment of comfort stations.[97] Thus, it can be argued that the establishment of the comfort stations reflected a military culture in which gender-based crimes tended to be tolerated and sexual slavery was institutionalized and obscured from the outside.

1.4.2. Conditions of Comfort Women

In the comfort stations, the 'comfort women' were forced into sexual slavery, being confined and repeatedly raped by the Japanese soldiers.[98] They were subjected to acts of rape for different period from several days, months and years in fear of horrific violence.[99] The places

[94] Dolgopol and Paranjape, 45. This is a testimony of a former private manager of a comfort station, Ichiro Ichikawa, in which there were Korean women. He was tried as a 'C' class war criminal and detained for five years after World War II.
[95] Ministry of Foreign Affair of Japan, "Japan's Efforts on the Issue of Comfort Women," accessed April 21, 2022, https://www.mofa.go.jp/policy/postwar/page22e_000883.html.
[96] Dolgopol and Paranjape, "Comfort Women: An Unfinished Ordeal."
[97] Yoshimi, Comfort Women: Sexual Slavery in the Japanese Military During World War II.
[98] The United Nations Commission on Human Rights, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, Fiftieth Session Item 6 of the Provisional Agenda," E/CN.4/Sub.2/1998/13," Fiftieth session (22 June 1998). See also generally, Women's Active Museum on War and Peace, *Nihongun "Ianfu" Mondai Subete No Gimon Ni Kotaemasu* (Tokyo: Goudou, 2013)., Angella Son, Stories That Make History: The Experience and Memories of the *Japanese Military "Comfort Girls-Women,"* ed. The Research Team of the War and Women's Human Rights Center, Stories That Make History (Berlin: Walter de Gruyter GmbH, 2020).
[99] ibid.

they were located were surrounded by high walls or barbed wire and secured by the guards, thus, there existed no way to escape.[100]

It is said that the vast majority of 'comfort women' lived a miserable and inhumane life in a poor environment.[101] For instance, they were forced to live in the facilities created on or near the Japanese military camps, tents or caves, and provided merely sufficient food to survive. Accordingly, they tended to be malnourished and susceptible to caught serious diseases due to the poor living condition.[102]

Furthermore, as a result of continuous rape, they often suffered the genital problems and injuries and the constant bleeding.[103] Although the military doctors regularly conducted the medical check on the 'comfort women', they were only concerned about the visible symptoms. Consequently, some of the 'comfort women' who had an internal disease were overlooked and became unable to bear children.[104]

Their suffering has lasted after the end of World War II. There were 'comfort women' abandoned by fleeing Japanese soldiers. Returning home did not bring peace for them because of shame and stigma.[105] They have been living with cruel memories, fearing refusal by their communities, seeking justice and reparations to be delivered.[106]

[100] Son, *Stories That Make History: The Experience and Memories of the Japanese Military "Comfort Girls-Women,"* 226-227.
[101] Son, 17-40. See also, George Hicks, *The Comfort Women: Japan's Brutal Regime of Enforced Prostitution in* the Second World War (W.W. Norton & Company, 1997): 66-82.
[102] Dolgopol and Paranjape, "Comfort Women: An Unfinished Ordeal."
[103] Dolgopol and Paranjape.
[104] Dolgopol and Paranjape.
[105] Hicks, *The Comfort Women: Japan's Brutal Regime of Enforced Prostitution in the Second World War*, 152-167.
[106] Knop and Riles, "Space, Time, and Historical Injustice: A Feminist Conflict-of-Laws Approach to the 'Comfort Women' Agreement." See also, Sonen, "Healing Multimentional Wounds of Injustice Intersectionality and the Korean Comfort Women.", Yu Tong, "Reparations for Former Comfort Women of World War II," Harvard International Law Journal 36, no. 2 (1995): 528–40.

CHAPTER 2

INJUSTICE FOR COMFORT WOMEN AFTER WORLD WAR II TO DATE

2.1 INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST 1946-1948

Following World War II, the Potsdam Declaration announced the Allied Powers' decision to prosecute Japanese war criminals.[107] It led to begin the IMTFE in Tokyo on 3rd May 1946.[108] The IMTFE has been often described as 'a sister institution' of the International Military Tribunal (IMT) in legal academy, and the legacy of the IMT has generally captured more attention of scholars.[109] On the other hand, some scholars found that the IMTFE substantively contributed to international criminal law in terms of the treatment of crimes in relation to gender-based violence, whose scholars often express that such crimes were broadly regarded as an inevitable by-product of war and a largely invisible crime until 1990s.[110] Indeed, it should be noted that the IMTFE prosecuted the rape committed against Chinese women by Imperial Japanese Army during the Nanking invasion between 1937 and 1938. However, it should be noted that 'comfort women' as sexual slavery was completely ignored, despites its gravity and general awareness of the crime. In this section, the treatment of gender-based crimes at the IMTFE will be assessed. It will examine the extent to which the IMTFE addressed those crimes and the way in which 'comfort women' was neglected.

2.1.1. Legal Framework of International Military Tribunal for the Far East

The IMTFE was created to bring Japanese war criminals to justice for crimes against humanity, war crimes, and crimes against peace perpetrated between 1 January 1928 and 2 September 1945.[111] The period was determined as such because, in the years from 1928 onwards, the Imperial Japanese Army started to invade the territories of many of Japan's neighbours and the IMTFE considered that individual responsibility for these attacks and the exploitation of the

[107] International Military Tribunal for the Far East, "International Military Tribunal for the Far East, Judgment of 12 November 1948," in The Tokyo War Crimes Trial, ed. John Pritchard and Sonia M. Zaide (Garland Publishing, 1981), Vol.22.

[108] ibid. The IMTFE was created by virtue of the Cairo Declaration of 1 December 1943, the Declaration of Potsdam of 26 July 1945, The Instrument of Surrender of Japan of 2 September 1945and the Moscow Conference of 26 December 1945.

[109] Madoka Futamura, War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy, Routledge, 1st ed., 2008. See also, Arnold Brackman, The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials (New York: William Morrow & Co, 1987).

[110] Diane Orentlicher, "The Tokyo Tribunal: Perspectives on Law, History and Memory," in The Tokyo Tribunal: Perspectives on Law, History and Memory, ed. Viviane E. Dittrich et al. (Brussels: Torkel Opsahl Academic EPublisher, 2020), 85–102, https://www.toaep.org/nas-pdf/3-dittrich-lingen-osten-makraiova. See also, Zachary D. Kaufman, "The Nuremberg Tribunal V . the Tokyo Tribunal : Designs , Staffs , and Operations," The John Marshall Law Review, no. 43 (2010): 753–68. There emerged the increasing concern to sexual violence in international law due to the prosecutions for sexual offenders during the Bosnian War in the ICTY.

[111] ibid. The Judges and Prosecutors were from Australia, Canada, China, France, India, the Netherlands, New Zealand, the Philippines, the Soviet Union, the United Kingdom and the United States.

resources must be assessed. Additionally, the surrender of Japan was announced by Emperor Hirohito on 2nd of September 1945.[112]

The Charter of the International Military Tribunal for the Far East, the Tokyo Charter, was designed with reference to the Charter of the International Military Tribunal, also known as Nuremberg Charter. General Douglas MacArthur, The Tokyo Charter was issued by a General of the United States Army and the Supreme Commander of the Allied Powers in Japan.[113] Contrary to the Nuremberg Charter, the Tokyo Charter is not a part of a treaty or agreement among the Allied Power, however, two Charters are substantially similar. Individual criminal responsibility for high-ranking officials is established in each Charter, as is jurisdiction over crimes against peace, war crimes, and crimes against humanity. Major Japanese criminals (A class) were prosecuted in the IMTFE, and the other criminals (B and C class) were tried by the Allied Powers individually. The IMTFE took a major exception by not bringing charges against the Japanese Emperor Hirohito for crimes against humanity, war crimes, or peace.[114] In the IMTFE, consequently, 28 major criminals were tried including the political and military leaders.[115]

The wording of the definition of the crimes in two Charters was not identical. In the Tokyo Charter, for example, war crimes were prohibited in Article 5(b) as merely 'conventional war crimes: namely, violations of the laws or customs of war,' referring to the Laws and Customs of War on Land established in the 1907 Hague Convention, rather than including the examples of war crimes as the Nuremberg Charter did.[116] Article 5(b) of the Tokyo Charter provided the standard interpretation of international customary law with reference to the 1907 Hague Convention.[117]

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[112] ibid.

[113] ibid. See also, Milton, Cantor, "Victors' Justice: The Tokyo War Crimes Trial." American Journal of Legal History 16, No. 4 (1972): 369-373.

[114] After the surrender of Japan, the government of Australia sought to prosecute Japanese Emperor Hirohito as a war criminal, however, it was refused by the Supreme Commander of the Allied Powers, General Douglas MacArthur. He held that the administration of Japan after war would be considerably facilitated if the emperor seemed to be cooperating with the occupying Allied Powers, because the emperor existed as a living god in Japan at that time. See also, Yuma Totani, "The Trial of Emperor Hirohito?," in The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II, ed. Yuma Totani (Harvard University Asia Center, 2020), 43–62, https://doi.org/https://doi.org/10.1163/9781684174737.

[115] ibid.

[116] Article 5(b) of the Tokyo Charter.

[117]. The part of Laws and Customs of War on Land of the 1907 Hague Convention referred to is as follows: 'According to the views of the High Contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war, as far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants…the High

Regarding crimes against humanity, Article 5(c) of the Tokyo Charter provides crimes against humanity as follows:

> …murder, extermination, enslavement, deportation, and other inhumane acts committed before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders. organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan.'[118]

On the other hand, the phrase 'committed against any civilian population' was eliminated from the definition in the Tokyo Charter, contrary to the Nuremberg Charter, aiming at establishing that any killing would be unlawful in the prosecution of a war of aggression.[119] In addition to this, since it was considered that the Nazi crimes against the Jewish people based on religious did not have a counterpart in the Asian war, the persecutions on the 'religious' ground was removed from the Tokyo Charter. More importantly, although the Tokyo Charter prohibited enslavement deportation to slave labour or forced labour and it allowed gender-based crimes to be prosecuted in pursuant of the term 'inhumane acts', no one was convicted of crimes against humanity in Tokyo.[120]

In respect of crimes against peace in Article 5(a) of the Tokyo Charter, it reads as follows:

> ',,,the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing[.][121]

In the IMTFE, the prosecution of individuals was allowed under the condition that the accused were 'charged with offenses which include Crimes against Peace'.[122] This limitation was established because the government of the US considered that the investigative institution

Contracting Parties clearly do not intend that unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgment of military commanders….the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations.'

[118] Article 6(c) of the Nuremberg Charter and Article 5(c) of the Tokyo Charter.

[119] Bernard Victor Aloysius Röling and Antonio Cassese, The *Tokyo Trial and Beyond : Reflections of a* Peacemonger (Cambridge: Polity, 1993): 56-57. See also, Article 6(c) of the Nuremberg Charter.

[120] Yuma Totani, "The Case Against The Accused," in *Beyond Victor's Justice? The Tokyo War Crimes Trial* Revisited, ed. Yuki Tanaka, Timothy L.H. McCormack, and Gerry Simpson (Leiden: Martinus Nijhoff Publishers, 2011), 145–61. There were a grouped indictment called 'Group Three: Conventional War Crimes and Crimes against Humanity'. In this group, the three counts were recorded, emphasising violations of the laws of war. The Judgment addressed grave crimes only in pursuant of the laws of war, apparently because clear arguments regarding crimes against humanity were not developed.

[121] Article 5(a) of the Tokyo Charter.

[122] Article 5 of the Tokyo Charter.

'should attach importance' to crimes against peace.[123] The US government presumably suggested that the IMTFE only have jurisdiction over crimes against peace, but later it was decided to contain the other two offenses due to the insistence of the United Kingdom (UK).[124]

Furthermore, Article 6 of the Tokyo Charter established the offense of conspiracy, stating that neither the defendant's official position nor the fact that he acted on the orders of his superiors was sufficient to absolve him of responsibility for the crime.[125]

', however, 'such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires'.[126]

The IMTFE is often criticised due to its political character and exercise in 'victor's justice'. For instance, selection of the judiciary was highly political and unfairly biased since the judges consisted of the Allied Powers as well as aggrieved nations.[127] Besides, much of the controversy stems from the fact that the IMTFE mainly focused on what was recognised as 'supreme' crime, crimes against peace, namely, conspiracy charges.[128] In the IMTFE, it seems that indirect approach towards specific acts was adopted, which means, establishing an individual's liability for the conspiracy came first and their responsibility for substantive crimes was considered once the conspiracy charge was established.[129] The issue of 'victor's justice' also criticised by the judge from India in the IMTFE, Radhabinod Pal, and it highlighted the politicisation and questionable legality of the IMTFE.[130] Moreover, the Judge from the Netherlands, Bert Röling, also admitted the elements of the 'victor's justice' with regard to the failure to include the firebombing and atomic bombings in Japan into the IMTFE's agenda, while arguing that the Tribunal was a significant milestone in terms of the development

[123] Totani, "The Case Against The Accused" 148.
[124] Neil Boister and Cryer Robert, The Tokyo International Military Tribunal: A Reappraisal (Oxford: Oxford University Press, 2008): 25.
[125] Article 6 of the Tokyo Charter.
[126] Article 6 of the Tokyo Charter. On the other hand, Article 7 of the Nuremberg Charter reads that '[T]he official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.
[127] The judges were provided from eleven countries, Australia, Canada, China, France, India, the Netherlands, New Zealand, the Philippines, the Soviet Union, the United Kingdom and the United States. See also, Milton Cantor, "'Victors' Justice: The Tokyo War Crimes Trial," American Journal of Legal History 16, no. 4 (1972): 369–73., Kirsten Sellars, "Imperfect Justice at Nuremberg and Tokyo," European Journal of International Law 21, no. 4 (2010): 1085–1102.
[128] Sellars, "Imperfect Justice at Nuremberg and Tokyo." See also, Bert V. A. Röling, "The Nuremberg and the Tokyo Trial in Retrospect," in Perspectives on the Nuremberg Trial, ed. Guénaël Mettraux (Oxford: Oxford University Press, 2008), 455–72., Hiro Saito, "The Legacy of the Tokyo Trial," in The History Problem: The Politics of War Commemoration in East Asia, ed. Hiro Saito (University of Hawaii Press, 2016), 129–54. at 137.
[129] Sellars, "Imperfect Justice at Nuremberg and Tokyo."
[130] Kei Ushimura, "Pal's 'Dissentient Judgment' Reconsidered: Some Notes on Postwar Japan's Responses to the Opinion," Japan Review, no. 19 (2007): 215–23.

of international law.[131] Hence, the IMTFE represents not only the 'victor's justice' but also injustice for the 'forgotten' crimes, such as aforementioned firebombing and atomic bombings in Japan as well as the sexual slavery of 'comfort women'.[132]

2.1.2. Treatment of Gender-based Crimes in International Military Tribunal for the Far East

Although gender-based crimes were not explicitly enumerated in the Tokyo Charter, the indictment of the IMTFE included gender-based crimes committed by the defendants, stating that the acts constituted 'the violation of recognized customs and conventions of war … [involving] mass murder, rape, … and other barbaric cruelties upon the helpless civilian population of the over-run countries…'[133] Gender-based crimes are described in the following ways in the indictment's claims of violations of the laws and customs of war:

> [Section one] Inhumane treatment, contrary in each case to Article 4 of the said Annex to the said Hague Convention and the whole of the said Geneva Convention and to the said assurances. … prisoners of war and civilian internees were murdered, beaten, tortured and otherwise ill-treated, and female prisoners were raped by members of the Japanese forces.
>
> [Section five] Mistreatment of the sick and wounded, medical personnel and female nurses, contrary to … the said Geneva Convention and … the said Red Cross Convention
>
> …
>
> (c) female nurses were raped, murdered and ill-treated.
>
> …
>
> [Section twelve] Failure to respect family honour and rights, individual life, private property and religious conventions and worship in occupied territories, and deportation and enslavement of the inhabitants thereof, contrary to Article 46 of the said Annex to the said Hague Convention and the Laws and Customs of War;
>
> Large numbers of the inhabitants of such territories were murdered, tortured, raped and otherwise ill-treated, arrested and interned without justification, sent to forced labour, and their property destroyed or confiscated.[134]

[131] Röling, "The Nuremberg and the Tokyo Trial in Retrospect."
[132] Shontelle Grimberg, "Women without a Voice: Japan's Silencing of Its Comfort Women and the Redemptive Future the Tokyo Women's Tribunal Offers to the Gendered and Colonial History of International Law," New *Zealand Women's Law Journal* 2, no. 207 (2018): 207–48., at 218-20.
[133] International Military Tribunal for the Far East, "International Military Tribunal for the Far East, Judgment of 12 November 1948.", Vol.2, Part C, Annex No. A-6, at 31.
[134] International Military Tribunal for the Far East., Vol.2 Part C, Appendix D, at 111-117.

Therefore, in the IMFTE, rape was not explicitly stipulated as a separated crime, thus, subsumed in 'inhumane treatment', 'ill-treatment' or 'failure to respect family honour and rights' in pursuant to the provision of conventional war crimes in the Tokyo Charter.

In fact, before the establishment of the ICTY in 1993 which stepped towards a conceptualisation of gender-based crimes, these crimes were not explicitly prohibited as war crimes, crimes against humanity and genocide.[135] Gender-based crimes were subsumed under the group what is called 'crimes against honour'. In the 1949 Geneva Conventions, the pillars of the current international humanitarian law, gender-based crimes are prohibited under the label of 'attacks against the honour of women' or 'outrages upon human dignity'.[136] It should be noted that this categorisation would be controversial, because it solely focused on victims' honour or dignity, not on their physical, psychological, and social suffering from their experiences.[137] Moreover, there apparently existed the assumption that victims would be women all the time, excluding the idea that there could be the gender-based crimes against men.[138]

Notwithstanding gender-based crimes were not expressly listed in the Tokyo Charter, testimonies regarding gender-based crimes committed by Imperial Japanese Army during World War II were collected by the cross-examination and contained in the official records of the IMTFE. Particularly, the 'Rape of Nanking' became well-known to the world through the proceedings in the IMTFE due to the evidence of the horrific atrocities lasted about 6 weeks.[139]

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[135] Ni Aolain Fionnuala, Dina Francesca Haynes, and Naomi Cahn, "Criminal Justice for Gendered Violence and Beyond," International Criminal Law Review 11, no. 3 (2011): 425–43. See also, Solange Mouthaan, "The Prosecution of Gender-Based Crimes at the ICC: Challenges and Opportunities," International Criminal Law Review 11, no. 4 (2011): 775–802, https://doi.org/10.1163/157181211X587184.

[136] For instance, Article 27 of the 1949 Fourth Geneva Convention states that 'Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault'. Furthermore, Article 4 (2) of the 1977 Additional Protocol II prohibits 'outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault'. Moreover, Common Article 3 to the 1949 Four Geneva Conventions also prohibits 'outrages upon personal dignity, in particular humiliating and degrading treatment'. Additionally, Article 76 (1) of the 1977 Additional Protocol I states that 'Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault'. International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 12 August 1949, 75 UNTS 287., International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3., International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609.

[137] Janet Halley, "Rape at Rome: Feminist Interventions in the Criminalization of Sex Related Violence in Positive International Criminal Law," Michigan Journal of International Law 30 (2008): 8.

[138] Halley.

[139] International Military Tribunal for the Far East, "International Military Tribunal for the Far East, Judgment of 12 November 1948.", Vol.2, Part B, at 1011-1039.

Nanking invasion begun on 13th of December in 1937 by the Central China Expeditionary Japanese Force under the command of the General Iwane Matsui. In addition to the acts of murdering and looting in the city, the prosecution report highlights the atrocities as follows:

> 'Death was a fluent penalty for the slightest resistance … [e]ven girls of tender years and old women were raped in large numbers throughout the city, and many cases of abnormal and sadistic behaviour in connection with these rapings occurred … [a]pproximately 20,000 cases of rape occurred … during the first month of the occupation.''[140]

Besides, some stories gathered from returning soldiers in relation to the atrocities committed by their own were also documented as follows:

> 'If the army men who participated in the war were investigated individually, they would probably all be guilty of murder, robbery or rape.'
>
> 'In the half year of battle, about the only things I learned are rape and burglary.'[141]

Thus, the details of gender-based crimes, especially rape during the Nanking invasion by the Imperial Japanese Army, were summarised in the public records at the IMTFE.

In this regard, the General Iwane Matsui was sentenced to death in the IMTFE for the atrocities committed under his command. Approximately 20,000 cases of horrific rapes that occurred during the first month of occupation provided enough evidence for the IMTFE to establish that he committed a war crime by failing to maintain control over his army and to protect the civilians.[142] This treatment of rape crimes in the IMTFE was positively viewed and praised by some scholars since the prosecution of rape at the IMTFE was a benchmark, considering the historical silence surrounding gender-based crimes.[143] In this regard, the General Iwane Matsui was sentenced to death in the IMTFE for the atrocities committed under his command. The IMTFE concluded that he was guilty of a war crime because he failed to 'control his troops and

[140] ibid.
[141] International Military Tribunal for the Far East, "International Military Tribunal for the Far East, Judgment of 12 November 1948.", at 1023.
[142] ibid, Vol. 2, Part C, at 1180-1182, 1154-1155 1158-1161. See also, John R. Pritchard, The Tokyo Major War *Crimes Trial : The Records of the International Military Tribunal for the Far East : With an Authoritative* Commentary and Comprehensive Guide International Military Tribunal for the Far East, vol. 103 (New York: E. Mellen Press, 2002): Majority Judgment, 49, 815–16.
[143] Susan Brownmiller, Against Our Will: Men, Women, and Rape (Penguin Books, 1976): 61. Brownmiller states that 'Rape in Nanking [Nanjing] might have passed out of history then and there, relegated in typical fashion to the dubious area of unsupported wartime rumour. But as it turned out, the Allied Powers elected to hold an International Tribunal for the Far East once the global war was finished'. See also, Kelly Dawn Askin, War Crimes against Women: Prosecution in International War Crimes Tribunals (Martinus Nijhoff Publishers, 1997): 202. Askin states that '[o]ne of the most positive aspects of the Tokyo Trials was its inclusion of rape, albeit secondarily, as a serious war crime meriting inclusion in the prosecution's cases'.

to protect the unfortunate citizens', showing sufficient evidence of approximately 20,000 cases of brutal rapes occurring during the first month of occupation.

However, it should be emphasised that rape was mentioned in the indictments under the headings of 'inhumane treatment,' 'ill-treatment,' and 'failure to protect family honour and rights', and rape was considered to be a part of 'atrocities', rather than a separated crime.[144] More importantly, the 'comfort women' was completely ignored, leaving them outside the IMTFE's agenda, despite of the existence of the acknowledgement and evidence of the 'comfort women' in the IMTFE.[145]

In 2007, a Japanese journalist, Taichiro Kajimura, revealed a document presented to the IMTFE concerning the sexual slavery of women in the Central Java province of Indonesia.[146] The Centre for Research and Documentation on Japan's War Responsibility (JWRC) also presented some exhibits in a press conference in 2007, including the one provided by the Dutch prosecution related to World War II war crimes trials of Japanese soldiers.[147] It states that, in Borneo, the comfort stations 'were surrounded by barbed wire' and 'the Special Naval Police (Tokkei Tai) … they arrested women on the streets and after a medical examination placed them in the brothels.'[148]

Why the 'comfort women' was completely removed from the IMTFE's agenda? There existed several reasons. Firstly, the IMTFE mainly focused on crimes against peace and countries where the 'comfort women' originally from did not efficiently represent at the proceedings.[149] The 'Comfort women' mostly came from Asian countries such as Korea, China, Japan, Taiwan, the Philippines, the Dutch East Indies and some other Japanese-occupied territories.[150] Relatively, there were the prosecutors and judges from Allied Powers such as Canada, Australia, France, the Netherlands, China, India, New Zealand, the Philippines, the United Kingdom, the Soviet Union, and the US in the IMTFE.[151] There was no representative from Korea where the

[144] International Military Tribunal for the Far East, "International Military Tribunal for the Far East, Judgment of 12 November 1948.", Vol 2, Part C, at 1180-1182, 1154-1155 1158-1161.
[145] Supreme Commander for the Allied Powers, Amenities in the Japanese Armed Forces.
[146] Hirofumi Hayashi, "Disputes in Japan over the Japanese Military 'Comfort Women' System and Its Perception in History," Annals of the American Academy of Political and Social Science 617 (2008): 123–32.
[147] Hayashi.
[148] Hayashi.
[149] Richard H Minear, *Victors' Justice: The Tokyo War Crimes Trial* (Princeton: Princeton University Press, 1971).
[150] Dolgopol and Paranjape, "Comfort Women: An Unfinished Ordeal."
[151] Richard H Minear, *Victors' Justice: The Tokyo War Crimes Trial* (Princeton: Princeton University Press, 1971): 75-76. There were the 11 male prosecutors and the panel of 11 male judges.

majority of the 'comfort women' came from, as well as Taiwan, and some other Japanese-occupied territories.

Moreover, the focus of the Chinese representatives was mainly 'Rape of Nanking'. Although a huge number of Chinese women were forced into the 'comfort women', only one reference concerning forced prostitution in the Chinese city of Kweilin was presented at the proceedings.[152] Furthermore, it has been criticised that the crimes committed by Imperial Japanese Army against the Filipino people were removed from the IMTFE's agenda because the Filipino judge was completely under the control of the US.[153] In relation to the Netherlands, whilst evidence of the 'comfort women' was provided in the IMTFE, it failed to prosecute the crimes because the crimes were committed in the colonies.[154]

Furthermore, it should be said that the IMTFE paid least attention to establishing a forum for victims of gender-based crimes to speak their experiences due to the lack of the provisions to protect such victims. Even in the prosecution regarding the 'Rape of Nanking', there emerged only 30 witnesses of the atrocities and, among those, merely 20 witnesses presented written affidavits.[155] I argue that the failure of the prosecution regarding the 'comfort women' in the IMTFE was due to the considerable exclusion of voices of victims of gender-based crimes stem from a military culture in which those crimes tended to be tolerated and obscured.

More importantly, during World War II and the proceedings at the IMTFE, the distinction between wartime rape and wartime prostitution was blurred.[156] The creation of comfort stations throughout Asia, labelling women as 'military prostitutes', turned the culpable acts of sexual slavery by Imperial Japanese Army into the complicit victims' participation and cooperation. Therefore, the experiences of the 'comfort women' were not addressed as serious as the barbaric acts of rape by Imperial Japanese Army during the Nanking invasion.[157]

[152] Pritchard, *The Tokyo Major War Crimes Trial : The Records o*f the International Military Tribunal for the Far *East : With an Authoritative Commentary and Comprehensive Guide International Military Tribunal for the Far* East, Vol 103, Majority Judgment, 49 617. The reference states that 'They recruited women labour on the pretext of establishing factories. They forced the women thus recruited into prostitution with Japanese troops'.
[153] Minear, *Victors' Justice: The Tokyo War Crimes Trial*.
[154] Minear.
[155] James Burnham Sedgwick, "Memory on Trial: Constructing and Contesting the Rape of Nanking at the International Military Tribunal for the Far East, 1946-1948," Modern Asian Studies 43, no. 5 (2009): 1229–54, https://doi.org/10.1017/S0026749X08003570.
[156] Brownmiller, Against Our Will: Men, Women, and Rape, 75.
[157] Ustinia Dolgopol, "Women's Voices , Women's Pain," Human Rights Quarterly 17, no. 1 (1995): 127–54. In fact, some Allied Powers' documents referred to the 'comfort women' as 'camp followers'.

Consequently, while the recent discovery of the exhibits represents that there existed the acknowledgement as well as evidence of the 'comfort women' provided in the IMTFE, the IMTFE failed to address the 'comfort women' with the gravity it deserved, and no one was convicted of a crime involving the 'comfort women'. As a result, the stories of the 'comfort women' were relegated to the abyss of history due to the lack of avenue for justice.

2.1.3. The War Crimes Trials Outside the IMTFE

As mentioned before, since the Tokyo Charter was applicable only to major criminals, other criminals were left to be prosecuted before domestic or other courts in the Asia-Pacific region by the Allied Powers. For instance, the war crimes trial of General Tomoyuki Yamashita, commander of 14th Area Army of Japan, held in Manila by the Philippine War Crimes Commission in 1945. The Philippine War Crimes Commission was established in 1945 by General Douglas MacArthur to examine the war crimes committed by the Imperial Japanese Army and Imperial Japanese Navy during the invasion and occupation of the Philippines.[158]

General Tomoyuki Yamashita was charged with conventional war crimes including the failure of his command responsibility.[159] In particular, his charge contained murder and mistreatment of Filipino civilians, the acts of rape committed against hundreds of Filipino women and the pillage in Manila. The court alleged that Yamashita was responsible for failing to maintain sufficient control over the acts committed by his troop.[160] The Court remarked that his actual knowledge on such acts of the Japanese soldiers of his troop was irrelevant since the acts were widespread and repeated over an extended period, thus, the Court sentenced him to death.[161]

Notably, A hotel owner, Washio Awochi, was accused of committing an act of forced prostitution against Dutch women at the Netherlands Temporary Court-Martial at Batavia in 1946.[162] The Temporary Courts Martial established by the Revised Administration of Justice

[158] Philip R Piccigallo, *The Japanese on Trial : Allied War Crimes Operations in the East , 1945*-1951 (Austin: University of Texas Press, 1980): 192.
[159] In re Yamashita, 327 U.S. 1, 39 (1946). See also, Order of General Douglas MacArthur Confirming Death Sentence of General Tomoyuki Yamashita, 6 February 1946., in Friedman., at 1599.
[160] ibid. See also, Kelly Dawn Askin, "Prosecuting Wartime Rape and Other Gender- Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles," Berkeley Journal of International Law 21, no. 2 (2003): 288–349., at 302-303., M. Cherif Bassiouni, Crimes against Humanity in International Criminal Law, 2nd ed., 1999.
[161] ibid.
[162] The United Nations War Crime Commission, "Trial of Washio Awochi," in Law Reports of Trials of War Crimes Volume XIII (The United Nations War Crime Commission, 1949), 122–25. See also, Fred L. Borch,

in the Army in the Dutch East Indies aimed to try the low-level Japanese war criminals in pursuant to the Ordinance of 28 June 1945 in Brisbane, where the Dutch East Indies government in exile partly located.[163] The prosecution was based on domestic law, recognising its sovereignty and applying international law.[164]

Washio Awochi managed a hotel in Batavia and forced 12 Dutch females into prostitution, containing girls between 12 and 14 years old. The Court held that:

> The accused was charged with having" in time of war and as a subject of a hostile power, namely Japan," and" owner of the Sakura-Club, founded for the use of Japanese civilians," committed" war crimes by, in violation of the laws and customs of war, recruiting women and girls to serve the said civilians or causing them to be recruited for the purpose, and then under the direct or indirect threat of the Kempei (Japanese Military Police) should they wish to leave, forcing them to commit prostitution with the members of the said club," which the women and girls" were not able to leave freely…"[165]

In this case, the Court found Washio Awochi was guilty of enforced prostitution in pursuant of Article 1(7) of the Statute Book Decree No. 44 of 1926 involving a war crime of 'abduction of girls and women for purpose of enforced prostitution.'[166] Since there existed no abduction in this case, the point in question at the Court was what elements constitutes enforced prostitution.[167] The Court concluded that girls and women 'were not free to move' and 'threatened by the Kempei (Japanese military police), and the threats 'were considered as being synonymous with ill-treatment, loss of liberty or worse,' hence, such elements would constitute enforced prostitution.[168]

In addition to this, in the same Batavia Court in 1948, Japanese military officials and brothel keepers in the service of the Imperial Japanese Army were tried and punished for crimes of rape, abduction, forced prostitution and coercion to prostitution committed against

Military Trials of War Crimianals in the Netherlands East Indies 1946-1949 (United Kingdom: Oxford University Press, 2017).

[163] Nina H.B. Jørgensen and Danny Friedmann, "Enforced Prostitution in International Law Through the Prism of the Dutch Temporary Courts Martial at Batavia," in Historical Origins of International Criminal Law: Volume 2, ed. Morten Bergsmo, CHEAH Wui Ling, and YI Ping (Torkel Opsahl Academic EPublisher, 2014), 331–54, https://doi.org/10.2139/ssrn.2541650.

[164] Jørgensen and Friedmann.

[165] The United Nations War Crime Commission, "Trial of Washio Awochi."

[166] ibid.

[167] ibid.

[168] The United Nations War Crime Commission. See also, Borch, Military Trials of War Crimianals in the Netherlands East Indies 1946-1949.

approximately 35 Dutch girls and women.[169] In this trial, a specific charge was brought against each defendant. For instance, a part of the charge of one accused reads as follows:

> …[O]n or around 26 February 1944, or at least in February 1944, at premises located in Kanarilaan19 in Semarang, he had a group of approximately 35 women, who had already been interned by the Japanese occupation authorities in the camps Semarang-Oost, Gedangan and Halmaheira in Semarang, and camps numbers 4 and 6 in Ambarawa, abducted for the purpose of prostitution to four premises configured as brothels in Semarang. [He did so] in his position as acting heitan officer of Semarang, while he knew, or ought reasonably to have suspected, that all or at least the majority of these women would not surrender themselves voluntarily to prostitution and therefore that coercion would be used against them…
>
> …on or around 29 February 1944, or at least in February 1944, in the hours of the afternoon at premises configured as a brothel in Semarang called Shoko Club, in his position of acting heitan officer, he forced five of the women referred to in a. into prostitution with threats that they would be killed in the most horrible way and that reprisals would be taken against their family members if they persisted in their refusal to have sexual intercourse voluntarily with any Japanese visitor to said club;[170]

The charge brought against this accused was based on the fact that the accused committed war crimes of rape, abduction of girls and women, forced prostitution and coercion to prostitution. In this trial, the Court also considered the testimonies from the Japanese captains, colonels, some medial doctors. The Court concluded that:

> These statements indicate that, when the military authorities took over the internment camps in Central Java from the civil administration at the end of March 1944, they discovered that women who belonged in those camps had been put to work as prostitutes in brothels in Semarang. This was deemed undesirable by the Headquarters of both the prisoners of war camps and the civil internment camps, since it could be concluded that this had happened under coercion and was contrary to international laws.
>
> …
>
> Most of these women and girls were forced by means of physical assault and physical coercion to endure sexual intercourse with Japanese men, for which purpose they were stationed in the four brothels referred to in the indictment. According to the judgement of the Court Martial, the Japanese would have met strong resistance and considerable difficulties if they had openly and clearly stated the purpose the women and girls were to serve, and it would have been seriously questionable whether they would have succeeded in recruiting women and girls from the camps without having to use violence…[171]

As a result, 4 Japanese military officers were convicted of abduction of women and girls and enforced prostitution (2 out of 4 Japanese military officers were also convicted of rape and

[169] Netherlands Temporary Courts Martial at Batavia, Judgement No. 72/1947 (1947). See also, Jørgensen and Friedmann, "Enforced Prostitution in International Law Through the Prism of the Dutch Temporary Courts Martial at Batavia."
[170] Netherlands Temporary Courts Martial at Batavia, Judgement No. 72/1947.
[171] Netherlands Temporary Courts Martial at Batavia.

sentenced to death). 2 other military officers were convicted of ill-treatment of prisoners and 4 brothel owners were convicted of enforced prostitution.[172]

It is significant that the Batavia courts tried Japanese military officers and civilians and found guilty of forcing the 'comfort women' into prostitution by means of threats or deception. However, it should be noted that the court failed to address a large number of Indonesian women who had suffered the same situation as the Dutch women did.[173]

2.2. 'COMFORT WOMEN' LAWSUITS FILED IN JAPAN 1991-2010

With the democratisation of South Korea in the 1980s, public concern about 'comfort women' grew. The factor was the presentation of research revealing the 'comfort women' system and the testimonies of the previously silenced 'comfort women'.[174] In the late 1980, Yun Chung-Ok from Ewha Women's University presented her research uncovering historical evidence of the 'comfort women'.[175] Her activities and research on the 'comfort women' led to the establishment of an non-governmental organisation (NGO), the Korean Council for the Women Drafted for Military Sexual Slavery by Japan (Korean Council), in 1990.[176] Initially, the 'comfort women' sought compensation through political means, writing letters to the Japanese government demanding an official apology and compensation.[177] On the other hand, when the movement of the 'comfort women' emerged in 1990s, the Japanese government declined its involvement in the 'comfort women' system, attributing the liability for the private agents.[178] Between 1991 and 2001, 10 'comfort women' lawsuits have been filed in domestic courts in Japan and the 'comfort women' have sought compensation for the damage they suffered.

In this section, I will examine the background and the details of the 'comfort women' lawsuits filed in domestic tribunals in Japan. The 'comfort women' lawsuits filed in Japan demonstrated that the individual right to claim compensation has been extinguished by the post-war peace treaties or bilateral agreements between countries. I consider that it is highly questionable that

[172] ibid.
[173] Dolgopol and Paranjape, "Comfort Women: An Unfinished Ordeal."
[174] Ling, "Walking the Long Road in Solidarity and Hope : A Case Study of the " Comfort Women " Movement ' s Deployment of Human Rights Discourse."
[175] Soh, "The Korean " Comfort Women ": Movement for Redress.", at 1232.
[176] Soh.
[177] Shin Ethan Hee-Seok, "The Comfort Women Reparation Movement: Between Universal Women's Human RIght and Particular Anti-Colonial Nationalism," Florida Journal of International Law 28, no. 1 (2016): 87–158., at 99-100.
[178] Ethan Hee-Seok. See also, Dolgopol and Paranjape, "Comfort Women: An Unfinished Ordeal.", at 12-13.

the right to reparation can be extinguished by such treaties and agreements. In fact, although Article 14(b) included the waiver of the nationals' right to claim compensation, the interpretation of the phase 'waiver' became an object of debate which has remained to date.[179]

In the negotiation process of the 1951 San Francisco Peace Treaty, the representative of the Netherlands strongly opposed to waive the individual's right to claim compensation in pursuant to the Dutch constitution.[180] In response to this, the representative of Japan added that the 'waiver' did not substantively extinguish the individual right to claim, but it would prevent individuals from making a claim in courts.[181] The US representative described such right as a right without a remedy.[182] As a result, Japan signed, separately from the San Francisco Treaty, the 1956 Protocol between the Government of Japan and the Government of the Kingdom of the Netherlands Relating to Settlement of the Problem Concerning Certain Types of Private Claims of Netherlands Nationals (The Stikker-Yoshida Agreement). In accordance with this, Japan paid the Netherlands about 10 million US dollars, and the Netherlands paid 415 florins per person to the former private detainees.

Concerning the 'waiver' clause of the 1951 San Francisco Peace Treaty, the question of whether the individual's right to claim was expired by the international treaty arose during a series of 'comfort women' lawsuits. In response to these questions, Japan has repeatedly held that the individual's right to claim has been expired, while avoiding referring to the interpretation of the term 'waiver'.

All the 'comfort women' lawsuits filed in the domestic courts in Japan have been eventually dismissed by applying the principle of state immunity, statute of limitation or on the ground that peace treaties and bilateral treaties have been settled. It can be argued that these court's rulings went against the evolving principles of the international law in relation to the right to an remedy and the right to reparation.

2.2.1 Silence Broken

[179] Article 14(b) of the San Francisco Peace Treaty. It states that '[e]xcept 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'.
[180] Shuichi Furuya, "Waiver or Limitation of Possible Reparation Claims of Victims," Heidelberg Journal of International Law 78, no. 3 (2018): 591–95.
[181] Furuya.
[182] Furuya.

The first ‘comfort women’ who begun to speak officially about the personal experience was Kim Hak-Sun and, in 1991, a testimony was provided regarding the Imperial Japanese Army's participation in the ‘comfort women’ system.[183] It resulted in filing a first ‘comfort women’ lawsuit at a domestic court in Japan by a group of Kim Hak-Sun and the other 7 ‘comfort women’ as well as some Korean survivors of the Japanese military service and the bereaved families (Asia-Pacific War Korean Victims case).[184] In this case, 8 Korean ‘comfort women’ demanded an official apology and compensation from the defendant, the Japanese government, for damage they suffered between 1937 and 1945. The ‘comfort women’ argued that they were forced to have sexual intercourse with a number of Japanese military persons for an extended period of time in comfort stations in Shanghai and Taiwan.[185]

The series of ‘comfort women’ lawsuits filed in Japanese domestic courts, as well as the discovery of the official directive by Professor Yoshimi Yoshiaki in 1992, resulted in the announcement of the 1993 Kono Statement by the Japanese government's then-Chief Cabinet Secretary, Yohei Kono.[186] For the first time, Japan acknowledged in the Kono Statement that the comfort stations were operated in response to the military authority of the time.[187] Furthermore, it asserted that the Japanese Imperial Army had a direct or indirect role in the creation and administration of the comfort stations and the transfer of the ‘comfort women’.[188] Regarding the Imperial Japanese Army's role in recruiting the ‘comfort women’, it was stated that such recruitment was primarily carried out by private recruiters who responded to the military's request. According to the government research, these women were frequently taken away against their will and that occasionally, administrative or military personnel actively participated in the recruitments.[189]

On the other hand, the Japanese government has persisted in denying that the Imperial Japanese Army ‘forcibly recruited’ the ‘comfort women’. The denial can be seen in the communication with South Korea conducted prior to the wording of the 1993 Kono Statement.[190] Regarding

[183] Sonen, “Healing Multimentional Wounds of Injustice Intersectionality and the Korean Comfort Women.”
[184] Toyko District Court, Asia-Pacific War Korean Victims’ Compensation Claims Case, Judgement, 2001 (Wa) No.17461, 26th March 2001.
[185] Toyko District Court.
[186] Yoshimi, Comfort Women: Sexual Slavery in the Japanese Military During World War II.
[187] Yohei Kono, “Statement by the Chief Cabinet Secretary,” Ministry of Foreign Affair of Japan, 4 August 1993, accessed May 6, 2022, https://www.mofa.go.jp/a_o/rp/page25e_000343.html.
[188] Kono.
[189] Kono.
[190] Keiichi Tadaki et al., “Details of Exchanges Between Japan and the Republic of Korea (ROK) Regarding the Comfort Women Issue: From the Drafting of the Kono Statement to the Asian Women’s Fund,” Ministry of Foreign Affairs of Japan, 2014, accessed April 13, 2018, https://www.mofa.go.jp/mofaj/files/000042167.pdf.

the ‘coercion’ in recruiting the ‘comfort women’, the Japanese government refused to use the phrase ‘forcibly taken away’, because the Japanese government argued that any materials to support the fact of such forcible recruitment by the Imperial Japanese Army had been found.[191] The South Korean government then asked the Japanese government to refer to the Imperial Japanese Army's role in establishing the comfort stations as ‘instruction’ of the Army. However, the Japanese government argued that such fact has been unable to confirm by their own research, hence, it proposed the alternative word, ‘request’ of the military.[192] To date, the Japanese government has been denying that the ‘comfort women’ were forcibly taken away by the Imperial Japanese Army.[193]

2.2.2. The Details of ‘Comfort Women’ Lawsuits

In 1990s, 10 ‘comfort women’ lawsuits have been filed in domestic courts in Japan. Through a series of the lawsuits, the ‘comfort women’ have demanded the official apology and monetary compensation from the Japanese government. The only case in which the court ruled in favour of the 'comfort women' was the Kampu case, which was heard in the Yamaguchi Prefectural Court's Shimonoseki Branch in 1992.[194] The other ‘comfort women’ cases are Asia-Pacific War Korean Victims case, filed in 1991, Philippine Sexual Slavery case filed in 1993, Former *‘Comfort Women’ Living in Japan* case filed in 1993, Dutch Ex-Prisoner of War and Private Internment case filed in 1994, *Chinese ‘Comfort Women’ Secondary* case filed in 1996, Victims of Sexual Violence in Shanxi Province case filed in 1998, *Taiwanese Former ‘Comfort Women’* case filed in 1999 and Hainan Island Wartime Sexual Violence case filed in 2001.[195] No more

[191] Tadaki et al.
[192] Tadaki et al.
[193] Hayashi, “Disputes in Japan over the Japanese Military ‘Comfort Women’ System and Its Perception in History.”
[194] Yamaguchi District Court (Shimonoseki Branch), Kampu Saiban, Judgement, LXDB28033107 (n.d.).
[195] Toyko District Court, Asia-Pacific War Korean Victims’ Compensation Claims Case, Judgement, 2001 (Wa) No.17461, (26th March 2001). *Tokyo District Court, Former ‘Comfort Women’ Living in Japan* Case, Judgement to 1993 (Wa) No. 6152 (1st October 1999). See also, Tokyo District Court, Philippine Sexual Slavery State Compensation Claim Case, Judgement to 1993 (Wa) No. 5966 (9th October 1998)., Tokyo District Court, Dutch Ex-Prisoner of War and Private Internment Case, Judgement to 1994 (Wa) No. 1218 (30th November 1998). Tokyo District Court., Tokyo District Court, “*Chinese ‘Comfort Women’ Secondary* Case, Judgement to 1996 (Wa) No.3316", (29th March 2002). Tokyo District Court, Chinese (Sanxi Province) Sexual Violence Victim Apology and Compensation Claim For Damages Case, Judgement (Wa) No. 24987 (24th April 2003)., Tokyo District Court, *Taiwanese Former ‘Comfort Women’ Compensation Claim for Damages and Apology* Case, Judgement to 1999 (Wa) No.15638 (15th October 2002). Tokyo District Court, Hainan Island Wartime Sexual Violence Compensation Case, Judgement to 2001 (Wa) No.14808 (30th August 2006).

'comfort women' lawsuit filed in domestic court in Japan after Hainan Island Wartime Sexual Violence case.

All the 'comfort women' lawsuits filed in the domestic courts in Japan have been dismissed in the Supreme Court. It can be argued that these rulings represented the opposition to the evolving principles of the international law in relation to the right to an effective remedy and the right to reparation, failing to restore the dignity and honour of the 'comfort women'.

2.2.2.1. Asia-Pacific War Korean Victims Case

This case was brought before the Tokyo District Court in 1991 by the Korean plaintiffs, including 8 'comfort women', 17 former Imperial Japanese Army's civilian employees and 15 family members of the victims. Among the 'comfort women' plaintiffs, there were Kim Hak-sun, who first introduced her real name and her experience in public.[196] The plaintiffs claimed that, during World War II, Japan recruited the residents in Korea as the 'comfort women' or the Imperial Japanese Army's civilian employees through the conscription, volunteer system or the national requisition ordinance and it resulted in causing intolerable damage to them.[197] The 'comfort women' plaintiffs argued that they were deceived and taken away to comfort stations and forced to have sexual intercourse with more than 10 Japanese military personnel per day, and they suffered from abuses and venereal diseases.[198] The plaintiffs demanded 20 million yen to be paid for each plaintiff as compensation for the loss and damage in pursuant to international law and domestic law.[199]

The Court admitted the following facts: 1) the comfort stations has been extensively established by the former Imperial Japanese Army since 1932, after Shanghai incident, until the end of World War II.[200] According to the materials of the Japanese government at that time, the

[196] Toyko District Court, Asia-Pacific War Korean Victims' Compensation Claims Case, Judgement, 2001 (Wa) No.17461, 26th March 2001. See also, Takaaki Mizuno, "Ianfu Houdou No Shuppatsuten (The Starting Point of Comfort Women Reporting)," Bulletin of Kanda University of International Studies 31 (2019): 241–69., Eriko Ikeda, "A True Solution to the 'Comfort Women' and the Eradication of Wartime Sexual Violence ('Ianfu' Mondai No Shin No Kaiketsu to Senjisei Bouryoku No Konzetsu No Tame Ni)," Bulletin of Ritsumeikan University International Peace Museum 20 (2019): 99–106.
[197] ibid.
[198] ibid.
[199] ibid.
[200] Shanghai incident was a conflict between the Republic of China and the Empire of Japam between 28th of January and 3rd of March in 1932. After Japan's invasion of Manchuria, Japanese military officers defied their senior officials and raised anti-Japanese demonstrations in the internationally controlled Shanghai International Settlement. The then Japanese government sent ultra-nationalist Japanese Buddhist priests to Shanghai. They

purpose of the establishment was to prevent the Japanese military personnel from conducting illegal acts such as rape against the residents and not to develop the anti-Japanese sentiment caused by the horrific acts of rape. 2) In answer to the Imperial Japanese Army's request, private agents recruited the 'comfort women' in the majority of cases. However, as the war expanded, the need to secure the 'comfort women' increased. As a result, there emerged a large number of 'comfort women' recruited against their will, and there existed some cases involving the Japanese military authorities. The 'comfort women' came from Korea, Japan, Taiwan, Indonesia and some other Japanese-occupied territories. 3) At the time of the transfer of the 'comfort women', the Imperial Japanese Army provided travel permits to the -comfort women', and their identification was issued by the Japanese government. 4) Some of the comfort stations were managed by the Imperial Japanese Army. The other comfort stations managed by private owners were established and maintained directly by the Imperial Japanese Army, as they set regulations of services and conducted hygiene management by the military doctors. Besides, the 'comfort women' were under the control of the Imperial Japanese Army all the time. 5) There were some cases that fleeing Japanese soldiers left the 'comfort women' behind.[201]

The testimonies of the 'comfort women' demonstrated how they were deceived and forcibly taken away. For instance, one of the plaintiffs argued that 'On my way home, I was stopped by two Japanese and Korean men near Busan Station. They asked to go to the military uniform factory in Kurashiki to earn some money, and I was taken to board a ship to Rabaul without my consent'. The other plaintiffs testified that 'Japanese and Korean men asked me to follow them to introduce me a job, but eventually I was taken from Busan to Shanghai by ship and train, and I was put in a place described 'Army Forces Comfort Station'. The house was divided into about 30 small rooms without windows.'[202]

In this instance, the District Court ruled that states, not indivisuals, should be considered the subjects of international law. As a result, it denied the individual right to claim compensation in relation to international law such as Article 3 of the 1907 Hague Convention, Article 46 of the Annex to the 1907 Hague Convention, crimes against humanity of Article 6 of the Nuremberg Charter and Article 5 of the Tokyo Charter, the 1926 Slavery Convention, the 1930

called anti-Chinese and pro-Japanese nationalist slogans and promoted Japanese dominance over East Asia. In response, Chinese people resisted against it and it turned into a conflict. See also, Donald A. Jordan, *China's Trial* by Fire: The Shanghai War of 1932 (Review) (Ann Arbor: The University of Michigan Press, 2001).

[201] ibid.

[202] ibid. See also, Korean Council for Women Drafted for Military Sexual Slavery by Japan, True Stories of the Korean Comfort Women, ed. Keith Howard (UNKNO, 1996).

Forced Labour Convention, the 1904 International Agreement for the Suppression of the 'White Slave Traffic', the 1910 International Convention for the Suppression of the 'White Slave Traffic', and international customary law.[203]

On the other hand, the High Court pointed out that the testimonies of the 'comfort women' indicated that the acts of Japanese soldiers would constitute a violation of forced labour under the 1930 Forced Labour Convention, thus, state responsibility could be attributed to Japan. However, the High Court considered that the individual right to claim compensation would not be exercised for damages other than the wages stipulated in the Convention.[204] The High Court also mentioned that that fact that the 'comfort women' forced into having sexual intercourse with a number of the Japanese military personnel every day constituted a violation of the 1904 International Agreement for the suppression of the 'White Slave Traffic' and the 1910 International Convention for the Suppression of the 'White Slave Traffic'.[205] Article 1 and 2 of the 1910 International Convention for the Suppression of the 'White Slave Traffic' stipulates as follows;

> Article 1
>
> Whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.
>
> Article 2
>
> Whoever, in order to gratify the passions of another person, has, by fraud, or by means of violence, threats, abuse of authority, or any other method of compulsion, procured, enticed, or led away a woman or girl over age, for immoral purposes, shall also be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.[206]

Furthermore, colonial regulations are outlined in Article 11 of the 1910 International Convention for the Suppression of the 'White Slave Traffic' requires States to notify its

[203] Toyko District Court, Asia-*Pacific War Korean Victims' Compensation Claims* case, Judgement, 2001 (Wa) No.17461, (26th March 2001).
[204] Toyko High Court, Asia-*Pacific War Korean Victims' Compensation Claims* case, Appeal Judgement, (Ne) No.2631, (22nd July 2003).The Tokyo High Court stated that 'the "comfort women" appellants claim at least wages for forced labour as compensations, however, it is clear that the nature and amount of damages cannot be claimed as wages. As long as the appellants claim the wages as the compensations for damages, instead of proving the equivalent wage and claiming it as the wages, the Court has to make a decision as mentioned above'.
[205] ibid.
[206] Article 1, 2, and 3 of the the 1910 International Convention for the Suppression of the 'White Slave Traffic'. Japan ratified the 1921 International Convention for the Suppression of the Traffic in Women and Children in 1925, which contained a provision to let the Contracting Parties to ratify the 1904 International Agreement for the suppression of the 'White Slave Traffic' and the 1910 International Convention for the Suppression of the 'White Slave Traffic'.

intention if States desire the Convention to enter into force in their colonies.[207] The High Court remarked that, although the Convention was not applicable to Korea at that time since Japan did not notify its intention, it was clear that the 'comfort women', under age at that time, were taken away from Korea to South Sea Islands, China, Burma or Japan, against their will. In this regard, however, the High Court stated that the individual right to claim compensation under the 1910 International Convention and under international customary law cannot be exercised against a state because such provisions were not included in the 1910 International Convention, neither under international customary law.[208]

With regard to the claim based on domestic law, generally in the 'comfort women' lawsuits filed in domestic courts in Japan, the claims by the 'comfort women' were dismissed in pursuant to the statute of limitations and/or the waiver of individual right to claim under the 1951 San Francisco Treaty or bilateral treaties.

Regarding the statute of limitation in Japanese law, Article 724 of the Civil Code provides that 'the right to compensation for damages caused by torts shall be extinguished by the operation of prescription if it is not exercised by the victim or the legal representative within three years from the time when the victim comes to know of the damages and the identity of the perpetrator'.[209] The same shall apply when twenty years have elapsed from the time of the tortious act.'[210] Therefore, even if the courts find the liability in accordance with Civil Code or even if the court accept that the right to claim may still have been valid after the bilateral peace treaty, such cases were commonly dismissed in pursuant to Article 724 of the Civil Code.

Fundamentally, in relation to tort liability in Japanese law, the State Liability Act was promulgated in 1947.[211] It is a law enacted as an enforcement law of Article 17 of the Japanese Constitution and is classified as an administrative law as one of the administrative relief laws. On the other hand, it also has an aspect as a special law of civil law.[212] Article 1(1) of the State Liability Act provides that '[W]hen a public officer who exercises the public authority of the

[207] Article 11 of the 1910 International Convention for the Suppression of the 'White Slave Traffic'.
[208] Toyko High Court, Asia-Pacific War Korean Victims' Compensation Claims case, Appeal Judgement, (Ne) No.2631, (22nd July 2003).
[209] Article 724 of the Civil Code
[210] ibid.
[211] State Liability Act No. 125 of October 27, 1947. See also, in general, Uga Katsuya and Junko Obata, Joukai Kokkabaishoho (State Liability Act) (Koubundo, 2019).
[212] Tadao Ishii, Kokkabaishou Soshou Nyumon (Introduction to the State Liability Litigation) (Sankyouhouki Shuppan, 2005). Article 17 of the Japanese Constitution states that, '[E]very person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.'

State or of a public entity has, in the course of his/her duties, unlawfully inflicted damage on another person intentionally or negligently, the State or public entity shall assume the responsibility to compensate therefor.'

While Article 1(1) states that the national or local government is responsible for damages caused by the exercise of State or public authority, the Supplementary Provision 6 reads that damages caused by acts committed prior to the implementation of the State Liability Act will be dealt with in accordance with the previous rules.[213] In light of this, Article 16 of the former Administrative Litigation Law which existed before the enforcement of the State Liability Act provides that 'administrative litigation does not accept complaints on damages'. Hence, there was no protection for damages caused by the exercise of public authority in administrative litigation before the enforcement of the State Liability Act.[214] Since there is no clear provision in the Civil Code before the establishment of State Liability Act with regard to the responsibility of the national or local government for damages caused by the exercise of the State or public authority and there is no precedents in case law, the doctrine of state immunity is generally applied to such cases.[215]

However, regarding the damage caused by private economic activities performed by the non-public authority, the doctrine in the Civil Code may be applied.[216] Therefore, in the 'comfort women' lawsuits, the Court regularly examined whether acts by offenders against the victims constituted illegal acts of authority of the state or public bodies or not.

In Asia-Pacific War Korean Victims case, the High Court considered that the doctrine of state immunity lacked legitimacy and rationality.[217] It held that the rationale of the doctrine of state immunity was questionable, because, prior to the establishment of the State Liability Act, the proceedings regarding damages caused by torts of the public authority were not recognised as civil court matters by the judicial court, neither were not accepted as administrative court matters by the administrative court. Namely, it pointed out that there was simply no legal approach for such damages. Hence, it should be considered that the offending acts of the public authority were not substantively lacking its illegality or exempted from liability.[218] In this

[213] Supplementary Provision 6 of the State Liability Act.
[214] Article 16 of the former Administrative Litigation Law.
[215] Ishii, Kokkabaishou Soshou Nyumon (Introduction to the State Liability Litigation).
[216] Katsuya and Obata, Joukai Kokkabaishoho (State Liability Act). See also, Ishii, Kokkabaishou Soshou Nyumon (Introduction to the State Liability Litigation).
[217] Toyko High Court, Asia-Pacific War Korean Victims' Compensation Claims Case, Judgement to 2001 (Ne) No. 2631 (n.d.).
[218] Toyko High Court.

regard, the High Court concluded that, since the Appellants were forced into an employment contract as 'comfort women' by the employer and was forced into prostitution for a long period of time in a poor working environment, these cases might constitute illegal acts conducted by Japan.[219]

Additionally, the High Court found that Japan breached the obligation of security.[220] It is the employer's obligation to consider safety for its employee in pursuant of the fair and equitable principles.[221] In addition to a direct contractual relationship or legal relationship between the employer and the employee, a special social contact relationship can be included in the obligation if the relationship contains practical control over the facility management or control over labour through direct concrete commands and supervision between the parties.[222] The High Court considered that Japan, that had a dominant contractual relationship with the activities in comfort stations, or that was in the position of a consortium with managers, were obliged to consider safety of 'comfort women' concerning the life and health.[223]

On the other hand, it was also noted that it should be understood that all possible measures were not able to be undertaken by Japan, because being left behind, and being under the threat of killing due to relocation or deterioration of the war situation was unavoidable, and it must be said that such damages suffered by the 'comfort women' was the war damage that should be meekly accepted.[224] The High Court finally dismissed the case in pursuant to the statute of limitations. Besides, it also stated that the individual right to claim of the 'comfort women' was extinguished by the Property Rights Measures Law, which enacted in Japan in pursuant to the bilateral agreement after World War II.[225] Finally, in 2004, the Supreme Court also dismissed the appeal.

[219] Toyko High Court.
[220] Toyko High Court.
[221] Yuzo Shiraha, Anzenhairyogimu to Sono Haikei (The Obligation of Security and Its Background) (Chuo Daigaku Syuppanbu, 1994). See also, Takashi Niimi, Kokka No Sekinin to Jinken: Guntaikiritsuron, Anzenhairyogimu No Houri (State Responsiblity and Human RIghts: Military Discipline Theory, The Doctrine of Obligation of Security) (Yuishobou, 2006).
[222] Shiraha, Anzenhairyogimu to Sono Haikei (The Obligation of Security and Its Background). Niimi, Kokka No Sekinin to Jinken: Guntaikiritsuron, Anzenhairyogimu No Houri (State Responsiblity and Human RIghts: Military Discipline Theory, The Doctrine of Obligation of Security).
[223] Toyko High Court, Asia-*Pacific War Korean Victims' Compensation Claims* Case, Judgement to 2001 (Ne) No. 2631.
[224] Toyko High Court.
[225] Tokyo High Court.

2.2.2.2. Kampu Case

Kampu case is the only case in which a Japanese domestic court ruled in favour of the 'comfort women', and the District Court made distinctive decisions on the right to compensation as well as the fact findings.[226] The plaintiffs were 3 'comfort women' and 7 former Korean female Teishintai labour force. It was held in the Shimonoseki Branch of the Yamaguchi Prefectural Court in 1992.[227] Especially, the 'comfort women' demanded an official apology and 110 million yen for each 'comfort women' plaintiff as compensation for the damage they suffered between 1937 and 1945, when they have been forced to have sexual acts for an extended period of time in comfort stations in Shanghai and Taiwan.[228] Additionally, 1 million yen was demanded as compensation for the then Japanese Minister of Justice' remark, describing the 'comfort women' as licenced prostitutes.[229]

The significance of this trial was that the District Court eventually found a cause of action in tort based on the failure of Japan's legislative duty, namely, the enactment of the necessary law to compensate for victims suffered during the aggression of Imperial Japanese Army, according to the State Liability Act.[230] Article 1, Section 1 of the State Liability Act reads:

> 'When public servants violate their professional legal duties, which are for the benefit of individuals, and inflict damage on such individuals, the nation of Japan or other public institutions will provide compensation'[231]

In this regard, the issues under discussion were whether the Japanese Diet had a legislative duty to remedy the 'comfort women' confined and forced to have sexual intercourse with Imperial Japanese military personnel and whether the failure of such legislative duty constituted the violation of Article 1(1) of the State Liability Act.[232] Notably, the Court

[226] Judgement of April 27, 1998, Yamaguchi District Court (Shimonoseki Branch), LXDB28033107. See also, Taihei Okada, "The Comfort Women Case: Judgment of April 27, 1998, Shimonoseki Branch, Yamaguchi Prefectural Court, Japan," Pacific Rim Law & Policy Journal 8, no. 1 (1999): 63–108., Hanafusa Toshio, Kampu Saiban Ga Mezashitamono (What the Kampu Trial Aimed For) (Hakutakusha, 2021).
[227] Judgement of April 27, 1998, Yamaguchi District Court (Shimonoseki Branch), LXDB28033107. See also, Okada, "The Comfort Women Case: Judgment of April 27, 1998, Shimonoseki Branch, Yamaguchi Prefectural Court, Japan."
[228] Judgement of April 27, 1998, Yamaguchi District Court (Shimonoseki Branch), LXDB28033107. See also, Okada.
[229] ibid.
[230] Etsuro Totsuka, "Commentary on a Victory for Comfort Women: Japan's Judicial Recognition of Military Sexual Slavery," Pacific Rim Law & Policy Journal 8, no. 1 (1999): 47–61. See also, Seita Yamamoto, "Kampu Saiban No Keika to Hanketsu (The Progress and Judgement of Kampu Case)," *The Report on Japan's War* Responsibility 21 (1998): 43–49.
[231] Kokka Baishiho (State Liability Act), Law No.125 of 1947, Article 1.
[232] Totsuka, "Commentary on a Victory for Comfort Women: Japan's Judicial Recognition of Military Sexual Slavery."

highlighted that the 'comfort women' system was severe violation of the dignity of women in accordance with Article 13 of the Japanese Constitution, though it denied the power of Japanese Constitution to compensate since it was enacted after the incidents.[233]

Nevertheless, considering the gravity of the human rights violation and the continuing violations lasting to date, the Court held that it would have constituted a violation of the 1921 International Treaty Concerning the Slave Trade of Women and Children and the 1930 Forced Labour Convention.[234] It held that the Japanese Diet had the constitutional duty to legislate the necessary law to prevent the victims from further suffering, but it failed to do so and resulted in the continuing violations of human rights of the 'comfort women'.[235]

Moreover, the Court examined the 1993 Kono statement and stated that the Japanese government was aware of the necessity of the expression of the apology for the gross human violation regarding the 'comfort women'. Additionally, the Court pointed out that the laws to provide redress to the victims suffered by the Nazi war crimes have been legislated in Germany, the US and Canada by the time of the publishment of the 1993 Kono statement. Thus, the Court held that the Kono statement established the constitutional duty of the Japanese government to legislate the necessary law to redress for the 'comfort women'.[236] Therefore, the Court concluded that the failure of the Japanese Diet to legislate a compensation law is the illegal act in pursuant of Article 1, Section 1 of the State Liability Act and ordered the Japanese government to compensate the 'comfort women' with 300 thousand yen.[237] In this case, it should be noted that the Court denied the defendant's assertion that the statute of limitation would prevent victims of wartime acts from bringing suit based on the Japanese Diet's illegal activity, not on the gravity of the human right violations.

Nonetheless, in terms of the fact-finding, it can be said that the Court made a distinctive decision in relation to the 'comfort women' system as well as the testimonies of the 'comfort women'.[238] The Court recognised that the 'comfort women' system represented sexism and

[233] Article 13 of the Japanese Constitution. It reads 'All the people shall be respected as individuals. Their right to life, liberty, and pursuant of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.'
[234] Judgement of April 27, 1998, Yamaguchi District Court (Shimonoseki Branch), LXDB28033107. See also, Okada. Japan ratified the 1921 International Treaty Concerning the Slave Trade of Women and Children in 1925 and the 1930 Forced Labour Convention in 1932.
[235] Judgement of April 27, 1998, Yamaguchi District Court (Shimonoseki Branch), LXDB28033107. See also, Okada.
[236] ibid.
[237] ibid.
[238] Totsuka, "Commentary on a Victory for Comfort Women: Japan's Judicial Recognition of Military Sexual Slavery."

racism and gross human rights violations which have remained. Although the reliable proof regarding how the Plaintiffs became the 'comfort women' nor the details of the 'comfort women' station where they were placed was not presented, the Court considered the testimonies to be credible in light of their poverty-stricken origin, advanced age, and the fact that they had to hide their experiences for a long time until the proceeding, even from their families.[239] It also noted that:

> '… even at that time, the 'comfort women' system was suspected of illegality under the 1921 International Convention for the Suppression of the Traffic in Women and Children and the 1930 Forced Labour Convention, but this system was not limited to that, namely, this system targeted at minors in colonies and occupied territories, as the Plaintiffs did, took them away against their will by using cajolery and threat, and forced them to engage in sexual intercourse with former Japanese military personnel politically and institutionally, with direct and indirect involvement in the comfort stations of the Japanese army, therefore, even in light of the level of civilization in the mid-twenty century, it is clear that it was an extremely anti-humanitarian and hideous acts and Imperial Japan, which advocated at least a first-class country, should not have been complicit in its state acts. Nevertheless, not only the former Japanese Army but also the government itself have been complicit in it, and result in causing serious human rights violations and severe damage as seen earlier, and it also changed the subsequent lives of a number of women who were forced to be 'comfort women', including the Plaintiffs, and forced half a life of humiliation even after the end of World War II, and it has fallen into the woman's limitless suffering until today after more than 50 years ...'[240]

The Court admitted the fact that the 'comfort women' plaintiffs were forced to be 'comfort women' by means of deception and violence, and to have sexual intercourse with Japanese military personnel in the comfort stations which had a connection with the Imperial Japanese Army to large extent.[241]

Thus, the Court recognised the 'comfort women' as a severe human rights violation left behind for decades and it was addressed under domestic tort law, rather than international law. The Court attempted to make as close as a legislative order with the prospect that a necessary legislation would be enacted to restore the damage of victims caused by the human rights violation.[242] This case was, however, eventually brought before the Supreme Court and dismissed.[243]

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[239] Judgement of April 27, 1998, Yamaguchi District Court (Shimonoseki Branch), LXDB28033107. See also, Okada.
[240] Judgement of April 27, 1998, Yamaguchi District Court (Shimonoseki Branch), LXDB28033107.
[241] Judgement of April 27, 1998, Yamaguchi District Court (Shimonoseki Branch), LXDB28033107. See also, Okada.
[242] Yamamoto, "Kampu Saiban No Keika to Hanketsu (The Progress and Judgement of Kampu Case)."
[243] Hiroshima High Court, Kampu Trial, Judgement (29th March 2001). See also, Tsubokawa Hiroko and Oomori Noriko, Shihou Ga Nintei Shita Nihongun Ianhu - *Kagai, Higaijijitsu Ha Kesenai! (Japanese Military "comfort Women" Certified by the Judiciary* - Damage and Harm Facts Can Not Be Erased! (Kamogawa Booklet, 2011).

2.2.2.3. Philippine Sexual Slavery Case

This case was filed in the Tokyo District Court in 1993 by the 46 Filipinos plaintiffs, who claimed that they were abducted and confined by the Imperial Japanese Army and forced into sexual slavery in the Japanese garrison for varying time from 1 month to a few years during World War II.[244] At that time, 15 plaintiffs were under 15 years old, 18 plaintiffs were from 16 to 20 years old, 12 plaintiffs were at 20s, and 1 person were at 30s.[245] The plaintiffs also experienced extreme violence, for example, some of their families were killed by the Japanese soldiers in front of them, when they were abducted.[246] In the Court, the plaintiffs demanded 20 million yen per person as compensation for their physical and psychological damages.[247]

In this case, alleged facts of crime were not admitted by the court, because the District Court firstly focused on the question whether the individual right to claim compensation stipulated in the provisions of international law and it denied the existence.[248] Particularly, regarding Article 3 of the 1907 Hague Convention, the Court considered it as a sanctions clause for compliance with the rule, and the individual right to claim compensation against a state was not contained.[249]

In this regard, Frits Kalshoven, a scholar of international humanitarian law, was invited as a witness to be questioned. He argued that Article 3 of the 1907 Hague Convention established the individual right to claim, referencing the remarks of several Contracting States in the drafting process, relevant state practice and previous cases in Germany and the UN.[250] However, the Court ultimately refused the argument, stating that the right to claim compensation of individuals, who lived in the occupied territory, against a state was not clearly stipulated in Article 3 of the 1907 Hague Convention and such right was not established as international customary law.[251] Similarly, as for crimes against humanity, included in Article

[244] Tokyo District Court, Philippine Sexual Slavery State Compensation Claim Case, Judgement to 1993 (Wa) No. 5966 (9th October 1998).
[245] ibid.
[246] ibid. See also, Hirohumi Hayashi, "Japanese Comfort Women in Southeast Asia," Japan Forum 10, no. 2 (1998): 211–19, https://doi.org/10.1080/09555809808721614., Katerina.R Mendosa, "Freeing the 'Slaves of Destiny': TheLolas of the Filipino Comfort Women Movement," SAGE 5, no. 3 (2003): 247–66, https://doi.org/10.1016/j.copsyc.2015.10.019.
[247] ibid.
[248] ibid.
[249] ibid.
[250] ibid. See also, Frits Kalshoven, "Some Comments on the International Responsibility of States," in International Humanitarian Law Facing New Challenges, ed. V. von Heinegg, W.H., Epping, 2007, 207–214, https://doi.org/10.1007/978-3-540-49090-6., Frits Kalshoven, "Individual Right to Claim Damages under Article 3 of Hague Convention IV: Supplementary Expert Opinion, 1999," International Humanitarian Law Series 17 (2007): 651–63.
[251] ibid.

6 of Nuremberg Charter, Article 5 of Tokyo Charter, and Article 5 of the Statute of ICTY, the Court demonstrated that it was intended to punish the international criminal liability of war criminals, and did not underpin the civil liability of the offender's country, and such customary international law neither has not been confirmed.[252]

With regard to domestic law, the Court applied the doctrine of state immunity and statute of limitation, therefore, it dismissed the case without the fact-finding.[253] The appeal was finally dismissed in the Supreme Court in 2003. The plaintiffs appealed to the High Court in 2000, however, it was similarly dismissed, and Supreme Court ultimately dismissed the appeal in 2003.[254]

2.2.2.4. Former Korean *'Comfort Women' Living in Japan* Case

This case was brought before the Tokyo District Court in 1993 by the Korean plaintiff, who has been the 'comfort women' for 7 years since 1938 in several comfort stations in China.[255] The plaintiff claimed that the Imperial Japanese Army forced her to be the 'comfort women', repeatedly raped and abused, which resulted in severe physical and psychological damage. Thus, the plaintiff demanded an official apology and 12 million yen as a compensation based on international law, Civil Code, and State Redress Act.[256]

The Court found that, at the age of 15, the plaintiff disagreed with the marriage decided by her parents and lived as a babysitter, however, a Korean man told her that if she went to the battlefield, she could live independently without getting married. She was taken to a comfort station in Wuchang District, China, without knowing that it would be a sex-related work.[257] She tried to escape many times, however, each time she was taken back and abused by the manager. She was eventually forced to move to several comfort stations until the end of World War II.[258] She was forced to have sexual intercourse with dozens of Japanese soldiers per day,

[252] Tokyo District Court, Philippine Sexual Slavery State Compensation Claim Case, Judgement to 1993 (Wa) No. 5966 (9th October 1998).
[253] ibid.
[254] Tokyo High Court, Philippine Sexual Slavery State Compensation Claim Case, Appeal Judgement (Ne) No. 5167 (12th December 2000).
[255] Tokyo District Court, *Former Korean 'Comfort Women' Living in Japan* case, Judgement (Wa) No.6152 (1st October 1999).
[256] ibid.
[257] ibid. See also, Association to Support the "Comfort Women" Trials in Japan, My Heart Is Not Defeated: *Korean "comfort Women" Song Shindo's Struggle (Ore No Kokoro Ha Maketenai: Zainichi Chosenjin "Ianhu"* Song Shindo No Tatakai) (Japan: Kinohanasya, 2007).
[258] ibid.

and the child she gave birth had to be adopted.[259] Besides, scars cut by a Japanese soldier and a tattoo of her nickname at comfort stations carved at that time on the arm still remain.[260]

In this case, the plaintiff argued that the individual right to claim against a state in relation to the damage caused by a gross human rights violation and a breach of a peremptory has been established in international customary law, presenting reports by the UN special rapporteur, Theodor C. Van Boven, as well as the 1996 Coomaraswamy Report submitted to the UN Human Rights Committee.[261]

The Court found that the Report submitted to the UN Commission on Human Rights by the Special Rapporteur Van Boven in 1993 indeed contained advanced proposals regarding types of acts that constitutes gross human rights violations and the right to reparation.[262] However, the Court considered that the report stated that victims would not be in a position to bring up international claims with regard to state responsibility and there introduced no actual example of the exercise of the individual right to claim against a state directly.[263]

Furthermore, in respect of the 1993 Coomaraswamy Report, the Court held that, in terms of the individual right to claim, the Report merely advised Japan that the compensation should be paid to the victims, with the reference to the Theodor C. Van Boven's opinion.[264] Besides, the Court pointed out that the individual right to claim directly against a state was not recognised in the 1930 Forced Labour Convention.[265] With regard to the claims based on domestic law, the District Court applied the doctrine of state immunity and statute of limitation and the case was consequently dismissed.[266]

The plaintiff appealed this case to the Tokyo High Court. The Court recognised that there were gross human rights violations, referring to the 1996 Coomaraswamy Report and the 1998

[259] Tokyo District Court, Former Korean 'Comfort Women' Living in Japan case, Judgement (Wa) No.6152 (1st October 1999).
[260] ibid.
[261] Theodoor C. van Boven, "Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms : Final Report," E/CN.4/Sub.2/1993/8, 2 July 1993. See also, The United Nations Commission on Human Rights, "Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Fifty-Second Session Item 9 (a) of the Provisional Agenda," E/CN.4/1996/53/Add.1," Fifty-second session (4 January 1996).
[262] ibid., See also, Tokyo District Court, *Former Korean 'Comfort Women' Living in Japan* case, Judgement (Wa) No.6152 (1st October 1999).
[263] ibid.
[264] Ibid.
[265] ibid.
[266] ibid. The plaintiff also argued that the remarks by Hiroo Shimizu, the Director of Employment Security Bureau of Ministry of Labour at that time, denying the involvement of the Imperial Japanese military in the 'comfort women' system as well as the fact that the 'comfort women' were forcibly taken away, would constitute defamation.

McDougall Report.[267] The Court also remarked that the elements of the 'comfort women' system could constitute forced labour under the 1930 Forced Labour Convention.[268] However, the Court ultimately denied the individual right to compensation against a state under international law.[269]

From the perspective of domestic law, the Court described the 'comfort women' as prostitution. It stated that, although the business method was significantly inappropriate, it should be understood that basically working as a comfort woman was an act which constituted prostitution within an employment relationship.[270] The Court concluded that some of the individual acts of the Imperial Japanese Army as a supervisor of its employees would constitute torts with regard to the coercion of sexual acts according to Article 709 of the Civil Code regulating liability for damages and Article 715(2) of the Civil Code regulating liability of employers.[271] However, the case was finally dismissed, applying the statute of limitation under Article 724 of the Civil Code. This case was brought before the Supreme Court, but it was dismissed in 2003.

2.2.2.5. Dutch Ex-Prisoners of War and Civilian Detainees Case

This case was filed in the Tokyo District Court in 1994 by the Dutch plaintiffs, including 7 ex-POW and one 'comfort women'.[272] The plaintiffs claimed that, in POW camps or civilian detainee camps during World War II, they were abused by the Imperial Japanese Army, which would constitute the violation of the 1907 Hague Convention and the 1929 Geneva Convention,

[267] The United Nations Commission on Human Rights, "Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Fifty-Second Session Item 9 (a) of the Provisional Agenda," E/CN.4/1996/53/Add.1," Fifty-second session (4 January 1996)., See also, The United Nations Commission on Human Rights, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, Fiftieth Session Item 6 of the Provisional Agenda," E/CN.4/Sub.2/1998/13," Fiftieth session (22 June 1998).
[268] Tokyo High Court, Former 'Comfort Women' Living in Japan Case, Judgement, Hanreijihou No. 1741, (30th November 2000): 40.
[269] ibid.
[270] ibid.
[271] ibid. Article 709 of Civil Code reads that '[A] person who has intentionally or negligently infringed any right of others, or legally protected interest of others, shall be liable to compensate any damages resulting in consequence.' Article 715(1) of the Civil Code reads that '[A] person who employs others for a certain business shall be liable for damages inflicted on a third party by his/her employees with respect to the execution of that business; provided, however, that this shall not apply if the employer exercised reasonable care in appointing the employee or in supervising the business, or if the damages could not have been avoided even if he/she had exercised reasonable care.' Article 715(2) states that '[A] person who supervises the business on behalf of the employer shall also assume the liability under the preceding paragraph.'
[272] Tokyo District Court, Dutch Ex-Prisoner of War and Private Internment Case, Judgement (Wa) No.1218 (30th November 1998).

and demanded 22,000 US dollars for each plaintiff as compensation against Japan, based on Article 3 of the 1907 Hague Convention and international customary law.[273]

Historically, Dutch East Indies were occupied by Japan by March in 1942, and it is said that around 99,000 POW and 80,000 civilians were detained in POW camps and civilian detainee camps respectively.[274] With regard to the 'comfort women', the Court found that the plaintiff was forced into prostitution in the club in the Halmahera camp in Semarang, despite being told to work for a tobacco company.[275] The plaintiff argued that the inhumane treatment, forced labour, abuse, and especially the use of the 'comfort women' in Semarang violated Article 46(1) of the 1907 Hague Convention.[276] However, the Court pointed out that, in order to exercise the individual right to claim under international law, it would be necessary that such right and obligations should have been clearly stipulated in provisions, in addition to the intention of the inclusion during the negotiation process.[277] Thus, the Court stated that, as for the 1907 Hague Convention, there is no provision stipulated the individual right to claim directly against a state.[278]

This case was appealed to the Tokyo High Court, however, the claims by the plaintiffs were dismissed in 2001 based on the similar judgement.[279] As for the 1951 San Francisco Peace Treaty, the Appellants stated that the claims of the Allied Powers and their nationals stem from actions taken by Japan and its nationals during the war did not cease the individual right to claim, i.e., the confiscation of individual right to claim, but it meant the Allied nationals could prosecute the Japanese government or their nationals in Japanese courts, despite the fact that the Dutch government had no grounds to support it under the Peace Treaty.[280]

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[273] Tokyo District Court, Dutch Ex-Prisoner of War and Private Internment Case, Judgement (Wa) No.1218 (30th November 1998).
[274] Hayashi Yōko, "Issues Surrounding the Wartime 'Comfort Women,'" The Review of Japanese Culture and Society 11/12 (2000): 54–65. See also, Chunghee Sarah Soh, "Human Rights and the 'Comfort Women,'" Peace Review 12, no. 1 (2000): 123–29.
[275] Tokyo District Court, Dutch Ex-Prisoner of War and Private Internment Case, Judgement (Wa) No.1218 (30th November 1998).
[276] ibid. Article 46(1) of the 1907 Hague Convention states that 'Family honours and rights, individual lives and private property, as well as religious convictions and liberty, must be respected. Private property cannot be confiscated.'
[277] ibid.
[278] Ibid.
[279] Tokyo High Court, Dutch Ex-Prisoner of War and Private Internment Case, Appeal Judgement (11th October 2001).
[280] Tokyo High Court, Dutch Ex-Prisoner of War and Private Internment Case, Appeal Judgement (11th October 2001). Article 14(b) of the San Francisco Peace Treaty reads that '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

Contrary to this, the defendant, Japan, argued the individual right to claim of the Allied nationals had been waived in pursuant to Article 14(b) of the 1951 San Francisco Treaty, and that the legal obligations of Japan and its nationals to respond to the claims had been extinguished.[281] The ruling basically accepted this as a preliminary reason.[282] It concluded that, by virtue of the waiver of claim clause in the 1951 San Francisco Peace Treaty, it is recognised that all claims between 'the Allied Powers and their nationals' and 'Japan and its nationals' have been finally resolved. Namely, it should be interpreted that the individual right to claim of Allied nationals was also waived by the Allied Powers, thereby extinguishing the substantive right of the Allied nationals to claim.[283] This case was appealed to the Supreme Court, however, it was finally dismissed in 2004.

2.2.2.6. *Chinese 'Comfort Women' Primary* Case

This case was brought before the Tokyo District Court in 1995 by the 4 Chinese 'comfort women', who have been taken, confined, and repeatedly raped by the Japanese soldiers during World War II.[284] Each plaintiff claimed 20 million yen as compensation and 3 million yen based on the State Redress Act, arguing that the failure of the National Diet to enact necessary legislation for compensation would be a tort.[285] Moreover, posting an apology in the newspaper in the name of the prime minister of Japan was also demanded.[286]

Each plaintiff has lived in Shanxi province in China and have been forcibly taken to the garrison by Japanese soldiers and confined and raped by unspecified number of Japanese soldiers for an extensive period.[287] Additionally, all the plaintiffs had a difficulty with walking and were incapable of running due to foot-binding which was the custom of China at that time.[288]

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military costs of occupation.' Conference for the Conclusion and Signature of the Treaty of Peace with Japan (1951: San Francisco, Calif.). Conference for the Conclusion and Signature of the Treaty of Peace with Japan, San Francisco, California, September 4-8, 1951: Record of Proceedings. Washington, D.C.: Department of State, 1951.

[281] ibid.

[282] ibid.

[283] ibid.

[284] Tokyo District Court, *Chinese 'Comfort Women' Primary* Case, Judgement to 1995 (Wa) No. 15635 (30th May 2001).

[285] ibid.

[286] ibid.

[287] Tokyo District Court, *Chinese 'Comfort Women' Primary* Case, Judgement to 1995 (Wa) No. 15635 (30th May 2001).

[288] ibid.

For instance, plaintiff A were taken to the garrison by Japanese soldiers at the age of 15, when she was staying at home with her mother. She was confined in yaodong (cave-shaped residential), and repeatedly raped by Japanese soldiers every day, and only allowed to go outside of yaodong when she went to the bathroom.[289] In fact, what the other plaintiffs had in common was that there was no change of clothes, and they were hardly able to wash their body during the confinement.[290] Moreover, a medical check was not conducted.[291] One day, plaintiff A was abused by a Japanese soldier because she tried to resist. The Japanese soldier hit on her right eye with a belt, resulting in losing her eyesight.[292] She was seriously injured and was taken to a village where she eventually reunited with her family after 5 months.[293] She has been suffering from serious sequelae and PTSD, however, has kept secret to her husband and children about her experience before the proceeding due to shame and stigma.[294]

Furthermore, Plaintiff B has been confined in a garrison and repeatedly raped for 40 days by Japanese soldiers.[295] She has been threatened with knives during rape, and abused when she has resisted. Eventually, she has released because her family paid money, however, her uterus was diagnosed as eroded by a doctor. She has recovered about a year and a half after the release, but she was unable to hold things with her left hand due to sequelae. Plaintiff B has passed away in 1999 during the proceeding.[296]

In the Tokyo District Court, even though 21 oral arguments, 3 plaintiffs' examinations (a video testimony for the other plaintiff) as well as an examination of a professor of international law were conducted, the Court finally dismissed the case without the fact-finding.[297]

In the judgement, however, the Court stated that the individual right to claim compensation was not included in Article 3 of the 1907 Hague Convention nor international customary law. It further mentioned that, although there were some previous cases dealing with the individual right to claim such as Prefecture of Voiotia v. Federal Republic of Germany case, it was insufficient to consider that the general practice that admit the individual right to claim

[289] ibid.
[290] Korean Council for Women Drafted for Military Sexual Slavery by Japan, True Stories of the Korean Comfort Women.
[291] ibid.
[292] ibid.
[293] ibid.
[294] ibid.
[295] ibid.
[296] ibid.
[297] Tokyo District Court, *Chinese 'Comfort Women' Primary* Case, Judgement to 1995 (Wa) No. 15635 (30th May 2001).

compensation directly against a state established based on the 1907 Hague Convention and international customary law.[298] As for claims based on domestic law, the Court applied the doctrine of state immunity and statute of limitation.[299]

This case was appealed to the Tokyo High Court. In the High Court, the defendant, Japan, demonstrated the new assertion that the individual right to claim of Chinese nationals against Japan and its nationals have been renounced by the Chinese government in pursuant of Article 5 of the 1972 Joint Communique of the Government of Japan and the Government of the People's Republic of China (the 1972 Japan-China Joint Communique).[300] In this regard, the High Court pointed out that it was questionable whether a state could renounce the individual right to claim according to the state-to-state agreement.[301] It also held that it would be unacceptable to consider that the individual right to claim compensation of Chinese nationals has been extinguished, because Chinese nationals have not received any compensation or alternative measures for war damage.[302] The case was brought before the Supreme Court, however, the Court ultimately dismissed the case in 2007. However, the Court dismissed the case, providing the similar judgement as the first instance.[303]

2.2.2.7. *Chinese 'Comfort Women' Secondary* Case

This case was filed in the Tokyo District Court in 1996 by 2 Chinese 'comfort women'.[304] One of the plaintiffs passed away during the proceeding, thus, her 5 heirs inherited the proceeding. The plaintiffs claimed 46 million yen in total as compensation for physical and psychological damage that they have suffered and for the legislative inaction of the National Diet of Japan. They also demanded a posting of an apology from the defendant in newspaper.[305]

[298] Tokyo District Court, Chinese 'Comfort Women' Primary Case, Judgement to 1995 (Wa) No. 15635 (30th May 2001). Prefecture of Voiotia v. Federal Republic of Germany, Case no. 137/1997; Court of First Instance of Leivadia, 30 October 1997, American Journal of International Law, vol. 92, 1997, 765; Case no.11/2000, Hellenic Supreme Court, May 4, 2000.
[299] ibid.
[300] Tokyo High Court, *Chinese 'Comfort Women' Primary* Case, Appeal Judgement (15th December 2004). Article 5 of the 1972 Japan-China Joint Communique states that 'The Government of the People's Republic of China declares that in the interest of the friendship between the Chinese and the Japanese peoples, it renounces its demand for war reparation from Japan.'
[301] ibid.
[302] ibid.
[303] ibid.
[304] Tokyo District Court, *Chinese 'Comfort Women' Secondary* Case, Judgement to 1996 (Wa) No.3316 (29th March 2002).
[305] ibid.

In light of the fact-finding, the Court recognised the following facts with regard to the plaintiffs. Plaintiff A has lived in Sanxi province in China. In 1942, at the age of 15, she has been taken to a Imperial Japanese Army's base by Japanese soldiers and Seigo Corps (an armed organisation that cooperated with the imperial Japanese Army, organised by local residents). She was taken way with her family, because her sister's husband was suspected that he has been cooperating with the Eighth Route Army (a hostile group under the command of the Chinese Communist Party). The plaintiff A has been confined and repeatedly raped by Japanese soldiers and the members of Seigo Corps during day and at night. She has been suffering the deteriorating condition, because her genital area was cut off and she has been left without medical treatments. After 6 months since being taken, she was released because her family paid money to Seigo Corps, however, she has also been taken three times afterward, and similarly confined and raped. Plaintiff A has been suffering from severe PTSD since then.[306]

Furthermore, plaintiff B were taken by Japanese soldiers and Seigo Corps in 1942, at the age of 13, because her farther was informed that he has been cooperating with the Eighth Route Army. She has been repeatedly raped by Japanese soldiers for 40 days and released because her family paid money to the Imperial Japanese Army. She has also been suffering from severe PTSD and has passed away in 1999 during the proceeding.[307]

In the judgement, the Court held that there were no provisions containing the individual right to claim compensation against a state in pursuant to the 1907 Hague Convention, the 1930 Forced Labour Convention, the 1910 International Convention for the Suppression of the Traffic in Women and Children, crimes against humanity and international customary law.[308] The case was eventually dismissed, applying the doctrine of state immunity.[309]

In the second trial at the Tokyo High Court, the Court stated that the brutal acts by Japanese soldiers conducted against the 'comfort women', such as a long-term confinement and sexual violence, were not occurred based on military order, and such acts would constitute the violation of the 1907 of the Hague Convention.[310] Moreover, the acts itself were not considered

[306] ibid. See also, Ikeda, "A True Solution to the 'Comfort Women' and the Eradication of Wartime Sexual Violence ('Ianfu' Mondai No Shin No Kaiketsu to Senjisei Bouryoku No Konzetsu No Tame Ni)."
[307] ibid.
[308] ibid n471.
[309] ibid.
[310] Tokyo High Court, *Chinese 'Comfort Women' Secondary* Case, Appeal Judgement (Wa) No.3316 (29th March 2002).

as the exercise of public authority, since those acts were not warfare nor operational activities, therefore, the doctrine of sate immunity could not be applied.[311]

In this case, the Court basically supported the argument of the defendant, Japan, that the legal obligation of Japan and its nationals to response to the claims of Chinese nationals has no longer existed because the such right of Chinese nationals to claim was waived as a result of incorporating Article 14(b) of the San Francisco Peace Treaty into Article 11 of the 1952 Treaty of Peace Between the Republic of China And Japan (Treaty of Taipei). In addition to this, the Court dismissed the case, stating that not only the legal obligation but also individual substantive right to claim have also extinguished.[312]

Consequently, this case was brought before the Supreme Court, however, it was dismissed, remarking that the right to claim compensation was renounced through the 1972 Japan–China Joint Communique, not through the Treaty of Taipei. Besides, it stated that only the judicial appeal function has been extinguished, not individual substantive right.[313]

2.2.2.8. Victims of Sexual Violence in Shanxi Province Case

This case was filed in Tokyo District Court in 1998 by 8 victims of sexual violence and 2 family members of the other 2 victims, came from Sanxi province in China.[314] The victims were taken away by Japanese soldiers and confined for an extensive period and repeatedly raped between 1941 and 1943, at the age from 15 to 25 years old.[315] The plaintiffs claimed 20 million yen for each plaintiff as compensation and an apology from the prime minister at that time, arguing the state responsibility in international law, stem from the violation of the 1907 Hague Convention, international customary law and crimes against humanity.[316]

In respect of the fact-finding, 8 plaintiffs and 2 witnesses were testified at the District Court and the alleged fact of crimes was mostly recognized. For instance, plaintiff A has been taken by Japanese soldiers three times in total, at the age of 15, and tortured because of being a Communist Party member and repeatedly raped. She was not able to stay at her village neither

[311] ibid.
[312] ibid.
[313] ibid..
[314] Tokyo District Court, Chinese (Sanxi Province) Sexual Violence Victim Apology and Compensation Claim for Damages Case, Judgement (Wa) No. 24987 (24th April 2003).
[315] ibid.
[316] Tokyo District Court, Chinese (Sanxi Province) Sexual Violence Victim Apology and Compensation Claim for Damages Case, Judgement (Wa) No. 24987 (24th April 2003).

to get married due to shame and stigma. Moreover, she has not been able to talk about her experience until this case was filed, suffering from physical and psychological damage over decades.[317]

Furthermore, plaintiff B were forced to have sexual intercourse with a certain Japanese soldier for a few months and resulted in getting pregnant and giving birth against her will.[318] Some relatives blamed her of serving the Japanese soldier and giving birth. As a result, her mother and brothers were killed by them. After World War II, she was judged as a collaborator with Japan and imprisoned for 2 years. Besides, when the Great Proletarian Cultural Revolution launched in China from 1996, plaintiff B was accused of being a traitor, and she tried to commit suicide, coupled with the suffering of her gynaecological illness.[319]

In the judgement, the Court stated that the acts by Japanese soldiers, including rape, against the plaintiffs were 'remarkably insane and despicable barbarism' and would constitute a violation of international law.[320] However, as for the individual right to claim compensation directly to the offenders' country, the Court remarked that such provision was not established in the 1907 Hague Convention and international customary law, since the reparation according to international law should be settled between states, and in this case, it was settled by the 1972 Japan-China Joint Communique.[321]

The defendant, Japan, argued that the individual right to claim for compensation has been extinguished through the 1972 Japan-China Joint Communique. However, the Court mentioned

[317] ibid. See also, Eriko Ikeda, "Insight on the Issues: Coercion, Sexual Violence, and Rape Centers in Yu County, Shanxi Province," in Denying the Comfort Women, ed. Robert Ricketts Nishino Rumiko, Kim Puja, Onozawa Akane, 1st ed. (London: Routledge, 2018), 62–68., Yuki Terazawa, "The Transnational Redress Campaign for Chinese Survivors of Wartime Sexual Violence in Shanxi Province," in Marginalization in China: Recasting Minority Politics, ed. Siu-Keung Cheung, Joseph Tse-Hei Lee, and Lida V. Nedilsky (New York: Palgrave Macmillan, 2009), 67–93.

[318] Tokyo District Court, Chinese (Sanxi Province) Sexual Violence Victim Apology and Compensation Claim for Damages Case, Judgement (Wa) No. 24987 (24th April 2003).

[319] ibid. The Great Proletarian Cultural Revolution has launched to preserve Chinese communism by purging remnants of capitalist and traditional elements from Chinese society.

[320] ibid.

[321] Article 5 of the 1972 Japan-China Joint Communique states that '[t]he Government of the People's Republic of China declares that in the interest of the friendship between the Chinese and the Japanese peoples, it renounces its demand for war reparation from Japan'. Minister for Foreign Affairs of Japan, "Joint Communique of the Government of Japan and the Government of the People's Republic of China," 29 September 1972, accessed July 12, 2021 https://www.mofa.go.jp/region/asia-paci/china/joint72.html.

that it only made China to extinguish the right to claim compensation, not the right to claim of Chinese nationals.[322] On the other hand, the Court applied the doctrine of state immunity.[323]

The Court closed the path of judicial remedy for the 'comfort women', yet the court recommended that, considering the extent of harm which the 'comfort women' have suffered for decades after World War II, it would be highly possible to provide remedy with the victims through the legislature or the administrative body.[324] The plaintiffs appealed to the Tokyo High Court, however, the case was eventually dismissed by the Supreme Court in 2005.

2.2.2.9. *Taiwanese Former 'Comfort Women'* Case

The first incidence of this case was filed in the Tokyo District Court in 1999 by the 9 Taiwanese 'comfort women' (two of them have passed away during the proceeding).[325] They demanded 10 million yen for each plaintiff as compensation and an official apology for the damage caused by systematic and continuous coercion of sexual activities with Japanese soldiers, based on the violation of the 1927 Slavery Convention, the 1930 Forced Labour Convention, the 1910 International Convention for the Suppression of the Traffic in Women and Children, as well as war crimes and the illegal acts according to the Civil Code and the legislative omission.[326]

In fact, the form of damage they suffered were separated in the following two types. Firstly, there were Han Chinese women who have been deceived and taken to the comfort stations abroad. Secondly, there were local women who were constantly raped by Japanese soldiers, when they went to work at the Imperial Japanese Army's garrison close to their village.[327] Similarly, the plaintiffs were taken to the comfort stations in China, Burma, Indonesia at the age between 17 and 20 years old as by deception or human trafficking and forced to have sexual intercourse with Japanese soldiers as the 'comfort women'.[328]

[322] Tokyo District Court, Chinese (Sanxi Province) Sexual Violence Victim Apology and Compensation Claim for Damages Case.
[323] ibid.
[324] ibid.
[325] Tokyo District Court, *Taiwanese Former 'Comfort Women' Compensation Claim for Damages and Apology* Case, Judgement to 1999 (Wa) No.15638.
[326] ibid.
[327] Shogo Suzuki, "The Competition to Attain Justice for Past Wrongs: The 'Comfort Women' Issue in Taiwan," Pacific Affairs 84, no. 2 (2011): 223–44. See also, Feng Pin-chia, "An 'Uncomfortable' Past: Documenting Taiwanese 'Comfort Women' in A Secret Buried for Fifty Years," Feminist Studies in English Literature 24, no. 1 (2016): 5–31.
[328] Tokyo District Court, *Taiwanese Former 'Comfort Women' Compensation Claim for Damages and Apology* Case, Judgement to 1999 (Wa) No.15638.

In the Judgement, the fact-finding was not recognised by the Court, and it was dismissed, stating that the individual right to claim compensation was not contained in the alleged international conventions and applying the doctrine of state immunity and statute of limitation.[329] The second incident also supported the first judgement, and this case was ultimately dismissed in the Supreme Court in 2005.[330]

2.2.2.10. Hainan Island Wartime Sexual Violence Case

This case is the last 'comfort women' lawsuit in domestic courts of Japan, which was filed in the Tokyo District Court in 2001.[331] The plaintiffs included ethnic minorities who have lived in Hainan Island in China, who has been forcibly taken by Japanese soldiers to be the 'comfort women' at the comfort stations at the age between 14 and 18 years old.[332] They demanded 20 million yen for each plaintiff as compensation based on Article 709 and 715 of the Civil Code and also a posting of an apology from Japan in the newspaper in pursuant to Article 723 of the Civil Code and Article 4 of the State Redress Act.[333] The plaintiffs also demanded the payment of 3 million yen to each plaintiff as compensation for the damage caused by the delay in the restoration of reputation.[334]

The Court recognised the fact-finding according to the testimonies of the plaintiffs. For instance, plaintiff A has been taken by Japanese soldiers to the garrison and raped at the age of 14. A few months later, she was taken to the comfort station and confined and repeatedly raped. She has been released after the war; however, she has been suffering from the criticism from

[329] ibid.
[330] Tokyo High Court, "Taiwanese *Former 'Comfort Women' Compensation Claim for Damages and Apology* Case, Judgement to 2002 (Ne) No. 5850," (9th February 2004).
[331] Tokyo District Court, Hainan Island Wartime Sexual Violence Compensation Case, Judgement to 2001 (Wa) No.14808 (30th August 2006).
[332] ibid.
[333] ibid. Article 723 of Civil Code reads that 'The court may order a person that has defamed another person to take appropriate measures to restore the reputation of the victim in lieu of or in addition to compensation for loss or damage, at the request of the victim.' , Ministry of Justice of Japan, "Civil Code," accessed August 21, 2022, https://www.japaneselawtranslation.go.jp/ja/laws/view/3494. Article 4 of the State Redress Act states that 'The State's or a public entity's responsibility to compensate for loss or damage is, in addition to being pursuant to the preceding three Articles, pursuant to the provisions of the Civil Code., Ministry of Justice of Japan, "State Redress Act (Act No. 125 of 1947)," accessed September 22, 2020, https://www.japaneselawtranslation.go.jp/ja/laws/view/3785.

[334] Tokyo District Court, Hainan Island Wartime Sexual Violence Compensation Case, Judgement to 2001 (Wa) No.14808 (30th August 2006).

the community and has experienced miscarriage and stillbirth for 8 times due to uterine deformation caused by rape.[335]

Furthermore, at the age of 16 or 17, plaintiff B was taken to a comfort station by Japanese soldiers, where she worked during the day and was repeatedly raped at night. She has been also tortured every time when she has attempted to escape from the comfort station. After the war, she got married, however, she has been suffering from criticism by people surrounding her.[336]

In the judgement, the District Court dismissed the case, applying the doctrine of state immunity and limitation of statute.[337] In the Tokyo High Court, it applied Article 715 of the Civil Code because the Court considered that the damage was caused during the process of performing the duty of the Japanese soldiers, given that the plaintiffs were their employees.[338] On the other hand, it also pointed out that, as for the individual right to claim against Japan and its nationals, the right to appeal to the courts has been extinguished in accordance with Article 5 of the 1972 Japan-China Joint Communique.[339] This case was appealed to the Supreme Court, however, it was dismissed and was not accepted as an appeal in 2010.

2.3. WOMEN'S INTERNATIONAL WAR CRIMES TRIBUNAL 2000

Between 8th and 12th of December 2000, the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery (the 2000 Women's International Tribunal) was held in Tokyo, Japan.[340] The establishment of the Tribunal was achieved by the tireless efforts of various women's nongovernmental organisations (NGOs) throughout Asia. The Tribunal's purpose was to reconsider the IMTFE's failure to address the criminal liability of high-ranking Japanese military and political officers for the 'comfort women'.[341] The other purpose was to assess the state responsibility of Japan regarding the 'comfort women'. [342] The 2000 Women's

[335] ibid. See also, Peipei Qiu, Su Zhiliang, and Chen Lifei, *Chinese Comfort Women : Testimonies from Imperial Japan ' s Sex Slaves (Oxford Oral History Series) 1st Edition*, 1st ed. (Oxford University Press, 2014)., Chunghee Sarah Soh, "From Imperial Gifts to Sex Slaves: Theorizing Symbolic Representations of the 'Comfort Women,'" Social Science Japan Journal 3, no. 1 (2000): 59–76.
[336] Tokyo District Court, Hainan Island Wartime Sexual Violence Compensation Case, Judgement to 2001 (Wa) No.14808 (30th August 2006).
[337] ibid.
[338] ibid.
[339] ibid.
[340] Yayori Matsui, "Women's International War Crimes Tribunal on Japan's Military Sexual Slavery: Memory, Identity, and Society," East Asia 19 (2001): 119–42.
[341] Matsui.
[342] Matsui.

International Tribunal was 'People's Tribunal' which lacked legal authority; thus, it was, rather, the outcome of the founders' efforts to reveal the truth of the 'comfort women' and draw attention of people to the applicable international law to matters of public concern. This section will analyse the details of the 2000 Women's International Tribunal and its legacy in terms of the development of international law and the impact on the Japanese society.

2.3.1. Concept of People's Tribunal

Before analysing the 2000 Women's International Tribunal, this section will generally introduce the concept of people's tribunals. People's tribunals deliver the civil society justice in response to the failure or insufficiency of the institutions of the international.[343] Namely, they seek to raise moral awareness in the public in order to respond where international and national mechanisms have failed the community in relation to moral, legal, and philosophical problems.[344] There existed the earlier examples of a peoples' tribunal such as the Vietnam war crimes trial established by Bertrand Russell in the late 1960s and the Permanent Peoples' Tribunal instituted in Italy in the 1970s by a group of 'private citizens of high moral authority'.[345] People's tribunals lack legal authority, because there is no judicial system of any states or group of states connected to the tribunals.[346] Each people's tribunal seek to discover new ways to challenge official silence, thus, a form and a process of each people's tribunal are different.[347]

Regarding the investigation stage of people's tribunals, oral testimonies of victims and witnesses submitted to panels are emphasised.[348] Since it is not necessary for them to follow formal court proceedings, they are easily adapted to the specific issues at hand.[349] It can also be innovative, for example, in the use of video and written testimony, as it is not restricted by the rules of evidence and procedure in courts. Besides, the victims and witnesses' testimonies are supported by legal assertions of advocates.[350] In the end, the people's tribunals seek to have

[343] Christine Chinkin, "People's Tribunals: Legitimate or Rough Justice," Windsor Yearbook of Access to Justice 24, no. 2 (2006): 201–20.
[344] ibid.
[345] Richard Falk, "The Rights of Peoples (In Particular Indigenous People)," in The Rights of People (Oxford: Clarendon Press, 1988), 17–38.
[346] Chinkin, "People's Tribunals: Legitimate or Rough Justice."
[347] ibid.
[348] Gabrielle Simm, "Peoples' Tribunal, Women's Courts, and International Crimes of Sexual Violence," in *Peoples' Tribunals and International Law* (Cambridge: Cambridge University Press, 2018), 61–83.
[349] ibid.
[350] ibid.

influence on public opinion by providing recommendations through ethical value and perceptions of justice regarding the particular issues and to contribute to the development of international law.[351]

2.3.2. Background and Objectives

The establishment of the 2000 Women's International Tribunal was originally proposed by the Violence Against Women in War Network, Japan (VAWW-NET, Japan) at the 1998 Asian Women's Solidarity Conference in Seoul.[352] VAWW-NET, Japan is an NGO that aims at combating violence against women in armed conflicts, including 'comfort women.' It was founded in 1998, following the International Conference on Violence Against Women in War and Armed Conflict Situations, which was held in Tokyo, Japan, in 1997.[353] Various Asian women's NGOs across Asia collaborated to organise the 2000 Women's International Tribunal, including the Korean Council, and the Asian Centre for Women's Human Rights (ASCENT) led to the success of the Tribunal.[354]

The objectives of the 2000 Women's International Tribunal were to assess the criminal liability of Japanese military officials and political officers for the 'comfort women' and address the state responsibility of Japan. This aim was reflected the opinion of the late Yayori Matsui, a Japanese women's rights activist that the 'comfort women' system is serious violation of international law, and NGOs have to cooperate to put pressure on the Japanese government to take appropriate measures.'[355] It was also mentioned that the Tribunal's ultimate goal is to break

[351] Chinkin, "People's Tribunals: Legitimate or Rough Justice."
[352] The Asian Women's Solidarity Conference is a conference organised by the NGOs and the victim survivors to address 'comfort women' and seek the official apology and legal compensation form the Japanese government, which has been held in Asia since 1992.
[353] The International Conference on Violence Against Women in War and Armed Conflict Situations was organised by women's NGOs in 1997. At the conference, reports on sexual violence by the Japanese military during the Nanjing Massacre, 'comfort women' and sexual violence by the military regime in Burma and East Timor have been addressed. The establishment of VAWW-NET, Japan was proposed during the conference. It was renamed as the Violence Against Women in War Research Action Centre (VAWW RAC) in September 2011. The activities of the VAWW RAC as a group were terminated in August 2021. See also, Asian Centre for Women's Human Rights, International Conference on Violence Against Women in War and Armed Conflict Situations, 1998.
[354] The Korean Council is a Korean NGO advocating the rights of the 'comfort women' and lobbying the government of Japan to take measures of an official apology and compensation since its foundation in 1990. Additionally, ASCENT is a Philippine NGO working to train women's organisations across Asia regarding human rights standards. It observes and investigates reports on violations of women's human rights.
[355] Matsui, "Women's International War Crimes Tribunal on Japan's Military Sexual Slavery: Memory, Identity, and Society."

the cycle of impunity for wartime sexual violence against women and prevent it from occurring again anywhere around the world.[356]

In this regard, the International Organising Committee was established at the preparatory conference in Seoul in 1999.[357] The Committee was divided into three sections. The first department represented by Professor Yun Chung-Ok was the organisations of victimised countries such as China, Taiwan, the Philippines, Indonesia, and South and North Korea. The second department was the offending country's organisation, Japan, which was represented by Yayori Matsui. The International Advisory Committee was represented by Indai Lourdes Sajor of the ASCENT. Members of the International Advisory Council came from around globe.[358]

The Charter of the Tribunal was prepared by the Committee and approved by a panel of judges chosen for their expertise in the field of violence against women. Gabrielle Kirk McDonald, former President of the ICTY; Carmen Argibay, a member of the Supreme Court of Argentina and President of the International Association of Women Judges, Christine Chinkin, Professor of International Law in London and participant in many UN Observer Mission and Willy Mutunga, former president of the Kenyan Bar Association and of the Kenya Human Rights Commission, comprised the panel of judges.[359]

Regarding the jurisdiction, Article 2 of the Charter reads as follow:

> 1. The Tribunal shall have jurisdiction over crimes committed against women as war crimes, crimes against humanity and other crimes under international law and shall cover all countries and regions that were colonized, …These crimes include, but are not limited to the following acts: sexual slavery, rape and other forms of sexual violence, enslavement, torture, deportation, persecution, murder, and extermination.
>
> 2. The Tribunal shall also have jurisdiction over acts or omissions of States...
>
> 3. The Tribunal shall also have jurisdiction over claims involving state responsibility under international law...[360]

Therefore, the jurisdiction of the 2000 Women' s International Tribunal combined war crimes and crimes against humanity as well as state responsibility and acts of omission. Furthermore, while, in pursuant to Article 14 of the Charter, the Tribunal required to determine 'guilty or not

[356] Matsui.
[357] Christene M. Chinkin, "Women's International Tribunal on Japanese Military Sexual Slavery," The American Journal of International Law 95, no. 2 (2001): 335–41.
[358] Chinkin. They are from the US, Australia, Africa, Europe, and Asia.
[359] Christine Lévy, "The Women's International War Crimes Tribunal, Tokyo 2000: A Feminist Response to Revisionism?," Clio 39 (2014): 125–45.
[360] "Appendix 2: Charter of The Women's International War Crimes Tribunal On Japan's Military Sexual Slavery," Droit et Cultures 2, no. 58 (2009): 169–76, https://journals.openedition.org/droitcultures/2189.

guilty of the alleged crime', Article 14 also stated that it would be possible to register an indeterminate verdict in some cases due to the massive destruction of related evidence when Japan has defeated.[361]

Contrary to the IMTFE whom the Emperor Hirohito's responsibility was excepted, the 2000 Women's International Tribunal focused, in practice, to try the Emperor Hirohito as an accused of letting the 'comfort women' system continue by maintaining his silence.[362] During the preparatory phase, the 'comfort women' were involved in the discussions, and it was apparent that they demanded the Tribunal to focus on, in part, on criminal liability of Japan and military officials who have never been brought to trial for the crimes committed against them.[363] It was considered by the 'comfort women' that confirming guilty of the offence would help them in finding peace themselves, even though the judgement of the Tribunal would not be enforceable.[364] The International Organising Committee was motivated by the conviction that the failure of the IMTFE must not be allowed to obscure Japan's responsibility for crimes committed against the 'comfort women'.[365] In addition to the Emperor Hirohito, 9 high-ranking military personnel and political officials were accused in the 2000 Women's International Tribunal.[366]

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[361] Article 14 of the Charter of the Women's International Tribunal. See also, Lévy, "The Women's International War Crimes Tribunal, Tokyo 2000: A Feminist Response to Revisionism?"
[362] Chinkin, "Women's International Tribunal on Japanese Military Sexual Slavery."
[363] Tina Dolgopol, "The Judgment of the Tokyo Women's Tribunal," Alternative Law Journal 28, no. 5 (2003): 242–49.
[364] Dolgopol.
[365] Prosecutors v. Hirohito Emperor Showa et al., no. PT-2000-1-T, Judgement, December 4, 2001. Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery., para 5.
[366] 9 high-ranking military personnel and political officials included 1) Rikichi Ando, the Commander of the 21st Army from November 1938 to February 1940 and Commander of the South China Area Army from February to October 1940, Commander of the Taiwan Army from November 1941 until February 1945, Governor General of Taiwan from December 1944 until the end of the war. 2) Shunroku Hata, the Commander of the Taiwan Army from August 1936 until August 1937, Commander of the Central China Expeditionary Army in 1938. After serving as the Minister of War from August 1939 to July 1940, Commander of the China Expeditionary Army from March 1941 until November 1944. 3) Seishiro Itagaki, the War Minister between June 1938 and August 1939, who was directly responsible to the Emperor Hirohito. He was also appointed as the Chief of Staff of the China Expeditionary Force from August 1939 until July 1941 and as Commander of the Korea Army from July 1941 until April 1945. 4) Seizo Kobayashi, Governor-General of Taiwan from 1936 until 1940, cabinet minister from December 1944 until March 1995. 5) Iwane Matsui, Commander of Shanghai Expeditionary Army and Central China Area Army for seven months during 1937 and 1938. 6) Hisaichi Terauchi, the Commander of the North China Area Army from August 1937 until December 1938, Commander of the Southern Expeditionary Army in Philippines, Indonesia, Malaysia, Timor, and Burma from November 1941 until the end of the war. He was also Minister of War from March 1936 until February 1937 when he was appointed the Inspector-General of Military Education. 7) Hideki Tojo, Chief of Staff of the Kwantung (Guangdong) Army in 1937. He became the Vice-Minister of War in May 1938. He was also appointed as Prime Minister and War Minister from October 1941 to July 1944. During this period, he
held the position of Home Minister for some time. As Prime Minister, Tojo was responsible for reviewing and reporting to the Emperor regarding the actions of all governmental ministries concerned in the war effort.

On the other hand, the Japanese government ignored the Tribunal's invitation.[367] Thus, the Tribunal attempted to engage with the Japanese government's claim of denial of responsibility under Article 53 of the International Court of Justice Statute concerning non-appearance.[368] As a result, the arguments for the defence were presented by three lawyers acting in the capacity of amicus curiae.[369]

It should be noted that, during the preparatory phase, the International Organising Committee made significant efforts to secure support from experts on violence against women in international law from around the world in order to not only end the cycle of impunity for 'comfort women', but also to contribute to the development of international law on the prohibition of wartime sexual crimes..[370]

2.3.3. Evidence and Witnesses

It should be noted that the significance of the 2000 International Women's Tribunal was the application of the victim-oriented approach in the trial, as well as the amount of evidence that the Tribunal collected during the proceedings. During the 3 days of the trial, over 75 victim survivors were present.[371] Numerous oral and documentary evidence as well as personal testimonies in video format were submitted as prosecution statements. Such evidence revealed the existence of forcible recruitment of women and girls, fraudulent recruitment and kidnapping, and their lives of misery when being confined in the comfort stations.[372] They forced to change original names Japanese ones and their own identity was denied.[373] In the end

Additionally, he served as Chief of General Staff of the Army from February until July 1944. 8) Yoshijiro Umezu, the Vice Minister of War from March 1936 until May 1938 and Commander of the Kwantung (Guangdong) Army from September 1939 until July 1944. He was also appointed as Chief of General Staff of the Army in July 1944. 9) Tomoyuki Yamashita, Commander General of the 14th Area Army from September 1944 to September 1945. He was responsible for Japanese troops operating in the Philippines.

[367] Lévy, "The Women's International War Crimes Tribunal, Tokyo 2000: A Feminist Response to Revisionism?"

[368] Article 53(1) reads that '[W]henever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim'.

[369] An amicus curiae is an individual or organisation that is not a party to an action, but who is permitted to assist a court by advising on a matter before the court.

[370] Matsui, "Women's International War Crimes Tribunal on Japan's Military Sexual Slavery: Memory, Identity, and Society."

[371] ibid.

[372] Chinkin, "Women's International Tribunal on Japanese Military Sexual Slavery."

[373] Prosecutors v. Hirohito Emperor Showa et al., no. PT-2000-1-T, Judgement, December 4, 2001. Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery., para 237.

of World War II, many of the 'comfort women' were left behind or were killed by the Imperial Japanese Army.[374]

There was also evidence that showed how the physical and psychological damages had lasted. Their horrifying experiences presented in the proceedings clearly demonstrated what Imperial Japanese Army have done to the 'comfort women' and their suffering for life:

> a North Korean survivor
>
> I was thirteen when Japanese soldiers came into my house and took me. My father tried to protect me but was beheaded in front of me. I was raped by three or four men every night.
>
> a Filipino survivor
>
> I lost my life. I was regarded as a dirty woman. I had no means of supporting myself and opportunities were extremely limited. I suffered terribly...
>
> a Taiwanese survivor
>
> Even after I got married, I could never enjoy sex, because the memory of rape by Japanese soldiers has always haunted me. However, I feel I have to speak up, because I heard the same horrible thing was happening in Bosnia.[375]

In addition to the testimonies of victim survivors, the Tribunal also considered evidence from expert witnesses which connecting the atrocities with Japan and the Emperor Hirohito. There was massive destruction of related documents by Imperial Japanese Army at the end of the war, nonetheless, relevant official reports and documents were discovered and presented by them in the Tribunal.[376] Such evidence discovered in the Japanese government' archives helped in explaining the structure of the Japanese government and the Emperor's authority exercised during World War II.[377] Moreover, such evidence covered the applicable international law during the war as well as the impact of trauma on the 'comfort women'.[378] Besides, 2 former Japanese soldiers were also testified in relation to their involvement in and use of the comfort stations.[379]

It can be said that the amount of evidence submitted to the Tribunal by the testimonies of victim survivors and expert witnesses was significant and it demonstrated that the Tribunal successfully adopted the victim-oriented approach during the proceedings. Furthermore, all the

[374] ibid: para 111.
[375] Matsui, "Women's International War Crimes Tribunal on Japan's Military Sexual Slavery: Memory, Identity, and Society."
[376] Dolgopol, "The Judgment of the Tokyo Women's Tribunal."
[377] Dolgopol.
[378] Chinkin, "Women's International Tribunal on Japanese Military Sexual Slavery."
[379] Prosecutors v. Hirohito Emperor Showa et al., no. PT-2000-1-T, Judgement, December 4, 2001. Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery., para 778.

testimonies and evidence presented to the Tribunal explicitly illustrated the huge scale of the brutality of Imperial Japanese Army against the 'comfort women' including forcible, fraudulent and deceptive recruitment, trafficking, and sexual slavery.

2.3.4. Judgement

The final judgement came on 4th of December in 2001, almost a year after the Tribunal convened and it was passed down at The Hague.[380] The legal theory in the judgement is consisted of the in-depth examination of fact-finding based on the testimonies of the 'comfort women', historical research, and the realization of 'gender justice' under international law. It can be said that this judgment contains an epoch-making content that reconstructs international law from the perspective of gender.

2.3.4.1. Fact-findings

In the 2000 Women's International Tribunal, there emerged numerous terrifying stories told by the 'comfort women', illustrating how horribly they had been treated by Imperial Japanese Army as well as their suffering for life. The Tribunal found that, for the 'comfort women' system, the most vulnerable people of the society were often targeted by the Japanese military. These victims were often deceived or threatened into the 'comfort women'. Moreover, violence and torture were commonly used against the 'comfort women', and escaping was especially punished. Thus, the fact-findings of the Tribunal well found the details of the crimes committed against the 'comfort women'. Furthermore, the Tribunal considered that, based on these facts, the acts committed by Japanese soldiers constitute sexual slavery and trafficking in persons.[381]

In light of the findings, the Tribunal considered that evidence involved the continuing harm of the 'comfort women'. For instance, the long-term suffering of the 'comfort women' was categorised in the following six groups according to the testimonies of the 'comfort women': enduring physical suffering, reproductive harm, ongoing psychological harm, harm to intimate relationships and social/community life, silence, and poverty and social/economic hardship.[382]

[380] ibid.
[381] ibid., para 263, 265, 322, 324.
[382] ibid., para 398-452.

The first heading 'Enduring physical suffering' included the physical damage that the 'comfort women' suffered due to torture and violence by Japanese Imperial Army after trying to escape and the tattoo imprinted on their body.[383] The second heading 'reproductive harm' stated that a large number of the 'comfort women' suffered from sexually transmitted diseases or became unable to bear children because of infection.[384] The third heading 'ongoing psychological harm' described that the 'comfort women' also suffered from nervous breakdowns and/or addictions due to their trauma.[385] Furthermore, in the fourth heading 'harm to intimate relationships and social/community life', it held that the marriage of many of the 'comfort women' ended in abuse or divorce because their partner was not able to accept their past.

Moreover, there were many 'comfort women' argued that they have been unable to take pleasure in sexual relation.[386] In the heading 'silence', it described that many 'comfort women' have been unable to tell their experience to their families because of shame and stigma.[387] Finally, in the heading 'poverty and social/economic hardship, it highlighted that, after the war, the 'comfort women' often made their living by performing domestic labour or working in other occupations in which they had a marginal social status.[388]

Hence, the findings regarding continuing harm of 'comfort women' illustrated to what extent the comfort system during World War II had an impact on the physical, psychological and social status of the victim survivors. It should be argued that trauma of former 'comfort women' is not private matter, but what Japan must take responsibility to contribute to their recovery.

2.3.4.2. International Criminal Law

In the verdict, 9 out of 10 accused, including the Emperor Hirohito, were charged with rape and sexual slavery as crimes against humanity. The Tribunal found them guilty of superior and individual responsibility for these crimes.[389] The Tribunal found Emperor Hirohito to be guilty

[383] ibid., para 398-405.
[384] ibid., para 406-412.
[385] ibid., para 413-424.
[386] ibid., para 425-442.
[387] ibid., para 445.
[388] ibid., para 448. See also, Dolgopol, "The Judgment of the Tokyo Women's Tribunal."
[389] Tomoyuki Yamashita was charged with rape as a crime against humanity committed against women and girls in Mapanique and the Tribunal found him guilty of individual responsibility pursuant to Article 3(1) of the Charter of the Tribunal because he was directed and responsible for Japanese troops operating in Mapanique, Philippines. The Japanese military commonly committed rape against local women in communities being conquered or occupied outside the comfort stations. The rape of women at Mapanique was one example of rape crimes committed during the war and became one of the common indictments of the Tribunal.

because of respondeat superior, stating that he acknowledged or should have acknowledged on the 'comfort women' system. The Tribunal specifically stated that, as Supreme Commander of the Army and Navy, the Emperor Hirohito was responsible for ensuring that his subordinates followed international law and preventing them from engaging in sexual crimes that violated international law.[390]

In relation to the charges, the Tribunal considered that the nature of the 'comfort women' system should be understood as sexual slavery. The Tribunal stated, in relation to the deprivation of freedom, that 'it is a basic tenet of the rule of law that freedom cannot be relinquished', referencing to the 1926 Slavery Convention.[391] Furthermore, the Tribunal considered that the establishment and systematic and widespread operation of military-controlled comfort stations constituted crimes against humanity under international law in effect at the time of the acts.[392] In this regard, the prosecutors focused on crimes against humanity with regard to criminal indictments because the pre-war status of Taiwan and Korea was recognised as a colony of Japan by the Allied Powers and Japan. Namely, the prosecutors considered that, whilst war crimes would be committed against residents of an opposing state, crimes against humanity could be charged even when the acts are 'committed against a civilian population of the perpetrator state or against stateless person'.[393] Besides, the judges held that the threshold requirement of crimes against humanity, which is 'the acts are "widespread" or "systematic" would meet in the case of the comfort system.

It can be argued that the significance of the judgement of the 2000 Women's International Tribunal is that it addressed the failure of the IMTFE to examine the 'comfort women' and ended the impunity provided for the Emperor Hirohito, even though the judgement was not enforceable. It can be also said that the judgment included an epoch-making content that reconstructs international law from the perspective of gender. However, it should be noted that the focus of the prosecutors was crimes against humanity and the sexual slavery of the 'comfort women' as war crimes was not sufficiently addressed in the Tribunal.

[390] Prosecutors v. Hirohito Emperor Showa et al., no. PT-2000-1-T, Judgement, December 4, 2001. Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery. See also, Matsui, "Women's International War Crimes Tribunal on Japan's Military Sexual Slavery: Memory, Identity, and Society."
[391] ibid., para 585.
[392] ibid. The Tribunal remarked that crimes against humanity stipulated in the Nuremberg and Tokyo Charters. It also stated that 'the precise term "crimes against humanity" was used in the early twentieth century by the Russian Foreign Minister to refer to the atrocities committed against the Armenians by Turkey. Upon his suggestion, reference to "crimes against humanity and civilization" was used in a 1915 Declaration by the governments of France, Great Britain, and Russia regarding the Armenian genocide.'
[393] ibid., para 518.

2.3.4.3. State Responsibility

The Tribunal concluded that the Japanese government failed to accept responsibility for harm caused to the 'comfort women', to prosecute the perpetrators and to provide reparations for the 'comfort women', therefore, state responsibility was established.[394] Essentially, a state is liable for any international wrongful act attributed to the state in pursuant to the premises of international law.[395] In the case of occurring such wrongful act, it is necessary for a state to take appropriate measures such as payment of compensation, offering an apology and/or restitution.[396] Regarding the state responsibility, the Tribunal focused on the 'continuing wrong' of the Japanese government on the 'comfort women'.[397] Namely, it demonstrated that the failure of undertaking adequate measures for the 'comfort women' caused an additional wrongful act which should be compensate.[398]

The judges also provided recommendations to not only the Japanese government, but also international community. Specifically, The judges required Japan to implement a wide range of measures; the acknowledgement of state responsibility for the 'comfort women' system; material and symbolic reparations, beyond monetary compensation, such as an insurance of an apology and the establishment of memorials; the establishment of a Truth Commission; the promotion of educational initiatives for the youth regarding the sexual crimes committed by the Japanese military; a disclosure of relevant information; searching for and returning the deceased's remains at the request of family members.[399] Besides, the Tribunal called on international community and the UN to undertake necessary measures to ensure that the Japanese government provides reparations to the victims and to seek an advisory opinion of the ICJ.[400] Accordingly, the Tribunal emphasised that the applicability of the right to remedy and the right to reparation of victims of gross human rights violations to past wrongs based on

[394] ibid.
[395] Dolgopol, "The Judgment of the Tokyo Women's Tribunal."
[396] Christine Evans, "State Responsibility, the Legal Order and the Development of Legal Norms for Victims," in The Right to Reparation in International Law for Victims of Armed Conflict, ed. Christine Evans (Cambridge: Cambridge University Press, 2012), 17–43.
[397] Prosecutors v. Hirohito Emperor Showa et al., no. PT-2000-1-T, Judgement, December 4, 2001. Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery., para 1014.
[398] ibid., para 894.
[399] ibid., para 1086.
[400] ibid., para 1088.

the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).[401]

2.3.5. Legacy of the Women's International War Crimes Tribunal

The significance of the 2000 International Women's Tribunal was that it addressed the IMTFE's failure by applying the gender-sensitive and delivered gender justice. The judges pointed out that the Tribunal would help to promote the global pattern of sexual stereotyping that contributes to the culture of impunity for crimes committed against girls and women in armed conflicts.[402]

Furthermore, given the massive destruction of materials concerning the 'comfort women' system by the Imperial Japanese Army, it was considerable that the Tribunal collected a huge amount of the historical records and testimonies of the 'comfort women'.[403] It can be argued that lacking the restrictive rules of evidence which can be seen in the formal courts also contributed to being flexible on collecting such records and testimonies.

On the other hand, the Japanese government not only ignored the invitation to the Tribunal, but also did not response to the recommendations by the Tribunal.[404] Furthermore, in 2001, there emerged the controversy over the modification of the Japanese TV programme concerning the 'comfort women' involving the 2000 Women's International Tribunal.[405] Although the details of the Tribunal were reported by media around the world, few media sources in Japan covered the story, despite the fact that the Tribunal was held in Japan.[406] One of the media which

[401] Article 8 of the UDHR reads that '[E]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.' UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III). Additionally, Article 2 of the ICCPR includes that '[T]o ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity'. UN General Assembly, "International Covenant on Civil and Political Rights", December 16, 1966, United Nations, Treaty Series, vol. 999, 171.

[402] Prosecutors v. Hirohito Emperor Showa et al., no. PT-2000-1-T, Judgement, December 4, 2001. Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery., para 11. See also, Matsui, "Women's International War Crimes Tribunal on Japan's Military Sexual Slavery: Memory, Identity, and Society."

[403] Ling, "Walking the Long Road in Solidarity and Hope : A Case Study of the " Comfort Women " Movement ' s Deployment of Human Rights Discourse": 98.

[404] Matsui, "Women's International War Crimes Tribunal on Japan's Military Sexual Slavery: Memory, Identity, and Society."

[405] Yumi Shikata and Reiko Nakano, "Jugun Ianfu Mondai Wo Meguru Gensetsu No Genzai: Media Wa Dou Tsutaetaka (How 'Comfort Women' Issues Were Reported by the Media in 2001)," Miyazaki Kouritsu Daigaku Jinbun Gakubu Kiyou 14, no. 1 (2006): 129–48.

[406] Shikata and Nakano.

decided to broadcast about the Tribunal was the educational TV programme of the Nippon Hoso Kyokai (NHK).[407]

Originally, the title of the TV programme was 'Towareru Nihongun no Senjisei Bouryoku (Wartime Sexual Violence of the Japanese Military in Question)'.[408] It was mainly organised by the contents in relation to the 2000 Women's International Tribunal such as wartime sex crimes of the Imperial Japanese Army, the guilty of the Emperor Hirohito and Japan, the importance of the Tribunal in the society, positioning the 'comfort women' as sex slavery for the Imperial Japanese Army, and responsibility of Japan for crimes against humanity.[409]

However, due to the pressure from the right-wing politicians, three elements were removed from the TV programme: 1) victims' testimonies of the 'comfort women'; 2) the fact that the Japanese government has acknowledged the existence of 'comfort women' and has taken some measures (though I argue that it has been insufficient); 3) testimonies of the Japanese soldiers who actually committed gender-based crimes against women on the battlefield.[410] Hence, it can be said that the elimination of the essential details of the 'comfort women' and Japan's involvement in the 'comfort women' system indicated to what wxtent Japan attempted to conceal the fact.[411] The title of the programme has been modified to simply 'Towareru Senjisei Bouryoku (Wartime Sexual Violence in Question)', therefore, it has been changed to a program merely dealing with wartime sex crimes and crimes against humanity in general.[412]

Nonetheless, the Tribunal's decision has had an impact on a number of legislative campaigns before various national legislatures. In 2007, the US House Resolution 121 was adopted, after the tireless lobbying efforts in assisting the 'comfort women', before the House of Representative in the US courts.[413] The Resolution called on the Japanese government to endure, for example, the formal acknowledgement, an apology and acceptance of historical

[407] Shikata and Nakano.
[408] Shikata and Nakano.
[409] Shikata and Nakano.
[410] Shikata and Nakano. On 12th January in 2005, the Japanese major newspaper, Asahi Shimbun, reported that Shoichi Nakagawa, then Minister of Economy, Trade and Industry, and Shinzo Abe, then Deputy Chief Cabinet Secretary, who knew of the contents of the broadcast in advance, and put pressure on a NHK's upper manager to edit the content of this programme. The politicians and NHK completely denied the content of the report, making it a political issue. See also, Kouzou Nagata, NHK Tetsu No Chinmoku Ha Dare No Tame Ni: Bangumikaihenjiken Jyunenme No Kokuhaku (NHK, for Whom the Iron Silence Is: Confessions of the 10th Anniversary of the Programme Alteration Incident) (Tokyo: Kashiwa Shobo, 2010).
[411] Nagata, NHK Tetsu No Chinmoku Ha Dare No Tame Ni: Bangumikaihenjiken Jyunenme No Kokuhaku (NHK, for Whom the Iron Silence Is: Confessions of the 10th Anniversary of the Programme Alteration Incident).
[412] Nagata.
[413] H.Res.121 (110th Congress) (January 31, 2007). It is a resolution that Japanese-American Congressman Mike Honda of California's 15th congressional district presented to the American House of Representatives in 2007.

responsibility, education of future generations regarding the crimes, following the recommendations of the international community.[414]

A similar resolution was also adopted in the lower house of the Dutch Parliament the same year. The resolution demanded that the Japanese government accept responsibility for the crimes against the 'comfort women,' offering an official apology as well as monetary compensation, and amending teaching materials to reflect the actual history.[415] In addition to this, the Canadian Parliament passed motion 291 including the similar contents.[416] Moreover, the European Parliament passed a resolution which urges the Japanese government to acknowledge legal responsibility and provide an apology for the 'comfort women' 'in a clear and unequivocal manner.' It also held that Japan should undertake effective administrative mechanisms to provide reparations to the victims and their families.[417]

More recently, on 8th of January 8 in 2021, the Seoul Central District Court of South Korea provided the judgement recognising Japan's tort liability, ordering Japan to pay compensation to 12 plaintiffs of the 'comfort women'.[418] In this regard, the Court remarked that Article 8 of the UDHR clarified the right to an effective remedy.[419] The Court also remarked that, in the case that the last resort for victims of crimes against humanity committed by a state is domestic trials, the application of state immunity would be denied, emphasising the victims' right to a trial.[420] It can be considered that this judgement granting human rights exceptions to sovereign immunity is a milestone, offering a new avenue to restore human rights not only to the 'comfort women' but also to victims of human rights violations by a state around the world.

However, on 21st of April of 2021 in another lawsuit filed by other 'comfort women', the Seoul Central District Court of South Korea provided the judgment recognising Japan's state

[414] H.Res.121 (110th Congress).
[415] "Netherlands Adopts Resolution on `Comfort Women'," The Korea Times, 11th November 2007, accessed April 5, 2022.
http://www.koreatimes.co.kr/www/news/opinon/2007/11/202_13505.html.
See also, "Dutch Bill Urges Compensation for ' Comfort Women '," China Daily, 22nd November, 2007, https://www.chinadaily.com.cn/cndy/2007-11/22/content_6270884.htm.
[416] "House of Commons Passes Motion Recognizing Japanese 'Comfort Women,'" CBC, 29th November 2007, accessed June 4, 2022,
https://www.cbc.ca/news/canada/house-of-commons-passes-motion-recognizing-japanese-comfort-women-1.638239.
[417] European Parliament, RC-B6-0525/2007 (December 12, 2007)., accessed June 5, 2022.
https://www.europarl.europa.eu/doceo/document/B-6-2007-0525_EN.html.
[418] 34th Civil Division of the Seoul Central District Court of South Korea, The Judgement to 2016, 505092 (8th January 2021).
[419] Article 8 of the United Nations Universal Declaration of Human Rights.
[420] 34th Civil Division of the Seoul Central District Court of South Korea, The Judgement to 2016, 505092.

immunity based on the 'state-to-state' conventional international law.[421] Namely, the Court held that, in accordance with the international customary law concerning state immunity, it would not be permissible for individuals to claim compensations for damage caused by the state's sovereign acts against a state.[422] Additionally, it also stated that the 'comfort women' must be resolved through domestic and foreign efforts of the Republic of Korea, including diplomatic negotiations with the Japanese government.[423] It can be argued that this judgement has left a precedent that states are unconditionally immune to crimes against humanity, setting back the historic achievement of the Judgement of the Seoul Central District Court provided in January 2021.

[421] 15th Civil Division Seoul Central District Court of South Korea, The judgement to the Second Lawsuit Claiming Compensations for Japanese Military "Comfort Women" (21st April 2021). Japanese translation is available at: http://justice.skr.jp/koreajudgements/51-1.pdf
[422] 15th Civil Division Seoul Central District Court of South Korea.
[423] ibid.

CHAPTER 3

SEXUAL SLAVERY IN INTERNATIONAL LAW

3.1. PROHIBITION ON SLAVERY

Historically, women have been considered 'property' and the rape of women was recognised as a crime against the man's property.[424] For instance, by the Middle Ages, the sexual slavery and rape of women were used as inducement to conquer enemies and also to increase the soldiers' motivation towards war or as a reward to comfort them.[425] Although such crimes were gradually prohibited, it was considered inevitable side effects of war, thus, barely punished.

On the other hand, as international law evolves, slavery has attained jus cogens status, hence, it makes the crimes prohibited at all times, in all places.[426] Article 5 of the Tokyo Charter and Article 6 of the Nuremberg Charter listed enslavement, deportation to slave labour and other inhumane acts as crimes against humanity.[427] In recent codifications, rape and enslavement have been stipulated as crimes against humanity in the Charter of the ICTY and the ICTR.[428] Besides, in 2019, Ntaganda was sentenced to 30 years for international crimes including rape and sexual slavery by the ICC, and it showed further development of a vast jurisprudence on sexual slavery in international law.[429]

While the body of international law has been certainly evolved, it can be said that enforcement of law involving gender-related crimes has not yet adequately developed. The 'comfort women' is historical evident that sexual violence was used as incentive for the soldiers, which remained injustice. Sexual violence is influential weapon during a war by insulting the targets physically as well as mentally to control over them, and its influence, in most cases, expands to the victims' families or communities. Furthermore, the women victims of sexual violence are generally murdered in gender-related manner, for instance, 'by having a sexual organ or body part mutilated or exploded, … or by being raped with broken glass or crude weapons'.[430] This chapter will analyse the developments on the prohibitions regulating sexual slavery in

[424] Alexandra Wald, "What's Rightfully Ours: Toward a Property Theory of Rape," Columbia Journal of Law and Social Problems 30, no. 3 (1997): 459–502.
[425] Wald.
[426] Jonathan Charney, "Universal International Law," American Journal of International Law 87, no. 4 (1993): 529–551. See also, Jordan J. Paust et al., International Criminal Law: Cases and Materials, 2nd ed., 2020.
[427] Article 5 of the 1946 International Military Tribunal for the Far East Charter. See also, Article 6 of the 1945 International Military Tribunal Charter.
[428] UN Security Council, Statute of the International Criminal Tribunal for the Former Yugoslavia (as amended on May 17, 2002), May 25, 1993, Article 5. See also, UN Security Council, Statute of the International Criminal Tribunal for Rwanda (as last amended on October 13, 2006), November 8, 1994, Article 3.
[429] Prosecutor v. Bosco Ntaganda, Sentencing Judgement, Trial Chamber VI, November 7, 2019, ICC-01/04-02/06-2442.
[430] Kelly D. Askin, "Comfort Women: Shifting Shame and Stigma from Victims to Victimizers," International Criminal Law Review, no. 1 (2001): 5–32.

international law in order to explore its application and interpretation in the 'comfort women' cases.

The prohibitions of slavery and slave-related practices have reached the level of international customary law as well as jus cogens status, thus, no justification could preclude International State responsibility for a violation of an obligation related to slavery.[431] The norm that has attained jus cogens status generate erga omnes obligations.[432] In addition to this, there is a trend to consider that sexual violence including sexual slavery has now achieved jus cogens.[433]

As for the definition of slavery, it has been developing to this day, from the era of the League of Nations, which established the 1926 Slavery Convention, to the 2002 Rome Statute of the ICC.[434] Besides, there emerged a number of international instruments related to slavery, such as the 1930 Forced Labour Convention, the 1957 Supplementary Convention on the Abolition of Slavery, the 1948 UDHR, the 1966 ICCPR and the 2014 Protocol and Recommendation.[435] In international humanitarian law field, the 1863 Lieber Code, the 1899 Hague Convention and the 1907 Hague Convention, the 1929 Geneva Convention and the four Geneva Conventions of 1949 relate to the prohibition of enslavement and slavery-like treatment in the context of armed conflicts.[436]

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[431] United Nations, "Vienna Convention on the Law of Treaties", May 23, 1969, United Nations, Treaty Series, vol. 1155, 331, Article 53 and 64. See also, International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1, Article 26, 40 and 50., Jean Allain, Slavery in International Law: Of Human Exploitation and Trafficking (Martinus Nijhoff Publishers, 2013).

[432] Dinah Shelton, "Normative Hierarchy in International Law," The American Journal of International Law 100, no. 2 (2006): 291–323. See also, Erika de Wet, "Jus Cogens and Obligations Erga Omnes," in The Oxford Handbook of International Human Rights Law, ed. Dinah Shelton (Oxford University Press, 2013).

[433] M. Cherif Bassiouni, "Enslavement as an International Crime," *N.Y.U. J. INT'L. L. & POL* 23 (1991): 445.

[434] League of Nations, Convention to Suppress the Slave Trade and Slavery, September 25, 1926, 60 LNTS 253, Registered No. 1414, Article 1(1). See also International Criminal Courts, Elements of Crimes, 2011.

[435] International Labour Organization, Forced Labour Convention, C29, June 28,1930, C29. See also, UN Economic and Social Council, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, September 7, 1956., UN General Assembly, Universal Declaration of Human Rights, December 10, 1948, 217 A (III)., UN General Assembly, "International Covenant on Civil and Political Rights", December 16, 1966, United Nations, Treaty Series, vol. 999, 171., International Labour organisation, Protocol of 2014 to the Forced Labour Convention, 1930 and Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), Geneva, June 11, 2014.

[436] Instructions for the Government of Armies of the United States in the Field by order of the Secretory of War (Lieber Code), April 24, 1963. See also, Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, July 29, 1899, Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, October 18, 1907, Convention relative to the Treatment of Prisoners of War. Geneva, July 17, 1929, Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, August 12, 1949, Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, August 12, 1949, Convention (III) relative to the Treatment of Prisoners of War. Geneva, August 12, 1949, Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, August 12, 1949.

In recent decades, international community has paid more attention to trafficking in persons which became one of the most lucrative criminal activities. The UN General Assembly established the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to 'supress all forms of traffic in women and exploitation of prostitution of women'.[437] In comparison to this, the 1993 Declaration on the Elimination of Violence Against Women (DEVAW) included more concrete provisions due to its inclusion of the lists of violence against women.[438] Furthermore, the Protocol to Prevent, Supress, and Punish Trafficking in Persons Especially Women and Children (the Palermo Protocol), supplementing the UN Convention against Transnational Organized Crime has adopted by the UN General Assembly in 2000, and came into effect in 2003.[439]

In light of the regional human rights instruments, the Council of Europe adopted European Convention for the Protection of Human Rights and Fundamental Freedom (ECHR) in 1950, came into effect in 1953, referencing to the UDHR of 1948 to achieve the realisation and enforcement of human rights and fundamental freedom.[440] On the other hand, unlike the ECHR, the American Convention on Human Rights (ACHR) established in 1978 explicitly prohibited trafficking in women.[441] Moreover in the African system, African Charter on Human and People's Rights (ACHPR), which is called Banjul Charter, was created in 1981 by the Organisation of African Unity (OAU), including the provision related to combatting sale and trafficking in children.[442] To date, Europa and Southeast Asia are the only regions in the world which have established comprehensive legally binding anti-trafficking conventions, namely, the 2005 Council of Europe Convention on Act against Trafficking in Human beings and the

[437] UN General Assembly, "Convention on the Elimination of All Forms of Discrimination Against Women", December 18, 1979, United Nations, Treaty Series, vol. 1249, 13, Article 6.
[438] UN General Assembly, Declaration on the Elimination of Violence against Women, 20 December 1993, A/RES/48/104, Article 2.
[439] UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, November 15, 2000.
[440] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.
[441] Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969. According to Article 6, 'no one shall subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women'.
[442] Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

2015 Association of Southeast Asian Nations (ASEAN) Convention Against Trafficking in Persons, Especially Women and Children.[443]

3.1.1. 1926 Slavery Convention

The definition of slavery, which work effects on our recognition on human exploitation in modern times at large extent, was included for the first time in Article 1(1) of the 1926 Slavery Convention as follows;

> 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.'[444]

It has been generally accepted that this definition has become authoritative in international law, as evidenced by the establishment of legal definition confirmed by its inclusion in Article 7(a) of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (the 1956 Supplementary Convention on the Abolition of Slavery) as well as in Article 7(2)(c) of the Rome Statute of the ICC.[445] In both articles, the definition was not changed but merely reproduced in substance, as the sentence 'any or all of the powers attaching to the right of ownership'.[446] Therefore, it can be said that, in international law, the first definition of slavery in 1926 is the definition broadly accepted by states.

Originally, the definition of slavery in the 1926 Slavery Convention emerged from the series of the efforts of the Temporary Slavery Commission, established by the League of Nations, which was a body of experts that assessed the parameters of the forms of human exploitation

[443] Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, CETS 197. See also, ASEAN Convention Against Trafficking in Persons, Especially Women and Children, 21 November 2015. 'ASEAN' is the Association of Southeast Asian Nations which is economic union including 10 State Parties in Southeast Asia.

[444] Article 1(1) of the 1926 Slavery Convention, ratified by 99 countries except for Japan until now. The 'human exploitation' is a term which encompasses those kind of exploitation established in the 2000 Palermo Protocol and 2005 Council of Europe Convention as part of the definition of human trafficking.

[445] Article 7(a) of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. It refers to the definition of slavery in the 1926 Slavery Convention. See also, Article 7(2)(c) of the Rome Statute of the International Criminal Court.

[446] In Article 7(a) of the 1956 Supplementary Convention, it states that '"Slavery" means, as defined in the Slavery Convention of 1926, the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised…'. Also, in Article 7(2)(c) states that the definition of enslavement is 'the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children'.

between 1924 and 1926.[447] The definition of slavery, and the Slavery Convention itself, was developed within the context of a League of Nations that was a European colonialist club, seeking to end slavery beyond its membership while curbing the excesses of servile labour while leaving it intact within the colonies. During the time of discussions in the Temporary Slavery Commission, it was attempted to include various forms of slavery such as lesser servitudes, childhood marriage and sham adoption.[448] However, this attempt was failed due to the objection by the colonial powers and ended up narrowing the application away from forced labour and restricting its obligation to bringing about 'progressively and as soon as possible' to complete abolition of slavery.[449] As a result, in the context of the era of colonisation, the definition of slavery was evolved, seeking to abolish slavery and, contradictory, leaving it within the colonies while suppressing the excesses of servile labour.[450]

Although the definition of slavery was established in international law, it can be said that international courts have focused on an understanding of the fundamental nature of slavery, rather than its interpretation. Since nowadays de jure slavery, where a right of ownership vindicated in a court of law exists, no longer remains, international jurisprudence has sought the nature of slavery from the perspective of what the enslaved lacked.[451] The connection between 'slavery' where legal ownership existed and 'slavery' in a contemporary setting where the legal ownership has been out of existence is, briefly, control.[452]

In Kunarac case, its focus was on the indication of slavery, to which the Special Court for Sierra Leone also referred, and demonstrated that slavery is considered as the ability of a person to control another, depriving individual autonomy or liberty in significant manner.[453] Generally,

[447] The 'human exploitation' is a term which encompasses those kind of exploitation established in the 2000 Palermo Protocol and 2005 Council of Europe Convention as part of the definition of human trafficking.
[448] League of Nations, Draft Convention of on Slavery, Replies of Governments, Reply from the Government of Germany, Doc. A.10(a). 1926. VI (July 22, 1926), in Publication of the League of Nations, VI.B. Slavery, 1926. VI.B. 3, 4 (1926). League of Nations, Draft Convention on Slavery and Proposed Amendments, Doc. A.VI/S,C.1/1 (September 10, 1926), in Publication in Draft Convention on Slavery: Discussion at the 7th Assembly; Folder R.77.D.46781 (1926).
[449] League of Nations, Report presented by the Sixth Commission on the Question of Slavery: Resolution, 19th mtg. at 156, in League of Nations Official Journal (Special Supplement 33) (September 26, 1925). See also, Jean Allain, "The Legal Definition of Slavery into the Twenty-First Century," in The Legal Understanding of Slavery, ed. Jean Allain (Oxford University Press, 2012), 209.
[450] Jean Allain, "Contemporary Slavery and Its Definition in Law," in Contemporary Slavery: Popular Rhetoric and Political Practice, ed. Annie Bunting and Joel Quir, 1st ed. (University of British Columbia Press, 2017), 36–66.
[451] Allain, Slavery in International Law: Of Human Exploitation and Trafficking.
[452] Allain.
[453] Prosecutor v. Dragoljub Kunarac et al., no. IT96-23/1-A, Judgement, June 12, 2002. International Criminal Tribunal for the former Yugoslavia. It states that indication of slavery entails 'control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat

such control is exercised through violence, threat to force or coercion, deception or phycological oppression, and eventually, it is meant to allow for exploitation.[454]

Nevertheless, what constitutes slavery in law can be established in terms of the definition of the 1926 Slavey Convention. Fundamentally, while the 1926 definition of slavery is applicable to de jure slavery, it also addresses de facto slavery through the term 'condition' rather than 'status', since status is a legal concept and such de jure slavery no longer exists today.[455] Furthermore, the 1926 definition of slavery can encompass various forms of slavery, since it does not speak of the exercise of a right of ownership but 'the powers attaching to the right of ownership'.[456]

As for what constitutes the powers attaching to the tight of ownership, basically, it is understood that possession is one of such powers in the context of the 1926 definition of slavery. Namely, slavery exists where possession is present or where control tantamount to possession is being exercised. It has been evolved and more concrete in the report of the UN Secretary-General on Slavery, the Slave Trade, and other forms of Servitude in 1953.[457] Essentially, it recognised such powers as being the ability to buy or transfer a person, using their capacity to work and profiting from the labour. More recently, it has been elaborated by the ICC in the Elements of Crimes in 2002, providing that such powers refer to 'purchasing, selling, lending or bartering such a person or persons.'[458]

Consequently, it can be considered that definition of slavery in Article 1 of the 1926 Slavery Convention provides the very emergence of property paradigm applied in the context of slavery, implying that ownership is a background relationship of control related to its incidental rights and powers. Furthermore, the definition impliedly allows its application to de facto slavery, even in the contemporary setting where individuals can no longer own slaves de jure.

of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour,. See also, Prosecutor v. Dragoljub Kunarac et al., no. IT96-23/1-T, Judgement, February 2, 2001. ICTY., para 193. It includes 'elements of control and ownership' such as 'the restriction or control of an individual's autonomy, freedom of choice or freedom of movement…the threat or use if force or other forms of coercion; the fear of violence, deception…psychological oppression…exploitation; the exaction of forced or compulsory labour…involving physical hardship; sex, prostitution; and human trafficking.'

[454] ibid.

[455] Jean Allain, "The Legal Definition of Slavery into the Twenty-First Century."

[456] Prosecutor v. Dragoljub Kunarac et al., no. IT96-23/1-A, Judgement, June 12, 2002. ICTY., para 17-119.

[457] United Nations Economic and Social Council, Slavery, the Slave Trade, and other forms of Servitude (Memorandum of the Secretary-General), UN Doc.E/2357, January 27, 1953.

[458] International Criminal Courts, Elements of Crimes, 2011., 117.

3.1.2. 1956 Supplementary Convention

After the end of World War II, the UN was created in 1945, succeeding the League of Nations. Considering the development of what constitutes slavery after the establishment of 1926 Slavery Convention, the Ad Hoc Committee was appointed by the UN General Assembly, based on the recommendation by the UN Economic and Social Council (ECOSOC), to examine whether the definitions of slavery in Article 1 of the 1926 Slavery Convention is satisfactory.[459]

In its 1951 Report, the Committee ultimately concluded that the definition of slavery in Article 1 of the 1926 Slavery Convention 'should continue to be accepted as accurate and adequate'.[460] It held that that there is not enough reason to discard or amend Article 1 of the 1926 Slavery Convention, because 'slavery is so various in its forms that it hardly admits of a strict definition […] and […] there is little prospect of formulating a definition of it which will be so precise and comprehensive as to embrace all types of servitude […] '. Furthermore, the Committee stated that the servitude such as debt bondage, serfdom, servile marriage and child exploitation would be considered as concerning 'a status analogous to slavery' and it was controversial whether Article 1 of the 1926 Slavery Convention covers such types of servile status, arguing that its suppression should be advanced by the UN.

Therefore, the UN Secretary-General produced the 1953 memorandum, considering overall issue including the reports of the Ad Hoc Committee on Slavery. The UN Secretary-General pointed out that '[…] the obligations of the Parties […] extended to all institutions or practices, whether or not designated as 'slavery', […] as stated in Article 1 of the Convention, 'any or all of the powers attaching to the right of ownership are exercised' over a person in these institutions or practices'.[461] Moreover, the UN Secretary General produced the most reliable declaration regarding what compose those powers attaching to a right of ownership and many

[459] UN Secretary-General, Memorandum of the Secretary-General on the Terms of Reference of the Ad Hoc Committee on Slavery, 19 UN Doc. E/AC.33/4 3 February 1950. It was delivered to the Economic and Social Council.

[460] United Nations Economic and Social Council, Report of the Ad Hoc Committee on Slavery (Second Session), 11, UN Doc. E/1988, E/AC.33/13 4 May 1951.

[461] United Nations Economic and Social Council, Slavery, the Slave Trade, and other forms of Servitude (Memorandum of the Secretary-General), UN Doc. E/2357, 27 January 1953,28. The UN Secretary General stated that the main institutions or practices such as debt bondage, serfdom, servile marriage and child exploitation, those of what the Ad Hoc Committee on Slavery examined, are covered in Article 1 of the 1926 Slavery Convention according to Article 2(b) of the 1926 Slavery Convention, which states that 'The High Contracting Parties undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, so far as they have not already taken the necessary steps: […] To bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms'.

of which had been identified by the League of Nations when preparing the earlier Convention as follows:

1. the individual of servile status may be made the object of a purchase;
2. the master may use the individual of servile status, and in particular his capacity to work, in an absolute manner, without any restriction other than that which might be expressly provided by law;
3. the products of labour of the individual of servile status become the property of the master without any compensation commensurate to the value of the labour;
4. the ownership of the individual of servile status can be transferred to another person;
5. the servile status is permanent, that is to say, it cannot be terminated by the will of the individual subject to it;
6. the servile status is transmitted ipso facto to descendants of the individual having such status.[462]

Ultimately, it was the 1953 Memorandum by the UN Secretary-General that became a fundamental element which led to the 1956 Supplementary Convention on the Abolition of Slavery.[463] In fact, the 1956 Supplementary Convention includes the provisions aiming at the abolition of the original four servitudes identified in the Temporary Slavery Commission in the League of Nations. Therefore, 'debt bondage, serfdom, servile marriage and child exploitation' was contained in the provisions, while recognising that these servitudes might also be considered as slavery in pursuant to Article 1 of the 1926 Slavery Convention.[464] Furthermore. the definition of slavery in Article 1(1) of the 1926 Slavery Convention was reproduced in substance in Article 7(a) of the 1956 Supplementary Convention. Hence, through the negotiation process of the 1956 Supplementary Convention, it was acknowledged that the slavery defined in the 1926 Slavery Convention and the servitude established in the 1956 Supplementary Convention overlapped to large extent. Therefore, it was specifically sought to ensure that the 1956 Supplementary Convention would contribute to the elimination of institutions and practices of the 4 types of servitudes.

3.1.3. Other International Human Rights Instruments

The UDHR was established by the United Nation General Assembly in 1948.[465] It was the outcome of experience of terror during World War II, and it provided, for the first time,

[462] United Nations Economic and Social Council, Slavery, the Slave Trade, and other forms of Servitude (Memorandum of the Secretary-General), UN Doc.E/2357, January 27, 1953, 28.
[463] The 1956 Supplementary Convention on the Abolition of Slavery was ratified by 124 countries until now except for Japan.
[464] Article 1 of the 1956 Supplementary Convention on the Abolition of Slavery.
[465] UN General Assembly, the 1948 Universal Declaration of Human Rights.

fundamental human rights to be universally protected, ensuring peace, stability, freedom as a mutual standard of achievements for people and states around the world.[466] The UDHR was formed as a statement of principles devoid of any obligatory character, and which would have moral force, not a statement of law nor binding obligations.[467] Notably, the Preamble of UDHR has been frequently referred in several international conventions, for instance, the Supplementary Convention on the Abolition of Slavery and the ILO Convention on the Abolition of Forced Labour.[468]

As for the provisions of UDHR, it addresses the issue on slavery in Article 4 and hold 'No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms'.[469] In light of the inclusion of servitude in addition to slavery, there existed the intention to cover the Nazi's terrific treatment to their POW and its trafficking in women and girls during World War II in order to prevent the reoccurrence.[470] It can be considered that, although the UDHR is not legally binding, it has significantly served as a keystone for more specific and legally binding treaties and covenants, and has established international politics. Therefore, its influence on issues of international justice has been undeniable.[471]

The human rights principles included in the UDHR were largely reflected in the ICCPR and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) established by the UN General Assembly.[472] The ICCPR provides various protections for civil and political rights, denouncing all forms of slavery, torture, and inhumane or degrading treatment and the right to free of these abuse.[473] Furthermore, the governments of state parties have the obligation to take administrative, judicial, and legislative measures in order to protect

[466] Johannes Morsink, "World War Two and The Universal Declaration," The Development of International Human Rights Law 1 (2017): 89–137.
[467] Morsink.
[468] Pleamble of the 1957 Convention on Abolition of Forced Labour Convention.
[469] Article 4 of the UDHR.
[470] Morsink, "World War Two and The Universal Declaration."
[471] Egon Schwelb and Martin Van Heuven, "Address, 'The Influence of the Universal Declaration of Human Rights on International and National Law,'" American Society of International Law 53 (1959): 217–29.
[472] UN General Assembly, "International Covenant on Economic, Social and Cultural Rights", December 16, 1966, United Nations, Treaty Series, vol. 993, 3-106. For instance, in the Preambles to the two covenants, it demonstrates the natural rights language of the UDHR such as 'recognition of the inherit dignity and of the equal and inalienable rights of all members of the human family and the assertion that 'rights derive from the inherent dignity of the human person'.
[473] UN General Assembly, "International Covenant on Civil and Political Rights", December 16, 1966, United Nations, Treaty Series, vol. 999, 171.

the rights enshrined in the treaty and to provide an effective remedy.[474] The provision on slavery can be found in Article 8 as follows,

> 1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
>
> 2. No one shall be held in servitude.[475]

Hence, under Article 8, slavery, the slave-trade, slave-related practices servitude were prohibited for all persons. The significance to this slavery provision is emphasized by its status as a non-derogable right under Article 4(2).[476]

On the other hand, the ICESCR is designated to protect economic, social and cultural rights containing labour rights, the right to health, the right to education and the right to an adequate standard of living. In particular, with regard to the rights to work, Article 6(1) provides as follows;

> The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.[477]

Besides, Article 7 of the ICESCR provides the specific lists of conditions of work which should be ensured such as 'remuneration' including fair wage, 'a decent living' for the workers and their families, 'safe and healthy' workplaces, 'equal opportunity' and 'reasonable limitation of working hours'.[478] Thus, the 1966 ICESCR indirectly prohibits slavery, servitude, or forced labour by ensuring the freewill to work and listing just conditions to work.[479]

Whereas there are several international human rights instruments which contain provisions prohibiting slavery, such provisions can also be seen in the regional human rights instruments. For instance, Article 4 of the ECHR prohibits slavery and servitude as well as forced and compulsory labour.[480] Additionally, the Council of Europe Convention on Action Against Trafficking in Human Beings, which was entered into forced in 2008 was established to aim at

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[474] R. Pisillo Mazzeschi, "International Obligations to Provide for Reparation Claims," in State Responsibility and Individual: Reparation in Instances of Grave Violations of Human Rights (The Hague: Kluwer law international, 1999), 149.
[475] Article 8 of the ICCPR.
[476] ibid., Article 4(2).
[477] Article 6(1) of the ICESCR.
[478] ibid., Article 7.
[479] ibid.
[480] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5., Article 4.

preventing trafficking in persons, protecting the victims, prosecuting the perpetrators and promoting national actions and international cooperation.[481] In recent years, the 2015 ASEAN Convention Against Trafficking in Persons, Especially Women and Children was established based on the similar objectives, while paying special attention to trafficking in women and children.[482]

Similar provision to the ECHR can be found in Article 6 of the ACHR.[483] Significantly, it particularly prohibits 'traffic in women' in addition to slavery or servitude.[484] Relatively, the 1981 ACHPR shows a unique approach to slavery, as it considers slavery as one of the forms of exploitation and degradation together with torture.[485]

3.1.4. Customary International Law

It is well-established that the prohibition of slavery constitutes a principle of customary international law and has been attained jus congens status. Fundamentally, customary international law is 'a general principle accepted as law' according to Article 38(1)(b) of the Statute of the ICJ.[486] A norm in customary international law generally established by evidence of two components, namely, state practice and opinio juris, which is a sense of legal obligation on the part of the state performing the practice.[487] The significance of customary international law is that, firstly, it legally binds all states unless a state persistently object during its formation in contrast to multilateral treaties which legally bind merely the ratified States.[488] Moreover,

[481] Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, May 16, 2005, CETS 197.
[482] Article 1 of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children.
[483] Organisation of American States. 1969. "American Convention on Human Rights." Treaty Series, No. 36. San Jose: Organization of American States., November 22, 1969.
[484] ibid. According to Article 6 of the ACHR, 'no one shall subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women'.
[485] Organization of African Unity, African Charter on Human and Peoples' Rights ("Banjul Charter"), June 27, 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, 1982. Article 5 of the Banjul Charter states that 'Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited'.
[486] United Nations, Statute of the International Court of Justice, April 18, 1946., Article 38(1)(b).
[487] Christian Dahlman, "The Function of Opinio Juris in Customary International Law," Nordic Journal of International Law 81, no. 3 (2012): 327–39.
[488] Dahlman.

customary international law ensures that an international legal obligation is erga omnes, an obligation 'towards the international community as a whole'.[489]

In light of the prohibition of slavery, state practice and opinio juris which the factors establish customary international law are evidenced by treaty law and UN practices.[490] In fact, the definition of slavery in Article 1 of the 1926 Slavery Convention is reiterated in a number of international instruments which are ratified and implemented by most of the State Parties.[491] For instance, the definition was reproduced in substance in Article 7(a) of the 1956 Supplementary Convention, with one hundred twenty-four Parties to date, including the institutions and practices similar to slavery.[492] Furthermore, as mentioned before, the prohibition of slavery can be seen in numerous international and regional human rights instruments.[493]

Hence, it can be considered that the international community has a legal interest in terms of the prevention of slavery and the violation of the prohibition of slavery represents a breach of erga omnes obligation. It demonstrates that the international community generally recognises the definition of slavery to be legally binding. Besides, it indicates that the prohibition of slavery to be a fundamental norm which presents the inviolable principle of the common international legal obligation, thus, it has been attained jus congens status.

3.1.5. Analysis

Although the 1926 Slavery Convention has not been ratified by Japan, the prohibition of slavery has been attained jus cogens status until the mid-twenty centuries through the measures against the slave trade in each country as well as the 1926 Slavery Convention. In the 'comfort women' case, the domestic courts acknowledged that the Convention was also restraint on

[489] Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain); Second Phase, International Court of Justice (ICJ), February 5, 1970. See also, United Nations General Assembly, "Identification of Customary International Law," in International Law Commission Seventieth Session, vol. A/CN.4/710, 2019. M. Cherif Bassiouni, "International Crimes: Jus Cogens and Obligatio Erga Omnes," Law and Contemporary Problems 59, no. 4 (1996): 63–74., Jean Allain, "Slavery and Its Obligations Erga Omnes," The Australian Year Book of International Law 36, no. 1 (2019): 83–124.

[490] A. Yasmine Rassam, "Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law," Virginia Journal of International Law 39, no. 2 (1999): 303–52.

[491] Article 1 of the 1926 Slavery Convention.

[492] Article 7 of the 1956 Supplementary Convention.

[493] Article 4 of the Universal Declaration of Human Rights. See also, Article 8 of the ICCPR, Article 4 of the European Convention, Article 6 of the American Convention and Article 5 of the African Charter.

Japan during World War II, however, the 'comfort women' was not considered to be slavery defined in the 1926 Slavery Convention and international customary law.[494]

Specifically, in Asia-Pacific War Korean Victims case and *Former 'Comfort Women' Living* in Japan case, two essential reports were examined to address the 'comfort women' in terms of the 1926 Slavery Convention and international customary law, namely, the 1996 Coomaraswamy Report and The 1998 McDougall Report.[495] These reports are the most comprehensive research on the history and the legal issues of the 'comfort women' conducted by Special Rapporteurs to the UN Commission on Human Rights.[496]

As for the 1996 Coomaraswamy Report, it criticised the opinion of the Japanese government that slavery defined in the 1926 Slavery Convention is inaccurate to apply to the 'comfort women'. It remarks that the act against Asian women victims by the Japanese Imperial Army should be identified as 'military sexual slavery' which constitutes the violation of international customary law and international human rights institutions.[497]

Additionally, it is considered that the 'comfort women' is the least phrase to express their damages caused by continuous rape, abuse, forced prostitution and other sexual violence in wartime.[498] Moreover, it required Japan to address the 'comfort women' in its administrative tribunal to deliver justice and reparation to the victims by acknowledging the 'comfort women' system was the violation of international obligations, referencing to the recommendation by the Working Group on Contemporary Forms of Slavery.[499]

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[494] Toyko High Court, Asia-*Pacific War Korean Victims' Compensation Claims* Case, Judgement to 2001 (Ne) No. 2631 (July 22, 2003). See also, Toyko High Court, Former 'Comfort Women' Living in Japan, Judgement to 1999 (Ne) No.5333 (Novemebr 30, 2000).

[495] Toyko High Court, Asia-*Pacific War Korean Victims' Compensation Claims* Case, Judgement to 2001 (Ne) No. 2631. See also, Toyko High Court, Former 'Comfort Women' Living in Japan, Judgement, Hanreijihou No. 1741, at 40.

[496] The United Nations Commission on Human Rights, "Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Fifty-Second Session Item 9 (a) of the Provisional Agenda, E/CN.4/1996/53/Add.1." See also, The United Nations Commission on Human Rights, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, Fiftieth Session Item 6 of the Provisional Agenda, E/CN.4/Sub.2/1998/13." Totsuka, "Commentary on a Victory for Comfort Women: Japan's Judicial Recognition of Military Sexual Slavery." at 50.

[497] The United Nations Commission on Human Rights, "Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Fifty-Second Session Item 9 (a) of the Provisional Agenda, E/CN.4/1996/53/Add.1." para 6. See also, India Lourdes Sajor, "Military Sexual Slavery: Crimes Against Humanity," World Bulletin: Bulletin of the International Studies of the Philippines 14, no. 5–6 (1998): 48–69., at 56-57.

[498] The United Nations Commission on Human Rights, "Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Fifty-Second Session Item 9 (a) of the Provisional Agenda, E/CN.4/1996/53/Add.1." para 10.

[499] ibid., para 9, 85.

Relatively, the 1998 McDougall Report also criticised the serious crimes of sexual slavery against numerous 'comfort women' committed by the Japanese Imperial Army.[500] It clearly argues that 'slavery and the slave trade were prohibited well before the "comfort stations" were created ... the prohibition against slavery…has clearly attained jus cogens status.'[501] It also pointed out that the violation of sexual autonomy by rape or other forms of sexual violence is considered to constitute a power attaching to the right of ownership of person, which is a similar approach in Kunarac case.[502] Thus, the most considerable indicia of sexual slavery with regard to the 'comfort women' would be the loss of autonomy, freedom and control over the sexual autonomy. Accordingly, sexual slavery of the 'comfort women' by the Imperial Japanese Army is a grave violation, even at that time, of customary international law which results in the violation of erga omnes obligations.'[503]

The 1998 McDougall Report also considered the massive crimes to be grave violations of human rights and humanitarian law which constitute crimes against humanity, severely condemning the failure of the Japanese government to address such crimes with a sexual nature which has reached the level of impunity.[504] Therefore, it required Japan to identify mechanisms to ensure criminal prosecutions and to offer legal compensation.[505]

Notwithstanding that these reports explicitly state that 'comfort women' is violation of customary international law prohibiting slavery, the Japanese courts supported the opinion of the Japanese government. In fact, the courts held that, whereas the 'comfort women' is researched in connection with slavery defined in the 1926 Slavery Convention in the Coomaraswamy Report, it did not mean that it recognised the 'comfort women' as slavery

[500] The United Nations Commission on Human Rights, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, Fiftieth Session Item 6 of the Provisional Agenda, E/CN.4/Sub.2/1998/13." See also, McDougall, "Addressing State Responsibility for the Crime of Military Sexual Slavery during the Second World War: Further Attempts for Justice for the 'Comfort Women.'" Ethan Hee-Seok, "The Comfort Women Reparation Movement: Between Universal Women's Human RIght and Particular Anti-Colonial Nationalism." at 122-24.
[501] The United Nations Commission on Human Rights, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, Fiftieth Session Item 6 of the Provisional Agenda, E/CN.4/Sub.2/1998/13." para 12.
[502] The United Nations Commission on Human Rights. para 22. See also, Carmen M. Argibay, "Sexual Slavery and the 'Comfort Women' of World War II," Berkeley Journal of International Law 21, no. 2 (2003): 375–89., at 386.
[503] The United Nations Commission on Human Rights, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, Fiftieth Session Item 6 of the Provisional Agenda, E/CN.4/Sub.2/1998/13.", para 12.
[504] ibid.The United Nations Commission on Human Rights., para 69.
[505] ibid., para 63-67.

defined in the Convention.[506] The McDougall Report was also considered by the domestic courts, however, it concluded that the 'comfort women' was presumed that it was akin to slavery and serious human rights violation in relation to these reports, and the argument that it was slavery under customary international law was not acceptable.[507] Besides, the courts held that, even if it is assumed that the 'comfort women' was slavery in accordance with customary international law, although violation of Article 2, 3, and 6 of the 1926 Slavery Convention constituted state responsibility, the individual's right to claim compensation directly to an offending state or the details of compensation are not established and such right is not interpreted in customary international law.[508]

3.2. SLAVERY AND FORCED LABOUR

The labour conventions have been complementing and developing existing international law, including the UN slavery conventions, and the instruments regarding the prevention, suppression, and punishment of trafficking in persons, specifically women and children, and the regional instruments. There exist several labour conventions which address forced or compulsory labour or child labour, and these labours are considered a serious violation of fundamental human rights and labour rights as well as a crime under specific conditions.[509]

3.2.1. Prohibition of Forced Labour

The first regulation on forced labour in international law emerged in Article 5 of the 1926 Slavery Convention, though its scope and application were limited. It was established according to the principle, particularly, that forced labour may only be used for essential public

[506] Toyko High Court, Asia-*Pacific War Korean Victims' Compensation Claims* Case, Judgement to 2001 (Ne) No. 2631.
[507] Toyko High Court. See also, Toyko High Court, Former 'Comfort Women' Living in Japan, Judgement, Hanreijihou No. 1741, at 40.
[508] Toyko High Court, Asia-*Pacific War Korean Victims' Compensation Claims* Case, Judgement to 2001 (Ne) No. 2631. See also, Toyko High Court, Former 'Comfort Women' Living in Japan, Judgement, Hanreijihou No. 1741, at 40., Tokyo District Court, *Taiwanese Former 'Comfort Women' Compensation Claim for Damages and* Apology Case, Judgement to 1999 (Wa) No.15638., *Tokyo High Court, "Taiwanese Former 'Comfort Women'* Compensation Claim for Damages and Apology Case, Judgement to 2002 (Ne) No. 5850," (February 9, 2004). Tokyo District Court, "*Chinese 'Comfort Women' Secondary* Case, Judgement to 1996 (Wa) No.3316 (March 29, 2002)."
[509] Ibid.

services or private interests under exceptional circumstances and it must receive sufficient rewards.[510] Article 5 of the 1926 Slavery Convention states;

> The High Contracting Parties recognise that recourse to compulsory or forced labour may have grave consequences and undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.
>
> (1) Subject to the transitional provisions laid down in paragraph (2) below, compulsory or forced labour may only be exacted for public purposes.
>
> (2) In territories in which compulsory or forced labour for other than public purposes still survives, the High Contracting Parties shall endeavour progressively and as soon as possible to put an end to the practice. So long as such forced or compulsory labour exists, this labour shall invariably be of an exceptional character, shall always receive adequate remuneration, and shall not involve the removal of the labourers from their usual place of residence.
>
> (3) In all cases, the responsibility for any recourse to compulsory or forced labour shall rest with the competent central authorities of the territory concerned.[511]

Specifically, in Article 5(2), forced labour for private interests is expressed in a complex language, that is, those for 'other than public purposes' requiring to provide such forced labour with adequate reward and to use them in their habitual area. Moreover, it states that State Parties shall undertake 'progressively and as soon as possible' to end the practice, repeating the same language as the provision on the abolition of slavery in Article 2.[512] Significantly, the distinction between forced labour and compulsory labour which holds to date emerged in the 1926 Slavery Convention, as it was held that forced labour 'might mean that which the courts may condemn certain criminals under common law', on the other hand, compulsory labour is more in line with those for public services.[513]

Although the first provision regulating forced labour emerged in the 1926 Slavery Convention, it remained the possibility of usage of forced labour for public services and those for private interests with exceptional reasons. It was largely because colonial State Parties, which used forced labour in their colonies, were reluctant to ratify the legal instrument containing the regulation on forced labour.[514] Besides, the Temporary Slavery Commission pointed out that

[510] Allain, Slavery in International Law: Of Human Exploitation and Trafficking.
[511] Article 5 of the 1926 Slavery Convention.
[512] Article 2 of the 1926 Slavery Convention.
[513] Daniel Roger Maul, "The International Labour Organization and the Struggle against Forced Labour from 1919 to the Present," Labor History 48, no. 4 (2007): 477–500.
[514] Allain, Slavery in International Law: Of Human Exploitation and Trafficking.

the issue of forced labour would rather fall within the scope the International Labour Organisation (ILO).[515]

The ILO was established in 1919 as part of the Treaty of Versailles after World War I, in pursuit of the enhancement of human and labour rights and of the belief that social justice is essential to universal and lasting peace.[516] According to the decision by the League of Nations Assembly, the Secretariat of the ILO and the Committee of Experts on Native Labour cooperatively addressed forced labour which can be 'analogous to slavery'.[517] As a result, on 28th of June in 1930, the Convention No. 29 Concerning Forced or Compulsory Labour (the 1930 Forced Labour Convention) was created.[518]

Most of the provisions in the 1930 Forced Labour Convention were sought to regulate forced labour during transition period, where forced or compulsory labour for public services allowed, namely, to be ultimately desuetude. Thus, it provides, in Article 1(1) that State Parties are obligated to undertake 'to suppress the use of forced or compulsory labour in all its forms within the shortest possible period'.[519] In addition to this, it stipulated the requirements in the utilisation of forced labour. For instance, it provides that only able-bodied males between eighteen and forty-five years old could be used as forced labour. [520]

Moreover, with regard to the work condition, it set the maximum period of engagement in forced labour as sixty days per year.[521] Hence, the Convention have attempted to make acceptable forced labour as much as they are able during the transition period, maintaining human dignity and balancing public and private interests in the colonial era. Nowadays, such transitional provisions other than Article 1(1), Article 2 which defines forced or compulsory labour, Article 25 which states illegal utilisation of forced labour is 'a penal offence', and the final articles concerning ratification and denunciation no longer exist in pursuant of Article 7 of the Protocol of 2014 to the Forced Labour Convention, 1930.[522]

[515] Allain.
[516] International Labour Office, "The Labour Provisions of the Peace Treaties," 1920.
[517] Ibid.
[518] International Labour Organization (ILO), Forced Labour Convention, C29, June 28, 1930, C29. It is ratified by 179 State Parties to date including Japan which ratified in 1932.
[519] Article 1 of the 1930 Forced Labour Convention.
[520] Article 11 of the 1930 Forced Labour Convention.
[521] Article 12 of the 1930 Forced Labour Convention.
[522] International Labour Organization (ILO), Protocol of 2014 to the Forced Labour Convention, 1930, June 11, 2014 (Entry into force on November 9, 2016), P29. Article 7 reads that 'The transitional provisions of Article 1, paragraphs 2 and 3, and Articles 3 to 24 of the Convention shall be deleted'.

As for the definition of forced or compulsory labour, Article 2(1) of the 1930 Forced Labour Convention which remains to date states as follows;

> For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.[523]

It prohibits all forms of forced or compulsory labour, excepting several forms in Article 2(2) such as compulsory military services, work or service in case of emergency, penal labour as a result of a conviction in a court of law and 'minor communal services".[524] According to the ILO Committee of Experts on the Applications of Convention and Recommendations, this definition encompasses 'traditional practices of forced labour, such as vestiges of slavery or slave-like practices, and various forms of debt bondage, as well as new forms of forced labour that have emerged in recent decades, such as human trafficking.'[525] Namely, thresholds which determine whether a situation consists forced labour would be various including limitations to freedom of workers' movement and physical or sexual violence.

As for the definition, in the 2007 Report of the Committee of Experts on the Application of Conventions and Recommendations, Eradication of Forced Labour (the 2007 Report of ILO), it was pointed out that the term 'under menace or any penalty' contains the loss of any rights or privileges such as 'promotion, transfer, access to new employment, the acquisition of certain consumer goods, housing or participation in university programmes'.[526] Hence, it can be said that a penalty in the definition would not only be a legal penalty, but also include de facto penalty.

For example, in the 2006 Ituango Massacres v. Colombia case in the Inter-American Court of Human Rights (IACHR), the Court demonstrated that it 'can consist in the real and actual presence of a threat, which can assume different forms and degrees, of which the most extreme are those that imply coercion, physical violence, isolation or confinement, or the threat to kill the victim or his next of kin".[527] Furthermore, the phrase 'voluntary offer of labour' is

[523] Article 2 of the 1930 Forced Labour Convention.
[524] ibid.
[525] International Labour Office, "Giving Globalization a Human Face," ILC.101/III/1B (Geneva, 2012): 272.
[526] International Labour Office, Report III (Part 1B) General Survey Concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105) (Geneva: International Labour Office, 2007).
[527] Organisation of American States, Inter-American Court of Human Rights, Ituango Massacres v. Colombia, Series C, No. 148, July 1, 2006, 79.

considered as consent to work or services.[528] The 2007 ILO Committee of Experts recognised that 'voluntary offer of labour' under threat doesn't exist, therefore, it added that 'account must be taken of the legislative and practical framework which guarantees or limits that freedom'.[529]

In 1957, the Convention No.105 Concerning the Abolition of Forced Labour was adopted by the General Conference of the ILO, supplementing the 1930 Forced Labour Convention (the 1957 Abolition of Forced Labour Convention).[530] It can be said that the significance of the 1957 Abolition of Forced Labour Convention is that it addressed systems of forced or compulsory labour. In fact, during the Cold War, the Ad Hoc Committee on Forced Labour of 1953 found that forced labour was used by a number of Western colonial State for economic purposes, on the other hand, Union of Soviet Socialist Republics was using systems of forced labour as a means of political coercion.[531] Thus, the provision on the abolition of such forced labour was included in Article 1 as follows;

> Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour--
>
> (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
>
> (b) as a method of mobilising and using labour for purposes of economic development;
>
> (c) as a means of labour discipline;
>
> (d) as a punishment for having participated in strikes;
>
> (e) as a means of racial, social, national or religious discrimination

In order to supress forced labour stipulated in Article 1, the State Parties were obliged to take 'effective measures to secure the immediate and complete abolition of forced or compulsory labour.[532] Therefore, the 1957 Abolition of Forced Labour Convention expanded the prohibition of forced labour for public purposes, though it lacked the means of enforcement, allowing the State Parties to denounce the Convention after ten years based on Article 5.[533]

[528] ibid, 20.
[529] ibid.
[530] International Labour Organization (ILO), Abolition of Forced Labour Convention, C105, 25 June 1957, C105. It was entered into force on 17th of January in 1959 and ratified by 176 countries since its creation except for Japan.
[531] UN Ad Hoc Committee on Forced Labour, "Report of the Ad Hoc Committee on Forced Labour" UN Doc. E/2431, 1953, (Geneva, 1953): 124-125.
[532] Article 2 of the 1957 Abolition of Forced Labour Convention.
[533] Article 5 of the 1957 Abolition of Forced Labour Convention.

3.2.2. Interrelation between Slavery and Forced Labour

National constitutions or labour legislation in a number of ratifying states of aforementioned conventions have adopted a definition of forced or compulsory labour established in the Convention in a similar way of wording and forced or compulsory labour is internationally prohibited in modern day.[534] Freedom of labour is frequently guaranteed by national constitutions and individuals generally can be protected from illegal intervention with their freedom by related provisions of criminal legislation.[535] However, it can be held that although, in a number of countries, there has been changes of national legislation or practice achieving the requirement of the conventions, there have been remaining certain issues involving the effective abolition of forced or compulsory labour in all forms for purposes of production or service, including slavery, slavery-related practices and other unlawful forms of compulsory work. Therefore, the definition of slavery and the one of forced labour are frequently compared.[536]

As for the interrelation between slavery and forced labour, it can be considered that slavery is one form of forced labour, however, not all force labour entail slavery. As analysed in the earlier section, slavery is 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised' according to Article 1(1) of the 1926 Slavery Convention. Slavery emerges where possession is present or where control tantamount to possession is being exercised and such powers are considered as the ability to buy or transfer a person or using their capacity to work and profiting from the labour.[537]

From the perspective of customary international law, the 1998 International Labour Organisation Commission of Inquiry into Forced Labour in Myanmar concludes that international law prohibits any recourse to forced or compulsory labour, thus, it amounts to jus cogens, from which no derogation is permitted.[538] It pointed out that the prohibition of forced labour included in international human rights instruments such as the UDHR and the ICCPR

[534] Orlando Patterson, "Trafficking, Gender and Slavery: Past and Present," in The Legal Understanding of Slavery, ed. Jean Allain, 1st ed. (Oxford University Press, 2012), 322–59.
[535] ibid.
[536] Forced or compulsory labour is defined as 'All work or service which is exacted from any person has not offered himself voluntarily' in the 1930 Forced Labour Convention.
[537] Allain, "Slavery and Its Obligations Erga Omnes."
[538] International Labour Organization, *Forced Labour in Myanmar (Burma) : Report of the Commission of Inquiry* Appointed under Article 26 of the Constitution of the International Labour Organization to Examine the Observance by Myanmar of the Forced Labour Convention, 1930 (No. 29) (Geneva: International Labour Organization, 1998): 203.

as well as in the national constitutions of the States Parties.[539] Moreover, it remarked that the violation of such perempetry norm result in constituting the crime of enslavement in intenational criminal law.[540]

However, there are some controvercy over the prohibition of forced labour as a perempetry norm. Firstly, while the legislative history of Article 4 establishes that 'servitude' was meant to cover various forms of slavery including forced labour, the prohibition of forced labour is not explicitly articulated as such.[541] Contrary to this, Article 8 of the ICCPR explicitly prohibits forced or compulsory labour with several exceptions such as prison labour according to a sentence by a court, essential military services, those in case of emergency and general civil obligation.[542] Although it stipulates the prohibition of forced labour, it rather provides the distinction between legal and illegal forced labour and there remains some uncertainty to what constitutes forced labour.[543]

In respect of the prohibition of forced labour as international crime, it can be considered that it is subsumed in the crime of enslavement. In the 2002 Krnojelac case, the Tribunal stated that, in order to establish forced or compulsory labour, it must be proven that the perpetrator (or the perpetrators) 'forced the detainees to work' by intentionally excising 'any or all of the powers attaching to the right of ownership over them.[544] Moreover, it pointed out that international humanitarian law generally prohibits forced or compulsory labour, but it does not prohibit all forms of labour by protected persons during armed conflict. It also pointed out that the use of such forced or compulsory labour constitutes enslavement.[545]

Besides, Elements of Crimes, the secondary legislation of the Rome Statute of the ICC, held that one of the elements of enslavement is '[T]he perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of

[539] ibid para 202.
[540] ibid para 204.
[541] Myres S. McDougal, Harold D. Lasswell, and Lung-chu Chen, Human Rights and World Public Order: The Basic Policies of an International Law of Human Dignity, 2nd ed. (Oxford University Press, 2018). See also, Lukas Knott, "Unocal Revisited: On the Difference between Slavery and Forced Labor in International Law," Wisconsin International Law Journal 28, no. 2 (2010): 201–33.
[542] Article 8 of the ICCPR.
[543] ibid.
[544] Prosecutor v Milorad Krnojelac., no. IT-97-25-T, Judgment, March 15, 2002, International Criminal Tribunal for the former Yugoslavia., 147.
[545] ibid.

liberty' and 'such deprivation of liberty may, in some circumstances, include exacting forced labour'.[546]

Consequently, it can be considered that the concept of forced labour and slavery largely overlap, while being mutually independent. Hence, although forced or compulsory labour would not attain jus cogens in its own right, it could be possible in case that forced labour involves the exercise of any or all of the powers attaching to the right of ownership.

3.2.3. Emerge of Modern Slavery

In recent decades, new forms of slavery have emerged, also known as 'modern slavery'. Although 'modern slavery' is not internationally and legally defined as a term, it generally involves slavery, enslavement and trafficking in persons. Regarding this concept, some scholars and institutions such as the UN bodies maintain that there are a tendency to combine the essence of slavery and enslavement with trafficking in international legal and political settings.[547] Contrary to this, there are some oppositions to such practice, arguing that it is not always legally accurate in terms of each legal concept.[548] Hence, there exists some extent of uncertainty within the practice of international law concerning modern slavery.[549]

In this regard, international courts frequently focus on the extent of control and coercion when considering modern slavery issues. In Rantsev case, the Court referred to the definition of enslavement as a crime against humanity for sexual exploitation dealt with in Kunarac case in the ICTY, which came to the conclusion that the conventional concept of slavery has developed to contain a variety forms of slavery while remaining the definition.[550] Moreover, the Court stated that the following factors must be dealt with when determining whether a situation qualifies as modern slavery: control over a person's movement or physical environment;

[546] M. Cherif Bassiouni, "Enslavement as an International Crime," New York University Journal of International Law and Politics 23, no. 2 (1991): 445.
[547] International Labour Office, Global Estimates of Modern Slavery (Geneva: International Labour Office, 2017).
[548] Janie A. Chuang, "Exploitation Creep and the Unmaking of Human Trafficking Law," The American Journal of International Law 108, no. 4 (2014): 609–49. See also, Allain, Slavery in International Law: Of Human Exploitation and Trafficking.
[549] Anne T. Gallagher, The International Law of Human Trafficking (Cambridge: Cambridge University Press, 2010): 119.
[550] Rantsev v Cyprus and Russian Federation, 25965/04, Council of Europe: European Court of Human Rights, January 7, 2010. See also, Prosecutor v. Dragoljub Kunarac et al., no. IT96-23/1-T, Judgement, February 2, 2001. International Criminal Tribunal for the former Yugoslavia., para117.

psychological control; measures taken to prevent or discourage escape; and control over sexuality and forced labour.[551]

According to the ILO survey, during the period between 2002 and 2011, an estimated 20.9 million people are engaged in forced or trafficked labour.[552] Out of those, approximately 18.7 million people engage in forced labour imposed by private interests, including 4.5 million are engaged in forced sexual exploitation.[553]

In this regard, it can be considered that the UDHR's Article 4 regarding prohibition on slavery and servitude includes the new forms of slavery in international law.[554] Additionally, the 1956 Supplementary Convention on the Abolition of Slavery stipulated 4 categories of servitude status in Article 1 as institutions and practices similar to slavery, including debt bondage, serfdom, servile marriage, and child exploitation.[555]

In this context, the UN General Assembly adopted the 1979 CEDAW, that emphasises on ending discrimination against women and girls and respect for the fundamental principles of human rights.[556] It was reflected the efforts of the Commission on the Status of Women on the developments of women's status between 1950s and 1970s.[557] In particular, given that women and girls continue to face challenges with trafficking and exploitation including sexual exploitation, Article 6 requires State Parties to take action to prevent 'all forms of traffic in women and exploitation of prostitution of women.'[558]

Although 'violence against women and girls' was not explicitly mentioned in this Convention, the General Recommendation 12 in 1989, 19 in 1992 and 35 in 2017 updating the General Recommendation 19 demonstrate that the Convention contains violence against women, including the concrete recommendation to the State Parties. [559] These General

[551] ibid.
[552] International Labour Office, Global Estimates of Modern Slavery.
[553] ibid.
[554] Article 4 of the Universal Declaration of Human Rights.
[555] Article 1 of the 1956 Supplementary Convention on the Abolition of Slavery.
[556] UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, December 18, 1979, United Nations, Treaty Series, vol. 1249, 13. This convention has been ratified by 189 State Parties to date including Japan.
[557] UN Division for the Advancement of Women, "Assessing the Status of Women : A Guide to Reporting under the Convention on the Elimination of All Forms of Discrimination against Women" (New York, 2000)., 5. Roberta Jacobson, The Committee on the Elimination of Discrimination against Women, ed. Philip Alston, The United Nations and Human Rights: A Critical Appraissal (Oxford University Press, 1992), 444-472, at 446.
[558] Article 6 of the CEDAR.
[559] UN Committee on the Elimination of Discrimination Against Women, General Recommendation No. 12, 1989. See also, UN Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19, 1992., UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 35, 2017.

Recommendations resulted in the establishment of the 1993 UN General Assembly Declaration on Violence Against Women (DEVAW), the first international instrument explicitly addressing violence against women.[560] According to Article 1, 'violence against women' refers to any gender-based act that causes or is likely to cause 'physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrarily deprivation of liberty, whether occurring in public or in private life.'[561] Furthermore, Article 2 provides what constitutes violence against women, mentioning it is not limited to, such as '[p]hysical, sexual and psychological violence occurring in the family, 'in the general community' and 'perpetrated or condoned by the State', and specifically its paragraph (b) includes 'trafficking in women'.[562]

Regarding the trafficking, a legal instrument particularly regulating trafficking ultimately emerged in 2000 with the establishment of the the Palermo Protocol.[563] It supplements the 2000 United Nations Convention Against Transnational Organized Crime (Palermo Convention).[564] The Palermo Protocol contains the definition of trafficking in persons as well as the provisions related to the implementation of the prevention of trafficking and the measure for victims.[565]

Article 3(a) of the Palermo Protocol defines 'trafficking in persons as follows;

> [t]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;[566]

[560] UN General Assembly, Declaration on the Elimination of Violence against Women, December 20, 1993, A/RES/48/104. See also, Sally Engle Merry, "Gender Justice and CEDAW: The Convention on the Elimination of All Forms of Discrimination Against Women," Journal of Women of the Middle East and the Islamic World, no. 9 (2011): 49–75.
[561] Article 1 of the Declaration on the Elimination of Violence against Women.
[562] ibid., Article 2.
[563] UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, New York, November 15 2000, 2237 U.N.T.S. 319. Ratified by 178 State Parties to date including Japan.
[564] UN General Assembly, United Nations Convention against Transnational Organized Crime, New York 5th November 2000, 2225 U.N.T.S. 209. Ratified by 190 State Parties to date including Japan.
[565] Article 6 and 7 of the Palermo Protocol.
[566] Article 3(a) of the Palermo Protocol. The Palermo protocol includes three protocols that were adopted by the United Nations to supplement the 2000 Convention against Transnational Organized Crime (the Palermo Convention). The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was adopted by the United Nations General Assembly in 2000 and entered into force on December 25, 2003.

Thus, trafficking in persons can be a varying form and is conducted with the intention of exploitation. It also provides that the exploitation is 'at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.' Therefore, this definition provides a minimum standard which all State Parties must follow so that State Parties can implement this instrument in their own legal framework without the conflict of domestic laws.[567]

Considering international concern on new forms of forced or compulsory labour and trafficking in persons for the purposes of forced or compulsory labour, which may involve sexual exploitation, the Protocol of 2014 to the Forced Labour Convention 1930 (the 2014 Forced Labour Protocol) was established by the ILO.[568] In terms of prevention, protection, and remedy, it was primarily intended to close the implementation gap between the 1930 Forced Labour Convention and the 1957 Abolition of Forced Labour Convention. It also highlighted the demand for a legally binding instrument related to the abolition of forced labour.[569]

Furthermore, it considers the increased number of forced or compulsory labour as modern slavery, namely, people involving trafficking in persons which may contains sexual exploitation. Hence, the Protocol reaffirms the definition of forced or compulsory labour in the 1930 Forced Labour Convention expanding it to trafficking in persons in Article 1(3) as follows;

> 'The definition of forced or compulsory labour contained in the Convention is reaffirmed, and therefore the measures referred to in this Protocol shall include specific action against trafficking in persons for the purposes of forced or compulsory labour.'[570]

Besides, the 2014 Forced Labour Protocol takes more worker or employer-centred approach rather than only concentrating on the punishment for perpetrator. For instance, it requires State Parties to implement the prevention of forced or compulsory labour in their domestic laws, covering 'all workers and all sectors of the economy.', and to offer victims with access to 'appropriate and effective remedies'.[571]

[567] Marjan Wijers, "Purity, Victimhood and Agency: Fifteen Years of the UN Trafficking Protocol," Anti-Trafficking Review, no. 4 (2015): 56–79. See also, Marley S Weiss, "Human Trafficking and Forced Labor: A Primer," ABA Journal of Labor and Employment Law 31, no. 1 (2015): 1–52.
[568] International Labour Organization, Protocol of 2014 to the Forced Labour Convention, 1930, P29, Geneva June 11, 2014.
[569] ibid. The Preamble of the 2014 Forced Labour Protocol.
[570] Article 1 of the 2014 Forced Labour Protocol.
[571] Article 2(c)(i) and Article 4 (1) of the 2014 Forced Labour Protocol.

With regard to regulation on trafficking in the regional human rights instruments, in 2005, the Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe.[572] It was created in accordance with already-existing international instruments, and it enhanced victim protection by repeating the definition of human trafficking included in Article 3(a) of the Palermo Protocol.[573] Significantly, the Convention established monitoring system, which is, the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties, to enhance its implementation.[574]

Besides, the European Court of Human Rights interprets Article 4 of the ECHR prohibiting slavery, servitude and forced labour as the prohibition of human trafficking.[575] In S.M. v Croatia case, it held that the term 'forced or compulsory labour' in Article 4 contains serious exploitation such as forced prostitution which can be related to the specific human trafficking, and any such conduct would constitute slavery or servitude.[576]

Moreover, the EU and the African Union cooperatively established the Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children (the 2006 Action Plan) in 2006, requiring the State Parties to follow the provisions on anti-trafficking in the Palermo Protocol.[577] In Asia, ASEAN adopted the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) in 2015, redefining the definition of trafficking in persons in pursuant to the Palermo Protocol.[578]

3.2.4. Analysis

In the 'comfort women' lawsuits filed in the domestic courts in Japan, the courts considered that the acts conducted by the Imperial Japanese Army against the 'comfort women' would be

[572] Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, May 16, 2005, CETS 197.
[573] In Chapter III of the Council of Europe Convention on Action against Trafficking in Human Beings provides the right to be identified as a victim, to be protected and assisted, to be provided with a recovery and reflection period of at the minimum 30 days, to be admitted a renewable residence permit, and to receive compensation.
[574] Article 36 and 37 of the Council of Europe Convention on Action against Trafficking in Human Beings.
[575] European Court of Human Rights, "Guide on Article 4 of Protocol No. 4 to the European Convention on Human Rights," 2020.
[576] S.M. v Croatia, Judgement, No.60561/14, June 25, 2020., European Court of Human Rights.
[577] Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children, November 22-23, 2006, EX.CL/313 (X) ANNEX IV.
[578] Article 2(a) of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children.

the violation of the 1930 Forced Labour Convention and the 1921 International Convention for the Suppression of the Traffic in Women and Children.

Japan ratified the 1930 Forced Convention in 1932. In Asia-Pacific War Korean Victims case and *Former 'Comfort Women' Living in Japan* case, in particular, the Court demonstrated that the abuses committed against the comfort women were prohibited in the 1930 Convention and Japan would bear state responsibility.[579] With regard to this, in the 1997 Report by the ILO, the Committee of Experts expressed that sexual slavery by the Japanese Imperial Army violated the absolute prohibitions in the 1930 Forced Labour Convention and noted that victims of such abuses should be appropriately paid compensation and be provided disability pension in pursuant to Article 14 and 15 of the Convention.[580]

In the series of the 'comfort women' lawsuits, the courts regularly found that the alleged acts constituted the violation of several anti-human trafficking conventions, namely, the 1904 International Agreement for the suppression of the 'White Slave Traffic, the 1910 International Agreement for the suppression of the White Slave Traffic and the 1921 International Convention for the Suppression of the Traffic in Women and Children.[581] By virtue of Article 8 of the 1910 International Agreement, Japan's admission to the 1910 International Agreement for the suppression of the White Slave Traffic implied ipso facto accession to the 1904 International Agreement for the suppression of the "White Slave Traffic.[582] The 1921 International Convention for the Suppression of the Traffic in Women and Children was also ratified by Japan in 1925.[583] In order for applying the 1921 International Convention in the

[579] Toyko High Court, Asia-Pacific *War Korean Victims' Compensation Claims* Case, Judgement to 2001 (Ne) No. 2631. See also, Toyko High Court, Former 'Comfort Women' Living in Japan, Judgement, Hanreijihou No. 1741, 40.

[580] International Labour Office, Report of the Committee of Experts on the Application of Conventions and Recommendations at 85th Session (Geneva: International Labour Office, 1997). Article 14(1) of the 1930 Forced Labour Convention states that 'forced or compulsory labour of all kinds shall be remunerated in cash at rates not less than those prevailing for similar kinds of work either in the district in which the labour is employed or in the district from which the labour is recruited, whichever may be the higher.' Article 15(1) and (2) reads that '[A]ny laws or regulations relating to workmen's compensation for accidents or sickness' and 'any laws or regulations providing compensation for the dependants of deceased or incapacitated workers' are 'equally applicable to persons from whom forced or compulsory labour is exacted and to voluntary workers.' See also, Sajor, "Military Sexual Slavery: Crimes Against Humanity."

[581] International Agreement for the suppression of the "White Slave Traffic", Paris, 18 May 1904, entry into force on July 18, 1905. See also, International Convention for the Suppression of the White Slave Traffic, Paris, May 4, 1910, entry into force July 18, 1905. International Convention for the Suppression of the Traffic in Women and Children, Geneva, 30 September 1921, entry into force 15 June 1922., See also in general, Jean Allain, "White Slave Traffic in International Law," Journal of Trafficking and Human Exploitation 1, no. 1 (2017): 1–40.

[582] International Agreement for the suppression of the "White Slave Traffic", Paris, 18 May 1904, entry into force on July 18, 1905.

[583] United Nations Treaty Collection.

colonies or territories of the Contracting Parties, it should be declared by the Contracting Parties themselves.[584]

In *Former 'Comfort Women' Living in Japan*, Japan argued that the 1921 International Convention cannot be applied to the then Japanese occupied territory, Korea.[585] However, the High Court mentioned that the Appellant was taken away and forced into the 'comfort women' in China, which was one of the Contracting Parties to the 1921 International Convention. The Court also held that the Appellant was strictly prohibited escaping and fleeing from the comfort station under the control of the Japanese private owner as well as the Imperial Japanese Army. Thus, the Court concluded that these elements constituted the violation of Article 1 of the 1921 International Convention for the Suppression of the Traffic in Women and Children.

Similarly, in Asia-Pacific War Korean Victims case and *Taiwanese Former 'Comfort Women'* case, because the 'comfort women' were kidnapped or taken away by deception or coercion to the South Sea Islands, China, Burma or Japan other than their countries, the Courts considered that such acts constituted the violation of Article 1 of the 1910 International Agreement.[586] While the Courts recognised that the violation of the series of anti-human trafficking agreements and convention might result in emerging state responsibility, it concluded that the 1910 International Agreement and the 1921 International Convention merely provided the punishment obligation and the legislative obligation to the States under Article 2 and 3, and did not stipulated the immediate emergence of state responsibility of a State.[587]

3.3 SEXUAL SLAVERY

[584] ibid.

[585] Toyko High Court, Former 'Comfort Women' Living in Japan, Judgement, Hanreijihou No. 1741, at 40. Article 1 of the 1910 Convention reads that '[w]hoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.'

[586] Toyko High Court, Asia-*Pacific War Korean Victims' Compensation Claims* Case, Judgement to 2001 (Ne) No. 2631. See also, Tokyo High Court, *"Taiwanese Former 'Comfort Women' Compensation Claim for Damages* and Apology Case, Judgement to 2002 (Ne) No. 5850."

[587] Toyko High Court, Asia-*Pacific War Korean Victims' Compensation Claims* Case, Judgement to 2001 (Ne) No. 2631. Toyko High Court, Former 'Comfort Women' Living in Japan, Judgement, Hanreijihou No. 1741, at 40. Tokyo High Court, "*Taiwanese Former 'Comfort Women' Compensation Claim for Damages and Apology* Case, Judgement to 2002 (Ne) No. 5850." Article 2 of the 1921 International Convention for the Suppression of the Traffic in Women and Children states that the ratified countries 'agree to take all measures to discover and prosecute persons who are engaged in the traffic in children of both sexes and who commit offences within the meaning of Article 1 of the Convention of May 4, 1910.' Also, Article 3 reads that the ratified countries 'agree to take the necessary steps to secure punishment of attempts to commit, and, within legal limits, of acts preparatory to the commission of the offences specified in Articles 1 and 2 of the Convention of May 4, 1910.'

Rape and enslavement have been stipulated as crimes against humanity in the Charters of the ICTY and the ICTR.[588] Furthermore, in 2019, Ntaganda was sentenced to 30 years in prison by the ICC for international crimes including rape and sexual slavery, demonstrating the continued development of a vast jurisprudence on sexual slavery in international law.[589] In this section, I will analyse the development of international law in relation to sexual slavery as crimes against humanity, war crimes and genocide in order to identify the applicable substantive law to the 'comfort women'.

3.3.1. Sexual Slavery as Crimes against Humanity

Historically, the widespread and systematic enslavement of persons was considered as a crime against humanity, as can be found in Article 6(c) of the Nuremberg Charter of the IMT and Article 5 of the Tokyo Charter of the IMTFE.

On the other hand, the concern over impunity of offenders committed gender-based crimes emerged in early 1990s, when the ICTY and ICTR prosecuted the sexual offenders committed the crimes during the Bosnian war and the Rwandan genocide. In response to the gross violations committed during the Bosnian war, the UN Security Council established the ICTY in 1993, in order to prosecute 'persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991'.[590] It was followed by the establishment of the ICTR in 1994 where prosecutes 'persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other violations committed in the territory of neighboring states, between 1 January 1994 and 31 December 1994'.[591]

Rape and enslavement have been stipulated as crimes against humanity in Article 5 of the ICTY Statute and Article 3 of the ICTR. While Article 5 of the ICTY is applied to the acts committed

[588] UN Security Council, Security Council resolution 827, Establishment of the International Criminal Tribunal for the Former Yugoslavia, S/RES/827, (May 25, 1993)., Article 5. See also, UN Security Council, Security Council resolution 955, Establishment of the International Criminal Tribunal for Rwanda, S/RES/955 (November 8, 1994), Article 3.
[589] Prosecutor v. Bosco Ntaganda, Sentencing Judgement, Trial Chamber VI, November 7, 2019, ICC-01/04-02/06-2442.
[590] UN Security Council, Security Council resolution 827, Establishment of the International Criminal Tribunal for the Former Yugoslavia, S/RES/827, (May 25, 1993).
[591] UN Security Council, Security Council resolution 955, Establishment of the International Criminal Tribunal for Rwanda, S/RES/955 (November 8, 1994).

in armed conflict directed at any civilians, regardless of their international or domestic nature of the conflict, Article 3 of the ICTR covers the acts committed 'as part of a widespread or systematic attack' against any civilians.'[592]

Kunarac case is significant precedent with regard to the development of prohibition on sexual slavery.[593] In this case, the Tribunal found that the indicia of enslavement can be control over a person's sexual autonomy or forcing a person to provide sexual conducts. Although the Appeals Chamber denied this assertion because the Tribunal considered that such factors would merely evidence of non-consent, Kunarac case notably demonstrated that the enslavement and rape could inseparably connected.[594]

The codification of sexual slavery as a stand-alone crime have emerged in the Rome Statute of the ICC in 1998. The Rome Statute includes, for the first time and contrary to the ad hoc Tribunals' statutes, explicit criminalisation of gender-based crimes as crimes against humanity and war crimes in the Articles 7(1)(g), 8(2)(b)(xxii), and 8(2)(e)(vi).[595] The Court have power to prosecute crimes against humanity committed 'as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack'.[596] The inclusion of these acts reflects essential developments of international criminal courts regarding gender-based crimes as well as the cooperation of nongovernmental organisation such as Women's Caucus for Gender Justice (Women's Caucus) which made effort to include gender-based crimes and mechanisms in the Rome Statute through the Rome Diplomatic Conference.[597]

Sexual slavery is listed in Article 7(1)(c) of the Rome Statute. It may be committed by one or more persons as a part of a common criminal purposes. The Elements of Crimes describes the elements of sexual slavery as follows:

[592] Article 5 of the ICTY Statute. See also, Article 3 of the ICTR Statute.
[593] Prosecutor v. Dragoljub Kunarac et al., no. IT96-23/1-T, Judgement, February 2, 2001. International Criminal Tribunal for the Former Yugoslavia.
[594] ibid., 542-543.
[595] Article 7 and 8 of the Rome Statute. See also, William A. Schabas, The International Criminal Court: A Commentary on the Rome Statute (Oxford University Press, 2010). Claus Kress and Kimberly Prost, "Claus Kress and Kimberly Prost," in *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes,* Article by Article, ed. Otto Triffterer (Hart, 1999).
[596] Article 7 of the Rome Statute.
[597] Women's Caucus for Gender Justice in the International Criminal Court, "Recommendations and Commentary for December 1997 PrepCom on the Establishment of An International Criminal Court" (Women's Caucus for Gender Justice in the International Criminal Court, 1997). See also, Pam Spees, "Women's Advocacy in the Creation of the International Criminal Court: Changing the Landscapes of Justice and Power," The University of Chicago Press 28, no. 4 (2003): 1233–54.

> 1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.
>
> 2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.
>
> 3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
>
> 4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.[598]

The examples contained in paragraph 1 are non-exhaustive. It also states that 'deprivation of liberty' may contain 'exacting forced labour or otherwise reducing a person to a servile status' and this element also encompasses 'trafficking in persons, in particular women and children'.[599] The deprivation of liberty includes a continuing offence and a sexual nature of acts in paragraph 2 was added to the deprivation of victim's autonomy. Paragraph 4 provides mens rea element in relation to the perpetrator, thus, the definition mainly focuses on the perpetrator's action.[600] Furthermore, sexual slavery may contain forced marriage, forced labour or domestic servitude including a forcible act of sexual nature, since sexual slavery involves the enslavement which limits one's autonomy, freedom and power to determine one's sexual activity.[601]

In terms of the recent jurisprudence in the ICC, in Ntaganda case, his participation in the recruitment and enlistment, and his role in creating the conditions that resulted in the sexual abuse of victims, as well as his control over the crimes of rape and sexual slavery were considered by the Court, and Ntaganda convicted of sexual slavery of civilians as a crime against humanity and as a war crime, and sexual slavery of children as a war crime.[602]

The inclusion of sexual slavery as a crime against humanity can also be found in Article 2(g) of the Statute of the Special Court for Sierra Leone (SCSL).[603] The SCSL was established in 2002 in accordance with the Security Council Resolution 1315 to prosecute the perpetrators

[598] The Elements of Crimes, Article 7(1)(g)-2.
[599] Ibid., footnote 18.
[600] Valerie Oosterveld, "Sexual Slavery and the ICC," Michigan Journal of International Law 25, no. 3 (2004): 608.
[601] The United Nations Commission on Human Rights, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, Fiftieth Session Item 6 of the Provisional Agenda," E/CN.4/Sub.2/1998/13," Fiftieth session (June 22, 1998): para 42.
[602] Prosecutor v. Bosco Ntaganda, Trial Chamber VI, ICC-01/04-02/06-2442, November 7, 2019, International Criminal Court.
[603] Article 2 of the Statute of the Special Court for Sierra Leone.

responsible for 'crimes against humanity, war crimes and other serious violation of international humanitarian law, as well as crimes under the relevant Sierra Leonean Law' during the Sierra Leone Civil War.[604]

It is notable that the SCSL found the accused guilty of sexual slavery as crime against humanity and separately forced marriage as an inhumane act in RUF case.[605] Regarding the elements of crimes of sexual slavery, the Court required, in addition to the slavery element that the exercise of any or all of the powers attaching to the right of ownership over a person or persons, the mens rea element which involves the intention of the perpetrator to conduct the act that constitutes sexual slavery or the perpetrator's state of mind that it was likely to occur.[606]

More recently, in Sepur Zarco case in 2016, the Guatemalan Court addressed a case involving sexual slavery committed during the Guatemalan Civil War.[607] A Guatemalan Court convicted two former military officers, Reyes Girón and Valdez Asig, of sexual violence, sexual slavery and domestic slavery against Maya Q'eqchi women who located close to the military outstation in Sepur Zarco.[608] It was the first case that a national court prosecuted sexual slavery as a crime against humanity.

Originally, the Guatemalan government was reluctant to investigate and prosecute the massacre committed by its military during the Guatemalan Civil War because of the amnesty granted by the 1996 National Reconciliation Law.[609] However, the Inter-American Court of Human Rights (IACtHR) eventually issued decision ruling that Guatemala had violated the rights to a fair trial and judicial protection in pursuant to ACHR and ordered to initiate the investigation.[610] In the judgement of the IACtHR, the Court held that the Mayan indigenous people were recognised

[604] UN Security Council, Security Council resolution 1315, Establishment of a Special Court for Sierra Leone, S/RES/1315 (August 14, 2000).
[605] Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao, (Appeal judgment), SCSL-04-15-A, (October 26, 2009), Special Court for Sierra Leone.
[606] Prosecutor v. Sesay, Kallon and Gbao, Trial Chamber I, Judgment, SCSL-04-15-T (March 2, 2009), Special Court for Sierra Leone., para 159. See also, Valerie Oosterveld, "The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments," Cornell International Law Journal 44, no. 1 (2011): 49–74.
[607] Guatemala v Esteelmer Francisco Reyes Girón y Heriberto Valdez Asig, Sentencia, C-01076-2012-00021, (February 27, 2016), Tribunal de Mayor Riesgo. See also, Claudia Martin and Susana SáCouto, "Access to Justice for Victims of Conflict-Related Sexual Violence: Lessons Learned from the Sepur Zarco Case," Journal of International Criminal Justice 18, no. 243–270 (2020).
[608] Guatemala v Esteelmer Francisco Reyes Girón y Heriberto Valdez Asig, Sentencia, C-01076-2012-00021, (February 27, 2016), Tribunal de Mayor Riesgo., 1, 492-493, 507-508.
[609] Claudia Martin and Susana SáCouto, "Access to Justice for Victims of Conflict-Related Sexual Violence Lessons Learned from the Sepur Zarco Case," Journal of International Criminal Justice 18, no. 2 (2020): 243–70.
[610] 'Las Dos Erres' Massacre v. Guatemala, Judgment, (November 24, 2009), Inter-American Court of Human Rights.

as ‘domestic enemy’ by the Guatemalan Army according to ‘Doctrine of National Security’, and they suffered massacres and complete destruction of their communities and culture.[611]

In Sepur Zarco case, sexual slavery as a crime against humanity was charge in pursuant to Article 378 of the Guatemalan Criminal Code which is entitled ‘Crimes against the duties of humanity’. Although the list of specific crimes which the accused was charged with were not stipulated in Article 378, the judges pointed out that the provision refers ‘to international conventions and especially the [1949] Geneva Conventions,’ which ratified by Guatemala in 1952, as well as other international law binding on Guatemala in relation to crimes against humanity.[612] Therefore, Article 378 enabled the Court to prosecute the crimes in pursuant to customary and conventional international law binding on Guatemala at the time the crimes were committed.[613] Consequently, in Sepur Zarco case, gender-based crime was considered to be a distinct crime together with consideration on the gendered domestic labour extracted for cooking and washing for the soldiers.[614]

Besides, the UN and Guatemala jointly established the International Commission Against Impunity in Guatemala to support law enforcement institutions with the investigation of crimes.[615] As a result, it enhanced Guatemala’s capability to prosecute various crimes committed by the Guatemalan Army during the Civil War.

3.3.2. Analysis

The widespread and systematic enslavement of civilians was considered as a crime against humanity, as stated in Article 6(c) of the IMT’s Nuremberg Charter and Article 5 of the IMTFE’s Tokyo Charter.[616] In the recent codifications, the Statute of the ICTY, ICTR and the ICC, gender-based violence are explicitly stipulated as crimes against humanity.[617] Specifically, Article 7(1)(g) of the Rome State include sexual slavery as a crime against humanity.[618] In a

[611] ibid.
[612] Guatemala v Esteelmer Francisco Reyes Girón y Heriberto Valdez Asig, Sentencia, C-01076-2012-00021, (February 27, 2016), Tribunal de Mayor Riesgo.
[613] Martin and SáCouto, “Access to Justice for Victims of Conflict-Related Sexual Violence Lessons Learned from the Sepur Zarco Case.”
[614] Jo-Marie Burt, “Gender Justice in Post-Conflict Guatemala: The Sepur Zarco Sexual Violence and Sexual Slavery,” Critical Studies, no. 4 (2019): 63–96.
[615] ‘Agreement between the United Nations and the State of Guatemala’, 11 December 2016.
[616] Article 6(c) of the Nuremberg Charter. See also, Article 5 of the Tokyo Charter.
[617] Article 5 of the Statute of the ICTY. See also, Article 3 of the Statute of the ICTR., Articles 7(1)(g) of the Rome Statute of the ICC.
[618] Articles 7(1)(g) of the Rome Statute of the ICC.

prosecution of crimes against humanity, the mens rea element, which is the intention of the perpetrator to plan or conduct the acts that constitute crimes against humanity, is often considered, however, the failure to undertake measures in response to the violations can be adequate to create the necessary element.[619]

In the recent case of the ICC, in 2019, Al Hassan was charged with crimes against humanity and war crimes committed in Timbuktu, Mali, from 2012 to 2013, as part of a widespread and systematic attack on the civilians as well as in the context of the internal armed conflict by armed groups Ansar Eddine and Al Qaeda in the Islamic Maghreb (AQIM).[620] Particularly, the Court found that the accused took part in the policy of force marriages that victimised Timbuktu's female civilians during the military control of Ansar Eddine and AQIM over the region and resulted in repeated rapes and sexual enslavement of women and girls.[621]

The Court held that these victims were taken under coercion and threats of use of violence and forced into the service of their 'husband' or several men and suffered the deprivation of liberty and loss of control over their daily lives.[622] The treatment of these victims which placed them in a situation of dependence by holding them captive in a house and remain at their disposal resulted in depriving their all autonomy and that the perpetrators exercised the power attaching to the right of ownership over them.[623] Moreover, these victims were forced to have sexual intercourse with the perpetrators, and these acts were committed as part of a widespread and systematic attack on the civilians, hence, the Court stated that these acts constituted a crime against humanity of sexual slavery.[624]

In comparison, the treatments of the 'comfort women', such as the deprivation of their fundamental rights and freedom as well as the procurement against their own will, constitute original 'slavery' as defined in the 1920 Slavery Convention.[625] Such a fact is also recognised by Japan as stated in the 1993 Kono Statement as well as in its own research report.[626] In

[619] Element 4 of Article 7 (1) (g)-2 of the Elements of Crimes of the ICC. See also, Baron, "Negligence, Mens Rea, and What We Want the Element of Mens Rea to Provide."
[620] Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud., no. ICC-01/12-01/18-767, Pre-Trial Chamber I, May 8, 2020. International Criminal Court.
[621] ibid., para 144-151.
[622] ibid.
[623] ibid.
[624] ibid.
[625] Article 1(1) of the 1926 Slavery Convention. See also,Jean Allain, "The Legal Definition of Slavery into the Twenty-First Century.," McDougall, "Addressing State Responsibility for the Crime of Military Sexual Slavery during the Second World War: Further Attempts for Justice for the 'Comfort Women.'"
[626] Yohei Kono, "Statement by the Chief Cabinet Secretary," Ministry of Foreign Affair of Japan, 4 August 1993, accessed May 6, 2022, https://www.mofa.go.jp/a_o/rp/page25e_000343.html. See also, United Nations

addition to this, the 'comfort women' were forced into sexual intercourse with the Japanese soldiers which resulted in a considerable loss of their all autonomy, including their bodily and sexual autonomy.[627] Additionally, since the Japanese Imperial Army clearly involved in the institutionalisation and management of the comfort stations and the procurement of the 'comfort women' across Asia, the acts include widespread and systematic nature and constitute a crime against humanity of sexual slavery.[628] Consequently, not only the military and political officers at the time who committed the acts, but also the Japanese government bear state responsibility and is obliged to provide reparation for the 'comfort women'.[629]

Apart from that, in December 2022, the ICC issued the new Policy on the Crime of Gender Persecution which encompasses a comprehensive approach to sexual and gender-based crimes that may constitute a crime against humanity of gender-based persecution.[630]

Persecution is listed in Article 7(1)(h) of the Rome Statute as a crime against humanity.[631] The definition is included in Article 7(2)(g) as 'the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.'[632] In this regard, gender persecution can affect anyone because everyone has gender identities, as they have racial and ethnic identities. Gender persecution requires not only the intent to commit the underpinning act, but also discriminatory intent to be proven.[633] Personal motives for rape, for instance, may include sexual pleasure or the opportunity to commit rape.[634]

Commission on Human Rights, "Note Verbale from the Permanent Mission of Japan," E/CN.4/1996/137 (27 March 1996).

[627] The United Nations Commission on Human Rights, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, Fiftieth Session Item 6 of the Provisional Agenda," E/CN.4/Sub.2/1998/13," Fiftieth session (22 June 1998). See also, Carmen M. Argibay, "Sexual Slavery and the 'Comfort Women' of World War II.,"

[628] Yoshimi, Comfort Women: Sexual Slavery in the Japanese Military During World War II. See also, McDougall, "Addressing State Responsibility for the Crime of Military Sexual Slavery during the Second World War: Further Attempts for Justice for the 'Comfort Women.'," Ikeda, "Insight on the Issues: Coercion, Sexual Violence, and Rape Centers in Yu County, Shanxi Province."

[629] McDougall, "Addressing State Responsibility for the Crime of Military Sexual Slavery during the Second World War: Further Attempts for Justice for the 'Comfort Women.'" See also, Grimberg, "Women without a Voice: Japan's Silencing of Its Comfort Women and the Redemptive Future the Tokyo Women's Tribunal Offers to the Gendered and Colonial History of International Law."

[630] The Office of the Prosecutor, "Policy on the Crime of Gender Persecution" (International Criminal Court, The Hague, 2022), accessed February 5, 2023, https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf.

[631] Article 7(1)(h) of the Rome Statute of the ICC.

[632] Article 7(2)(g) of the Rome Statute of the ICC.

[633] The Office of the Prosecutor, "Policy on the Crime of Gender Persecution.," para 45.

[634] ibid., para 49.

As for the discriminatory intent, for example, men and women may be targeted by perpetrators separately through rape because of their gender, and especially, women and girls may be targeted because perpetrators regard them chattel or booty of war, implying that women are inferior to men.[635] Furthermore, specifically in the context of sexual slavery, rape may be committed against women and girls because rape is seen as part of the victims' role by perpetrators.[636]

Given that the aim of the establishment of comfort stations was Japanese soldiers' sexual gratification to prevent mass rape against habitants and deter anti-Japanese sentiment as well as the underlying ideologies of the 'comfort women' such as patriarchal norms and a military culture to views women as being inferior to men, the acts committed against the 'comfort women' by the Japanese Imperial Army can be recognised as a crime against humanity of gender persecution.[637]

3.3.3. Sexual Slavery as War Crimes

The prohibition of slavery in international humanitarian law already existed in the 19th century. It can be found in the Instructions for the Government of Armies of the United States in the Field (the Lieber Code) issued in 1863.[638] It was established during the American Civil War between 1861 and 1865 in the US, codifying international customary laws of war in the US Army regulations on the laws of land warfare and it is commonly referred to a cornerstone of humanitarian law.[639]

The Lieber Code provides the principles of military necessity, the protection of non-combatant and command responsibility.[640] It also stipulates the elimination of cruelty such as the use of torture in extracting confession, the use of poisons in any way and wanton destruction, and in that way, it establishes the guideline of modern war involving the principles of justice and

[635] ibid., para 51.
[636] ibid.
[637] United Nations Commission on Human Rights, "Note Verbale from the Permanent Mission of Japan," E/CN.4/1996/137 (27 March 1996)., See also generally, Prosecutors v. Hirohito Emperor Showa et al., no. PT-2000-1-T, Judgement, December 4, 2001. Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery.
[638] Instructions for the Government of Armies of the United States in the Field by order of the Secretory of War (Lieber Code), 24 April 1963.
[639] Adam Roberts, "Foundational Myths in the Laws of War: The 1863 Lieber Code, and the 1864 Geneva Convention," Melbourne Journal of International Law 20, no. 1 (2019): 1–39.
[640] Roberts.

humanity.[641] The protection of non-combatant is provided in Article 25.[642] Besides, Article 44 states the list of conducts which constitute violation of the laws of land warfare as follows;

> All wanton violence committed against persons in the invaded country, all destruction of property not commanded by the authorized officer, all robbery, all pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense.
>
> A soldier, officer or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior.[643]

Wanton violence was characterised as being different from legal aggression in the Lieber Code, thus, any unnecessary force used by soldiers, officers or private interests against inoffensive citizen and military personnel were considered illegal acts.[644] According to Article 44, all rape were considered as wanton violence and such illegal conducts were prohibited no matter what the circumstances.[645] Therefore, the prohibition of rape in the Lieber Code is different from the custom provided during the Middle Ages since it established the contextual illegality of rape.

Furthermore, the jurisdictional reach of the Lieber Code expanded to the prohibition of slavery. During this period, under the law that slaves were property, not combatants, if armed black men were captured by the military, they were to be treated as criminals.[646] Also, under common law, releasing them was considered a criminal act by destroying enemy property.[647] Lincoln, the then President of the US, sought to challenge these legal notions, as a result, Article 43 of the Lieber's Code 43 included the liberty of every captured person.[648]

With regard to the criminal responsibility, the Lieber Code stipulated the provisions on the prohibition of wanton violence committed by all officers, soldiers and private person and it prescribed that such perpetrators were severely punished.[649] Although these provisions were included in order to carry out a certain strategy during the American Civil War, which was the

[641] Article 16 of the Lieber Code.
[642] Article 25 of the Lieber Code. It states that 'protection of the inoffensive citizen of the hostile country is the rule'.
[643] Article 44 of the Lieber Code.
[644] Article 16 and Article 71 of the Lieber Code.
[645] Article 44 of the Lieber Code.
[646] Matthew J. Mancini, "Francis Lieber, Slavery, and the 'Genesis' of the Laws of War," The Journal of Southern History 77, no. 2 (2011): 325–48.
[647] ibid.
[648] Article 43 of the Lieber Code. See also, Mancini, "Francis Lieber, Slavery, and the 'Genesis' of the Laws of War."
[649] Article 37, 47, 58, and 71 of the Lieber Code.

interruption of the Confederacy economy by releasing the enslaved labour, it substantially strengthened the procedural principle in humanitarian law.[650]

Between the late 19th century to the early 20th century, multi-national instruments which restrict the conduct of was were established, the 1899 Convention with Respect to the Laws and Customs of War on Land (The 1899 Hague Convention) and the 1907 Convention Respecting the Laws and Customs of War on Land (The 1907 Hague Convention).[651] The provisions of these Conventions includes international customary law, thus, it binds even non ratified countries to adopt the standard of interpretations of humanitarian law. Significantly, the Article 1 of both the 1899 Hague Convention and the 1907 Hague Convention establishes as a requirement for an armed force to be accorded belligerents' rights to be commanded by a person responsible for his subordinates. Not only armies, but also militia and volunteer armies were subjected to the laws of war.[652]

In respect of rape or other forms of sexual violence, Article 46 of the Regulations annexed to both Conventions imply the prohibition of sexual violence by using the term, 'family honour'.[653] For instance, Article 46 of the Regulations annexed to the 1907 Hague Conventions states that '[f]amily honour and rights…must be respected'.[654]

After World War I, the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties were created by the Allied Powers in order to investigate crimes committed during the war and to instruct measures of punishments.[655] Especially, the atrocities committed by the Germen Army under Kaiser Wilhelm II included mass rape.[656] The Commission finally found 32 non-exhaustive violations of the laws and customs of war, including rape and abduction of girls and women for the purpose of forced prostitution. However, as for the attempt to prosecute Kaiser Wilhelm II, it was severely condemned by the US and Japanese delegations.[657] Especially, the Japanese delegation argued that the high-

[650] Mancini, "Francis Lieber, Slavery, and the 'Genesis' of the Laws of War."
[651] Hague Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, July 29, 1899. See also, Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, October 18, 1907.
[652] Article 1 of the Hague Convention of 1899 and 1907.
[653] Article 46 of the Hague Convention 1899 and 1907.
[654] Article 46 of the Hague Convention of 1907.
[655] Howard S. Levie, "Report of the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties," in Documents on Prisoners of War (Newport: Naval War College Press, 1979).
[656] William H. Parks, "Command Responsibility For War Crimes," 62 Military Law Leview, no. 1 (1973): 1–12.
[657] Levie, "Report of the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties." See also, Parks, "Command Responsibility For War Crimes."

ranking commanders cannot be accused based on the omissions in preventing or restraining the alleged acts.[658]

Consequently, the prosecution of Kaiser Wilhelm II was failed and merely a few German officials were prosecuted.[659] Although there existed a large number of evidence including mass rape and sexual violence which would constitute war crimes, these acts remained injustice.[660] On the other hand, by the era of World War II, the prohibition of sexual violence expanded its reach to the treatment of POW as well as all situations of war through the establishment of the 1929 Geneva Convention.[661] Article 3 was established on the consideration of women's participation in the national defence and it provides that,

> Prisoners of war are entitled to respect for their persons and honour. Women shall be treated with all consideration due to their sex.
>
> Prisoners retain their full civil capacity.[662]

After the number of the prosecution of war criminals occurred in the end of World War II, the revision of the Geneve Convention was promoted in order to further enhance humanitarian law. As a result, the four Geneva Conventions were emerged in 1949. In Article 27 of the Fourth Geneva Convention, it explicitly stipulates the protection of women as follows,

> Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity
>
> Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.[663]

Hence, all protected persons, in all circumstances, are covered in Article 27, and specifically women are protected from rape, enforced prostitution or other forms of sexual violence.[664] Article 27 extended and supplemented Article 46 of the Annex to the 1907 Hague Convention with regard to the family honour and the family rights of inhabitants in occupied lands as well as civilians captured during the war.[665]

[658] ibid.
[659] ibid.
[660] ibid.
[661] Convention Relative to the Treatment of Prisoners of War (1929). Geneva, July 27, 1929.
[662] Article 3 of the 1929 Geneva Convention.
[663] Article 27 of the 1949 Fourth Geneva Convention.
[664] ibid.
[665] Article 46 of the 1907 Hague Convention.

Common Article 3 of the four Geneva Conventions provides an international minimum standard of protection of people who do not actively participate in hostilities, in the context of non-international armed conflict, containing armed forces' members in certain situations specified in the article.[666] This provision includes 2 crucial protections: humane and non-discriminatory treatment.[667] Article 3(1)(c) prohibits 'outrages upon personal dignity, in particular humiliating' against the above-mentioned people and the term 'personal dignity' implies the prohibition of sexual violence. The four Geneva Conventions enhanced the provisions of protection of non-combatant, particularly focusing on those of women.[668]

In 1977, the Additional Protocol I and Additional Protocol II to the 1949 Geneva Conventions were adopted.[669] Additional Protocol I aimed at reaffirming and enhancing the protection of victims of armed conflicts and supplement to the Geneva Conventions.[670] Therefore, it regulates the conducts of combatants and the treatment of non-combatants 'in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict'.[671] In Article 76 (1) of Additional Protocol I explicitly prohibits rape, enforced prostitution and other forms of violence. It provides that,

> Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.[672]

Additionally, 'outrages upon personal dignity' remains prohibited no matter what circumstances, and whether committed by civilian or by military personnel in pursuant to Article 75 (b), adding enforced prostitution.[673]

Furthermore, Additional Protocol I enhanced the provision of command responsibility by its certain articulation, which can be found in Article 86.[674] Article 86 stipulates that it is necessary

[666] Common Article 3 of the 1949 Four Geneva Conventions.
[667] Theodor Meron, "War Crimes Law Comes of Age," American Journal of International Law 92, no. 3 (1998): 462–68.
[668] Meron.
[669] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3. See also, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609.
[670] Giad Draper, The Implementation and Enforcement of the Geneva Conventions of 1949 and of the Two Additional Protocols of 1978: Recent Developments (Alphen aan den Rijn: Sijthoff & Noordhoff, 1980)., 9-13.
[671] Preamble of the Additional Protocol I.
[672] Article 76 of Additional Protocol I.
[673] Article 75 Additional Protocol I.
[674] Article 86 of the Additional Protocol I.

for the High Contracting Parties to take preventive measure against a breach, and that superiors are not immune from the penal or disciplinary responsibility for the conducts of their subordinates, if, under the circumstances at the time, they knew, or had information they should have been able to conclude, that he was committing or about to commit such an offense, and if they did not prevent or they fail to take all necessary measure to suppress the offence.[675]

Additional Protocol II provides the protection of non-combatants in the context of internal armed conflicts.[676] Remarkably, in Article 4 (Fundamental Guarantee), it provides that,

> 1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.
>
> 2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:
> (a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
> …
>
> (e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
>
> (f) slavery and the slave trade in all their forms; [677]

Hence, it prohibits violence to life and health both physically and mentally, rape, enforced prostitution as well as slavery under any circumstances, and all persons in the context of non-international armed conflicts.[678]

Regarding the Rome Statute of the ICC, Article 8(1) reads that the Court has power to prosecute war crimes committed 'as part of a plan or policy or as part of a large-scale commission.'[679] War crimes can only be committed during armed conflict, whereas crimes against humanity can be committed at any time, including during peacetime or in situations of violence that do not amount to armed conflict. The grave breaches of the 1949 Geneve Conventions are included in war crimes at the ICC.[680]

[675] ibid.
[676] Sylvie Junod, "Additional Protocol II: History and Scope," American University Law Review 1, no. 33 (1983): 29–40.
[677] Article 4 of the Additional Protocol II.
[678] Junod, "Additional Protocol II: History and Scope."
[679] Article 8(1) of the Rome Statute.
[680] Article 8 of the ICC.

sexual slavery is amount to a war crime in accordance with Article 8(2)(b)(xxii), and 8(2)(e)(vi) of the Rome Statute.[681] Article 8(2)(b)(xxii) is applicable in international armed conflict, reflecting the laws and customs. On the other hand, Article 8(2)(e)vi) is applicable in non-international armed conflict reflecting Common Article 3 of the 1949 Geneva Conventions.[682] The element of sexual slavery as a war crime provided in the Elements of Crimes is substantially identical to the one regarding crimes against humanity.[683]

The explicit inclusion of sexual slavery as a war crime and a crime against humanity in the Rome Statute represents that the gross human rights or international humanitarian law violations are amount to international crimes.[684]

The historical empowerment of a body of international law is evident that the protection of individuals during the armed conflicts has evolved, and it has been increasingly accepted that sexual slavery has achieved the jus cogens status.[685] Rule 94 of customary international humanitarian law prohibits any forms of slavery and the slave trade which applicable in international and internal armed conflicts.[686]

3.3.4. Analysis

Under laws of war, rape and forced prostitution were prohibited, as with slavery. Article 46 of the Regulations annexed to the 1907 Hague Convention provides 'the family honour and rights…must be respected.'[687] Furthermore, Article 27 of the 1949 fourth Geneva Convention also incorporates the term 'family honour' and the 'family rights' and separately stipulates the protection of women against rape and enforced prostitution.[688]

The war crimes trials based in part on charges with rape and enforced prostitution were conducted outside of the IMTFE after World War II. For example, General Tomoyuki

[681] ICC Statute, Article 8(2)(b)(xxii) and 8(2)(e)(vi).
[682] ibid.
[683] Article 8 (2) (b) (xxii)-2 and Article 8 (2) (e) (vi)-2 of the Elements of Crimes of the ICC.
[684] Luping, "Investigation and Prosecution of Sexual and Gender-Based Crimes before the International Criminal Court."
[685] The United Nations Commission on Human Rights, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, Fiftieth Session Item 6 of the Provisional Agenda," E/CN.4/Sub.2/1998/13," Fiftieth session (June 22, 1998).
[686] Jean-Marie Henckaerts Louise Doswald-Beck, Customary International Humanitarian Law: Volume II, Practice, Part 2, ed. Jean-Marie Henckaerts and Louise Doswald-Beck (Cambridge University Press, 2005), para 1754.
[687] Article 46 of the Regulations annexed to the 1907 Hague Convention.
[688] Article 27 of the 1949 Fourth Geneva Convention.

Yamashita was charged with conventional war crimes including the failure of his command responsibility.[689] His charges included, in addition to murder and mistreatment of Filipino civilians, the acts of rape committed against numerous Filipino women. The court found that Yamashita failed to and failing to maintain control over his subordinates' acts.[690]

Furthermore, in the Netherlands Temporary Court-Martial at Batavia, a hotel owner, Washio Awochi, was charged with a war crime of enforced prostitution committed against 12 Dutch women.[691] In another war crimes trial in Batavia, Japanese military officials and brothel keepers in the service of the Imperial Japanese Army were punished for war crimes of rape, abduction, forced prostitution and coercion to prostitution committed against around 35 Dutch girls and women.[692]

Rape and enforced prostitution were considered as crimes against women's honour, rather than crimes of violence. In this regard, McDougall points out that this characterisation is 'unfortunate and incorrect.'[693] Nevertheless, according to customary international law, rape and enforced prostitution were prohibited by the time the 'comfort women' system initiated by the Imperial Japanese Army.

In the series of the 'comfort women' lawsuits in Japan, the 'comfort women' attempted to apply Article 46 of the 1907 Hague Convention as a basis of their claims, considering that Article 46 prohibits the acts violate the basic rights of individuals including sexual autonomy.[694]

For instance, in Victims of Sexual Violence in Shanxi Province case, rape and other sexual abuses committed against the Plaintiffs were considered to violate Article 46 of the 1907 Hague Convention. They argued Article 46 covers the deprivation of the victims' sexual as a crime

[689] In re Yamashita, 327 U.S. 1, 39 (1946). See also, Order of General Douglas MacArthur Confirming Death Sentence of General Tomoyuki Yamashita, 6 February 1946., in Friedman., at 1599.
[690] ibid. See also, Askin, "Prosecuting Wartime Rape and Other Gender- Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles.", Bassiouni, Crimes against Humanity in International Criminal Law.
[691] The United Nations War Crime Commission, "Trial of Washio Awochi." See also, Borch, Military Trials of War Crimianals in the Netherlands East Indies 1946-1949.
[692] Netherlands Temporary Courts Martial at Batavia, Judgement No. 72/1947. See also, Jørgensen and Friedmann, "Enforced Prostitution in International Law Through the Prism of the Dutch Temporary Courts Martial at Batavia."
[693] McDougall, "Addressing State Responsibility for the Crime of Military Sexual Slavery during the Second World War: Further Attempts for Justice for the 'Comfort Women.'"
[694] Article 46 of the 1907 Hague Convention. See also, Theodor Meron, "Rape as a Crime Under International Humanitarian Law," The American Journal of International Law 87, no. 3 (1993): 424–28., David S. Mitchell, "The Prohibition of Rape in International Humanitarian Law as a Norm of Jus Cogens: Clarifying the Doctrine," Duke Journal of Comparative & International Law 15, no. 2 (2005): 219–57.

against ‘family honour’ and the abuses committed by the Japanese soldiers against the victims was considerably.[695]

3.3.5. Sexual Slavery as Genocide

In response to the experience of Holocaust during World War II, the Convention on the Prevention and Punishment of the Crimes of Genocide (The Genocide Convention) was adopted by the UN General Assembly in 1948.[696] Significantly, the Genocide Convention, for the first time, criminalised genocide and obliged the States to prosecute and punish the perpetrator.[697]

The Genocide Convention combines three different pillars of international law, namely, international human rights law, international humanitarian law, and international criminal law. As for the international human rights law, the Convention obliges countries to protect their civilians, stem from the provisions of the UDHR, the duties of countries include the protection to foreigners through the notion of state responsibility for injury to aliens as well as their own civilians. Furthermore, from the aspect of international humanitarian law, it prohibits certain acts during wartime to protect persons. Finally, with regard to international criminal law, it proclaims that genocide is an international crime and obligates countries to punish such acts.

Regarding the definition of genocide, the Convention provides in Article II,

> In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) Killing members of the group;
>
> (b) Causing serious bodily or mental harm to members of the group;
>
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) Imposing measures intended to prevent births within the group;
>
> (e) Forcibly transferring children of the group to another group.[698]

[695] Tokyo District Court, Chinese (Sanxi Province) Sexual Violence Victim Apology and Compensation Claim For Damages Case, Judgement, 1998 (Wa) No. 24987.
[696] UN General Assembly, “Convention on the Prevention and Punishment of the Crime of Genocide”, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277.
[697] Article I and III of the Genocide Convention. Although the reference to ‘genocide’ was made in the indictments in the context of crimes against humanity at the Nuremberg Trials held after World War II, however, it was used as a descriptive term rather than legal term because ‘genocide’ was not stipulated as a separate crime in the Nuremberg Charter. See, Hilary Earl, “Prosecuting Genocide before the Genocide Convention: Raphael Lemkin and the Nuremberg Trials, 1945–1949,” Journal of Genocide Research 15, no. 3 (2013): 317–37.
[698] Article II of the Genocide Convention.

Thus, the definition of genocide held in the Convention is specifically narrow, including killing, causing serious bodily or mental harm, inflicting inhuman conditions on them, preventing births, and transferring children to another group and includes the element of 'intent to destroy', which is often hard to prove. Additionally, some scholars argued that Article II(e) addresses slavery and slavery-related crimes by highlighting a crime similar to slavery, or the institutionalisation of genocide constitutes genocide containing serious bodily harm in pursuant to Article II(c).[699] This definition of genocide is reflected in the Article 6 of the Rome Statute.[700] The criteria of legal admissibility of genocide requires 'intent' of the perpetrator to destroy 'a national, ethnical, racial or religious group'.

In the Akayesu case in the ICTR in 1998 is considered 'the first in which an international tribunal was called upon to interpret the definition of genocide as defined in the Convention for the Prevention and Punishment of the Crime of Genocide'.[701] In this case, the ICTR concluded that sexual assaults including rape and other forms of sexual violence was conducted as instruments of genocide, It also stated that the crimes partially established widespread and systematic attack against civilians, constituting crimes against humanity.[702] Additionally, the Chamber indicated that rape was 'a physical invasion of a sexual nature, committed on a person under circumstances which are coercive',[703] and also remarked that sexual assaults that constitute genocide are committed with the specific intention of destroying, 'in whole or in part, a particular group'.[704]

More recently, in Ríos Montt case in 2013, the Tribunal found former Guatemalan director José Efraín Ríos Montt guilty of genocide and crimes against humanity committed during the

[699] Allan D. Cooper, "From Slavery to Genocide: The Fallacy of Debt in Reparations Discourse," Journal of Black Studies 43, no. 2 (2012): 112.
[700] Article 6 of the Rome Statute.
[701] The Prosecutor v. Jean-Paul Akayesu (Trial Judgement), ICTR-96-4-T, September 2, 1998 International Criminal Tribunal for Rwanda. According to Article 2 of the ICRC Statute, genocide is constituted 'any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.
[702] The Prosecutor v. Jean-Paul Akayesu (Trial Judgement), ICTR-96-4-T, September 2, 1998 International Criminal Tribunal for Rwanda., para124.
[703] Ibid., para 688.
[704] Ibid., para 731. The Prosecutor v. Jean-Paul Akayesu (Sentence), ICTR-96-4-T, October 2, 1998, International Criminal Tribunal for Rwanda. See also, The Prosecutor v. Jean-Paul Akayesu (Appeal Judgment), ICTR-96-4-A, June 1, 2001, International Criminal Tribunal for Rwanda.

Guatemalan Civil War.[705] These convictions were based on the commission of murder, torture, forcible displacement and gender-based violence by the accused. The Tribunal remarked that, during the Guatemalan genocide, the systemised rape of Maya women was a weapon of genocide used to achieve breaking emergent Maya communities.[706]

Moreover, the Tribunal considered the execution of acts of barbarism resulting from racism and ordered the establishment of solid reparation to the victims.[707] Thus, in this case, evidence of gender-based crimes was not primary focus but proof that genocide occurred which used in conjunction with other crimes. Although a Constitutional Court later annulled the verdict, the sentence itself was a landmark as Guatemala has been struggling for justice.[708]

The ICJ recognised the customary nature of the Genocide Convention which has been broadly accepted as embodying principles and stated as follows:

> 'The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as 'a crime under international law' […] The first consequence arising from this conception is that the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation. A second consequence is the universal character both of the condemnation of genocide and of the co-operation required 'in order to liberate mankind from such an odious scourge.'[709]

Critically, the ICJ affirmed that the Convention embodied principles that are part of general customary international law. Besides, in the judgement of Bosnia and Herzegovina v. Serbia and Montenegro case, the ICJ also explicitly held that 'the fact that the Convention was intended to confirm obligations that already existed in customary international law.'[710] Namely, the prohibition of genocide is a peremptory norm, hence, States have a duty to prevent and punish it whether or not they have ratified the Genocide Convention.[711]

[705] Sentencia Condenatoria en contra de Jose Efrain Ríos Montt. 2013. Condenado por Genocidio. Guatemala City: F&G Editores.
[706] ibid.
[707] Victoria Sanford, Sofia Duyo Álvarezarenas, and Kathleen Dill, "Sexual Violence as a Weapon during the Guatemalan Genocide," in Women and Genocide: Survivors, Victims, Perpetrators, ed. Elissa Bemporad and Joyce W. Warren, 2018, 34–46.
[708] ibid.
[709] Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion (1951) ICJ Reports, p.23.
[710] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I), 110-111, para. 161.
[711] Schabas, "Genocide and the International Court of Justice: Finally, a Duty to Prevent the Crime of Crimes." See also, Lori Lyman Bruun, "Beyond the 1948 Convention: Emerging Principles of Genocide in Customary International Law," Maryland Journal of International Law and Trade 17, no. 2 (1993): 193–226.

3.3.6. Analysis

It can be argued that the genocidal aspect of the 'comfort women' can be seen in terms of cultural or ethical genocide in the context of colonisation. Although the applicability of the Genocide Conventions itself is limited, the ICJ confirmed that the prohibition of genocide is a peremptory norm of international law, or jus cogens, thus, it is worth examining on genocidal aspect of 'comfort women'.[712]

Furthermore, it can be said that the more insidious motivations and genocidal aspect of the 'comfort women' may be disguised by the aims of colonisation and the establishment of comfort stations across Asia, that is the Imperial Japanese Army's 'efforts' to reduce destructive and wartime rape during and after conflicts. In terms of the criteria of legal admissibility of genocide, 'intent' often restricts the definition and interpretation of genocide in court settings.[713] The intention can be disguised by perpetrators to escape its responsibility by appealing to the exercise of self-defence or by referring to the higher aims of colonization.[714] In addition to this, the courts frequently depend on documented expression of 'intent' in proceedings in relation to genocide because other forms of courtroom proof could be inferential and complicated, which might result in miscarriages of justice.[715]

It can be considered that the insidious motivations within the context of the 'comfort women' could be express as 'cultural genocide'. The mention of the experiences of the 'comfort women' in terms of cultural or ethnic genocide has often referred to the experiences of the Korean 'comfort women'. Through the testimonies of the Korean the 'comfort women' in the Women's International Tribunal 2000, they commonly spoke about their experiences in terms of 'ethnic genocide' and colonial memory, which was distinctly different from the narrative centring on Christianity and the rule of law by the Dutch 'comfort women'.[716]

[712] The applicability of the Genocide Convention is limited according to the non-retroactivity principle of treaties is established in Article 28 of the Vienna Convention on the Law of Treaties 'unless a different intention appears from the treaty or is otherwise established' as well as nullum crimen sine lege (no crime without a law) and nulla poena sine lege (no punishment without a law) principles. The ICJ has confirmed, according to the text of the Genocide Convention and the travaux préparatoires, that 'the substantive provisions of the Convention do not impose upon a State obligations in relation to acts said to have occurred before that State became bound by the Convention.' See, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports, 2015, para. 100.

[713] Tony Barta, "With Intent to Deny: On Colonial Intentions and Genocide Denial," Journal of Genocide Research 10, no. 1 (2008): 111–33.

[714] Barta.

[715] Barta.

[716] Rumi Sakamoto, "The Women's International War Crimes Tribunal on Japan's Military Sexual Slavery: A Legal and Feminist Approach to the 'Comfort Women' Issue," New Zealand Journal of Asian Studies 3, no. 1 (2001): 49–58.

An early researcher of the 'comfort women', Kim Il Myon also asserted that Japan implemented two genocidal policies in the context of colonisation. It was pointed out that such policies are 'extermination' by killing Korean people through sexual slavery, conscription, and drug abuse, and 'eradication of nationality' by coercively incorporating the Japanese language and surnames in the Korean culture, forcing them to worship Shintoism, and pledge allegiance to the Japanese emperor.[717]

In accordance with Raphael Lemkin, cultural genocide is a component of a multi-faceted matter that constitutes an extensive assault conducted in every aspect of a colonised people.[718] The target of cultural genocide is their way of living.[719] It can be completely destroyed through attacks, generally, on their symbols, or cultural or religious activities.[720] For instance, in the case of the Korean 'comfort women', they were commonly forced to change their names to Japanese names and to wear Japanese or Chinese-styled clothing.[721] Moreover, the usage of Korean language was forbidden in general.[722] Some of them experienced a forced surgical procedure permanently sterilised them.[723] Therefore, the Korean 'comfort women' were not only force to have sexual intercourse and abused by sexual attacks, but also were deprived the cultural and ethnic identity in the context of colonisation.

However, there are often difficulties in reaching agreement with the 'intent', included as the definition of genocide, in particular, with regard to cultural genocide in the context of colonisation.[724] It is because, within the context of colonisation, the attack on colonised people tends to be recognised as a function of colonisation rather than genocide itself.[725] It was also

[717] Il Myon Kim, *Tennou No Guntai to Chousenjin Ianfu (Emperor's Army and Korean Comfort Women)* (Tokyo: San-Ichi Shobo, 1976). See also, Bob Tadashi Wakabayashi, "Comfort Women: Beyond Litigious Feminism, Review of Comfort Women: Sexual Slavery in the Japanese Military during World War II by Yoshimi Yoshiaki and Suzanne O'Brien: Japan's Comfort Women: Sexual Slavery and Prostitution during World War II and the US O," Monumenta Nipponica 58, no. 2 (2003): 223–58.
[718] Raphael Lemkin, Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress (Washington D.C.: Carnegie Endowment for International Peace, 1944). See also, Edward C. Luck, "Cultural Genocide and the Protection of Cultural Heritage," J. Paul Getty Trust Occasional Papers in Cultural Heritage Policy, no. 2 (2018): 20.
[719] Lemkin, Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress.
[720] Lemkin. See also, Raphael Lemkin, "Tasmania," Patterns of Prejudice 39, no. 2 (2005): 170–96., Michael A. McDonnell and Anthony Dirk Moses, "Raphael Lemkin as Historian of Genocide in the Americas," Journal of Genocide Research 7, no. 4 (2005): 501–529.
[721] Christine De Matos and Mark E. Caprio, Japan as the Occupier and the Occupied (New York: Palgrave Macmillan, 2015).
[722] De Matos and Caprio.
[723] George Hicks, *The Comfort Women: Japan's Brutal Regime of Enforced Prostitution in the Second World War* (W.W. Norton & Company, 1997): 230.
[724] Leo Kuper, Genocide: Its Political Use in the Twentieth Century (Penguin, 1981): 24.
[725] Kuper.

said that, in the dispute over the wording of the Genocide Convention, many of the forces that make the Convention so ineffective.[726]

Nevertheless, a comprehensive understanding of different genocides including a definition which contains historical perspective has emerged in academic setting. For example, Helen Fein defined genocide as 'genocide is a sustained purposeful action by a perpetrator to physically destroy a collectively directly or indirectly, through the interdiction of the biological and social reproduction of group members, sustained regardless of the surrender or lack of threat offered by the victim.'[727] It was remarked that such actions would result in growing infant mortality and destroying the connection between reproduction and socialisation of future generations in the family, which could be recognised as the expansion of the Genocide Convention.[728] It was also considered that 'a sustained of purposeful actions' would be significantly more realistic than a 'intent' in relation to genocidal outcomes.[729]

In legal term, the genocidal aspect and insidious motivations of the 'comfort women' can be disguised or restrictive in accordance with the legal admissibility of genocide.[730] However, in order to understand the genocidal aspect of the 'comfort women', it is necessary to recognise some realities which might be more influential than individual intentions, namely, the 'comfort women' were deprived not only their liberty and all autonomy, but also their ethical identities and their cultures.

[726] Kuper.
[727] Helen Fein, "Defining Genocide as a Sociological Concept," in Genocide: A Sociological Perspective (London: Sage, 1990), 8–31.
[728] Fein., See also, Frank Chalk and Kurt Jonassohn, The History and Sociology of Genocide (New Haven: Yale University Press, 1990).
[729] Fein, "Defining Genocide as a Sociological Concept."
[730] Barta, "With Intent to Deny: On Colonial Intentions and Genocide Denial."

CHAPTER 4

REPARATIONS FOR THE ‘COMFORT WOMEN’

4.1. REPARATIONS WITHIN THE FRAMEWORK OF STATE RESPONSIBILITY

Under general international law, a state is internationally responsible for a serious breach of an international obligation of the nature of a peremptory norm. Historically, international law recognises that a state liable for an internationally wrongful acts obliged to make full reparations for the damage caused by the act committed against the injured State. This fundamental principle has remained continuous since at least the 1930 League of Nations Codification Conference.[731] The recent guideline of state responsibility can be found in the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) of 2001 of the International Law Commission (ILC).[732]

However, the Japanese government has constantly denied the state responsibility for the 'comfort women' based on the post-war peace treaties and international agreements. Japan has repeatedly argued that any individual claim to compensation against Japan that the 'comfort women' would have had have been waived by those post-war peace treaties and international agreements.[733] On the other hand, in order to express its moral responsibility, the Japanese government established an Asian Women's Fund in 1995 to provide compensation, medical welfare, and to offer a letter of apology.[734] However, it can be criticised that it is not a state compensation, and the projects were implemented without the admission of the state responsibility.

I contend that a serious violation of a peremptory norm, including the prohibition against sexual slavery, cannot be ceased by economic treaties and agreements created to resolve 'property' claims between the states, which does not particularly address human rights violations in relation to the 'comfort women'. Moreover, I argue that, in a broad sense, a peremptory norm

[731] Antal Berkes, "The League of Nations and the International Law of State Responsibility" 22 (2020): 331–62, https://doi.org/10.1163/18719732-12341433. See also, Edwin M. Borchard, "'Responsibility of States ,' at the Hague Codification Conference," The American Journal of International Law 24, no. 3 (1930): 517–40.
[732] International Law Commission, "Articles on the Responsibility of States for Internationally Wrongful Acts 2001" (2001).
[733] Jennifer Kwon, "The Comfort Women Litigation and the San Francisco Treaty: Adopting a Different Principle of Treaty Interpretation," George Washington Law Review 73, no. 3 (2005): 649–67. See also, Kohki Abe, "International Law as Memorial Sites: The 'Comfort Women' Lawsuits Revisited," Korean Journal of International and Comparative Law 1, no. 2 (2013): 166–87, https://doi.org/10.1163/22134484-12340019.
[734] Ministry of Foreign Affair in Japan, "Measures Taken by the Government of Japan on the Issue of 'Comfort Women,'" accessed January 14, 2021, https://www.mofa.go.jp/policy/women/fund/policy.html. The terminology for the Asian Women's Fund's money to former 'comfort women' has modified from the 'comfort money' (irokin) and 'sympathy money' (mimaikin) to 'atonement money' (tsugunaikin) while doing the activities. The terms, 'comfort' and 'sympathy' imply charity, on the other hand, the term, 'atonement', associates a sin or crime for which one desires to express sincere apology. This change has been made in response to the strong criticism from activists inside and outside of Japan. See also, Norma Field, "War and Apology: Japan, Asia, the Fiftieth, and After," East Asia Cultures Critique 5, no. 1 (1997): 1–51.

is a non-negotiable standard, hence, all States have peremptory obligations owed to the entire international community.[735]

4.1.1. Framework of State Responsibility

The fundamental principle that a state is liable for an internationally wrongful acts obliged to make full reparations for the damage caused by the act committed against the injured State has remained continuous since at least the 1930 League of Nations Codification Conference.[736] The state responsibility was already considered as significant international law filed in the first half of the 20th century and it was selected for codification at the 1930 League of Nations Codification Conference.[737] Although it failed to be officially adopted, the Draft Articles on the Responsibility of States produced at the Conference stated, in Article 7, that 'International responsibility is incurred by a State if damage is sustained by a foreigner as a result of an act or omission on the part of the executive power incompatible with the international obligations of the State.'[738] Additionally, Article 8 read as follows:

> 'International responsibility is incurred by a State if damage is sustained by a foreigner as a result of acts or omissions of its officials, acting within the limits of their authority, when such acts or omissions contravene the international obligations of the State.
>
> International responsibility is likewise incurred by a State if damage is sustained by a foreigner as a result of unauthorised acts of its officials performed under cover of their official character, if the acts contravene the international obligations of the State.'[739]

Therefore, a government and its officials could be liable for violations of international law caused by their acts under the government's command or with its authorization, or even by unauthorised acts of its officials. Furthermore, according to Oppenheim, a state responsibility for violations of international law endured by the state, namely the government actions, would

[735] Article 53 of the 1969 Vienna Convention on the Law of Treaties states, under the heading of the 'Treaties conflicting with a peremptory norm of general international law ("jus cogens")', that 'A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. United Nations, "Vienna Convention on the Law of Treaties", May 23, 1969, United Nations, Treaty Series, vol. 1155, 331.
[736] Berkes, "The League of Nations and the International Law of State Responsibility." See also, Borchard, "'Responsibility of States ,' at the Hague Codification Conference."
[737] James Crawford, The International Law Commi*ssion's Articles on State Responsibility: Introduction , Text* and Commentaries (Camb: Cambridge University Press, 2002).
[738] Hunter, Miller, "The Hague Codification Conference," The American Journal of International Law 24, 4 (1930): 674-693.
[739] ibid.

constitute an 'international delinquency'.[740] It would include 'any injury to another State committed by the Head or Government of a State in violation of an international legal duty' as well as those committed by 'officials or other individuals commanded or authorised by the Head or Government.'[741] Moreover, it was also said that a State might be responsible for 'certain unauthorised injurious acts of [States'] agents, of their subjects, and even of such aliens as a re for the time living within their territory'.[742] In addition to this, a state was regarded responsible 'to pay compensation for injurious acts of its officials which, although unauthorised, fall within the normal scope of their duties.'[743]

The recent guideline of state responsibility can be found in the 2001 ARSIWA.[744] The ILC was originally established in 1947 by the UN General Assembly in order to progressively advance international law and its codification.[745] The drafting process of the ARSIWA has contested and it took four decades until the 2001 ARSIWA was adopted by the ILC.[746] Nowadays, the 2001 ARSIWA has been widely referred in various ICJ cases as well as international and reginal human rights cases.[747]

Regarding the 2001 ARSIWA, Article 1 provides that 'Every internationally wrongful act of a State entails the international responsibility of that State'.[748] Additionally, Article 2 reads as follows:

> There is an internationally wrongful act of a State when conduct consisting of an action or omission:
>
> (a) is attributable to the State under international law; and
>
> (b) constitutes a breach of an international obligation of the State.[749]

Therefore, state responsibility would arise from a breach of international obligation stem from an action as well as form omission.

[740] Lassa Francis Lawrence Oppenheim, "International Law: A Treatise," in Disputes, War and Nationality, Vol. II, ed. Hersch Lauterpacht, 7th ed. (London: Longsmans Green, 1952): para 151.
[741] ibid.
[742] ibid: para 149.
[743] ibid: para 150.
[744] International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts 2001.
[745] Evans, "State Responsibility, the Legal Order and the Development of Legal Norms for Victims."
[746] ibid.
[747] ibid.
[748] International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts 2001.
[749] ibid.

Additionally, in relation to the attribution of conduct to a state, the 2001 ARSIWA provides, in Article 4, that:

> 1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.
>
> 2. An organ includes any person or entity which has that status in accordance with the internal law of the State.[750]

Article 5 also states that even 'the conduct of a person or entity' which is not fallen within Article 4 can be recognised as the conduct of the State, if that person or entity 'is empowered by the law of that State to exercise elements of the governmental authority' and acting in that capacity in the particular instance'.[751] Therefore, the acts of an organ of the state would be regarded as a conduct of that state in international law, regardless of the category of authority, i.e. whether the agency is associated with legislative, executive or judicial. Besides, actions of a person or entity authorised to exercise elements of government power without belonging to the official bodies of the State can also be classified as actions attributed to the State.

Furthermore, Article 31(1) states that 'The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.' The injury contains any material and non-material damage entailed by the State's internationally wrongful act, reflecting customary international law.[752]

This principle of state responsibility and compensation has been said that it was extended from the principle of respondeat superior to the law of nations, making States responsible for the acts conducted by their military army.[753] Thus, such states' duty is also applicable to the crimes committed against the 'comfort women' by the Imperial Japanese Army, which was clearly part of the administration of Japan.[754]

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[750] International Law Commission, Article 4.
[751] ibid., Article 5.
[752] ibid., Article 31 (1), (2).
[753] Frits Kalshoven, "Article 3 of the Convention (IV) Concerning the Laws and Custom of War on Land, Signed at The Hague, 18 October 1907," in Remembering What We Have Tried to Forget (ASCENT, 1997), 16–30. See also, Kalshoven, "Individual Right to Claim Damages under Article 3 of Hague Convention IV: Supplementary Expert Opinion, 1999." The Principle of respondeat superior is a legal doctrine that the superior is liable for the acts of their agents.
[754] International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts 2001, Article 4. The institutions and agencies of states, the officials and employees are, in general, referred to collectively organs of the state. The approach of Article 4 of the ILC Articles in 2001 was originally included in the Draft Articles of the ILC in 1927, reflected in the Draft Articles of the ILC in 1973.

Furthermore, the foundation of the principle that a state liable for an internationally wrongful acts obliged to make full reparations for the damage caused by the act committed against the injured State can also be seen in Chorzów Factory case in 1927.[755] In this case, the Permanent Court of International Justice (PCIJ), the predecessor of the ICJ remarked that:

> It is a principle of international law and even a general conception of law that any breach of an engagement involves an obligation to make reparation in an adequate form . . . reparation is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself.[756]

This principle established in Chorzów Factory case has been broadly referred and reaffirmed in several cases in the ICJ, containing the Gabcikovo-Nagymaros Project case, the Case Concerning Armed Activities on the Territory of the Congo and in international and regional human rights courts.[757]

The 2001 ARSIWA also provides the components which constitute reparation such as guarantees of non-repetition in Article 30, restitution in Article 34, compensation in Article 36 and satisfaction in Article 37.[758] The official commentaries to Article 33 under the heading of 'Scope of international obligations set out in this part' states as follows:

> When an obligation of reparation exists towards a State, reparation does not necessarily accrue to that State's benefit. For instance, a State's responsibility for the breach of an obligation under a treaty concerning the protection of human rights may exist towards all the other parties to the treaty, but the individuals concerned should be regarded as the ultimate beneficiaries and in that sense as the holders of the relevant rights.[759]

Hence, it can be said that the 2001 ARSIWA demonstrated that state responsibility might arise from the violation of certain fundamental human rights through treaty provisions in human rights law. It also referred to the individual rights regarding human rights violations, though it only appeared in the Commentaries and not in the actual Articles.[760]

[755] Factory at Chorzów Case (Germany v. Poland), Jurisdiction, 1927, PCIJ, Ser. A, No. 9. See also, Evans, "State Responsibility, the Legal Order and the Development of Legal Norms for Victims.", M. Cherif Bassiouni, "International Recognition of Victims' Rights," Human Rights Law Review 6, no. 2 (2006): 203–79.
[756] Factory at Chorzów Case (Germany v. Poland), Jurisdiction, 1927, PCIJ, Ser. A, No. 9, p. 21.
[757] Gabcikovo-Nagymaros Project Case (Hungary v. Slovakia), ICJ Report 7 (1997): para 149-152. See also, Armed Activities on the Territory of the Congo Case (Democratic Republic of the Congo v. Uganda), ICJ Report 82 (2005): para 259.
[758] International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts 2001.
[759] International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, 2001, Article 33, para 3.
[760] Evans, "State Responsibility, the Legal Order and the Development of Legal Norms for Victims."

4.1.2. Japan's Defence to State Responsibility

Japan has been denying its state responsibility regarding Korean and Taiwanese 'comfort women', arguing that state responsibility arises from internationally wrongful act committed against a non-national.[761] As for the status of Taiwan, after the Sio-Japanese War (a conflict between China and Japan) between 1894 and 1895, Japan expanded its control over Taiwan in 1895 in pursuant to Article 2 of the Simonoseki Treaty.[762] As a result, Taiwan has remained a colony of Japan until the end of World War II.[763] Relatively, Korea was dominated by Japan according to the Treaty of Annexation in 1910, resulting in ceding sovereign power of the Korean Emperor at the time, and thus, Korea was annexed to Japan during World War II.[764] Japan, therefore, has denied the liability for the damage caused to Korean and Taiwan 'comfort women', arguing that state responsibility applicable within the inter-state relationships, excluding the colonial and occupied territories.

Apart from that, the Japanese government also opposed to the state responsibility for the 'comfort women' according to the post-war peace treaties and international agreements between Japan and other states concerned following the end of World War II.[765] It has stated that any individual claim against Japan that the 'comfort women' would have had have been fully waived by those peace treaties and international agreements.[766] The relevant articles of such treaties and agreements applied by Japan for the defence to state responsibility will be described below.

4.1.2.1. San Francisco Peace Treaty

[761] Prosecutors v. Hirohito Emperor Showa et al., no. PT-2000-1-T, Judgement, December 4, 2001. Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery., para 911.
[762] Simonoseki Treaty is a treaty signed on April 17, 1895, between the Empire of Japan and Qing China after the First Sino-Japanese War from 1894 to 1895. See also, Mark R. Peattie, "Japanese Attitudes Toward Colonialism, 1895-1945," in The Japanese Colonial Empire, 1895-1945, ed. Ramon H. Myers and Mark R. Peattie (Princeton University Press, 2020), 80–127., Edward I-te Chen, "The Attempt to Integrate the Empire: Legal Perspectives," in The Japanese Colonial Empire, 1895-1945, ed. Ramon H. Myers and Mark R. Peattie (Princeton University Press, 2020), 240–74.
[763] Samuel Pao-San Ho, "Colonialism and Development: Korea, Taiwan, and Kwantung," in The Japanese Colonial Empire, 1895-1945, ed. Ramon H. Myers and Mark R. Peattie (Princeton University Press, 2020), 347–98.
[764] Pao-San Ho.
[765] McDougall, "Addressing State Responsibility for the Crime of Military Sexual Slavery during the Second World War: Further Attempts for Justice for the 'Comfort Women.'"
[766] Kwon, "The Comfort Women Litigation and the San Francisco Treaty: Adopting a Different Principle of Treaty Interpretation." See also, Abe, "International Law as Memorial Sites: The 'Comfort Women' Lawsuits Revisited."

In 1951, on behalf of the UN, the San Francisco Peace Treaty ended the legal status of war between Japan and the Allied Powers, and provided redress for hostile acts of Japan up to and including World War II. In this regard, China was not invited because there was a disagreement over whether the Republic of China (in Taiwan) or the People's Republic of China (in mainland) constituted the Chinese people.[767] Likewise, Korea was also not invited because of a similar disagreement about whether South or North Korea constituted the Korean people.[768] Article 14 of the San Francisco Peace Treaty provide:

> 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 during the course of the prosecution of the war, and claims of the Allied Powers for . . . military costs of occupation.
>
> Article 22
>
> If in the opinion of any Party to the present Treaty there had arisen a dispute concerning the interpretation or execution of the treaty, which is not settled by reference to a special claims tribunal or by any agreed means, the dispute shall, at the request of any party thereto, be referred for decision to the International Court of Justice . . .[769]

4.1.2.2. Treaty of Peace Between Japan and Taiwan

The Treaty of Peace Between the Republic of China and Japan (Treaty of Taipei) was signed on 28 April 1952 to officially end the Second Sino-Japanese War from 1937 and 1945. It became invalid in 1972 when China normalized trade. Article 11 stipulates that it will govern any conflicts between the Republic of China and Japan:

> Unless otherwise provided for in the present Treaty and the documents supplementary thereto, any problem arising between the Republic of China and Japan as a result of the

[767] Prosecutors v. Hirohito Emperor Showa et al., no. PT-2000-1-T, Judgement, December 4, 2001. Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery., para 1024. See also, Rana Mitter, *China's Good War : How World War II Is Shaping a New Nationalism* (Cambridge: Belknap Press: An Imprint of Harvard University Press, 2020).

[768] Dong-Choon Kim, "The San Francisco Peace Treaty and 'Korea,'" in The San Francisco System and Its Legacies, ed. Kimie Hara (London: Routledge, 2014), 97–115, https://doi.org/10.2307/j.ctvckq5fp.7.

[769] Conference for the Conclusion and Signature of the Treaty of Peace with Japan (1951: San Francisco, Calif.). Conference for the Conclusion and Signature of the Treaty of Peace with Japan, San Francisco, California, September 4-8, 1951: Record of Proceedings. Washington, D.C.: Department of State, 1951. Australia, Canada, Ceylon (modern-day Sri Lanka), France, Indonesia, the Netherlands, New Zealand, Pakistan, the Philippines, the United Kingdom, and the United States were considered as Allied Powers under the definition established by Article 23 of the San Francisco Peace Treaty. It was not signed by Portugal, which ruled East Timor as a colonial state.

existence of a state of war shall be settled in accordance with the relevant provisions of the San Francisco Treaty.[770]

4.1.2.3. Treaty of Peace and Friendship Between Japan and China

A formal peace treaty between Japan and the People's Republic of China was not signed at the time of the 1951 San Francisco Peace Treaty. Instead, a 'Joint Communique' was agreed to improve the relationship on September 29, 1972. Article 5 provides that that the People's Republic of China 'renounces its demand for war reparations.'[771]

4.1.2.4. Settlement Between Japan and Netherlands

The entitlements of Netherlands nationals are specifically addressed in the 1956 Stikker-Yoshida Agreement.[772] It states that;

> Article I
>
> For the purpose of expressing sympathy and regret for the suffering inflicted during the Second World War by agencies of the government of Japan upon Netherlands nationals, the government of Japan shall voluntarily tender as a solatium the amount of Pounds Sterling equivalent to US$10,000,000 to the Government of the Kingdom of the Netherlands on behalf of those Netherlands nationals.
>
> Article III
>
> The Government of the Kingdom of the Netherlands confirms that neither itself nor any Netherlands nationals will raise against the government of Japan any claim concerning the sufferings inflicted during the Second World War by agencies of the government of Japan upon Netherlands nationals.[773]

[770] "Treaty of Peace between the Republic of China and Japan Signed at Taipei, 28 April 1952, Entered into Force, 5 August 1952," accessed April 5, 2021, http://www.taiwandocuments.org/taipei01.htm.
[771] Joint Communique of the Government of Japan and the Government of the People's Republic of China (September 29, 1972: Beijing, China), Article 5. See also, Minister for Foreign Affairs of Japan, "Joint Communique of the Government of Japan and the Government of the People's Republic of China," accessed July 12, 2021, https://www.mofa.go.jp/region/asia-paci/china/joint72.html.
[772] The Protocol between the Government of Japan and the Government of the Kingdom of the Netherlands Relating to Settlement of the Problem Concerning Certain Types of Private Claims of Netherlands Nationals, (3rd March, 1956: Tokyo, Japan), accessed April 8, 2021, https://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/A-S38(2)-135.pdf. See also, Naoko Kumagai, "Japan's Reconciliation in the Issue of Comfort Women with the Netherlands and South Korea: Pragmatic and Reflective Reconciliation," Journal of European Integration History 25, no. 1 (2019): 51–64.
[773] ibid.

It was argued that Article III could prevent the Netherlands from bringing any more claims against Japan for the actions of Japan as well as its agents that affected Netherlands nationals during World War II.

4.1.2.5. Reparations Agreement Between Japan and the Philippines

The Reparations Agreement between Japan and the Philippines was established on 9th May in 1956 based on the San Francisco Peace Treaty, which provides the relevant part as follows:

> Article 1
>
> Japan, by way of reparations, shall supply the Republic of the Philippines with the services of the Japanese people and the products of Japan in the form of capital goods, the total value of which will be . . . equivalent to five hundred and fifty million United States dollars…
>
> Article 12
>
> 2. Any dispute between the two Governments concerning the interpretation and implementation of the present Agreement shall be settled primarily through diplomatic channels…[774]

It should be noted that a language expressly waiving individual claims was not contained in this Agreement. The San Francisco Agreement was ratified by the Philippines in July 1956 after they had come to this Reparation Agreement.[775]

4.1.2.6. Agreements 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 (the 1965 Agreements between Japan and the Republic of Korea) was signed together with the Treaty on Basic

[774] Reparations Agreement between Japan and the Philippines, (May 9, 1956: Manila, the Philippines). See also, Claude A. Buss, "Japan and the Philippines," Far Eastern Survey 20, no. 12 (1951): 115. See also, Yoshikawa Youko, "Tihi Baishou Koushou No Tateyakusya Tachi (Key Players in the Negotiation Process of the Reparations Agreement between Japan and the Philippines)," Kokusaiseiji 75 (1983): 130–49., Minister for Foreign Affairs of Japan, "Rekishi Mondai Q&A Kanren Shiryou: Nihon No Gutaiteki Sengoshori (Baisho, Zaisan, Seikyuuken Mondai) (Q&A on Historical Issues and Related Materials: Concrete Post-War Procedures of Japan (Compensation, Property and Claims Issues))," accessed May 3, 2021, https://www.mofa.go.jp/mofaj/a_o/rp/page22_002287.html.

[775] The Philippines participated in the San Francisco Peace Treaty negotiations in September 1951 and signed the Peace Treaty, but decided not to ratify it until the reparations issue was settled.

Relations between Japan and the Republic of Korea.[776] The Republic of Korea was not invited to the San Francisco Peace Conference in 1951, but the independence of Korea was already established in pursuant to Article 2 of the San Francisco Peace Treaty.[777] The 1965 Agreements between Japan and the Republic of Korea was signed to normalise the diplomatic relations between the two countries. Furthermore, Japan provided South Korea with economic assistance of 500 million dollars, which was said that completely and finally settled the claims between the two countries and their nationals.[778]

Article II of the 1965 Agreements between Japan and the Republic of Korea reads as follows:

> (1) The Contracting parties confirm that [the] problem concerning property, rights and interests of the two contracting Parties and their nationals . . . and concerning claims between the Contracting Parties and their nationals, including those provided for in Article IV, paragraph (a) of the [San Francisco] Treaty of Peace with Japan . . . is settled completely and finally.
>
> (2) [N]o contention shall be made with respect to the measures on property, rights and interests of either contracting Party and its nationals which are within the jurisdiction of the other contracting party on the date of the signing of the present Agreement, or with respect to any claims of either Contracting Party and its nationals against the other contracting Party and its nationals arising from the causes which occurred on or before the said date.[779]

In this regard, the question will be whether the peace treaties and bilateral agreements between Japan and the other state concerned could extinguish the right to reparations of the 'comfort women' who were forced into sexual slavery by the Imperial Japanese Army during World War II. In this point, I argue that the Japan's defence to state responsibility as such should be challenged based on jus cogens norms and obligations erga omnes. In the next section, I will examine the state responsibility of Japan, opposing to the Japan's defence mentioned in this section.

[776] Front Matter, "Japan and Korea: Agreement on Settlement of Problems in Regard to Property and Claims and Economic Cooperation (Reparations) Treaties and Agreements," in International Legal Materials (Cambridge University Press, 1966), 111–17.
[777] Conference for the Conclusion and Signature of the Treaty of Peace with Japan (1951: San Francisco, Calif.). Conference for the Conclusion and Signature of the Treaty of Peace with Japan, San Francisco, California, September 4-8, 1951: Record of Proceedings. Washington, D.C.: Department of State, 1951. Article 2 states that 'Japan, recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet…'
[778] Tamada, "The Japan-South Korea Comfort Women Agreement: Unfortunate Fate of a Non-Legally Binding Agreement." See also, Haruyuki Yamate, "Nikkan Seikyuuken Kyoutei 2jyou No Kaisyaku Ni Tsuite (Regarding) the Interpretation of Article 2 of the Japan-Korea Claims Agreement)," Kyouto Gakuen Hougaku 2・3 (2007): 37–128.
[779] Front Matter, "Japan and Korea: Agreement on Settlement of Problems in Regard to Property and Claims and Economic Cooperation (Reparations) Treaties and Agreements."

4.1.3. State Responsibility of Japan

Firstly, it can be argued that the principle of state responsibility also applies to occupied territories, though Japan has been denying its state responsibility regarding Korean and Taiwanese 'comfort women'.[780] For instance, the advisory opinion of the ICJ on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory accepted the right to reparation of people in the occupied territory.[781] The ICJ remarked that Israel, the occupying Power, must terminate to build the separation wall located in the Occupied Palestinian Territory, in order to end the violation of the international obligations.[782] Moreover, the ICJ stated that Israel must repeal or render ineffective all legislative and regulatory acts as well as the associated regime adopted to construct the wall.[783] Besides, it also held that Israel must provide full reparation for damage caused to not only natural persons, but also legal persons.[784]

Furthermore, at the time crimes were allegedly committed against the 'comfort women', customary international law prohibitions already contained slavery, which would be applied in pursuant to the laws of war, or separately as substantive offenses, regardless of the nature or even the existence of an armed conflict.[785] In accordance with the 1998 McDougall Report, regardless of the geographical situation of Korea and Taiwan at the time the offenses were committed, Japan violated customary international law. Therefore, the same standards must be followed for Korean and Taiwanese 'comfort women'. The same principle would hold true for the Japanese 'comfort women'.[786]

Besides, it should be underlined that harm done to any civilian population including habitants in occupied territories and colonies of an offending state is contained in the fundamental doctrine of crimes against humanity. For instance, the International Commission of Inquiry on Darfur to the UN Secretary-General remarked that the interpretation of the international agreements on state responsibility involves the acceptance and acknowledgement of the right

[780] Prosecutors v. Hirohito Emperor Showa et al., no. PT-2000-1-T, Judgement, December 4, 2001. Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery., para 911.
[781] International Court of Justice, Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (9th July 2004).
[782] ibid.
[783] ibid.
[784] ibid.
[785] McDougall, "Addressing State Responsibility for the Crime of Military Sexual Slavery during the Second World War: Further Attempts for Justice for the 'Comfort Women.'"
[786] The United Nations Commission on Human Rights, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, Fiftieth Session Item 6 of the Provisional Agenda, E/CN.4/Sub.2/1998/13."

to an effective remedy.[787] The International Commission of Inquiry on Darfur also referred to a letter of a former president of the ICTY addressed to the UN Secretary-General in 2000 which provided that:

> The emergence of human rights under international law has altered the traditional State Responsibility concept, which focused on the State as the medium of compensation. The integration of human rights into State Responsibility has removed the procedural limitation that victims of war could seek compensation only through their own government, and has extended the right to compensation to both nationals and aliens. There is a strong tendency towards providing compensation not only to State but also to individuals based on State Responsibility. Moreover, there is a clear trend in international law to recognise a right to compensation in the victim to recover from the individual who caused his or her injury.[788]

Therefore, it can be said that there emerged the idea that a legal consequence of the concept of state responsibility can be the States' duty to provide effective remedy and reparation to victims of the human rights violations.[789] This is also affirmed in the 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (the 2005 Basic Principles and Guidelines), as it will be discussed in the later sections.

Regarding the post-war peace treaties and international agreements which Japan have relied on as the defence to the state responsibility for the 'comfort women', such Japan's defence can be contested on the ground which will be explained as follows. Firstly, a serious violation of jus cogens norm, containing the prohibition against sexual slavery, cannot be extinguished by inter-state peace treaties and bilateral treaties with economic nature, which does not specifically address human rights issues of the 'comfort women'.[790] Moreover, treaties against jus cogens principles are invalid. Article 53 of the 1969 Vienna Convention on the Law of Treaties

[787] United Nations Security Council, "Report of the International Commission of Inquiry on Darfur to the Secretary-General Pursuant to Security Council Resolution 1564 (2004) of 18 September 2004," vol. S/2005/60, 2005: para 597, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/WPS S 2005 60.pdf.

[788] United Nations Security Council, "Annex: Letter Dated 12 October 2000 from the President of the International Tribunal for the Former Yugoslavia Addressed to the Secretary-General," vol. S/2000/106, n.d., https://doi.org/10.1017/S0020818300010833.

[789] Dinah Shelton, Remedies in International Human Rights Law, Remedies in International Human Rights Law, 3rd ed. (Oxford University Press, 2015). See also, Theo Van Boven, "Victims' Rights to a Remedy and Reparation: The New United Nations Principles and Guidelines," in Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making, ed. Carla Ferstman, Mariana Goetz, and Alan Stephens (Brill, 2009), 17–40.

[790] Tong, "Reparations for Former Comfort Women of World War II." See also, McDougall, "Addressing State Responsibility for the Crime of Military Sexual Slavery during the Second World War: Further Attempts for Justice for the 'Comfort Women.'"

provides that 'a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.'[791]

In the Barcelona Traction case, the ICJ held that '[T]he obligations of a State towards the international … are the concern of all States … they are obligations erga omnes. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination.'[792]

Furthermore, it should be noted that human rights treaties independently bind Japan to completely carry out the investigation of historical wrongs and offer effective reparation to the 'comfort women'. Nowadays, the principle of non-application of statute of limitations for serious human rights violations has been becoming more and more present in human rights treaties, which unquestionably provide protection for the 'comfort women'. According to the ICJ, 'an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation.'[793] Therefore, it can be argued that Japan is expected to interpret the peace treaties and international agreements in accordance with international human rights treaties in order to prevent unjustifiably depriving the 'comfort women' of the procedural right to seek justice and fundamental human rights such as those rights established in the ICCPR.[794]

Hence, the right of the 'comfort women' to reparation cannot be said to have been extinguished by the peace treaties and the bilateral agreements. Japan must accept consequences of a treaty provision conflicting with the right to reparation of the 'comfort women' as sexual slavery and provide full reparation to them.

4.1.4. Asian Women's Fund

[791] United Nations, "Vienna Convention on the Law of Treaties", 23 May 1969, United Nations, Treaty Series, vol. 1155, Article 53.
[792] International Court of Justice (ICJ), Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain); Second Phase (5 February 1970).
[793] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, Advisory Opinion of 21 June 1971, ICJ Rep. 1971, para. 31.
[794] UN General Assembly, "International Covenant on Civil and Political Rights", December 16, 1966, United Nations, Treaty Series, vol. 999, 171. Article 2(3) reads that the Contracting Parties undertakes Each State Party to the present Covenant undertakes 'To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity'.

The Japanese government has continuously denied the state responsibility for the 'comfort women', and it has repeatedly stated that the Japanese government has accepted the moral responsibility. In order to express its 'deep and sincere feelings of remorse and apology' for the 'comfort women', the Japanese government allocated the budget to establish the Asian Women's Fund in 1995.[795] The Asian Women's Fund aimed at providing 'tsugunai kin (atonement money) to each 'comfort women' and/or medical welfare, and delivering the then Japanese Prime Minister's 'Letter of Apology', and collecting and organising materials related to the 'comfort women' and using them as lessons from history.[796]

4.1.4.1. Establishment of Asian Women's Fund

In 1994, the then Japanese Prime Minister Tomiishi Murayama who was the leader of the three ruling parties (the Liberal Democratic Party, the Social Democrats, and the New Party Sakigake) of the coalition government issued a statement on the 50th anniversary of the end of the war.[797] In this statement, the then Prime Minister Murayama expressed his 'deep and sincere feelings of remorse and apology' regarding the 'comfort women', and clarified that he would explore 'the way of wide-ranging public participation' in order to share this feeling with its nationals.[798] This statement led to launching a 'Issues 50 years after the War' Project aimed

[795] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*. See also, "Sengo Gojyu Nen Ni Mukete No Murayama Tomiichi Naikakusouridaujin No Danwa (Statement by Prime Minister Tomiichi Murayama on the 50th Anniversary of the End of the War)."
[796] Ministry of Foreign Affair in Japan, "Measures Taken by the Government of Japan on the Issue of 'Comfort Women,'" accessed January 14, 2021, https://www.mofa.go.jp/policy/women/fund/policy.html. The terminology for the Asian Women's Fund's money to former 'comfort women' has modified from the 'comfort money' (irokin) and 'sympathy money' (mimaikin) to 'atonement money' (tsugunaikin) while doing the activities. The terms, 'comfort' and 'sympathy' imply charity, on the other hand, the term, 'atonement', associates a sin or crime for which one desires to express sincere apology. This change has been made in response to the strong criticism from activists inside and outside of Japan. See also, Field, "War and Apology: Japan, Asia, the Fiftieth, and After."
[797] The Murayama administration, which was established on June 30, 1994, recognized the post-war processes as an important issue. Self-governing unions, the supporter of the Socialist Party to which Murayama belonged, submitted a petition to the Japanese Diet demanding a resolution acknowledging Japan's responsibility for the war, thus, the Murayama administration has been already in an environment where it could address the post-war processes since the beginning. In addition, the Murayama administration established the 'Office for Gender Equality' in the Prime Minister's Office to clarify its stance on tackling women's human rights issues. These matters supported the administration to assess 'comfort women'.
[798] "Sengo Gojyu Nen Ni Mukete No Murayama Tomiichi Naikakusouridaujin No Danwa (Statement by Prime Minister Tomiichi Murayama on the 50th Anniversary of the End of the War)," 31st August 1994, accessed 5 August 2022, https://www.awf.or.jp/6/statement-04.html.

at implementing policies related to the post-war compensations under the Murayama administration, thus, the Subcommittee on the 'comfort women' was formed.[799]

The policy of the Japanese government until then has been that the individual right to claim compensation for damage caused during World War II was ceased according to the San Francisco Peace Treaty and other related bilateral agreements.[800] Contrary to this, the ruling party strongly opposed that the individual compensation should be provided since it considered the issues concerning the post-war processes as a priority issue of the administration.[801] This controversy was moderated with a view to an expeditious resolution of the issue, as a result, a first report was issued by the Subcommittee.[802]

The Subcommittee on the 'comfort women' pointed out that the Japanese government must take moral responsibility for the 'comfort women' and express the Japanese people's atonement for the 'comfort women', based on feelings of apology and remorse.[803] Precisely, the Subcommittee suggested the Japanese government of establishing and assisting a public participation type fund and providing as much support as possible, containing activities aimed at enlightening, preventing, responding to, and resolving issues related to the honour and dignity of women.[804] Since a fund was intended to be mainly donation by the private sector, there emerged a question whether the adequate fund-raising could be secured and, furthermore, how much amount of money would be paid for the 'comfort women'.

Consequently, in 1995, 480 million yen was allocated as a subsidy for the expenses of the establishment of the Fund. It was followed by forming the project details of the 'Josei no tame no Asia Heiwa Kokumin Kikin (Asian Women's Fund)' and the announcement of the

[799] Subcommittee on the Issue of Military Comfort Women, "First Report of the Subcommittee on the Issue of Military Comfort Women for the Ruling Party's 50th Anniversary Project," 7th December 1994, accessed June 6, 2022,
https://www.awf.or.jp/6/statement-05.html.
[800] McDougall, "Addressing State Responsibility for the Crime of Military Sexual Slavery during the Second World War: Further Attempts for Justice for the 'Comfort Women.'" See also, Ikeda, "Insight on the Issues: Coercion, Sexual Violence, and Rape Centers in Yu County, Shanxi Province", Soh, "The Korean " Comfort Women ": Movement for Redress." As assessed in Chapter 2, the Japanese government as a defendant in the series of 'comfort women' lawsuit filed in Japan, it has repeatedly been argued that the individual right to claim compensations for damage caused during World War II was ceased according to the post-war agreements.
[801] Yuki Toda, "Ajia Josei Kikin Ni Kansuru Ichi Kenkyu (A Study on the Asian Women's Fund)," Ritsumeikan Housei Ronsyu 8 (2010): 261–95.
[802] ibid.
[803] Subcommittee on the Issue of Military Comfort Women, "First Report of the Subcommittee on the Issue of Military Comfort Women for the Ruling Party's 50th Anniversary Project."
[804] ibid.

government's initiatives.[805] Whereas the Fund is known as Asian Women's Fund in English, it is generally called the Kokumin Kikin, which means National or People's Fund in Japan. It is said that the purpose of its Japanese name is that the Japanese government intended to concretely emphasise that the source of the atonement is from the Japanese in their role as public figures that constitute the Japanese nationals, and not from a civilian or a private person.[806]

The Japanese government's initiatives included: 1) Calling for donations from a wide range of Japanese people in order to provide 2 million yen to each 'comfort women' as 'irokin (comfort money)' or 'mimaikin (sympathy money)', 2) Providing the government's funding of 830 million yen in total to medical welfare projects, (the amount of which vary between 1.2 and 3 million yen reflecting the living costs in the countries concerned); 3) Expressing remorse and apology from a state by offering the then Prime Minister Murayama's letter of apology, 4) collecting and organising materials related to the 'comfort women' and using them as lessons from history.[807]

Furthermore, the payment criteria were determined by the board of the Asian Women's Fund.[808] As for the payment, only the 'comfort women' who were still alive as of 19th of July in 1995 (the date the Asian Women's Fund was established) were eligible.[809] While the criteria respected the country's accreditation, the accreditation process required a confirmation from the Asian Women's Fund.[810] Regarding the 'comfort women' who passed away on or after 19th of July in 1995, their spouses and children were able to make requests, respecting the will of the deceased with regard to the recognition, but in that case, medical and welfare services were not supposed to be implemented.[811] Additionally, the application to receive the payment had to

[805] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*.
[806] Yasuaki Onuma, "Hajimeni," in Ianfu Mondai to Ajia Jyosei Kikin, ed. Yasuaki Onuma, Haruki Wada, and Shimomura Mitsuko (Tokyo: Toshindo, 1998), 3.
[807] Ministry of Foreign Affair in Japan, "Measures Taken by the Government of Japan on the Issue of 'Comfort Women,'" accessed January 14, 2021, https://www.mofa.go.jp/policy/women/fund/policy.html. The terminology for the Asian Women's Fund's money to former 'comfort women' has modified from the 'comfort money' (irokin) and 'sympathy money' (mimaikin) to 'atonement money' (tsugunaikin) while doing the activities. The terms, 'comfort' and 'sympathy' imply charity, on the other hand, the term, 'atonement', associates a sin or crime for which one desires to express sincere apology. This change has been made in response to the strong criticism from activists inside and outside of Japan. See also, Field, "War and Apology: Japan, Asia, the Fiftieth, and After."
[808] The board members consisted of 6 or more and 12 or less. It was designated as a department that decided and executed important matters relating to the organization's business, however, the detailed deliberations on the substantial Fund's activities were entrusted to a subordinate organization, the Management Council. Note that the minutes of the Management Council have not been open to the public.
[809] Toda, "Ajia Josei Kikin Ni Kansuru Ichi Kenkyu (A Study on the Asian Women's Fund)."
[810] ibid.
[811] Toda.

be completed within five years from the date of publication, and the payment method was determined depending on the country/region concerned.[812]

The Asian Women's Fund first started out with projects in the Philippines, South Korea and Taiwan. Operations commenced in the Philippines in August 1996, in South Korea in January 1997, and in Taiwan in May 1997.[813] Regarding the donation, around 565 million yen was collected between 1995 and 2002.[814] Apart from this, the project of the Asian Women's Fund was also implemented in the Netherlands from 1998.[815] In this case, the Asian Women's Fund implemented the medical welfare support project and offered the then Prime Minister's apology letter.[816] The medical and welfare assistance reached 79 people.[817] Additionally, in accordance with the policy of the Indonesian government, instead of conducting projects directly targeting the 'comfort women', the Japanese government' funding were used to support the 'Social Welfare Promotion for the Elderly' project targeting the elderly in general, including the 'comfort women', at the request of the Indonesian government.[818]

Although the then Japanese government primary launched the project of Asian Women's Fund as the public-private joint activities to express the 'deep and sincere feelings of remorse and apology', it can be argued that it was substantially not a state compensation, resulting in obscuring state responsibility of Japan.[819] The Japanese government has merely reiterated that it provided the assistance to the projects of the Asian Women's Fund to take moral responsibility, implying that the issues on the legal compensation have been solved through the post-war treaties or bilateral agreements.[820]

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[812] ibid.
[813] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*.
[814] Momoyo Ise, "'Ajia Jyosei Kikin' No Keiken to Shinrai Kouchiku Heno Michi (The Experience of the Asian Women's Fund and the Road to Building Trust)," Seisaku Opinion, no. 26 (2015): 1–7.
[815] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*.
[816] ibid.
[817] ibid.
[818] ibid. See also, Ministry of Social Affairs Republic of Indonesia, "Report on the Handle of Ex Jugun Ianfu by Indonesia Government in Cooperation with Asian Women's Fund (AWF)," 2006, https://www.awf.or.jp/pdf/196e.pdf. The Indonesian Government requested the development of the welfare facilities for the elderly, rather than projects benefiting each former 'comfort women', because: 1) it was considered that it would be extremely difficult to identify former 'comfort women'; 2) it was important to protect the honour of the former 'comfort women' and their families; and 3) reparations from Japan to Indonesia had already been settled by the agreements such as the Peace Treaty.
[819] "Sengo Gojyu Nen Ni Mukete No Murayama Tomiichi Naikakusouridaujin No Danwa (Statement by Prime Minister Tomiichi Murayama on the 50th Anniversary of the End of the War)."
[820] "An NGO Shadow Report to CEDAW, Japan: The 'Comfort Women' Issue, 44th Session" (New York, 2009): 2, https://www2.ohchr.org/english/bodies/cedaw/docs/ngos/comfortwomen_japan_cedaw44.pdf.

Furthermore, it was apparent that the Japanese government did not even have a firm conviction and sincere attitude towards the projects of the Asian Women's Fund. For example, Momoyo Ise, former Managing Director and Executive Director of the Asian Women's Fund, stated that she heard one of the government members said 'the 'comfort women' is addressed by the Asian Women's Fund, which is a private organisation…' at a Japanese government committee meeting.[821] In this regard, I contend that the Japanese government appeared to be using the public to escape from its responsibility.

Moreover, when the funeral of Kim Hak-soon, the first 'comfort woman' who testified her experiences in public and brought the first 'comfort women' lawsuit before the domestic court of Japan, was held in South Korea, Ise requested the Japanese embassy to attend the funeral, however, no one responded to the request.[822] It can be argued that it symbolised how the Japanese government did not take the 'comfort women' seriously and sincerely, while claiming to take moral responsibility. The Japanese government should have shown an effort to gain an international understanding of the fundamental idea and meaning of the project of the Asian Women's Fund.

In the following sections, I will analyse the details of the activities of Asian Women's Fund in different countries and regions in order to identify the issues in relations to this project.

4.1.4.2. Project in the Philippines (August 1996 - August 2001)

The Philippines was the first country that the Asian Women's Fund started its project in 1996. In the beginning, the project was not favourably accepted by the 'comfort women' since they have constantly demanded reparations from the Japanese government itself.[823] Furthermore, the controversy over the Asian Women's Fund resulted in splitting the 'comfort women' into two groups, which was LILA-Pilipina and Malaya Lolas.[824]

[821] Ise, "'Ajia Jyosei Kikin' No Keiken to Shinrai Kouchiku Heno Michi (The Experience of the Asian Women's Fund and the Road to Building Trust)": 3.
[822] ibid.
[823] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*. See also, University of the Philippines, "Voices and Visions: Symbolic Convergences in the Oral Narratives of Filipino Comfort Women," Humanities Diliman 12, no. 2 (2015): 79–109.
[824] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*. See also, Maria Rosa Henson, *Comfort Woman: A Filipina's Story of Prostitution and Slavery* Under the Japanese Military (Maryland: Rowman & Littlefield, 2016).

The LILA-Pilipina was formed out of the 1992 task force on the Filipino 'comfort women' established by feminist NGOs.[825] The LILA-Pilipina initially refused the activities of the Asian Women's Fund, however, there emerged some 'comfort women' in the group who wished to receive tsugunai kin (atonement money). Among them, there was Maria Rosa Henson, the first Filipino 'comfort woman' who came in public, who positively changed her mind after meeting with representatives of the Asian Women's Fund.[826]

The LILA-Pilipina has applied a dualistic approach to the project of the Asian Women's Fund, namely, whilst its official purpose was to seek reparations from the Japanese government itself, it also became an intermediator between the Filipino 'comfort women' and the Philippine government which has supported and cooperated with the Asian Women's Fund.[827] In Contrast, the Malaya Lolas was created by the 'comfort women' who determined not to receive tsugunai kin (atonement money) form the Asian Women's Fund.[828] Although there eventually appeared some members who came to accept the Fund's offer in the Malaya Lolas, it maintained the campaign to demand that the Japanese government admit the state responsibility and officially apologise to the 'comfort women'.[829]

In order to be eligible to receive what the Fund provided, it was necessary to be approved that the applicant has been the 'comfort women' by the Philippine government's Department of Justice. Hence, the 'comfort women' were required to provide evidence showing that they have been imprisoned in a certain place for a certain period of time, providing descriptions of the situation at the time, a photograph, a certificate signed by a person in charge of the location of the military installation, a birth certificate and marriage certificate.[830] Therefore, victims of one or two rapes/group rapes were not included.[831]

Consequently, a letter of apology from then Japanese Prime Minister and tsugunai kin (atonement money) were provided only for the 'comfort women' who had been approved by the Philippine Ministry of Justice.[832] In addition to this, through the Philippine Ministry of

[825] Asian Women's Human Rights Council and Bayan, *Primer on Filipino "Comfort Women": Qestions and* Answers (Quezon, 1992).
[826] Henson, *Comfort Woman: A Filipina's Story of Prostitution and Slavery Under the Japanese Military*.
[827] Sarah C. Soh, "Japan's National/Asian Women's Fund for 'Comfort Women,'" Pacific Affairs 76, no. 2 (2003): 209–33.
[828] Women's Active Museum on War and Peace, Nihon*gun "Ianfu" Mondai Subete No Gimon Ni Kotaemasu*.
[829] ibid.
[830] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*.
[831] Women's Active Museum on War and Peace, *Nihongun "Ianfu" Mondai Subete No Gimon Ni Kotaemasu*.
[832] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*.

Social Welfare and Development, the medical welfare support project equivalent to 1.2 million yen per person was implemented by allocating the Japanese government's budget.[833]

It can be argued that, although there were indeed some positive responses to the project of the Asian Women's Fund, the struggle of the 'comfort women' for justice seemed to continue after the end of the activities of the Fund. After Maria Rosa Henson received the tsugunai kin (atonement money), a reporter at a press conference asked her if she would forgive Japan. She stated, 'I can't forget, but if I don't forgive, God won't forgive me'.[834] In addition to this, some other 'comfort women' who received tsugnai kin (atonement money) stated that they accepted the 'Private Fund' because they have been suffering from financial problems but they would continue to seek justice from the Japanese government and legal compensation.[835]

4.1.4.3. Project in South Korea (January 1997 – May 2002)

In South Korea, the Korean Council urged the 'comfort women' to refuse the offer from Asian Women's Fund.[836] It criticised that the Japanese government tried to avoid its legal responsibility by offering tsugunai kin (atonement money), medical and welfare and a letter of apology through the Asian Women's Fund and described the project as a deceptive measure.[837] This movement influenced the attitudes of the media as well as the South Korean government, resulting in its rejection of the Fund.[838]

Nevertheless, 7 'comfort women' accepted the activities of the Asian Women's Fund in 1997, however, they were criticised by the public, resulted in splitting the 'comfort women' into supporters and opponents.[839] In this regard, some opponents described the project of the Asian Women's Fund as 'second rape' as Japan tempted the 'comfort women' with money.[840] However, it can be argued that the criticism against the 'comfort women' who have received

[833] ibid.
[834] Ise, "'Ajia Jyosei Kikin' No Keiken to Shinrai Kouchiku Heno Michi (The Experience of the Asian Women's Fund and the Road to Building Trust)." See also, Henson, *Comfort Woman: A Filipina's Story of Prostitutio*n and Slavery Under the Japanese Military.
[835] Soh, "Japan's National/Asian Women's Fund for 'Comfort Women.'" See also, University of the Philippines, "Voices and Visions: Symbolic Convergences in the Oral Narratives of Filipino Comfort Women."
[836] Digital Museum: The Comfort Women Issue and the Aian Women's Fund, "Projects by Country or Region: South Korea," accessed May 5, 2022, https://www.awf.or.jp/e3/korea.html.
[837] Soh, "Japan's National/Asian Women's Fund for 'Comfort Women.'"
[838] Ise, "'Ajia Jyosei Kikin' No Keiken to Shinrai Kouchiku Heno Michi (The Experience of the Asian Women's Fund and the Road to Building Trust)."
[839] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*.
[840] Soh, "Japan's National/Asian Women's Fund for 'Comfort Women.'"

the offer itself can be secondary damage for the recipients. More to say, in the first place, the contents of the project which resulted in such situation is an essential problem.

Criticism from the Asian Women's Fund by NGOs supporting the 'comfort women' and the South Korean government caused the Fund to temporarily suspend its work.[841] Meanwhile, the Korean Council launched a fund-raising campaign in 1997 in cooperation with the new Kim Dae Jung South Korean administration.[842] In the following year, the administration announced that it will pay 31.5 million won (around 26,000 US dollars) for 140 'comfort women' to support their livelihoods.[843] The recipients of the payment was limited to those who have signed a pledge not to receive the offer from the Asian Women's Fund, and the 7 recipients of the Fund's offer were excluded.[844]

In this regard, the director of the Asian Women's Fund sent a letter to the then Korean President Kim Dae Jung requesting that the tsugunai kin (atonement money) from the Fund and the South Korean government's livelihood support money would be different in nature, therefore, should be compatible.[845] However, the South Korean government did not accept the request, contrary, in 1998, it requested the Asian Women's Fund to terminate to implement its project.[846]

Consequently, the Asian Women's Fund decided to switch the content of the project to a collective medical care, and started negotiations with the South Korean side.[847] However, it eventually became clear that this project modification was not also accepted by the South Korean government.[848] While lacking the cooperation of the South Korean side, the Asian Women's Fund made efforts to offer its resources to as many South Korean applicants as possible in an undisclosed manner until the project's conclusion in 2002.[849] Regarding the number of recipients, it was announced that there was a total of 285 people in the Philippines, Taiwan, and South Korea, but have not yet announced by country.[850] This is because, in

[841] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*.
[842] ibid.
[843] ibid.
[844] ibid.
[845] ibid. See also, Haruki Wada, Ianfu Mondai No Kaiketsu No Tameni (To Solve the Comfort Women Issue) (Toyko: Heibonsha, 2015).
[846] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*.
[847] Wada, Ianfu Mondai No Kaiketsu No Tameni (To Solve the Comfort Women Issue).
[848] ibid.
[849] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*. See also, Soh, "Japan's National/Asian Women's Fund for 'Comfort Women.'"
[850] Ise, "'Ajia Jyosei Kikin' No Keiken to Shinrai Kouchiku Heno Michi (The Experience of the Asian Women's Fund and the Road to Building Trust)."

particular, the criticism of the Asian Women's Fund in South Korea was considerably strong, and the Fund considered that the announcement of the number of recipients by country might cause negative impact on the recipients.[851]

4.1.4.4. Project in Taiwan (May 1997 – May 2002)

In Taiwan, the negotiation regarding the project of the Asian Women's Fund was proceeded with the NGO Taipei Women's Rescue Foundation (TWRF), a group aiming at rescuing women and children from sexual assault as well as supporting the 'comfort women'.[852] Similar to the South Korean case, the project of the Asian Women's Fund was not favourably accepted by the TWRF, because it has been seeking reparation from the Japanese government together with the admission of legal responsibility.[853]

Initially, the Asian Women's Fund planned to offer 2 million yen as tsugunai kin (atonement money), 3 million yen for medical and welfare support per person, and an apology letter from the then Japanese Prime Minister for the 'comfort women'.[854] However, after the project began, the TWRF, which opposed the Fund's project, held an auction in order to distribute around 500,000 yuan (around 2 million yen equivalent to the tsugunai kin from the Fund) to each 'comfort women'.[855] In relation to this, the TWRF asked the recipients of the money from the auction to submit a pledge not to receive the offer from the Asian Women's Fund.[856] Furthermore, in 1998, members of the Taiwanese Legislative Yuan convinced the authorities to provide 500,000 yuan (approximately 2 million yen) to each 'comfort women' as advance money for the tsugunai kin (atonement money) from the Asian Women's Fund.[857]

On the other hand, some 'comfort women' wished to receive the offer from the Asian Women's Fund.[858] One significant aspect of the case in Taiwan, compared to the case in South Korean, was that the Asian Women's Fund cooperated with Rai Hau-min, a lawyer in Taiwan, who was

[851] ibid.
[852] Digital Museum: The Comfort Women Issue and the Aian Women's Fund, "Projects by Country or Region: Taiwan," accessed May 8, 2022, https://www.awf.or.jp/e3/taiwan.html. See also, Wada, Ianfu Mondai No Kaiketsu No Tameni (To Solve the Comfort Women Issue).
[853] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*. See also, Wada, Ianfu Mondai No Kaiketsu No Tameni (To Solve the Comfort Women Issue).
[854] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*.
[855] ibid.
[856] ibid.
[857] Asian Peace National Fund for Women.
[858] Soh, "Japan's National/Asian Women's Fund for 'Comfort Women.'"

willing to support the 'comfort women' in applying for the Fund's offer, if it would be the wish of them.[859] Rai Hau-min emphasised the public and humanitarian nature of the project of the Asian Women's Fund and criticised the political disputes which prevent the project from the implementation.[860] Accordingly, the Fund was able to advertise its project in the local newspapers each year until the project's conclusion in 2002 and it was said the Fund was able to deliver the project to a certain number of the 'comfort women'.[861]

4.1.4.5. Project in Indonesia (March 1997- March 2007)

In Indonesia, the Japanese government established 69 elderly welfare facilities across the country through the Asian Women's Fund.[862] However, it can be argued that it was not directed to the 'comfort women' and they were not able to receive any compensation nor an apology letter from the then Japanese Prime Minister, due to the application of state-to-state approach in relation to the realisation of the project.[863]

In Indonesia, the 'comfort women' has received significant attention since 1992, when the first Indonesian 'comfort women' came in public and her experiences were published in newspaper.[864] It was followed by the fact-finding survey of the damage during the period of Japanese occupation and the official registration of the 'comfort women' by the Lembage Butun Hukum (LBH), Legal Aid Institute, which started form 1993.[865] In the LBH In Yogyakarta branch, it was said that over 250 women out of 17,000 victims of war who have registered were the 'comfort women'.[866] Furthermore, in 1995, the Communication Forum of the Ex-Indonesian Heiho (Indonesians served as auxiliary forces under Japanese occupation) also started to register the 'comfort women'.[867] In response to the call, over 20,000 women came to register.[868] There was a limitation to the amount of research that could be conducted

[859] Asian Women's Fund, "Shougen: Rai Hau-Min (Testimony: Rai Hau-Min)" (2006), https://www.awf.or.jp/pdf/k0020.pdf.
[860] Asian Women's Fund.
[861] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribu*nal).
[862] Digital Museum: The Comfort Women Issue and the Aian Women's Fund, "Projects by Country or Region: Indonesia," accessed August 11, 2022, https://www.awf.or.jp/e3/indonesia-00.html.
[863] Women's Active Museum on War and Peace, *Nihongun "Ianfu" Mondai Subete No Gimon Ni Kotaemasu.*
[864] McGregor, "Emotions and Activism for Former So-Called 'Comfort Women' of the Japanese Occupation of the Netherlands East Indies."
[865] McGregor.
[866] Women's Active Museum on War and Peace, *Nihongun "Ianfu" Mondai Subete No Gimon Ni Kotaemasu.*
[867] McGregor, "Emotions and Activism for Former So-Called 'Comfort Women' of the Japanese Occupation of the Netherlands East Indies."
[868] Women's Active Museum on War and Peace, *Nihongun "Ianfu" Mondai Subete No Gimon Ni Kotaemasu.*

by a single private organisation to investigate the actual damages of each cases, however, neither the Indonesian government nor the Japanese government provided any support.[869]

Besides, in 1996, the Indonesian Minister of Social Affairs Ign Soewignjo demonstrated that the Indonesian government's position regarding the 'comfort women' would be as follows:

> 'For the people of Indonesia, the comfort women issue represents a dark, unforgettable side of their history, and it is important that every effort be made to learn from this lesson to prevent such an occurrence from ever happening again. The Government empathizes with the endless psychological and physical trauma and pain of the women who were victims of violence. However, the Government, representing a people imbued with the Panchasila philosophy, does not intend to introduce measures or policies strongly coloured by emotion, and will work hard to protect the honour of women who were victimized and their families. The Government of Indonesia is of the understanding that the question of war reparations, material restitution and the right to claim from the Japanese Government was settled by two accords signed in 1958 -- the Treaty of Peace Between Japan and the Republic of Indonesia, and the Reparations Agreement Between Japan and the Republic of Indonesia…'[870]

Hence, the Indonesian government preferred to receive support in developing the welfare facility for the elderly instead of receiving individual support, because it considered that the investigation and recognition of the huge number of the 'comfort women' would be difficult. In addition to this, the Indonesian government considered that it was necessary to secure the dignity of the 'comfort women' and their families from an Islamic perspective.[871]

Consequently, the project to establish the welfare facilities began in March 1997, with the Ministry of Social Affairs of Indonesia acting as the executing agency.[872] The Japanese government provided a total of 380 million yen in total for 10 years through the Asian Women's Fund.[873] With regard to the facilities, it was confirmed by the Indonesian Minister of Social Affairs that the priority to reside will be given to the 'comfort women' who have come forward, and that the facilities will be developed intensively in areas where many 'comfort women' seemed to have existed.[874] However, regarding the idea of giving priority to the 'comfort

[869] ibid.
[870] Digital Museum: The Comfort Women Issue and the Aian Women's Fund, "Projects by Country or Region: Indonesia."
[871] Ise, "'Ajia Jyosei Kikin' No Keiken to Shinrai Kouchiku Heno Michi (The Experience of the Asian Women's Fund and the Road to Building Trust)."
[872] Aiko Kurasawa, "Indonesia Ni Okeru Ianfu Cyousa Houkoku (Report on the 'Comfort Women' in Indonesia)," Ianfu Chousa Houkoku, 1999, https://www.awf.or.jp/pdf/0062_p089_105.pdf.
[873] Digital Museum: The Comfort Women Issue and the Aian Women's Fund, "Projects by Country or Region: Indonesia." See also, Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*.
[874] Directorate General of Welfare and Welfare Ministry of Social Affairs Indonesia, "Indonesia Seifu to Ajia Jyosei Kikin Ni Yoru Ianfu Mondai Heno Torikumi No Houkoku (Report on Efforts to Address the Comfort

women', it should be said that it was obvious that there would be some psychological reluctance to come forward. Not only that, but practically, it was argued that Indonesian women who attended to the 2000 Women's International Tribunal didn't receive any information about the facilities.[875]

4.1.4.6. Project in the Netherlands (July 1998 – July 2001)

In Netherlands, instead of providing tsugunai kin (atonement money) which generated from the donation, the medical welfare support project was individually implemented. Additionally, the copies of a letter written by the then Prime Minister of Japan Hashimoto and sent to the then Prime Minister of Netherlands Willem Kok were also provided for the 'comfort women'.[876]

Originally, regarding the preparation of the Asian Women's Fund project in the Netherlands, the Dutch government urged the Japanese side to discuss directly with the parties concerned, as the Dutch government considered that the reparations, assets, and claims related to World War II had already been settled by the 1951 San Francisco Peace Treaty.[877] This response was not due to the opposition to the project, but rather to the fact that the Dutch government had no grounds to support it under the 1951 San Francisco Peace Treaty.

Therefore, the discussion has firstly begun between the Ministry of Foreign Affairs of Japan and the Stichting Japanse Ereschulden (JES), the Foundation of Japanese Honorary Debts in English.[878] The JES was a group established in 1990 in Netherlands which has been acting on behalf of the former Dutch POW and civilian internees who suffered when Southeast Asia was

Women Issue through Cooperation between the Indonesian Government and the Asian Women's Fund)," 2006, https://www.awf.or.jp/pdf/196.pdf. See also, Asian Peace National Fund for Women, Ianfu Mondai to Ajia Jyosei *Kikin ("Comfort Women" and Asian Women's Tribunal)*.

[875] Women's Active Museum on War and Peace, *Nihongun "Ianfu" Mondai Subete No Gimon Ni Kotaemasu*. See also, "An NGO Shadow Report to CEDAW, Japan: The 'Comfort Women' Issue, 44th Session."

[876] Digital Museum: The Comfort Women Issue and the Aian Women's Fund, "Projects by Country or Region: Netherlands," accessed 12 May, 2021., https://www.awf.or.jp/e3/netherlands-00.html. See also, Asian Peace National Fund for Women, Ianfu Mondai to Ajia Jyosei Kik*in ("Comfort Women" and Asian Women's Tribunal)*.

[877] In relation to waiver of claims under Article 14(b) of the Peace Treaty, 'Protocol between the Government of Japan and the Government of the Kingdom of the Netherlands Relating to Settlement of the Problem Concerning Certain Types of Private Claims of Netherlands Nationals' was concluded on 13th of March in 1956, based on the Yoshida-Sticker letter. Accordingly, Japan decided to voluntarily provide 10 million US dollars with Dutch government as 'sympathy money' in order to express regret for the pain inflicted on the Dutch people. See also, Tadashi Ikeda, "Kikitori Oranda Jigyo: Jyunbi to Igi (Hearing on the Project in Netherlands: Preparation and Significance)" (2006).

[878] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*.

occupied by the Japanese Imperial Army during World War II. The JES has continuously insisted that the Japanese government should pay compensations for such victims.[879] Through the discussions, the JES expressed that it would refuse to accept the activities of the Asian Women's Fund if it was asked, because the JES has constantly demanded the Japanese government to pay general war reparations and it seemed that the project of the Fund was irrelevant to the JES.[880] On the other hand, the JES acknowledged that there existed some 'comfort women' who wished to accept the project by the Asian Women's Fund, thus, it was necessary to set up a new organisation with legal personality and independent powers that could work with other bodies of the Dutch side.[881]

Consequently, the Project Implementation Committee in the Netherlands (PICN) was established in July 1998 to formally start the project of the Asian Women's Fund.[882] It is said that the content of the project in Netherlands was determined in consideration of the requests of the Dutch government as well as the balance with the content of projects in other countries, which had been already finished the discussion.[883] Namely, according to the Japanese government, the Dutch side seemed to prefer to receive practical supplies such as wheelchairs and beds rather than tsugunai kin (atonement money) given that the Japanese government paid 10 million US dollars to the Dutch government under the 1956 Stikker-Yoshida Agreement.[884] In this point, there emerged some arguments from the PICN side that it was the Japanese government which explained to the PICN about the impossibility of providing tsugunai kin (atonement money) due to the 1956 Protocol.[885]

Moreover, it should be noted that, although the Japanese government paid 10 million US dollars to the Dutch government in 1956, it was mainly provided for the former private internees.[886] Furthermore, it was said that, regarding the project in the Netherlands and Indonesia, which initially started discussions on a two-country and one-region basis, the content of project in Netherlands was largely affected by the one in Indonesia which had

[879] ibid.
[880] Ikeda, "Kikitori Oranda Jigyo: Jyunbi to Igi (Hearing on the Project in Netherlands: Preparation and Significance)."
[881] ibid.
[882] Digital Museum: The Comfort Women Issue and the Aian Women's Fund, "Projects by Country or Region: Netherlands."
[883] Asian Peace National Fund for Women, Ianfu Mon*dai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*.
[884] Ikeda, "Kikitori Oranda Jigyo: Jyunbi to Igi (Hearing on the Project in Netherlands: Preparation and Significance)."
[885] ibid. See also, Women's Active Museum on War and Peace, *Nihongun "Ianfu" Mondai Subete No Gimon Ni* Kotaemasu.
[886] ibid.

included the establishment of welfare facilities for the elderly rather than tsugunai kin (atonement money).[887]

As a result, the agreement was reached on the implementation of medical and welfare support for individuals. The total amount of the Japanese government's funds was 255 million yen and an average of 3 million yen in medical and welfare services was provided to each confirmed 'comfort women'.[888] Among the 108 applicants who got contact with the PICN, 78 applicants were qualified as recipients of the support from the Asian Women's Fund.[889] The criteria for the recognition as the 'comfort women' was that the person concerned had a Dutch nationality at the time of the incident, who was physically forced into prostitution by a member of the Japanese occupation forces during World War II. Besides, the location, frequency, nature of damage, and cause of illness were also examined.

On the other hand, there existed few 'comfort women', who were plaintiffs in one of the 'comfort women' lawsuits filed in domestic courts of Japan, have rejected the offer from the Asian Women's Fund and continued to seek a proper apology and state compensation.[890] For instance, Jan Ruff-O' Herne, the first Dutch 'comfort women' who came in public in 1992 demanded the Japanese government to provide an 'unequivocal' apology to the 'comfort women'.[891] In addition to this, another 'comfort women', Elly Colly van der Ploeg, also demanded an proper apology and state compensation.[892]

Apart from the medical and welfare support, the recipients of the offer from the Asian Women's Fund received a copy of the letter of apology which was sent by the then Japanese Prime Minister to the then Dutch Prime Minister, mentioning the interstate spirit of friendship and understanding.[893] Consequently, the project of the Asian Women's Fund in Netherlands

[887] ibid.
[888] Digital Museum: The Comfort Women Issue and the Aian Women's Fund, "Projects by Country or Region: Netherlands."
[889] Finally, the total number of the recipients became 79 including one more victim survivor whose special application was admitted after the closing date. See also, Soh, "Japan's National/Asian Women's Fund for 'Comfort Women.'", Ikeda, "Kikitori Oranda Jigyo: Jyunbi to Igi (Hearing on the Project in Netherlands: Preparation and Significance)."
[890] "An NGO Shadow Report to CEDAW, Japan: The 'Comfort Women' Issue, 44th Session."
[891] Ibid.
[892] ibid.
[893] It remarked that 'I recognize that the issue of the so-called wartime comfort women was a grave affront to the honour and dignity of many women and was conducted with the involvement of the Japanese military of that time. I therefore wish to convey to Your Excellency the deep feelings of apology and remorse that I bear in my heart for all the former comfort women who underwent numerous painful experiences and suffered incurable physical and psychological damage.' It also concluded that '[W]e Japanese recognize that we must not evade the weight of the past or avoid our responsibility for the future. Japan intends to face up squarely to its past history, to ensure

finished in July 2001.[894] Marguerite Hamer-Monod de Froideville, a president of the PICN, stated, at the ending ceremony, that 'this project was finally launched 53 years after the end of the war. No amount of money could actually atone for the terrible experiences the 'comfort women' had to endure in their youth, nevertheless, in a way, the project brought the peace and some kind of justice they needed into their lives'.[895]

4.1.4.7. Controversy over the Asian Women's Fund

Firstly, it can be argued that the policy of the Asian Women's Fund was highly questionable. Basically, the Fund was established in pursuant to the Japanese government's premise that the public and private sectors would work together, and in doing so, it would fulfil Japan's moral responsibility.[896] Namely, the Fund was formed by the Japanese government so that Japanese people fulfil their moral responsibility, but, in fact, there was no spontaneous movement by Japanese people to request their own government to create the Fund.[897] Therefore, it can be said that the Japanese government established the Fund without acknowledging the will of Japanese people, and merely called on them to atone for the moral responsibility regarding the 'comfort women' through the Fund.

More importantly, it should be noted that the Asian Women's Fund was not state compensation.[898] In fact, the international community strongly denied the claim of the Japanese government that the legal issues regarding the 'comfort women' had been solved. Among the reports presented to the UN Commission on Human Rights, although the 1996 Coomaraswamy Report evaluated the Asian Women's Fund as it bears moral responsibility, the 1998

that this history is taught accurately to future generations, and to do its utmost to further promote friendly relations with the Netherlands, relations that will mark their 400th anniversary in the year 2000'. See also, Digital Museum: The Comfort Women Issue and the Aian Women's Fund, "Documents of Japanese Government and the AWF: Letter from Prime Minister Ryutaro Hashimoto to Prime Minister Willem Kok," 1998, accessed 12 May 2021, https://www.awf.or.jp/e6/statement-24.html.

[894] Digital Museum: The Comfort Women Issue and the Aian Women's Fund, "Projects by Country or Region: Netherlands."

[895] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*.

[896] "Sengo Gojyu Nen Ni Mukete No Murayama Tomiichi Naikakusouridaujin No Danwa (Statement by Prime Minister Tomiichi Murayama on the 50th Anniversary of the End of the War)." See also, Toda, "Ajia Josei Kikin Ni Kansuru Ichi Kenkyu (A Study on the Asian Women's Fund)."

[897] Toda, "Ajia Josei Kikin Ni Kansuru Ichi Kenkyu (A Study on the Asian Women's Fund)."

[898] "An NGO Shadow Report to CEDAW, Japan: The 'Comfort Women' Issue, 44th Session."

McDougall Report criticised the implementation of project without the acceptance of legal responsibility.[899]

Furthermore, in 2008, solid recommendations were presented by the UN Human Rights Committee in relation to the 'comfort women', stating that Japan should accept legal responsibility, offer an acceptable apology to the majority of victim survivors, prosecute perpetrators, take legislative and administrative measures for compensation, educate the future generations on the matter, and refute and sanction for denial.[900] In response to this, the Japanese government held that 'it is our understanding that the recommendations are not legally binding and Contracting Parties to the 1966 ICCPR are not obliged to follow the recommendations'.[901] The Human Rights Committee has constantly presented the similar recommendations to the Japanese government as it can be seen in the recent observations submitted in November 2022.[902]

In addition to the Human Rights Committee, the Committee against Torture (CAT) also submitted the recommendations for the Japanese government, including the education of the future generations on the 'comfort women' and rehabilitation, maintaining that 'remedial measures are themselves a means of preventing further violations of the State party's obligation in this respect under the Convention'.[903] The CAT also pointed out that the Japanese government's non-action towards the 'comfort women' 'foster continuing abuse and re-traumatization'.[904] It can be said that the continuation of the negative attitude towards the 'comfort women' of the Japanese government represents a denial of the huge efforts of the international community to enhance human rights situations through the UN human rights mechanisms.

[899] The United Nations Commission on Human Rights, "Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Fifty-Second Session Item 9 (a) of the Provisional Agenda, E/CN.4/1996/53/Add.1." See also, The United Nations Commission on Human Rights, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, Fiftieth Session Item 6 of the Provisional Agenda, E/CN.4/Sub.2/1998/13."
[900] Human Rights Committee, "Consideration of Reports Submitted By States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee JAPAN, CCPR/C/JPN/CO/5" (Geneva, December 18, 2008): para 22.
[901] "Toubensyo Dai 171 Kai Kokkai (The Cabinet Written Response to the Memorandum Submitted by MP Ikuko Tanioka on Questions Regarding History Textbooks and Recommendations by the United Nations Human Rights Commission on Comfort Women at 171st Diet Session)," accessed January 13, 2009, https://www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/171/meisai/m171001.htm.
[902] Human Rights Committee, "Concluding Observations on the Seventh Periodic Report of Japan," CCPR/C/JPN/CO/7 (Geneva, November 30, 2022), https://doi.org/10.32420/1996.2.45.
[903] Committee against Torture, "Concluding Observations on the Second Periodic Report of Japan, Adopted by the Committee at Its Fiftieth Session," UN Doc. CAT/C/JPN/CO/2, 28th June 2013: para 19.
[904] ibid.

Moreover, although the atonement programme should be provided directly to the victims, for example, in Indonesia, medical welfare programme was implemented for the elderly in general.[905] It can be argued that the resources generated from the budget of the Japanese government were not directly utilised for the 'comfort women'. Besides, the apology letters from the then Japanese Prime Minister were delivered only to the recipients of the tsugunai kin (atonement money), thus, it can be considered that great number of 'comfort women' did not receive an apology letter.[906]

Additionally, the projects of the Asian Women's Fund caused the split of the 'comfort women' into the supporters and the opponents of the projects, collapsing the unity, particularly in South Korean and Taiwan.[907] As a result, there emerged some 'comfort women' who received the tsugunai kin (atonement money) in a difficult position surrounded by the pressure of the public.[908] Thus, it can be said that the Asian Women's Fund was not the satisfactory solution for the 'comfort women'.

Furthermore, although taking the 'comfort women' as a historical lesson was one of the Japanese government initiatives, the phrase 'comfort women' has been gradually deleted in the history textbooks of compulsory education during the time period when the Asian Women's Fund's projects were implemented.[909] Originally, when the 1993 Kono Statement issued by the Japanese government, the 'comfort women' was described in all the textbooks of junior high schools.[910] However, the descriptions regarding the 'comfort women' has been gradually erased, and by 2006, rough descriptions of the 'comfort women' just remained in 2 out of 7 textbooks.[911]

[905] Digital Museum: The Comfort Women Issue and the Aian Women's Fund, "Projects by Country or Region: Indonesia."
[906] Toda, "Ajia Josei Kikin Ni Kansuru Ichi Kenkyu (A Study on the Asian Women's Fund)."
[907] Asian Peace National Fund for Women, *Ianfu Mondai to Ajia Jyosei Kikin ("Comfort Women" and Asian Women's Tribunal)*.
[908] Soh, "Japan's National/Asian Women's Fund for 'Comfort Women.'" See also, Women's Active Museum on War and Peace, *Nihongun "Ianfu" Mondai Subete No Gim*on Ni Kotaemasu.
[909] "An NGO Shadow Report to CEDAW, Japan: The 'Comfort Women' Issue, 44th Session."
[910] "An NGO Shadow Report to CEDAW, Japan: The 'Comfort Women' Issue, 44th Session."
[911] For instance, one of the textbook reads, in the heading, 'Greater East Asia Co-prosperity Sphere Illusion', that '…at the request of the military, young women were gathered from several areas across Asia, such as Korea, and sent to the battlefield for Japanese soldiers'. Additionally, the other textbook states, in a note of 'Post-war compensation and neighbouring countries', that '…court cases seeking post-war compensation were brought by women who were sent to comfort facilities, or by men from Korea or Taiwan who were drafted as Japanese soldiers during the wartime…'. "An NGO Shadow Report to CEDAW, Japan: The 'Comfort Women' Issue, 44th Session." See also, Women's Active Museum on War and Peace, *Nihongun "Ianfu" Mondai Subete No Gimon* Ni Kotaemasu.

In this regard, in 1999, when Japanese media reported that a textbook company applied to the Ministry of Education to amend its textbook and delete the phrase 'forcibly' from the description that 'they were forcibly sent to the battlefield as comfort women', Marguerite Hamer-Monod de Froideville, a president of the PICN, expressed the strong objection.[912] In her letter addressed to the Japanese ambassador in the Netherlands at the time, she wrote that this matter had greatly hurt the feelings of the 'comfort women', and the alternation of the descriptions would be contrary to the words of an apology letter from the then Japanese Prime Minister.[913] This alternation would indicate that the future generations of Japan will remain ignorant of the exact facts of Japanese history during World War II.

Finally, it should be noted that the 'comfort women' from East Timor was not included in the agenda of the Asian Women's Fund. In fact, the compensation for the victims of sexual violence in East Timor committed by the Imperial Japanese Army has been ignored to date.[914] After Japan's defeat in World War II, East Timor was returned to Portugal, which was not recognised as a 'belligerent' in accordance with the 1951 San Francisco Peace Treaty. For this reason, East Timor, a territory of a neutral country, was not considered during the post-war reparations process.[915] From this perspective, it can be said that the Asian Women's Fund failed to provide comprehensive reparations for the 'comfort women'.

4.2. VICTIM-ORIENTED REPARATIONS

Since the late 1980s, the fight against impunity and the call for reparative justice has become more vocal in international law field. In order to systematise a vast body of law that governs victims' right to reparation, the 2005 Basic Principles and Guidelines was adopted by the UN General Assembly in 2005 as a result of more than 16 years of work, applying the victim-oriented approach into the consultative meetings.[916]

[912] Asian Peace National Fund for Women, Ianfu Mondai to Ajia Jyosei *Kikin ("Comfort Women" and Asian Women's Tribunal)*.
[913] ibid.
[914] Women's Active Museum on War and Peace, Higashi Thimoru: Sensou Wo Ikinuita Onna Tachi (East Timor: Women Who Survived the War).
[915] ibid.
[916] United Nations General Assembly, "Resolution Adopted by the General Assembly on 16 December 2005: 60/147 Basic Principles and Guidelines on the Right To a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humani," A/RES/60/1, 21 March 2006, http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf. See also, Redress, *Implementing Victims '*

Furthermore, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity was also established in 2005 by the UN Commission on Human Rights.[917] These two instruments are substantially complementary in terms of the principles and measures of retributive and reparative justice.[918]

Moreover, provisions of various international human rights instruments explicitly or implicitly require the States' duty to provide an effective remedy.[919] Hence, in this section, I will examine the evolving principles of the international law in relation to the right to remedy and the right to reparation in order to analyse to what extent the development of international law can contribute to promote the right to remedy and the right to reparation of the 'comfort women'.

4.2.1. United Nations Basic Principles and Guidelines on the Right to a Remedy and a Reparation

The 2005 Basic Principles and Guidelines is a guiding instrument for States in implementing victim-oriented approach toward reparation programme in pursuant of international human rights law and international humanitarian law.[920] It also serves as a guiding instrument for victims themselves, since the 2005 Basic Principles and Guidelines can be applied by national and international adjudicators in case there emerges the issue regarding victims' right.[921] In this section, I will examine the drafting process, the scope and content and the forms of reparation which the 2005 Basic Principles and Guidelines provide in order to assess the development of the right to remedy and the right to reparation in international law.

4.2.1.1. Background

The fight against impunity and the realisation of reparative justice has been sought over years in the international community. Within this context, in the request of the UN Sub Commission

Rights: A Handbook on the Basic Principles and Guidelines on the Right to a Remedy and Reparation (London: Redress, 2006), accessed June 15, 2022, https://redress.org/wp-content/uploads/2018/01/MAR-Reparation-Principles.pdf.

[917] Van Boven, "Victims' Rights to a Remedy and Reparation: The New United Nations Principles and Guidelines."

[918] ibid.

[919] Mazzeschi, "International Obligations to Provide for Reparation Claims."

[920] M.S. Groenhuijsen and R.M. Letschert, "Reflections on the Development and Legal Status of Victims Rights Instruments," in *Compilation of International Victims' Rights Instruments*, ed. M.S. Groenhuijsen and R.M. Letschert (Nijmegen: Wolf Legal Publishers, 2006), 1–18.

[921] Van Boven, "Victims' Rights to a Remedy and Reparation: The New United Nations Principles and Guidelines."

on prevention of discrimination and protection of minorities, Professor Theo van Boven, one of the members, began to analyse the right to reparation in order to 'explore the possibility of establishing some principles and guidelines in this respect.[922]

The work on drafting the Principles and Guidelines was conducted by experts with the assistance of human rights NGOs as well as the governments. For instance, the 1993 first report presented by the UN Special Rapporteur, Professor Theo van Boven, was revised based on the comments from human rights NGOs.[923] In 1997, the revised draft Principles and Guidelines submitted to the Commission on Human Rights.[924] Afterwards, an Independent Expert of Commission, Professor M. Cherif Bassiouni, further developed the draft Principles and Guidelines, adding reference to international humanitarian law, and considering the opinions of governmental and non-governmental experts.[925] The final report was presented to the Commission on Human Rights in 2000.[926]

The draft Principles and Guidelines further revised and clarified, based on the resolutions of Commission on Human Rights, through the consultations under the leadership of the delegation of Chile, with the support of Theo van Boven and M. Cherif Bassiouni, as well as governmental representatives and NGOs.[927]

Significantly, it should be noted that the drafting process of the Basic Principle and Guidelines was supported by NGOs which has regularly gathered the opinions of the victims of human rights violations themselves. The purpose of the consultative meetings in the drafting process was to compile and systematize a vast body of law that governs victims' right to reparation.[928] Therefore, it was important to ensure that the text in the Principle and Guidelines accurately

[922] ibid.
[923] ibid.
[924] ibid.
[925] Bassiouni, "International Recognition of Victims' Rights."
[926] The United Nations Commission on Human Rights, "Civil and Political Rights, Including the Questions of: Independence of the Judiciary, Administration of Justice, Impunity: The Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms:," vol. E/CN.4/200, Fifty-sixth session, 18 January 2000.
[927] The United Nations Commission on Human Rights, "The Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms: Resolution 2000/41," sixtyth meeting, 20 April 2000. See also, The United Nations Commission on Human Rights, "Report to the Economic and Social Council on the Fifty-Seventh Session of the Commission: 2001/105," vol. E/CN.4/200, Fifty-seventh session, 25 April 2001., The United Nations Commission on Human Rights, "The Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms: 2002/44," Fifty-first meeting, 23 April 2002. Chile was an early supporter of the draft Principles and Guidelines. Redress, *Implementing Victims ' Rights:* A Handbook on the Basic Principles and Guidelines on the Right to a Remedy and Reparation.
[928] Redress, Implementing *Victims ' Rights: A Handbook on the Basic Principles and Guidelines on the Right to* a Remedy and Reparation.

reflected an overall understanding around the world, while also taking into account States' suggestions.[929] Applying the victim-oriented approach into the consultative meetings made the draft maintained the balance between the States' responsibility and interests and the victims' rights and interests.[930] As a result of more than 16 years of work, on 16 December 2005, the Basic Principles and Guidelines were eventually adopted by the UN General Assembly.[931]

4.2.1.2. Scope and Content

The 2005 Fundamental Principles and Guidelines are not obligations, but guide States in implementing victim-oriented reparations programmes in accordance with international human rights law and international humanitarian law.[932] Furthermore, it also serve as an instruction for victims themselves, since the 2005 Basic Principles and Guidelines can be referred by adjudicators in case there emerges the issue regarding victims' right.[933] For example, the reference to the provisions of the 2005 Basic Principles and Guidelines can be seen in the decisions of the IACHR.[934]

In relation to gross violations and serious violations that constitute crimes under international law, during the drafting process, there has been the controversy over whether the Basic Principles and Guidelines should only focus on gross violations of human rights or all violations of human rights, along with the growing opinion in consideration of the significance of the inclusion of the serious violations of international humanitarian law.[935] Although there is no explicit definition of 'gross violation' nor 'serious violation' in international law, it is acknowledged that gross violations contain those which affect the core rights of humankind such as the right to life in pursuant to customary international law.[936] Relatively, serious violations include those which constitute crimes in international law regardless of the violations

[929] ibid.
[930] ibid.
[931] United Nations General Assembly, "Resolution Adopted by the General Assembly on 16 December 2005: 60/147 Basic Principles and Guidelines on the Right To a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humani," A/RES/60/1, 21 March 2006, http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.
[932] Groenhuijsen and Letschert, "Reflections on the Development and Legal Status of Victims Rights Instruments."
[933] Van Boven, "Victims' Rights to a Remedy and Reparation: The New United Nations Principles and Guidelines."
[934] Ruth Rubio-Martin and Clara Sandoval, "Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the Cotton Field Judgment," Human Rights Quarterly, no. 33 (2011): 1062– 1091.
[935] Van Boven, "Victims' Rights to a Remedy and Reparation: The New United Nations Principles and Guidelines."
[936] ibid.

committed in the internal or international armed conflicts.[937] Such crimes are reflected in the Rome Statute of the ICC as genocide, crimes against humanity, and war crimes in Article 6, 7 and 8 respectively.[938]

In the end of the drafting process, the consensus was that the worst violations should be the focus of the Basic Principles and Guidelines, selecting the limitation to gross and serious violations.[939] Article 4 of the 2005 Basic Principles and Guidelines provides that the legal consequences of the violations would be the State's duty to investigate, to prosecute alleged person liable for the violations and to punish in case of finding guilty.[940] Furthermore, Article 5 contains the State's duty to incorporate appropriate provisions for universal jurisdiction in domestic law and Article 6 and 7 refer to the non-applicability of statutes of limitations including domestic statutes of limitations.[941] Moreover, Article 26 states that the 2005 Basic Principles and Guidelines are 'without prejudice to the right to a remedy and reparation for victims of all violations of international human rights law and international humanitarian law'.[942] It can be said that it reflected the consistent argument during the drafting process that all violations of international human rights law and international humanitarian law would result in causing state responsibility and relevant legal consequences.[943]

Regarding the definition of victims, Article 8 of the 2005 Basic Principles and Guidelines stipulates that 'persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law'.[944] Besides, the 2005 Basic Principles and Guidelines can be also applicable to victims who have indirectly suffered

[937] ibid.
[938] Article 6,7, and 8 of the Rome Statute of the International Criminal Court.
[939] K. O. Keburiya and A. M. Solntsev, "The Significance of the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation," Moscow Journal of International Law, no. 2 (2021): 78–98, https://doi.org/10.24833/0869-0049-2021-2-87-98.
[940] United Nations General Assembly, "Resolution Adopted by the General Assembly on 16 December 2005: 60/147 Basic Principles and Guidelines on the Right To a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," Article 4, A/RES/60/1, March 21, 2006, http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.
[941] ibid., Article 5,6 and 7.
[942] ibid., Article 26.
[943] Keburiya and Solntsev, "The Significance of the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation."
[944] United Nations General Assembly, "Resolution Adopted by the General Assembly on 16 December 2005: 60/147 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," Article 8, A/RES/60/1, March 21, 2006, accessed May 7, 2022, http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.

damage including families and dependants of the direct victims and also 'persons who have suffered harm in intervening to assist victims in distress or to prevent victimization'.[945] The notion of victims was referred to Article 1 and 2 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power which was established in 1985 by the UN General Assembly and generally accepted.[946]

4.2.1.3. Forms of Reparations

According to the 2005 Basic Principles and Guidelines, there are 5 types of reparations: restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition and their scope and content will be described as follows.

Article 19 of the 2005 Basic Principles and Guidelines refers restitution as a mean that 'restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred'.[947] For instance, 'Restitution' contains 'as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.'[948]

Restitution would be the primary goal of reparation. In pursuant to the PCIJ's decision in the 1927 Chorzów Factory case, the principle established through international practice together with the judgements of arbitration proceedings is that reparation must, to the greatest extent possible, wipe out the consequences of the illegal act and re-build the situation that would have existed if that act had not been committed.'[949] On the other hand, restitution can only apply in cases where the state can be restored to its pre-violation state.

In case that a form of restitution cannot be applied or results in being insufficient, compensation would be provided according to the financial evaluation of the damage caused in pursuant to

[945] ibid.
[946] UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: resolution / adopted by the General Assembly, November 29, 1985, A/RES/40/34.
[947] UN General Assembly, "UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law Adopted by the UN General Assembly Resolution No. 60/147 " (21 March 2006), Article 19.
[948] ibid., Article 19.
[949] Permanent Court of International Justice: Case Concerning the Factory at Chorzyw (Claim for Indemnity) (The Merits). Germany v. Poland. Judgment of 13 September 1928.

Article 36 of the ARSIWA of 2001.[950] If both restitution and compensation are not possible, satisfaction should be provided in pursuant to Article 37 of the ARSIWA of 2001.[951]

Regarding compensation, Article 20 of the 2005 Basic Principles and Guidelines states that it 'should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case'.[952] The damage that generates to compensation may result from physical and psychological damage, loss of opportunities to work, to learn and to take benefits from a society, material damage including loss of potential earnings, non-material damages, necessary costs for legal and medical support, and psychological and social services.[953]

In relation to compensation, the necessity to develop, strengthen, and grow specific compensation funds with the goal of delivering fast and adequate payments to victims of human rights breaches is remarked in the Preamble to the 2005 Basic Principles and Guidelines.[954] Additionally, it should be noted that compensation is merely a component of that right to reparation. The economic consequences of violating human rights could differ between legal systems, however, the practice of international and, to a greater extent, regional human rights courts demonstrates that compensation typically excludes harm that cannot be measured economically.[955] Besides, compensation would be provided based on the principle of fairness in the absence of explicit information on quantitative indications of the extent of harm sustained.[956] Moreover, compensation may also include costs for physical or psychological care and medication.[957]

[950] International Law Commission, "Articles on the Responsibility of States for Internationally Wrongful Acts 2001" (2001): Article 36. See also, Keburiya and Solntsev, "The Significance of the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation."
[951] ibid., Article 37.
[952] UN General Assembly, "UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law Adopted by the UN General Assembly Resolution No. 60/147" (21 March 2006), Article 20.
[953] ibid., Article 20.
[954] ibid.
[955] Keburiya and Solntsev, "The Significance of the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation." See also, Christine D. Gray, Judicial Remedies in International Law (New York: Oxford University Press, 1987): 33-34.
[956] Leiry Cornejo Chavez, "New Remedial Responses in the Practice of Regional Human Rights Courts: Purposes Beyond Compensation," International Journal of Constitutional Law 15, no. 2 (2017): 372–92.
[957] International Commission of Jurists, The Right to a Remedy and Reparation for Gross Human Rights *Violations: A Practitioners' Guide*, Revised (Geneva: International Commission of Jurists, 2018), https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf.

With regard to rehabilitation, a first listed non-material form of reparation in the 2005 Basic Principles and Guidelines, Article 21 provides that it 'should include medical and psychological care as well as legal and social services'.[958] It should be emphasized that rehabilitation can be provided not only when victims have been experiencing physical or psychological damage, but it can also take the form of social rehabilitation, such as restoring the victim's dignity and social or overall legal standing.[959]

In pursuant to Article 22 of the 2005 Basic Principles and Guidelines, satisfaction contains various measures as follows: measures to terminate 'continuing violations'; 'verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests' of the victim their families and their associates; searching for victims and remains, and related assistance; the issuance of 'an official declaration or a judicial decision' to restore 'the dignity, the reputation and the rights of the victim and of persons closely connected with the victim'; official apology containing 'acknowledgement of the facts and acceptance of responsibility'; sanctions, both 'judicial and administrative', against those responsible for the violations; memorials for the victims; incorporation of 'an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels'.[960]

Thus, satisfaction is a comprehensive form of reparation contains a variety of measures. In this regard, it can be said that the obligation of a State to hold liable for the recognition of the fact of a human rights violation would be a fundamental tenet of the symbolic actions.[961]

Finally, according to Article 23 of the 2005 Basic Principles and Guidelines, guarantees of non-repetition include; keeping military and security forces under effective civilian control; ensuring that all civil and military proceedings adhere to international due process standards;

[958] UN General Assembly, "UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law Adopted by the UN General Assembly Resolution No. 60/147" (21 March 2006), Article 21.
[959] Nora Sveaass, "Gross Human Rights Violations and Reparation under International Law: Approaching Rehabilitation as a Form of Reparation," European Journal of Psychotraumatology 4 (2013).
[960] UN General Assembly, "UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law Adopted by the UN General Assembly Resolution No. 60/147" (21 March 2006), Article 22.
[961] Charlotte Verdon, "Improving the Present to Repair the Past: A Proposal to Redefine the Guiding Principle of Reparation for Gross Violations of Human Rights," New York University Journal of International Law and Politics 53, no. 2 (2021): 587–630. See also, Heidy Rombouts, Pietro Sardaro, and Stef Vandeginste, "The Right to Reparation for Victims of Gross and Systematic Violations of Human Rights," in Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations, ed. Koen Feyter, Stephan Parmentier, and Paul Lemmens (Oxford: Intersentia, 2005), 345–53.

increasing the judiciary's independence; protecting persons in the legal, medical, media and other related professions including human rights activists; implementing 'human rights and international humanitarian law education to all sectors of society' and training for the military and law enforcement officers; promoting compliance with codes of conduct and ethics, especially international standards; enhancing mechanisms to prevent and observe social conflicts and their resolution; amendments to laws that contribute to or permit violations of international human rights and humanitarian law.[962]

As a result, guarantees of non-repetition could take various forms, such as structural changes in national institutions to align with the rule of law, removing the source of future violations.[963] In accordance with the 2016 Guidelines on Measures of Reparation under the Optional Protocol to the ICCPR issued by the Human Rights Committee, legislation is required as a first step in order to accomplish a guarantee of non-repetition of human rights violations, as well as to incorporate international law provisions into domestic law in order to achieve conformity.[964]

It should be noted that these modalities and forms of reparation are not mutually exclusive.[965] There is a possibility that, depending on the case and victims, more than these forms of reparation may be used to deliver justice. More importantly, while monetary terms of reparation are frequently discussed and acknowledged, the significance of non-monetary and symbolic forms of reparation that can provide satisfaction to victims of human rights violations should be emphasised.[966] The design of a reparation programme should not be interpreted as an attempt to put a monetary value on the lives or suffering of victims. Rather, it should be interpreted as a contribution to the victim survivors' quality of life. It would also be important

[962] UN General Assembly, "UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law Adopted by the UN General Assembly Resolution No. 60/147" (21 March 2006), Article 23.
[963] Heidy Robouts, "Reparations for Victims of Gross and Systematic Human Rights Violations: The Notion of Victim," Third World Legal Studies 16, no. 5 (2003): 89–114. See also, Jeremy Sarkin, "Towards a Greater Understanding of Guarantees of Non-Repetition (GNR) or Non-Recurrence of Human Rights Violations: How GNR Intersects Transitional Justice with Processes of State (Re)Building, the Rule of Law, Democratic Governance, Reconciliation, Natio," Stanford Journal of International Law 57 (2021): 191–230.
[964] UN Human Rights Committee, "Guidelines on Measures of Reparation under the Optional Protocol to the International Covenant on Civil and Political Rights" (30 November 2016).'
[965] Van Boven, "Victims' Rights to a Remedy and Reparation: The New United Nations Principles and Guidelines."
[966] Van Boven. See also, Pablo de Greiff, "Reparation Efforts from an International Perspective: The Contribution of Reparations in Achieving Imperfect Justice," in To Repair the Irreparable: Reparation and Reconstruction in South Africa, ed. Erik Doxtader and Charles Villa-Vicencio (Cape Town: New Africa Books, 2004), 321–58.

to consider that victims' expectations from the reparation program would differ depending on their background, and to meet those diverse expectations to the greatest extent possible.[967]

4.2.2. United Nations Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity

Over the years, ending the impunity of perpetrators of human rights violations has been sought by the United Nations.[968] The Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (the 2005 Updated Set of Principles) was established by the UN Commission on Human Rights in 2005.[969] The 2005 Updated Set of Principles and the 2005 Basic Principles and Guidelines are substantially complementary in terms of the principles and measures of retributive and reparative justice.[970]

Originally, Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Set of Principles) was created as a set of guidelines to support States in evolving effective measures to combat impunity in pursuant to the 1993 Vienna Declaration and Programme of Action adopted by the 1993 World Conference on Human Rights in Vienna.[971] As a result of the cumulative works on setting the guidelines by the UN Sub-Commission, Set of Principles was created by the Commission on Human Rights in 1997.[972] In terms of victims' legal rights, it established the principles and justification for the victim' right to know, the victims' right to justice, and the victims' right to reparations, as well as

[967] Greiff, "Reparation Efforts from an International Perspective: The Contribution of Reparations in Achieving Imperfect Justice."
[968] Rodolfo Mattarollo, "Impunity and International Law," Impunity and International Law 11, no. 1 (1998): 81–94. See also, Beatriz Pavon, "Combating Impunity : Transitional Justice in the Aftermath of Mass Atrocities," UN Chronicle 41, no. 3 (2004): 22–23. See also in general, Frank Haldemann and Thomas Unger, eds., The United Nations Principles to Combat Impunity: A Commentary, 1st ed. (New York: Oxford University Press, 2018).
[969] Van Boven, "Victims' Rights to a Remedy and Reparation: The New United Nations Principles and Guidelines."
[970] ibid.
[971] The World Conference on Human Rights was held in Vienna, Austria between 14th and 25th of June in 1993 in order to discuss about the status of human rights machinery in globe. The 1993 Vienna Declaration and Programme of Action recommended the UN General Assembly to adopt a set of principles for the protection and promotion of human rights through action to combat impunity, considering the issue of impunity of perpetrators of human rights violations. See, UN General Assembly, "Vienna Declaration and Programme of Action", 12 July 1993, A/CONF.157/23.
[972] United Nations Commission on Human Rights, "Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity", 2 October 1997, E/CN.4/Sub.2/1997/20/Rev.1.

various measures to ensure that violations do not reoccur.[973] The recommendations of Professor Diane Orentlicher were reflected and expanded upon in the 2005 Updated Set of Principles.[974]

Regarding the 2005 Updated Set of Principles, Principle 1 outlines states' general obligations to take effective measures to combat impunity, highlighting the duty such as; investigation into violations; undertaking measures to deliver justice by prosecuting and punishing the perpetrator; implementation of effective remedy; ensuring the right to know and the right to truth; undertaking any necessary measures to prevent future violations.[975] As stipulated in the 1997 Set of Principles, there are three principle elements provided in the 2005 Updated Set of Principles with regard to victims' legal rights, namely, the right to know, the right to justice and the right to reparation/guarantees of non-recurrence.

Firstly, it should be noted that the right to know is a sine qua non condition in order to exercise the right to justice and the right to reparation.[976] The 2005 Updated Set of Principles remarks that the right to know about history on horrific crimes and 'massive or systematic' violations is the 'inalienable' right for every people.[977]

Thus, 'the inalienable right to know' is not only an individual right, but also a collective right.[978] It also emphasised that the exercise of the right to truth can contribute to a prevention of repetition of the violations.[979] Therefore, it is necessary that access to archives relating to the human rights violations is offered for victims and their families.[980] Furthermore, access to archives should be facilitated for those who act for victims' defence as well as the courts and judicial commissions of inquiry.[981]

In respect of the right to justice, Principe 19 of the 2005 Updated Set of Principles establishes General Principle and it requires States to 'undertake prompt, thorough, independent and

[973] ibid, para 16.
[974] According to her study submitted to the Commission on Human Rights in 2004, 'recent developments in international law have affirmed the Principles as a whole and highlighted their contribution to domestic efforts to combat impunity'. See, Diane Orentlicher, "Independent Study on Best Practices, Including Recommendations, to Assist States in Strengthening Their Domestic Capacity to Combat All Aspects of Impunity" submitted to the Commission on Human Rights, E/CN.4/2004/88, Sixtieth session, 27 February 2004 .
[975] United Nations Commission on Human Rights, "Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity", Principle 1, 8 February 2005, E/CN.4/2005/102/Add.1.
[976] Jens Boel, Perrine Canavaggio, and Antonio González Quintana, "Archives and Human Rights: A Close Relationship," in Archives and Human Rights, ed. Jens Boel, Perrine Canavaggio, and Antonio González Quintana (New York: Routledge, 2021), 9–80, https://doi.org/10.4324/9780429054624.
[977] United Nations Commission on Human Rights, E/CN.4/2005/102/Add.1, Principle 2.
[978] Boel, Canavaggio, and Quintana, "Archives and Human Rights: A Close Relationship."
[979] United Nations Commission on Human Rights, E/CN.4/2005/102/Add.1, Principle 2.
[980] Boel, Canavaggio, and Quintana, "Archives and Human Rights: A Close Relationship."
[981] Boel, Canavaggio, and Quintana.

impartial investigations of violations of human rights and international humanitarian law' and to prosecute and punish the perpetrators responsible for the violations with general consideration on the States' duty in relation to the administration justice.[982] This general consideration stipulated in the following section is regarding the distribution of jurisdiction between courts at different levels and the use of restrictions in areas that might favour impunity, containing prescription and official immunities.[983]

Finally, in respect of the right to an effective remedy and reparation, Principle 31 provides that:

> Any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator.[984]

Notably, the 2005 Updated Set of Principles encompasses the victims' right to immediate and effective remedy through proceedings in criminal, civil or administrative settings as well as reparative justice through the establishment of reparation programmes 'based upon legislative or administrative measures, funded by national or international sources,' directed at not only victims, but also to communities.'[985] In this regard, it can be argued that designing and implementing reparation programmes complements reparation through litigation and adjudication, thereby contributing to the quality of life of the victims.[986]

4.2.3. The Right of Victims to an Effective Remedy

Various international human rights instruments explicitly or implicitly require States to provide an effective remedy to victims of human rights violations.[987] The right to remedy is comprised of two distinct concepts: a procedural obligation to prosecute and punish perpetrators of human rights violations and a substantive obligation to provide victims with appropriate reparation.[988]

Several regional conventions provide for the right to remedy. Article 13 of ECHR, for instance, states that '[E]veryone whose rights and freedoms' are violated under ECHR has 'an effective

[982] United Nations Commission on Human Rights, E/CN.4/2005/102/Add.1, Principle 19.
[983] ibid., Principle 20-30.
[984] ibid., Principle 31.
[985] ibid., Principle 32.
[986] Van Boven, "Victims' Rights to a Remedy and Reparation: The New United Nations Principles and Guidelines."
[987] Mazzeschi, "International Obligations to Provide for Reparation Claims."
[988] Shelton, Remedies Int. Hum. Rights Law. See also, UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13.

remedy before a national authority,' regardless of whether the violation was 'committed by persons acting in an official capacity.'[989] Additionally, Article 41 of the ECHR provides just satisfaction in favour of the victims suffered as a result of the actions of a State that constitutes the breach of the Convention.[990] Similarly, Article 63(1) of the ACHR also contains the right to remedy and individual compensation for damages caused by a State's violation of protected rights.[991]

The principle to provide domestic legal remedy by a State to victims of human rights violations can also be seen in several human rights treaties.[992] For example, Article 2(3) of the 1966 ICCPR requires States to addresses:

> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
>
> (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
>
> (c) To ensure that the competent authorities shall enforce such remedies when granted.

Unlike the ECHR and ACHR, a specific course of action to remedy is not stipulated as a mandate of States in the ICCPR.[993] To date, however, Article 2(3) is the legal basis for developing jurisprudence in relation to effective and enforceable reparations for individuals.[994] In Rodriquez v Uruguay case, Human Rights Committee held that the lack of an investigation into the State's violations of human rights hindered civil remedies. Moreover, it declared, in relation to gross human rights violations, that the adoption of amnesty laws results in conflicting with the State' obligations under Article 2(3) of the ICCPR.[995]

[989] Council of Europe. 1950. "Convention for the Protection of Human Rights and Fundamental Freedoms." Council of Europe Treaty Series 005. Strasbourg: Council of Europe.
[990] ibid.
[991] Organisation of American States. 1969. "American Convention on Human Rights." Treaty Series, No. 36. San Jose: Organisation of American States.
[992] Bassiouni, "International Recognition of Victims' Rights." See also, Mazzeschi Riccardo Pisillo, "Reparation Claims by Individuals for State Breaches of Humanitarian Law and Human Rights: An Overview," Journal of International Criminal Justice 1, no. 2 (2003): 339–47.
[993] Valeska David, "Reparations at the Human Rights Committee: Legal Basis, Practice and Challenges," Netherlands Quarterly of Human Rights 32, no. 1 (2014): 8–43, https://doi.org/10.1177/016934411403200103.
[994] Bassiouni, "International Recognition of Victims' Rights." See also, David, "Reparations at the Human Rights Committee: Legal Basis, Practice and Challenges."
[995] Rodriquez v Uruguay (322/88), CCPR/C/51/D/322/1988 (1994); 2 IHRR 112 (1995). See also, Blancov v Nicaragua (328/88), CCPR/C/51/D/328/1988 (1994); 2 IHRR 123 (1995). In this case, the scope of the victim's right to an effective remedy was clarified. Bautista de Arellana v Columbia (563/93), CCPR/C/55/D/563/1993 (1995); 3 IHRR 315 (1996). In this case, the victim's right to remedy beyond compensation was assessed.

Furthermore, Article 6 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) clearly requires States to provide 'effective protection and remedies, through the competent national tribunals and other State institutions,' for those who suffered harm caused by racial discrimination which constitutes violation of human rights and fundamental freedoms against the Convention.[996]

Moreover, there are various conventions that contain the explicit requirement that a State provide a remedy for victims of human rights violations or that include provisions with regard to the right to some forms of reparation, which implicit the right to a remedy.[997] For instance, Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Torture Convention) requires State to ensure that 'the victim of an act of torture obtains redress' including compensation and rehabilitation, in their legal system.'[998] This is also applicable to the dependants of the victims, in the case of the death of the victim due to the harm.[999] Furthermore, Article 39 of Convention on the Rights of the Child implicitly contains the right to remedy, requesting the States to 'take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim.'[1000]

In addition to the conventions, it should be noted that Article 8 of the 1948 Universal Declaration of Human Rights also reflects the principle of States' duty to provide an effective remedy for the victims of harm cause by violations of the fundamental rights.[1001] The principle further re-affirmed in Article 7(2) of the 1963 UN Declaration on the Elimination of All Forms of Racial Discrimination.[1002] Besides, Article 11 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also states that victims of 'torture or other cruel, inhuman or degrading treatment

[996] UN General Assembly, "International Convention on the Elimination of All Forms of Racial Discrimination", December 21, 1965, United Nations, Treaty Series, vol. 660, 195.
[997] Mazzeschi, "International Obligations to Provide for Reparation Claims." See also, Shelton, Remedies Int. Hum. Rights Law.
[998] UN General Assembly, "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", December 10, 1984, United Nations, Treaty Series, vol. 1465, 85. Also, Articles 2, 15 and 6 of the 1989 Convention Concerning Indigenous and Tribal Peoples in Independent Countries, ILO C 169, as well as Article 24 of the 1954 Convention Relating to the Status of Stateless Persons, 360 UNTS 117, implies the right to remedy.
[999] ibid.
[1000] UN General Assembly, Convention on the Rights of the Child, November 20, 1989, United Nations, Treaty Series, vol. 1577, 3.
[1001] UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).
[1002] UN General Assembly, United Nations Declaration on the Elimination of All Forms of Racial Discrimination, 20 November 1963, A/RES/1904.

or punishment' committed 'by or at the instigation of a public official' have the right to redress and compensation.[1003]

As a result, numerous international and regional human rights instruments as well as declarations contain or imply that States have a duty to provide a remedy in favour of the injured individuals. Contrary to the recalcitrant State practice of Japan regarding the 'comfort women,' this principle can be found in a variety of national practices.

For instance, since the end of World War II, the efforts to provide the extensive reparation for victims of crimes committed by the Nazi regime has been undertaken by Germany.[1004] It was victims of the Holocaust who made claims against Germany, as reparations or collective sanctions was not imposed on German people by the Allied Powers.[1005] Those claims were advocated by Israel.[1006] Accordingly, Germany established 'Wieder Gut Machung' in the national legislation, that offers individual compensation to victims of the Holocaust.[1007] Additional compensation agreements was established for slave labour of its industry, and similar settlements was also made by Austria for the Holocaust victims and slave labour in the industry.[1008]

Since the 1952 Reparations Agreement between Israel and Germany (the Luxemburg Agreement), the German government has compensated the victims with over 80 billion US dollars to date, for victims of Nazi crimes, through laws and agreements.[1009] The material

[1003] UN General Assembly, Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 9, 1975, A/RES/3452(XXX).
[1004] Ariel Colonomos and Andrea Armstrong, "German Reparations to the Jews after World War II: A Turning Point in the History of Reparations," in The Handbook of Reparations, ed. Pablo De Greiff, 1st ed. (New York: Oxford University Press, 2008), 390–419. See also, Kurt Schwerin, "German Compensation for Victims of Nazi Persecution," Northwestern University Law Review, 1972, 479.
[1005] Colonomos and Armstrong, "German Reparations to the Jews after World War II: A Turning Point in the History of Reparations."
[1006] Colonomos and Armstrong. Israel has not yet existed as a state at the time.
[1007] Sanya Romeike, "Transitional Justice in Germany after 1945 and after 1990" (Nuremberg, 2016), https://www.nurembergacademy.org/fileadmin/media/pdf/news/Transitional_Justice_in_Germany.pdf.
[1008] Mark Spoerer and Jochen Fleischhacker, "The Compensation of Nazi Germany's Forced Labourers: Demographic Findings and Political Implications," Population Studies 56, no. 1 (2002): 5–21. See also, Swiss Banks, "Summary of Major Holocaust Compensation Programs," 2000, http://www.claimscon.org/forms/allocations/Summary of Major Holocaust Compensation Programs.pdf.
[1009] Federal Ministry of Finance, Wiedergutmachung: Provisions Relating to Compensation for National Socialist Injustice (Federal Ministry of Finance, 2018), accessed October 14, 2021. https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Press_Room/Publications/Brochures/2018-08-15-entschaedigung-ns-unrecht-engl.pdf?__blob=publicationFile&v=21. See also, Frederick Honig, "The Reparations Agreement between Israel and the Federal Republic of Germany," The American Journal of International Law 48, no. 4 (1954): 564–78., Kirsten Grieshaber, "Germany Marks 70 Years of Compensating Holocaust Survivors," AP News, September 15, 2022, accessed August 14, 2022, https://apnews.com/article/holocaust-survivor-compensation-fund-germany 0d35aa1cba7756d1b9b6008e9d7841b7.

reparations provided by the German government contained those for personal damages, deprivation of liberty as well as other harms caused on account of race, religion, political views, physical disability or sexual orientation.[1010] Further compensation was also paid to the families of victims.[1011] In addition to the material reparations, the German government also provided other forms of reparations such as an official apology and compensatory laws and agreements.[1012]

Apart from the state practice of Germany, the recent national practice in Columbia where has been affected by a 60-year internal armed conflict, represents another example of the State duty to provide a remedy to victims. In order to find a permanent solution to the internal armed conflict, the Colombian government adopted a victims-oriented Transitional Justice Project (TJP) in 2011.[1013] It included a regime to address the right to justice and the right to reparation.[1014] As a result, the 'Victims Law' was established as the first normative procedure to provide administrative reparation and property loss restitution for victims.[1015]

In 2016, after the agreement with a peace settlement, the 'Sistema Integral de Verdad, Justicia, Reparación y No Repetición' was set up, aiming at producing effective response to human rights violations during the conflict and addressing the right to justice, the right to truth, and the right to reparation that can lead to national reconciliation.[1016] It should be noted that the significance of the victims-oriented TJP was that it provided an avenue not only to build a public truth, but also to considerably offer symbolic reparation to both the victims and the society itself. Considering symbolic reparation to be a crucial component of transitional justice,

[1010] Federal Ministry of Finance, Wiedergutmachung: Provisions Relating to Compensation for National Socialist Injustice.
[1011] Federal Ministry of Finance: 17-21.
[1012] Konrad Adenauer, former Chancellor of Germany, issued an apology through a speech in the German parliament, on 27 September 195. Federal Foreign Office, "Compensation for National Socialist Injustice," accessed July 3, 2022,
https://www.auswaertiges-amt.de/en/aussenpolitik/themen/compensation-for-national-socialist-injustice/228224.
A 1949 law was established to restore the rights and privileges of those who have been discriminated under Nazi legislation. Additionally, laws expanding the support to war victims such as those suffered from medical experimentation as well as POW who suffered from the inhumane treatment due to their Jewish background. See also, Federal Ministry of Finance, Wiedergutmachung: Provisions Relating to Compensation for National Socialist Injustice.
[1013] Alberto Marco Velásquez-Ruiz and Carolina Olarte-Bácares, "Access to Remedy and the Construction of Collective Memory. New Perspectives in the Realm of the Colombian Transitional Justice Project," Business and Human Rights Journal, no. 7 (2022): 468–474.
[1014] ibid.
[1015] Congreso de Colombia, Ley 1448 de 2011 Por la cual se dictan medidas de atención, asistencia y reparación integral a las víctimas del conflicto armado interno y se dictan otras disposiciones (2011).
[1016] Integral System for Justice, Truth, Reparation and Non-Recurrence. See also, Velásquez-Ruiz and Olarte-Bácares, "Access to Remedy and the Construction of Collective Memory. New Perspectives in the Realm of the Colombian Transitional Justice Project."

it developed social dialogue activities that resulted in collective memory.[1017] For example, the Committee of the TJP organised the commemoration of a series of massacres in the affected region.[1018] Furthermore, through the established social dialogue, psycho-social rehabilitation as well as guarantees of non-repetition by virtue of the established dialogue in the community were provided.[1019]

In contrast to these contemporary state practices, the Japanese government has constantly denied its responsibility for the 'comfort women', considerably, Japan has repeatedly rejected the victims' claims in its national courts.[1020] Given that the failure of inter-state reparations which lack the needs of the 'comfort women' and the evolving principle in relation to a remedy for victims of human rights violations, Japan must take a victim-oriented approach towards full reparations for the 'comfort women'. Such reparations must include not only material reparations such as monetary compensation, but also symbolic reparations. In this regard, the potential reparations for the 'comfort women' will be provided in the following section.

4.3. REPARATIONS WITH A GENDERED APPROACH

There is a growing recognition of the significance of making women's experiences in conflict visible.[1021] For example, the UN Security Council Resolution 1325 on Women, Peace, and Security adopted in 2000 recognises the effects of armed conflict on women and girls, women's participation in making and building peace, and peace processes and conflict resolution with a gendered approach.[1022] In this regard, it can be argued that administrative reparation

[1017] Alberto Marco Velásquez-Ruiz, "The Emergence and Consolidation of Transitional Justice within the Realm of Colombian Peacebuilding," in Truth, Justice and Reconciliation in Colombia Transitioning from Violence, ed. Fabio Diaz Pabon (New York: Routledge, 2018), 50–65.
[1018] PAX Colombia, "Conmemorar a Las Víctimas Por La Verdad, La Justicia, La Reparación y La No Repetición," PAX Colombia, September 28, 2018, accessed September 8, 2022, https://paxencolombia.org/conmemorar-a-las-victimas-por-la-verdad-la-justicia-la-reparacion-y-la-no-repeticion/.
[1019] Velásquez-Ruiz, "The Emergence and Consolidation of Transitional Justice within the Realm of Colombian Peacebuilding."
[1020] Bassiouni, "International Recognition of Victims' Rights." Japan has continuously denied individual victims' claims through a series of the 'comfort women' lawsuits filed in Japan, arguing that individual victims' right to claim were waived through the peace treaties and international agreements.
[1021] R. Rubio-Marin and P. d. Greiff, "Women and Reparations," International Journal of Transitional Justice 1, no. 3 (2007): 318–37. See also, Margaret Urban Walker, "Transformative Reparations? A Critical Look at a Current Trend in Thinking about Gender-Just Reparations," International Journal of Transitional Justice 10, no. 1 (2016): 108–25. Colleen Duggan and Adila Abusharaf, "Reparation of Sexual Violence in Democratic Transitions: The Search for Gender Justice," in The Handbook of Reparations, ed. Pablo De Greiff (New York: Oxford University Press, 2006), 623–649.
[1022] United Nations Security Council, "United Nations Security Council Resolution 1325 on Women, Peace and Security," S/RES/1325 (October 31, 2000).

programme may be more preferable than judicial reparations procedure, or at least be notable supplement to judicial reparations procedure, if there exist a large number of victims suffered widespread and systematic violence, including sexual violence.[1023] Furthermore, it can be said that reparations with gendered approach could be more functioned by providing transformative reparations, rather than only providing remedial and corrective reparations.[1024]

In case of sexual violence in judicial avenue, there is a possibility that the victims experience re-victimisation, stigma and a rejection from their family and community, considering the difficulty of victims to speak out about their experiences.[1025] Compared to this, administrative measures may reduce some of the difficulties by establishing simple procedures and mitigating thresholds of evidence.[1026] Furthermore, administrative measures could provide a choice for victims to decide when to access reparations, if they are not ready for it due to suffering from violations.[1027] Such examples can be seen in the recent reparations activities, such as those recommended by Sierra Leone's Truth and Reconciliation Commission (SLTRC), Timor Leste and Peru's Truth and Reconciliation Commission.[1028] In those reparation activities, the list of victims was open-ended and/or the reparations process was separated from the participation of victims in the statement-taking process of the truth commission.[1029]

Furthermore, while judicial procedures set considerable restrictions on victims' participation, establishing administrative reparations has a significant advantage in this regard.[1030] Precisely, women's involvement in the process of establishing administrative reparations would result in not only delivering functional information for the efficient design of reparations programme,

[1023] Rubio-Marin and Greiff, "Women and Reparations." See also, Rombouts, Sardaro, and Vandeginste, "The Right to Reparation for Victims of Gross and Systematic Violations of Human Rights."
[1024] Walker, "Transformative Reparations? A Critical Look at a Current Trend in Thinking about Gender-Just Reparations."
[1025] Duggan and Abusharaf, "Reparation of Sexual Violence in Democratic Transitions: The Search for Gender Justice." See also, Rombouts, Sardaro, and Vandeginste, "The Right to Reparation for Victims of Gross and Systematic Violations of Human Rights."
[1026] Rubio-Marin and Greiff, "Women and Reparations."
[1027] ibid.
[1028] Jamesina King, "Gender and Reparations in Sierra Leone: The Wounds of War Remain Open," in In What Happened to the Women? Gender and Reparations for Human Rights Violations, ed. Ruth Rubio-Marin (New York: Social Science Research Council, 2006), 246–83. See also, Galuh Wandita, Karen Campbell-Nelson, and Manuela Leong Pereira, "Learning to Engender Reparations in Timor-Leste: Reaching Out to Female Victims," in What Happened to the Women? Gender and Reparations for Human Rights Violations, ed. Ruth Rubio-Marín (New York: Social Science Research Council, 2006), 284–335., Lisa Laplante, "On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Developmen," Yale Human Rights & Development Law Journal 10 (2007): 141–78.
[1029] ibid. For instance, a suggested reparations programme by The SLTRC did not set a limitation to those who participated in the Commission, and it recommended leaving open the list. Likewise, the Timor Leste recommended having a two-year period to identify other potential beneficiaries.
[1030] Rubio-Marin and Greiff, "Women and Reparations."

but also having reparative impact, given the barriers that many societies set in the way of women's participation.[1031]

In terms of reparations, it should be noted that compensating women in proportion to damage in order to restore their pre-violence status would be the most limited option among material reparations.[1032] It is due to the fact that in many societies, women's legal status and opportunities are not equal to men's.[1033] Moreover, it can be said that the opportunities available to women are generally undervalued.[1034] Besides, if women depend on other means or opportunities, the reparations programme, which compensates for lost income potential and provides advantages in terms of education and employment as a source of income, would not be functional.[1035] Additionally, the reparation programme, which provides compensation and restitution for land or property loss, would be ineffective if the right to ownership is not equal in society between men and women.[1036] On the other hand, if the programme is designed in a way that is sensitive to the needs of women, rehabilitation could be a form of future-oriented reparation by providing services and social benefits such as education, medical care, and training.[1037]

Relatively, reparation programme can also include symbolic measures such as apologies, the construction of museums and memorials and setting days of commemoration.[1038] Symbolic measures are significant because they can contribute to relieving victims and their families of the burden of keeping memory and allow them to move forward by sharing the victims' memories in public.[1039] In case of the 'comfort women', symbolic measures can be undertaken because they has been seeking an official apology and the recognition of state responsibility of

[1031] Valérie Couillard, "The Nairobi Declaration: Redefining Reparation for Women Victims of Sexual Violence," International Journal of Transitional Justice 1, no. 3 (2007): 444–453. See also, Pablo de Greiff, "Justice and Reparations," in The Handbook of Reparations, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006), 451–477.
[1032] Rubio-Marin and Greiff, "Women and Reparations." See also, Couillard, "The Nairobi Declaration: Redefining Reparation for Women Victims of Sexual Violence."
[1033] Rubio-Marin and Greiff, "Women and Reparations."
[1034] ibid.
[1035] ibid.
[1036] ibid.
[1037] Sveaass, "Gross Human Rights Violations and Reparation under International Law: Approaching Rehabilitation as a Form of Reparation."
[1038] John Torpey, Politics and the Past: On Repairing Historical Injustices (Maryland: Rowman & Littlefield, 2003).
[1039] Rubio-Marin and Greiff, "Women and Reparations." See also, Brandon Hamber, "Narrowing the Micro and Macro: A Psychological Perspective on Reparations in Societies in Transition," in The Handbook of Reparations, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006), 560–588.

Japan in addition to material reparations.[1040] Besides, symbolic measures can make the reparation programme more flexible and sensitive to the needs of women.[1041]

In this sense, the transformative reparations can be an option to bring about structural changes in societies that contribute to removing sex oppression and gender inequality.[1042] The transformative reparations necessitate the reconstruction of economic, social and political relations that oppress women and expose them to the violations they have suffered.[1043]

Morocco's Equity and Reconciliation Commission, for example, challenged established gender hierarchies by providing benefits to the families of deceased victims in ways that deviated from Morocco's gender-biased inheritance laws.[1044] In comparison, South Africa maintained a gender-neutral amount of money given to each beneficiary of reparations, ignoring differences in the consequences of violence against rural women and poor women.[1045]

The idea of the transformative reparations to provide structural changes emerged in the 2007 Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, which emphasises the need of reparation including measures to eliminate 'the political and structural inequalities that negatively shape women's and girls' lives.'[1046] Furthermore, in the 2013 General Recommendation No. 30, the UN Committee on the Elimination of Discrimination against Women also demonstrated the need of transitional justice mechanisms to 'secure a transformative change in women's lives' by addressing 'the structural inequalities which led

[1040] The United Nations Commission on Human Rights, "Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict, Fiftieth Session Item 6 of the Provisional Agenda, E/CN.4/Sub.2/1998/13."
[1041] Debra DeLaet, "Gender Justice: A Gendered Assessment of Truth-Telling Mechanisms," in Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies, ed. Tristan Anne Borer (Notre Dame: University of Notre Dame Press, 2006). See also, Fionnuala Ní Aoláin and Catherine Turner, "Gender, Truth and Transition," *UCLA Women's Law Journ*al 16 (2007): 229–79.
[1042] Walker, "Transformative Reparations? A Critical Look at a Current Trend in Thinking about Gender-Just Reparations." See also, Zinaida Miller, "Effects of Invisibility: In Search of the 'Economic' in Transitional Justice," International Journal of Transitional Justice 2, no. 3 (2008): 266–291., Rubio-Martin and Sandoval, "Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the Cotton Field Judgment."
[1043] Walker, "Transformative Reparations? A Critical Look at a Current Trend in Thinking about Gender-Just Reparations." See also, Rubio-Martin and Sandoval, "Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the Cotton Field Judgment."
[1044] Priscilla B. Hayner, Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions, 2nd ed. (New York: Routledge, 2011).
[1045] Beth Goldblatt, "Evaluating the Gender Content of Reparations: Lessons from South Africa," in In What Happened to the Women? Gender and Reparations for Human Rights Violations, ed. Ruth Rubio-Marín (New York: Social Science Research Council, 2006), 48–91.
[1046] Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation. International Meeting on Women's and Girls' Right to a Remedy and Reparation. Paris: International Federation for Human Rights, 2007.

to the violations of women's rights, respond to women's specific needs and prevent their re-occurrence.'[1047]

Additionally, according to the UN Special Rapporteur Pablo de Greiff, reparations with transformative approach 'tackle, and to the extent possible, subvert' existing patterns of inequality and discrimination and the programme 'should not contribute to the entrenchment of these factors.'[1048] It was also emphasised that the goal of such reparation measures is to 'distribute a direct benefit to victims themselves.'[1049]

Hence, the transformative reparations contain legal and institutional reforms, the establishment of a prohibition of discrimination and the subversion of sexist or patriarchal norms, and constitutional amendments affecting the status of women.[1050] These structural changes can promote the achievement of women's ability to recover from damages in male-dominated societies.[1051] On the other hand, there is increasing concern that collective or structural measures do not provide 'do not grant individualised recognition individualised recognition, which is a key component of the reparations concept.[1052] Indeed, transformative reparation measures cannot replace reparative measures that directly and primarily address individual victims.[1053] It should be noted that reparative measures are both a component of and a requirement for transformative reparations, given that the needs of individual victims should be prioritised in reparations programs.

4.4. BEYOND COMPENSATION FOR 'COMFORT WOMEN'

In the case of the 'comfort women', reparations should be mutually coherent with other forms of reparations. Monetary compensation and symbolic reparations including a sincere and meaningful apology should be accompanied with transformative reparations in order to provide

[1047] Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations,' UN Doc. CEDAW/C/GC/30 (1 November 2013), para 77, 79.
[1048] Pablo de Greiff, 'Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence,' UN Doc. A/69/518 (October 14, 2014), para 81.
[1049] ibid, para 21.
[1050] Rubio-Martin Ruth, "The Gender of Reparations in Transitional Societies," in The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations, ed. Rubio-Martin Ruth (Cambridge: Cambridge University Press, 2009), 63–120.
[1051] ibid.
[1052] Colleen Duggan and Jacobson Ruth, "Reparation of Sexual and Reproductive Violence: Moving from Codification to Implementation," in The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations, ed. Rubio-Marin Ruth (Cambridge: Cambridge University Press, 2009), 121–61.
[1053] Greiff, "Justice and Reparations." See also, Ruth, "The Gender of Reparations in Transitional Societies."

full reparation for the 'comfort women'.[1054] Such full reparation should also contribute to the guarantee of non-repetition of the past atrocities. Furthermore, a victim-oriented and gendered approach should be adopted for the 'comfort women'. The needs of the individual victims are primary in reparation programmes, delivering justice to them.[1055] For successful reparations, it is necessary that victims and civil society as a whole are participate in the development of the schemes, ensuring that the measures are proportionate to the suffering inflicted and contribute to the victim's recognition as a right holder.[1056] Therefore, the participation of the 'comfort women' in establishing the reparation programme is essential.

4.4.1. Rehabilitation

Rehabilitation may encompass legal and social services, in addition to medical and psychological treatments.[1057] In the 'comfort women', it can be considered that the continuing violations have escalated the needs and the urgency of any appropriate forms of reparation, in addition to the actual physical and psychological damage they suffered.[1058] Those continuing violations include Japan's denial of the 'comfort women' as sexual slavery, the rejection of state responsibility for the 'comfort women' and the failure to provide reparations which contain their needs.[1059] It can be argued that the continuing violations have caused additional harm to victim survivors and their families. Survivors of mass sexual violence, in particular, suffer long-term trauma that may necessitate specialised care and treatment.[1060]

The physical and psychological damage inflicted on the 'comfort women' has not healed. Many of the 'comfort women' testified that they were forcibly taken or tricked and taken to a foreign country and forced into the 'comfort women'. Some of them have witnessed their families

[1054] Esther Song, "Just Reparations for Korean 'Comfort Women': A Transitional Justice and International Law Perspective," Journal of Korean Law 20, no. 2 (2021): 373–412.
[1055] Greiff, "Justice and Reparations."
[1056] Pablo de Greiff, Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, U.N. Doc. A/HRC/21/46, at 28-46 (2012).
[1057] UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law : resolution / adopted by the General Assembly, 21 March 2006, A/RES/60/147, Article 21.
[1058] McDougall, "Addressing State Responsibility for the Crime of Military Sexual Slavery during the Second World War: Further Attempts for Justice for the 'Comfort Women.'" See also, Ling, "Walking the Long Road in Solidarity and Hope : A Case Study of the " Comfort Women " Movement ' s Deployment of Human Rights Discourse.", Grimberg, "Women without a Voice: Japan's Silencing of Its Comfort Women and the Redemptive Future the Tokyo Women's Tribunal Offers to the Gendered and Colonial History of International Law."
[1059] Grimberg, "Women without a Voice: Japan's Silencing of Its Comfort Women and the Redemptive Future the Tokyo Women's Tribunal Offers to the Gendered and Colonial History of International Law."
[1060] Getz, "Honour and Dignity: Trauma Recovery and International Law in the Issue of the Comfort Women of South Korea."

being abused when they were taken away, and/or have been raped, being watched by their families.[1061] The 'Comfort women' were confined in comfort stations and forced into having sexual interactions with Japanese soldiers over a period of weeks, months, or years.[1062] Thus, the 'comfort women' have experienced utmost trauma concerning rape, sexual and physical abuse, starvation, threats of death, and witnessed many others cruel acts.[1063] Bessel van der Kolk, a psychiatrist, says of trauma, 'it takes tremendous energy to keep functioning while carrying the memory of terror, and the shame of utter weakness and vulnerability'.[1064]

The experiences of the 'comfort women' had a considerable impact on their lives after the war. The majority of 'comfort women' were rejected by their societies and found it difficult to marry.[1065] The consequences of 'comfort women' has been deteriorated in patriarchal societies in particular, where single women are officially and privately undervalued in general, and males are given job preference.[1066] Moreover, they tend to have no education and be the low socioeconomic status, to be ashamed of their experiences as the 'comfort women' to date, and to suffer from various disorders such as depressive disorder, social anxiety disorder, and panic disorder.[1067]

Rehabilitation should be also provided for the relatives of the 'comfort women', because the relatives of victims of mass violence suffer loss of loved one, loss of peace and cohesion of the family, and loss of the ability to decide one's course of life. For instance, in the Programme for Reparation and Integral Health Assistance for Victims of Human Rights Violations in Chile between 1991 and 2004 which implemented to redress damages that victims suffered from human rights violations during Pinochet's dictatorship from 1973 to 1990, reparation measures were also provided to the third-generation relatives.[1068] Chile has progressively recognised the

[1061] The Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery, Prosecutors v. Hirohito Emperor Showa et al, No. PT-200., See also, Women's Active Museum on War and Peace, Nihongun *"Ianfu" Mondai Subete No Gimon Ni Kotaemasu*.
[1062] The Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery, Prosecutors v. Hirohito Emperor Showa et al, No. PT-200., See also Women's Active Museum on War and Peace, Nihongun *"Ianfu" Mondai Subete No Gimon Ni Kotaemasu*.
[1063] Jeewon Lee et al., "Psychiatric Sequelae of Former 'Comfort Women,' Survivors of the Japanese Military Sexual Slavery during World War II," Psychiatry Investig 15, no. 4 (2018): 336–343.
[1064] Bassel Van der Kolk, The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma (New York: Penguin Group, 2014).
[1065] Lee et al., "Psychiatric Sequelae of Former 'Comfort Women,' Survivors of the Japanese Military Sexual Slavery during World War II."
[1066] ibid.
[1067] ibid.
[1068] Aprueba Norma General Técnica no. 88, del Programa de Atención en salud a las personas afectadas por la represión política ejercida por el Estado en el período 1973–1990. Resolución exenta no. 437', June 30, 2006. See also, Law 19123 'Crea Corporación Nacional de Reparación y Reconciliación, establece pensión de reparación y

damage suffered and the risks for the affected population, containing the whole family group of the victims as well as future generations.[1069] Through the measures, psychologists and psychiatrists from the human rights institutions implemented various medical and psychosocial care, including group therapy and social assistance, based on the needs of victims and their families.[1070]

4.4.2. Symbolic Reparations

As mentioned before, the continuing violations include Japan's denial of the acknowledgement that the 'comfort women' system is an internationally wrongful act, and it has resulted in increasing the suffering of the victim survivors as well as their families. Furthermore, it can be said that the continuing violations have deprived them of the stability of their family and with their societies.[1071] Therefore, it is necessary for Japan to offer a sincere and meaningful apology to individual victims, acknowledging the wrongful acts involving the 'comfort women' and admitting its state responsibility. Given that the truth seeking is a key component of the right to remedy and the right to reparation, Japan is required to verify the facts of the 'comfort women' system and the experiences of the 'comfort women' and to disclosure information if it does not result in causing additional damage to the victim survivors, their families and related people.[1072]

Furthermore, memory preservation can assist in healing of the 'comfort women' and their families. Setting commemorative days and constructing museums and memorials can increase respect for the 'comfort women'. Moreover, the implementation of education for future generations to tell the history of the Imperial Japanese Army's cruel acts involving the 'comfort women' can also contribute to preventing re-occurrence of such human rights violations.[1073] In

otorga otros beneficios en favor de personas que señala'., Elizabeth Lira, "Reflections on Rehabilitation as a Form of Reparation in Chile after Pinochet's Dictatorship," International Human Rights Law Review 5, no. 2 (2016): 194–216.

[1069] Aprueba Norma General Técnica n° 88, del Programa de Atención en salud a las personas afectadas por la represión política ejercida por el Estado en el período 1973–1990. Resolución exenta N° 437', June 30, 2006.

[1070] Lira, "Reflections on Rehabilitation as a Form of Reparation in Chile after Pinochet's Dictatorship."

[1071] Song, "Just Reparations for Korean 'Comfort Women': A Transitional Justice and International Law Perspective." See also, Getz, "Honour and Dignity: Trauma Recovery and International Law in the Issue of the Comfort Women of South Korea."

[1072] Van Boven, "Victims' Rights to a Remedy and Reparation: The New United Nations Principles and Guidelines." See also, Bassiouni, "International Recognition of Victims' Rights.", Merryl Lawry-White, "The Reparative Effect of Truth Seeking in Transitional Justice," International and Comparative Law Quarterly 64, no. 1 (2014): 141–77.

[1073] Rubio-Marin and Greiff, "Women and Reparations."

addition to this, the participation of the 'comfort women' themselves in developing the reparation programme helps not only to incorporate as much their own needs as possible, but also to promote healing and function it as rehabilitation.[1074]

To date, the activities concerning conservation of memory of the 'comfort women' in Japan has been mainly implemented by a non-profit organization (NPO). The Women's Active Museum on War and Peace in Tokyo, Japan was established through the donation by a NPO, Women's War and Peace Human Rights Fund founded in 2002.[1075] The museum was created as Japan's first museum to convey the facts and consequences of wartime sexual violence and the 'comfort women'. It has also dedicated to providing educational activities in relation to wartime sexual violence and to collecting and organising relevant materials.[1076]

4.4.3. Empowerment and Equality with a Gendered Approach

It can be stated that, horrific violations involving girls' and women's bodies, fertility, sexuality, and self-esteem, assumedly occur, especially in societies with a patriarchal structure and a culture that devalues women. Gender and their perceived vulnerability and inferiority are common causes of such exploitation.[1077] Unfortunately, such perceptions can be found in Japanese culture, which is not uncommon.

As a result, it can be argued that Japan must address the ideas underpinning the 'comfort women and girls' and the political and socioeconomic structures that justify gender inequality throughout all levels of society, thereby preventing violence against women and girls. Such structural changes can be achieved by educational campaigns on women's rights, providing educational and vocational opportunities, and incorporating non-discriminatory regulations.[1078]

[1074] ibid.
[1075] Onna Tachino Sensou to Heiwa Jinken Kikin (Women's War and Peace Human Rights Fund), "Katsudou No Enkaku (Activity History)," accessed October 3, 2022, https://wfphr.org/.
[1076] ibid.
[1077] Walker, "Transformative Reparations? A Critical Look at a Current Trend in Thinking about Gender-Just Reparations."
[1078] Ruth, "The Gender of Reparations in Transitional Societies."

CHAPTER 5

CONCLUSIONS

First conclusion

The origin of the historical injustice for the 'comfort women' can be found in a conventional military culture existed anywhere in war, in which the gender-based crimes are often tolerated and women are seen as being inferior to men. However, as for the 'comfort women', it was reinforced by setting the institutionalisation and organisation of the 'comfort women' system as a favoured policy of the Imperial Japanese Army, placing them as 'military prostitutes.'

The motivation to establish the comfort stations well represents such traditional military culture. Since Japan begun to invade the Asia-Pacific Region to accomplish its domination, Japanese military and political officers perpetrated and allowed inhumane atrocities against the civilians and the POW in the occupied territories. Particularly in China, following the Imperial Japanese Army's march to Nanking, Japanese soldiers committed mass rape against the civilians. During this 'Rape of Nanking', it is said that several thousand citizens were raped over a period of about 6 weeks.

Ironically, this incident had a significant impact on the decision to establish the 'comfort women' system throughout Asia. Despite the criticism from the international community for the horrific atrocities, the then Japanese government was concerned with damage control regarding the reputation of the Imperial Japanese Army, rather than making amends. Thus, the comfort stations were established to conciliate anti-Japanese sentiments of people stem from the outrage on the mass rapes by satisfying the sexual gratification of the Japanese soldiers under the military control. The other aim of the establishment of the comfort stations was to enhance the military force by minimising the Japanese soldiers' exposure to sexually transmitted diseases. Hence, the 'comfort women' were regarded as chattels by the Imperial Japanese Army to accomplish the victory of war.

In the 'comfort women' system, numerous women suffered the deprivation of freedom and loss of the autonomy. These women were taken to the comfort stations in different countries across Asia by the Japanese Imperial Army, military and civilian police and their private agents. These women were abducted, falsely recruited, or otherwise coerced or deceived into the 'comfort women'. The comfort stations were systematically controlled by the Imperial Japanese Army

regarding the establishment, operation and stuffing. Furthermore, the then Japanese government organised the military control over the 'comfort women'.

Even the comfort stations managed by private owners were functionally under the control of the Imperial Japanese Army and military police. It should be noted that, although there existed women who were taken to military camps, soldiers' barrack or tents, rather than typical comfort stations which developed in China, these actions can also be attributed to the policy of the Imperial Japanese Army favouring the establishment of comfort stations.

The 'comfort women' were forced into sexual slavery for different period from several days, months and years, being confined, repeatedly raped by the Japanese soldiers, and exposed to various diseases due to the poor condition. As a result of continuous rape, these victims often suffered the genital problems and injuries. Their suffering has lasted after the end of World War II as returning home did not bring peace for them due to shame and stigma.

These acts of Imperial Japanese Army should be criticised in terms of both the actual harm caused to victims as well as the harm lasting over 80 years due to Japan's continuing violations of human rights stem from the non-acceptance of its responsibility.

Second conclusion

The study of the historical context and the judgements of the IMTFE held between 1946 and 1948, the 'comfort women' lawsuits filed in domestic courts of Japan between 1991 and 2010, and the 2000 International Women's Tribunal, has allowed me to identify what have been preventing the 'comfort women' from justice to be delivered to date.

I contend that the issue of 'comfort women' was completely removed from the IMTFE's agenda because not only its focus was to accuse the responsibility of Japan for waging war against Allied Powers, but because the 'comfort women' were recognised and tolerated as military prostitutes as if there were victims' voluntary participation and cooperation in the name of the army. Furthermore, due to its focus on the interests of the Allied Powers, the voice of victims of gender-based crimes was considerably excluded.

The indictments of the IMTFE demonstrated that gender-based crimes committed by the Japanese soldiers, however, these crimes were not explicitly stipulated as a separated crime in

the Tokyo Charter and considered to be a part of atrocities, thus, it was subsumed in ‘inhumane treatment’, ‘ill-treatment’ or ‘failure to respect family honour and rights.’ Under the laws of war, the gender-based crimes have been recognised as crimes against honour, and due to this categorisation, the victims’ actual physical and psychological harm caused by violence were generally ignored.

In addition to this, the countries of origin of the 'comfort women' were not sufficiently represented in the proceedings in the IMTFE. The ‘comfort women’ mostly came from Korea, China, Japan, Taiwan, the Philippines, the Dutch East Indies and some other Japanese-occupied territories. Relatively, while the prosecutors and judges in the IMTFE were from Allied Powers such as Canada, Australia, France, the Netherlands and China, but there were no judges from Korea where the majority of the ‘comfort women’ came from.

On the other hand, the rulings of the Batavia court are quite significant because the Japanese military officers and the private managers were found guilty of rape and/or forcing the ‘comfort women’ into prostitution. However, I argue that these cases showed the existence of discrimination between the victims in the colonial times, in which colonial powers prioritised the protection of their nationals. As a result, these courts failed to address the large number of Indonesian women who had suffered the same situation as the Dutch women did.

After the IMTFE period, the stories of the ‘comfort women’ were relegated to the abyss of history. However, in the 1990s, the prosecution of sex offenders at the ICTY and ICTR brought the issue of sexual violence in international law to the attention of the international community. Therefore, ‘comfort women’ victims filed 10 lawsuits against the Japanese government before the domestic courts in Japan, seeking justice and reparation.

However, all the cases were eventually dismissed by the Japanese domestic courts on the basis of statute of limitations and the expiration of the individual right to claim against the Japanese state according to the peace treaties and bilateral agreement adopted by Japan. I contend that these judgements were in complete disregard for jus cogens norm, which is the prohibition of slavery, and the evolving principles of the international law in relation to the right to an effective remedy and the right to reparation.

Through the series of lawsuits, the domestic courts in Japan have repeatedly rejected the claims based on not only Article 3 of the Hague Convention, but also based on customary international law and other conventions such as the 1930 Forced Labour Convention and the 1910 International Convention for the Suppression of the Traffic in Women and Children. According

to these rulings, in order for international law to serve as the basis for individual claims, it is necessary that the rights of individuals are clearly stipulated, and that the intention of the Contracting Parties to establish such stipulations can be confirmed.

I argue that the domestic courts should have considered the continuing violations of human rights of the 'comfort women' and the principle of non-application of statute of limitations for serious human rights violations which has been becoming more and more present in human rights treaties. In this regard, Kampu case is a quite notable example because the Japanese court found a cause of action in tort based on the failure of Japan's legislative duty, namely, the absence of laws to compensate victims.

Furthermore, the domestic courts and Japan authorities have constantly held that the individual right to claim of 'comfort women' has expired with the adoption of the post-war peace treaties and bilateral agreements, like the waiver clause established in Article 14(b) of the 1951 San Francisco Peace Treaty. However, I assert that a serious violation of jus cogens norm, such as the prohibition against sexual slavery, cannot be derogated by international treaties and agreements with economic nature, which do not specifically address human rights violations of the 'comfort women'. Moreover, I contend that these peace treaties and agreements are invalid because jus cogens norms are a non-negotiable standard in pursuant to Article 53 of the 1969 Vienna Convention on the Law of Treaties and can only be derogated by another jus cogens norm.

In comparison, the 2000 Women's International Tribunal successfully reconsidered the failure of the IMTFE by making huge efforts to gain support from specialists on women's rights in international law from around the globe and collecting a large amount of evidence with a victim-oriented approach. While the domestic courts showed a limited approach to evidence, focusing on the examination of individual right to claim, leaving the fact-finding behind, the 2000 Women's International Tribunal demonstrated that people's tribunal has the great flexibility of the rules of evidence which contributes testimonies and records. Although people's tribunal lacks legal authority, the 2000 Women's International Tribunal, the legal theory in the judgement contained the comprehensive examination of fact-finding based on the testimonies of the 'comfort women', historical research, and the realisation of 'gender justice' under international law. However, the Tribunal showed a limitation in relation to the criminal indictments. The prosecutors focused on crimes against humanity because the pre-war status of Taiwan and Korea was recognised as a colony of Japan by Allied Power and Japan and war

crimes is applicable when the alleged acts committed against residents of an opposing state. Indeed, considering conventional international law, a colony which controlled by a colonised power was considered a part of the colonised power, however, it cannot exclude the cases may fallen within the scope of war crimes.

The attitude of Japan towards the People's Tribunal should be criticised. Japan not only did not respond to the Tribunal but also attempted to minimise the impact of the results on the society by controlling media. Especially, the pressure put by some politicians on the NHK to modify the educational TV programme resulted in deleting the contents concerning the People's Tribunal. I argue that past wrongs should be delivered to the future generations as an education in order to prevent repetition of atrocities.

Third conclusion

Considering the developments in international law, the 'comfort women' can constitute crimes against humanity of sexual slavery because women were deprived of their liberty and significantly lost their all autonomy including bodily and sexual autonomy due to the continuing offences committed by the Japanese soldiers. The systematic and widespread nature of the 'comfort women' system falls under the chapeau of crimes against humanity. Furthermore, the 'comfort women' can constitute war crimes because they were taken away against their will, sometimes across borders, and subjected to forcible sexual activities by the Japanese soldiers in a large-scale in the context of armed conflicts, violating international humanitarian law rules. Finally, the 'comfort women' can also constitute acts of genocide in terms of ethnic genocide within the context of colonisation, because they were deprived not only their liberty and all autonomy, but also their ethnic identities.

The prohibition of sexual slavery as a specific crime is a recent development in international law, however, the prohibition of slavery has been well established before World War II. The first legal definition of slavery can be found in the 1926 Slavery Convention which prohibited slavery and slave trade. Article 1(1) states that 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised,' and numerous international instruments, including forced labour conventions, international human rights

instruments as well as instruments on human trafficking have referred to the definition which resulted in making it authoritative. Therefore, the prohibition of slavery constitutes a principle of customary international law and has attained jus cogens status, thus, the norm generates erga omnes obligations.

Slavery has evolved to include various forms while maintaining the definition. For instance, 'modern slavery' generally encompasses slavery, enslavement and trafficking in persons, though it is not internationally and legally defined. In relation to this, Japan ratified the 1921 International Convention for the Suppression of the Traffic in Women and Children in 1925. Considering that numerous 'comfort women' has been trafficked to comfort stations across borders against their will, being deprived freedom, these cases also fall within the scope of trafficking in persons.

Sexual slavery is explicitly listed as a stand-alone crime as a crime against humanity and as a war crime, in the Rome Statute of the ICC. The widespread and systematic enslavement of civilians was historically considered as a crime against humanity, as stated in Article 6(c) of the IMT's Nuremberg Charter and Article 5 of the IMTFE's Tokyo Charter.

The Elements of Crimes of the Rome Statute establish that one of the elements of sexual slavery is 'deprivation of liberty' by the perpetrator exercising any or all of the powers attaching to the right of ownership over a person or persons. The deprivation of liberty can be caused by continuing offence. The second element is a sexual nature of acts which deprives victims of their autonomy. The third element encompasses mens rea. These elements of sexual slavery are substantially identical to the one as war crimes, except that the latter should be committed within the context of armed conflicts.

In case of the 'comfort women', these victims were taken way against their own will and were deprived their fundamental rights and freedom, and these treatments constitute slavery as defined in the 1920 Slavery Convention, which is a jus cogens norm. Although Japan has constantly denied that the 'comfort women' were sex slaves, in fact, the conditions of the 'comfort women' were described in the 1993 Kono Statement as well as in the Japan's official report, 'On the issue of wartime 'comfort women' issued together with the 1993 Kono Statement. Furthermore, the 'comfort women' were forced into sexual acts with the Japanese soldiers which resulted in a considerable loss of their all autonomy, including their bodily and sexual autonomy.

Given that these acts were conducted across Asia through the institutionalisation and management of the comfort stations and the procurement of the 'comfort women' by the Imperial Japanese Army, these acts had a widespread and systematic nature, hence, constituting crimes against humanity of sexual slavery. Consequently, not only the military and political officers where the authors of these crimes, but also the Japanese government bears state responsibility and is obliged to provide reparation for the 'comfort women'.

Furthermore, considering that the purpose of the establishment of the comfort stations was Japanese soldiers' sexual gratification to prevent mass rape against habitants and deter anti-Japanese sentiment as well as the underpinning ideologies of the 'comfort women' such as patriarchal norms and a military culture to sees women as being inferior to men, the acts committed against the 'comfort women' by the Japanese Imperial Army can be considered as a crime against humanity of gender persecution.

As for war crimes, slavery was prohibited since the 1863 Lieber Code. Moreover, Article 46 of the Regulations annexed to the 1907 Hague Convention was reflected in Article 27 of the 1949 Fourth Geneva Convention. Thus, Article 27 of the 1949 Fourth Geneva Convention categorises rape and other gender-based violence as a crime against honour, which does not capture the violence element of these crimes. Nevertheless, it can be argued that the prohibition of any attack against women were well established under customary international law. Since the 'comfort women' is sexual slavery and were taken away against their will, in war zones, sometimes across borders, and subjected to forcible sexual activities by the Japanese soldiers in a large-scale commission in the context of armed conflicts, thus, the 'comfort women' is also a war crime.

Regarding genocide, the 'comfort women' can be framed in terms of ethnic genocide considering the colonial context. The applicability of the Genocide Convention itself is limited, however, the ICJ affirmed that the prohibition of genocide is a peremptory norm of international law.

In the context of the 'comfort women', the insidious motivation may be disguised by the Japan's aim of colonisation as well as the aim of the establishment of comfort stations that is the Imperial Japanese Army's 'efforts' to reduce mass rape against civilians during and after conflicts. Within the context of colonisation, the attack on colonised people tends to be considered as a function of colonisation rather than genocide itself. In terms of the criteria of legal admissibility of genocide which requires 'special intent' of the perpetrator to destroy a

group in total or in part, often restricts the definition and interpretation of genocide in court settings. Therefore, the intention can be disguised by perpetrators to escape its responsibility, for instance, appealing to the higher aims of colonisation.

The genocidal aspect of the 'comfort women' has often referred to the experiences of the Korean 'comfort women' from the perspective of ethnic genocide. In this regard, the 'comfort women' forced to incorporate the Japanese language and surnames and to wear Japanese or Chinese-styled clothing and Shintoism. Some of them experienced a forced surgical procedure permanently sterilised them. Hence, the genocidal aspect of the 'comfort women' should be understood with a focus on some realities, rather than individual intentions, that these 'comfort women' in the colonial context were not only deprived their liberty and autonomy, but also of their ethnic identity.

Fourth Conclusion

Since the 1930 League of Nations Codification Conference attempted to codify the fundamental principle of state responsibility, a State is responsible at the international level for internationally wrongful act and has a duty to repair the damage caused by its acts. The principle of state responsibility and compensation has been said to be derived from the principle of respondeat superior to the law of nations, therefore, such States' duty extends to crimes committed against the 'comfort women' by the Imperial Japanese Army, which was clearly part of Japan's administration.

The Japanese government has constantly denied the state responsibility, completely disregarding the jus cogens norm of prohibition of slavery. At the time the alleged crimes against the 'comfort women' were committed, customary international law prohibited slavery, which would be applied in accordance with the laws of war, or separately as substantive offenses, regardless of the nature or the existence of an armed conflict. Regardless of the geographical situation of Korea and Taiwan at the time the offenses were committed, Japan violated customary international law. Besides, harm caused to any civilian population by widespread and systematic attack, is included in the fundamental doctrine of crimes against humanity.

Moreover, as ICJ states, international instruments must be interpreted and applied within the framework of the overall legal system prevailing at the time of interpretation. International human rights treaties such as the ICCPR and the UDHR, independently bind, or implicitly call on, a State to completely conduct the investigation into past wrongs and offer effective reparations to the victims. Hence, these human rights treaties unquestionably provide the protection for the 'comfort women' by applying the principle of non-application of statute of limitations for serious human rights violations.

While denying the state responsibility, the Japanese government established the Asian Women's Fund in 1995 to express the acceptance of moral responsibility. I criticise that the Fund was not state compensation, and that it illustrated the disadvantage of inter-state reparations, which tend to ignore or do not cover the needs of victims. The premises of public-private partnerships of the Fund contributed to concealing where the responsibility lied. It also failed to provide comprehensive and satisfactory reparations for the 'comfort women' due to the lack of victim-oriented approach and the narrow scope of the reparation programmes. It symbolised how state-led inter-state reparations programme can easily leave victims' needs behind.

The existing domestic mechanisms are frequently limited in their ability to reach victims of large-scale violations such as the 'comfort women'. In this respect, collective reparations, focusing on an inclusive approach, with moral reparation, community recognition, and access to public resources and services can be a solution and play a significant role to restorative justice.

In many societies, women's legal status and opportunities are not equal to men's one and the availability of the opportunities of women generally undervalued. Therefore, compensating women in proportion to damage to restore their pre-violence status can be the most limited option among material reparations. In this regard, structural changes in societies can contribute to eliminating sex oppression and gender inequality. These structural changes can be legal and institutional reforms, setting up a prohibition of discrimination and the subversion of sexist or patriarchal norms, the amendment of constitution that affects women's status can contribute to achieving women's ability to recover from harm in male-dominated societies. On the other hand, reparative measures should directly and primarily address individual victims, prioritising their needs, thus, reparative actions are both a component of and a prerequisite for transformative reparations.

Consequently, the establishment of a national reparations programme by setting a particular mechanism to address reparation of the 'comfort women' can be an option but the involvement of the 'comfort women' in the process of creating reparations programme is crucial. Otherwise, it would end up without delivering what they need, as the Asian Women's Fund did. The women's involvement has a reparative impact, considering the barriers that many societies set in the way of women's participation, in addition to contribute to the efficient design of reparations programme by providing functional information.

As a result, reparations for the 'comfort women' should go beyond monetary compensation, including symbolic and transformative reparation together with structural changes. For instance, rehabilitation should be included, considering not only the actual harm they suffered, but also the continuing violations which caused additional harm to the 'comfort women' as well as their families. These continuing violations include Japan's denial of the 'comfort women' as sexual slavery, the rejection of state responsibility for the 'comfort women' and the failure to provide full and effective reparations which contain their particular needs.

For the long-term trauma they suffered due to the mass sexual violence, specialised care and treatment should be provided. Particularly the male-dominated society to which they belonged made life after the war more difficult to fit for the vast majority of the 'comfort women', such as the rejection of their communities and the difficulty of getting married.

Rehabilitation should be also provided for the families of the 'comfort women', because the relatives of victims of mass violence suffered loss of loved ones, loss of stability of the family, and loss of the ability to decide one's course of life. The rehabilitation programme should be designed in a way that it is sensitive to the needs of women and their families, by doing so, it could be a future-oriented reparation in terms of services and social benefits.

Symbolic reparation can take various forms. Japan is required to verify the facts of the 'comfort women' system because the truth seeking is a crucial component of the right to remedy and the right to reparation. Japan should provide a meaningful and sincere apology to individual victims, acknowledging state responsibility, and disclosing information unless it does not result in causing additional damage to the victims. In addition, memory preservation can assist in psychologically healing the 'comfort women' and their families and in increasing respect for them in the society. The education for future generations regarding the sexual crimes of the Imperial Japanese Army against the 'comfort women' can also contribute to preventing the re-occurrence of further atrocities. Besides, Japan must address the underpinning ideas of the

‘comfort women and girls’ and improve the political and socioeconomic structure that justify gender inequality.

I argue that Japan must be aware that the denial of the gravity of these crimes represents a complete disregard of the development of international law. Japan must acknowledge that it bears state responsibility for the systematic sexual slavery of the ‘comfort women’. Given the limitations of inter-state reparations, Japan should provide not only material reparation, but also symbolic and transformative reparation together with structural changes for these victims which have lacked to date. There is indeed a certain restraint that the first step to provide the satisfactory reparations for the ‘comfort women’ will be Japan’s acknowledgement of the crime which will be a hard task. However, time does not heal their harm, rather it worsens. Therefore, support of international community in keep calling on Japan to delivering justice and providing reparations for the ‘comfort women’ considering the development of international law will be crucial. By doing so, the historical justice for the ‘comfort women’, which has remained over 80 years, will move forward to solution.

BIBLIOGRAPHY

1. Books

Allain, Jean. “Contemporary Slavery and Its Definition in Law.” In Contemporary Slavery: Popular Rhetoric and Political Practice, edited by Annie Bunting and Joel Quir, 1st ed., 36–66. University of British Columbia Press, 2017.

Allain, Jean. Slavery in International Law: Of Human Exploitation and Trafficking. Martinus Nijhoff Publishers, 2013.

Allain, Jean. “The Legal Definition of Slavery into the Twenty-First Century.” In The Legal Understanding of Slavery, edited by Jean Allain, 209. Oxford University Press, 2012.

Asian Center for Women’s Human Rights. International Conference on Violence Against Women in War and Armed Conflict Situations, 1998.

Asian Women’s Human Rights Council, and Bayan. *Primer on Filipino “Comfort Women”:* Qestions and Answers. Quezon, 1992.

Bassiouni, M. Cherif. Crimes against Humanity in International Criminal Law. 2nd ed., 1999.

Bassiouni, M. Cherif, and Marcia McCormick. Sexual Violence: An Invisible Weapon of War in the Former Yugoslavia. Chicago: DePaul University, 1996.

Boister, Neil, and Cryer Robert. The Tokyo International Military Tribunal: A Reappraisal. Oxford: Oxford University Press, 2008.

Borch, Fred L. Military Trials of War Crimianals in the Netherlands East Indies 1946-1949. United Kingdom: Oxford University Press, 2017.

Boven, Theo Van. “Victims’ Rights to a Remedy and Reparation: The New United Nations Principles and Guidelines.” In Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making, edited by Carla Ferstman, Mariana Goetz, and Alan Stephens, 17–40. Brill, 2009.

Boven, Theodoor C. van. “Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms : Final Report,” 1993.

Brackman, Arnold. The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials. New York: William Morrow & Co, 1987.

Caprio, Mark E. “Korean Clitiques of Japanese Assimilation Policy.” In Japanese Assimilation Policies in Colonial Korea, 1910-1945, 171–97. University of Washington Press, 2009.

Chalk, Frank, and Kurt Jonassohn. The History and Sociology of Genocide. New Haven: Yale University Press, 1990.

Chang, Iris. The Rape of Nanking: The Forgotten Holocaust of World War II. Basic Books, 2014.

Chen, Edward I-te. “The Attempt to Integrate the Empire: Legal Perspectives.” In The Japanese Colonial Empire, 1895-1945, edited by Ramon H. Myers and Mark R. Peattie, 240–74. Princeton University Press, 2020.

Colonomos, Ariel, and Andrea Armstrong. “German Reparations to the Jews after World War II: A Turning Point in the History of Reparations.” In The Handbook of Reparations, edited by Pablo De Greiff, 1st ed., 390–419. New York: Oxford University Press, 2008.

Crawford, James. *The International Law Commission’s Articles on State Responsibility:* Introduction , Text and Commentaries. Camb: Cambridge University Press, 2002.

DeLaet, Debra. “Gender Justice: A Gendered Assessment of Truth-Telling Mechanisms.” In Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies, edited by Tristan Anne Borer. Notre Dame: University of Notre Dame Press, 2006.

Directorate General of Welfare and Welfare Ministry of Social Affairs Indonesia. “Indonesia Seifu to Ajia Jyosei Kikin Ni Yoru Ianfu Mondai Heno Torikumi No Houkoku (Report on Efforts to Address the Comfort Women Issue through Cooperation between the Indonesian Government and the Asian Women’s Fund),” 2006. https://www.awf.or.jp/pdf/196.pdf.

Dolgopol, Ustinia, and Snehal Paranjape. “*Comfort Women: An Unfinished Ordeal.”* Geneva: International Commission of Jurists, 1994.

Doswald-Beck, Jean-Marie Henckaerts Louise. Customary International Humanitarian Law: Volume II, Practice, Part 2. Edited by Jean-Marie Henckaerts and Louise Doswald-Beck. Cambridge University Press, 2005.

Draper, Giad. The Implementation and Enforcement of the Geneva Conventions of 1949 and of the Two Additional Protocols of 1978: Recent Developments. Alphen aan den Rijn: Sijthoff & Noordhoff, 1980.

Duggan, Colleen, and Adila Abusharaf. “Reparation of Sexual Violence in Democratic Transitions: The Search for Gender Justice.” In The Handbook of Reparations, edited by Pablo De Greiff, 623–649. New York: Oxford University Press, 2006.

Duggan, Colleen, and Jacobson Ruth. “Reparation of Sexual and Reproductive Violence: Moving from Codification to Implementation.” In The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations, edited by Rubio-Marin Ruth, 121–61. Cambridge: Cambridge University Press, 2009.

Erika de Wet. “Jus Cogens and Obligations Erga Omnes.” In The Oxford Handbook of International Human Rights Law, edited by Dinah Shelton. Oxford University Press, 2013.

European Court of Human Rights. “Guide on Article 4 of Protocol No. 4 to the European Convention on Human Rights,” European Court of Human Rights, 2020.

Evans, Christine. “State Responsibility, the Legal Order and the Development of Legal Norms for Victims.” In The Right to Reparation in International Law for Victims of Armed Conflict, edited by Christine Evans, 17–43. Cambridge: Cambridge University Press, 2012.

Falk, Richard. “The Rights of Peoples (In Particular Indigenous People).” In The Rights of People, 17–38. Oxford: Clarendon Press, 1988.

Fein, Helen. “Defining Genocide as a Sociological Concept.” In Genocide: A Sociological

Perspective, 8–31. London: Sage, 1990.

Friedman, Leon. The Law of War: A Documentary History, Volume 2. Edited by Leon Friedman. 1st ed. New York: Random House, 1972.

Front Matter. "Japan and Korea: Agreement on Settlement of Problems in Regard to Property and Claims and Economic Cooperation (Reparations) Treaties and Agreements." In International Legal Materials, 111–17. Cambridge University Press, 1966.

Futamura, Madoka. War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy. Routledge. 1st ed., 2008.

Gallagher, Anne T. The International Law of Human Trafficking. Cambridge: Cambridge University Press, 2010.

Goldblatt, Beth. "Evaluating the Gender Content of Reparations: Lessons from South Africa." In In What Happened to the Women? Gender and Reparations for Human Rights Violations, edited by Ruth Rubio-Marín, 48–91. New York: Social Science Research Council, 2006.

Goto-Shibata, Harumi. "Towards the Shanghai Incident." In Japan and Britain in Shanghai, 1925–31, 116–143. London: Palgrave Macmillan, 1995.

Gray, Christine D. Judicial Remedies in International Law. New York: Oxford University Press, 1987.

Greiff, Pablo de. "Justice and Reparations." In The Handbook of Reparations, edited by Pablo de Greiff, 451–477. Oxford: Oxford University Press, 2006.

Greiff, Pablo de. "Reparation Efforts from an International Perspective: The Contribution of Reparations in Achieving Imperfect Justice." In To Repair the Irreparable: Reparation and Reconstruction in South Africa, edited by Erik Doxtader and Charles Villa-Vicencio, 321–58. Cape Town: New Africa Books, 2004.

Grey, Rosemary. "Gender-Based Crimes." In Prosecuting Sexual and Gender-Based Crimes at the International Criminal Court Practice, Progress and Potential, 37–66, 2019.

Groenhuijsen, M.S., and R.M. Letschert. "Reflections on the Development and Legal Status of Victims Rights Instruments." In *Compilation of International Victims' Rights Instruments*, edited by M.S. Groenhuijsen and R.M. Letschert, 1–18. Nijmegen: Wolf Legal Publishers, 2006.

Haldemann, Frank, and Thomas Unger, eds. The United Nations Principles to Combat Impunity: A Commentary. 1st ed. New York: Oxford University Press, 2018.

Hamber, Brandon. "Narrowing the Micro and Macro: A Psychological Perspective on Reparations in Societies in Transition." In The Handbook of Reparations, edited by Pablo de Greiff, 560–588. Oxford: Oxford University Press, 2006.

Hayner, Priscilla B. Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions. 2nd ed. New York: Routledge, 2011.

Henson, Maria Rosa. *Comfort Woman: A Filipina's Story of Prostitution and Slavery Under* the Japanese Military. Maryland: Rowman & Littlefield, 2016.

Hicks, George. *The Comfort Women: Japan's Brutal Regime of Enforced Prostitution in the* Second World War. W.W. Norton & Company, 1997.

Hiroko, Tsubokawa, and Oomori Noriko. Shihou Ga Nintei Shita Nihongun Ianhu - Kagai, Higaijijitsu Ha Kesenai *(Japanese Military "comfort Women" Certified by the Judiciary* - Damage and Harm Facts Can Not Be Erased. Kamogawa Booklet, 2011.

Ikeda, Eriko. "Insight on the Issues: Coercion, Sexual Violence, and Rape Centers in Yu County, Shanxi Province." In Denying the Comfort Women, edited by Robert Ricketts Nishino Rumiko, Kim Puja, Onozawa Akane, 1st ed., 62–68. London: Routledge, 2018.

Ikeda, Tadashi. "Kikitori Oranda Jigyo: Jyunbi to Igi (Hearing on the Project in Netherlands: Preparation and Significance)." 2006.

International Commission of Jurists. The Right to a Remedy and Reparation for Gross Human Ri*ghts Violations: A Practitioners' Guide*. Revised. Geneva: International Commission of Jurists, 2018.

International Labour Office. "Giving Globalization a Human Face." Geneva: International Labour Office, 2012.

International Labour Office. "Global Estimates of Modern Slavery." Geneva: International Labour Office, 2017.

International Labour Office. Report III (Part 1B) General Survey Concerning the Forced Labour Convention, 1930 (No. 29), and Abolition of Forced Labour Convention, 1957 (No. 105). Geneva: International Labour Office, 2007.

International Labour Office. Report of the Committee of Experts on the Application of Conventions and Recommendations at 85th Session. Geneva: International Labour Office, 1997.

International Labour Organisation. "Report of the Committee of Experts on the Application of Conventions and Recommendations, Eradication of Forced Labour." Geneva: International Labour Office, 2007.

International Labour Office. "The Labour Provisions of the Peace Treaties." Geneva: International Labour Office." Geneva: International Labour Office,1920.

International Labour Organisation. *Forced Labour in Myanmar (Burma) : Report of the* Commission of Inquiry Appointed under Article 26 of the Constitution of the International Labour Organization to Examine the Observance by Myanmar of the Forced Labour Convention, 1930 (No. 29). Geneva: International Labour Organization, 1998.

International Military Tribunal for the Far East. "International Military Tribunal for the Far East, Judgment of 12 November 1948." In The Tokyo War Crimes Trial, edited by John Pritchard and Sonia M. Zaide, Vol.22. Garland Publishing, 1981.

Ishii, Tadao. Kokkabaishou Soshou Nyumon (Introduction to the State Liability Litigation). Tokyo: Sankyouhouki Shuppan, 2005.

Jordan, Donald A. *China's Trial by Fire: The Shanghai War of 1932 (Review)*. Ann Arbor: The University of Michigan Press, 2001.

Jørgensen, Nina H.B., and Danny Friedmann. "Enforced Prostitution in International Law Through the Prism of the Dutch Temporary Courts Martial at Batavia." In Historical Origins of International Criminal Law: Volume 2, edited by Morten Bergsmo, CHEAH Wui Ling, and YI Ping, 331–54. Torkel Opsahl Academic EPublisher, 2014.

Kress, Claus, and Kimberly Prost. “Claus Kress and Kimberly Prost.” In Commentary on the *Rome Statute of the International Criminal Court: Observers’ Notes, A*rticle by Article, edited by Otto Triffterer. Hart, 1999.

Kalshoven, Frits. “Article 3 of the Convention (IV) Concerning the Laws and Custom of War on Land, Signed at The Hague, 18 October 1907.” In Remembering What We Have Tried to Forget, 16–30. ASCENT, 1997.

Kalshoven, Frits. “Some Comments on the International Responsibility of States.” In International Humanitarian Law Facing New Challenges, edited by V. von Heinegg, W.H., Epping, 207–214, 2007.

Katsuya, Uga, and Junko Obata. Joukai Kokkabaishoho (State Liability Act). Koubundo, 2019.

Kestemont, Lina. Handbook on Legal Methodology From Objective to Method. Intersentia, 2018.

Kim, DONG-CHOON. “The San Francisco Peace Treaty and ‘Korea.’” In The San Francisco System and Its Legacies, edited by Kimie Hara, 97–115. London: Routledge, 2014.

Kim, Il Myon. *Tennou No Guntai to Chousenjin Ianfu (Emperor’s Army and Korean Comfort* Women). Tokyo: San-Ichi Shobo, 1976.

King, Jamesina. “Gender and Reparations in Sierra Leone: The Wounds of War Remain Open.” In In What Happened to the Women? Gender and Reparations for Human Rights Violations, edited by Ruth Rubio-Marin, 246–83. New York: Social Science Research Council, 2006.

Kolk, Bassel Van der. The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma. New York: Penguin Group, 2014.

Korean Council for Women Drafted for Military Sexual Slavery by Japan. True Stories of the Korean Comfort Women. Edited by Keith Howard. UNKNO, 1996.

Kuper, Leo. Genocide: Its Political Use in the Twentieth Century. Penguin, 1981.

Lemkin, Raphael. Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress. Washington D.C.: Carnegie Endowment for International Peace, 1944.

Levie, Howard S. “Report of the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties.” In Documents on Prisoners of War. Newport: Naval War College Press, 1979.

Matos, Christine De, and Mark E. Caprio. Japan as the Occupier and the Occupied. New York: Palgrave Macmillan, 2015.

Mazzeschi, R. Pisillo. “International Obligations to Provide for Reparation Claims.” In State Responsibility and Individual: Reparation in Instances of Grave Violations of Human Rights, 149. The Hague: Kluwer law international, 1999.

McDougal, Myres S., Harold D. Lasswell, and Lung-chu Chen. Human Rights and World Public Order: The Basic Policies of an International Law of Human Dignity. 2nd ed. Oxford University Press, 2018.

Minear, Richard H. *Victors’ Justice: The Tokyo War Crimes Trial*. Princeton: Princeton University Press, 1971.

Mitter, Rana. *China's Good War : How World War II Is Shaping a New Nationalism*. Cambridge: Belknap Press: An Imprint of Harvard University Press, 2020.

Nagata, Kouzou. NHK Tetsu No Chinmoku Ha Dare No Tame Ni: Bangumikaihenjiken Jyunenme No Kokuhaku (NHK, for Whom the Iron Silence Is: Confessions of the 10th Anniversary of the Programme Alteration Incident). Tokyo: Kashiwa Shobo, 2010.

Naoko, Kumagai. Ianfu Mondai. Tokyo: Chikuma Shobo, 2014.

Niimi, Takashi. Kokka No Sekinin to Jinken: Guntaikiritsuron, Anzenhairyogimu No Houri (State Responsiblity and Human RIghts: Military Discipline Theory, The Doctrine of Obligation of Security). Yuishobou, 2006.

Onuma, Yasuaki. "Hajimeni." In Ianfu Mondai to Ajia Jyosei Kikin, edited by Yasuaki Onuma, Haruki Wada, and Shimomura Mitsuko, 3. Tokyo: Toshindo, 1998.

Oppenheim, Lassa Francis Lawrence. "International Law: A Treatise." In Disputes, War and Nationality, Vol. II, edited by Hersch Lauterpacht, 7th ed. London: Longsmans Green, 1952.

Orentlicher, Diane. "The Tokyo Tribunal: Perspectives on Law, History and Memory." In The Tokyo Tribunal: Perspectives on Law, History and Memory, edited by Viviane E. Dittrich, Kerstin von Lingen, Jolana Makraiová, and Philipp Osten, 85–102. Brussels: Torkel Opsahl, 2020.

Orlando Patterson. "Trafficking, Gender and Slavery: Past and Present." In The Legal Understanding of Slavery, edited by Jean Allain, 1st ed., 322–59. Oxford University Press, 2012.

Pao-San Ho, Samuel. "Colonialism and Development: Korea, Taiwan, and Kwantung." In The Japanese Colonial Empire, 1895-1945, edited by Ramon H. Myers and Mark R. Peattie, 347–98. Princeton University Press, 2020.

Paust, Jordan J., M. Cherif Bassiouni, Michael P. Scharf, Jimmy Gurule, Leila Sadat, and Bruce Zagaris. International Criminal Law: Cases and Materials. 2nd ed., 2020.

Peattie, Mark R. "Japanese Attitudes Toward Colonialism, 1895-1945." In The Japanese Colonial Empire, 1895-1945, edited by Ramon H. Myers and Mark R. Peattie, 80–127. Princeton University Press, 2020.

Piccigallo, Philip R. *The Japanese on Trial : Allied War Crimes Operations in the East , 1945-* 1951. Austin: University of Texas Press, 1980.

Pocar, Fausto. Human Trafficking: A Crime against Humanity. Edited by Ernesto U. Savona and Sonia Stefanizzi. Measuring Human Trafficking. Springer, 2007.

Pritchard, John R. *The Tokyo Major War Crimes Trial : The Records of the International Military Tribunal for the Far East : With an Authoritative Commentary and* Comprehensive Guide International Military Tribunal for the Far East. Vol. 103. New York: E. Mellen Press, 2002.

Qiu, Peipei, Su Zhiliang, and Chen Lifei. *Chinese Comfort Women : Testimonies from Imperial Japan ' s Sex Slaves (Oxford Oral History Series) 1st Edition*. 1st ed. Oxford University Press, 2014.

Remmelink, Willem. "Invasion of Java." In The Invasion of the Dutch East Indies, edited by

Willem Remmelink, 417–34. Leiden: Leiden University Press, 2015.

Remmelink, Willem. "Outline of the Operation." In The Invasion of the Dutch East Indies (Volume 3.0), edited by Willem Remmelink, 1–9. Leiden: Leiden University Press, 2015.

Röling, Bernard Victor Aloysius, and Antonio Cassese. *The Tokyo Trial and Beyond :* Reflections of a Peacemonger. Cambridge: Polity, 1993.

Röling, Bert V. A. "The Nuremberg and the Tokyo Trial in Retrospect." In Perspectives on the Nuremberg Trial, edited by Guénaël Mettraux, 455–72. Oxford: Oxford University Press, 2008.

Rombouts, Heidy, Pietro Sardaro, and Stef Vandeginste. "The Right to Reparation for Victims of Gross and Systematic Violations of Human Rights." In Out of the Ashes: Reparation for Victims of Gross and Systematic Human Rights Violations, edited by Koen Feyter, Stephan Parmentier, and Paul Lemmens, 345–53. Oxford: Intersentia, 2005.

Ruth, Rubio-Martin. "The Gender of Reparations in Transitional Societies." In The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations, edited by Rubio-Martin Ruth, 63–120. Cambridge: Cambridge University Press, 2009.

Saito, Hiro. "The Legacy of the Tokyo Trial." In The History Problem: The Politics of War Commemoration in East Asia, edited by Hiro Saito, 129–54. University of Hawaii Press, 2016.

Sanford, Victoria, Sofia Duyo Álvarezarenas, and Kathleen Dill. "Sexual Violence as a Weapon during the Guatemalan Genocide." In Women and Genocide: Survivors, Victims, Perpetrators, edited by Elissa Bemporad and Joyce W. Warren, 34–46. Indiana: Indiana University Press, 2018.

Schabas, William A. The International Criminal Court: A Commentary on the Rome Statute. Oxford University Press, 2010.

Shelton, Dinah. Remedies in International Human Rights Law. Remedies in International Human Rights Law. 3rd ed. Oxford University Press, 2015.

Shiraha, Yuzo. Anzenhairyogimu to Sono Haikei (The Obligation of Security and Its Background). Chuo Daigaku Syuppanbu, 1994.

Shirane, Seiji. "Introduction." In *Imperial Gateway: Colonial Taiwan and Japan's Expansion* in South China and Southeast Asia, 1895–1945, 1–16. Cornell University Press, 2022.

Simm, Gabrielle. "Peoples' Tribunal, Women's Courts, and International Crimes of Sexual Violence." In *Peoples' Tribunals and International Law*, 61–83. Cambridge: Cambridge University Press, 2018.

Singh, Rattan. Legal Research Methodology. 1st ed. LexisNexis, 2013.

Son, Angella. Stories That Make History: The Experience and Memories of the Japanese *Military "Comfort Girls-Women."* Edited by The Research Team of the War and Women's Human Rights Center. Stories That Make History. Berlin: Walter de Gruyter GmbH, 2020.

Tenney, Lester I. "The Bataan Death March." In Japanese War Crimes: The Search for Justice, edited by Peter Li, 81–106. New Brunswick: Transaction, 2009.

Terazawa, Yuki. "The Transnational Redress Campaign for Chinese Survivors of Wartime

Sexual Violence in Shanxi Province." In Marginalization in China: Recasting Minority Politics, edited by Siu-Keung Cheung, Joseph Tse-Hei Lee, and Lida V. Nedilsky, 67–93. New York: Palgrave Macmillan, 2009.

Torpey, John. Politics and the Past: On Repairing Historical Injustices. Maryland: Rowman & Littlefield, 2003.

Toshio, Hanafusa. Kampu Saiban Ga Mezashitamono (What the Kampu Trial Aimed For). Hakutakusha, 2021.

Totani, Yuma. "The Case Against The Accused." In *Beyond Victor's Justice? The Tokyo War* Crimes Trial Revisited, edited by Yuki Tanaka, Timothy L.H. McCormack, and Gerry Simpson, 145–61. Leiden: Martinus Nijhoff Publishers, 2011.

Totani, Yuma. "The Trial of Emperor Hirohito?" In The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II, edited by Yuma Totani, 43–62. Harvard University Asia Center, 2020.

Velásquez-Ruiz, Alberto Marco. "The Emergence and Consolidation of Transitional Justice within the Realm of Colombian Peacebuilding." In Truth, Justice and Reconciliation in Colombia Transitioning from Violence, edited by Fabio Diaz Pabon, 50–65. New York: Routledge, 2018.

Wada, Haruki. Ianfu Mondai No Kaiketsu No Tameni (To Solve the Comfort Women Issue). Toyko: Heibonsha, 2015.

Wandita, Galuh, Karen Campbell-Nelson, and Manuela Leong Pereira. "Learning to Engender Reparations in Timor-Leste: Reaching Out to Female Victims." In What Happened to the Women? Gender and Reparations for Human Rights Violations, edited by Ruth Rubio-Marín, 284–335. New York: Social Science Research Council, 2006.

Women's Active Museum on War and Peace. Higashi Thimoru: Sensou Wo Ikinuita Onna Tachi (East Timor: Women Who Survived the War). Toyko: Women's Active Museum on War and Peace, 2007.

Women's Active Museum on War and Peace. *Nihongun "Ianfu"* Mondai Subete No Gimon Ni Kotaemasu. Tokyo: Goudou, 2013.

Yoshimi, Yoshiaki. Comfort Women: Sexual Slavery in the Japanese Military During World War II. New York: Columbia University Press, 1995.

Yoshimi, Yoshiaki. Jyugun Ianfu (Comfort Women). Toyko: Iwanami Shinsho, 1995.

Yoshimi, Yoshiaki, ed. Jugun Ianfu Siryousyu. Tokyo: Otsukishoten, 1992.

Yoshioka, Yoshinori. Nihon No Shinryaku to Bouchou. Tokyo: Shinnihon Shuppansya, 1996.

Young, Donald J. The Fall of the Philippines: The Desperate Struggle Against the Japanese Invasion, 1941-1942. North Carolina: McFarland, 2015.

Young, Louise. "Manchukuo and Japan." In *Japan's Total Empire: Manchuria and the Culture* of Wartime Imperialism, 1st ed., 3–20. London: University of California Press, 1998.

2. Articles

Abe, Kohki. "International Law as Memorial Sites: The 'Comfort Women' Lawsuits Revisited."

Korean Journal of International and Comparative Law 1, no. 2 (2013): 166–87. https://doi.org/10.1163/22134484-12340019.

Allain, Jean. "Slavery and Its Obligations Erga Omnes." The Australian Year Book of International Law 36, no. 1 (2019): 83–124.

Allain, Jean. "White Slave Traffic in International Law." Journal of Trafficking and Human Exploitation 1, no. 1 (2017): 1–40.

"Appendix 2: Charter of The Women's International War Crimes Tribunal On Japan's Military Sexual Slavery." Droit et Cultures 2, no. 58 (2009): 169–76. https://journals.openedition.org/droitcultures/2189.

Askin, Kelly D. "Comfort Women: Shifting Shame and Stigma from Victims to Victimizers." International Criminal Law Review, no. 1 (2001): 5–32.

Askin, Kelly D. "Prosecuting Wartime Rape and Other Gender- Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles." Berkeley Journal of International Law 21, no. 2 (2003): 288–349.

Askin, Kelly D. War Crimes against Women: Prosecution in International War Crimes Tribunals. Martinus Nijhoff Publishers, 1997.

Association to Support the "Comfort Women" Trials in Japan. My Heart Is Not Defeated: *Korean "comfort Women" Song Shindo's Struggle (Ore No Kokoro Ha Maketenai: Zainichi Chosenjin "Ianhu" Song Shindo No Tatakai)*. Japan: Kinohanasya, 2007.

Baron, Marcia. "Negligence, Mens Rea, and What We Want the Element of Mens Rea to Provide." Criminal Law and Philosophy 14, no. 1 (2020): 69–89.

Barta, Tony. "With Intent to Deny: On Colonial Intentions and Genocide Denial." Journal of Genocide Research 10, no. 1 (2008): 111–33.

Bassiouni, M. Cherif. "Enslavement as an International Crime." New York University Journal of International Law and Politics 23, no. 2 (1991): 445.

Bassiouni, M. Cherif. "International Crimes: Jus Cogens and Obligatio Erga Omnes." Law and Contemporary Problems 59, no. 4 (1996): 63–74.

Bassiouni, M. Cherif. "International Recognition of Victims' Rights." Human Rights Law Review 6, no. 2 (2006): 203–79.

Berkes, Antal. "The League of Nations and the International Law of State Responsibility" 22 (2020): 331–62.

Boel, Jens, Perrine Canavaggio, and Antonio González Quintana. "Archives and Human Rights: A Close Relationship." In Archives and Human Rights, edited by Jens Boel, Perrine Canavaggio, and Antonio González Quintana, 9–80. New York: Routledge, 2021.

Borchard, Edwin M. "'Responsibility of States ,' at the Hague Codification Conference." The American Journal of International Law 24, no. 3 (1930): 517–40.

Brook, Timothy. "The Tokyo Judgment and the Rape of Nanking." The Journal of Asian Studies 60, no. 3 (2001): 673–700.

Brownmiller, Susan. Against Our Will: Men, Women, and Rape. Penguin Books, 1976.

Bruun, Lori Lyman. "Beyond the 1948 Convention: Emerging Principles of Genocide in

Customary International Law." Maryland Journal of International Law and Trade 17, no. 2 (1993): 193–226.

Burt, Jo-Marie. "Gender Justice in Post-Conflict Guatemala: The Sepur Zarco Sexual Violence and Sexual Slavery." Critical Studies, no. 4 (2019): 63–96.

Buss, Claude A. "Japan and the Philippines." Far Eastern Survey 20, no. 12 (1951): 115.

Buss, Doris E. "Rethinking 'Rape as a Weapon of War.'" Feminist Legal Studies 17, no. 2 (2009): 145–63.

Cantor, Milton. "'Victors' Justice: The Tokyo War Crimes Trial." American Journal of Legal History 16, no. 4 (1972): 369–73.

Carmen M. Argibay. "Sexual Slavery and the 'Comfort Women' of World War II." Berkeley Journal of International Law 21, no. 2 (2003): 375–89.

Charney, Jonathan. "Universal International Law." American Journal of International Law 87, no. 4 (1993): 529–551.

Chinkin, Christene M. "Women's International Tribunal on Japanese Military Sexual Slavery." The American Journal of International Law 95, no. 2 (2001): 335–41.

Chinkin, Christine. "People's Tribunals: Legitimate or Rough Justice." Windsor Yearbook of Access to Justice 24, no. 2 (2006): 201–20.

Chuang, Janie A. "Exploitation Creep and the Unmaking of Human Trafficking Law." The American Journal of International Law 108, no. 4 (2014): 609–49.

Cooper, Allan D. "From Slavery to Genocide: The Fallacy of Debt in Reparations Discourse." Journal of Black Studies 43, no. 2 (2012): 112.

Cornejo Chavez, Leiry. "New Remedial Responses in the Practice of Regional Human Rights Courts: Purposes Beyond Compensation." International Journal of Constitutional Law 15, no. 2 (2017): 372–92.

Couillard, Valérie. "The Nairobi Declaration: Redefining Reparation for Women Victims of Sexual Violence." International Journal of Transitional Justice 1, no. 3 (2007): 444–453.

Dahlman, Christian. "The Function of Opinio Juris in Customary International Law." Nordic Journal of International Law 81, no. 3 (2012): 327–39.

David, Valeska. "Reparations at the Human Rights Committee: Legal Basis, Practice and Challenges." Netherlands Quarterly of Human Rights 32, no. 1 (2014): 8–43.

Dinah Shelton. "Normative Hierarchy in International Law." The American Journal of International Law 100, no. 2 (2006): 291–323.

Dolgopol, Tina. "The Judgment of the Tokyo Women's Tribunal." Alternative Law Journal 28, no. 5 (2003): 242–49.

Dolgopol, Ustinia. "Women's Voices , Women's Pain." Human Rights Quarterly 17, no. 1 (1995): 127–54.

Earl, Hilary. "Prosecuting Genocide before the Genocide Convention: Raphael Lemkin and the Nuremberg Trials, 1945–1949." Journal of Genocide Research 15, no. 3 (2013): 317–37.

Ethan Hee-Seok, Shin. "The Comfort Women Reparation Movement: Between Universal

Women's Human RIght and Particular Anti-Colonial Nationalism." Florida Journal of International Law 28, no. 1 (2016): 87–158.

Field, Norma. "War and Apology: Japan, Asia, the Fiftieth, and After." East Asia Cultures Critique 5, no. 1 (1997): 1–51.

Fionnuala, Ni Aolain, Dina Francesca Haynes, and Naomi Cahn. "Criminal Justice for Gendered Violence and Beyond." International Criminal Law Review 11, no. 3 (2011): 425–43.

Furuya, Shuichi. "Waiver or Limitation of Possible Reparation Claims of Victims." Heidelberg Journal of International Law 78, no. 3 (2018): 591–95.

Getz, Gudrun. "Honour and Dignity: Trauma Recovery and International Law in the Issue of the Comfort Women of South Korea." *Journal of International Women's Studies* 19, no. 1 (2018): 63–77.

Grimberg, Shontelle. "Women without a Voice: Japan's Silencing of Its Comfort Women and the Redemptive Future the Tokyo Women's Tribunal Offers to the Gendered and Colonial History of International Law." *New Zealand Women's Law Journal* 2, no. 207 (2018): 207–48.

Halley, Janet. "Rape at Rome: Feminist Interventions in the Criminalization of Sex Related Violence in Positive International Criminal Law." Michigan Journal of International Law 30 (2008): 1–123.

Hayashi, Hirofumi. "Disputes in Japan over the Japanese Military 'Comfort Women' System and Its Perception in History." Annals of the American Academy of Political and Social Science 617 (2008): 123–32.

Hayashi, Hirohumi. "Japanese Comfort Women in Southeast Asia." Japan Forum 10, no. 2 (1998): 211–19.

Henry, Nicola. "Memory of an Injustice: The 'Comfort Women' and the Legacy of the Tokyo Trial." Asian Studies Review 37, no. 3 (2013): 362–80.

Honig, Frederick. "The Reparations Agreement between Israel and the Federal Republic of Germany." The American Journal of International Law 48, no. 4 (1954): 564–78.

Ikeda, Eriko. "A True Solution to the 'Comfort Women' and the Eradication of Wartime Sexual Violence ('Ianfu' Mondai No Shin No Kaiketsu to Senjisei Bouryoku No Konzetsu No Tame Ni)." Bulletin of Ritsumeikan University International Peace Museum 20 (2019): 99–106.

Ise, Momoyo. "'Ajia Jyosei Kikin' No Keiken to Shinrai Kouchiku Heno Michi (The Experience of the Asian Women's Fund and the Road to Building Trust)." Seisaku Opinion, no. 26 (2015): 1–7.

Iyenaga, Toyokichi. "Japan's Annexation of Korea." The Journal of Race Development 3, no. 2 (1912): 201–23.

Junod, Sylvie. "Additional Protocol II: History and Scope." American University Law Review 1, no. 33 (1983): 29–40.

Kalshoven, Frits. "Individual Right to Claim Damages under Article 3 of Hague Convention IV: Supplementary Expert Opinion, 1999." International Humanitarian Law Series 17

(2007): 651–63.

Kaufman, Zachary D. “The Nuremberg Tribunal V . the Tokyo Tribunal : Designs , Staffs , and Operations.” The John Marshall Law Review, no. 43 (2010): 753–68.

Keburiya, K. O., and A. M. Solntsev. “The Significance of the 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation.” Moscow Journal of International Law, no. 2 (2021): 78–98.

Knop, Karen, and Annelise Riles. “Space, Time, and Historical Injustice: A Feminist Conflict-of-Laws Approach to the ‘Comfort Women’ Agreement.” Cornell Law Review 102, no. 4 (2017): 853–928.

Knott, Lukas. “Unocal Revisited: On the Difference between Slavery and Forced Labor in International Law.” Wisconsin International Law Journal 28, no. 2 (2010): 201–33.

Kumagai, Naoko. “Japan’s Reconciliation in the Issue of Comfort Women with the Netherlands and South Korea: Pragmatic and Reflective Reconciliation.” Journal of European Integration History 25, no. 1 (2019): 51–64.

Kwon, Jennifer. “The Comfort Women Litigation and the San Francisco Treaty: Adopting a Different Principle of Treaty Interpretation.” George Washington Law Review 73, no. 3 (2005): 649–67.

Laplante, Lisa. “On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Developmen.” Yale Human Rights & Development Law Journal 10 (2007): 141–78.

Lawry-White, Merryl. “The Reparative Effect of Truth Seeking in Transitional Justice.” International and Comparative Law Quarterly 64, no. 1 (2014): 141–77.

Lee, Jeewon, Young-Sook Kwak, Yoon-Jung Kim, Eun-Ji Kim, E. Jin Park, Yunmi Shin, Bun-Hee Lee, et al. “Psychiatric Sequelae of Former ‘Comfort Women,’ Survivors of the Japanese Military Sexual Slavery during World War II.” Psychiatry Investig 15, no. 4 (2018): 336–343.

Lemkin, Raphael. “Tasmania.” Patterns of Prejudice 39, no. 2 (2005): 170–96.

Lévy, Christine. “The Women’s International War Crimes Tribunal, Tokyo 2000: A Feminist Response to Revisionism?” Clio 39 (2014): 125–45.

Ling, Cheah Wui. “Walking the Long Road in Solidarity and Hope : A Case Study of the " Comfort Women " Movement ’ s Deployment of Human Rights Discourse.” Harvard Human Rights Journal 22, no. 2000 (2009): 63–107.

Lira, Elizabeth. “Reflections on Rehabilitation as a Form of Reparation in Chile after Pinochet’s Dictatorship.” International Human Rights Law Review 5, no. 2 (2016): 194–216.

Luck, Edward C. “Cultural Genocide and the Protection of Cultural Heritage.” J. Paul Getty Trust Occasional Papers in Cultural Heritage Policy, no. 2 (2018): 20.

Luping, Dianne. “Investigation and Prosecution of Sexual and Gender-Based Crimes before the International Criminal Court.” American University Journal of Gender, Social Policy & the Law 17, no. 2 (2009): 431–96.

Mancini, Matthew J. “Francis Lieber, Slavery, and the ‘Genesis’ of the Laws of War.” The Journal of Southern History 77, no. 2 (2011): 325–48.

Martin, Claudia, and Susana SáCouto. “Access to Justice for Victims of Conflict-Related Sexual Violence Lessons Learned from the Sepur Zarco Case.” Journal of International Criminal Justice 18, no. 2 (2020): 243–70.

Matsui, Yayori. “Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery: Memory, Identity, and Society.” East Asia 19 (2001): 119–42.

Mattarollo, Rodolfo. “Impunity and International Law.” Impunity and International Law 11, no. 1 (1998): 81–94.

Maul, Daniel Roger. “The International Labour Organization and the Struggle against Forced Labour from 1919 to the Present.” Labor History 48, no. 4 (2007): 477–500.

McDonnell, Michael A., and Anthony Dirk Moses. “Raphael Lemkin as Historian of Genocide in the Americas.” Journal of Genocide Research 7, no. 4 (2005): 501–529.

McDougall, Gay J. “Addressing State Responsibility for the Crime of Military Sexual Slavery during the Second World War: Further Attempts for Justice for the ‘Comfort Women.’” Korean Journal of International and Comparative Law 1, no. 2 (2013): 137–65.

McGregor, Katharine. “Emotions and Activism for Former So-Called ‘Comfort Women’ of the Japanese Occupation of the Netherlands East Indies.” *Women’s Studies International* Forum 54 (2016): 67–78.

Mendosa, Katerina.R. “Freeing the ‘Slaves of Destiny’: TheLolas of the Filipino Comfort Women Movement.” SAGE 5, no. 3 (2003): 247–66.

Meron, Theodor. “Rape as a Crime Under International Humanitarian Law.” The American Journal of International Law 87, no. 3 (1993): 424–28.

Meron, Theodor. “War Crimes Law Comes of Age.” American Journal of International Law 92, no. 3 (1998): 462–68.

Merry, Sally Engle. “Gender Justice and CEDAW: The Convention on the Elimination of All Forms of Discrimination Against Women.” Journal of Women of the Middle East and the Islamic World, no. 9 (2011): 49–75.

Metzger, Stanley D. "Liberal Japanese Peace Treaty." Cornell Law Review 37, (1952): 382.

Miller, Hunter. “The Hague Codification Conference.” The American Journal of International Law 24, no. 4 (1930): 674-693.

Miller, Zinaida. “Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice.” International Journal of Transitional Justice 2, no. 3 (2008): 266–291.

Min, Pyong Gap. “Korean ‘Comfort Women’: The Intersection of Colonial Power, Gender, and Class.” Gender & Society 17, no. 6 (2003): 938–957.

Min, Sung Kil, Chang Ho Lee, Joo Young Kim, and Eun Ji Sim. “Posttraumatic Stress Disorder in Former ‘Comfort Women.’” The Israel Journal of Psychiatry and Related Sciences 48, no. 3 (2011): 161–69.

Mitchell, David S. “The Prohibition of Rape in International Humanitarian Law as a Norm of Jus Cogens: Clarifying the Doctrine.” Duke Journal of Comparative & International Law 15, no. 2 (2005): 219–57.

Mizuno, Takaaki. “Ianfu Houdou No Shuppatsuten (The Starting Point of Comfort Women

Reporting).” Bulletin of Kanda University of International Studies 31 (2019): 241–69.

Morsink, Johannes. “World War Two and The Universal Declaration.” The Development of International Human Rights Law 1 (2017): 89–137.

Mouthaan, Solange. “The Prosecution of Gender-Based Crimes at the ICC: Challenges and Opportunities.” International Criminal Law Review 11, no. 4 (2011): 775–802.

Ní Aoláin, Fionnuala, and Catherine Turner. “Gender, Truth and Transition.” *UCLA Women’s* Law Journal 16 (2007): 229–79.

Okada, Taihei. “The Comfort Women Case: Judgment of April 27, 1998, Shimonoseki Branch, Yamaguchi Prefectural Court, Japan.” Pacific Rim Law & Policy Journal 8, no. 1 (1999): 63–108.

Oosterveld, Valerie. “The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments.” Cornell International Law Journal 44, no. 1 (2011): 49–74.

Oosterveld, Valerie. “Lessons from the Special Court for Sierra Leone on the Prosecution of Gender-Based Crimes.” Journal of Gender, Social Policy and the Law 17, no. 2 (2009): 407–30.

Oosterveld, Valerie. “Sexual Slavery and the ICC.” Michigan Journal of International Law 25, no. 3 (2004): 608.

Park, Jee Hoon, Kyong Weon Lee, Michelle D. Hand, Keith A. Anderson, and Tess E. Schleitwiler. “Korean Survivors of the Japanese ‘Comfort Women’ System: Understanding the Lifelong Consequences of Early Life Trauma.” Journal of Gerontological Social Work 59, no. 4 (2016): 332–48.

Parker, Karen, and Chew, Jennifer F. "Compensation for Japan s World War II War-rape Victims." Hastings International and Comparative Law Review 17, (1994): 497-99.

Parks, William H. “Command Responsibility For War Crimes.” 62 Military Law Leview, no. 1 (1973): 1–12.

Pavon, Beatriz. “Combating Impunity : Transitional Justice in the Aftermath of Mass Atrocities.” UN Chronicle 41, no. 3 (2004): 22–23.

Pin-chia, Feng. “An ‘Uncomfortable’ Past: Documenting Taiwanese ‘Comfort Women’ in A Secret Buried for Fifty Years.” Feminist Studies in English Literature 24, no. 1 (2016): 5–31.

Ramaj, Klea. “The 2015 South Korean-Japanese Agreement on ‘Comfort Women’: A Critical Analysis.” International Criminal Law Review 22, no. 3 (2022): 475–509.

Rassam, A. Yasmine. “Contemporary Forms of Slavery and the Evolution of the Prohibition of Slavery and the Slave Trade Under Customary International Law.” Virginia Journal of International Law 39, no. 2 (1999): 303–52.

Riccardo Pisillo, Mazzeschi. “Reparation Claims by Individuals for State Breaches of Humanitarian Law and Human Rights: An Overview.” Journal of International Criminal Justice 1, no. 2 (2003): 339–47.

Roberts, Adam. “Foundational Myths in the Laws of War: The 1863 Lieber Code, and the 1864 Geneva Convention.” Melbourne Journal of International Law 20, no. 1 (2019): 1–39.

Robouts, Heidy. “Reparations for Victims of Gross and Systematic Human Rights Violations: The Notion of Victim.” Third World Legal Studies 16, no. 5 (2003): 89–114.

Rubio-Marin, R., and P. d. Greiff. “Women and Reparations.” International Journal of Transitional Justice 1, no. 3 (2007): 318–37.

Rubio-Martin, Ruth, and Clara Sandoval. “Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the Cotton Field Judgment.” Human Rights Quarterly, no. 33 (2011): 1062– 1091.

Sajor, India Lourdes. “Military Sexual Slavery: Crimes Against Humanity.” World Bulletin: Bulletin of the International Studies of the Philippines 14, no. 5–6 (1998): 48–69.

Sakamoto, Rumi. “The Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery: A Legal and Feminist Approach to the ‘Comfort Women’ Issue.” New Zealand Journal of Asian Studies 3, no. 1 (2001): 49–58.

Sarkin, Jeremy. “Towards a Greater Understanding of Guarantees of Non-Repetition (GNR) or Non-Recurrence of Human Rights Violations: How GNR Intersects Transitional Justice with Processes of State (Re)Building, the Rule of Law, Democratic Governance, Reconciliation, Natio.” Stanford Journal of International Law 57 (2021): 191–230.

Schabas, William A. “Genocide and the International Court of Justice: Finally, a Duty to Prevent the Crime of Crimes.” Genocide Studies and Prevention 2, no. 2 (2007): 101–22.

Schwelb, Egon, and Martin Van Heuven. “Address, ‘The Influence of the Universal Declaration of Human Rights on International and National Law.’” American Society of International Law 53 (1959): 217–29.

Schwerin, Kurt. “German Compensation for Victims of Nazi Persecution.” Northwestern University Law Review, (1972), 479.

Sedgwick, James Burnham. “Memory on Trial: Constructing and Contesting the Rape of Nanking at the International Military Tribunal for the Far East, 1946-1948.” Modern Asian Studies 43, no. 5 (2009): 1229–54.

Sellars, Kirsten. “Imperfect Justice at Nuremberg and Tokyo.” European Journal of International Law 21, no. 4 (2010): 1085–1102.

Shikata, Yumi, and Reiko Nakano. “Jugun Ianfu Mondai Wo Meguru Gensetsu No Genzai: Media Wa Dou Tsutaetaka (How ‘Comfort Women’ Issues Were Reported by the Media in 2001).” Miyazaki Kouritsu Daigaku Jinbun Gakubu Kiyou 14, no. 1 (2006): 129–48.

Soh, Chunghee Sarah. “Japan’s National/Asian Women’s Fund for ‘Comfort Women.’” Pacific Affairs 76, no. 2 (2003): 209–33.

Soh, Chunghee Sarah. “From Imperial Gifts to Sex Slaves: Theorizing Symbolic Representations of the ‘Comfort Women.’” Social Science Japan Journal 3, no. 1 (2000): 59–76.

Soh, Chunghee Sarah. “Human Rights and the ‘Comfort Women.’” Peace Review 12, no. 1 (2000): 123–29.

Soh, Chunghee Sarah. “The Korean " Comfort Women ": Movement for Redress.” University of California Press 36, no. 12 (1996): 1226–40.

Sonen, Michele Park. “Healing Multimentional Wounds of Injustice Intersectionality and the

Korean Comfort Women." Berkeley La Raza Law Journal 22, no. 1 (2012): 269–300.

Song, Esther. "Just Reparations for Korean 'Comfort Women': A Transitional Justice and International Law Perspective." Journal of Korean Law 20, no. 2 (2021): 373–412.

Spees, Pam. "Women's Advocacy in the Creation of the International Criminal Court: Changing the Landscapes of Justice and Power." The University of Chicago Press 28, no. 4 (2003): 1233–54.

Spoerer, Mark, and Jochen Fleischhacker. "The Compensation of Nazi Germany's Forced Labourers: Demographic Findings and Political Implications." Population Studies 56, no. 1 (2002): 5–21.

Suzuki, Shogo. "The Competition to Attain Justice for Past Wrongs: The 'Comfort Women' Issue in Taiwan." Pacific Affairs 84, no. 2 (2011): 223–44.

Sveaass, Nora. "Gross Human Rights Violations and Reparation under International Law: Approaching Rehabilitation as a Form of Reparation." European Journal of Psychotraumatology 4 (2013).

Tamada, Dai. "The Japan-South Korea Comfort Women Agreement: Unfortunate Fate of a Non-Legally Binding Agreement." International Community Law Review 20, no. 2 (2018): 220–51.

Toda, Yuki. "Ajia Josei Kikin Ni Kansuru Ichi Kenkyu (A Study on the Asian Women's Fund)." Ritsumeikan Housei Ronsyu 8 (2010): 261–95.

Tong, Yu. "Reparations for Former Comfort Women of World War II." Harvard International Law Journal 36, no. 2 (1995): 528–40.

Totsuka, Etsuro. "Commentary on a Victory for Comfort Women: Japan's Judicial Recognition of Military Sexual Slavery." Pacific Rim Law & Policy Journal 8, no. 1 (1999): 47–61.

University of the Philippines. "Voices and Visions: Symbolic Convergences in the Oral Narratives of Filipino Comfort Women." Humanities Diliman 12, no. 2 (2015): 79–109.

Ushimura, Kei. "Pal's 'Dissentient Judgment' Reconsidered: Some Notes on Postwar Japan's Responses to the Opinion." Japan Review, no. 19 (2007): 215–23.

Velásquez-Ruiz, Alberto Marco, and Carolina Olarte-Bácares. "Access to Remedy and the Construction of Collective Memory. New Perspectives in the Realm of the Colombian Transitional Justice Project." Business and Human Rights Journal, no. 7 (2022): 468–474.

Verdon, Charlotte. "Improving the Present to Repair the Past: A Proposal to Redefine the Guiding Principle of Reparation for Gross Violations of Human Rights." New York University Journal of International Law and Politics 53, no. 2 (2021): 587–630.

Wakabayashi, Bob Tadashi. "Comfort Women: Beyond Litigious Feminism, Review of Comfort Women: Sexual Slavery in the Japanese Military during World War II by Yoshimi Yoshiaki and Suzanne O'Brien: Japan's Comfort Women: Sexual Slavery and Prostitution during World War II and the US O." Monumenta Nipponica 58, no. 2 (2003): 223–58.

Wald, Alexandra. "What's Rightfully Ours: Toward a Property Theory of Rape." Columbia Journal of Law and Social Problems 30, no. 3 (1997): 459–502.

Walker, Margaret Urban. "Transformative Reparations? A Critical Look at a Current Trend in

Thinking about Gender-Just Reparations." International Journal of Transitional Justice 10, no. 1 (2016): 108–25.

Weiss, Marley S. "Human Trafficking and Forced Labor: A Primer." ABA Journal of Labor and Employment Law 31, no. 1 (2015): 1–52.

Wijers, Marjan. "Purity, Victimhood and Agency: Fifteen Years of the UN Trafficking Protocol." Anti-Trafficking Review, no. 4 (2015): 56–79.

Yamamoto, Seita. "Kampu Saiban No Keika to Hanketsu (The Progress and Judgement of Kampu Case)." *The Report on Japan's War Responsibility* 21 (1998): 43–49.

Yamate, Haruyuki. "Nikkan Seikyuuken Kyoutei 2jyou No Kaisyaku Ni Tsuite (Regarding the Interpretation of Article 2 of the Japan-Korea Claims Agreement)." Kyouto Gakuen Hougaku 2-3 (2007): 37–128.

Yōko, Hayashi. "Issues Surrounding the Wartime 'Comfort Women.'" The Review of Japanese Culture and Society 11/12 (2000): 54–65.

Youko, Yoshikawa. "Tihi Baishou Koushou No Tateyakusya Tachi (Key Players in the Negotiation Process of the Reparations Agreement between Japan and the Philippines)." Kokusaiseiji 75 (1983): 130–49.

Zarco, Ricardo M., Filomin A. Candaliza-Gutierrez, and Marlon R. Dulnuan. "Trends in Murder and Rape Incidents in the Philippines and Metro Manila, 1980 to 1994." Philippine Sociological Review 43, no. 1 (1995): 43–54.

3. Documentation

3.1. UN Documents

Committee against Torture. "Concluding Observations on the Second Periodic Report of Japan, Adopted by the Committee at Its Fiftieth Session." UN Doc. CAT/C/JPN/CO/2. 2013.

Committee on the Elimination of Discrimination against Women, "General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations," CEDAW/C/ GC/30. November 1, 2013.

Greiff, Pablo de. "Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence." A/HRC/21/46. 2012.

Greiff, Pablo de. "Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence." A/69/518. 2014.

Human Rights Committee. "Concluding Observations on the Seventh Periodic Report of Japan." CCPR/C/JPN/CO/7. Geneva, 2022.

Human Rights Committee. "Consideration of Reports Submitted By States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee JAPAN." CCPR/C/JPN/CO/5. Geneva, 2008.

Orentlicher, Diane. "Independent Study on Best Practices, Including Recommendations, to Assist States in Strengthening Their Domestic Capacity to Combat All Aspects of Impunity." E/CN.4/2004/88. 2004.

United Nations Ad Hoc Committee on Forced Labour. "Report of the Ad Hoc Committee on

Forced Labour.” ILO-SR_NS36. Geneva, 1953.

United Nations Division for the Advancement of Women. “Assessing the Status of Women : A Guide to Reporting under the Convention on the Elimination of All Forms of Discrimination against Women.” ST/DESA/DAW(09)/W872. New York, 2000.

United Nations General Assembly. UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by the UN General Assembly Resolution No. 60/147. 2006.

United Nations Human Rights Committee. Guidelines on Measures of Reparation under the Optional Protocol to the International Covenant on Civil and Political Rights. CCPR/C/158. (2016).

United Nations Secretary-General. "Memorandum of the Secretary-General on the Terms of Reference of the Ad Hoc Committee on Slavery." E/AC.33/4 3. 1950.

United Nations Security Council, "Security Council resolution 1315, Establishment of a Special Court for Sierra Leone." S/RES/1315. August 14, 2000.

United Nations Security Council, "Security Council resolution 955, Establishment of the International Criminal Tribunal for Rwanda." S/RES/955. November 8, 1994.

United Nations Security Council, "Security Council resolution 827, Establishment of the International Criminal Tribunal for the Former Yugoslavia." S/RES/827. May 25, 1993.

United Nations "Economic and Social Council, Slavery, the Slave Trade, and other forms of Servitude (Memorandum of the Secretary-General)." E/2357. 1953.

United Nations Commission on Human Rights, “Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.” E/CN.4/2005/102/Add.1. 2005.

United Nations Commission on Human Rights. “The Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms: 2002/44.” 2002.

United Nations Commission on Human Rights. “Report to the Economic and Social Council on the Fifty-Seventh Session of the Commission: 2001/105.” Vol. E/CN.4/200. 2001.

United Nations Commission on Human Rights. “Civil and Political Rights, Including the Questions of: Independence of the Judiciary, Administration of Justice, Impunity: The Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms.” Vol. E/CN.4/200. 2000.

United Nations Commission on Human Rights. “The Right to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms: Resolution 2000/41." E/CN.4/RES/2000/41. 2000.

United Nations Commission on Human Rights. “Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict." Fiftieth Session Item 6 of the Provisional Agenda. E/CN.4/Sub.2/1998/13.1998.

United Nations Commission on Human Rights, “Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity”,

E/CN.4/Sub.2/1997/20/Rev.1. 1997.

United Nations Commission on Human Rights. “Note Verbale from the Permanent Mission of Japan.” ST/SG/SER.E/315. 1996.

United Nations Commission on Human Rights. “Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences." Fifty-Second Session Item 9 (a) of the Provisional Agenda. E/CN.4/1996/53/Add.1. 1996.

United Nations Committee against Torture. “Concluding Observations on the Combined Third to Fifth Periodic Reports of the Republic of Korea.” CAT/C/KOR/CO/3-5. 2017.

United Nations Committee on the Elimination of Discrimination against Women. “Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Japan.” CEDAW/C/JPN/CO/6-8. 2016.

United Nations Economic and Social Council. "Slavery, the Slave Trade, and other forms of Servitude (Memorandum of the Secretary-General)." E/2357. 1953.

United Nations Economic and Social Council, "Report of the Ad Hoc Committee on Slavery (Second Session)" E/1988, E/AC.33/13. 1951.

United Nations General Assembly. “Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabián Salvioli.” A/HRC/51/34/Add.1. 2022.

United Nations General Assembly. “Identification of Customary International Law.” In International Law Commission Seventieth Session. Vol. A/CN.4/710. 2019.

United Nations General Assembly, “Resolution Adopted by the General Assembly on 16 December 2005: 60/147 Basic Principles and Guidelines on the Right To a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” A/RES/60/1. 2006.

United Nations Security Council. “Report of the International Commission of Inquiry on Darfur to the Secretary-General Pursuant to Security Council Resolution 1564 (2004) of 18 September 2004.” Vol. S/2005/60. 2005. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/WPS S 2005 60.pdf.

United Nations Security Council. “United Nations Security Council Resolution 1325 on Women, Peace and Security.” S/RES/1325. 2000.

United Nations Security Council. “United Nations Security Council Resolution 1325 on Women, Peace and Security.” S/RES/1325. October 31, 2000.

United Nations Security Council. “Annex: Letter Dated 12 October 2000 from the President of the International Tribunal for the Former Yugoslavia Addressed to the Secretary-General.” Vol. S/2000/106. 2000.

United Nations War Crime Commission. “Trial of Washio Awochi.” In Law Reports of Trials of War Crimes Volume XIII. 122–25. 1949.

3.2. League of Nations

League of Nations. 1926. "Draft Convention on Slavery and Proposed Amendments." Doc. A.VI/S,C.1/1 in Publication in Draft Convention on Slavery: Discussion at the 7th Assembly; Folder R.77.D.46781 (September).

League of Nations. 1926. "Draft Convention on Slavery, Replies of Governments, Reply from the Government of Germany" Doc. A.10(a). 1926. VI.B. in Publication of the League of Nations (July): 3, 4.

League of Nations. 1925. "Report presented by the Sixth Commission on the Question of Slavery: Resolution, at the 19th meeting, in League of Nations Official Journal (Special Supplement 33) (September).

3.3. International Law Commission

International Law Commission. 2001. "Articles on the Responsibility of States for Internationally Wrongful Acts 2001". (November). Available at https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

3.4. ICC Publications

International Criminal Court, Policy Paper on Sexual and Gender-Based Crimes, June 2014. Available at https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf.

International Criminal Court, Elements of Crimes, 2011. Available at https://www.icc-cpi.int/sites/default/files/ElementsOfCrimesEng.pdf.

The Office of the Prosecutor. "Policy on the Crime of Gender Persecution." The Hague, 2022. https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf.

3.5. Other

"An NGO Shadow Report to CEDAW. Japan: The 'Comfort Women' Issue, 44th Session." New York: 2009. https://www2.ohchr.org/english/bodies/cedaw/docs/ngos/comfortwomen_japan_cedaw44.pdf.

Asian Peace National Fund for Women. Ianfu Mondai to Ajia J*yosei Kikin ("Comfort Women" and Asian Women's Tribunal)*. Asian Peace National Fund for Women, 2004. https://www.awf.or.jp/pdf/0169.pdf.

Asian Women's Fund. "Shougen: Rai Hau-Min (Testimony: Rai Hau-Min)." 2006. https://www.awf.or.jp/pdf/k0020.pdf.

Kurasawa, Aiko. "Indonesia Ni Okeru Ianfu Cyousa Houkoku (Report on the 'Comfort Women' in Indonesia)." Ianfu Chousa Houkoku, 1999. https://www.awf.or.jp/pdf/0062_p089_105.pdf.

Ministry of Social Affairs Republic of Indonesia. "Report on the Handle of Ex Jugun Ianfu by Indonesia Government in Cooperation with Asian Women's Fund (AWF)," 2006.

https://www.awf.or.jp/pdf/196e.pdf.

Redress. *Implementing Victims ' Rights: A Handbook on the Basic Principles and Guidelines* on the Right to a Remedy and Reparation. London: Redress, 2006. https://redress.org/wp-content/uploads/2018/01/MAR-Reparation-Principles.pdf.

Romeike, Sanya. Transitional Justice in Germany after 1945 and after 1990. Nuremberg, International Nuremberg Principles Academy, 2016. https://www.nurembergacademy.org/fileadmin/media/pdf/news/Transitional_Justice_in_Germany.pdf.

Supreme Commander for the Allied Powers. Amenities in the Japanese Armed Forces. General Headquarters, Supreme Commander for the Allied Powers, 1945. http://nadesiko-action.org/wp-content/uploads/2016/05/Manila_Feb1943_Amenities-in-the-Japanese-Armed-Forces_US-National-Archives-_AWF.pdf.

Swiss Banks. "Summary of Major Holocaust Compensation Programs," 2000. http://www.claimscon.org/forms/allocations/Summary of Major Holocaust Compensation Programs.pdf.

Tadaki, Keiichi, Hiroko Akizuki, Makiko Arima, Mariko Kawano, and Ikuhiko Hata. "Details of Exchanges Between Japan and the Republic of Korea (ROK) Regarding the Comfort Women Issue: From the Drafting of the Kono Statement to the Asian Women's Fund," 2014. https://www.mofa.go.jp/mofaj/files/000042167.pdf.

"Toubensyo Dai 171 Kai Kokkai (The Cabinet Written Response to the Memorandum Submitted by MP Ikuko Tanioka on Questions Regarding History Textbooks and Recommendations by the United Nations Human Rights Commission on Comfort Women at 171st Diet Session)," 2009. https://www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/171/meisai/m171001.htm.

United Nations Commission on Human Rights. An Analysis of the Legal Liability of the Government of Japan for "Comfort Women Stations established during the Second World War." American Journal of Chinese Studies 6(1) (1999): 73-102.

Women's Caucus for Gender Justice in the International Criminal Court. "Recommendations and Commentary for December 1997 PrepCom on the Establishment of An International *Criminal Court." Women's Caucus for Gender Justice in the International Criminal* Court, 1997. https://4genderjustice.org/wp-content/uploads/2021/12/wcgj-prepcom-paper.pdf

4. Legislation

4.1. Charter and Statute

African Charter on Human and Peoples' Rights. 27 June 1981. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

Charter of the International Military Tribunal for the Far East. January 19, 1946 (Amended April 26, 1946).

Charter of the International Military Tribunal: Annex to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis. 8 August 1945.

Rome Statute of the International Criminal Court. 17 July 1998.

Statute of the International Court of Justice. April 18, 1946.

Statute of the International Criminal Tribunal for Rwanda. 8 November 1994 (Ammended October 13, 2006).

Statute of the International Criminal Tribunal for the Former Yugoslavia. 25 May 1993 (Amended May 17, 2002).

Statute of the Special Court for Sierra Leone. 16 January 2002.

4.2. International Treaties and Conventions

Association of Southeast Asian Nations. 2015. "Convention Against Trafficking in Persons, Especially Women and Children." (November). Avaolable at https://www.asean.org/wp-content/uploads/2015/12/ACTIP.pdf.

Council of Europe. 2005. "Council of Europe Convention on Action Against Trafficking in Human Beings." CETS 197 (May). Avairable at https://rm.coe.int/168008371d.

Council of Europe. 1950. "European Convention for the Protection of Human Rights and Fundamental Freedoms." Amended by Protocols No. 11 and 14. ETS 5. (November). Available at https://www.echr.coe.int/documents/convention_eng.pdf.

Economic and Social Council. 1956. "Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery." Treaty Series 266 (September): 3.

European Union and the African Union. 2006. "Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children." EX.CL/313 (X) ANNEX IV (November). Available at https://au.int/sites/default/files/pages/32899-file-3._ouagadougou_action_plan_to_combat_trafficking_en_1.pdf.

International Committee of the Red Cross. 1977. "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)." Treaty Series 1125 (June): 3.

International Committee of the Red Cross. 1977. "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)." Treaty Series 1125 (June) 609.

International Committee of the Red Cross. 1949. "Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)." Treaty Series 75 (August): 287.

International Committee of the Red Cross. 1949. "Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention." Treaty Series 75 (August): 85.

International Committee of the Red Cross. 1949. "Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention." Treaty Series 75 (August): 31.

International Committee of the Red Cross. 1929. "Convention relative to the Treatment of

Prisoners of War." (July). Available at https://ihl-databases.icrc.org/en/ihl-treaties/gc-pow-1929.

International Conferences (Paris). 1910. "International Convention for the Suppression of the 'White Slave Traffic.'" Treaty Series 98 (August): 101.

International Conferences (Paris). 1904. "International Agreement for the suppression of the 'White Slave Traffic.'" Treaty Series (September): No. 11.

International Conferences (The Hague). 1907. "Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land." (October). Avairable at https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907?activeTab=default.

International Conferences (The Hague). 1899. "Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land." (July). Avairable at https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-ii-1899?activeTab=default.

International Labour Organisation. 2014. "Protocol of 2014 to the Forced Labour Convention, 1930 and Forced Labour (Supplementary Measures) Recommendation." (June): No. 203). Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029.

International Labour Organisation. 1989. "Convention Concerning Indigenous and Tribal Peoples in Independent Countries." Treaty Series 1659 (September).

International Labour Organisation. 1957. "Convention (No. 105) concerning the Abolition of Forced Labour." Treaty Series 320 (January): 291.

International Labour Organisation. 1930. "Forced Labour Convention." C29 (June). Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

League of Nations. 1927. "Geneva Convention on the Execution of Foreign Arbitral Awards." Treaty Series 92 (September): 301.

League of Nations. 1926. "Convention to Suppress the Slave Trade and Slavery." Treaty Series 60 (September): 234, No. 1414.

League of Nations. 1921. "International Convention for the Suppression of the Traffic in Women and Children." Treaty Series 9 (September): 415.

Organization of American States. 1969. "American Convention on Human Rights, 'Pact of San Jose'." (November). Available at https://www.oas.org/dil/access_to_information_American_Convention_on_Human_Rights.pdf.

United Nations. 1954. "Convention Relating to the Status of Stateless Persons." Treaty Series 360 (June): 117.

UN General Assembly. 2000. "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime." Treaty Series 2237 (November): 319.

UN General Assembly. 1989. "Convention on the Rights of the Child." Treaty Series 1577 (November): 3.

UN General Assembly. 1984. "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." Treaty Series 1465 (December): 85.

UN General Assembly. 1979. "Convention on the Elimination of All Forms of Discrimination Against Women." Treaty Series 1249 (December): 13.

UN General Assembly. 1969. "International Convention on the Elimination of All Forms of Racial Discrimination." Treaty Series 660 (December): 195.

UN General Assembly. 1966. "International Covenant on Civil and Political Rights." Treaty Series 999 (December): 171.

UN General Assembly. 1966. "International Covenant on Economic, Social and Cultural Rights." Treaty Series 993 (December): 3.

UN General Assembly. 1848. "Convention on the Prevention and Punishment of the Crime of Genocide." Treaty Series 78 (December): 277.

United Nations. 1969. "Vienna Convention on the Law of Treaties." Treaty Series 1155 (May): 331.

United Nations. 1951. "Treaty of Peace with Japan." Treaty Series 136 (September): 45.

4.3. Bilateral Agreements

Agreement between Japan and South Korea on the Settlement of Problems concerning Property and Claims and on Economic Co-operation (with Protocols, exchanges of notes and agreed minutes). June 22, 1965: Tokyo, Japan.

Joint Communique of the Government of Japan and the Government of the People's Republic of China. September 29, 1972: Beijing, China.

Reparations Agreement Between the Philippines. July 23 1956.

The Protocol between the Government of Japan and the Government of the Kingdom of the Netherlands Relating to Settlement of the Problem Concerning Certain Types of Private Claims of Netherlands Nationals. March 13, 1956: Tokyo Japan.

Treaty of Peace and Friendship Between Japan and China. August 12, 1978: Tokyo, Japan.

Treaty of Peace Between the Republic of China and Japan. August 5, 1952: Taipei, Taiwan.

Treaty of Shimonoseki. April 17, 1895: Shimonoseki, Japan.

4.4. International Decralations

International Federation for Human Rights . "Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation. International Meeting on Women’s and Girls Right to a Remedy and Reparation." Paris: 2007.

United Nations General Assembly. "Declaration on the Elimination of Violence against Women." A/RES/48/104. 20 December 1993.

United Nations General Assembly, “Vienna Declaration and Programme of Action.” A/CONF.157/23. July 12, 1993.

UN General Assembly. 1985. "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power." A/RES/40/34, November 29, 1985.

United Nations General Assembly. "Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." A/RES/3452(XXX). December 9. 1975.

UN General Assembly. "United Nations Declaration on the Elimination of All Forms of Racial Discrimination." A/RES/1904. November 20, 1963.

UN General Assembly. "Universal Declaration of Human Rights." 217 A (III). December 10, 1948.

4.5. National Legislations

Congreso de Colombia. Ley 1448 de 2011 Por la Cual se Dictan Medidas de Atención, Asistencia y Reparación Integral a las Víctimas del Conflicto Armado Interno y se Dictan otras Disposiciones (2011).

General Orders No. 100. April 24, 1863. US War Department.

Government of Chile. Aprueba Norma General Técnica no. 88, del Programa de Atención en salud a las personas afectadas por la represión política ejercida por el Estado en el período 1973–1990. Resolución exenta no. 437’, June 30, 2006.

Law No. 125 of 1947. Concerning State Liability for Compensation (Japan). October, 27 1947.

Ley No. 19123 de 1990. Crea la corporación nacional de reparación y reconciliación, establece pensión de reparación y otorga otros beneficios en favor de personas que señala (Chile). 1990.

US House. Res.121 (110th Congress). July 20, 2007.

5. Case Law

5.1. ICC

Prosecutor v Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud. ICC-01/12-01/18-767. Pre-Trial Chamber I Decesion. May 8. 2020. International Criminal Court.

Prosecutor v Bosco Ntaganda. ICC-01/04-02/06-2442. Chamber VI Decision. November 7, 2019. International Criminal Court.

5.2. ICJ

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, ICJ Rep 2007 (I).

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia). Judgment. February 3, 2015. ICJ Rep 3.

Armed Activities on the Territory of the Congo Case (Democratic Republic of the Congo v. Uganda). Judgement. December 19, 2005. ICJ Rep 82.

Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain). Second Phase. February 5, 1970. International Court of Justice.

Gabcikovo-Nagymaros Project Case (Hungary v. Slovakia). Judgement. September 25, 1997. ICJ Rep 7.

Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276. Advisory Opinion. June 21, 1971. ICJ Rep 71.

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. Advisory Opinion. July 9, 2004. ICJ Rep (2004).

Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. Advisory Opinion. May 28, 1951. ICJ Rep 15.

5.3. ICTY

Prosecutor v Dragoljub Kunarac et al. IT96-23/1-A. Appeal Judgement. June 12, 2002. International Criminal Tribunal for the former Yugoslavia.

Prosecutor v Dragoljub Kunarac et al. IT96-23/1-T. Trial Chamber II Judgement. February 22, 2001. International Criminal Tribunal for the former Yugoslavia.

Prosecutor v Milorad Krnojelac. IT-97-25-T. Judgement. March 15, 2002. International Criminal Tribunal for the former Yugoslavia.

5.4. ICTR

Prosecutor v Jean-Paul Akayesu. ICTR-96-4-A. Appeal Judgment. June 1, 2001. International Criminal Tribunal for Rwanda.

Prosecutor v Jean-Paul Akayesu. ICTR-96-4-T. Trial Judgement. September 2, 1998. International Criminal Tribunal for Rwanda.

Prosecutor v, Jean-Paul Akayesu. ICTR-96-4-T. Sentence. October 2, 1998. International Criminal Tribunal for Rwanda.

5.5. SCSL

Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao. SCSL-04-15-A. Appeal judgment. October 26, 2009. Special Court for Sierra Leone.

Prosecutor v Sesay, Kallon and Gbao. SCSL-04-15-T. Trial Chamber I Judgment. March 2, 2009. Special Court for Sierra Leone.

5.5. PCIJ

Germany v Poland. Ser. A, No. 17. September 13, 1928. The Merits. Permanent Court of International Justice.

Germany v. Poland. Ser. A, No. 9. July 26, 1927. Jurisdiction. Permanent Court of International Justice.

5.6. CCPR

Bautista de Arellana v Columbia (563/93). CCPR/C/55/D/563/1993. Views. October 27, 1995. Human Rights Committee.

Blancov v Nicaragua (328/88), CCPR/C/51/D/328/1988. July 20, 1994. Views. Human Rights Committee.

Rodriquez v Uruguay (322/88). CCPR/C/51/D/322/1988. July, 191994. Decision. Human Rights Committee.

5.7. ECHR

Rantsev v Cyprus and Russian Federation. 25965/04. Judgement. January 7, 2010. Council of Europe: European Court of Human Rights.

S.M. v Croatia. No.60561/14. Judgement. June 25, 2020. European Court of Human Rights.

5.8. IACtHR

'Las Dos Erres' Massacre v Guatemala. Judgment. November 24, 2009. Inter-American Court of Human Rights.

5.9. Japan

Asia-Pacific War Korean Victims' Compensation Claims Case. (Ne) No. 2631. Appeal Judgement. July 22, 2003. Toyko High Court.

Asia-Pacific War Korean Victims' Compensation Claims Case. (Wa) No.17461. Judgement. March 26, 2001. Toyko District Court.

Chinese (Sanxi Province) Sexual Violence Victim Apology and Compensation Claim For Damages Case. (Wa) No. 24987. Judgement. October 30, 1998. Tokyo District Court.

Chinese 'Comfort Women' Primary Case. (Wa) Appeal Judgement. December 15, 2004.Tokyo High Court.

Chinese 'Comfort Women' Primary Case. (Wa) No. 15635. Judgement. May 30, 2001.Tokyo District Court.

Chinese 'Comfort Women' Secondary Case. (Wa) No.3316. Appeal Judgement. March 29, 2002. Tokyo High Court.

Chinese 'Comfort Women' Secondary Case. (Wa) No.3316. Judgement. March 29, 2002. Tokyo District Court.

Dutch Ex-Prisoner of War and Private Internment Case. (Wa) Appeal Judgement. October 11, 2001.Tokyo High Court.

Dutch Ex-Prisoner of War and Private Internment Case. (Wa) No. 1218. Judgement. November 30, 1998. Tokyo District Court.

Former 'Comfort Women' Living in Japan Case. Hanreijihou No. 1741. Appeal Judgement. October 7, 1999. Toyko High Court.

Former 'Comfort Women' Living in Japan. (Wa) No. 6152. Judgement. October 1, 1999. Tokyo District Court.

Hainan Island Wartime Sexual Violence Compensation Case. (Wa) No.14808. Judgement. July 16, 2001. Tokyo District Court.

Kampu Case. (Ne) No. 257. Judgement. May 1, 1998. Hiroshima High Court.

Kampu Case. LXDB28033107. Judgement. April 27, 1998. Yamaguchi District Court.

Philippine Sexual Slavery State Compensation Claim Case. (Ne) No. 5167. Appeal Judgement. December 12, 2000. Tokyo High Court,

Philippine Sexual Slavery State Compensation Claim case. (Wa) No. 5966. Judgement. October 9, 1998. Tokyo District Court.

Prosecutors v. Hirohito Emperor Showa et al. no. PT-2000-1-T. Judgement. December 4, 2001. Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery.

Taiwanese Former 'Comfort Women' Compensation Claim for Damages and Apology Case. 2002 (Ne) No. 5850, Judgement. February 10, 2004. Tokyo High Court.

Taiwanese Former 'Comfort Women' Compensation Claim for Damages and Apology Case. (Wa) No.15638. Judgement. October 15, 2002. Tokyo District Court.

5.10. Other Jurisdictions

15th Civil Division Seoul Central District Court of South Korea. The judgement to the Second Lawsuit Claiming Compensations for Japanese Military "Comfort Women" (2021).

34th Civil Division of the Seoul Central District Court of South Korea. The Judgement to 2016. 505092 (re) (2021).

Guatemala v Esteelmer Francisco Reyes Girón y Heriberto Valdez Asig. C-01076-2012-00021. Sentencia. February 27, 2016. Tribunal de Mayor Riesgo.

Netherlands Temporary Courts Martial at Batavia. Judgement. No. 72/1947 (1947). Accessed August 7, 2022. https://www.law.cuhk.edu.hk/en/research/crj/document/Batavia-Judgment-No-72A-1947.pdf.

In re Yamashita. 327 U.S. 1. Decision. February 4, 1946. US Supreme Court.

Prefecture of Voiotia et al v Germany. No. 137/1997. October, 30, 1997. District Court of Livadia.

Rigoberta Menchu et al. v Ríos Montt et al. Exp 1904-2013. May 10, 2013. Deision.

Constitutional Court of Guatemala, Tribunal Primero A.

6. Website Sources

Digital Museum: The Comfort Women Issue and the Aian Women's Fund. "Documents of Japanese Government and the AWF: Letter from Prime Minister Ryutaro Hashimoto to Prime Minister Willem Kok." Accessed 12 May 2021. https://www.awf.or.jp/e6/statement-24.html.

Digital Museum: The Comfort Women Issue and the Aian Women's Fund. "Projects by Country or Region: Indonesia." Accessed August 11, 2022. https://www.awf.or.jp/e3/indonesia-00.html.

Digital Museum: The Comfort Women Issue and the Aian Women's Fund. "Projects by Country or Region: Netherlands." Accessed 12 May, 2021. https://www.awf.or.jp/e3/netherlands-00.html.

Digital Museum: The Comfort Women Issue and the Aian Women's Fund. "Projects by Country or Region: South Korea." Accessed May 5, 2022. https://www.awf.or.jp/e3/korea.html.

Digital Museum: The Comfort Women Issue and the Aian Women's Fund. "Projects by Country or Region: Taiwan." Accessed May 8, 2022. https://www.awf.or.jp/e3/taiwan.html.

European Parliament. "Joint Motion for a Resolution." RC-B6-0525/2007. 12 December, 2007. Accessed 5 June 2022. https://www.europarl.europa.eu/doceo/document/B-6-2007-0525_EN.html.

Federal Foreign Office. "Compensation for National Socialist Injustice." Accessed July 3, 2022. https://www.auswaertiges-amt.de/en/aussenpolitik/themen/compensation-for-national-socialist-injustice/228224.

Federal Ministry of Finance. Wiedergutmachung: Provisions Relating to Compensation for National Socialist Injustice. Federal Ministry of Finance, 2018. Accessed October, 14 2021. https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Press_Room/Publications/Brochures/2018-08-15-entschaedigung-ns-unrecht-engl.pdf?__blob=publicationFile&v=21.

Grieshaber, Kirsten. "Germany Marks 70 Years of Compensating Holocaust Survivors." AP News, September 15, 2022. Accessed August 14, 2022. https://apnews.com/article/holocaust-survivor-compensation-fund-germany-0d35aa1cba7756d1b9b6008e9d7841b7.

"House of Commons Passes Motion Recognizing Japanese 'Comfort Women.'" CBC, 2007. Accessed June 4, 2022, https://www.cbc.ca/news/canada/house-of-commons-passes-motion-recognizing-japanese-comfort-women-1.638239.

Kono, Yohei. "Statement by the Chief Cabinet Secretary." Ministry of Foreign Affair of Japan. 1993. Accessed accessed May 6, 2022. https://www.mofa.go.jp/a_o/rp/page25e_000343.html.

Minister for Foreign Affairs of Japan. "Joint Communique of the Government of Japan and the

Government of the People's Republic of China." Accessed July 12, 2021https://www.mofa.go.jp/region/asia-paci/china/joint72.html.

Minister for Foreign Affairs of Japan. "Rekishi Mondai Q&A Kanren Shiryou: Nihon No Gutaiteki Sengoshori (Baisho, Zaisan, Seikyuuken Mondai) (Q&A on Historical Issues and Related Materials: Concrete Post-War Procedures of Japan (Compensation, Property and Claims Issues))." Accessed May 3, 2021. https://www.mofa.go.jp/mofaj/a_o/rp/page22_002287.html.

Ministry of Foreign Affair of Japan. "Measures Taken by the Government of Japan on the Issue of 'Comfort Women,'" 2021. " Accessed January, 14 2021https://www.mofa.go.jp/policy/women/fund/policy.html.

Ministry of Foreign Affair of Japan. "Japan's Efforts on the Issue of Comfort Women." Accessed April 21, 2022. https://www.mofa.go.jp/policy/postwar/page22e_000883.html.

Ministry of Justice of Japan. "Civil Code." Accessed August 21, 2022. https://www.japaneselawtranslation.go.jp/ja/laws/view/3494.

Ministry of Justice of Japan. "State Redress Act (Act No. 125 of 1947)." Accessed September 22, 2020. https://www.japaneselawtranslation.go.jp/ja/laws/view/3785.

"Netherlands Adopts Resolution on `Comfort Women'." The Korea Times, 2007. Accessed April 5, 2022. http://www.koreatimes.co.kr/www/news/opinon/2007/11/202_13505.html.

Onna Tachino Sensou to Heiwa Jinken Kikin (Women's War and Peace Human Rights Fund). "Katsudou No Enkaku (Activity History)." Accessed October 3, 2022. https://wfphr.org/.

PAX Colombia. "Conmemorar a Las Víctimas Por La Verdad, La Justicia, La Reparación y La No Repetición." PAX Colombia, September 28, 2018. Accessed September 8, 2022. https://paxencolombia.org/conmemorar-a-las-victimas-por-la-verdad-la-justicia-la-reparacion-y-la-no-repeticion/.

"Sengo Gojyu Nen Ni Mukete No Murayama Tomiichi Naikakusouridaujin No Danwa (Statement by Prime Minister Tomiichi Murayama on the 50th Anniversary of the End of the War)," 1994. Accessed 5 August 2022. https://www.awf.or.jp/6/statement-04.html.

Subcommittee on the Issue of Military Comfort Women. "First Report of the Subcommittee on the Issue of Military Comfort Women for the Ruling Party's 50th Anniversary Project." 1994. Accessed June 6, 2022. https://www.awf.or.jp/6/statement-05.html.

Japanese Cabinet Councillors' Office on External Affairs, 'Iwayuru Jyuugun Ianhu Mondai ni tsuite', 'On the issue of wartime 'comfort women'' in English, 4 August 1993. Accessed August 13, 2021. https://www.mofa.go.jp/mofaj/area/taisen/pdfs/im_050804.pdf

Ministry of Foreign Affairs in Japan, Announcement by Foreign Ministers of Japan and the Republic of Korea at the Joint Press Conference, 28th December 2015, Accessed May 22, 2022. https://www.mofa.go.jp/a_o/na/kr/page4e_000364.html