

COMMENTARY ON A VICTORY FOR “COMFORT WOMEN”: JAPAN’S JUDICIAL RECOGNITION OF MILITARY SEXUAL SLAVERY

Etsuro Totsuka[†]

Abstract: Despite international condemnation, Japan has done little to recognize its responsibility for forcing over 200,000 “Comfort Women” into sexual slavery for the Japanese Imperial Army during the Second World War. However, in a landmark April 1998 decision, a Japanese court ordered Japan to compensate three Korean “Comfort Women.” This was the first time that a Japanese court found in favor of foreign plaintiffs in a postwar compensation case. The court held members of the Diet negligent under the State Liability Act for failing to enact a compensation law for the “Comfort Women.” Although the judgment will almost certainly be overturned, it should have widespread political impact. The court’s extensive fact-finding regarding “Comfort Women” will be hard to challenge and should bolster the movement to have the Japanese Government compensate and restore dignity to the “Comfort Women” victims.

*There can be no illusions. Japan cannot keep peace in Asia when it is not at peace with its own history.*¹

I. INTRODUCTION

On April 27, 1998, the Shimonoseki branch of the Yamaguchi Prefectural Court ordered the Government of Japan to pay compensation to three Korean “Comfort Women”² Plaintiffs, victims of sexual slavery by the

[†] B.S. (1964) and B.A. (1970) Rikkyo University, Japan National Legal Training Institute (1973), LL.M., LSE, University of London (1990). Mr. Totsuka is a member of the Daini Tokyo Bar Association and Japan Federal Bar Association, has been an advocate at the United Nations for victims of wartime sexual slavery by Japan since 1992, and is currently a visiting scholar at the University of Washington. The author would like to acknowledge and thank the editorial staff of the Pacific Rim Law & Policy Journal for patiently harmonizing, brushing up and editing the translation of the judgment as well as this commentary. Particular acknowledgments are due to Donna O. Perdue for her extensive role in forming, writing and editing this commentary from the original translation of the author’s article “Nihon ga shiranai sensou-sekinin no. 54—Kampu-saiban de moto—‘ianfu’ ni syousou hanketsu” published by Nihon-Hyoronsha in Hogaku Semina, July 1998, at 37-40; Hiroshi Kushizaki, Chief Editor of Hogaku-Semina for his permission to use the article as the major basis of this commentary; Taihei Okada for his hard work in translating the judgment and assisting translation of the article; Lawrence Repeta for encouraging the author to contribute the translated judgment and this commentary to the Pacific Rim Law & Policy Journal; and most especially, the living and dead who suffered as military sexual slaves, the many supporters of the victims, and the judges who wrote the judgment.

¹ Won Soon Park, *Japanese Reparations Policy and the “Comfort Women” Question*, POSITIONS: E. ASIA CULTURES CRITIQUE, Spring 1997, at 107.

² Editor’s Note: Throughout this introduction and the case that follows, the term “Comfort Women” remains in quotations in order to avoid full acceptance of this Japanese euphemism.

Japanese Imperial Forces during the war years 1931 to 1945.³ The Court based liability on the National Diet Members' collective failure to carry out their constitutional duty to enact an appropriate compensation law. The Court summarized the "Comfort Women" issue as follows:

The facts make it clear that the Plaintiffs became "Comfort Women" through the deception of the probable comfort station owners, were confined and forced to have sex with the Imperial Japanese soldiers, and that even after the war, they physically suffered a great deal. In addition, they suffered much due to shame.

It is also clear that the "Comfort Women" system was a manifestation of sexism and racism of the time which severely violated the dignity of women and profoundly damaged racial pride; and that it is not the past issue but the ongoing human rights issue that should be resolved now.⁴

It is inevitable that the judgment will be overturned on appeal, as the nation of Japan has never before lost a case to foreign plaintiffs on postwar compensation issues in the courts of Japan. Although this courageous judgment will not be legally binding once it is overturned, the court's fact-finding will have widespread political impact. The court accepted the testimony of Korean "Comfort Women" as credible, and determined that the Japanese armed forces had a central role in establishing and managing "comfort stations" in which the Plaintiffs had been forced to serve as "Comfort Women." These court-found facts will be an important tool for political minorities that want Japan to recognize, apologize to, and compensate the victims of its wartime abuses. Supported by the legitimacy of the judicial fact-finding apparatus, minority political interests may be able to force the Diet to undertake the steps necessary to compensate and restore dignity to the "Comfort Women" victims of Japanese aggression.

³ Between 1932 and the end of the Second World War, the Japanese Government and the Japanese Imperial Army forced over 200,000 women into sexual slavery in euphemistically named "comfort stations" throughout Asia. The majority of these "Comfort Women" were from Korea, but many were also taken from other Asian countries under Japanese control.

⁴ Taihei Okada, Translation, *The "Comfort Women" Case: Judgment of April 27, 1998, Shimonoseki Branch, Yamaguchi Prefectural Court, Japan*, 8 PAC. RIM L. & POL. J. 63 (1999).

II. BACKGROUND

A. *Public Discussion of the "Comfort Women" Issue*

In the early 1990s, the issue of "Comfort Women" emerged in public discourse. In June 1990, Mr. Shoji Motooka, then a Socialist member of the House of Councillors of Japan, demanded that the Japanese government investigate the "Comfort Women" question. The government denied any involvement of the Japanese military in the comfort station operations, and refused to begin an investigation. This official denial led various South Korean women's organizations, including the Korean Council for the Women Drafted for Military Sexual Slavery by Japan, to send the Japanese government a series of protests demanding a just solution to this question. A courageous South Korean "Comfort Woman" victim, Ms. Kim Haksun, came forward with her story in August of 1991. Three South Korean "Comfort Women" including Ms. Kim brought suit in a Japanese court in December 1991, seeking recognition and compensation for Japan's violation of their human rights. Since that time, six suits have been filed in Japanese courts by groups of "Comfort Women" of various nationalities.⁵

In January 1992, Japanese historian Yoshiaki Yoshimi released vital documents contradicting the Japanese government's denial of an official role

⁵ Suits against the State of Japan by former "Comfort Women" by date filed and status of each case (data as of November 1998 provided by the Horitsu Shinbun-sha, Tokyo):

- a) December 6, 1991, Tokyo District Court, by three South Korean women, joined by six more in April, 1992, pending;
- b) December 25, 1992, Yamaguchi District Court, Shimonoseki Branch, by three South Korean women, judgment in favor of plaintiffs returned April 27, 1998 (this case), currently on appeal to the Hiroshima High Court;
- c) April 2, 1993, Tokyo District Court, by 18 women from the Philippines, joined by 28 more in September 1993, suit dismissed October 1998, currently on appeal to the Tokyo High Court;
- d) April 5, 1993, Tokyo District Court, by one South Korean woman living in Japan, pending;
- e) January 24, 1994, Tokyo District Court, by one Dutch woman, pending;
- f) August 7, 1995, Tokyo District Court, by four Chinese women, joined by two more in February 1996, pending;
- g) October 30, 1998, Tokyo District Court, by nine comfort women survivors and one relative of a victim, filed a suit referred to as the "Sansei-sho Case," derived from the Japanese pronunciation of the "Shanxi" province of China, pending.

in wartime "Comfort Women" operations.⁶ Since the 1992 press release of Professor Yoshimi's information, the "Comfort Women" issue has been investigated by a variety of organizations, both within Japan and throughout the world. This author brought the "Comfort Women" issue to the United Nations Commission on Human Rights in February 1992, in a presentation condemning Japan for its crimes against humanity with respect to the Korean and other Asian "sex slaves,"⁷ and has contributed to published studies on the "Comfort Women" issue.⁸

Extensive research and debate has been carried out to prepare reports documenting the history and analyzing the legal aspects of the "Comfort Women" issue. The United Nations has appointed Special Rapporteurs and made resolutions, recommendations, and reports on the "Comfort Women" or military sexual slavery issue. The most important of these reports were submitted by Radhika Coomaraswamy⁹ and Gay McDougall.¹⁰ Non-

⁶ Colin Nickerson, Japan Admits Forcing Koreans into Wartime Prostitution, BOSTON GLOBE, Jan. 14, 1992.

⁷ A summary record of the February 1992 speech can be found in U.N. Document E/CN.4/1992.SR.30/Add.1.

⁸ Etsuro Totsuka, *Military Sexual Slavery by Japan and Issues in Law*, in TRUE STORIES OF THE KOREAN COMFORT WOMEN 193-200 (Keith Howard ed., 1995); Etsuro Totsuka, *International Legal Issues between ROK and Japan Concerning Comfort Women*, in INTERNATIONAL LEGAL ISSUES BETWEEN THE REPUBLIC OF KOREA AND JAPAN 65-88 (Lee Jang-Hie ed., 1998).

⁹ *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, U.N. Commission on Human Rights, 52nd Sess., Provisional Agenda Item 9(a), U.N. Doc. E/CN.4/1996/53/Add.1 (1996). This report to the U.N. Commission on Human Rights on the issue of military sexual slavery found that the conduct against Asian women victims by the Japanese Imperial Forces should be identified as military sexual slavery, that Japan violated customary international law, and that Japan is legally responsible for not only compensation to the victims but also for punishment of the perpetrators. The Japanese government challenged her report and raised a number of legal arguments.

¹⁰ *Contemporary Forms of Slavery, Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict*, U.N. Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 50th Sess., Provisional Agenda Item 6, U.N. Doc. E/CN.4/Sub.2/1998/13 (1998) [hereinafter *Sexual Slavery During Armed Conflict*]. Ms. McDougall, a Special U.N. Rapporteur and an American alternate member of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, concluded that the major legal arguments raised by Japan are flawed under international law. See *id.* Appendix, An Analysis of the Legal Liability of the Government of Japan for "Comfort Women Stations" Established During the Second World War. Her conclusion was essentially the same as that of Ms. Coomaraswamy. Ms. McDougall's recommendations identified the need for the following: 1) mechanisms to ensure criminal prosecutions; 2) mechanisms to provide legal compensation; 3) adequacy of compensation; and, 4) reporting requirements. She concluded her report as follows:

68. The present report concludes that the Japanese Government remains liable for grave violations of human rights and humanitarian law, violations that amount in their totality to crimes against humanity. The Japanese Government's arguments to the contrary, including arguments that seek to attack the underlying humanitarian law prohibition of enslavement and rape, remain as unpersuasive today as they were when they were first raised before the Nuremberg war crimes tribunal more than 50 years ago. In addition, the Japanese Government's

governmental organizations (“NGOs”), labor unions, and professional organizations have also prepared reports providing both documentary evidence and legal analysis.¹¹

The Committee of Experts of the International Labour Organisation (“ILO”) has officially noted that the “Comfort Women” system should be characterized as “sexual slavery” in violation of the ILO Forced Labour Convention, which was in force at the time during which these abuses occurred.¹² The Committee of Experts recognized that they did not have the power to order compensation for the “Comfort Women” under the Forced Labour Convention, and recommended that Japan, as a signatory to the Convention, should “give proper consideration to this matter expeditiously.”¹³

argument that Japan has already settled all claims from the Second World War through peace treaties and reparations with agreements following the war remains equally unpersuasive. This is due, in large part, to the failure until very recently of the Japanese Government to admit the extent of the Japanese military’s direct involvement in the establishment and maintenance of these rape centres. The Japanese Government’s silence on this point during the period in which peace and reparations agreements between Japan and other Asian Governments were being negotiated following the end of the war must, as a matter of law and justice, preclude Japan from relying today on these peace treaties to extinguish liability in these cases.

69. The failure to settle these claims more than half a century after the cessation of hostilities is a testament to the degree to which the lives of women continue to be undervalued. Sadly, this failure to address crimes of a sexual nature committed on a massive scale during the Second World War has added to the level of impunity with which similar crimes are committed today. The Government of Japan has taken some steps to apologize and atone for the rape and enslavement of over 200,000 women and girls who were brutalized in “comfort stations” during the Second World War. However, anything less than full and unqualified acceptance by the Government of Japan of legal liability and the consequences that flow from such liability is wholly inadequate. It must now fall to the Government of Japan to take the necessary final steps to provide adequate redress.

¹¹ USTINIA DOLGOPOL & SNEHAL PARANJAPPE, INTERNATIONAL COMMISSION OF JURISTS, COMFORT WOMEN, AN UNFINISHED ORDEAL (1994). Written statements submitted to the United Nations by the International Fellowship of Reconciliation include U.N. Documents E/CN.4/1993/NGO/36, E/CN.4/1994/NGO/19, E/CN.4/Sub.2/1994/NGO/30, E/CN.4/1995/NGO/37, and E/CN.4/1995/NGO/40. The Center for Research and Documentation on Japan’s War Responsibility submitted *The Report on the Issue of Japan’s Military “Comfort Women”* to the United Nations in 1994. In 1995, the Japan Federation of Bar Associations submitted the following to the United Nations, *Recommendation on the Issue of “Comfort Women”* and *Supplementary Explanation of the Recommendation on the Issue of “Comfort Women.”* In 1997, the Federation of Korean Trade Unions submitted a detailed legal analysis to the International Labour Organisation Committee of Experts entitled, “*Comfort Women” Military Sexual Slavery by Japan*, concerning Japan’s violations of the Forced Labour Convention.

¹² *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Int’l Lab. Conf., 83rd Session, Report III (Part 4A), Convention 29 on Japan, Int’l Lab. Org. (1996).

¹³ *Id.* This position was later reaffirmed. *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Int’l Lab. Conf., 85th Session, Report III (Part 1A), Convention 29 on Japan, Int’l Lab. Org. (1997).

B. *Attitude of the Japanese Government*

After years of denying that the Japanese military was directly involved in establishing and supervising “comfort stations” during the Second World War, the Japanese Government finally recognized the extent of its own involvement in an official study by the Japanese Cabinet Councillors’ Office on External Affairs entitled *On the Issue of Wartime “Comfort Women”* and in a statement by then-Chief Cabinet Secretary Kono Yohei, both released on August 4, 1993. Then-Prime Minister Tomiichi Murayama made a weak public apology in July 1995, in which he noted:

[T]he scars of war still run deep The problem of the so-called wartime “Comfort Women” is one such scar which, with the involvement of the Japanese military forces of the time, seriously stained the honor and dignity of many women. This is entirely inexcusable. I offer my profound apology to all those who, as wartime “Comfort Women,” suffered emotional and physical wounds that can never be closed.¹⁴

Despite apparent factual admissions and vague apologies for its guilt, the Japanese Government continues to deny legal liability for the actions of Japanese military forces in establishing and managing “comfort stations,” and thereby continues to deny liability for violations of the individual rights of the “Comfort Women” victims. It asserts the following substantive grounds for denying liability:

- a) Recent developments or advances in international criminal law may not be applied retroactively;
- b) Describing the system of “comfort stations” and use of “Comfort Women” as slavery is not accurate and, in any event, the crime of slavery was not forbidden by an established customary norm of international law at the time of the Second World War;
- c) Acts of rape committed in armed conflict were not prohibited by customary norms of international law of the time, nor by the

¹⁴ Statement by Japanese Prime Minister Tomiichi Murayama in July 1995, cited in *Sexual Slavery During Armed Conflict*, *supra* note 10., app. ¶ 3.

Regulations annexed to the Hague Convention No. IV of 1907;
and,

- d) The laws of war only apply to nationals of a belligerent state and therefore cannot cover the actions of the Japanese military with respect to Korean nationals, since Korea was annexed to Japan during the Second World War.¹⁵

The Japanese Government also argues that individual “Comfort Women” have no right to compensation, as any potential individual claims were fully satisfied by the San Francisco peace treaty which concluded the Second World War, and by other bilateral agreements between Japan and other Asian countries.¹⁶ Finally, the Government maintains that any civil or criminal claims by “Comfort Women” are now barred by the applicable statute of limitations.¹⁷

The Japanese Government has also attempted to evade official responsibility for “Comfort Women” by establishing the Asian Women’s Fund in July 1995, to support non-governmental organizations that focus on women’s issues. The Asian Women’s Fund supports research and academic study, provides counseling services for women, and holds meetings and conferences to address issues affecting women. With respect to the “Comfort Women,” the Fund promotes “the desire to convey to these women the sincere apologies and remorse felt by the Japanese people” through “atonement funds” that are raised from donations made by the Japanese public. The Asian Women’s Fund offers consolation money to the “Comfort Women” victims as atonement for Japan’s past acts, but this money is not compensation paid in recognition of a legal duty to the victims of Japan’s violations of human rights.

¹⁵ These arguments are reviewed in *Sexual Slavery During Armed Conflict*, *supra* note 10, app. ¶ 4, based on a document distributed by the Japanese Government prior to the 52nd Session of the United Nations Commission on Human Rights. The validity of the Japanese annexation of Korea in 1910 is seriously disputed, as evidence now indicates that the preceding 1905 treaty making Korea a protectorate of Japan did not take effect, as it appears that individual cabinet members of the then-sovereign Korean Government were militarily coerced.

¹⁶ *Id.*

¹⁷ *Id.*

III. THE *KANPU* LITIGATION BROUGHT BY KOREAN “COMFORT WOMEN”

A. *Overview of the Case*

The Plaintiffs in this litigation were three “Comfort Women” and seven forced laborers¹⁸ from the city of Pusan in South Korea. The Plaintiffs filed the lawsuit in the city of Shimonoseki, which is across the Korea Strait from Pusan, making it the nearest Japanese court for these Plaintiffs. In Shimonoseki, the Plaintiffs were represented by local lawyers and supported by local civic groups who assisted with the expenses of the lawsuit. The Plaintiffs’ lawyers claimed that Shimonoseki was not only a practical choice, but also represented a strategic choice of forum that might be more likely to serve justice instead of serving entrenched government interests. The Plaintiffs, their lawyers, and their supporters assumed that conscientious judges willing to consider arguments contrary to government claims were not in top positions in large urban areas but, instead, were often transferred to remote districts like Shimonoseki. Thus, it was believed that the Plaintiffs were more likely to receive an impartial hearing and a fair judgment in the Shimonoseki Court than in courts of larger cities.

On April 27, 1998, a three-judge panel, presided over by Chief Judge Hideaki Konoshita of the Shimonoseki Branch of the Yamaguchi Prefectural Court, presented the judgment for the so-called *Kanpu* case.¹⁹ The judgment recognized that the members of the Japanese Diet had a constitutional duty to enact a law requiring compensation for the “Comfort Women” Plaintiffs, and that they had failed to fulfill this duty. They consequently ordered Japan to pay 300 thousand yen for its failure to abide by the State Liability Act (*Kokka Baisho-ho*). This judgment was received with jubilation by supporters of the “Comfort Women,” although they were disappointed that the judge denied other claims, including compensation for the *Teishintai* forced labor Plaintiffs, and an apology from a former Minister of Justice whose remarks were claimed to defame the “Comfort Women.”²⁰

¹⁸ The forced women laborers were called the *Teishintai* plaintiffs. Ironically, *Teishintai* means “voluntary corps.” These forced laborers were not “Comfort Women.”

¹⁹ This case is referred to as the *Kanpu* litigation where “Kan” is short for the city of the court, Shimonoseki, and “pu” is short for Pusan, Korea.

²⁰ The court held that it was beyond the power of the judiciary to force the legislative body to issue an apology.

B. *The Court's Legal Reasoning*

The Plaintiffs asserted a number of legal theories on which they based their claims of injury and their rights to compensation. The “duty of a moral state” argument invoked both international conventions and domestic constitutional law to create a duty to restore victims of wartime aggression, and asserted that the statute of limitations did not apply to this duty. Due to ambiguity as to the nature of the asserted “duty of a moral state” and a potential separation of powers violation that would arise from the judiciary ordering the Diet to pass specific legislation, this argument was rejected as baseless and beyond the power of the court. The court also declined to retroactively apply the “right to live in peace” granted by the current Japanese Constitution. After considering whether the Imperial Meiji Constitution created a right for these Plaintiffs and could still be applied, the court held that there was no basis for the Plaintiffs’ request for compensation based on the Article 27 property rights of the Meiji Constitution.

The court finally found a cause of action in tort based on the failure of the Japanese state to enact a compensation law for victims of aggression by the Imperial Japanese Army. The State Liability Act states that when public servants commit a violation of their professional duty that causes injury to an individual, then the nation of Japan or other public institutions will provide compensation.²¹ The key question in this case is whether members of the Diet have a “duty” to pass certain pieces of legislation to aid individuals harmed by the state, and whether failure to pass the desired legislation constitutes a breach of duty actionable under the State Liability Act. The court in this case observed that it was following a 1985 Supreme Court judgment holding that:

Concerning the passage of legislation, Diet members are held politically liable in their relations with the people, but are not held legally liable in their relations with individuals. In accordance with the application of Article 1 Section 1 of the State Liability Act, except when Diet members directly and clearly violate the Constitution, their legislative activities cannot be judged to be illegal.²²

²¹ Kokka baishoho [State Liability Act], Law No. 125 of 1947, art. 1.

²² Taihei Okada, Translation, *The “Comfort Women” Case: Judgment of April 27, 1998*, Shimonoseki Branch, Yamaguchi Prefectural Court, Japan, 8 PAC. RIM L. & POL. J. 63, 97 (1999).

The judges stated that in accordance with the 1985 Supreme Court judgment, the "Comfort Women" case before them was clearly an example of the exception to the rule of legislative immunity. When core human rights of the individual are infringed, the Diet members have the constitutional duty to amend the wrong, and the court has the constitutional right and duty to stop such infringement. The court's duty is not affected by whether the infringement resulted from an existing law or by the failure to legislate a necessary law. The Constitution partitions powers between the legislature and the court, and grants the unique duty and right to the court to guarantee constitutional rights. The judges' analysis concluded that the court has the power to find liability for the Diet's failure to enact a compensation law in the present case, because the Diet members understood the necessity of a law in order to protect human rights, were able to do so, but have not done so within a reasonable period of time.

The Shimonoseki Court held that enactment of a compensation law became the constitutional duty of the Japanese Diet members shortly after the August 4, 1993, report of Japanese Cabinet Councillors' Office on External Affairs and statement by the then-Chief Cabinet Secretary recognizing the role of the Japanese military in establishing and maintaining comfort stations, admitting that this was a severe human rights violation against women and other races, and acknowledging that the Japanese government should apologize.²³ In particular, the statement "we should seriously consider how the Japanese government can express its apology" created the duty to enact legislation. By August 1996, three years after the official report and comment, the Diet's failure to enact a compensation law ripened into an illegal activity according to the State Liability Act. By focusing on the recent illegal acts of the Diet, instead of the Plaintiffs' wartime injuries, the court rejected (or, entirely avoided) the Japanese Government's defense that the statute of limitations precluded victims from bringing suit for wartime acts of Japanese aggression.

The court found the Japanese government guilty of negligence for failing to compensate the "Comfort Women" Plaintiffs, and the court ordered that the "Comfort Women" Plaintiffs be awarded damages. Although each plaintiff had requested 101 million yen plus five percent annual interest on the unpaid amount from February 1993 until the payment is completed, the court awarded each plaintiff only 300 thousand yen plus

²³ The Court notes that the latest date at which this duty could have come into being was shortly after the August 4, 1993 admission of guilt by the Japanese Government. In examining the evidence, the court notes that the "Comfort Women" issue was internationally known and starting to be discussed in the Diet by May or June of 1990, at which time the unconstitutionality of the "Comfort Women" system was already clear.

five percent interest on the unpaid amount from September 1996 until payment is completed. The *Teishintai* forced laborer Plaintiffs were not awarded damages under the tort liability theory because the harms they suffered fall within the scope of war reparations. The court also applied contract theory to the claims of the *Teishintai* Plaintiffs, and held that no contractual duty existed on the part of the Japanese government.

IV. COMMENTARY

A. *Legal Significance*

The judgment in the *Kanpu* litigation represents the first time a Japanese court has found in favor of foreign plaintiffs in a postwar compensation case. This case employed domestic tort law, not international law, to reach its ruling. The crucial factor in legal reasoning that led the Shimonoseki Court to find the Japanese Government liable for negligence lay in its willingness to view the "Comfort Women" issue as the kind of exception that imposes a legal liability on the Diet for its legislative activities. Thus, the court was able to follow precedent handed down from the Japanese Supreme Court to reach this innovative interpretation based on reasoning from the facts.

The Government appealed this case to the Hiroshima High Court on May 8, 1998, claiming that the *Kanpu* judgment transgressed the 1985 Supreme Court precedent. This judgment in favor of the "Comfort Women" will probably be overturned on appeal, as the Japanese Government and much of the Japanese judiciary continue to deny legal liability for past violations of the rights of "Comfort Women." The attitude prevailing in the Japanese courts is illustrated by the recent judgment of the Tokyo District Court dismissing a suit by forty-six "Comfort Women" from the Philippines.²⁴ In most of the approximately forty ongoing postwar compensation claims filed against Japan by former victims of wartime aggression, Tokyo has sought to invalidate their claims by asserting that individuals have no legal basis to seek governmental redress by invoking international law.²⁵ In the alternative, the defense claims that Imperial Japan's government was not accountable under the state action doctrine, and that any rights the Plaintiffs might have had in the past have now expired

²⁴ *Tokyo Court Dismisses Sex Slave Suit, Refuses to Confirm Alleged Ordeals*, JAPAN TIMES, Oct. 10, 1998, at 1-2. See *supra* note 5 for additional suits. The Philippine suit was filed in 1993 and in the intervening years, seven of the elderly plaintiffs died waiting for justice.

²⁵ In Japan, international law can be applied directly by courts without any implementing legislation.

under the Japanese Civil Code's statute of limitations. By dismissing these suits, the Japanese judiciary (and, by extension, the Japanese Government) avoided fact-finding to determine whether the incidents and damages alleged by the Plaintiffs actually occurred.

B. The Real Importance of this Case Lies in the Court's Determination of Facts

The Shimonoseki Court made extensive findings of fact with respect to the "Comfort Women" system and the injuries asserted by the Plaintiffs. One outstanding aspect of this case is that a Japanese court found the testimony of Korean "Comfort Women" and forced laborers to be sufficiently credible to establish the facts to which it applied Japanese legal standards. It is impossible to clearly ascertain some details (e.g., exact locations of "comfort stations" or identities of comfort station owners) and it was not proven how the "comfort stations" were established and maintained. The court generously observed that the Plaintiffs' advanced age and humble origins probably contributed to ambiguities and gaps in their testimonies, but "the lack of details did not impair the credibility of the testimonies." It continued:

Furthermore, considering the fact that they had to hide the shameful experience for such a long time, and that the "Comfort Women" Plaintiffs only revealed their experiences for the first time in these proceedings, and that the present testimonies are of their personal experience, the credibility is considered to be quite high. Since there is no counter proof to any of this testimony, it is acceptable.²⁶

The following assertions were found to be true: all of the "Comfort Women" Plaintiffs were brought to comfort stations by deception and forced to become "Comfort Women" by rape; the comfort stations had close relations with the Imperial Japanese forces; and until the end of the Second World War and the Sino-Japanese War in August 1945, the "Comfort Women" Plaintiffs were forced to have sexual intercourse primarily with Japanese soldiers.²⁷ The court also found that the *Teishintai* forced labor

²⁶ *The "Comfort Women" Case*, at 76.

²⁷ *Id.*

Plaintiffs were recruited by deception and did not receive the money, training, or education they were promised in exchange for their labor.²⁸

C. *These Facts Will Aid Political Lobbying for Resolution of the "Comfort Women" Issue*

Although fact-finding by a district court is not binding on appeal, Japanese courts do not often alter the district court's facts unless new evidence has become available to the appellate court. Thus, district court findings of fact are usually respected by the public and by higher courts. In this case, no new evidence is available to contradict the findings of the court, which gave credence to the personal, subjective testimony of the foreign Plaintiffs. Although the Japanese Government relies on legal arguments to deny liability for the "Comfort Women" victims, it cannot provide contradictory evidence to attack the facts of this case or discredit the international body of evidence documenting the Japanese military's role in the "Comfort Women" system of human rights violations. Even if the legal decision of the district court is overturned on appeal, the facts found by the Shimonoseki District Court have gained legitimacy with the Japanese public and the international community.

On a larger scale, this case demonstrates the power of a remote district court to echo domestic and international opinion concerning the "Comfort Women" issue. The judiciary did not overstep its power by advocating what sort of legislation should be enacted, observing that drafting and enactment of laws properly belongs to the legislature. Instead, the Shimonoseki Court demonstrated that Japanese institutions can rely on Japanese domestic law while following Supreme Court precedent to reach the conclusion that the Japanese Government has a legal duty to compensate "Comfort Women" victims. If upheld by a higher court, this decision could be a much more powerful legal statement than the recommendations of the United Nations and the Japan Federation of Bar Associations, which have no legally binding status. Even the Report of the International Labour Organisation Committee of Experts' finding that the "Comfort Women" system was a violation of the Forced Labour Convention cannot force the Japanese Government to act, even though Japan ratified this ILO treaty in 1932.

Domestic and international groups are increasing their pressure on the Japanese government to accept legal responsibility for the "Comfort

²⁸ *Id.* at 76-79. For most of the *Teishintai* forced labor plaintiffs, any income they did receive went directly into Japanese bank accounts and they could not withdraw any of it, even after the war.

Women” issue and enact legislation to fairly compensate these victims.²⁹ The *Kanpu* litigation will aid these lobbying activities by providing a court-

²⁹ The following organizations have addressed the “Comfort Women” issue and called for official acceptance of responsibility and victim compensation.

1. On March 6, 1998, the Japan Federation of Bar Associations made a recommendation to the Japanese government for the third time. This recommendation repeated the Bar Association’s view that the involvement of the Imperial Japanese Forces in the violation of individual rights and human dignity of the “Comfort Women” requires the Japanese Government to accept responsibility and to enact a fair compensation law, apologize to the victims, and “restore their honor in an appropriate and concrete manner.” The Bar Association continued to be unsatisfied with the Asian Women’s Fund as unacceptable “consolation money” which does not provide legal compensation for violation of individual rights. See *Ianfu Mondai: Rippo Kaiketsu wo Saido Kankoku*, [Comfort Women Issue: JFBA Again Recommends Legal Resolution], SHUKAN HORITSU SHINBUN, Mar. 13, 1998, at 5.

2. April 17, 1998, the United Nations Commission on Human Rights unanimously approved a draft resolution to accept the 1996 Coomaraswamy Report, which stated that the Japanese government should take the legal responsibility. The Japanese government co-sponsored the draft resolution. UN Doc. E/CN.4/1998/54. See U.N. Commission on Human Rights, Resolution 1998/52 ¶ 1 *United Nations High Commissioner for Human Rights Webpage* <<http://www.unhcr.ch/html/menu4/chrres/1998.res/52.htm>> (visited Feb. 6, 1999).

3. On April 15 through April 17, 1998, the Fifth Asian Alliance Conference for the Resolution of the “Comfort Women” Issues was held in Seoul. Participants came from South Korea, the Philippines, Indonesia, Taiwan and Japan. On April 17, they approved a resolution demanding that: a) the Japanese government accept its legal responsibility, officially apologize and individually compensate the victims; b) the Asian Women’s Fund, which was created so that the Japanese Government could avoid providing official compensation, be abolished; and, c) the Japanese Government fulfill the 1996 recommendations of the United Nations Commission on Human Rights. They also committed themselves to continued efforts to establish the truth and punish those responsible, including compiling a list of “Comfort Women”-related war criminals; establishing a ban on the entry of Japanese war criminals to all countries (especially to the invaded Asian countries), encouraging the establishment of the International Criminal Court, and establishing the “International Women’s Tribunal on War Crimes Concerning ‘Comfort Women.’” *Hangukkuchonsindaemunje Taehkkyobwihoe, Chonsindae Chanyojip 9: Che 5 Cha Ilbongun ‘Wiabu’ Munje Asiyondaehoewi Pogoso, Ije, Ilbonjonbuwi Baesanuro Haegyollu* [Report of the Fifth Asian Alliance Conference for the Resolution of the “Comfort Woman” Issues], 70-71 (1998).

4. On April 21 through April 22, 1998, an international forum to demand the early resolution of “Comfort Women” issues was held in Tokyo. Participants included lawmakers and citizens from South Korea, Taiwan, the Philippines, and Japan. The forum approved a resolution demanding: a) the Japanese government clarify its own legal responsibility as an aggressor; b) the Japanese government clearly and officially apologize to the victims; c) the Japanese government immediately provide individual compensation to the victims; d) the Japanese government investigate what it did in the past, disclose all related documents, and make clear who was responsible; e) the Japanese government improve historical education so that the facts of aggression will be taught accurately; and f) the Japanese government legislate the necessary laws to fulfill the above objectives. *Sengo Hosho Jitsugen FAX Soku No. 216* [Postwar Compensation Facts; FAX Broadcast No. 216] SENGO HOSHO NETTOWAKU [THE POSTWAR COMPENSATION NETWORK], Apr. 26, 1998, at 1-2.

5. On May 14, 1998, the “Forum on the Truth-Finding Committee Law” was held in the Diet

determined set of facts which cannot be challenged without contradictory evidence. These activities will be strengthened by the courageous judgment of the Shimonoseki District Court, even if the court's legal conclusions are overturned on appeal.

V. CONCLUSION

This judgment is a landmark in the movement for resolving the "Comfort Women" issue. First, the court as a competent state organ determined, based on the victims' testimonies, detailed facts demonstrating that the "Comfort Women" system was sexual slavery. Second, although few observers anticipate the Shimonoseki Court's legal interpretation of the Constitution will be upheld by the upper courts, its spirit will enormously encourage the movement to force the Japanese Government to recognize its legal obligations to the "Comfort Women" victims.

The Japanese Government appealed this judgment, which means this litigation is likely to continue for a long time. Because of the lengthy process, most of the elderly victims will not live to see the judicial resolution of their demand for justice. Yet, no one can deny the significance of this judgment as an indispensable step for Japan to become a leader in upholding human rights.

Members' Office Building in Tokyo. Participants included citizens, Diet members and researchers. The war-related issues addressed included "Comfort Women" presented by groundbreaking historian Yoshiaki Yoshimi, biological weapons and poison gas, forced labour, and the Nanking Massacre. Activists for the Truth-Finding Committee Law reported on their attempts to get legislation passed to establish an official investigative committee. Diet Member Koh Tanaka presented the "Bill for Amending the National Diet Library Law," proposed as an alternative to the Truth-Finding Committee Law. In the original Truth-Finding Committee Law, the committee was to be placed under the Prime Minister's Office while under the Tanaka plan, it will be placed in the Library as an independent office. The latter plan will allow investigations to be more objective, given the independent status of the Library and its extensive archives, human resources, and research experience. Such an independent truth-finding committee might empower human rights activists in the Diet by providing credible and reliable information supporting their attempts to compel the Diet to enact compensation laws. *Ajia-Taieiyō-Chiiki no Giseisha ni Omoi wo Hase Kokoro wo Yoseru Kai* [Society for the Remembrance of Asian Pacific War Victims, Japan], *SENGO HOSHŌ NEWSU NO.30* [POSTWAR REPARATION NEWS NO. 30] July 7, 1998, at 1-2.

