

Impunity and the Japanese legal system--the case of military sexual slavery--

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By Etsuro TOTSUKA, Professor of law, Ryukoku University, Kyoto.

Intoroduction

It was a happy surprise for this author to have found, in the archives of the Japanese Foreign Ministry, a copy of the letters sent from Canada and the U.S.A. to the 1919 Paris Peace Conference, which discussed the legal issues surrounding the punishment of the war criminals of the Central Powers including Germany during WWI¹.

In it, “Dominion Women’s Christian Temperance Union” in “London and various Canadian places” associated with the women of France and any other protesting nations and demanded that “the trial before an international tribunal, and punishment, on conviction as a criminal, of every officer, soldier or civilian of any of the said Central Powers or of any of their allies who shall be accused, whether as principal or accomplice, of any sexual offence against a women in the course of the war.”²

Since then, no effective measures had been taken by the international society and Japan had no hesitation to create so called “comfort women” system, namely military sexual slavery.

1. General background of the issue of “comfort women”

Despite the criticisms and actions made by the UN, ILO as well as NGOs, the Japanese government has rejected the taking of necessary steps to make reconciliation with the victims of military sexual slavery, namely “comfort women”³.

The term “comfort women” was first used by the military of the Japanese Empire before and during WW II. It is a euphemism for the enslaved women victims of military sexual slavery by the Japanese military.

The author delivered a presentation on “comfort women” as “sex slaves” to the UN Commission on Human Rights on 17th February 1992 as follows⁴:

“One example was the situation of Korean girls and women abducted by Japanese forces during the Second World War for use as sex slaves. ... The former Vice-Chairman of the Japanese House of Representatives had alleged that 57.9 per cent, including 143,000 young girls and women, had died in enslavement.”

Since then, this issue has been greatly discussed by international lawyers. Not only the International Commission of Jurists⁵ but also the UN special rapporteurs⁶, the ILO Committee of Experts⁷ and the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery⁸ (WIWCT) confirmed that Japan had legal duty to punish the perpetrators of war crimes and crimes against humanity as regards the war time military violence against women and recommended that the Japanese government take some concrete actions, which included fact-finding, admission of the facts and guilt and state compensation to the women victims.

Let me briefly summarize the current attitude of the Japanese government.

Firstly, the Japanese government has stubbornly been refusing compensation by the state and their policy to support private funds, namely “the Asian Women’s Fund”⁹ has not changed on the unjustifiable grounds such as the “treaty defense”¹⁰.

Secondly, the Japanese courts, except for only one in favor of the victims, namely the famous judgment made by the Yamaguchi District Court¹¹, refused all demands for compensation that were filed by the victims. The single exceptional victory of the victims was reversed by the Hiroshima High Court¹², the judgment of which was then supported by the Supreme Court on 25th March 2003. Korean women victims’ offers to settle the dispute through international arbitration, which was strongly recommended by the United Nations human rights bodies, were refused by the Japanese Government¹³.

Thirdly, the proposals made by the Diet Members of the opposition parties for a state apology by legislation of the Japanese National Diet for state payment were successfully submitted to the House of Councilors and proved that such legislation would not violate any international law or the Constitution. They have been, however, blocked by the conservative Diet Members supporting the government¹⁴.

Fourthly, the legislative proposals submitted by the Diet Members of the opposition parties to the House of Representatives for state investigation of the sufferings during war time have been also blocked by the conservative Diet Members supporting the government¹⁵.

Fifthly, the government expressed no admission of guilt that the Japanese Imperial Military committed any crimes under Japanese domestic law¹⁶.

Sixthly, no admission of any violation of international law was offered by the

government¹⁷.

Seventhly, no further investigation by the government is being conducted¹⁸.

This stagnation may delay achieving not only women's human rights, as it will slow down the prevention of further systematic violence against women, but also peace in the world¹⁹.

The author of this paper wishes to review the history of the Japanese case of military "comfort women" and to discuss whether Japan could have prevented systematic violence against women such as military sexual slavery by relying on legal measures.

2. Development of international law in the 20th Century

In the early stage of the Meiji Era, namely in the second half of the 19th Century, Japan showed her strong willingness²⁰ to abide by international law and ratified or acceded to some important treaties.

The following three international instruments were relevant for the purpose of this paper. All of them were the major multilateral treaties that the international community worked out to suppress the slave trade in women and children, namely white slaves for prostitution after they made some progress in suppressing international trade in black slaves.

① The International Agreement for the Suppression of the White Slave Traffic, signed at Paris, on 18th May 1904.

② The International Convention for the Suppression of the White Slave Traffic, signed at Paris on 4th May 1910.

③ The International Convention for the Suppression of the Traffic in Women and Children, concluded at Geneva on 30th September 1921.

Japan ratified or acceded to them in 1925²¹.

Although Japan has not ratified the Slavery Convention, adopted at Geneva on 25th September 1926, the author believes that the violation of prohibition of slavery and slave trade have constituted crimes under international customary law since the adoption of this Convention.

The Convention concerning Forced or Compulsory Labour was adopted by the General Assembly of the International Labour Organization on 28th June 1930. Japan ratified this Convention on 15 October 1932²². The first sentence of Article 2 prohibits any forced labour of women²³. Article 24 stipulates that "the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties

imposed by law are really adequate and are strictly enforced.”

On 11th March 1933, the Cabinet of the Japanese Empire decided to withdraw from the League of Nations that condemned Japan for the invasion of China.²⁴ In this process, Japan seemed to have substantially abandoned a willingness to respect international law.

The author suspects that Japan has not regained a willingness to abide by international law yet, which became clear in the process at the United Nations concerning the current issue of military sexual slavery.

3. Creation of military sexual slavery by Japan

The leading historian, Prof. Yoshiaki YOSHIMI wrote²⁵:

“When were the first military comfort stations established, and how did the system expand? As noted above, since the materials that remain are only the tip of the documentary iceberg, it is very difficult to give a definitive answer.”

“It appears, then, that the first comfort stations were constructed by the navy.”

“The naval comfort stations established at this time were large enough to occupy several buildings. A document from a slightly later period reveals that at the end of 1936, there were ten restaurants employing serving women Of these ten establishments, seven were reserved exclusively for naval personnel.”

The lack of official documents, which, otherwise, might unearth the fact surrounding the birth of the military “comfort stations” and its criminality, gave many conservative observers much room to argue that the military’s behavior against the women victims constituted “no crime”, since the state regulated prostitution system “lawfully” existed. This has been one of the major causes that allowed the Japanese government to ignore the pressure for state apology from the international community.

4. Responses of the Japanese legal system against military sexual slavery by Japan

Could the legal system of the Japanese Empire in 1930s have reversed its military’s attempt to continue the practice of sexual slavery? In order to answer this question, the author wishes to stress the importance of his recent findings²⁶.

The author luckily found and obtained the earliest district court and appeal court judgments of the Japanese criminal court against ten private entrepreneurs, who deceived and trafficked in 15 Japanese women in Nagasaki to a Japanese Naval "comfort station" in Shanghai, China. These lower courts' judgments in 1936 have been possessed by nobody but the Japanese government, which neither submitted them

to the Diet nor to the Korean government, although they publicly promised to make a through investigation for both of them.

It was already known as early as in 1997 that, in 1937, then Supreme Court endorsed the judgment of the appeal court^{2 7}. The lower courts' judgments, however, were not yet found.

As it was assumed by the researchers including myself that the judgments must have been destroyed by the Atomic Bomb dropped in August 1945 by the USA onto Nagasaki City, nobody attempted to find them. They, however, survived to be found.

The Nagasaki District Court Judgment^{2 8} clearly shows the following facts, which, except for some information contained in the Supreme Court judgment, were not known before its finding.

The indictment against the defendants was issued by a prosecutor^{2 9} of the Nagasaki District Court. The defendants were ten Japanese, who belonged to a group of eight men and two women living in Nagasaki except for one man, who lived in Shanghai. No name of the defendants' legal counsel was available in the judgment. It was issued on 14th February 1936 by a panel of three judges^{3 0} of the Criminal Division of the Nagasaki District Court.

The judges found that all defendants under a series of conspiracies deceived and trafficked in 15 Japanese women in Nagasaki to a Japanese Naval "comfort station" in Shanghai, China and that they were guilty of committing crimes defined by Art. 226 (1) and (2) of the Penal Code^{3 1}.

The judges sternly sentenced them to penal servitude for periods up to three years and six months.^{3 2}

It is important to take note of the date, 7th March 1932^{3 3}, when the initial conspiracy was entered into by three male defendants at an inn in Shanghai. They discussed how they could abduct by deception and traffic in women from Nagasaki, Japan to a "comfort station" designated by the Japanese Imperial Navy to be newly set up in Shanghai, China. There, they agreed on the methods to recruit women to a Naval "comfort station", pretending that the women would be well paid for works in ordinary workplaces such as a restaurant or cafe, without telling them the truth that they were to be forced to give sexual services to the Japanese officers and soldiers. They approached the fifteen women victims during the period from 10th March to the beginning of May. The date of the first shipment of the three women victims from Nagasaki to Shanghai was 14th March 1932.

This finding, which is compared with the researches^{3 4}, strongly suggests that this Nagasaki District Court judgment was probably made in relation to one of the first

cases of abductions of military “comfort women” recruited to the first Naval “comfort stations”.³⁵

The fifteen women victims were recruited from Nagasaki and seemed to be Japanese homeland citizens. As the known former “comfort women” except for a few are not Japanese homeland citizens, this judgment adds a fresh aspect for the researchers in this area.

The pattern of recruitment is strikingly similar to the many Korean cases of abductions of women.³⁶

The legal basis of the judgment was Art. 226 (1) and (2) of the Penal Code³⁷. This article could be enough in substance to implement the provisions of international law, mentioned above, namely three instruments against trafficking in adult women for prostitution³⁸.

The judgment successfully punished the perpetrators of abductions of and trafficking in the women to a Naval “comfort station” by enforcing the Penal Code. This meant that the Japanese domestic judicial system effectively achieved realization of the rule by law and that Japan abided by international obligation as far as these Nagasaki cases were concerned. This success story of the then Administration of Justice is surprising for the author to learn, as this happened at the time of rising Fascism and Militarism in Japan³⁹. Just two weeks after this judgment, the February 26 Incident, an attempted *coup d'etat* took place.

5. Limitations of the judicial system

The author, however, should also point out significant limitations in this success story, which could have provided a good chance to prevent recurrences of similar crimes.

The contents of this judgment strongly suggest that the Japanese police and prosecutors, namely the Japanese Government already knew that the conduct of defendants conspiring with the military against those fifteen women victims constituted crimes, namely cross border abductions⁴⁰. They failed, however, in punishing any military personnel, although they clearly knew about the involvement of the Japanese Navy in Shanghai, who must have initiated a series of actions to abduct the women victims. This must have been the starting point of *de facto* impunity of the enormously large scale military's crimes committed later.

These limitations of the judicial power, which should be examined into by researchers, suggests that legislation of domestic laws and adoption of international treaties are not enough to prevent further occurrences of violations of human rights.

If the Japanese law that incorporated international law had been further effectively implemented, it must have been possible for Japan to prevent the further recurrence of violations of women's human rights. Not only the Japanese domestic legal system but also international law system, however, did not have enough mechanisms for effective implementation.

The judgment dated 28th September 1936 of the Nagasaki Appeal Court basically supported the Nagasaki District Court Judgment, although it reduced the periods of penal servitude for five of eight appellants.

The Supreme Court judgment dated 5th March 1937 turned down the further appeal made by the seven appellants (defendants).

No other case of punishment made by the Japanese Administration of Justice of the crimes against the "comfort women" committed by any other person has been known even today. Only one known precedent of the punishment of the perpetrators of crimes against the Dutch victims of military sexual slavery by Japan is the judgment that was delivered by a military war crime tribunal of the Dutch East Indies in 1946, although the Dutch military tribunals were largely indifferent towards non-Dutch Asian victims.^{4 1}

6. Administrative power and *de facto* impunity

How did the state of perfect *de facto* impunity arise?

The Supreme Court judgment, which supported the lower courts, was followed by a series of administrative measures taken by the government.

Instead of suppressing the trafficking in such women, the Home Ministry, which controlled police decided to tolerate it, as it was regarded as a necessary evil.^{4 2} It is clear that the Home Ministry knew international law provisions. The note ordered that those, who claimed any involvement of Imperial Forces, had to be suppressed in order to keep honour of the Imperial Forces. It was cunningly formulated, however, so that any persons, who were ordered by military to transport such women to China, could do so insofar as they concealed the facts that they were working for military and that the destination was military "comfort stations".^{4 3} Thus, all women recruited to military "comfort stations" had necessarily to be deceived. As a result, all cases of trafficking in women to military "comfort stations" inevitably constituted crimes of abduction by way of deception, in violation of Art. 226 of the Penal Code.

This was soon followed by one of the key military documents, "a notice entitled "Matters Concerning the Recruitment of Women to Work in Military Comfort Stations," issued on March 4, 1938 by an adjutant in the Ministry of War."^{4 4} The Ministry of

War ordered that “This task will be performed in close cooperation with the military police or local police force of the area.”^{4 5} This was so ordered “for preserving the honor of the army and avoiding social problems.”^{4 6}

In April 1938 there was a gathering of relevant officials from the army, navy, and Foreign Ministry at the Nanking Consulate. It was decided in regard to the army’s exclusive “store” (*shuho*) and comfort stations that “consulates will not interfere with establishments managed and supervised directly by the army.”^{4 7}

Thus, the system for *de facto* impunity was completed.

7. Were “loopholes” in international law responsible?

There can be no argument among researchers as regards the fact that “Korean women became the primary targets of efforts to round up comfort women.”^{4 8} Prof. YOSHIMI attributes this to “the loopholes in international law”, namely the exemption clauses of colonies in three international treaties including the 1910 treaty (Art. 11) and the 1921 treaty (Art. 14) for suppression of trafficking in white slaves.^{4 9}

This author was not convinced by his argument on the basis of the following points.

First, despite the provisions of exempting application to colonies in the three treaties mentioned above, the treaties could be applied in trafficking in “comfort women”, where the victims were transported by a Japanese ship or via any port in Japan.

Second, Japan ratified the 1930 ILO No. 29 Convention concerning forced labour, which prohibited any forced labour of women. And this ILO convention had to be applied in not only the homeland territory but also colonies of Japan.

Third, the author believes that trafficking in men and women were also prohibited by then under customary international law, which outlawed slave trade.

Fourth, as the Nagasaki District Court judgment proved, the provisions in Chapter 33 of the Penal Code including Art. 226 that prohibited abductions of and trafficking in women and children had to be applied to the cases of “comfort women”. As the Penal Code of Japan was introduced into colonies of Japan such as Korea and Taiwan, the same provisions were effective there as well.^{5 0}

As a result, this author believes that there existed in colonies such as Korea and Taiwan the legal provisions of then domestic law as well as international law, under which the abductions of and trafficking in the women victims to military “comfort stations” could have been suppressed. As a result, one may conclude that what was responsible for *de facto* impunity was not lack of legal provisions or the exemption

clauses, but lack of willingness of the Japanese Government to enforce the legal provisions.

Further researches are necessary concerning the reasons why the law was not effectively enforced in colonies, particularly in Korea.^{5 1} The major cause of *de facto* impunity in colonies, particularly in Korea was the lack of political will to apply law. The colonization of Korea was enforced through directed coercion by the Japanese military against then Korean Emperor's ministers and that the 1905 Treaty between Korea and Japan did not take effect^{5 2}. It was followed by a period of violent suppression by Japan. As all Governors General of Korea were appointed from the military^{5 3}, there must have been little political will to punish the perpetrators, who committed crimes against Korean military "comfort women".

In Japan, we have a proverb, "A thief cannot be made to twist a rope to catch a thief."^{5 4} How can we effectively enforce law to punish the perpetrators of any crimes, where those responsible for the maintenance of the legal system are directly or indirectly responsible for the crimes?

Conclusions

The Imperial Japan's legal system, which had weakness in ensuring effective enforcement of law, compromised military's demands for *de facto* impunity as regards military sexual slavery. This allowed the rapid growth of this monstrous system of inhuman, degrading and torturous treatment of women. It is essential to research into comprehensive legal systems that could effectively be implemented to cope with *de facto* impunity.^{5 5}

This finding of the Nagasaki District Court judgment symbolizes the Japanese Government's failure in fact-finding concerning the issue of "comfort women". Despite their repeated promises before the Diet, they did not make public the documents that they possessed in their own offices such as the Ministry of Justice^{5 6}. This failure should be criticized as a substantial cover-up.

Lastly, it should be also asked, if women had been equally included in the judicial system as well as military and other governmental offices, would it have been different?

¹ This was reported by this author in a Japanese monthly legal journal. See: TOTSUKA, Etsuro, Senji seibouryoku eno taio wo motometa souki no jyosei undou—Daiichiji-sekai-taisen shori wo tougi shita pari-heiwa-kaigi e kagaisya shobatsu

wo yokyu suru bunsho wo teisyutsu, Hougaku-semina, no. 566, February issue 2002, pp.77-80.

² Totsuka, E., "Korekara no Nihon to Kokusai Jinken-ho(Saisyukai) Senji Seidorei eno Taio wo motometa Souki no Jyosei Undo" (Japanese), Hougaku Semina, February 2002.

³ This represents the situation of June 2004.

⁴ UN Doc. E/CN.4/1992/SR.30/Add1, para. 14-18.

⁵ DOLGOPOL, Ustina & PARANJAPE, Snehal, *Comfort Women: an unfinished ordeal Report of a Mission by International Commission of Jurists*, ICJ, (1994). <http://www.comfort-women.org/Unfinished.htm>. This WCCW site was hit on 8th February 2004.

⁶The Addendum (UN Doc. E/CN.4/1996/53/Add.1) of the first report in 1996 to the Commission on Human Rights made by Ms. Radhika Coomaraswamy the Special Rapporteur on Violence Against Women. Final Report on systematic rape, sexual slavery and slavery-like practices during armed conflict (UN Doc. E/CN.4/Sub.2/1998/13.) submitted by Ms. Gay McDougall, the Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict to the UN Sub-Commission of Human Rights.

⁷ The ILO Committee of Experts on the Application of Conventions and Recommendations referred to the issue of military sexual slavery by Japan in violations of ILO No. 29 Forced Labor Convention, in its observations in 1996, 1997, 1999, 2001, 2002, 2003 and 2004. <http://www.ilo.org/ilolex/english/newcountryframeE.htm>. This ILOLEX site was hit on 11th July 2004.

⁸"The Women's International War Crimes Tribunal on Japan's Military Sexual Slavery" (the Women's Tribunal) was a people's tribunal organized by Asian women and human rights organizations and supported by international NGOs. The Women's Tribunal (the Tokyo Tribunal) was held in Tokyo on 8-12 December 2000. On the fifth day, 12 December 2000, the Tribunal issued its preliminary judgment, which found Emperor Hirohito guilty, and the State of Japan responsible, for the crimes of rape and sexual slavery as crimes against humanity. <http://www1.jca.apc.org/vaww-net-japan/english/>. This VAWW Net Japan web site was hit on 11th July 2004.

⁹ As for the claim of the AWF, see: Its web site, hit on 11 July 2004, <http://www.awf.or.jp/english/index.html>. See: also the web site of the Korean Council for the Women Drafted for Military Sexual Slavery by Japan, <http://www.k-comfortwomen.com> hit on 11 July 2004. As for the views of the leading Japanese historian, see: YOSHIMI, Yoshiaki, The Emergence of the Issue, in: YOSHIMI, Yoshiaki, translated by O'BRIEN, Suzanne, *Comfort Women Sexual Slavery in the Japanese Military During WW II*, Colombia University Press (2000), pp. 23-40.

¹⁰ This author, whose legal opinions were supported by the international legal experts (See: the ICJ, *op. cit.*, the UN, the ILO and the WIWCT mentioned above, has been criticizing the attitude of the Japanese government since 1992 as follows. 1. As for the private fund policy, see: TOTSUKA, Etsuro, Military Sexual Slavery by Japan and Issues in Law, in: Keith Howard (ed.), *Testimonies compiled by the Korean Council for Women Drafted for Military Sexual Slavery by Japan and the Research Association on the Women Drafted for Military Sexual Slavery by Japan*, translated by Lee, Young Joo, *True Stories of the Korean Comfort Women*, Cassell, London & New York (1995), pp.193-200. 2. As for the victims of the ROK, see: TOTSUKA, Etsuro, International

Legal Issues between ROK and Japan concerning Comfort Women, Lee, In: Jang-Hie (ed.), *International Legal Issues between the Republic of Korea and Japan*, ASRI Press, Seoul, (1998), pp.65-88. 3. As for the victims in China, see: TOTSUKA, Etsuro, Peace Treaty and Japan's Wartime Responsibility: Breaking the Treaty Defense, *Humanares Volkerrecht Informationsschriften*, 1/2002, pp.43-46.

^{1 1} TOTSUKA, Etsuro, Commentary on a Victory for "Comfort Women": Japan's Judicial Recognition of Military Sexual Slavery, *Pacific Rim Law & Policy Journal*, Vol.8(1999), No.1, pp.47-61.

^{1 2} Reuters=CNN.Com.news, Japan court rules against 'comfort women', March 29, 2001, Web posted at: 10:36 AM EST (1536 GMT). Hit on 14th February 2004.

^{1 3} See: E/CN.4/1994/NGO/19, 4 February 1994, Written statement submitted by the International Fellowship of Reconciliation, a non-governmental organization in consultative status (category II), "Comfort women": a case of impunity. See also: E/CN.4/Sub.2/1994/3313 June 1994, the Report of the Working Group on Contemporary Forms of Slavery on its nineteenth session, Chairman-Rapporteur: Mr. Ioan Maxim. See also: E/CN.4/Sub.2/1996/26, 16 July 1996, Preliminary report of the Special Rapporteur on the situation of systematic rape, sexual slavery and slavery-like practices during periods of armed conflict, Ms. Linda Chavez. See also: E/CN.4/Sub.2/1996/24, 19 July 1996, Report of the Working Group on Contemporary Forms of Slavery on its twenty-first session, Chairperson-Rapporteur: Mrs. Halima Embarek Warzazi.

^{1 4} In 2001: See: E/CN.4/Sub.2/2001/NGO/24, 24 July 2001, Written statement submitted by Japan Fellowship of Reconciliation (JFOR), a non-governmental organization in consultative status (Special)"Comfort women": "Three opposition parties succeeded, for the first time, in submitting to the House of Councilors a united Bill for "Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coercion Act" below." In 2002: See: E/CN.4/Sub.2/2002/NGO/23, 25 July 2002, Written statement submitted by Japan Fellowship of Reconciliation, a non-governmental organization in special consultative status to Sub-Commission on the Promotion and Protection of Human Rights, Fifty-fourth session: "For the first time in history, on 18 July 2002, the Committee on Cabinet Affairs of the House of Councilors of the Diet of Japan started its substantial deliberation on a Bill, "Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coercion Act"." In 2003: See: E/CN.4/Sub.2/2003/NGO/46, 30 July 2003, Written statement submitted by Japan Fellowship of Reconciliation, non-governmental organizations in special consultative status "Comfort Women": Systematic rape, sexual slavery and slavery-like practices, to the Sub-Commission on the Promotion and Protection of Human Rights, Fifty-fifth session: "Members of the House of Councilors of the Japanese National Diet, Ms. OKAZAKI, Tomiko; Ms. MADOKA, Yoriko; Ms. CHIBA, Keiko; Ms. KAWAHASHI, Yukiko; Ms. YOSHIKAWA,

Haruko; Ms. HATTA, Hiroko; Mr. YOSHIOKA, Yoshinori; Ms. OWAKI; Masako; Ms. FUKUSHIMA, Mizuho; Mr. KUROIWA Takahiro; Mr. SHIMABUKURO Soko; Ms. TAJIMA, Yoko; and Ms. TAKAHASHI, Kiseko with support of other 73 Members of the House, on 31 January 2003, re-introduced a Bill, "Promotion of Resolution for Issues concerning Victims of Wartime Sexual Coersion Act" to the House at the 2003 Ordinary Diet Session. The Bill is the same as the previous bill See: E/CN.4/Sub.2/2001/NGO/24 and E/CN.4/Sub.2/2002/NGO/23, which was abolished at the end of the last Diet session in December 2002. ...The National Diet of the Republic of Korea, a major victimized nation, made the following significant resolution that guaranteed success of the Bill mentioned above on 26 February 2003 at the opening of President ROH Moo-hyn's Era."

^{1 5} The information of the movement to actualize the legislation for the fact-finding is available in Japanese at the following web site of "Senso-Higai-Chosakai-Ho wo Jitsugensuru Shimin-Kaigi", hit on 11 July 2004. <http://www.geocities.co.jp/HeartLand-Keyaki/5481>.

^{1 6} As for the Japanese Government attitude in relation to apology and the fact-finding conducted by them, see: O'BRIEN, Suzanne, Translator's introduction, YOSHIMI, *op. cit.* pp. 1-21. See: YOSHIMI, Yoshiaki, The Emergence of the Issue, YOSHIMI, *op. cit.* pp. 23-40. As for the attitude of the Japanese Government at the Diet, see: (In Japanese) MOTOOKA, Shoji, "*Ianhu*" *Mondai to Watashi no Kokkai-Shingi*, Shoji Motooka's Tokyo Office (April 2002), pp. 1-194. As for the attitude of the Japanese Government and the UN activities, see: TOTSUKA, *op. cit.*

^{1 7} *Ibid.*

^{1 8} *Ibid.*

^{1 9} This author, being invited to give opinions concerning the bill for apology to the victims of sexual coercion during war time on 12 December 2002 by the Committee of the Cabinet Affairs of the House of Councilors, supported the purpose of this bill, which was to achieve friendly relationship with Asian countries. <http://www.jca.apc.org/~fsaito/sexslave.html>.

^{2 0} One of the examples is the firm response made by the Japanese Meiji Government, that liberated all of the Chinese slave trade victims of a Peruvian vessel, the Maria Luz at Edo Bay or Port of Yokohama in 1872. See: the following web sites, hit on 11 February 2004: Bill Mihalopoulos, What is a Contract?: Law Meets the Doctor, the Migrant, and the Prostitute. <http://www.aasianst.org/absts/1999abst/inter/i-173.htm>. Juan del Campo, Treaties with Japan and China. http://members.lycos.co.uk/Juan39/Japan_China.html.

^{2 1} The 1904 Agreement was acceded by Japan on 21st October 1925 and promulgated on 21st December 1925. As for the 1910 Convention, the deposition of accession was registered by Japan on 21st October 1925 and it was promulgated on 21st December 1925. The 1921 Convention was ratified by Japan on 28th September 1925; its deposition was registered on 15th December 1925; and it was promulgated on 21st December 1925.

^{2 2} Ratification was made by Japan on 15th October 1932. Its deposition was registered on 21st November 1932 and it was promulgated on 7th December 1932.

^{2 3} The Japanese government acknowledged that coercion was, in general, employed in recruitment and/or treatment of the comfort women.

^{2 4} Naikaku-Seido Hyakunen-Shi Iinkai, Naikaku-Seido Hyakunen-Shi ge, Naikaku-Kanbo (1985), p. 201.

^{2 5} YOSHIMI, *op. cit.*, pp. 43-44.

^{2 6} The author's article on these judgments was published in two articles, which have

just been published in a Japanese journal: TOTSUKA, Etsuro, Senji jyosei ni taisuru boryoku eno nihon shiho no taiou, sono seika to genkai (jyou), Sensou-Sekinin-Kenkyu Quaterly -- The Report on Japan's War Responsibility, published in Japan, no. 43, March 2004, pp. 35-45, 67; and TOTSUKA, Etsuro, Senji jyosei ni taisuru boryoku eno nihon shiho no taiou, sono seika to genkai (ge), Sensou-Sekinin-Kenkyu Quaterly -- The Report on Japan's War Responsibility, published in Japan, no. 44, June 2004, pp. 50-63.

The publication of these articles was reported by mass media in Japan based on the news articles extensively circulated by Kyodo News Agency on 15 June 2004: They include Wartime 'comfort women' rulings uncovered, The Japan Times, Wednesday, June 16, 2004. <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040616a8.htm>.

It was also reported by this author at an international conference in Adelaide.

TOTSUKA, Etsuro, Could we prevent systematic sexual violence against women during war time?--Learning from the history of the Japanese case of "comfort women"—, The International Law Conference: The Challenge of Conflict: International Law Responds 26-29 February 2004 at the Holiday Inn on Hindley, Adelaide, Australia.

^{2 7} The Mainichi Shimbun (Osaka) on 6 August 1997 reported that the Supreme Court ruled on 5 March 1937 that the abduction by deception of and trafficking in 15 Japanese women from Nagasaki to a Navy comfort station in Shanghai was the violation of Art. 226 of the Penal Code. This judgment had been published in the 1937 selected judgments of the Supreme Court.

^{2 8} Nagasaki Chiho Saiban-sho Keiji-bu Hanketsu, Showa 11 nen, 2 gatsu, 14 nichi, Kokugai Iso Jiken, Hikoku-nin F., Minoru hoka 8 mei.

^{2 9} A male Prosecutor, Mr. KAWAKAMI, Isamu.

^{3 0} All were male Justices, Mr. HONGO, Masahiro, Mr. NARAHASHI, Yoshio and TAKASHIGE, Hisato.

^{3 1} Art. 226 of the current Penal Code, which is essentially the same as then (in 1936) Art. 226 of the Penal Code (Kei-ho, Meiji 40 nen Ho 45). "A person who kidnaps or abducts another for the purpose of transporting the same to a foreign country shall be punished with penal servitude for a limited period of not less than two years. 2. The same shall apply to a person who buys or sells another for the purpose of transporting the same to a foreign country or who transports a person kidnapped, abducted, or sold to a foreign country." The penal code of Japan 2002, originally translated by NAKANE, Fukio, published by EIBUN-HOREI-SHA, Japan (2002), pages 68-69.

^{3 2} Three men were sentenced to three years and six months. Two women were sentenced to two years and six months. Two men were sentenced to two years. Three men were sentenced to a year and six months with suspension of three years.

^{3 3} It was just 40 days after the outbreak of the military attacks waged by the Japanese Forces against China in Shanghai.

^{3 4} YOSHIMI, *op. cit.*, pp.43-47.

^{3 5} Ibid., p. 43, p. 45 & p. 217.

^{3 6} Keith Howard (ed.), *op. cit.*.

^{3 7} Art. 226, *op. cit.*.

^{3 8} The Penal Code had no provision to criminalize a person, who trafficked in a juvenile without using deception or violence despite the duties of a State Party of the

1910 Treaty, as provided in its Art. 1.

^{3 9} The Manchurian Incident in 1931 was followed by the First Shanghai Incident in January 1932, in which year the extremists in military killed senior politicians and occupied the centre of Tokyo, namely the 5.15 Incident.

^{4 0} No “admission of guilt” was offered by the current Japanese Governments’ officials up until today of “criminal nature” of the involvement of the Japanese Forces in the abductions of the women victims of “comfort women”, despite the fact that the Government officially admitted the “facts” that the Japanese Forces were involved in the abductions.

^{4 1} UN. Doc. E/CN.4/1995/NGO/40, Written statement submitted by the International Fellowship of Reconciliation, a non-governmental organization in consultative status (category II) Slavery during wartime, which was written on behalf of IFOR by Attorney Mr. JUNSLAGER, Geraldin, then legal advisor to the Foundation of Japanese Honorary Debts, was submitted on 14th February 1995 to the UN Commission on Human Rights. In it, a summary of the judgment is available. See: U. Dolgopol and S. Paranjape, *Comfort Women: An Unfinished Ordeal*, International Commission of Jurists, 1993, pp. 135-36. See also: YOSHIMI, *op. cit.*, pp. 173-176. See also: TANAKA, Yuki, (ed.) SELDON, Mark, *JAPAN’S COMFORT WOMEN Sexual slavery and Prostitution during World War II and the US Occupation*, Routledge, (2002), pp. 73-77. *Ibid.*, pp. 84-100.

^{4 2} YOSHIMI, *op. cit.*, p. 63.

^{4 3} (In Japanese) NAGAI, Kazu, *A Study of Japanese “Military Sexual Slavery” under the Sino-Japanese War*, *Twentieth Century Studies*, No. 1 (2000), pp. 79-111.

^{4 4} YOSHIMI, *op. cit.*, pp. 58-59.

^{4 5} *Ibid.*

^{4 6} *Ibid.*

^{4 7} YOSHIMI, *op. cit.*, p. 64.

^{4 8} YOSHIMI, *op. cit.*, p. 157.

^{4 9} *Ibid.*

^{5 0} Chosen Keiji-rei (Meiji 45 nen 3 gatsu seirei dai 11 go) introduced the Japanese Penal Code into Korea in 1912. See also: Taiwan Keiji-rei (Meiji 41 nen 8 gatsu 28 nichi ritsurei dai 9 go).

^{5 1} See: (In Japanese) YUN, Chung-Ok, Shokuminchi-shihai, Sengo-sekinin, Senji-seibouryoku, ‘Jyosei-Kokusai-Senpan-Hotei’ wo tomoni tsukutte, *Women’s Asia* 21, No. 34 (2003), pp. 39-41.

^{5 2} See: UN. Doc. E/CN.4/1993/NGO/36, Written statement submitted by the International Fellowship of Reconciliation, a non-governmental organization in consultative status (category II), which was written by the author on behalf of IFOR, was submitted on 15 February 1993 to the UN Commission on Human Rights.

^{5 3} In colonial Taiwan, the Governor Generals appointed by Japan were civilians. The author, however, does not mean that the Japanese colonial rule in Taiwan was harmless.

^{5 4} In Japanese, “Dorobo ni nawa wo nawaseru koto wa dekinai.”

^{5 5} The areas of concerns in relation to impunity and violence against women during war time are as follows: Defects in Administration of Justice, Human Rights Law and Constitution; Gender and Law; Colonialism and Dictatorship; Control of Military; Violence against Women and International Human Rights and Humanitarian Law; and Peace Studies.

^{5 6} The relevant information that was not made public must be possessed by not only the Ministry of Justice (Homu-sho) but also the National Police Agency (Keisatsu-cho) and the Ministry of Public Management, Home Affairs, Posts and Telecommunications (somu-sho) as well as the Ministry of Defense (Bouei-cho).