

# Resolving the Japan - Korea “Comfort Women” Conflict: The Most Effective vs. The Most Likely Solution

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## Abstract

This article analyses the “comfort women” issue that is weakening the relationship between Japan and the Republic of Korea (ROK), which the U.S. fears may threaten their trilateral security partnership. It discusses the facts and legal terminology for imperial Japan’s system of sexual slavery in the 1930s and World War II. It reviews the history of imperial Japan’s annexation of Korea and the postwar years when the U.S. sought to strengthen Japan to counter the rise of Communism. It shows that Japan’s postwar conservatives engaged in audacious denialism for its crimes against humanity that it repeats today. It compares Germany’s path to reconciliation with its former enemies with Japan’s failure to do the same. Right-wing backlash derailed Japan, while Germany repaired its relationships through a process of apologies, reparations, memorialization, and other significant efforts that showed genuine contrition and acceptance of responsibility. The 2015 Statements by Japan and the ROK failed to meet international standards for adequate reparations. The UN has stated repeatedly to Japan that reparations must be victim-centered and comprehensive. The most effective solution to end friction between Japan and ROK is that Japan genuinely apologizes and provides sufficient reparations, according to international standards. The most likely solution will be the continuation of the status quo. The strengthening of human rights will ultimately side with the comfort women/girls.

**Key Words:** “comfort women,” sexual slavery, Japan-ROK relations, trilateral security, reparations, sovereign immunity

## Introduction

Watching young men in a Tokyo street taunting an 86-year-old woman in a wheelchair, yelling that she is a whore and should go home to South Korea, is disconcerting in the 2016 documentary “The Apology.” Seeing a young Japanese man stand up in a Washington, D.C., audience and brazenly denounce the award-winning film to its director<sup>1</sup> as lies told by prostitutes against the Japanese government is astonishing. His passionate anger in defense of Japan matched the intensity of the audience’s grief on behalf of the “comfort women,” Japan’s brutally treated sex slaves in World War II.

The “comfort women” issue has remained a serious obstacle to a good relationship between South Korea and Japan, despite the decades that have passed since 1945. It is a top concern of the United States (U.S.), which views their trilateral relationship as key to countering China’s rise and North Korea’s nuclear weaponry. This article seeks to solve the issue by stating 1) the facts of the “comfort women” through legally accurate terminology, 2) why Japan’s systematic sexual slavery happened, 3) why it is a problem today by reviewing some history between Japan and Korea, including Japan’s apologies; comparing Japan’s reconciliation efforts with Germany’s; examining Japan’s right-wing backlash, South Korea’s legal front, and the role of the U.S., and 4) a recommendation for the most effective solution, but recognizing the status quo as probably the most likely “solution,” with the hope that larger trends in human rights lead to justice for the “comfort women and girls.”

### What Happened? Terminology and Facts

Imperial Japan’s sex slavery during the 1930s and World War II, by forcing “comfort women” to be raped by Japanese military in “comfort

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1 Tiffany Hsiung is the director of “The Apology” 2016.

stations,” was the largest government-sponsored system of sex slavery in modern history.<sup>2</sup> Given the critical role of accurate facts in the “History Wars” that right-wing Japan fuels and liberals fight, this article focuses on establishing correct legal language and facts as fundamental for any discussion of the “comfort women.”

The scope of the “comfort women” system was vast both in number and geography. Estimates have varied widely from 50,000 to 400,000<sup>3</sup> “comfort women,” with 200,000 most often cited. In addition to China and Korea, the “comfort station” system covered large parts of Asia, including Singapore, Taiwan, the Philippines, Indonesia, East Timor, Thailand, Myanmar, Vietnam, Borneo, many Pacific Islands,<sup>4</sup> and Japanese women were also forced into sex slavery. This article focuses on Korean “comfort women” as one aspect of Japan’s overall system, all of which must be remembered and condemned.

The imperial Japanese military oversaw the creation of the “comfort women” system because it wanted to reduce the number of rapes committed by its soldiers against the local population where it was seizing control.<sup>5</sup> A notorious example is the “Rape of Nanking” (also known as the Nanjing Massacre), where tens of thousands were

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2 Alexis Dudden, “The Comfort Women Part I” (Center for Korean Legal Studies YouTube, March 5, 2021), accessed December 24, 2021, <https://www.youtube.com/watch?v=1MWANFBJESk&list=LL&index=3>.

3 Estimates rose after further research in China suggested an additional 200,000 comfort women/girls. Peipei Qui, Su Zhiliang and Chen Lifei, *Chinese Comfort Women, Testimonies from Imperial Japan’s Sex Slaves* (Oxford: Oxford University Press, 2013), 6; Peipei Qiu, “Japan Government Continues to Deny Responsibility for Sex Slavery,” *The Conversation*, January 27, 2015, accessed December 23, 2021, <https://theconversation.com/japan-government-continues-to-deny-responsibility-for-sex-slavery-36533>.

4 Radhika Coomaraswamy, “Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, in accordance with Commission on Human Rights Resolution 1994/45,” January 4, 1996, accessed December 24, 2021, <https://digitallibrary.un.org/record/228137?ln=en#record-files-collapse-header>; Julie Mccarthy, “PHOTOS: Why These World War II Sex Slaves Are Still Demanding Justice,” *National Public Radio*, December 4, 2020, accessed December 22, 2021, <https://www.npr.org/sections/goatsandsoda/2020/12/04/940819094/photos-there-still-is-no-comfort-for-the-comfort-women-of-the-philippines>.

5 Zhiliang Su, trans. Edward Vickers, “Reconstructing the History of the ‘Comfort Women’ System: The Fruits of 28 Years of Investigation into the ‘Comfort Women’ Issue in China,” *The Asia-Pacific Journal/Japan Focus*, vol. 19, issue 5, no. 7/Article ID 55488 (March 1, 2021), 5.

raped.<sup>6</sup> The imperial Japanese were concerned that these rampant rapes were harming Japanese security by enraging the local population to kill imperial Japanese soldiers in revenge or subjecting them to espionage.<sup>7</sup> They also harmed imperial Japan's international image as foreign correspondents reported their crimes. In addition, the military wanted to control its soldiers' exposure to venereal disease. In the "comfort stations," military doctors would examine "comfort women" weekly to stop soldiers from raping those with venereal disease. Ordering the soldiers to stop raping local women and enforce discipline was apparently not considered a solution. In fact, in some early cases, commanders encouraged the rapes of local women as part of soldiers' recreation, and rapes at the "comfort stations" were the replacement entertainment. Soldiers' attitudes indicated they felt entitled to rape as part of their life as soldiers.<sup>8</sup>

In discussing the 1930s and World War II, the term "imperial Japan" refers to the form of governance Japan had since the Meiji Restoration of 1868 until the end of World War II. The term "modern Japan" or "Japan" refers to the new form of governance that Japan took on in its 1947 constitution. The 1947 constitution was written with the Allies' supervision following Japan's defeat in 1945 and significantly changed Japan's governance.<sup>9</sup> It reduced the role of the emperor from being the highest state authority to a mere symbol, and it denied Japan the right to wage war, such that Self-Defense Forces were established in 1954 to replace its traditional military. In addition, the term "Korea" refers to the 1910 - 1945

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6 Newsweek Staff, "Exposing the Rape of Nanjing," *Newsweek*, November 30, 1997, accessed December 23, 2021, <https://www.newsweek.com/exposing-rape-nanking-170890>; University of Southern California Shoah Foundation, accessed December 22, 2021, <https://sfi.usc.edu/collections/nanjing-massacre>.

7 Yoshiaki Yoshimi, *Comfort Women, Sexual Slavery in the Japanese Military during World War II* (New York City, New York: Columbia University Press, 1995), 74-5.

8 Ustinia Dolgopol and Snehel Paranjape, "Comfort Women: The Unfinished Ordeal," Report of a Mission (International Commission of Jurists, Geneva, 1994), accessed December 29, 2021, <https://www.icj.org/wp-content/uploads/1994/01/Japan-comfort-women-fact-finding-report-1994-eng.pdf>, 25; Yoshimi, *Comfort Women, Sexual Slavery in the Japanese Military during World War II*, 67-74.

9 Council on Foreign Relations, "Japan's Postwar Constitution," accessed December 23, 2021, <https://www.cfr.org/japan-constitution/japans-postwar-constitution>.

period when the Korean peninsula was annexed to Japan. The terms “Republic of Korea,” “ROK,” and “South Korea” refer to the new state that emerged after the war and now commonly means the southern part of the peninsula, although legally the ROK encompasses the entire peninsula.<sup>10</sup>

The term “comfort women” means the women and girls the imperial Japanese military forcibly held in “comfort stations” for multiple daily rapes. Although “comfort women” is an offensive euphemism, I use it because it has become well-known to mean specifically the women and girls enslaved by the Japanese military in the 1930s and World War II. However, this article adds “girls” to the term (comfort women/girls) to make it more accurate because many girls under 18 years old were forced into the “comfort stations.” The elderly Grandma Gil Won-ok described above in “The Apology,” for example, was enslaved at the age of 13 for five years. Indeed, girls were deliberately sought out because they were virgins and therefore free of venereal disease.

Terms such as “slavery” and “torture” are legal terms meeting the definitions of international law, according to United Nations (UN) and other international legal experts analyzing the law at the time the crimes were committed.<sup>11</sup> Customary international law prohibited slavery, which was defined in the 1926 Slavery Convention. Article 1 stated (1) 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. (2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person

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<sup>10</sup> Article 3, Republic of Korea Constitution, 1987, accessed December 23, 2021, <https://www.law.go.kr/LSW/lsInfoP.do?lsiSeq=61603&viewCls=engLsInfoR&urlMode=engLsInfoR#0000>.

<sup>11</sup> Gay J. McDougall, “Final Report of the Special Rapporteur on Contemporary Forms of Slavery, Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict,” June 22, 1998, accessed December 24, 2021, [https://digitallibrary.un.org/record/257682?ln=en#record-files-collapse-header;Coomaraswamy, “Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, in accordance with Commission on Human Rights Resolution 1994/45”; Women’s Active Museum on War and Peace \(WAM\), “Women’s International War Crimes Tribunal for the Trial of Japan’s Military Sexual Slavery,” December 4, 2001, accessed December 24, 2021, <https://archives.wam-peace.org/wt/en/judgement.”>](https://digitallibrary.un.org/record/257682?ln=en#record-files-collapse-header;Coomaraswamy, “Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, in accordance with Commission on Human Rights Resolution 1994/45”; Women’s Active Museum on War and Peace (WAM), “Women’s International War Crimes Tribunal for the Trial of Japan’s Military Sexual Slavery,” December 4, 2001, accessed December 24, 2021, https://archives.wam-peace.org/wt/en/judgement.”)

with intent to reduce him to slavery; ... and, in general, every act of trade or transport in slaves.<sup>12</sup>

The comfort women/girls did not have freedom to escape the “comfort stations” and were subjected to multiple brutal rapes per day ranging from two or three reaching numbers such as 30 or 60, and suffered constant pain and injury that was often permanently debilitating.<sup>13</sup> If some token amount of money was “paid” to the women/girls, it does not negate that they were slaves. “Sexual slavery,” not “forced prostitution,” is the most correct term, according to legal experts.<sup>14</sup> In addition, UN Special Rapporteur Ms. Gay J. McDougall stated, “According to the Japanese Government’s own admissions [in the 1990s] ... the women were ‘deprived of their freedom’ and ‘recruited against their own will.’”<sup>15</sup> Thus, imperial Japan’s forcible use of comfort women/girls met the definition of slavery under customary international law, and imperial Japan’s apparatus for acquiring these slaves met the definition of slave trade, thereby violating international law at the time the imperial Japanese military created the comfort women/girls system.

Slavery was also a crime against humanity, according to Article 5 of the Charter of the International Military Tribunal for the Far East in Tokyo.<sup>16</sup> In addition, rape in most, if not all, cases also met the legal definitions for “torture” and could be prosecuted as such, “genocide” in that targeting a protected group through attacks on its female members is genocide, and a war crime.<sup>17</sup> This is an abbreviated application of the law

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<sup>12</sup> United Nations Human Rights, “The Slavery Convention,” September 25, 1926, accessed December 24, 2021, <https://www.ohchr.org/en/professionalinterest/pages/slaveryconvention.aspx>.

<sup>13</sup> Yoshimi, *Comfort Women, Sexual Slavery in the Japanese Military During World War II*, 65-75.

<sup>14</sup> Women’s International War Crimes Tribunal for the Trial of Japan’s Military Sexual Slavery, “Judgement Part III,” December 4, 2001, accessed December 24, 2021, <https://archives.wam-peace.org/wt/wp-content/uploads/2020/02/Part-III.pdf>, 150-6.

<sup>15</sup> McDougall, “Final Report of the Special Rapporteur on Contemporary Forms of Slavery, Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict.”

<sup>16</sup> Article 5, “Charter of the International Military Tribunal of the Far East,” January 19, 1946, accessed December 24, 2021, [https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.3\\_1946%20Tokyo%20Charter.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.3_1946%20Tokyo%20Charter.pdf).

<sup>17</sup> McDougall, “Final Report of the Special Rapporteur on Contemporary Forms of Slavery, Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict.”

to the facts; additional analyses can be cited to buttress these legal conclusions. The point is that these terms are not hyperbole because they are grounded in the requirements of established legal definitions.

“Comfort stations” means the physical locations where the Japanese held the women and girls. Like the term “comfort women,” “comfort station” is a misleading and offensive euphemism, given that these locations were sites of rape and other forms of torture and killing. Significantly, many women and girls did not survive their enslavement.<sup>18</sup> High mortality was due to the brutality of the rapes, resultant injuries, and beatings. Women were killed by being forced to endure multiple gang-rapes or were killed after being repeatedly raped. High mortality was also due to suicide, diseases, lack of adequate medical care, poor living conditions, location with the soldiers on the battlefield thereby subjecting them to death by warfare, and murder triggered by an infraction or otherwise, such as trying to escape, illness, pregnancy, or even a whim, without consequences.<sup>19</sup> Although “torture and unlawful killing station” would be an accurate term, I use “rape station” to underscore the sexual nature of the torture and vulnerability to grave physical harm and death.

As critical as knowing the true meaning of “comfort women” and “comfort station” is understanding what these terms did not mean. The comfort women/girls were not prostitutes. Any assertion that they were voluntary prostitutes is “mind-boggling in light of the enormous amount of testimonial, documentary, and circumstantial evidence to the contrary, according to legal experts.<sup>20</sup> They did not work in “brothels” or “military

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<sup>18</sup> Alexis Dudden stated about half died, “The Comfort Women Part I.” Gay McDougall stated 75 percent died, Chung Chin Sung stated 90 percent died in Niamh Reilly, “Testimonies on War Crimes against Women in Conflict Situations at the United Nations World Conference on Human Rights” (Center for Women’s Global Leadership, June 1994), <https://www.cwgl.rutgers.edu/coalition-building/156-publications/cb/314-testimonies-of-the-global-tribunal-on-violations-of-womens-human-rights>, 21.

<sup>19</sup> Qui, Zhiliang and Lifei, *Chinese Comfort Women, Testimonies from Imperial Japan’s Sex Slaves*.

<sup>20</sup> Women’s International War Crimes Tribunal For the Trial of Japan’s Military Sexual Slavery,” Judgement Part III,” 150–1.

brothels” because they were sex slaves, not prostitutes, held for rape against their will.<sup>21</sup> Crucially, the “recruiters” used deception or force to take the women/girls to the rape stations.<sup>22</sup> They targeted girls and women from poor families who welcomed an opportunity to work in a factory, as was often promised. The intersectionality of class (poverty), gender (patriarchal), and colonial rule (Japan’s annexation of Korea) put the women and girls in a particularly low place in society. This vulnerability also made kidnapping an easy way to take them to a rape station, as their families were powerless to intervene or save them.

In addition, women and girls were further easily deceived because it was not obvious that the term “comfort station” (“ianjo,” in Japanese, and “wianso,” in Korean) had anything to do with sex. Harvard Law professor Jeannie Suk Gersen writes that Japanese and Korean newspapers of the time used the term to refer to “recreation areas in municipal parks, a hotel, a shelter for children, and a hot-springs spa.” In 1940, a major Japanese newspaper reported that a Japanese woman who travelled to northern China in response to an advertisement seeking “comfort women” was surprised to discover what it actually meant.<sup>23</sup> The comfort women/girls did not enter into legal contracts to provide sex, as claimed by another Harvard Law professor, J. Mark Ramseyer.<sup>24</sup> When asked to provide such contracts to prove his argument, Ramseyer was unable to, as noted by Gersen, who also points out many other failings in his scholarship – remarkably low quality for a Harvard professor. Although right-wing Japanese academics praised Ramseyer, the larger academic community continues its consensus that the comfort women/girls were in fact sex

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21 Coomaraswamy, “Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, in accordance with Commission on Human Rights Resolution 1994/45”; Yoshiaki, *Comfort Women, Sexual Slavery in the Japanese Military During World War II*, 65-75.

22 Coomaraswamy, “Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, in accordance with Commission on Human Rights Resolution 1994/45.”

23 Jeannie Suk Gersen, “Seeking the True Story of the Comfort Women,” *The New Yorker*, February 25, 2021, accessed December 24, 2021.

24 J. Mark Ramseyer, “Contracting for Sex in the Pacific War,” *International Review of Law and Economics*, vol. 65 (March 2021): 1-8.

slaves.<sup>25</sup>

The horrific situation described above must be viewed with a recognition that in such a large population, variation existed. For example, legitimate research has included the unusual situation in which a comfort women/girl ended up having an affectionate relationship with a Japanese soldier.<sup>26</sup> In addition, the imperial Japanese military's use of locals to help get comfort women/girls to the rape stations, including by trickery and coercion, adds another shade to the picture. But the essential conclusion to draw from the variations or complications is that the overwhelming majority of comfort women/girls were coerced under the auspices of the Japanese military into living terrible lives in deep physical and emotional pain and that absolutists cannot wield rare exceptions to refute the norm.

Finessing the language regarding the comfort women issue is fundamental to addressing the current friction between Japan and Korea and for educating the public so it can distinguish between facts and false claims by both right-wing and left-wing groups. The issue must also be considered within the history of the relationship between Japan and Korea.

## Why Did This Happen?

### Japan-Korea historical relations and the role of the U.S.

The ROK's wary attitude towards Japan is based beyond colonialism and World War II. Rulers of the Japanese islands have long sought control of the Korean peninsula as an entry into the area of China. The peninsula was a natural staging ground and source for materials to support any Japanese military incursion into the continent. The Imjin Wars of the late 16th century marked a spectacular effort by Japan to take Joseon Korea

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<sup>25</sup> Many academics have refuted J. Mark Ramseyer, eg. Al Roth et al., "Letter by Concerned Economists Regarding 'Contracting for Sex in the Pacific War' in the International Review of Law and Economics," accessed December 30, 2021, <http://chwe.net/irle/letter/>.

<sup>26</sup> C. Sara Soh, *The Comfort Women* (Chicago, Illinois, The University of Chicago Press, 2008), 186.

as the first step towards conquering Ming China. Although it ultimately failed, it left a legacy of distrust by Koreans against its large island neighbor.

This distrust has been well-taken. Japan's effort to control Korea as the gateway for seizing China foreshadowed imperial Japan's designs in the 1930s and World War II. Imperial Japan's Meiji Restoration in the mid-1800s set it on course to become a world power. Its victory in the first Sino-Japanese War 1894 - 1895 resulted in Qing China's ignominious loss of Joseon Korea as a tributary state. Although imperial Japan speciously couched its declaration of war against China as motivated by a desire to make Joseon Korea an independent state, imperial Japan apparently did not want Korea to exercise that independence in conducting its international affairs. Imperial Japanese government assassins hacked Korean Queen Min to death in 1895 when she sought help from Russia to reduce imperial Japan's influence in Korea.<sup>27</sup> Indeed, imperial Japan went to war with Russia in 1904 - 1905 because of their dispute over each state's influence over Manchuria and Korea. In this war, imperial Japan was victorious again. The Taft (U.S. Secretary of War) - Katsura (Japanese Prime Minister) agreement in 1905 was an understanding that the Philippines and Joseon Korea would be governed as "protectorates" of the U.S.<sup>28</sup> and imperial Japan, respectively. When Korea asked for U.S. help later that year to fend off Japanese pressure, President Theodore Roosevelt declined.<sup>29</sup> Roosevelt negotiated

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<sup>27</sup> Yasuji Nagai, "Diplomat's 1895 Letter Confesses to Assassination of Korean Queen," *Asahi Shimbun*, November 21, 2021, accessed December 30, 2021, <https://www.asahi.com/ajw/articles/14482741>.

<sup>28</sup> United States House of Representatives, accessed December 23, 2021, <https://history.house.gov/Exhibitions-and-Publications/APA/Historical-Essays/Exclusion-and-Empire/The-Philippines/>.

<sup>29</sup> James M. Lindsay and Anna Shortridge, "TWE Remembers: The Taft - Katsura Memorandum" (Council on Foreign Relations, July 31, 2020), accessed December 30, 2021, <https://www.cfr.org/blog/twe-remembers-taft-katsura-memorandum-0>. Koreans continued to dream of having state status while colonized. Yong-Chool Ha and Jung Hwan Lee, "The Impact of the Colonial Situation on International Perspectives in Korea: Active Imaginations, Wishful Strategies, and Passive Action," in *International Impact of Colonial Rule in Korea 1910-1945*, ed. Yong-Chool Ha (Center for Korea Studies, University of Washington, 2019), 106.

an end to the war in New Hampshire, producing the Treaty of Portsmouth, which was a green light for imperial Japan to annex Korea later in 1910. Disturbing from today's perspective, Roosevelt won the Nobel Peace Prize for this deal that had little regard for the Koreans.

Imperial Japanese colonial rule over Korea was harsh and first and foremost for the benefit of imperial Japan. For the next 35 years imperial Japan ruled Korea often with brutality. Imperial Japan tried to destroy Korea's cultural identity and language to make them Japanese. For example, in 1939 they compelled Koreans to change their names to Japanese ones. Children were required to speak and write in Japanese and answer to their Japanese names. Imperial Japan ruled Korea through a Japanese Governor-General. To the ordinary Korean, Japan enforced its control of the country through strict surveillance and stifling of dissent. Japan also controlled the Korean economy and forced many Koreans to go to Japan to work in agriculture, mines, and factories. The Japanese used coercive "recruitment" methods such that many did not freely choose this work.<sup>30</sup> Imperial Japan also drafted Koreans into its military in 1943 and almost 244,000 Korean soldiers and civilians were forced to serve in the armed services with about 22,000 Korean deaths during World War II.<sup>31</sup>

Imperial Japan also looked to Korean women as a source of labor. They were forcibly recruited or recruited by deceit, among other means. Many women were mobilized to work in factories in Korea and imperial Japan. Given this pattern, Japan's forcible recruitment of comfort women/girls can be seen as an extension of its coercive methods for labor generally. They all were slaves, albeit with the comfort women/girls bearing a most horrific form of "labor."

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<sup>30</sup> Dolgopol and Paranjape, "Comfort Women," 22.

<sup>31</sup> Justin McCurry, "I Don't Have Much Hope: Koreans Search for Loved Ones Who Died Fighting for Japan," *The Guardian*, August 14, 2019, accessed January 3, 2022, <https://www.theguardian.com/world/2019/aug/15/i-dont-have-much-hope-koreans-search-for-loved-ones-who-died-fighting-for-japan/>.

## Why Is This a Problem Today?

Japan's behavior in World War II is a live issue because it impacts Japan's relationship with South Korea, which is at one of its lowest points in decades. It weakens and potentially threatens their security relationship, thereby making it a high concern of the U.S.<sup>32</sup> Koreans will not forget the gross injustice imperial Japan inflicted on Korean women and girls, as well as forced laborers, and Japan's failure to give them adequate redress. The unresolved injustice creates fluctuating tensions that weaken the Japan - South Korea - U.S. security partnership. Although Japan and South Korea each enjoy strong bilateral relationships with the U.S., the U.S. is concerned with the problematic Japan-South Korea relationship as the weakest link in their trilateralism to counter China's increasing strength and North Korea's nuclear threat.

### The Lack of Adequate Reparations

Japan claims that it has apologized many times for "acts" against the "comfort women" who suffered immense pain and permanent physical and psychological injuries. And indeed it has, if one is counting apologies in statements by high Japanese government officials, including several Prime Ministers. In fact, for its wrongdoings during wartime and colonial rule, Japanese officials have made nearly 50 apologetic statements.<sup>33</sup> In this sense, leftist claims that Japan has never apologized are incorrect. But for what did Japan apologize? These apologies, while specific in admitting imperial Japanese military involvement and in the case of the comfort women/girls, the terrible often permanent injury they suffered, have been vetted legally to carefully avoid terms such as "rape," "slavery," "torture," "crimes," "crimes against humanity," and "genocide," although UN and

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<sup>32</sup> Michelle Ye Hee Lee, "As Biden Seeks to Restore Alliances, a Souring Japan-South Korea Relationship Presents a Challenge," *Washington Post*, March 2, 2021.

<sup>33</sup> Stefan Engert, "Japan - China and the Two Koreas, the Apologia Syndrome," in *Apology and Reconciliation in International Relations, The Importance of Being Sorry*, ed. Christopher Daase et al. (London and New York: Routledge, 2016), 237.

other legal experts established these were legally correct terms. That was because Japan was also arguing against these experts in UN fora that such terms did not apply. Therefore, a more accurate characterization of the apologies is that they did indeed apologize for facts that formed part of “rape,” “slavery,” “torture,” and other crimes, but leaves the legal conclusion that they are “rape,” “slavery,” “torture,” and other crimes unstated.

Two key statements by a senior official and a Prime Minister in the 1990s seem to reflect this characterization by suggesting a genuine effort to apologize and attempt to improve regional relationships, while also being legally sanitized. The Japanese government began its policy of atonement in response to growing outspokenness in South Korea in the late 1980s with its democratization in 1987. A breakthrough in advocacy occurred in 1991, when a former comfort girl who was enslaved at age 17, Kim Hak-sun, emerged from society's shadows of shame and secrecy to openly state what the Japanese had done to her. She became the catalyst for many other comfort women/girls speaking out. Japan denied responsibility, but in 1992, Japanese historian Yoshiaki Yoshimi, who was moved by Kim's testimony, discovered imperial army documents that showed direct military involvement in the rape center system, thereby ultimately making the government concede state complicity.

Given the growing body of evidence and statements by comfort women who personally suffered from imperial Japan's rape stations, the Japanese government began an investigation of the issue. In August 1993 Yohei Kono, Chief de Cabinet, announced the study's findings. He stated: the Japanese military was “directly or indirectly, involved in the establishment and management of the comfort stations and the transfer of comfort women. The recruitment of the comfort women was conducted mainly by private recruiters who acted in response to the request of the military.” ... “in many cases they were recruited against their own will, through coaxing, coercion, etc, and that at times, administrative/military personnel directly took part in the recruitments. They lived in misery at comfort stations under

a coercive atmosphere.” ... “The Korean peninsula was under Japanese rule in those days, and their recruitment, transfer, control, etc. were conducted generally against their will ...”

He continued: “Undeniably, this was an act, with the involvement of the military authorities of the day, that severely injured the honor and dignity of many women. The Government of Japan would like to take this opportunity once again to extend its sincere apologies and remorse to all those, irrespective of place of origin, who suffered immeasurable pain and incurable physical and psychological wounds as comfort women.”

Kono stated further: “We shall face squarely the historical facts as described above instead of evading them, and take them to heart as lessons of history. We hereby reiterated our firm determination never to repeat the same mistake by forever engraving such issues in our memories through the study and teaching of history.”<sup>34</sup>

The Kono statement was a landmark. This clear apology and vow never to allow it to happen again was reiterated repeatedly by Prime Minister Tomiichi Murayama, who as a Socialist was a rare exception to the conservative Liberal Democratic Party’s (LDP’s) dominance. In 1994, in preparation for the 50th anniversary of World War II’s end, Prime Minister Murayama announced the “Peace, Friendship, and Exchange Initiative,” which included collection of historical documents and evidence, “to enable everyone to face squarely the facts of history,” and exchange programs to promote understanding.<sup>35</sup> He reiterated the importance of the facts concerning the comfort women and expressed “profound and sincere remorse and apologies.”

When the 50th anniversary arrived, Murayama stated: “Now that Japan enjoys peace and affluence, we tend to forget how precious

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<sup>34</sup> Digital Museum The Comfort Women Issue and the Asian Women’s Fund, “Statement by Chief Cabinet Secretary Yohei Kono in the Result of the Study on the Issue of ‘Comfort Women’,” August 4, 1993, accessed December 23, 2021, <https://www.awf.or.jp/e6/statement-02.html>.

<sup>35</sup> Digital Museum, “Statement by Prime Minister Tomiichi Murayama on the Peace, Friendship, and Exchange Initiative,” August 31, 1994, accessed December 13, 2021, <https://www.awf.or.jp/e6/statement-04.html>.

and sacred peace is. We must talk to younger generations about the tragedy of war, so that we never repeat the mistakes of the past.” He emphasized the need to build trust with neighboring countries and ultimately the world; Japan must look into the past and learn lessons to avoid mistakes in the future.

He further stated: “During a certain period in the not-too-distant past, Japan followed mistaken national policies and took the road to war, ensnaring the Japanese people in a fateful crisis and inflicting, through colonial rule and aggression, great damage and pains on people in many countries, especially in Asia. Regarding in all humility these irrefutable facts of history, and in the hope that no such mistake will be made in the future, I express once more my feeling of deep remorse and state my heartfelt apology. I also offer my sincere condolences to all victims of that history, both at home and abroad.”<sup>36</sup>

A review of Murayama’s statements shows a striking emphasis on ‘facing squarely’ the facts of history, demonstrating an attitude that an objective truth existed that could be proven tangibly and must be taught so that it is never forgotten, that Japan must never repeat its mistakes, that it took responsibility for its devastation of neighboring countries, and that profound apology and remorse were necessary to gain the trust of these countries. In an attempt to pay reparations, Japan created the Asian Women’s Fund, which the government funded in part but was also funded by donations from “a wide spectrum of Japanese society as a way to enact the Japanese people’s atonement for the former comfort women and support welfare projects to assist the comfort women,” according to the Asian Women’s Fund Digital Museum.<sup>37</sup> Many, but not all, comfort women/girls rejected the funds because they were not provided fully by the Japanese government, lacked linkage to legal liability, and other

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<sup>36</sup> Digital Museum, “Statement by Prime Minister Tomiichi Murayama on the Occasion of the 50th Anniversary of the End of the War,” August 15, 1995, accessed December 13, 2021, <https://www.awf.or.jp/e6/statement-10.html>.

<sup>37</sup> Digital Museum, “Establishment of the AW Fund, and the Basic Nature of Its Projects,” accessed December 13, 2021, <https://www.awf.or.jp/e2/foundation.html>.

reasons. UN Special Rapporteur McDougall recommended in 1998 that a new fund be created to provide legal compensation.

The UN Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, stated in her 1996 report: “The Government of Japan has not accepted legal responsibility but in many statements appears to accept moral responsibility for the existence of “comfort women” during the Second World War. The Special Rapporteur considers this a welcome beginning.”<sup>38</sup>

As an effect of these efforts, junior high textbook editors began including accounts of the comfort women/girls in school history books. High-ranking Japanese officials also continued to make apologies, including in 1996 a letter to the “former comfort women” from Prime Minister Ryutaro Hashimoto and also signed by subsequent Prime Ministers Keizo Obuchi, Yoshiro Mori and Junichiro Koizumi.<sup>39</sup>

The Kono and Murayama statements and the efforts to improve regional relations were a legitimate start towards reconciliation, but instead of leading to a fuller repair of relations, right-wing elements in Japan began to dominate and obfuscate the narrative.

## Nearly the Opposite of Germany: A Brief Comparison

Although the Kono, Murayama, and other high-level apologies that followed suggested a positive trajectory toward improved relationships with Japan’s wronged neighbors, they did not move in that direction and instead produced today’s troubled relationships, especially between Japan and South Korea. In contrast, Germany, which once epitomized hellish aggression with its murder of 11 million people, including gassing, torture, and other unspeakable crimes against six million Jews, now enjoys global respect, prosperity, and excellent relationships with its former bitter

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<sup>38</sup> Coomaraswamy, “Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, in accordance with Commission on Human Rights Resolution 1994/45,” paragraph 125.

<sup>39</sup> Digital Museum, “Letter from Prime Minister to the Former Comfort Women,” 1996, accessed December 13, 2021, <https://www.awf.or.jp/e6/statement-12.html>.

enemies. Why such contrasting outcomes?

### *The Early Postwar Years*

A comparison of the postwar years of Japan and Germany is revealing. From the earliest days after the war's end in 1945, the seeds for today's differences were planted. In Germany, the Allies divided it into zones for their control, with the Soviet Union gaining the eastern half, and made the pursuit of justice a top priority. They set up the International Military Tribunal in Nuremberg, which held trials from November 1945 to October 1946, with succeeding trials until 1949.<sup>40</sup> While imperfect, the trials produced many positives: an opportunity to present evidence of the Nazis' horrific crimes for all the world to see, a sense of some degree of justice through the execution and imprisonment of the perpetrators of mass crimes, and the advancement of international law, including new terms, such as "crimes against humanity," to describe the magnitude of the atrocities, never before seen at this scale.

In contrast, the International Military Tribunal for the Far East trials (Tokyo Trials) were weaker in significant ways. Most fundamentally, the trials spared Emperor Hirohito, which affected it from the start, according to Kristen D. Burton.<sup>41</sup> Supreme Commander of the Allied Powers U.S. General Douglas MacArthur and Japanese officials "worked to ensure no testimony implicated the Emperor," thereby suppressing evidence that would implicate him in imperial Japan's vast crimes against humanity and other atrocity crimes. MacArthur also called for censoring the Japanese media to exclude any criticism against the Imperial government or himself. Burton states, "Historians have argued that MacArthur's actions had a profound effect on distorting

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<sup>40</sup> Jennifer Lind, *Sorry States, Apologies in International Politics* (Ithaca & London Cornell University Press, 2008), 106.

<sup>41</sup> Kristen D. Burton, "War Crimes on Trial: The Nuremberg and Tokyo Trials" (National World War II Museum, November 24, 2020), accessed December 2, 2021, <https://www.nationalww2museum.org/war/articles/nuremberg-and-tokyo-war-crimes-trials>.

the Japanese public's general understanding about the war. In a contrast to Nuremberg, in which photographs and videos of Nazi atrocities were put on public display, the Tokyo Trials were characterized by limited discussions of details." Also, American press coverage was much less than that at Nuremberg. This meant that public transparency and display of overwhelming evidence against Japan was muted and the horror and extent of Japan's crimes did not become as well known and well understood as Germany's did. People remembered Nuremberg as the judicial act that ended World War II, while Tokyo slipped from view.<sup>42</sup>

The Tokyo Trials had additional omissions, such as imperial Japan's systematic sexual enslavement of the comfort women/girls<sup>43</sup> and its forced mass labor and conscription of its colonial subjects from Korea and Taiwan. They also did not adequately cover the horrific medical experiments done by the imperial military's Unit 731. The difference in how the U.S. viewed the gruesome medical experimentation by the Nazis and imperial Japan was stark. Medical experts investigated the Nazi's experiments as war crimes, while others viewed imperial Japan's experiments as providing valuable scientific information that the U.S. could get for a fraction of the financial cost. The Japanese also benefited from their ruthlessness in killing their experimental subjects, who could not testify as some German subjects did.<sup>44</sup>

According to Jennifer Lind, author of *Sorry States Apologies in*

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42 Timothy Brook, "The Tokyo Judgment and the Rape of Nanking," *The Journal of Asian Studies*, vol. 60, no. 3 (August 2001): 675.

43 The only specific cases of comfort women/girls (who were Dutch) were prosecuted in subsequent trials at Batavia, Dutch East Indies (now approximately Jakarta, Indonesia). See Ethan Hee-Seok Shin and Stephanie Minyoung Lee, "Japan Cannot Claim Sovereign Immunity and Also Insist that WWII Sexual Slavery Was Private Contractual Acts," *Just Security*, July 20, 2021, accessed December 4, 2021, <https://www.justsecurity.org/77492/japan-cannot-claim-sovereign-immunity-and-also-insist-that-wwii-sexual-slavery-was-private-contractual-acts/>. Evidence showed the Japanese government forced Dutch women into sexual slavery. See Yun-hyung Gil, "Released Document Shows Japan's Forced Mobilization of Comfort Women," *Hankyoreh*, October 8, 2013, accessed December 18, 2021, [https://english.hani.co.kr/arti/english\\_edition/e\\_international/606227.html](https://english.hani.co.kr/arti/english_edition/e_international/606227.html).

44 Howard Brody et al., "United States Responses to Japanese Wartime Inhuman Experimentation after World War II: National Security and Wartime Exigency," accessed December 10, 2021, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4487829/>.

*International Politics*, the U.S. agreed not to prosecute these crimes in exchange for the results of the experiments and then covered up this arrangement and the program's existence.<sup>45</sup> Although the Nuremberg Trials also did not encompass the Nazi's gruesome experiments, with its leader Dr. Josef Mengele escaping to South America, a subsequent judicial proceeding convicted 16 German doctors for these crimes.<sup>46</sup>

Under the watch of the United States and its Allies, the behavior of Germany and Japan in the early post war years also diverged. The key factor for the United States in Japan was its strong concern over the rise of Communism. Instead of seeking to keep Japan weak and pay large reparations, the U.S. decided to turn it into a strong ally against the Soviet Union. As Lind states: "Faced with the choice between justice and reconstruction, the United States chose the latter. Government officials were de-purged and reinstated; most prisoners were released, pardoned, and returned to positions of authority."<sup>47</sup> One beneficiary was a literal bloodline to the present: Kishi Nobusuke, grandfather of former Prime Minister Shinzo Abe. Kishi was a cabinet minister under Class A<sup>48</sup> war criminal Prime Minister Gen. Hideki Tojo and organized forced labor as a minister for imperial Japan's puppet state of "Manchukuo" in Manchuria.<sup>49</sup> He was arrested as a war criminal, but the Americans released him from prison after three years to help build up Japan during the Cold War. Kishi helped found the conservative Liberal Democratic Party (LDP) "with a bit of help from the CIA"<sup>50</sup> and became Prime

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<sup>45</sup> Lind, *Sorry States, Apologies in International Politics*, 31.

<sup>46</sup> United States Holocaust Memorial Museum, "The Doctors Trial," *Holocaust Encyclopedia*, accessed November 22, 2021, <https://encyclopedia.ushmm.org/content/en/article/the-doctors-trial-the-medical-case-of-the-subsequent-nuremberg-proceedings>.

<sup>47</sup> Lind, *Sorry States, Apologies in International Politics*, 31.

<sup>48</sup> As stated in Article 5 of the Nuremberg Tribunal Charter, Class A was Crimes against Peace, Class B was War Crimes, Class C was Crimes against Humanity. The significance of Class A is that the perpetrators were top leaders who had planned and directed the war. Classes B and C included perpetrators of any rank. <https://www.pbs.org/wgbh/americanexperience/features/macarthur-tokyo-war-crimes-trials/>.

<sup>49</sup> The Economist, "The Family Man," *The Economist*, September 5, 2020, accessed November 14, 2021, <https://www.economist.com/books-and-arts/2020/09/03/a-timely-comprehensive-biography-of-abe-shinzo>.

<sup>50</sup> The Economist, "The Family Man."

Minister in 1957. His son-in-law became Foreign Minister and his grandson, Shinzo Abe, became Prime Minister twice in 2006 - 2007 and 2012 - 2020, building his career by building the right-wing. His strong desire to amend Japan's Constitution in favor of a stronger military is traceable to Kishi's aim to re-establish Japan as a more equal power to the U.S.<sup>51</sup> Other suspected war criminals included postwar Prime Ministers Hatoyama Ichiro (1954 - 1956) and Ikeda Hayato (1960 - 1964).<sup>52</sup>

Although in 1945-46, the U.S. considered burdening Japan with hefty reparations, by the time of the 1951 San Francisco Peace Treaty, U.S. policy was to protect Japan's economic recovery, thereby minimizing reparations. As such, Korea and China got nothing at the time. In addition, the U.S. obsession with the Cold War caused it to oppose the Japanese left-wing, which supported greater justice and remorse for the war and was anti-imperialist. Thus, the U.S. largely blessed Japan's conservatives, which also meant overlooking their refusal to take responsibility for the crimes they committed just a few years before.<sup>53</sup>

This political situation allowed Japan to engage in audacious remarks, even during negotiations for a peace treaty with South Korea. Instead of discussing reparations to Korea, one negotiator demanded that Korea pay Japan reparations because its colonialism turned Korea into a "flourishing country."<sup>54</sup> Other Japanese officials joined in his claim. The U.S.'s preoccupation with the Red Threat made it easy for Japanese conservatives to dismiss other more liberal Japanese views by labeling them pro-Communist. Japan's stridency continued with officials pretending Japan did nothing wrong to Korea. It refused to pay reparations; only compensation was to be considered. It refused to pay anything to Korean forced laborers, denying that they even existed. Individuals were not paid reparations;

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<sup>51</sup> Ibid.

<sup>52</sup> Edward Drea, "Researching Japanese War Crimes Records Introductory Essays, Nazi War Crimes and Japanese Government Records Interagency Working Group," 2006, accessed December 4, 2021, <https://www.archives.gov/files/iwg/japanese-war-crimes/introductory-essays.pdf>.

<sup>53</sup> Lind, Sorry States, *Apologies in International Politics*, 32.

<sup>54</sup> Ibid., 33.

instead in yet another audacious move, Japan paid the Japanese companies, such as Mitsubishi, that had used the forced laborers. In addition, American prisoners of war (POWs) who also labored as slaves were not justly compensated. Linda Goetz Holmes, author of *Unjust Enrichment: American POWS Under the Rising Sun*, blames the U.S. government in part for not ensuring that POWs abused by Japan were treated the same as those by Germany. Shockingly, more than 40 percent of American POWS died<sup>55</sup> in Japanese captivity compared to about one percent under Germany.<sup>56</sup>

Japan did make bilateral treaties for compensating Burma, the Philippines, Indonesia, South Vietnam, and Thailand, but they shrewdly included products and services that would enhance Japan's economic in-roads into these countries and increase their trade opportunities.<sup>57</sup> The payment was also not tied to any Japanese wrongdoing, perpetuating impunity. Consistent with its denials, Japan's conservatives also reversed the Allies' education reforms from the early days of its occupancy, the one area where the Allies did not tolerate Japanese amnesia. The Ministry of Education rejected textbooks that did not emphasize the story of Japan's victimization, especially from the atomic bombing of Hiroshima and Nagasaki, and its virtuous quest to end nuclear weapons. The atomic bombings were, indeed, horrific, with a total of about 200,000 Japanese killed,<sup>58</sup> but so too were Japan's mass atrocities that killed as many or more people, such as the 200,000 - 300,000 in Nanjing in 1937.<sup>59</sup> Regarding the military's organized mass rape of women and girls, the

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<sup>55</sup> National WWII Museum, "'To Sustain, Not Destroy': Operations Swift Mercy and POW Supply," September 18, 2020, accessed December 29, 2021, <https://www.nationalww2museum.org/war/articles/operation-swift-mercy-and-pow-supply>.

<sup>56</sup> Kirk Spitzer/Yokkaichi, "The American POWS Still Waiting for an Apology from Japan 70 Years Later," *Time*, September 12, 2014, accessed December 13, 2021, <https://time.com/3334677/pow-world-war-two-usa-japan/>.

<sup>57</sup> Lind, *Sorry States, Apologies in International Politics*, 34.

<sup>58</sup> Britannica, The Editors of Encyclopedia. "Atomic Bombings of Hiroshima and Nagasaki," *Encyclopedia Britannica*, July, 30, 2021, accessed December 1, 2021, <https://www.britannica.com/event/atomic-bombings-of-Hiroshima-and-Nagasaki>.

<sup>59</sup> History.com Editors, "Nanjing Massacre," *History*, June 7, 2019, accessed December 1, 2021, <https://www.history.com/topics/japan/nanjing-massacre>.

Ministry declared that rape had occurred on all battlefields in history and therefore need not be raised in connection with the imperial Japanese military.

In immediate postwar Germany, no one was trying to spin the war into an opposite virtue. However, while leftists pushed passionately for recognition of responsibility and atonement, German conservatives supported a more moderate degree of remembrance. In the war's aftermath, people had to grapple with their own devastation. Lily Gardner Feldman states that the German people were in a "collective trauma."<sup>60</sup> Attitudes were mixed, with some in denial and others saw themselves as culpable. Germany's first postwar chancellor and leader of the conservative Christian Democratic Union party, Konrad Adenauer, championed emerging efforts by faith-based groups to reach out to France and newly-created Israel. In 1951, Adenauer began negotiations for a reparations agreement with Israel, although the German Parliament was not wholly supportive. Nonetheless Adenauer continued his push that Germany pay material indemnity for moral and pragmatic reasons, recognizing that West Germany had to become trusted and respected to be able to rejoin the international community. In addition, NATO, especially the United States with its strong Jewish lobby, pressured Germany to get agreement.<sup>61</sup> Unlike Japan, Germany also paid reparations to individuals, not just to state governments. These reparations would grow over the decades with Germany supporting pensions and compensation to more people, rather than fewer or denying them as Japan had done. By 2021 the German government had paid about \$90 billion to individuals and will continue to pay pensions and redress.<sup>62</sup>

### *Some Apologies 1960s - 1990s*

In the 1960s, Japan and Germany were both addressing their pasts

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<sup>60</sup> Greg Rienzi, "Other Nations Could Learn from Germany's Efforts to Reconcile after WWII," *Johns Hopkins Magazine* (Summer 2015), accessed December 3, 2021, <https://hub.jhu.edu/magazine/2015/summer/germany-japan-reconciliation/>.

<sup>61</sup> Rienzi, "Other Nations Could Learn from Germany's Efforts to Reconcile after WWII."

<sup>62</sup> Kristen Grieshaber, "Germany Expands Compensation Program to More Holocaust Survivors," *The Los Angeles Times*, October 6, 2021.

more, but with widening degrees of difference. In an effort to forge normal relations with South Korea in 1965, Japan made a vague apology that did not admit responsibility for an “unhappy phase” between the two nations. Because Japan had maintained that Korea owed it reparations, it audaciously said it would drop its claims.<sup>63</sup> On June 22, 1965, Japan and ROK signed the Treaty on Basic Relations<sup>64</sup> between Japan and ROK and associated agreements, such as the Agreement on the Art Objects and Cultural Co-operation, the Agreement on the Legal Status and the Treatment of the Nationals of the Republic of Korea Residing in Japan, the Agreement on Fisheries, and 20 additional documents.<sup>65</sup> The most important agreement regarding payments was the Agreement on the Settlement of Problems concerning Property and Claims and on Economic Co-operation (the 1965 Claims Agreement).<sup>66</sup> Japan agreed to pay compensation, without admitting responsibility, to South Korea, which would consist of \$300 million (about \$2.4 billion today) in grants and \$200 million in loans.<sup>67</sup> This 1965 Claims Agreement said any additional claims were closed.<sup>68</sup>

In the 1970s, Japanese leftists were stronger and pushed for education that included Japan’s role in colonialism and the war. In addition, the Tokyo District Court ruled against the Ministry of Education for controlling the contents of textbooks.<sup>69</sup> Textbooks began including previously verboten topics, such as the suffering of Koreans under Japanese colonial rule. Conservatives, however, were angered by these developments.

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<sup>63</sup> Lind, *Sorry States, Apologies in International Politics*, 47.

<sup>64</sup> Japan and Republic of Korea, “Treaty on Basic Relations,” June 22, 1965, accessed December 21, 2021, <https://treaties.un.org/doc/Publication/UNTS/Volume%20583/volume-583-I-8471-English.pdf>.

<sup>65</sup> Shigeru Oda, “The Normalization of Relations between Japan and the Republic of Korea,” *American Journal of International Law*, vol. 61, issue 1 (January 1967): 35-56.

<sup>66</sup> “Japan and Republic of Korea Agreement on Settlement of Problems concerning Property and Claims and on Economic Co-operation (with Protocols, Exchanges of Notes, and Agreed Minutes),” June 22, 1965, Tokyo, accessed December 21, 2021, <https://treaties.un.org/doc/Publication/UNTS/Volume%20583/volume-583-I-8473-English.pdf>.

<sup>67</sup> Isabel Reynold, “Why Japan’s Feud with South Korea Isn’t Going Away,” *Washington Post*, August 3, 2020.

<sup>68</sup> See “Japan and Republic of Korea Agreement on Settlement of Problems concerning Property and Claims and on Economic Co-operation.”

<sup>69</sup> Lind, *Sorry States, Apologies in International Politics*, 49.

Japanese memorialization of the war continued to focus more on themselves and honoring their fallen soldiers. In 1978, 14 convicted Class A war criminals, including Prime Minister Hideki Tojo and other top leaders, were elevated to the status of gods at Yasukuni Shrine, an outrage for Koreans and Chinese,<sup>70</sup> especially when Prime Minister Nakasone visited there to pay his respects in 1985.<sup>71</sup> The Japanese public largely accepted the unapologetic tone of the conservatives.<sup>72</sup>

Germany also increased its apologies, and in the late 1960s and 1970s also reflected a more liberal society. However, Germany's apologies showed a much stronger willingness to look at its past unflinchingly. Unlike the Japanese, German politicians were admitting detailed responsibility. Germans, not the Allies, held their first major Nazi war crimes trials from 1963 to 1965.<sup>73</sup> The Germans continued to seek justice against Nazi criminals, and the German parliament abolished the statute of limitations for murder to accommodate the passing years since the war.<sup>74</sup> In the 1980s, the conservatives came to prominence and urged that Germany should become "normal," which was supported by NATO. As part of "normalization," in 1985, President Ronald Reagan met with Chancellor Helmu Kohl at Bitburg Cemetery,<sup>75</sup> which held German SS soldiers, an elite unit notorious for absolute loyalty to Hitler and determined by the Nuremberg Trials to be active participants in the Holocaust.<sup>76</sup> But the visit was no Yasukuni. Although conservative intellectuals argued that remembrance had gone too far, becoming self-flagellation, liberal intellectuals fought back. The "Historians' Debate"

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70 "Explainer: Why Yasukuni Shrine Is Controversial Symbol of Japan's Wartime Legacy," *Reuters*, August 14, 2021, accessed November 15, 2021, <https://www.reuters.com/world/asia-pacific/why-yasukuni-shrine-is-controversial-symbol-japans-war-legacy-2021-08-13/>.

71 Lind, *Sorry States, Apologies in International Politics*, 52.

72 *Ibid.*, 53.

73 Rieni, "Other Nations Could Learn from Germany's Efforts to Reconcile after WWII."

74 Lind, *Sorry States, Apologies in International Politics*, 128.

75 *Ibid.*, 133.

76 Andrew Glass, "Reagan Visits German War Cemetery, May 5, 1985," *Politico*, May 5, 2019, accessed December 23, 2021, <https://www.politico.com/story/2018/05/05/this-day-in-politics-may-5-1985-565776>.

was born, played out openly in the press and throughout society. Germans went through a period of some argument but the conservatives soon resoundingly sided with memory. By the late 1980s, the clear consensus emerged that both sides were committed to acknowledgement and acceptance of Germany's responsibility for the past.<sup>77</sup>

In the early and mid 1990s, both Japan and Germany were on the path of apology and responsibility for the past, albeit with Germany being much further down the road. Especially compared to its previous stance, Japan engaged in seemingly genuine contrition, as discussed above, by officially studying the comfort women/girls issue and with Prime Ministers and other high officials apologizing for the permanent injury and pain suffered by the comfort women/girls. As had been the case in Germany a decade earlier, some conservative backlash appeared. But unlike Germany, Japan veered off the road of reconciliation. Right-wing backlash became dominant and apparently became the ticket to high political success, as seen in the rise of Shinzo Abe.

Germany, meanwhile, ended the 20th century with the Bundestag's decision to build the Memorial for the Murdered Jews in Europe, a breathtaking monument in the heart of Berlin, next to the Brandenburg Gate. It is mammoth, covering 19,073 square meters,<sup>78</sup> later dwarfing the modest comfort woman statue placed by comfort women/girls in Seoul, the removal of which became Japan's obsession in the 2010s. In stark contrast, Japan saw its history splashed out in United Nations reports condemning its treatment of the comfort women/girls and in the landmark Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery (Women's International Tribunal on Sexual Slavery),<sup>79</sup> held by legal experts and civil society groups in 2000 in Tokyo, that laid out unequivocal evidence of Japan's system of sexual

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<sup>77</sup> Lind, *Sorry States, Apologies in International Politics*, 134.

<sup>78</sup> "The Memorial for the Murdered Jews of Europe," accessed December 30, 2021, <https://www.stiftung-denkmal.de/en/memorials/memorial-to-the-murdered-jews-of-europe/>.

<sup>79</sup> Women's International War Crimes Tribunal of Japan's Military Sexual Slavery, "Judgement."

slavery, including testimony from former Japanese soldiers who admitted to raping women and described it in detail. It also included Emperor Hirohito in its indictment. It was not legally binding, but it filled some of the major omissions from the Tokyo Trial and other postwar redress. It showed how justice should have been meted out in 1946, with a finding of guilty for the ironically-named Showa (“bright peace”) Emperor and those responsible for the systematic rape of comfort women/girls.

## Japan’s Right-wing Backlash

The rise of right-wing revisionism in the late 1990s was backlash against the growing movement for justice and accountability. According to Puja Kim, in 1997, Shinzo Abe led the newly established Young Diet Members’ Group for Considering Japan’s Future and History Textbooks, which was created by “ultra-rightists” in the LDP.<sup>80</sup> The group said that “comfort women” were prostitutes and that they be eliminated from public school textbooks. Three months later, far-right leaders of society, businessmen, and academics founded Nippon Kaigi (the Japan Conference), the powerful ring-wing organization to which Abe and other top LDP leaders are members. Kim notes that in 1997 all seven publishers of junior high school textbooks included comfort women/girls, but then the LDP and other revisionists pressured publishers to drop any mention of them. By 2012, all references were gone.<sup>81</sup> (As of 2021, only one textbook states that the comfort women/girls were coerced.<sup>82</sup>)

At the same time, Kim writes, “comfort women” bashing emerged.<sup>83</sup>

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**80** Puja Kim, “The ‘Comfort Women’ Redress Movement in Japan: Reflections on the Past 28 Years,” in *The Transnational Redress Movement for the Victims of Japanese Military Sexual Slavery*, ed. Pyong Gap Min, Thomas R. Chung and Sejung Sage Yim, Volume 2 in the Series Genocide and Mass Violence in the Age of Extremes (DeGruyter Oldenbourg, 2020), 55.

**81** Kim, “The ‘Comfort Women’ Redress Movement in Japan,” 56.

**82** So-youn Kim, “Japanese Textbooks Don’t Acknowledge ‘Comfort Women’ System’s Coercive Nature,” *Hankoryeh*, March 31, 2021, accessed October 22, 2021, [http://english.hani.co.kr/arti/english\\_edition/e\\_international/989040.html](http://english.hani.co.kr/arti/english_edition/e_international/989040.html).

**83** Kim, “The ‘Comfort Women’ Redress Movement in Japan,” 56.

In 2001, the publicly funded Japan Broadcasting Corporation (NHK) was scheduled to air the Women's International Tribunal on Sexual Slavery, described above. While the Tribunal's judgment did not have legal effect, it had strong moral effect in promoting the quest for justice. The Tribunal's overwhelming evidence and meticulous legal analysis that convicted Emperor Hirohito and other perpetrators was persuasive. Apparently too persuasive for senior government officials, who pressured NHK to alter the documentary. NHK complied because the government controlled its budget. Kim states that the NHK incident was "a turning point in public perception that paved the way for an official policy of "comfort women" denial.<sup>84</sup> As part of his pattern that would emerge of remarks against comfort women/girls, contradicting his statements of apology and the Japanese government's own admissions, Abe in March 2007 told the Diet there was no evidence of forcible recruitment of the comfort women/girls. Such remarks, made repeatedly, rendered any apology by Abe essentially meaningless.

Meanwhile, civil society continued its fight on behalf of the comfort women/girls. Every Wednesday the Korean Council for Justice and Remembrance for the Issues of Military Sexual Slavery by Japan (Korean Council) led protests at the Japanese Embassy in Seoul. When the number of Wednesdays reached 1,000, the Korean Council marked the anniversary in 2011 by unveiling its Statue of Peace, which depicts a young comfort woman or girl sitting calmly and placed so she is looking directly at the Japanese Embassy. This statue has become an unforgettable symbol of the comfort women/girls reparations movement. So strong, in fact, that right-wing Japan is obsessed with removing it and other memorials around the world, especially in the United States, as Tomomi Yamaguchi writes.<sup>85</sup> In

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<sup>84</sup> Kim, "The Comfort Women Redress Movement in Japan," 57.

<sup>85</sup> Tomomi Yamaguchi, "The 'History Wars' and the 'Comfort Woman' Issue: The Significance of *Nippon Kaigi* in the Revisionist Movement in Contemporary Japan," in *The Transnational Redress Movement for the Victims of Japanese Military Sexual Slavery*, ed. Pyong Gap Min, Thomas R. Chung and Sejung Sage Yim, Volume 2 in the Series Genocide and Mass Violence in the Age of Extremes (DeGruyter Oldenbourg, 2020), 233.

2012, in response to a plaque in New Jersey memorializing the comfort women/girls, conservatives put an ad in the local paper denying that they were forced into sex and that some had salaries that were higher than military generals. Shinzo Abe was one of the signers.<sup>86</sup> In 2013, the city of Glendale in California built its own comfort woman/girl statue. In 2014, right-wingers in Japan and the U.S. filed unsuccessful lawsuits against the city of Glendale in U.S. courts demanding the removal of the statue. The right-wing groups behind this effort did not include Nippon Kaigi, which thought the effort was futile. Instead Nippon Kaigi took the legal fight to Japan and targeted a more useful foe: the liberal *Asahi Shimbun*,<sup>87</sup> Japan's second largest newspaper that had provided extensive coverage of the comfort women/girl issue and revealed that conservatives had pressured NHK to sanitize its documentary on the Women's International Tribunal on Sexual Slavery.

Given intense criticism, *Asahi Shimbun* had conducted an internal review of its comfort women/girls coverage to determine its accuracy. When it revealed in 2014 that some articles had errors, while the larger body of work on the subject had no errors, the Japanese right took full advantage of the admission of errors to amplify criticism.<sup>88</sup> Ever-forming right-wing groups brought three lawsuits in Japanese courts against *Asahi Shimbun*, including one backed by Nippon Kaigi called "Asahi Glendale." They all lost, but they reveal a level of audacity that was reminiscent of the immediate post-war years. In *Asahi Glendale*, the Japanese plaintiffs, who lived in Japan and the U.S., blamed *Asahi Shimbun* for damaging Japan's reputation by impacting several adverse developments, including the creation of statues in the U.S., inclusion of comfort women in U.S. high school textbooks, negative UN reports, and the U.S. House Resolution 121

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<sup>86</sup> See an image of the advertisement, accessed December 30, 2021, <http://lendnow.org/wp-content/uploads/2016/09/yesweremember.jpg>.

<sup>87</sup> Yamaguchi, "The 'History Wars' and the 'Comfort Women' Issue," 243.

<sup>88</sup> *Ibid.*, 244.

of 2007<sup>89</sup> that condemned Japan on the comfort women/girls issue. These damages to reputation led to harm, they claimed, including bullying of Japanese children.<sup>90</sup> One of their demands was that Asahi Shimbun give a written apology in major Japanese and international newspapers that included a statement that the Japanese Army never forcibly recruited any “comfort women.” In addition, after their losing verdicts in 2016 and 2018, Nippon Kaigi brazenly claimed victory for favorable findings that did not exist in the rulings.<sup>91</sup>

## The 2015 Statements by Japan and ROK

With this backdrop, in 2015 Japan and South Korea issued statements that were intended to resolve “permanently and irreversibly” the comfort women disagreements between them. I will refer to these statements as “the 2015 Statements,” not “Agreement,” because the foreign ministries at the time did not call the two statements an agreement; instead, they were announcements,<sup>92</sup> reflecting their legally non-binding character.

The Japanese statement reiterated previous apologies, stating “Prime Minister Abe expresses anew his most sincere apologies and remorse to all the women who underwent immeasurable and painful experiences and suffered incurable physical and psychological wounds as comfort women.” In addition, “it has been decided that the Government of the ROK establish a foundation for the purpose of providing support for the former comfort

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<sup>89</sup> Text H.Res.121 - 110th Congress (2007 - 2008), “A Resolution expressing the sense of the House of Representatives that the Government of Japan should formally acknowledge, apologize, and accept historical responsibility in a clear and unequivocal manner for its Imperial Armed Forces’ coercion of young women into sexual slavery, known to the world as ‘comfort women,’ during its colonial and wartime occupation of Asia and the Pacific Islands from the 1930s through the duration of World War II.” U.S. House of Representatives Resolution 121, <https://www.congress.gov/bill/110th-congress/house-resolution/121/text>.

<sup>90</sup> Yamaguchi, “The ‘History Wars’ and the ‘Comfort Women’ Issue,” 246.

<sup>91</sup> *Ibid.*, 251.

<sup>92</sup> Japan Ministry of Foreign Affairs, “Announcement by Foreign Ministers of Japan and the Republic of Korea at the Joint Press Occasion,” December 28, 2015, accessed December 30, 2021, [https://www.mofa.go.jp/a\\_o/na/kr/page4e\\_000364.html](https://www.mofa.go.jp/a_o/na/kr/page4e_000364.html).

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 honor and dignity and healing the psychological wounds of all former comfort women be carried out under the cooperation between the Government of Japan and the Government of ROK.” By carrying out these acts, Japan “confirms that this issue is resolved finally and irreversibly with this announcement.” In addition, with the ROK, Japan will “refrain from accusing or criticizing each other regarding this issue in the international community, including the United Nations.”<sup>93</sup>

The ROK statement also said the “issue is resolved finally and irreversibly with this announcement,” on the premise that Japan will implement the announced measures. The ROK also acknowledged the fact that Japan “is concerned about the statue built in front of the Embassy of Japan in Seoul from the viewpoint of preventing any disturbance of the peace of the mission or impairment of its dignity, and will strive to solve this issue in an appropriate manner through taking measures such as consulting with related organizations about possible ways of addressing this issue.” ROK also agreed to “refrain from accusing or criticizing each other regarding this issue in the international community, including at the United Nations,” premised on Japan implementing its announced measures.<sup>94</sup> Statements following this announcement indicated that Japan would contribute 1 billion yen (about \$8.3 million) and that Abe expected the Seoul comfort girl statue to be removed.

Despite the intent to resolve totally the comfort women issue forever, the 2015 Statements utterly failed to do so. The failure to meaningfully consult with Korean comfort women/girls in the process leading to the 2015 Statements and the lack of legal accountability by Japan were unacceptable. The UN condemned the agreement as inadequate. UN legal experts indicated “the agreement did not meet standards of State accountability for gross human rights violations and was reached without

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<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

a proper consultation process.”<sup>95</sup> The UN and international civil society stressed a victim-centered approach as the heart of any meaningful reparations, which must be determined according to what the victims deem most meaningful, not what governments decide, especially not the perpetrator government. To address the full humanity of the victims and society - meaning the collective as well as individuals, reparations must include many facets.<sup>96</sup> A genuinely contrite perpetrator state would not try to dodge this necessity. Yet acceptance of legal responsibility, proportionality to the gravity of the violations, dedicated education of the existence of the crimes in schools, and assured prevention of repetition were missing in the 2015 Statements. UN bodies and other legal experts have told Japan that reparations must include significant compensation, restitution, rehabilitation, satisfaction, public apology, full disclosure of documents, preservation of memory, prosecution of individuals, the inapplicability of statutes of limitations for gross human rights violations, access to legal redress, and related elements. At least 12 UN reports have addressed the comfort women/girls issue and recommended actions to Japan, thereby establishing clear goalposts for what it must deliver for acceptable reparations.<sup>97</sup> Japan’s game of apologetic words followed by contradictory denials places Japan at the wrong end of the playing field.

In fact, the 2015 Statements had elements that were the opposite

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**95** UN Office of the High Commissioner for Human Rights (OHCHR), “Japan/S. Korea: ‘The Long Awaited Apology to ‘Comfort Women’ Victims Is Yet to Come - UN Rights Experts,” March, 11, 2016, accessed December 24, 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17209>.

**96** Please see for a full discussion on reparations, The Women’s International War Crimes Tribunal for the Trial of Japan’s Military Sexual Slavery, “Judgement Part VII Reparations,” December 4, 2001, accessed December 24, 2021, <https://archives.wam-peace.org/wt/wp-content/uploads/2020/02/Part-VII.pdf>, 254-63.

**97** Please see Women’s Active Museum on War and Peace (WAM), “Compilation of Recommendations by the UN Human Rights Bodies on the ‘Comfort Women’ Issue,” Japan/Alternative Report On the Issue of Japan’s Military Sexual Slavery, May 2014, accessed December 30, 2021, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JPN/INT\\_CCPR\\_CSS\\_JPN\\_17435\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JPN/INT_CCPR_CSS_JPN_17435_E.pdf). Additional UN Reports: UN Committee against Torture, “Concluding Observations on the Second Periodic Report of Japan, Adopted by the Committee at Its Fiftieth Session (6-31 May 2013); UN Committee on the Elimination of Discrimination against Women, “Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Japan,” March 10, 2016.

of international standards. Abe's intent that the statue near the Japanese Embassy in Seoul be removed undermined memorialization, an important part of reparations. UN experts said, "We are deeply concerned that the [ROK] may remove a statue" commemorating the comfort women and their long search for justice.<sup>98</sup> In addition, to try to close the comfort women issue as "resolved finally and irreversibly" is the opposite of the recognition that apologies and reparations are merely part of a process towards reconciliation. As David Tolbert of the International Center for Transitional Justice (ICTJ) states, "An apology should open up space for accountability rather than close it." It should "encourage a collective reckoning by society..." Instead, the 2015 deal provoked South Korean passions and protest, including the later self-immolation and death of a Buddhist monk.<sup>99</sup>

In addition, Japanese officials quickly undermined the 2015 Statements following their delivery. Foreign Minister Fumio Kishida (currently Prime Minister) stated that the \$8.3 million would be Japan's "humanitarian" contribution, as opposed to state compensation, to the new foundation. Kishida also spun the statements into an accord for enhancing security arrangements among Japan, South Korea, and the United States, and emphasized that the "comfort women" issue was resolved irreversibly.<sup>100</sup> It appeared that the overarching motive for the agreement, applauded by the U.S., was firming up the trilateral security relationships. Kim has further stated that one month later, Prime Minister Abe told the Diet that he would not make a personal apology to former "comfort women" because "sexual slavery" and [the story of] 200,000 victims are not facts. He expected the statue in front of the Japanese Embassy to be removed."<sup>101</sup>

The right-wing called their efforts the "History Wars." Unlike Germany's internal "Historians' Debate" in the 1980s, these were aimed

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<sup>98</sup> Ibid.

<sup>99</sup> BBC, "S Korean Monk Dies after Sex Slave Self-immolation Protest," *BBC News*, January 10, 2017, accessed, December 30, 2021, <https://www.bbc.com/news/world-asia-38566234>.

<sup>100</sup> Kim, "The Comfort Women Redress Movement in Japan," 65.

<sup>101</sup> Ibid.

at other states, such as China and South Korea, as being at war with Japan's "truth."<sup>102</sup> The United States was a crucial battleground for disseminating the denial of the sexual slavery. The United Nations became another front. One example: Japan vehemently opposed documentation of comfort women/girls in UNESCO's Memory of the World Program. Nippon Kaigi's Historical Awareness Research Committee pressured UNESCO strongly and said it would request that Japan stop its contributions to UNESCO if it accepted the documents.<sup>103</sup> Given the membership of top LDP leaders in Nippon Kaigi, that threat was real. UNESCO postponed its decision in 2017 on whether to accept both the documents of the comfort women/girls and the revisionists and called for a dialogue among all parties.<sup>104</sup>

## South Korea's Legal Front

Recent cases in South Korea have opened up another front for the "History Wars" and the quest for adequate redress. Prior to this time, comfort women litigation had not been fruitful for advancing their justice.<sup>105</sup> Comfort women began taking their cases to Japanese courts in the 1990s, but all cases were dismissed either at the first instance or once, on appeal. Comfort women also filed suit in the U.S but lost because sovereign immunity shielded Japan and the political question doctrine meant the issue was non-justiciable, among other reasons.<sup>106</sup> However, after the

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<sup>102</sup> Yamaguchi, "The 'History Wars' and the 'Comfort Woman' Issue," 234.

<sup>103</sup> Ibid., 257.

<sup>104</sup> Ibid.

<sup>105</sup> Amnesty International, "South Korea: Disappointing Japan Ruling Fails to Deliver Justice to 'Comfort Women'," April 21, 2021, accessed December 24, 2021, <https://www.amnesty.org/en/latest/news/2021/04/south-korea-disappointing-japan-ruling-fails-to-deliver-justice-to-comfort-women/#:~:text=9%3A02%20am-,South%20Korea%3A%20Disappointing%20Japan%20ruling%20fails,deliver%20justice%20to%20'comfort%20women'&text=%E2%80%9CThis%20ruling%20runs%20contrary%20to,against%20humanity%20and%20war%20crimes.>

<sup>106</sup> Columbia Law School Center for Korean Legal Studies, "Lawsuits Brought against Japan by Former Korean 'Comfort Women'," accessed December 24, 2021, [https://kls.law.columbia.edu/content/lawsuits-brought-against-japan-former-korean-comfort-women.](https://kls.law.columbia.edu/content/lawsuits-brought-against-japan-former-korean-comfort-women)

2015 Statements, comfort women began bringing cases in South Korea. On January 8, 2021, Seoul Central District Court ruled in favor of 12 comfort women (or family members) and ordered Japan to pay them about \$91,800 each.<sup>107</sup> In this landmark ruling, the Court determined that Japan could not shield itself by invoking sovereign immunity against *jus cogens*-prohibited crimes, which are crimes so significant that they pre-empt other rules of international law and are universally applicable.<sup>108</sup> This determination is at odds with prevailing judgments that do not allow for a *jus cogens* exception, including the International Court of Justice's *Jurisdictional Immunities of the State (Germany vs. Italy: Greece intervening)* judgment (*Jurisdictional Immunities* case) in 2012.<sup>109</sup> The Seoul Central District Court in the January 8, 2021, decision joins Italy and Greece as the only countries who have ruled this way.<sup>110</sup>

The related issue of forced labor was also brought to Japanese and South Korean courts. In another landmark ruling in 2018, South Korea's Supreme Court ruled against two of Japan's largest companies. The Court ordered Mitsubishi Heavy Industries Ltd. to pay \$88,000 to each of four plaintiffs. A South Korean court then ordered seizure of Nippon Steel's assets worth about \$356,000, which Japan says is illegal. However, these landmark judgments favoring comfort women/girls and forced laborers were soon contradicted by additional rulings in Seoul Central District Court. In April 2021, the Court (with a different panel) ruled that Japan's sovereign immunity eclipsed another group of comfort women's claims. On June 7, 2021, the Court dismissed a case brought by forced laborers, stating the 1965 agreement between Japan and ROK precluded their claims. The companies they were suing included Mitsubishi Heavy

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<sup>107</sup> Ibid.

<sup>108</sup> United Nations Report of the International Law Commission, Chapter V, Seventy-first Session 2019, accessed December 30, 2021, <https://legal.un.org/ilc/reports/2019/english/chp5.pdf>, 141-208.

<sup>109</sup> International Court of Justice Judgment, *Jurisdictional Immunities of the State (Germany vs. Italy: Greece intervening)*, February 3, 2012, accessed December 30, 2021, <https://www.icj-cij.org/public/files/case-related/143/143-20120203-JUD-01-00-EN.pdf>.

<sup>110</sup> Shin and Lee, "Japan Cannot Claim Sovereign Immunity and Also Insist That WWII Sexual Slavery Was Private Contractual Acts."

Industries Ltd, Nippon Steel Corp; Mitsui E&S Holdings Co., ENEOS Corp., and Sumitomo Metal Mining Co.<sup>111</sup>

These conflicting rulings show that the contours of the law are in flux in ROK. The January 8, 2021, ruling relies on the notion that sovereign immunity is not fixed. “It continuously evolves in accordance with the changes in the international order. This is reflected in international conventions... which have evolved from the theory of absolute state immunity and does not exempt jurisdiction over a state in certain cases...” After citing national laws that also stipulate exceptions where state immunity is not applicable, including the U.S. Foreign Sovereign Immunities Act, the judgment continues: “This change seems to reflect the changes in the international legal order towards protection of individual rights.”<sup>112</sup> The April 2021 ruling, in contrast, adheres to a traditional view of sovereign immunity and reflects the current state of customary international law.

One of the losing plaintiffs in the April 2021 decision has called for ROK to take the comfort women/girls issue to the International Court of Justice (ICJ). There is a strong risk the ICJ will rule in favor of Japan because of sovereign immunity, as it ruled in the *Jurisdictional Immunities* case in favor of Germany. In this case, the ICJ did not find a *jus cogens* exception for sovereign immunity. The ICJ said the issue of whether sovereign immunity applies was a procedural matter that rendered Germany’s crimes against humanity irrelevant to its decision. On the other hand, Korea vs Japan could be distinguishable from the *Jurisdictional Immunities* case in that Korea was an annexed colony and therefore was a part of Japan during its use of sex slavery, but this distinction may not change the outcome. In addition, political fall-out and acrimony from any decision could be as damaging as an adverse legal conclusion.

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<sup>111</sup> Takuya Suzuki, “S. Korea Court Rejects Laborers’ Claims against Japanese Firms,” *The Asahi Shimbun*, June 7, 2021, accessed December 24, 2021, <https://www.asahi.com/ajw/articles/14367481>.

<sup>112</sup> The Korean Council for Justice and Remembrance for the Issues of Military Sexual Slavery by Japan, trans. Woohee Kim, “Seoul Central District Court The 34th Civil Chamber Judgment,” January 8, 2021, accessed December 30, 2021, [https://womenandwar.net/kr/wp-content/uploads/2021/07/ENG-2016\\_Ga\\_Hap\\_505092\\_30Jun2021.pdf](https://womenandwar.net/kr/wp-content/uploads/2021/07/ENG-2016_Ga_Hap_505092_30Jun2021.pdf), 1-40.

Therefore, a probable bar to a suit before the ICJ is the requirement that both states agree to its jurisdiction. It is difficult to imagine Korea and Japan weighing the risks and potential benefits and both concluding that it would be in their best interests to grant ICJ jurisdiction.

Japan also argues that the Treaty on Basic Relations<sup>113</sup> between Japan and ROK and its associated agreements signed June 22, 1965, preclude any claim by the comfort women/girls and forced laborers. Article II of the 1965 Claims Agreement states:<sup>114</sup> “The Contracting Parties confirm that [the] problem concerning property, rights and interests of the two Contracting Parties and their nationals (including juridical persons) and concerning claims between the Contracting Parties and their nationals, including those provided for in Article IV, paragraph (a) of the Treaty of Peace with Japan signed at the city of San Francisco on September 8, 1951, is settled completely and finally.”<sup>115</sup> The reference to the San Francisco Peace Treaty is to the “special arrangements” countries such as Korea would make with Japan to resolve claims.<sup>116</sup> Japan contends that the term “claims” in the 1965 Claims Agreement includes the claims from the comfort women/girls and forced laborers. Therefore, their claims are void because this agreement settled all claims “completely and finally.”

However, with respect to the comfort women/girls, it was nearly impossible that they were even considered when the 1965 Claims Agreement was under negotiation, given that the issue was hidden as a shameful topic, including by the comfort women/girls themselves, and by Japan, which denied any sex slavery. As noted above, the issue did not emerge into public discourse until the 1990’s when comfort women/girls began to speak out. The 1965 Claims Agreement, as shown by its full title and contents, was geared towards property and economic matters, and sexual slavery was not within its four corners.

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<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> “Treaty of Peace with Japan,” Signed at San Francisco, on September 8, 1951, *United Nations - Treaty Series*, no. 1832 (1952), accessed December 30, 2021, <https://treaties.un.org/doc/publication/unts/volume%20136/volume-136-i-1832-english.pdf>.

These court developments and Japan's reaction further underline the stark difference with Germany's reparations to individuals. As stated above, Germany has provided significant individual reparations, and it has only become more generous over the decades, providing to this day compensation and pensions to increasingly more people. In addition, the amounts awarded by the ROK courts, while historic, are also paltry compared to the German amounts, totaling \$90 billion thus far.<sup>117</sup> Yet Japan refuses to pay or accept the rulings' authority over Japanese businesses.

The United States facilitated Germany's reparations agreements with European states in the 1990's and 2000's, but did not push Japan similarly in Asia, even though it was by then a prosperous country. Timothy Webster writes, "The United States' failure to do the same in Asia perpetuates a pernicious double standard set after the war."<sup>118</sup> The U.S. set up compensation mechanisms in France, Germany, and Switzerland, while U.S. courts dismissed East Asian cases. "The moral leadership that yielded transatlantic solutions to war responsibility issues in Europe dissolved when the topic emerged in East Asia."<sup>119</sup>

Japan states that Japan's compensation efforts cannot be compared to Germany's. Its Foreign Ministry website states: "Japan dealt collectively with the issue of reparations with the countries concerned in a manner that was generally accepted by the international community at the time, pursuant to the San Francisco Peace Treaty, treaties and instruments. On the other hand, the Government of Japan is aware that Germany took the approach of personal compensation as it could not deal collectively with countries concerning various issues including reparations as Japan did, since Germany was divided following the war."<sup>120</sup> This explanation

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<sup>117</sup> Grieshaber, "Germany Expands Compensation Program to More Holocaust Survivors."

<sup>118</sup> Timothy Webster, "Recent Attempts at Reparations Show That World War II Is Not Over," *The Conversation*, May 23, 2019, accessed December 29, 2021, <https://theconversation.com/recent-attempts-at-reparations-show-that-world-war-ii-is-not-over-114655>.

<sup>119</sup> Webster, "Recent Attempts at Reparations Show That World War II Is Not Over."

<sup>120</sup> Japan Ministry of Foreign Affairs, "History Issues Q&A," February 1, 2021, accessed December 29, 2021, [https://www.mofa.go.jp/policy/q\\_a/faq16.html](https://www.mofa.go.jp/policy/q_a/faq16.html).

is unsatisfying because West Germany could have behaved as Japan did; the division of Germany did not make personal compensation the required option. The non-Communist Allies' ease towards Japan generally was because it wanted to strengthen Japan as an anti-Communist partner in the Cold War, instead of keeping Japan weak and a financial burden.

## The Role of the U.S.

The 2018 ROK Supreme Court judgment in favor of the plaintiff forced laborers precipitated another front for battle: trade. In seeming retaliation, Japan restricted exports of materials that South Korean semiconductor manufacturers needed and removed South Korea from its favorable trading status with Japan.<sup>121</sup> South Korea then removed Japan from its list for favored trading status. It almost withdrew from an important military intelligence-sharing agreement, General Security of Military Information Agreement (GSOMIA),<sup>122</sup> but did not under heavy U.S. pressure.<sup>123</sup> Disputes also continued at the World Trade Organization.

The role of the U.S. in pressuring South Korea from withdrawing from the GSOMIA was but one example of the long-standing vital influence of the U.S. in Japan-ROK relations. As I have shown, the U.S. played a decisive role at key junctures in history, both positive and negative for Korea. The United States was instrumental in 1905 when it allowed Japan to control and ultimately colonize Korea. It also ended Japan's rule over Korea when it won World War II, at great sacrifice with the Allies. Its tolerance of Japan's denialism at the dawn of the Cold War planted the seeds for denialism today, echoed by highly

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<sup>121</sup> Brian Kim, "Korea and Japan Clash over History and Law," *Lawfare*, August 16, 2019, accessed December 25, 2021, <https://www.lawfareblog.com/korea-and-japan-clash-over-history-and-law>.

<sup>122</sup> BBC, "South Korea to Continue Intelligence-sharing Pact with Japan," November 23, 2019, accessed December 29, 2021, <https://www.bbc.com/news/world-asia-50526883>.

<sup>123</sup> Min Joo Kim and Simon Denyer, "Under US Pressure, South Korea Holds Off Ending Intelligence Pact with Japan," *Washington Post*, November 22, 2019.

influential former Prime Minister Shinzo Abe, the grandson of a formerly imprisoned wartime cabinet member and forced labor organizer. The U.S. and Allies' failure to push Japan to pursue justice and pay reparations in the way Germany did and is doing now is an injustice to many, including American POWs, as well as Korean comfort women/girls and forced laborers. That the Allies divided Korea in half, leading ultimately to about 4 million total casualties<sup>124</sup> in the devastating and still unresolved Korean War exacerbates the injury. However, United States-led forces stopped North Korea from taking the entire Korean peninsula in 1950, saving the ROK from complete defeat. The U.S. ultimately suffered more than 36,000 deaths,<sup>125</sup> a tremendous sacrifice. Its continuing commitment with about 28,500 troops in ROK today, with the protection of the U.S. nuclear umbrella, makes the U.S. the ROK's most extraordinary and essential friend.

The United States also played a critical role in moving South Korea and Japan towards their 1965 Treaty on Basic Relations and associated agreements.<sup>126</sup> It has also intervened when there was risk of skirmish between the two countries.<sup>127</sup> The U.S. also was credited as supporting their first summits in 1983 and 1984.<sup>128</sup> The U.S. was watchful of problems between Japan and the ROK to ensure they would not escalate. The U.S. later led the way in the creation of the Trilateral Coordination and Oversight Group (TCOG), thereby institutionalizing the trilateral relationship, but this Group ended in the 2003.<sup>129</sup> Some argue that

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<sup>124</sup> Bruce Cumings, *The Korean War: A History* (New York: Modern Library, 2010), 36.

<sup>125</sup> CBSNews.com Staff, "How Many Americans Died in Korea," *CBS News*, June 5, 2000, accessed December 25, 2021, <https://www.cbsnews.com/news/how-many-americans-died-in-korea/>.

<sup>126</sup> Erik French, Jiyoon Kim and Jihoon Yu, "The US Role in South Korea-Japan Relations: From Johnson to Biden," *The Diplomat*, January 14, 2021, accessed December 24, 2021, <https://thediplomat.com/2021/01/the-us-role-in-south-korea-japan-relations-from-johnson-to-biden/>.

<sup>127</sup> Lind, *Sorry States, Apologies in International Politics*, 39.

<sup>128</sup> French, Kim and Yu, "The US Role in South Korea-Japan Relations."

<sup>129</sup> Chung Min Lee, *Prospects for US-South Korean-Japanese Trilateral Security Cooperation in an Era of Unprecedented Threats and Evolving Political Forces* (Atlantic Council, Washington, D.C., 2018), 3.

reviving the TCOG could hold the answer for better Japan-South Korea relations.<sup>130</sup> This arrangement could facilitate regular communications among Japan, ROK, and the U.S. and be attractive in that the U.S. is the most important partner for both Japan and ROK in countering threats, such as North Korea and China.

## The Most Effective vs. The Likely Solution

To assess responsibility and actions necessary to resolve the acrimonious impasse between Japan and ROK requires consideration of the big picture in how we got here. The role of the U.S. had both positive and negative consequences. But of course, the most important cause of today's tensions between Japan and ROK is Japan. That Japan never fully repaired relations with the countries that imperial Japan ruthlessly took throughout Asia remains Japan's responsibility. It must take responsibility for its treatment of Korea during colonialism and World War II. It must bear the burden of its breathtaking crimes against humanity, genocide, and war crimes throughout Asia. The fundamental fact is that the comfort women/girls issue is about perpetrator vs. victim. It is not simply a Japan vs. ROK issue.

## The Most Effective Solution

As the perpetrator state, Japan must bear the onus of providing what it takes to allow victims to feel, at last, some sense of peace. A victim-centered approach, which was lacking in the 2015 Statements, is necessary, according to international standards. Instead, Japan is putting the blame squarely on ROK for its failure thus far to fulfil its side of the non-legally-binding 2015 Statements. And indeed, ROK has failed to do what it announced it would do. But that misses the point - the issue is the redress

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<sup>130</sup> Mathew Ha, "How Washington Can Help Bridge the Gap between Seoul and Tokyo" (Foundation for Defense of Democracies, September 10, 2020), accessed December 30, 2021, <https://www.fdd.org/analysis/2020/09/10/how-washington-can-bridge-gap-seoul-tokyo/>.

of the comfort women/girls, not failure by the ROK. The comfort women/girls must be included in determining the adequacy of the reparations. That they do not approve of the 2015 Statements is what matters. The goalposts have not been moved; the goalposts were never properly recognized by Japan in the first place, even though repeated UN reports and expert legal analyses have stated clearly what adequate reparations entail.

Secondarily, the onus must also be on the U.S. to push Japan to meet its full responsibility, rather than pushing Japan and ROK equally to find some compromise in the middle. Of course, the ROK and the comfort women/girls must be reasonable in what they require, but thus far their unreasonableness has not been the barrier to just resolution. Japan's contradictory denials refuting its apologetic statements, its unwillingness to admit legal liability, its obsession in removing comfort women/girls statues, its revisionist campaign launched in the United Nations and globally, and its failure to educate its youth are what is unreasonable. The brazenness of the young Japanese man I describe at the start of this article is a bad fruit of these actions. Japan now owes double the repentance; first for its original crimes during colonialism and World War II, and second, for its actions since. While Japan would probably lash out, the U.S. has the leverage to pressure Japan to do much more to make reparations for its World War II crimes. Japan needs the U.S. as much as, if not more than, the U.S. needs Japan. The U.S. - Japan relationship must remain rock solid in terms of security, but there is room for the U.S. to lean on Japan to take responsibility for its atrocity crimes.

German Chancellor Angela Merkel gave some advice to Japan in 2015: "look back humbly on the past" and the necessity of facing history squarely and calling things by their name.<sup>131</sup> As I have shown, Germany now has much better relationships with its former bitter enemies by making reconciliation the heart of its foreign policy from the early postwar years.

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<sup>131</sup> BBC, "Germany's Merkel Addresses WWII Reconciliation in Japan," *BBC News*, March 9, 2015, accessed December 30, 2021, <https://www.bbc.com/news/world-asia-31792313>.

Germany's success has not been perfect; incidents involving neo-Nazis and the right-wing have erupted in Germany over the years, especially after Merkel welcomed a million refugees in 2015 - 2016.<sup>132</sup> But as for World War II atrocities, the German people came to embrace contrition overwhelmingly, voting for politicians who promoted reconciliation and made reparations accordingly. Many people in Japan, on the other hand, left the path of reconciliation in favor of right-wing backlash, voting in favor of the LDP consistently since 1955 with less than seven years of non-LDP rule.<sup>133</sup>

Why this difference in societies? Former ROK Ambassador Yoo Euy-sang, author of *Diplomatic Propriety & Our Interests with Japan*, has said "Twenty years of economic depression...have caused Japan to be no longer tolerant [of Korea] ... Recession also encourages nationalism and populism in Japan. In the past, most Japanese newspapers were politically balanced, except for a few papers. Now, however, there's barely any balance ... This change in newspaper voice has consolidated Japanese public sentiment, which works as an obstacle to easing our relationship."<sup>134</sup> In addition, the LDP has been credited for offering a tent big enough to maintain power, seeming to be all things for all people. The party has been likened to Amazon: "you can find anything to buy ... Therefore, people do not need any opposition party to buy something else."<sup>135</sup> Compounding the problem for comfort women/girls is the patriarchy of Japanese society, which discourages victims from reporting rape to the police. The remarkable obstacles faced by journalist Shiori Ito when she tried to press charges against a prominent journalist who raped her in 2015 exemplified the repressed state of women's rights in

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132 Lauren Jackson and Tara Godwin, "On the Path to Day X: The Return of Germany's Far Right," *New York Times*, June 25, 2021.

133 Lee, *Prospects for US-South Korean-Japanese Trilateral Security Cooperation in an Era of Unprecedented Threats and Evolving Political Forces*.

134 Tack-whan Wi and Iou-chung Chang, "1965 Korea-Japan Agreement Should Be Re-estimated," *Korea.net*, March 23, 2016, accessed December 25, 2021, <https://www.korea.net/Government/Current-Affairs/National-Affairs/view?affairId=83&subId=258&articleId=134245>.

135 Motoko Rich, "Why the Governing Party Election Is the Main Event in Japan," *New York Times*, October 31, 2021, accessed December 30, 2021.

Japan.<sup>136</sup>

The ideal solution would be Japan taking the onus for finding reconciliation with Korea's comfort women/girls. A Germany-like embrace of legal responsibility and contrition with reparations, education so that future generations never commit these crimes again, and profound memorialization in the form of significant monuments and museums in Tokyo and elsewhere in Japan would go a long way in achieving reconciliation. Like Germany, Japan is now a wealthy country that can easily afford paying more reparations as Germany has done. Lind has argued that Germany-like reparations are too much in that they would provoke right-wing backlash, but what if that backlash is already dominant? It seems strong pushback is required to prevent possible further movement to the right. Importantly, German-style contrition in no way would diminish the reputation of Japan. In fact, it would be a path for respect, just as Germany has achieved. Japan could also easily make clear it was imperial Japan, not the successor Japan, that committed the crimes, just as Germany blamed the Third Reich, not the successor West and East Germany. For the sake of diplomacy, the 2015 Statements could be a starting point for a new victim-centered agreement with comprehensive reparations.

By achieving a victim-centered agreement, Japan would be following the lead of court decisions that have stated the remedy is through political negotiations when sovereign immunity is a bar to legal remedy. To achieve a truly effective agreement, Japan must genuinely meet victims' concerns. Crucially, the United States, the ROK's strongest friend, must also be part of the solution by pressing Japan sufficiently to take its responsibility, which the U.S. failed to do in the early postwar years that created a through line to today's politics.

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<sup>136</sup> Shiori Ito, *Black Box* (New York, New York: Feminist Press, 2017).

## The Likely, Minimal Solution

In reality, however, none of this ideal is likely, at least in the foreseeable future. Japan will likely continue to prefer stability and the LDP, which includes conservative, right-wing, denialist values, and the U.S. will likely continue to chide both ROK and Japan to get along. Anything is possible, but immediate trends indicate this is likely. An example of the fraught diplomacy was in July 2021, when ROK President Moon Jae-in sought an hour-long meeting with then-Prime Minister Yoshihide Suga to discuss export controls and the 2018 ROK Supreme Court decision ordering reparations. A high-ranking Japanese diplomat at the Japanese Embassy in Seoul told a journalist that Moon was “masturbating” in his suggestion for a dialogue because his government “does not think about the Japan-South Korea relationship as much as Korea does.”<sup>137</sup> Although the Japanese ambassador apologized, Moon did not go to Tokyo. ROK Presidential elections in March 2022 could produce an outcome that results in improved relations, but fundamental sources of tension will remain.

The reality that trilateralism will likely continue imperfectly with varying degrees of friction is fine, however, so long as the comfort women/girls and their supporters continue to be a thorn in Japan’s side. For the sake of justice and human rights advancement, civil society must insist in public protest, academia, media, memorialization, and in the courts that the comfort women/girls are to be respected and that Japan must bear the burden for reconciliation. Comfort women/girls statues must further proliferate, with the recent one in Berlin underlining the need for Germany-like atonement.<sup>138</sup> In this way, the status quo, with the ups

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<sup>137</sup> S. Nathan Park, “Japan Wasted a Golden Chance for Olympic Reconciliation, Tokyo-Seoul Relations Remain Mired in Bad History and Petty Insults,” *Foreign Policy*, July 29, 2021, accessed December 24, 2021, <https://foreignpolicy.com/2021/07/29/japan-olympics-korea-relations/>.

<sup>138</sup> “Japan Protests Berlin District Comfort Woman Statue Extension,” *Kyodo News*, September 6, 2021, accessed December 24, 2021, <https://english.kyodonews.net/news/2021/09/bf8eb542adf-japan-protests-berlin-district-comfort-women-statue-extension.html>.

and downs of the touchy Japan-ROK relationship, will continue, and the U.S. will be fated to serve as a mediator when tensions even remotely threaten security. So be it, as it is appropriate for the U.S. to bear that burden and preferable to silencing the victims through denials and blame.

Security must also prevail, of course. Tensions between Japan and ROK must never fall so low that a military outbreak is possible. Such a scenario has not emerged in recent times, despite tensions raised in 2018 when an ROK naval vessel allegedly locked its radar on a Japanese military aircraft while the ship searched for a North Korean fishing boat in distress. The territorial question of Dokto/Takishima/Liancourt Rocks,<sup>139</sup> the islands that both ROK and Japan claim, has also not proven urgent, although again tensions have been raised by, for example, military drills<sup>140</sup> and when ROK President Lee Myung-bak visited the islands in 2012.<sup>141</sup> Overarching all tensions, however, are interests and incentives that push Japan and ROK into cooperation. They are keenly aware of their common security interests, including preventing war with North Korea. The interests of Japan and ROK are not exactly the same, given ROK's desire to have better relations with North Korea, but they are alike enough to be a strong incentive to cooperate on security. And they both want to maintain excellent relationships with the U.S. Better relations would produce better interoperability and other efficiencies, but with the role of the U.S. as mediator, the three countries can work well enough to maintain security. The revival of the TCOG would be desirable, but is not essential.

Accordingly, tension over unresolved World War II issues can continue without causing an overwhelming security risk. Indeed, this tension may in a different way enhance security because letting Japan deny its World

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**139** The Korean name for these islands is Dokto, the Japanese name is Takishima, and the U.S. calls them the Liancourt Rocks.

**140** Jeff Jeong, "Is 'Radar Feud' Sign of Future Military Confrontation between South Korea and Japan?" *Defense News*, December 26, 2018, accessed December 23, 2021, <https://www.defensenews.com/global/asia-pacific/2018/12/26/is-radar-feud-sign-of-future-military-confrontation-between-south-korea-and-japan/>.

**141** BBC, "South Korea's Lee Myung-bak Visits Disputed Islands," *BBC News*, August 10, 2021, accessed December 21, 2021, <https://www.bbc.com/news/world-asia-19204852>.

War II crimes in itself is a form of security threat. How can a country that does not take responsibility for such massive crimes be fully trusted? The comfort women/girls issue thus acts as a political constraint on Japan. The LDP's desire to amend Japan's constitution to allow for greater military powers, its denial of its crimes, and other revisionism that it projects internationally should be viewed warily. The presence of about 55,000 U.S. troops in Japan<sup>142</sup> probably absolutely constrains Japan, but security must never be taken for granted. It behooves all countries to keep a check on Japan's ambitions.

Thus, the most realistic solution is a minimal one of continuing the status quo. While time is not on the side of the elderly comfort women/girls as they live out their twilight years, time also does not favor Japan's denialism. As noted by the Seoul Central District Court in January 2021, international law has been developing significantly in favor of increasing human rights and accountability. It is possible that this Court's finding of a *jus cogens* exception for sovereign immunity might lead to other courts ruling similarly, despite the current state of customary international law. If enough courts rule in this manner and states start accepting this exception as binding, then new customary law emerges. After all, sovereign immunity has already evolved from absolute to having limited carve-outs, such as for commercial activities. Why not also for crimes against humanity and other atrocity crimes?

Another example of growing jurisdiction is in the criminal prosecution of individual perpetrators of crimes against humanity and genocide. German and other European courts are at the forefront by invoking universal jurisdiction, thereby prosecuting non-European perpetrators, such as a former Syrian government official who committed such crimes in Damascus.<sup>143</sup> That there was no nexus to European territory did not

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<sup>142</sup> Lindsay Maizland and Nathanael Cheng, "The U.S.-Japan Security Alliance" (Council on Foreign Relations, November 4, 2021), accessed December 24, 2021, <https://www.cfr.org/backgrounders/us-japan-security-alliance>.

<sup>143</sup> Ben Hubbard, "German Court Convicts Former Syrian Official of Crimes against Humanity," *The New York Times*, February 24, 2021, accessed December 29, 2021, <https://www.nytimes.com/2021/02/24/world/middleeast/germany-court-syria-war-crimes.html>.

matter. Indeed, if individual Japanese perpetrators of the mass rape of comfort women/girls are still living now, prosecuting them in German courts must also be pursued vigorously – a poetic reckoning for former World War II partners. There is no time bar for such crimes under universal jurisdiction, though it will be difficult to get them into German (or other European) custody.

While the world has seen a rise in right-wing populism in certain countries and backlash against progressiveness, the overall trend is advancement towards greater accountability and recognition of human rights. The pioneering activism of comfort women/girls has already helped lead to advancements in prosecuting sexual violence in conflict, such as that by the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Court.<sup>144</sup> It is also directly applicable to the situation today. The March 2021 UN Report on conflict-related sexual violence focused on 18 countries for which it had verified information of such violence.<sup>145</sup> Examples, such as the Islamic State’s recent sexual enslavement of Yazidi women and girls, underline the urgency of the issue. The foundation of Noble-prize-winning Dr. Denis Mukwege states that the comfort women/girls movement “has proven to the world that sexual violence in conflict can be condemned by communities and nations at large ... The Korean example can provide crucial knowledge on how to successfully pave the way for such movements elsewhere.”<sup>146</sup> Survivors from many countries across the world, including Colombia, Burundi, Bosnia, and Iraq, have shown solidarity with the comfort women/girls. As the long arc of the moral universe bends toward justice,<sup>147</sup> the comfort women/girls and their brethren will likely find their peace.

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**144** Just Security, Japan Cannot Claim Sovereign Immunity and Also Insist that WWII Sexual Slavery Was Private Contractual Acts.

**145** UN Secretary-General’s Report, “Conflict-related Sexual Violence,” March, 30, 2021, accessed December 30, 2021, <https://undocs.org/S/2021/312>.

**146** “The Mukwege Foundation Celebrates the 1400th Wednesday Demonstration Honouring the Japanese Military ‘Comfort Women’,” accessed December 30, 2021, <https://www.mukwegefoundation.org/2129/>.

**147** Paraphrasing Martin Luther King Jr., accessed December 30, 2021, <https://www.si.edu/spotlight/mlk?page=4&iframe=true>.

## Conclusion

This article lays out the facts of imperial Japan's sexual enslavement of comfort women/girls in World War II using legally correct vocabulary. It describes the history of Japan - ROK relations and the role of the U.S. in allowing Japan to annex Korea in 1910 and choosing reconstruction over justice in the early post-war years, thereby allowing Japan to engage in audacious denialism, with some suspected wartime criminals regaining positions of authority. In the 1990s, Japan made apologies to the comfort women/girls, but right-wing backlash derailed reconciliation efforts and instead produced audacious denialism again. Comfort women/girls were not adequately included in the negotiations for the 2015 Statements by Japan and ROK announcing a deal that failed to meet their needs, as recognized by the UN and civil society. Court rulings in Seoul show the legal landscape is in flux, with the Seoul Central District Court finding a *jus cogens* exception for sovereign immunity and ruling that Japan must compensate the plaintiff comfort women/girls, but then a different panel of the Court ruling later that sovereign immunity shielded Japan from liability.

The onus for truly resolving World War II crimes must be on Japan, as the perpetrator, and secondarily on the U.S. as enabling Japan's colonialism over Korea and inadequate postwar pursuit of justice, including brazen denialism and insufficient reparations. The U.S. must pressure Japan far more than it pressures the ROK for improved relations. The most effective solution would be Japan behaving as Germany did to reconcile with its former bitter enemies by taking full legal responsibility for imperial Japan's crimes, apologizing fully, educating young people, providing sufficient reparations, including significant memorials in Japan, and other elements necessary for the needs of victims and society. This outcome is unlikely, however. The likely solution will be a minimal one - the continuation of the status quo with fluctuations in Japan-ROK relations and the U.S. intervening when tensions become too much. Security will remain sufficient with this arrangement, although not as robust as it could be if relations were better. This outcome, however, is

preferable to one in which the comfort women/girls are silenced without true reparations. Remembering Japan's atrocity crimes is in itself a security measure. Time is not on the side of Japan as international law strengthens. Demands for justice for historical and current atrocities throughout the world are increasing, even as more years pass since the crimes were perpetrated. The comfort women/girls will not be forgotten in a world of growing accountability and strengthening human rights.

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