

# Wartime Sexual Violence and War Responsibility: The “Comfort Women Issue” in Japan

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## I. Introduction

In this paper I will examine the aspect of transitional justice by focusing on what is called the “comfort women” issue in Japan from a gender perspective.<sup>1</sup> I will touch upon three points. First, I will discuss the reason why I will refer to the “comfort women” issue as an example of transitional justice, then I will describe the efforts taken towards compensation and reconciliation, and finally, we will examine the future challenges.

It should be noted that the term “comfort women” issue is used by the Japanese government and within academia for historical reasons.

## II. “Transitional Justice” and the “Comfort Women” Issue

### 1. The “Comfort Women” Issue as an Issue of “Unfinished Justice”

In East Asia today, the way “transitional justice”<sup>2</sup> is discussed varies considerably from country to country. In Korea and Taiwan, for instance, it is discussed as a practical issue related to these countries’ historical paths. In Japan and China, transitional justice is considered to be an issue concerning countries and regions such as Latin America, South Africa, or South-East Asia – in other words: “other people’s affairs”<sup>3</sup>.

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<sup>1</sup> *Miho MITSUNARI* (2016), Possibilities and Challenges in the Study of Wartime Law: Comments from a Gender Perspective, in: Hiroshi ONO/Yichii DEGUCHI/Naoko MATSUMOTO (eds.), *The Wartime Regime and Law Scholars: 1931–1952*, Kokusaiyoin, pp. 145–154 [三成美保「戦時法研究の可能性と課題—ジェンダー視点からのコメント」小野博司・出口雄一・松本尚子編『戦時体制と法学者—1931～1952』国際書院、2016年、145-154頁].

<sup>2</sup> The Peace Studies Association of Japan (ed.) (2012), *Restoration of Human Rights and Justice in a Time of Regime Transition*, Peace Research, Vol. 38 [日本平和学会編「(特集)体制移行期の人権回復と正義」『平和研究』38号、2012年]; *Yasue MOTIZUKI* (2012), *Transitional Justice: The Pursuit of Justice in the International Community*, Horitsubunkasya [望月康恵『移行期正義——国際社会における正義の追及』法律文化社、2012年].

<sup>3</sup> *Naoyuki UMEMORI* (2021), *Reconciliation Studies as a Method: The East Asian Basis of Conflict Resolution Studies*, in: Toyomi ASANO (ed.), *An Attempt at Reconciliation Studies*:

For Japan, however, transitional justice is not just someone else's problem or an issue of the past, and this is most clearly shown by the "comfort women" issue.

The term "comfort women" was actually used during a certain period in history, namely during the 15 years of war in the Asia-Pacific from 1931 to 1945. Back then, Japan was a militaristic imperial state, but after losing the war in 1945, the regime re-emerged as a democracy. This systemic change led to the Treaty of San Francisco in 1951 and ended Japan's occupation. The Japanese government considered reparations towards South Korea, a former colony, to have been settled in 1965 with the Treaty on Basic Relations Between Japan and the Republic of Korea. However, the "comfort women" issue was never settled. It was ignored throughout the transition period, was never raised as a topic for discussion, and because the victims could not speak out, they were kept from achieving justice. Thus, this issue, that was forgotten during the "transition period", has to be discussed as an issue of "justice". It therefore makes us think about how to address the topic of "unfinished justice" as a whole.<sup>4</sup>

## 2. Three Premises

Before I get to the main point, let me briefly touch on three premises.

### a) Who are "Comfort Women"?

First of all, what kind of women were the "comfort women"? Did they choose to serve as "prostitutes" within a public system by their own free will, or were they rather "sex slaves", tricked and forced into prostitution? This question is the biggest issue concerning a possible "compensation" for the "comfort women".<sup>5</sup>

According to a definition by the "Asian Women's Fund" that was established under the leadership of the Japanese government, the "comfort women" were "those [women] who were taken to former Japanese military installations, such as

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Memory, Emotion, and Value (Reconciliation Studies Series, Volume 1: Principles and Methods), Akashisyoten, p. 45 [梅森直之「方法としての「和解学」ー紛争解決学の東アジアの基礎」浅野豊美編『和解学の試みー記憶・感情・価値』(和解学叢書第1巻=原理・方法)明石書店、2021年、45頁].

<sup>4</sup> Miho MITSUNARI (2017), Wartime sexual violence and Law – "The Comfort Women Issue" and War reparation: Coordinator's Comments, Gender and Law, No. 14 [三成美保「戦時性暴力と法:慰安婦問題と戦後補償:企画趣旨」『ジェンダーと法』14号、2017年].

<sup>5</sup> Yoshiaki YOSHIMI (2010), What is the Japanese Military "Comfort Women" System?, Iwanamisyoten [吉見義明「日本軍「慰安婦」制度とは何か」岩波書店、2010年]; Noriko OHMORI/Fumiko KAWADA (2010), The "Comfort Women" Issue, Iwanamisyoten [大森典子・川田文子「「慰安婦」問題が問うてきたこと」岩波書店、2010年].

comfort stations, for a certain period during wartime in the past and forced to provide sexual services to officers and soldiers”.<sup>6</sup>

Figure 1 shows us where the so-called “comfort stations” were established.<sup>7</sup>

The thick line shows the maximum area occupied by Japan. It covers a broad range from East to South-East Asia, and the dots show the so-called “comfort stations.” These were the places where the “comfort women” lived. You can see that “comfort stations” were built everywhere where the Japanese military moved in. The number of “comfort women” is also a disputed topic and estimations vary between 80,000 and 200,000. Their nationalities and backgrounds were diverse, that is, they were not only Asian women – in Indonesia, for example, there were also Dutch “comfort women.”<sup>8</sup>

### *b) Historical Background*

Now I would like to discuss the historical background of the “comfort women.” Here, it is important to understand that both prostitution and colonial domination were intersectional because Japan (the homeland) and the colony (as the overseas territory) had asymmetrical relations and had different standards concerning prostitution. It was legal for men to purchase sex from prostitutes, whereas women who sold sex for money were disdained as “shameful prostitutes”. Next to this double standard on sexuality, a double standard for women existed between the women in Japan and those in the colonies because women in the colonies were forced to be prostitutes, while women in Japan were required to stay sexually pure.

The public prostitution system was introduced to Japan from Europe in the late 19<sup>th</sup> century during the Meiji Era.

A system of controlled prostitution known as ‘*yukaku*’ had also existed in Japan during the Edo period (1603–1868). Prostitution districts authorized by the Shogunate were set up in Edo, Kyoto and Osaka, where girls who were sold as collateral for their parents’ debts had to work in brothels. In the early Meiji period, this system was abolished on the grounds that it was based on human trafficking, and a public prostitution system was established, with the prostitution business being conducted formally based on a ‘contract’. Instead of managing districts, individual prostitutes were the subjects to be managed.

<sup>6</sup> Digital Museum The Comfort Women Issue and the Asian Women’s Fund [デジタル祈念館 慰安婦問題とアジア女性基金], <https://awf.or.jp/e1/facts-00.html>, last visit 18.09.2023.

<sup>7</sup> Women’s Active Museum on War and Peace (wam) [アクティブ・ミュージアム「わたしの戦争と平和資料館」], <https://wam-peace.org/ianjo/map/>, last visit 18.09.2023.

<sup>8</sup> Women’s Active Museum on War and Peace (ed.) (2013), The Japanese military “comfort women” issue, all your questions answered, Godosyuppan [アクティブ・ミュージアム「わたしの戦争と平和資料館」(wam) 編著『日本軍「慰安婦」問題、すべての疑問に答えます。』合同出版、2013年].



Figure 1: Map of “comfort stations” © Women’s Active Museum on War and Peace (WAM)

In practice, many women could not quit their roles as prostitutes because they had sold themselves into bondage.

In 1900 a modern public prostitution system was established, and a Christian abolitionist movement developed at the same time. As a result of the latter movement, the public prostitution system was abolished in some areas during the war years from the 1930s onwards.

From the 1920s onwards, the public prostitution system for colonies was introduced. Contrary to Japan, brothels in the colonies could not close down freely and the prostitutes were not allowed to leave freely, so the brothels there were more profitable than in the Japanese homeland. Both the activists against prostitution as well as the women in Japan saw the forced prostitution of women in the colonies as a necessary thing to protect the purity of Japanese women. So, being a woman – in a colony – as a prostitute – were three intersectional attributions that made “comfort women” being disdained more than other women on mainland Japan.

### *c) What Happened in the 1990s?*

In 1991, a former “comfort woman” named Kim Hak-sun came forward publicly and filed the first lawsuit of this kind to seek compensation. Over the next ten years, ten more cases arose as former “comfort women” from Taiwan, China, the Philippines, and the Netherlands followed suit. Why did the victims keep silent for almost 50 years and then come forward and file lawsuits in the 1990s? To answer this two-part question, we have to consider the issues of transitions, both in South Korea as well as throughout the whole world.

After the Korean War (1950–1953), a “developing dictatorship” was established in Korea after a military coup in the 1960s. Under this dictatorial system, sexuality was treated in three different ways. Within Korea, prostitutes were being punished. But for US Forces stationed in the country, comfort stations were installed and for Japanese tourists package sex tours (known as “Gisaeng-tourism”) were organized. As prostitution was considered immoral and deemed to be a particular service for foreigners, former “comfort women” had to remain silent, had to hide their past from their husbands even after getting married, and many women suffered both from physical as well as psychological aftereffects. In 1987, South Korea became a democracy. With this systemic transition, the female victims, could come forward as “former comfort women” for the first time.

Changes arose in other parts of the world, as well, as the Cold War ended in 1990 and many countries transformed from former socialist systems to capitalist economies. The 1990s were a time when “Violence against Women” that was committed during these transition periods became recognized as an international human rights issue. The “comfort women” issue can be considered as a starting point. In 1993, the Declaration on the Elimination of Violence against Women was adopted, and the United Nations established international tribunals, where wartime sexual violence also played a role. In 1995, we had the Beijing Declaration, the establishment of a permanent International Criminal Court with the Rome Statute of 1998, which de-

fined sexual violence in wartime as a crime against humanity for the first time. This contributed to the establishment of an international system to prosecute sexual violence, so the “comfort women” issue was no longer a matter limited to just Japan and South Korea, but rather an issue that the international community looked to as a model case of how to achieve “justice”.

### 3. Remarks from Several UN Committees

The actions taken by the Japanese government concerning the “comfort women” issue are not considered sufficient by the international community. Several UN Committees have recommended that Japan improves its response to the issue. The United Nations Human Rights Committee (CCPR) stated in its concluding observations of 2014 that the “comfort women” were sex slaves and that violations of the victim’s human rights violations were still ongoing (see Document 1). In the concluding observations on the seventh periodic report of Japan (30 November 2022), the Japanese government was harshly criticized for “the State party has made no progress” and “regrets ... the lack of effective remedies and full reparation to all victims of past human rights violations” (see Document 2). The UN Committee on the Elimination of Discrimination against Women (CEDAW) also touched upon the “comfort women” issue in concluding observations of 2009 and 2016. In 2009 it was kept to a short general recommendation<sup>9</sup>, but the observations of 2016 went into further detail (see Document 3).<sup>10</sup> This time, the CEDAW expressed its regret that Japan’s position was that sexual violence during wartime in the Asia-Pacific region did not fall within the mandate of the Convention (on the Elimination of All Forms of Discrimination against Women). The Committee made clear that measures against those human rights violations were not precluded *ratione temporis*. It therefore expected reports to be made on the extent of consultations with survivors and other measures taken to ensure the rights of victims to truth, justice, and reparations. This recommendation from 2016 can be considered to reflect the notion of “transitional justice”.<sup>11</sup>

<sup>9</sup> <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsryr9E9fM8JLxSfpAS5QTBBAcZeXryG1RJq1oEcE7klxKgZUpuPATBd7Jxtc6VzfoKiZUrHQ60HytBmY1fidz%2FVnXmz90i2C3uXrOICa6qa>, last visit 18.09.2023.

<sup>10</sup> [https://www.gender.go.jp/international/int\\_kaigi/int\\_teppai/pdf/CO7-8\\_e.pdf](https://www.gender.go.jp/international/int_kaigi/int_teppai/pdf/CO7-8_e.pdf), last visit 18.09.2023.

<sup>11</sup> Koki ABE (2017), For Whom the Bell of International Law Rings?: The “Unofficial” Judicial Project of the Tokyo Women’s Tribunal Revisited, Gender and Law, No. 14 [阿部浩己「女性国際戦犯法廷の地平——民衆法廷という司法プロジェクト」『ジェンダーと法』14号、2017年].

**Document 1: United Nations Human Rights Committee: Concluding observations on the sixth periodic report of Japan, 20 August 2014**

Sexual slavery practices against “comfort women”

14. The Committee is concerned by the State party’s contradictory position that the “comfort women” were not “forcibly deported” by Japanese military during wartime but that the “recruitment, transportation and management” of women in comfort stations was done in many cases against their will, through coercion and intimidation by the military or entities acting on behalf of the military. The Committee considers that any such acts carried out against the will of the victims are sufficient to consider them as human rights violations involving the direct legal responsibility of the State party. The Committee is also concerned about revictimization of the former “comfort women” by attacks on their reputations, including by public officials, and some that are encouraged by the State party’s equivocal position. The Committee takes into account information that all claims for reparation brought by victims before Japanese courts have been dismissed, and all complaints to seek criminal investigation and prosecution against perpetrators have been rejected on the ground of the statute of limitations. The Committee considers that this situation reflects ongoing violations of the victims’ human rights, as well as a lack of effective remedies available to them as victims of past human rights violations (arts. 2, 7 and 8).

The State party should take immediate and effective legislative and administrative measures to ensure:

(a) That all allegations of sexual slavery or other human rights violations perpetrated by the Japanese military during wartime against the “comfort women” are effectively, independently and impartially investigated and that perpetrators are prosecuted and, if found guilty, punished; (b) Access to justice and full reparation to victims and their families; (c) The disclosure of all available evidence; (d) Education of students and the general public about the issue, including adequate references in textbooks; (e) The expression of a public apology and official recognition of the responsibility of the State party; (f) Condemnation of any attempts to defame victims or to deny the events.

**Document 2: United Nations Human Rights Committee: Concluding observations on the seventh periodic report of Japan, 30 November 2022 (CCPR/C/JPN/CO/7)**

Elimination of slavery, servitude and trafficking in persons

28. The Committee notes the information provided by the State party regarding its efforts towards addressing human rights violations against “comfort women”. It regrets, however, that the State party has made no progress with regard to the Committee’s previous recommendations and continues to deny its obligation, under the Covenant, to address the continuing violations of the victims’ human rights. It also regrets the lack of criminal investigation and prosecution of perpetrators, and the lack of effective remedies and full reparation to all victims of past human rights violations (arts. 2, 7 and 8).

29. The Committee reiterates its previous recommendations, and urges the State party to take immediate and effective legislative and administrative measures to ensure:

(a) That all allegations of human rights violations perpetrated by the Japanese military during wartime against “comfort women” are effectively, independently and impartially investigated, that all available evidence is disclosed, and that perpetrators are prosecuted and, if found guilty, punished; (b) Access to justice and full reparation to all victims and their families, including victims from other countries; (c) Education about the issue, including

adequate references in textbooks, and strong condemnation of any attempts to defame victims or to deny the events.

(SOURCE) <https://www.mofa.go.jp/mofaj/files/000054775.pdf>

**Document 2: CEDAW:Committee on the Elimination of Discrimination against Women: Concluding observations on the combined seventh and eighth periodic reports of Japan\* (7 March 2016)**

“Comfort women”

28. The Committee recalls its previous concluding observations (CEDAW/C/JPN/CO/6, paras. 37 and 38) and also refers to numerous recommendations on the unresolved issue of “comfort women” made by other United Nations human rights mechanisms such as the Committee on the Elimination of Racial Discrimination (CERD/C/JPN/CO/7–9), the Human Rights Committee (CCPR/C/JPN/CO/6), the Committee Against Torture (CAT/C/JPN/CO/2), the Committee on Economic, Social and Cultural Rights (E/C.12/JPN/CO/3), several United Nations Special Procedures mandate holders of the Human Rights Council and the Universal Periodic Review (A/HRC/22/14/Add.1, para.147–145 et seq.). While noting the efforts by the State party to attempt to resolve the issue of “comfort women”, most recently through the bilateral agreement between the State party and the Republic of Korea announced on 28 December 2015, the Committee regrets the State party has not implemented the aforementioned recommendations and its position that the issue of “comfort women” does not fall within the mandate of the Committee, as the alleged violations occurred prior to the entry into force of the Convention for the State party in 1985. The Committee further regrets that: (a) Recently, there has been an increase in the number of statements from public officials and leaders regarding the State party’s responsibility for violations committed against “comfort women”; and that the announcement of the bilateral agreement with the Republic of Korea, which asserts that the “comfort women” issue “is resolved finally and irreversibly” did not fully adopt a victim-centred approach; (b) Some “comfort women” have died without obtaining an official unequivocal recognition of responsibility by the State party for the serious human rights violations that they suffered; (c) The State party has not addressed its obligations under international human rights law towards “comfort women” victims in other concerned countries; and (d) The State party deleted references to the issue of “comfort women” in textbooks.

29. The Committee reiterates its previous recommendations (CEDAW/C/JPN/CO/6, paras. 37 and 38) and observes that the issue of “comfort women” gives rise to serious violations that have a continuing effect on the rights of victims/survivors of those violations that were perpetrated by the State party’s military during the Second World War given the continued lack of effective remedies for these victims. The Committee, therefore, considers that it is not precluded *ratione temporis* from addressing such violations, and urges the State party to: (a) Ensure that its leaders and public officials desist from making disparaging statements regarding responsibility, which have the effect of re-traumatising victims; (b) Recognize the right of victims to a remedy, and accordingly provide full and effective redress and reparation, including compensation, satisfaction, official apologies and rehabilitative services; (c) Ensure that in the implementation of the bilateral agreement announced jointly with the Republic of Korea in December 2015, the State party takes due account of the views of the victims/survivors and ensure their rights to truth, justice, and reparations; (d) Adequately integrate the issue of “comfort women” in textbooks and ensure that historical facts are objectively presented to students and the public at large; and (e) Provide information in its next periodic

report on the extent of consultations and other measures taken to ensure the rights of victims/survivors to truth, justice and reparations.

(SOURCE) United Nations, International Covenant on Civil and Political Rights, Human Rights Committee, Concluding observations on the seventh periodic report of Japan, 30 November 2022 (CCPR/C/JPN/CO/7), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FJPN%2FCO%2F7&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FJPN%2FCO%2F7&Lang=en)

### III. Initiatives for Compensation and Reconciliation

The “comfort women” issue was excluded from the realization of “justice” during the “transition period”, and although attempts for “reconciliation” and “compensation” finally began in the 1990s, ways to gain “compensation” have been blocked by the Japanese government and the Japanese judiciary. Descriptions of “comfort women” have been removed from history textbooks, and the path to “reconciliation” is also facing difficulties. Interviews with victims have been conducted since the 1990s, but the reality is that a growing number of victims have already passed away.

In Japan, compensation and reconciliation issues concerning the “comfort women” issue face high obstacles in terms of politics, the judicial system, education, and public opinion, both within Japan as well as in terms of international diplomacy. I would like to address three things here: First, academics, especially tendencies in historical research. Second, the responses of the government and the judicial system, and third, the Women’s Tribunal.

#### 1. The “Comfort Women” Issue in Historiography

##### *a) Post-War Histography and the “Comfort Women” Issue*

Post-war history studies in Japan eagerly researched the Asia-Pacific War, but the topic of war crime history lagged significantly. Instead, the focus was on the Tennō system, imperialism, fascism, and other domestic issues, but there was a lack of studies about colonialism. In 1982, the issue was raised and war crime research gained momentum, but that did not mean that research about the “comfort women” issue also got into full swing right away. Official documents concerning the military had largely been burned and disposed of, and history studies avoided to address the issue of a responsibility of the Japanese people. In addition, the gender perspective was missing completely within the Japanese historiography. All this led to a lack of awareness regarding the “comfort women” issue. In 1991, when Kim Hak-sun came forward as a former “comfort woman”, Japanese historians were shocked and research about the “comfort women” immediately gained momentum. The 1990s also marked the beginning of gender studies in Japan so that many gender scientists from various fields such as political sciences, historiography and legal stud-

ies started looking into the “comfort women” issue. The cooperation among journalists, civil groups, and researchers was also strengthened.

In the beginning, the Japanese government denied military involvement, but when documents were found in 1992, they changed their stance and began research themselves. Based on the findings, a statement by then Chief Cabinet Secretary Yohei Kono (referred to as the “Kono Statement”) was issued in 1993 (see Document 3).<sup>12</sup> The Kono Statement acknowledged the following: The Japanese Imperial Army was directly and indirectly involved in the establishment of “comfort stations” and the transport of “comfort women,” that there were numerous cases of forced prostitution, and that the atmosphere in the “comfort stations” was coercive. It then expressed apologies and remorse and reiterated “a firm determination never to repeat the same mistake by forever engraving such issues in our memory through the study and teaching of history.” In responding to questions in the Diet in 2021, the Japanese government also reaffirmed its continued adherence to the Kono Statement.

**Document 3: Statement by Chief Cabinet Secretary Yohei Kono on the Result of the Study on the Issue of “Comfort Women”, 4 August 1993**

The Government of Japan has been conducting a study on the issue of wartime “comfort women” since December 1991. I wish to announce the findings as a result of that study. As a result of the study which indicates that comfort stations were operated in extensive areas for long periods, it is apparent that there existed a great number of comfort women. Comfort stations were operated in response to the request of the military authorities of the day. The then Japanese military was, directly or indirectly, involved in the establishment and management of the comfort stations and the transfer of comfort women. The recruitment of the comfort women was conducted mainly by private recruiters who acted in response to the request of the military. The Government study has revealed that in many cases they were recruited against their own will, through coaxing, coercion, etc., and that, at times, administrative/military personnel directly took part in the recruitments. They lived in misery at comfort stations under a coercive atmosphere.

As to the origin of those comfort women who were transferred to the war areas, excluding those from Japan, those from the Korean Peninsula accounted for a large part. The Korean Peninsula was under Japanese rule in those days, and their recruitment, transfer, control, etc., were conducted generally against their will, through coaxing, coercion, etc.

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.

It is incumbent upon us, the Government of Japan, to continue to consider seriously, while listening to the views of learned circles, how best we can express this sentiment.

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 reiterate 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>12</sup> [https://www.mofa.go.jp/a\\_o/rp/page25e\\_000343.html](https://www.mofa.go.jp/a_o/rp/page25e_000343.html), last visit 18.09.2023.

As actions have been brought to court in Japan and interests have been shown in this issue outside Japan, the Government of Japan shall continue to pay full attention to this matter, including private researched related thereto.

(SOURCE) <https://warp.da.ndl.go.jp/info:ndljp/pid/10310403/www.awf.or.jp/e6/statement-02.html>

However, gender bashing increased during the 21<sup>st</sup> century in Japanese society, and gender mainstreaming stagnated. Politicians repeatedly and publicly made statements that denied the dignity of “comfort women,” when in 2014 it was reported that the memoirs of a man claiming to have assisted in kidnapping “comfort women,” referred to as the “Yoshida Testimony”, was fake. Until then, the memoirs had been considered to be proof for the coercion exerted on “comfort women,” and with the revelation that the memoirs’ claims were in part fabrications<sup>13</sup>, movements to deny the existence of “comfort women” gained strength. In that situation, two major historical science societies in Japan jointly organized a symposium in 2013. The fact, that this was the very first symposium on the “comfort women” issue by these societies shows, how little importance was attached to a gender perspective among Japanese historians until then. However, for the “comfort women” research this was groundbreaking. The findings from the symposium were compiled into a book in 2014.<sup>14</sup>

### *b) Historical Perception and Legal Responsibility*

What are the conflicting historical perceptions of the “comfort women”?

The perceptions based on historical research and those of the Kono Statement have a common foundation, but the perception of the government since the Abe Administration in the 21<sup>st</sup> century differs greatly from this (see Table 1).<sup>15</sup>

<sup>13</sup> The Asahi Shimbun Co. Third-Party Committee, Report (Abridged), December 22, 2014 [朝日新聞社第三者委員会「報告書（要約版）」2014年12月22日], <https://www.asahi.com/shimbun/3rd/report20150728e.pdf>, last visit 18.09.2023; The Asahi Shimbun, Thinking about the comfort women issue, 2014 [朝日新聞「慰安婦問題を考える」2014年], <https://www.asahi.com/topics/ianfumondaiwokangaeru/en/>, last visit 18.09.2023.

<sup>14</sup> REKISHIGAKU KENKYUKAI (The Historical Science Society of Japan)/NIHONSHI KENKYUKAI (The Japanese Society for Historical Studies) (eds.) (2014), Considering the “Comfort Women” Issue: Military Sexual Violence and the Everyday World, Iwanamisyoten [歴史学研究会・日本史研究会編『「慰安婦」問題を「から考える」——軍事性暴力と日常生活』岩波書店・2014年].

<sup>15</sup> Ministry of Foreign Affairs of Japan, Issues regarding History, Japan’s Efforts on the Issue of Comfort Women [外務省「慰安婦問題についての我が国の取組」], [https://www.mofa.go.jp/policy/postwar/page22e\\_000883.html](https://www.mofa.go.jp/policy/postwar/page22e_000883.html), last visit 18.09.2023.

Table 1  
Comparing Views on the “Comfort Women Issue”

	Historical research	Japanese government
Existence of comfort women/ comfort stations	Admits	Admits
Number of comfort women	80,000 to 200,000	Number unknown (200,000 cannot be confirmed)
Coercion	Happened	Cannot be confirmed
Involvement of Japanese military	Direct and indirect involvement	No direct involvement
Existence of private agents (who directly operated the comfort stations)	Private agents acted under the control of the military	Private agents operated freely (military was a customer)
Women who became comfort women	Were often tricked	Were often former prostitutes who entered into free contracts upon conviction
compensation	Individual compensation issues are not solved yet	Individual compensation is included in the compensation to the Korean government based on the Treaty on Basic Relations Between Japan and the Republic of Korea of 1965

As shown in the chart<sup>16</sup>, both acknowledged that the “comfort women” and the “comfort stations” existed. The positions differ on the following: the number of “comfort women,” whether or not they were forced to be “comfort women,” whether or not the military was directly involved, the role of private brothel operators, and the conditions for women forced to be “comfort women.” Resulting from these differences in the historical perceptions, there are also conflicting views about the legal responsibilities for individual compensations. In other words, the historic perception and recognition of legal liability essentially differ between the historiographic research and the Japanese government.

c) The Statement of 2015

In May 2015 a joint statement of 16 historical societies, including the major Japanese ones, was published (Document 4).<sup>17</sup> The cause for this was a statement by the Mayor in Osaka in 2013 as well as the “Yoshida testimony issue” of 2014. Mayor Hashimoto (at the time) said that the “military comfort women” system was necessary to maintain military discipline and provide rest for soldiers, and that there was no evidence that the Japanese government at the time forcibly brought comfort women into Japan<sup>18</sup>. His comments were strongly criticized by various social strata<sup>19</sup>. “Com-

<sup>16</sup> <https://wam-peace.org/ianjo/map/>, last visit 18.09.2023.

<sup>17</sup> 日本史研究会「慰安婦」問題に関する日本の歴史学会・歴史教育者団体の声明」(2015年5月25日), <https://www.nihonshiken.jp/20151104-statement/>, last visit 18.09.2023.

<sup>18</sup> Nikkei Inc., Hashimoto’s Major Comments on the Comfort Women Issue and Other Issues, May 17, 2013 [日本経済新聞「慰安婦問題などを巡る橋下氏の主な発言」2013年

fort women” were increasingly the subject of derogatory comments in Japanese society at that time, which alarmed the historical societies and prompted the statement. The main points of the joint statement were as follows: First, the Yoshida testimony had not been used as a document for historical research, so the “Kono Statement” was still based on solid facts. Second, “comfort women” were sex slaves and the contracts themselves were forced on them. And thirdly, unjust attacks towards “comfort women” researchers should be stopped.

Japanese Studies Scholars in the US immediately issued a supportive statement as well. In it, they stated that many countries still struggled to acknowledge past injustices and that it took over forty years for the US government to compensate Japanese-Americans [for their internment during World War II]. They also touched upon the fact, that “the promise of equality for African Americans was not realized in US law until a century after the abolition of slavery”.<sup>20</sup>

Historians from both Japan and the US say that the “comfort women” issue is a violation of human rights and should never be forgotten. As it will take a long time until it is seen as such and matters of compensation and reconciliation are realized, it is even more necessary for historical research to keep this memory alive.

**Document 4: Joint Statement by Associations of History Scholars and Educators in Japan on the “Comfort Women” Issue (May 25, 2015)**

In the wake of the August 2014 cancellation of an article by the Asahi Shimbun, some politicians and media have been acting as if the fact of the forced marriage of Japanese “comfort women” had lost its basis. We, the Japanese historical societies and history educators’ organizations, point out the following three problems with this unjust view. First, the Japanese government’s admission that the Japanese military was involved in the forced rendition of “comfort women” (the Kono Statement) was not based on the article in question or the testimony of Seiji Yoshida on which it was based. Therefore, the cancellation of the article does not destroy the basis of the Kono Statement. The existence of “comfort women” who were forcibly taken away from their homes has been proven by numerous historical documents and studies. Forced removal should not be limited to cases of forced removal (confirmed in Semarang, Indonesia, and Shanxi Province, China; there are also many testimonies from the Korean Peninsula), but should be understood to include cases of removal

5月17日], [https://www.nikkei.com/article/DGXNASHC1603M\\_W3A510C1000000/](https://www.nikkei.com/article/DGXNASHC1603M_W3A510C1000000/), last visit 18.09.2023.

<sup>19</sup> Japan Federation of Bar Associations (2013), Chairman’s Statement Calling for the Withdrawal and Apology of Toru Hashimoto’s Comments on Japanese Military “Comfort Women” and the “Sex Industry” (May 24, 2013) [日本弁護士連合会会長談話「橋下徹氏の日本軍「慰安婦」及び「風俗業」に関する発言の撤回と謝罪を求める会長談話」(2013年5月24日)], [https://www.nichibenren.or.jp/document/statement/year/2013/130524\\_3.html](https://www.nichibenren.or.jp/document/statement/year/2013/130524_3.html), last visit 18.09.2023;

Joint NGO Statement, Immediate Release, May 23, 2013 [NGO共同声明「市民社会は、橋下大阪市長による「従軍慰安婦」に関する発言に対し、強く抗議する」2013年5月23日], [https://hrn.or.jp/activity\\_statement/1886/](https://hrn.or.jp/activity_statement/1886/), last visit 18.09.2023.

<sup>20</sup> [https://ch-gender.jp/wp/?page\\_id=10540](https://ch-gender.jp/wp/?page_id=10540), last visit 18.09.2023.

against the will of the person (confirmed in a wide range of areas including the Korean Peninsula).

Second, the women who were considered “comfort women” were subjected to indescribable violence as sex slaves. Recent historical studies have revealed not only the coercive nature of the mobilization process, but also that the women who were mobilized were placed in a state of sexual slavery in which their human rights were violated. It also points out the linkage between the “comfort women” system and everyday colonial rule and discriminatory structures. Even if there was a contract for sex trafficking, an unequal and unfair structure existed behind it, and to ignore this political and social background is to turn a blind eye to the whole picture of the problem.

Third, some of the mass media reports that emphasize “misinformation” have led to unjustified attacks on university faculty members involved in the “comfort women” issue and their affiliated institutions, including threats of resignation and cancellation of lectures. This is an infringement on academic freedom and must not be tolerated.

If some politicians and the media continue to adopt an irresponsible attitude of turning a blind eye to the facts regarding the issue of Japanese “comfort women”, it will be tantamount to sending a signal internationally that Japan does not respect human rights. This attitude will further violate the dignity of the victims of Japanese military sexual slavery, who suffered severely. What is required now is to keep these issues in mind through historical research and education, as stated in the Kono Declaration, and not to repeat the mistakes.

We again call on the politicians and the media concerned to seriously confront the facts of the past perpetration and its victims.

May 25, 2015 16 organizations related to historical studies

(SOURCE) NIHONSHI KENKYUKAI (The Japanese Society for Historical Studies)

(May 25, 2015), Joint Statement by Associations of History Scholars and Educators in Japan on the “Comfort Women” Issue [日本史研究会「慰安婦」問題に関する日本の歴史学会・歴史教育者団体の声明] 2015年5月25日, <https://www.nihonshiken.jp/20151104-statement/>

## 2. The Japanese Government and Judiciary

### *a) The Japanese Government’s Position of Issues Being Settled – Re-Reading the Treaty on Basic Relations Between Japan and the Republic of Korea*

The Japanese government’s position is that compensation issues regarding South Korea have been concluded with the Property Claims Agreement mentioned in the 1965 Treaty on Basic Relations Between Japan and the Republic of Korea. A critical approach towards this treaty was made possible in 2005 when official documents on the negotiation process for establishing diplomatic relations between the two countries were made public. According to recent research, there are three problems with the argument that the issue has been settled.

The first problem is that “property” and “claims” are based on theories justifying colonial rule rather than taking responsibility for that rule. Colonial rule is justified based on three grounds: that colonial rule was justified by international law; that co-

lonial rule helped the modernization process of the colonies; and that recognizing Korea's independence was a mere territorial separation. This theory was also shared by the Allied nations as the other party to the Treaty of San Francisco, so the Allies and Japan can be considered to be accomplices in not questioning the principles of colonial rule.<sup>21</sup>

The second problem with saying the issue has been settled is that the treaty with South Korea was negotiated as a form of economic assistance during the Cold War. In South Korea, a developing dictatorship had just been established, and at that time economic cooperation connected to development aid was given a high degree of importance within the international community.

Finally, the third problem was that the treatment became “violence through law” against the victims. The treaty was signed between two states, but the voices of the victims were not reflected in it at all, so for the victims, the issues were far from being settled.

*b) The Two Faces of Justice – Find the Facts, but Don't Judge  
About the Legal Responsible*

Between 1991 and 2001, ten cases were brought before the court system with diverse plaintiffs. In 2010, the final Supreme Court decision was made, with the court dismissing all claims of former “comfort women.” Only one case before a district court (the Shimonoseki Trial) in 1998 was won by the plaintiffs, where the “legislative inaction” of the state was acknowledged. In eight of ten cases the detailed allegations of the “comfort women” were acknowledged as facts.

The points disputed in court included issues concerning international law as well as domestic law.

aa) Illegality Under International Law

The plaintiffs claimed that the system of “comfort stations” was in violation of international law applicable at that time, namely the Slavery Convention, the Forced Labour Convention, The International Convention for the Suppression of the Traffic in Women and Children, and the Hague Convention, and should be considered a crime against humanity and a war crime. The courts, however, argued that international treaties regulated relations between states, and that individuals could not sue states based on international treaties.

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<sup>21</sup> Osamu OTA (2017), The Problem of the Japan-Korea Treaty: Reconsidering the “Settled” Thesis, Gender and Law, No. 14 [太田修「日韓条約の何が問題か:『解決済み』論批判』『ジェンダーと法』14号、2017年].

### bb) Legal Responsibility and Domestic Law

There were mainly three issues in terms of domestic law: The responsibility of the state, the period of exclusion and the waiver of claims. The government established the concept of “absence of liability,” and also stated that the twenty-year statute of limitations for tort cases had passed and repeated the government’s basic stance that compensation claims were waived with the Treaty of San Francisco. The court accepted the government’s claims. Japanese courts therefore decided that there was no legal obligation for the Japanese government to respond to the claims of the plaintiffs from the perspectives of both international as well as domestic law. However, they also accepted the fact that 35 victims were severely harmed. 30 of them were still teenagers when they suffered from these crimes. It was acknowledged that the victims were taken to the comfort stations forcefully, no money was paid, and that they suffered from physical injuries and trauma that they kept silent about even to their families and husbands after marriage, so the lawsuits were not meaningless. The female victims had a chance to talk about facts which were then kept as records and strengthened the sense of solidarity within the international community.

### c) Attempts and Setbacks of the “Asian Women’s Fund”

In Japan, the idea that the government and the people should share a moral responsibility even though there was no legal responsibility for the comfort women gained strength, and thus the “Asian Women’s Fund”<sup>22</sup> was established. Around 600 million yen were collected in this fund, but it failed<sup>23</sup> because it did not pursue a victim-centered approach.<sup>24</sup> The selection of recipient countries and victims as well as different thoughts on how to proceed with the compensation, and if there should be a letter of apology by the Japanese Prime Minister, divided the victims and caused confusion and division among those victims and the support groups. Many women in South Korea refused to accept the compensation because they felt that the government was just trying to hide its legal responsibility and the victim’s dignity would not be restored. As a result, it is said that the Asian Women’s Fund and its attempt to meet a moral responsibility failed, partly also due to interventions of the South Korean government.<sup>25</sup>

<sup>22</sup> Asian Women’s Fund (<https://www.awf.or.jp/>), last visit 18.09.2023.

<sup>23</sup> Ministry of Foreign Affairs of Japan, Measures Taken by the Government of Japan on the Issue of “comfort women” [日本外務省「アジア女性基金による事業の概要」], <https://www.mofa.go.jp/policy/women/fund/policy.html>, last visit 18.09.2023.

<sup>24</sup> See note 8, p. 37.

<sup>25</sup> In May 1998, the new government led by President Kim Dae-jung paid almost the same amount as the Fund’s compensation to 142 former “comfort women” who pledged not to receive compensation from the Asian Women’s Fund, but not to the 11 who had received compensation from the Fund. Asian Women’s Fund, “Details of Reparations Programs in Each

### 3. The Women's International War Crimes Tribunal

In 2000, the Women's International War Crimes Tribunal took place in Tokyo as one form of a people's tribunal. The difference to other people's tribunals was that it aimed at victimize gender justice and thus can also be considered to be a "women's tribunal." The people's tribunal model was established by Russ Russell and Jean-Paul Sartre in order to ensure justice for war crimes committed by members of the United States' military during the war in Vietnam in 1967. Until 2014, more than 80 people's tribunals had been held. These tribunals are not legally binding. However, they help to shed light on cases in which people are not protected by law or the judicial system, they give victims a chance and a voice, and they also function as an instrument of the people to restore justice.

The Women's International War Crimes Tribunal chose a victim-centered approach, and 64 female victims from eight Asian countries participated. Experts in international human rights law functioned as judges, and the proceedings were conducted according to real court procedures. The Tribunal acknowledged that the "comfort women" system constituted the crime of sexual slavery according to the international laws which were in effect at that time. Nine persons, including the Emperor Shōwa, were convicted. The Tribunal also found that the violations of the law were still ongoing due to the Japanese government's failure to act and its inappropriate conduct (Document 5).<sup>26</sup>

The Tribunal also affected other people's tribunals judging sexual violence cases and measures concerning human rights taken by the UN. It was widely covered by media outside of Japan, but almost not at all within Japan. In 2001, the Japanese public broadcaster NHK (Japanese Broadcasting Corporation) reported about the Women's Tribunal, but due to pressure from politicians, they had to change the content. VAWW-NET Japan ("War and Violence Against Women" Japan Network), the organizer of the tribunal, filed a lawsuit against NHK, and although the plaintiff lost in the first instance, the court of appeal (Tokyo High Court) found that the plaintiff had "abused or deviated from the editorial authority guaranteed in the Constitution" and accepted the plaintiff's claim (2007). However, the Supreme Court reversed the decision, and the plaintiff's case was decided<sup>27</sup> (2008).

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Country/Region-Korea", <https://www.awf.or.jp/3/korea.html>, last visit 18.09.2023), see note 8, p. 37.

<sup>26</sup> Violence Against Women In War-Network Japan (VAWW-NET JAPAN) (ed.) (2000–2002), *Judging Japanese Military Sexual Slavery: The Record of the 2000 International Tribunal for Women War Criminals*, 6 Vols., Ryokufusyuppan [「戦争と女性への暴力」日本ネットワーク (VAWW-NETジャパン) 編『日本軍性奴隷制を裁く:2000年女性国際戦犯法廷の記録』全6巻、緑風出版、2000–2002年].

<sup>27</sup> Violence Against Women In War-Network Japan (VAWW-NET JAPAN) (ed.) (2010), *The Truth Revealed: The NHK Program Falsification Case: The Women's International War Crimes Tribunal and Political Intervention*, Gendaisyokan [「戦争と女性への暴力」日本ネットワーク (VAWW-NETジャパン) 編 (西野瑠美子、東海林路得子責任編集)『暴かれた真実——NHK番組改ざん事件:女性国際戦犯法廷と政治介入』現代書館、2010年].

After that, the “comfort women issue” was rarely covered by the media.

**Document 5: The Women’s International War Crimes Tribunal for the Trial of Japan’s Military Sexual Slavery: Judgement on the Common Indictment and the Application for Restitution and Reparation**

**J. THE L E G A L AND M O R A L BASIS OF THE WOMEN’ S I N T E R N A T I O N A L WAR CRIMES TRIBUNAL**

**1. The History of Peoples’ Tribunals**

63. The Women’s International War Crimes Tribunal is not the first Peoples’ Tribunal – it is built upon prior examples, such as the Vietnam War Crimes Tribunals instituted by Lord Bertrand Russell in the late 1960s. ...

64. Another example of a Peoples’ Tribunal is the permanent Peoples’ Tribunal established in Italy in the 1970s by “private citizens of high moral authority” from a number of countries. ...

65. Peoples’ Tribunals are premised on the understanding that “law is an instrument of civil society” that does not belong exclusively to governments whether acting alone or in conjunction with the states. Accordingly, where states fail to exercise their obligations to ensure justice, civil society can and should step in. ...

68. A Peoples’ Tribunal can step in to fill lacunae in international law and to forge new ground in the development of international law by creating a “law of peoples” arising from principles of humanity and justice. ...

71. This Peoples’ Tribunal represents a belief that states cannot, through their political agreements and settlements, ignore or forgive crimes against humanity committed against individuals. Three characteristics in particular distinguish this Tribunal from its predecessors. First, these proceedings were held in Japan, the country which has perpetrated the wrongs charged in the Indictments and the Application for Restitution and Reparations. Second, it is a Women’s Tribunal, a Tribunal specifically established by an international committee of women’s groups to redress crimes of sexual violence against women. Third, the Tribunal was established by grassroots organisers from within the victimized countries rather than by distinguished persons from outside. It focuses upon crimes of sexual violence and slavery routinely discounted in peace settlements and effectively erased from or ignored in the official records.

72. The reliance in the earlier Peoples’ Tribunals upon well-known persons from “cultural, legal and religious life” 41 did not, however, ensure the inclusion of women’s voices. ...

74. ... It is our hope that the determinations of this Tribunal will not provide the former “comfort women” with the only form of redress they ever receive, particularly in light of their advancing years; but rather that the force of the Judgement of this Peoples’ Tribunal will finally persuade the state of Japan, the Allies, and the international community at large to fulfil their respective responsibilities to ensure the long and painfully overdue legal recognition of wrongdoing and provision of full remedies to the survivors and to those who claim on behalf of women who did not survive the atrocities.

(SOURCE) <https://archives.wam-peace.org/wt/wp-content/uploads/2020/02/Part-I.pdf>

## IV. Future Issues

### 1. Passing on “Memories” and “Reconciliation” – Textbooks and Museums

Memories have to be passed on in order to achieve reconciliation, and in that sense education is key. However, descriptions of “comfort women” were deleted from Japanese textbooks due to the government textbook authorization system.

In 1997, descriptions about “comfort women” and the term “post-war compensation” appeared in all junior high school history textbooks for the first time. In 1997, the Supreme Court ruled that censorship of terms like “Nanjing Massacre”,<sup>28</sup> “Unit 731”, “rape,” and “comfort women” was unlawful. However, this led to politicians intervening even more strongly into the field of education. This is symbolized by a revision of the Basic Act on Education in 2006 by the Abe administration and the establishment of the “Council for the Implementation of Education Rebuilding” in 2012. This council was placed directly under the oversight of the prime minister. The term “comfort women” has been included in textbooks for junior high school social studies (historical field) approved by the Ministry of Education since 1997. At that time, all seven types of history textbooks included related descriptions, but in 2002 the number was reduced to three, in 2006 to two, and in the 2011 certification (junior high school social studies textbooks from the 2012 academic year onward), all of them disappeared. In a 2021 parliamentary debate about textbooks, the government decided to still support the Kono Statement, but at the same time parliamentarians demanded that the basic stance of the government on descriptions of “comfort

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<sup>28</sup> The Nanjing Massacre (Nanking Incident) is an incident in which the Imperial Japanese Army occupied the city of Nanjing in the Republic of China at the end of 1937, at the beginning of the Sino-Japanese War, and allegedly killed, looted, raped, and torched many prisoners of war, defeated soldiers, and ordinary citizens over a two-month period. This fact was recognized at the postwar International Military Tribunal for the Far East (Tokyo Tribunal). The number of victims varies from several tens of thousands to more than 300,000. Although Japanese historical studies believe that the Nanking Incident is based on historical fact, conservatives strongly argue that the Nanking Incident did not take place. *Tokuji KASAHARA* (2018), *The History of the Nanjing Incident Controversy: How Japanese People Have Perceived the Historical Facts* (Enlarged Edition), Heibonsya [笠原 十九司『増補 南京事件論争史：日本人は史実をどう認識してきたか』平凡社・2018年].

<sup>29</sup> “Unit 731” was one of the research institutes that existed in the Imperial Japanese Army in 1936, and its official name was the Headquarters of the Quarantine and Water Supply Department of the Kanto Army (commonly known as the 73<sup>rd</sup> Manchuria Division). Based in Manchuria, its main mission was to prevent infectious diseases among soldiers and control water supply. At the same time, it was also engaged in research and development of biological weapons, and is said to have conducted experiments on human subjects and actual use of biological weapons. The defeat of the war led to the destruction of evidence, and according to U.S. military documents, the U.S. government concluded that the government should not hold the Far Eastern Military Tribunal to obtain information on Japanese biological warfare research, so the people involved were not charged with any crimes. *Keiichi TSUNEISHI* (2022), *The Complete History of Unit 731*, Kohbunken [常石 敬一『731部隊全史』高文研・2022年].

women” was to be reflected in the books<sup>30</sup>. Following this, descriptions of “comfort women” were removed from almost all high school history textbooks as well. The Japan Federation of Bar Associations (JFBA) has issued a number of statements criticizing the government’s move to censor the textbooks regarding the description of comfort women<sup>31</sup>.

However, the issue of “comfort women” has not been erased entirely. In 2005, the Women’s Active Museum on War and Peace<sup>32</sup> was opened in Tokyo. Records and materials related to the “comfort women” from the Woman’s International War Crime Tribunal are saved and displayed here.

## **2. The Importance of “Restoring Dignity” – Legal Responsibility and Moral Obligation**

Many female victims refused to accept the compensation payments from the Asian Women’s Fund, but they were grateful for the restoration of their dignity through the Women’s Tribunal. This fact shows that the restoration of dignity is key when it comes to the question of taking responsibility. Many victims said that the reason for them to come forward was their anger at the fact that their situation was distorted and disrespected.

The South Korean government has registered 273 “comfort women” victims, but in 2013 more than 70% of them had already died. Not only the dignity of individual victims has to be restored, but of all female victims, regardless of whether they could come forward or not. Therefore, an official apology is needed about the whole system of “comfort women.” For that, we need to preserve the memory of what happened and pass it on to the next generations.

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<sup>30</sup> On October 26, 2021, the Society for the Study of Japanese History published a letter of protest against the government’s intervention in textbook descriptions of “comfort women” and other historical terms, demanding the withdrawal of the government’s view and approval of applications for correction based on it, and the abolition of the 2014 revised examination standards (letter of demand).

<sup>31</sup> Japan Federation of Bar Associations (2014), Opinion Paper Concerning the Revision of Textbook Examination Standards, the Guidelines for the Screening of Textbook Examination Standards, and the Adoption of Textbooks (December 19, 2014), <https://www.nichibenren.or.jp/en/document/opinionpapers/20141219.html>, last visit 18.09.2023 [日本弁護士連合会「教科書検定基準及び教科用図書検定審査要項の改定並びに教科書採択に対する意見書」(2014年12月19日)]; Japan Federation of Bar Associations (2022), Statement against the Advocacy to Change Certain Descriptions in Textbooks in Line with the Government’s Point of View (February 17, 2022), <https://www.nichibenren.or.jp/en/document/statements/220217.html>, last visit 18.09.2023 [日本弁護士連合会「政府見解により教科書の「従軍慰安婦」強制連行」等の記述を変更させる動きに関する会長声明」2022年2月17日].

<sup>32</sup> <https://wam-peace.org/en/>, last visit 18.09.2023.

### 3. Understanding Wartime Sexual Violence – From “Asking” to “Listening”

Wartime sexual violence is not a sudden incident that appears out of nowhere during wartime – it is linked to everyday structural gender discrimination. Of course, not all sexual relationships during those times were violent. Some were based on mutual consent, some developed into love and marriage, and some resulted in pregnancy and childbirth, both wanted and unwanted. This continuum has to be acknowledged<sup>33</sup> and all experiences and thoughts of victims have to be accepted and listened to without any disrespect. We have to listen to the voices of the victims. In recent “comfort women” research respect towards the autonomy of the victims is shown. It tries to re-form the memory by listening to what the persons concerned want to tell, rather than asking what the audience wants to hear.<sup>34</sup>

## V. Conclusion – International Frameworks to Pursue “Transitional Justice”

The theoretical structure of transitional justice is very meaningful for understanding Japan’s “comfort women” issue, and the following points can be considered particularly from a gender perspective.

First, it is necessary to talk about the continuity of human rights violations. Wartime sexual violence against women was not seen as an international issue until the 1990s, something which must be borne in mind. This means that human rights have to be restored retroactively. For that, we must also acknowledge that the victims continue to suffer because there was no rescue mechanism or saving mechanism during the transitional periods in their home countries, and they had to remain silent about their physical and psychological suffering.

We also need an approach that does not limit the issue to the transition from dictatorship to democracy within one country. Instead, we need to discuss it within the context of two or even more states and also bear in mind transitions of the international community as a whole. The “comfort women” issue shows that for victims to

<sup>33</sup> Chizuko UENO/Shinzo ARARAGI/Kazuko HIRAI (2018), *Toward a Comparative History of War and Sexual Violence*, Iwanamisyoten, p. 1 [上野千鶴子・蘭信三・平井和子編『戦争と性暴力の比較史へ向けて』岩波書店・2018年・1頁].

<sup>34</sup> Puja KIM/Akane ONOZAWA (ed.) (2020), *Listening to the Victims of Sexual Violence: From “Comfort Women” to Contemporary Sexual Exploitation*, Iwanamisyoten [金富子・小野沢あかね編『性暴力被害を聴く——「慰安婦」から現代の性搾取へ』岩波書店・2020年]; Korean Council on the Issue of Paramilitary Personnel, 2000 Women’s International War Crimes Tribunal Testimony Team (translated by Tomiko KIM and Aya FURUHASHII, eds.) (2020), *Rewriting History with Memory: Listening to ‘Comfort Women’ Survivor’s Katari*, Iwanamisyoten. [韓国挺身隊問題対策協議会・2000年女性国際戦犯法廷証言チーム(金富子・古橋綾編訳)(2020)『記憶で書き直す歴史——「慰安婦」サバイバーのカタリを聴く』岩波書店].

speak up, a regime change in their countries was necessary. However, the states responsible for perpetrating the crimes often supported and upheld dictatorships, or they just kept silent and accepted the actions of the dictator countries. Responsibility must therefore also be taken for not allowing a transition in those countries and therefore contributing to a longer continuation of the suffering.

Finally, we have to understand that cases concerning post-war compensation are pursued by victims of war crimes that have not yet been brought to justice. The “comfort women” lawsuits can be considered “retrials” of the International Military Tribunal for the Far East (Tokyo Trial of 1946). International law developed as a means to maintain interstate order and provided a legal basis for asking for war responsibility and peace. Post-war international human rights law supplemented this aspect of international law, but it still could not escape from a Western and male-dominated model. After human rights and gender mainstreaming were made possible in the 1990s, apologies were made and, for the first time, facing actions of the past was considered to be an element of justice. Thinking about the “comfort women” issue is an important historical opportunity for broadening the intertemporal approach of international human rights law towards a more transtemporal approach, and at making this approach more precise.