

No. 8471. TREATY¹ ON BASIC RELATIONS BETWEEN
JAPAN AND THE REPUBLIC OF KOREA. SIGNED AT
TOKYO, ON 22 JUNE 1965

Japan and the Republic of Korea,

Considering the historical background of relationship between their peoples and their mutual desire for good neighborliness and for the normalization of their relations on the basis of the principle of mutual respect for sovereignty ;

Seeking Meaningful Redress for Korean Forced Labour Survivors

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ALPHA Education

Japan :

Etsusaburo Shiina, Minister for Foreign Affairs of Japan
Shinichi Takasugi

The Republic of Korea :

Tong Won Lee, Minister of Foreign Affairs of the Republic of Korea
Dong Jo Kim, Ambassador Extraordinary and Plenipotentiary of the Republic
of Korea

Who, having communicated to each other their full powers found to be in good and due form, have agreed upon the following articles :

¹ Came into force on 18 December 1965, the date of the exchange of instruments of ratification at Seoul, in accordance with article VII.

² United Nations, *Treaty Series*, Vol. 136, p. 45.

³ United Nations, *Official Records of the third session of the General Assembly, Part I, Resolutions* (A/810), p. 25.

Introduction

The legacies of World War II remain alive in the everyday realities of many individuals. It left in its wake unspeakable casualties and untied loose ends for many who survived the atrocities that occurred. One of these groups that continues to fight for redress are the Chinese and Korean forced labourers who were exploited at the hands of Japanese corporations during WWII. To this day, there is yet to be any formal acknowledgment or sincere apology by the Japanese government or Japanese corporations regarding the forced labour and exploitative conditions that millions of individuals were subject to.¹ This paper will focus on the South Korean context and consider factors that have led to the lack of redress by Japan and, most importantly, what the implications are for survivors in light of what meaningful justice means to them.

The Post-War Context and the United States' Role

To better understand some of the key factors that have led to the lack of redress and formal recognition by the Japanese government of the atrocities committed against Korean victims during WWII, it is important to understand the post-war international context. Namely, how the United States' Cold War interests in Asia deeply shaped the ways in which Korea was hastily pressured into entering superficial resolutions with Japan. Following WWII, the US became actively involved in anti-communism efforts in Asia, with Japan as a key ally and central player in its regional strategy.² Moreover, the US supported right-wing authoritarian regimes in Asia, including in Japan and South Korea, as part of forwarding their single-minded agenda of anti-communism.³ These developments laid the foundation for the lack of wartime redress that occurred in Asia following WWII.

An important way in which redress occurs is through "transitional justice", which is a period following war or colonization where redress and reconciliation are sought to be achieved through military tribunals, reparations, and formal apologies.⁴ A key reason why forced labour issues have been unredressable is because the post-war era between Japan and South Korea lacked this integral period of transitional justice. While the post-war period in Europe was marked by transitional justice through measures like the Nuremberg Military Trials, which prosecuted and sentenced guilty individuals to death or life imprisonment for the heinous crimes they committed, the same kind of crackdown did not occur in Asia.⁵

After WWII in 1947, the US's priority in Asia shifted to blocking the spread of communism. And in order to forward this interest, it was important for the US to ally themselves with an anti-communist Japan.⁶ During the Tokyo War Crimes Trial (1946-48), many top-ranking individuals who were guilty of war crimes were

¹ Juana Wai Sum Lee, "The Unsolved Legacy of Forced Labour During World War II in Asia" (master's thesis, Columbia University, 2020), 11, <https://doi.org/10.7916/d8-cfmk-cz52>.

² Eva Hansson, Kevin Hewison, and Jim Glassman, "Legacies of the Cold War in East and Southeast Asia: An Introduction," *Journal of Contemporary Asia* 50, no. 4 (2020): 496, <https://doi.org/10.1080/00472336.2020.1758955>.

³ *Ibid.*

⁴ Lisa Yoneyama, *Cold War Ruins* (Durham and London: Duke University Press, 2016), 16.

⁵ Yoneyama, *Cold War Ruins*, 2.

⁶ Hansson, "Legacies of the Cold War," 496.

exempted from being tried or prosecuted.⁷ For example, Kishi Nobusuke was a high-ranking official known to have committed many war crimes, but he was considered a valuable asset for US interests due to his vast network of connections to financiers and influential far-right nationalists.⁸ Rebuilding an anti-communist Japan was the main priority, so the US shaped the kind of redress that occurred, or rather did not occur. In advancing their priority of making anti-communist allies in the region, the US enabled the dismissal of Japan's many war crimes, including the issue of forced labour. Further, by supporting a military dictatorship in South Korea, the US hastened diplomatic relations and normalization between South Korea and Japan in a way that encouraged the erasure of war crimes and ignored the importance of redress.⁹ The authoritarian military regimes in South Korea, which lasted until the 1990s under US support, were uninterested in taking steps to provide WWII survivors of sexual slavery and forced labour with redress or reparations.¹⁰ It was not until South Korea became more democratic in the late 1990s that redress activism could more robustly organize and occur.¹¹ The next section will consider how various lawsuits brought by Korean plaintiffs against Japanese corporations fared within the South Korean legal system, and the impact, or lack thereof, these rulings have had on bringing about meaningful redress for survivors. While reading about these legal efforts, keep in mind the role that US hegemonic interests played in setting the stage for the upward battle that survivors continue to face in trying to obtain redress.

There are many different factors that influence a court's decision on any given lawsuit, but in the context of forced labour lawsuits brought by plaintiffs against Japanese corporations, the decisions have largely hinged upon interpretations of the 1965 Treaty on Basic Relations Between Japan and the Republic of Korea. The primary aim of the 1965 Treaty was to settle property claims between Korea and Japan and to promote economic cooperation between the two nations.¹² However, Article II(1) of the treaty also includes a provision stating that "claims between the contracting parties and their nationals...are settled completely and finally."¹³ Interpreting this provision has been at the heart of the legal question of whether South Korean plaintiffs are able to bring claims against Japanese parties. Japan is of the position that all issues of wartime compensation were resolved by the treaty through Article II(1), and that this bars Korean parties from bringing wartime claims against Japanese parties.¹⁴ On the other hand, others hold the view that the treaty did not waive the right of survivors to bring claims by reasoning that the South Korean government must have sufficiently notified and consulted survivors and potential claimants before signing onto an agreement that seeks to waive their right to claim compensation.¹⁵ Because they failed to do so, some argue that the treaty did not waive the right of survivors to make wartime claims.

It is also relevant to note that the 1965 Treaty was signed during a period of authoritarian rule in South Korea in the Cold War context described in the above section. As such, the government at the time prioritized

⁷ Yoneyama, *Cold War Ruins*, 31.

⁸ *Ibid.*

⁹ Yoneyama, *Cold War Ruins*, 3.

¹⁰ Lee, "The Unsolved Legacy of Forced Labour," 27.

¹¹ Lee, "The Unsolved Legacy of Forced Labour," 27.

¹² Victor Cha, "Bridging the Gap: The Strategic Context of the 1965 Korea-Japan Normalization Treaty," *Korean Studies* 20 (1996), 124.

¹³ "Japan-Korea Treaty on Basic Relations," *International Legal Materials* 4, no. 5 (1965): 924-27, <https://doi:10.1017/S0020782900046829>.

¹⁴ Hyonhee Shin, "South Korea court dismisses forced labour case against Japanese firms," *Reuters*, June 7, 2021,

<https://www.reuters.com/world/asia-pacific/south-korea-court-dismisses-forced-labour-case-against-japanese-firms-2021-06-07/>.

¹⁵ Lee, "The Unsolved Legacy of Forced Labour," 14.

economic and political development over seeking accountability for wartime victims.¹⁶ This post-war period of authoritarian rule and heavy US influence in South Korea not only failed to bring about a period of transitional justice, but hasty attempts to normalize relations between South Korea and Japan and the disproportionate focus on economic development led to the signing of a treaty that would go on to pose a significant legal hurdle for victims seeking redress.

Nevertheless, there have been several decisions by South Korean courts that have ruled in favour of Korean plaintiffs in forced labour cases, starting with a landmark ruling in 2012 by the Supreme Court of Korea recognizing the right of Korean forced labour victims to claim compensation from Japan.¹⁷ This decision indicated that South Korean courts were willing to interpret the 1965 Treaty in a way that is sympathetic to the goals of redress and accountability. And in 2018, the Supreme Court once again ruled in favour of Korean plaintiffs in two separate cases, one against Nippon Steel and the other against Mitsubishi Heavy Industries.¹⁸ The Supreme Court ordered both defendant companies to pay compensation to the plaintiff parties and re-affirmed that the 1965 Treaty did not terminate the rights of forced labour victims to seek reparations.¹⁹ However, legal victories amount to nothing more than symbolic victories if not accompanied by willingness on the part of the Japanese government and corporations to provide meaningful redress to survivors. Although these legal rulings in favour of Korean plaintiffs are a non-negligible step forward in obtaining justice for forced labour victims, it has yet to produce tangible results, whether that be formal apologies or monetary compensation.

Nippon Steel and Mitsubishi Heavy Industries did not accept the 2018 Supreme Court rulings against them and maintained the Japanese government's position that the 1965 Treaty bars South Korean nationals from making wartime compensation claims against Japan.²⁰ As such, the companies have not paid the compensation amounts they were ordered to pay. The 2018 decisions escalated diplomatic conflict between South Korea and Japan, as Japan condemned the Supreme Court's decisions and South Korean courts took steps to enforce the ruling.²¹ In December 2019, the Daegu District Court approved a request by plaintiffs from the Nippon Steel case to seize the company's local assets in light of the company's lack of response to the Supreme Court's order that they pay compensation.²² In this way, South Korean courts have tried to exert domestic pressure on Japanese corporations to make reparations, but such efforts led to a trade war and serious political tension between the two countries.²³ Given the ways in which the issue of forced labour compensation seems to unavoidably trigger further issues of international relations and diplomacy, the process of achieving redress for victims is plagued by complex barriers that go beyond the scope of the courts. But in order to fully assess the limitations of the legal system and consider alternative paths to obtaining redress, it

¹⁶ *Ibid.*

¹⁷ "Supreme Court of Korea: Ruling of the First Petty Bench on Case No. 22549 of 2009 ㄹ on Claim for Compensation," (May 24, 2012) [in Korean].

¹⁸ Youkyung Lee, "South Korea–Japan Feud Deepens Over Mitsubishi Forced Labor Case," *Time*, November 29, 2018, <https://time.com/5466430/south-korea-japan-wwii-mitsubishi-compensation/>.

¹⁹ Tong-Hyung Kim, "Court orders Japan company to pay 4 Koreans for forced labor," *AP News*, October 30, 2018, <https://apnews.com/article/474886c44d2c498e94e90c0a8abc5f6>.

²⁰ *Ibid.*

²¹ Lee, "The Unsolved Legacy of Forced Labour," 45.

²² Lee, "The Unsolved Legacy of Forced Labour," 46.

²³ *Ibid.*

is integral that the demands of survivors and what meaningful redress means to them are at the center of these discussions.

Meaningful Redress

While pursuing legal victories is one channel through which redress activism can occur, as we have seen, even the highest court of the land ruling in favour of survivors does not automatically lead to meaningful redress being achieved. But what constitutes meaningful redress? And what do survivors really want? Although the Chinese context is distinct in many ways from the Korean one, the three non-negotiable demands that have been articulated by the Chinese forced labour redress movement are informative of what Korean survivors also seek from Japan: (1) Acknowledgment of the atrocities committed and an apology for these crimes; (2) Constructing a memorial to memorialize victims and educate the public; (3) Compensation for victims.²⁴ These demands are echoed by Korean activists, with key demands being a sincere public apology, acknowledgment by the Japanese government and corporations of the atrocities they committed, and payment of damages.²⁵ Meaningful redress to survivors includes, at its core, genuine acknowledgments and apologies from the wrongful parties, and this is something that goes beyond the mere payment of monetary compensation. As such, purely monetary settlements or court orders for the payment of damages is not enough. However, given that even the payment of court-ordered damages to Korean plaintiffs has been met with significant resistance from the Japanese parties, there is yet a steep uphill battle to climb in obtaining all of the key demands of meaningful redress. And given the nature of these demands, the legal system is not equipped to be the sole channel through which redress activism occurs.

South Korea's 2023 Plan to Compensate Forced Labour Victims

In March 2023, the South Korean government announced a plan to compensate forced labour victims through a public foundation funded by South Korean corporations who economically benefitted from the 1965 Treaty.²⁶ What is notable about this plan is that none of the guilty Japanese parties are required to contribute to this fund.²⁷ The South Korean government expressed that it merely *hopes* that Japanese corporations will consider providing voluntary contributions, and is unwilling to exert any kind of pressure to compel this.²⁸ The motivation behind this decision is a political one, as South Korea's government seeks to amend its relations with Japan in order to secure stronger diplomatic relations and security cooperation with the country amidst North Korea's nuclear ambitions.²⁹ Especially in light of the 2018 Supreme Court ruling and the strained

²⁴ Ivy Lee, "Toward Reconciliation: The Nishimatsu Settlements for Chinese Forced Labor in World War II," *The Asia-Pacific Journal* 8(32), no. 6, (2010), 4.

²⁵ Lee, "The Unsolved Legacy of Forced Labour," 38.

²⁶ "S Korea announced plan to resolve row over Japan forced labour," *Aljazeera*, March 6, 2023, <https://www.aljazeera.com/news/2023/3/6/s-korea-announces-plan-to-resolve-row-over-japan-forced-labour>.

²⁷ *Ibid.*

²⁸ *Aljazeera*, "S Korea announced plan to resolve row over Japan forced labour."

²⁹ Michelle Ye Hee Lee, "South Korea to compensate victims of Japan's wartime forced labor," *The Washington Post*, March 6, 2023, <https://www.washingtonpost.com/world/2023/03/06/south-korea-japan-forced-labor-compensation/>.

relations between South Korea and Japan that followed, the US has also pressed the two nations to improve their relations.³⁰ As such, the US welcomed the proposed plan and applauded it as a move towards “coordination and partnership for two of the United States’ closest allies.”³¹ This is once again an example of how removed political bodies, including the US, continue to subordinate and ignore the interests of survivors seeking redress in favour political and economic goals.

This development has been met with heavy criticism from survivors as the plan fails to hold Japan accountable in any way for the atrocities committed.³² As discussed in the above section, meaningful redress must include sincere apologies, acknowledgments, and compensation by the Japanese government and corporations. Through this decision, the South Korean government has revealed its prioritization of amending its relations with Japan over the demands of survivors. The proposed fund is to be distributed to the plaintiffs from the 2018 Supreme Court cases, but the surviving plaintiffs have already stated that they will refuse the money, expressing their grave disapproval with the way in which the South Korean government seeks to sweep this issue under the rug.³³ This is a unilateral move by the South Korean government to dismiss the forced labour redress movement, and we have yet to see how they will or will not respond to the fervent opposition expressed by survivors, who are the very individuals the proposed fund is supposed to address. This is a demonstration of the continued failure to center the interests of survivors in the government’s attempts to resolve this issue.

Conclusion

Given the ways in which the demands of the forced labour redress movement are so intricately tied to political, economic, and transnational interests, survivors continue to face numerous challenges in their battle to obtain meaningful redress. As well, the core demands of survivors – apology, acknowledgment, and compensation – all require a level of willingness by the relevant Japanese parties to meaningfully reflect on their past and take steps to rectify the harm they caused. This is an ideal situation that may seem far out of reach, but it is the hope of survivors and supporters of survivors that alongside the redress activism that continues on, the broader international public will be educated about WWII history in Asia, so that these atrocities will not be forgotten in our collective memories.

³⁰ Jean Mackenzie and Nicholas Yong, “South Korea to compensate victims of Japan’s wartime forced labour,” *BBC News*, March 6, 2023, <https://www.bbc.com/news/world-asia-64858944>.

³¹ *Aljazeera*, “S Korea announced plan to resolve row over Japan forced labour.”

³² Mackenzie, “South Korea to compensate victims of Japan’s wartime forced labour.”

³³ *Ibid.*

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