Seoul Central District Court

The 34th Civil Chamber

Judgment

Case no.: 2016 Ga-Hap 505092 Compensation for Damage (Others)

Plaintiffs: 1. OOO
2. OOO
3. OOO
4. OOO
5. OOO
6. OOO
7. OOO
8. OOO
9. OOO
10. OOO
11. ◆◆◆, Successor of OOO
12. OOO
Attorney of the Plaintiffs Kim, Kang-won

Defendant: State of Japan
Legal representative Minister of Justice Kamikawa Yoko

End of Pleadings: October 30, 2020

Verdict Issued: January 8, 2021

Order

1. The Defendant should recompense 100,000,000 KRW to each Plaintiff.
2. The Defendant bears the cost of litigation.
3. Section 1 of this Order may be provisionally executed.

Relief

Follows the Order[1]

Reasoning

1. Basic Facts

A. Imperial Japan's[2] Forced Annexation of the Korean Peninsula, Forced Mobilization of Joseon[3] People, and the End of the War

1) After the Korea-Japan Annexation Treaty of August 22, 1910, Imperial Japan ruled the Korean Peninsula through the Government-General of Korea. Imperial Japan assumed a war footing in the East Asia region by initiating the Manchurian Incident in 1931 and the Sino-Japanese War in 1937. In 1941, Imperial Japan initiated the Pacific War and the battlefronts extended beyond East Asia to the Pacific Islands and the South Pacific Ocean area.

2) As Imperial Japan waged war, it began to suffer labor and war supplies shortage. In response, Imperial Japan implemented the Guidelines for Total National Spirit Mobilization Campaign in August 1937 and enacted and promulgated the National Mobilization Law on April 1, 1938, and the National Service Draft Ordinance on July 8, 1939. In November 1941, it required unmarried women between the ages of 14 and 25 to cooperate with the Labor Patriotism Corps for a maximum of 30 days a year based on the National Labor Patriotism Corps Cooperation Ordinance.[4] From the late 1930s, Imperial Japan mobilized both men and women from colonial Korean peninsula as "Volunteer Labor Corps" for a variety of work including road building, medicine, and manual labor. On August 23, 1944, the Japanese Emperor announced the "Women's Volunteer Labor Ordinance," officializing the above "Volunteer Labor Corps." Koreans were mobilized for Volunteer Labor Corps through "recruitment" from September 1939,

[1] Attorney of the Plaintiffs stated the changed reliefs during the fourth date of pleading on October 30, 2020 as per the request for change in reliefs submitted on October 28, 2020.
[2] Imperial Japan was established in 1868 through the Meiji Restoration and existed in the Japanese archipelago until 1947 when the current Japanese Constitution was adopted. It is the predecessor of the Defendant.
[3] *t/n:* "Joseon" refers to Joseon dynasty of Korea.
[4] National Labor Patriotism Corps Cooperation Ordinance was amended in December 1943 to increase the mobilization days of women between the ages of 14 to 25 from 30 days to 50 days, and was amended in November 1944 to expand its scope to women without spouses between the ages of 14 to 40.

through “government facilitation” from February 1942, and through the “National Conscription Order” from September 1944.

3) The Pacific War which Imperial Japan initiated came to an end after atomic bombs were dropped on Hiroshima on August 6, 1945, and Nagasaki on August 9. Emperor Hirohito of Imperial Japan declared an unconditional surrender to the Allied Forces including the United States of America at noon on the 15th of that same month.

B. Mobilization Process of “Comfort Women”[5]

1) Imperial Japan’s installation of comfort stations and mobilization of “comfort women”

a) The installation of comfort stations

“Comfort stations” were first installed by the Japanese Navy as a preventive measure against the frequent rapes committed by Japanese soldiers during the Shanghai Incident in 1932 that resulted in problems, such as local resistance and sexually transmitted diseases. As the Second Sino-Japanese War began in full force, Imperial Japan decided to build “comfort stations” to manage soldiers given the expansion of the battlefronts. It was the intention of Imperial Japan to offer soldiers "mental comfort" thus boosting their morale and alleviating discontent of soldiers prone to deserting a war that never seemed to end and also, in particular, to reduce the possibility of the leakage of military secrets by placing women from colonies who cannot speak Japanese as “comfort women.” From 1937, comfort stations began to be installed in full scale in war zones such as China, which was occupied by the

[5] Women who were mobilized to fulfill sexual demands of Japanese military soldiers during the Asia-Pacific War were referred to as “chongshindae” (distinct from Women’s Volunteer Labor Corps), “conscription of unmarried women,” “Patriotism Corps,” “Labor Corps,” “jugun ianfu.” Around 1990, The *Chongshindae* Research Group and The Korean Council for the Women Drafted for Military Sexual Slavery by Japan decided to use the terminology “Japanese military ‘comfort women.’” Given that this terminology also labels sexual violence perpetrated by men as giving “comfort” to men, some argue that the terminology should be changed to “sexual slavery,” “war slave,” “military sexual slavery,” or “Japanese military ‘comfort women’ victim.” The Act on Protection, Support, and Commemorative Projects for Sexual Slavery Victims for the Japanese Imperial Army uses the terminology “Japanese military ‘comfort women’ victims.” In her report titled ‘‘Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict,” Gay McDougall, Special Rapporteur for the UN Sub-Commission on the Promotion and Protection of Human Rights, referred to military comfort stations as “rape centers” or “rape camps,” and the women as “sex slaves.” While a number of terminologies are being used, this judgment refers to the women as “comfort women” following the terminology the Plaintiffs used and the facilities they resided within or outside military camps as “comfort stations.”

Japanese military. As the area occupied by the Japanese military expanded after 1941, the military comfort stations were further installed in Southeast Asia and the South Pacific area.

The Imperial Japanese Army amended the Battlefield Canteen Regulations via The Army Ministry of Japan Document Vol. 48 on September 29, 1937, to allow the installation of comfort stations in military canteens (a shop established in military camps during wartime that sells goods to soldiers and civilians attached to the military). On July 18, 1943, the Imperial Japanese Army stipulated in the Regulations for Facilities Outside Military Camps that special comfort stations exclusively for soldiers and civilians attached to the military could be established outside military camps, but as entrusted businesses if the camp hosts a squadron or larger unit. These regulations provided the basis for installing comfort stations within and outside military camps. The Wartime Military Service Guide published by the Japanese military in May 1938 urged readers to “seek active preventive measures against sexually transmitted diseases, implement sanitary facilities for comfort women, and prohibit contact with prostitutes and locals other than those designated by the military.”

b) Mobilization of “comfort women”

Imperial Japan mobilized “comfort women” to comfort stations installed in the battlefronts through various methods targeting women from various countries in its occupied territories, including its own country. The methods of mobilization included ① forced mobilization through physical force, threats, and abduction of women, ② mobilization through local community leaders, government officials, and schools, ③ mobilization through false promises of ”employment and big money,” ④ commission to private recruiters, and ⑤ mobilization through labor corps and conscription.

2) The role of Imperial Japan in the transportation of “comfort women” and in the operation of comfort stations

The Japanese military headquarters provided the convenience for the smooth transportation of mobilized “comfort women” to places outside the Korean peninsula by issuing identification cards required for overseas travel or free

passports. The Japanese soldiers or police directly carried out the tasks of transporting “comfort women” to the battlefronts. Comfort stations were directly managed by the Japanese military or commissioned to private operators by the Government of Imperial Japan. In cases where private operators were commissioned, the Japanese military supervised the operation and management of comfort stations by selecting and determining the private operator’s operations of business, acquisition of equipment and facilities, opening hours, fees, use of contraceptive measures, etc. The healthcare of “comfort women” (limited to the prevention, diagnosis, and treatment of sexual disease) were mainly managed by the Japanese military doctors. When “comfort women” escaped, the Japanese military itself tracked them down and dragged them back to the “comfort station” or killed them on the spot.

3) Individual cases of “comfort women” mobilization process and experiences at comfort stations for each Plaintiff

a) Plaintiff OOO was born in Seongju-eup, Seongju-gun, North Gyeongsang Province in 1923 and moved to Daegu when she was 19. In October 1941, a Japanese who was around 40 years old and several Joseon[6] men visited her friend’s house and enticed her with promises of “employment in Seoul.” The Plaintiff OOO followed them, hoping to find employment in Seoul and to bring herself out of her impoverished family. When the Plaintiff arrived in Seoul, the Joseon man told her that the job was not located in Seoul and boarded her on a train at Seoul station. The above Plaintiff was taken to a Japanese military comfort station at Sanjiang Province, China.

Plaintiff OOO lived at the comfort station with 27 other Korean “comfort women.” She was not fed properly, and was forced to sexually serve 5-6 Japanese soldiers during the weekdays and 15-16 soldiers during the weekends and holidays.

b) Plaintiff OOO was born in Jeongseon-gun, Gangwon Province in 1926. After moving to Cheorwon, she was forced to change her name under the Japanese colonial rule to “Kanemoto Kimiko.” While on an errand in 1942, she was dragged to a truck through physical force and abducted by a man dressed as a soldier on the streets. She was taken to a Japanese military comfort station in Hunchun, Jilin Province, China.

[6] Follows terminology as stated by Plaintiffs. The same is reflected throughout paragraph 3).

Plaintiff OOO was forced to work as a “comfort woman” and coerced to provide sexual services to as many as 40 Japanese soldiers a day with weekly gynecology examinations. She was often beaten by Japanese soldiers in the comfort station, which resulted in ruptured eardrums.

c) Plaintiff OOO was born in Sangju-si in 1928. In 1943, she heard rumors that the Japanese military was “taking away unmarried women” and “recruiting labor corps” and hid in her mother’s friend’s house. On her way back, Japanese police officers visited her house and handed her a mobilization document with her name printed on it. She was put at the back of a truck and taken away from her house without knowing where she was taken to, having only been told that she “will be taken to a place for weaving clothes.”

Plaintiff OOO had to change her name to “Okada” under the Japanese colonial rule and was transported to Shenyang, China. She was forced to sexually serve 7-8 Japanese soldiers each day at a comfort station in Changchun, China, while being regularly injected with vaccination for sexually transmitted diseases. The comfort station where Plaintiff OOO was taken to had regular gynecology examinations performed by Japanese military doctors. A Japanese woman who was known as a wife of an executive officer of the Japanese military oversaw the management of the comfort station.

Plaintiff OOO was severely beaten by soldiers, to the point that her hair could not grow around the top of her head. Plaintiff OOO was in her mid-teens at the time. She was often ill and had a fever as she was too young and weak. Japanese soldiers even tried to abandon her at a mountain and burn her to death, claiming that her illness could be transmitted to another person.

d) Plaintiff OOO (registered as born in 0000) was born in Busan in 1927. On her way to an errand in July 1942, she was forcibly dragged by unknown men and was taken to China.

Plaintiff OOO was taken to a concentration camp in Yanji, Jilin Province, China, where iron bars were installed. She had to change her name to “Tomiko” and was mobilized to construction work expanding an air base that the Japanese military was using. At the construction site, a barbed electrical wire was installed to deter laborers from escaping. During her time there, she

was repeatedly raped and beaten up by Japanese soldiers. A while after, the Japanese soldiers sent Plaintiff OOO to a nearby comfort station. Plaintiff OOO was locked up at the comfort station and forced to sexually serve 30-40 Japanese soldiers per day. Plaintiff OOO was severely abused with deadly weapons when Japanese soldiers' sexual demands were not met.

In the end, Plaintiff OOO suffered from a sexually transmitted disease called syphilis, and when she did not recover even after regularly receiving injection No. 606[7], she received extreme treatment using mercury. After that treatment, she was no longer able to conceive. Plaintiff OOO tried to escape from the comfort station, but was dragged back by Japanese soldiers and was severely beaten until her entire body was covered with blood. Due to the beatings, she suffered from ear ailments but could not receive any treatment. She still has difficulties in hearing.

e) Plaintiff OOO was born in Miryang, South Gyeongsang Province, in 1924. In 1941, a friend asked, "Would you like to work at a sewing factory in China?" Plaintiff OOO wanted to help her impoverished household, so she boarded a train to China with a "comfort women" recruitment agent, thinking she and her friend were going to a factory in China.

After the train, which Plaintiff OOO and other Joseon women had boarded, arrived in China, the said Plaintiff was taken to a comfort station near Muling, Heilongjiang Province, China. She was forced to sexually serve more than 15 soldiers per day as a "comfort woman." She was subject to weekly gynecology examinations by Japanese military doctors and received injection No. 606. She was often beaten by soldiers and managers of the comfort station. When she had spare time, she had to clean and sew the Japanese soldiers' clothes and perform singing for wounded Japanese soldiers. Plaintiff OOO also witnessed other "comfort women" who were sick or died at comfort stations due to diseases or escaped comfort stations, unable to bear the life of being a "comfort woman".

f) Plaintiff OOO was born in Pyeongyang in 1922. When she was 20 years old, she heard that she could "earn money at a factory." She followed a "comfort women" recruiter to Dongning, Heilongjiang Province, China, and was

[7] The injection was "Salvarsan," which was frequently used for treatment of sexually transmitted diseases such as syphilis.

confined in the comfort station there. The manager of the comfort station was from Joseon but only Japanese soldiers used the comfort station. The Japanese soldiers entered with “tickets” they bought from the comfort station manager. When they gave tickets to the “comfort women,” the “comfort women” would then bring them to the manager and calculate the total amount. The Plaintiff OOO was subject to weekly gynecology examinations by Japanese military doctors. She was punished by managers when she received fewer soldiers or could not meet the sexual demands of Japanese military soldiers due to illness.

Plaintiff OOO became pregnant while forced to work as a “comfort woman” and left the station when a Japanese military official offered to pay off her debts and told her to go back home. Unable to raise her newborn baby by herself, she left the child with a Chinese person. She was scared to be trafficked again and ended up entering Shimenzi comfort station. She was pregnant again and left that comfort station. Plaintiff OOO witnessed other “comfort women” who attempted suicide or escaped, unable to bear the life at comfort stations.

g) Plaintiff OOO was born in Asan in 1929 and got married around November 1943 to avoid forced mobilization of unmarried women. However, her husband was forcibly mobilized the day after they married, and Plaintiff OOO was forced by Japanese police to board on a train about two or three days afterwards. After traveling from Busan to Shimonoseki, Japan, she arrived at “Tokudai” military camp and received military uniforms as clothing. Afterward, she was forced to sexually serve 20-30 Japanese soldiers per day as a “comfort woman.” Her life was unstable as she had to stay at air-raid shelters during the day and was returned to comfort stations at night. She was transported to a military ship, where she was forced to continue serving as a “comfort woman.” At the comfort station, her clothes were torn with swords and she was assaulted with deadly weapons, which left her with permanent scars.

h) Plaintiff OOO was born in Jechun, North Chungcheong Province in 1930. Around February 1945, she was told that she “would be able to study abroad in Japan” and left for Japan with congratulations from students in the entire

school. She was mobilized to Okayama airplane factory, where she was locked up and forced to serve as a “comfort woman” for Japanese soldiers.

i) Plaintiff OOO (registered as born in 0000) was born in Gwancheol-ri, Imsil-gun, North Jeolla Province in 1926.[8] In 1943, upon rumors that Japanese soldiers were taking girls away, she hid in an acquaintance’s house. A local government official dragged her out, saying “you will get well-fed if you go (to a cotton cloth factory).” She had to go against her will and was taken to “Yasishima” comfort station in the South Pacific Islands after boarding multiple trains and ships. Japanese soldiers came to the comfort station, and when Plaintiff OOO cried, they beat her up.

j) Plaintiff OOO was born in Andong in 1929 and was forcibly taken by Japanese police officers to Hokkaido, Japan. She changed her name to “Kaneyama Wonka” there and thought she would be going to a factory. However, she was placed with about 100 women in a military camp facility and did chores such as cooking and laundry for the soldiers. She was sexually assaulted and raped multiple times. When she tried to resist, she was severely beaten by soldiers and her leg was broken due to the beatings.

k) Plaintiff OOO (registered as born in 0000) was born in Daegu in 1927 and received a job offer from a Japanese soldier in October 1944. Although she declined, she was forcibly dragged and taken to a comfort station in Manchuria, China, where she was forced to serve as a “comfort woman” for Japanese soldiers.

l) Plaintiff OOO was born in Namhae-gun, South Gyeongsang Province, in 1922. While collecting clams by the seashore with her cousin in 1938, she was forcibly dragged away by Japanese soldiers and taken to Nagoya, Japan. From there, she was sent to Manchuria, China, and lived at a comfort station in front of a Japanese military platoon in Manchuria with 20 other “comfort women.” She was forced to sexually serve multiple Japanese soldiers during the holidays. The comfort station where the Plaintiff resided was managed by

[8] In the case of Plaintiff OOO, the birth year listed in her resident registration and the birth year listed in interview materials in her testimony (Exhibit 23-1) does not match and contain a significant difference. However, the Plaintiff was born before the Resident Registration Act was enacted, and the documents that could prove her birth were destroyed through the Japanese colonial rule and the Korean War. As multiple cases exist of people born around this time whose resident registration do not match their actual birth year, the birth year as testified by the Plaintiff is documented as is.

Japanese military female soldiers. When “comfort women” ran away from the comfort stations, they were shot to death if captured.

m) Plaintiff OOO, OOO, OOO, OOO, OOO, OOO, OOO, OOO, OOO, OOO, OOO, OOO (hereinafter “the Plaintiffs”) were each assigned a room in the comfort stations, which were group lodgings, received one or two meals a day, and underwent gynecological examination once a week by Japanese military doctors to check if they had sexually transmitted diseases. Sexually transmitted diseases and other gynecological illnesses would be treated but treatment for other illnesses was not provided at all. “Comfort women” suffering from infectious diseases such as dysentery were quarantined or abandoned.

Their meals were very poor, so they ate grass or mixed it with bean paste. They cleaned and wore old military uniforms used by Japanese soldiers. They were made objects of soldiers’ sexual desires multiple times a day, and even more soldiers visited on the weekends. When the soldiers’ demands were not met, they violently assaulted and seriously injured the women.

The managers at the comfort stations surveilled the “comfort women” to prevent them from fleeing. When the “comfort women” were sick or resisted and did not respond to the sexual demands of the Japanese soldiers, the managers would beat the “comfort women.” When “comfort women” escaped, the Japanese military tracked them down and either killed them or dragged them back to the station. If “comfort women” succeeded in escaping, surveillance of the remaining “comfort women” became even more severe.

The Plaintiffs were not paid by the managers of comfort stations, and, even when they did, the money they received was only an insignificant amount.

C. The Lives of the Plaintiffs After the End of the War

1) When the war ended, the Japanese military abandoned the “comfort women” in comfort stations and retreated. Plaintiffs wandered around the comfort station without knowing that the war was over and found themselves in the middle of battlefields, or had to perform all kinds of work to make ends meet. Most of the Plaintiffs were not able to return home immediately and had to wander around in China and Japan.

2) The Plaintiffs either could not get married, or those who did were not able to maintain a stable marriage. Even when they managed to return home, their parents or family members regarded them with shame, leaving them unable to engage in normal social life. They also struggled with speaking about their past and many hid their “comfort women” history from their husbands and children. One Plaintiff’s husband rebuked the Plaintiff after marriage for “not revealing that she was a ‘comfort woman’ before the marriage.”
3) The Plaintiffs suffered physical damages from injuries, illnesses, and aftereffects of sexually transmitted diseases at the comfort stations. In addition to physical damages, they suffered from severe psychological damages and could not adjust to normal social activities, which left them unable to have stable jobs and in poverty.

D. International Conventions that Imperial Japan Had Signed by the End of the War

1) The Convention with Respect to the Laws and Customs of War on Lands
The Convention with Respect to the Laws and Customs of War on Lands was signed at the Hague Peace Conference in 1907. The Convention was ratified by Imperial Japan on December 13, 1911. Article 3 of the Convention stipulates that “a belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces,” and Article 46 of its Annex of Regulations states “family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.”
2) International Convention for the Suppression of the White Slave Traffic
The International Convention for the Suppression of the White Slave Traffic[9], ratified by Imperial Japan in 1925, states that “Whoever, in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes, shall be punished, notwithstanding that the various acts constituting the offence may have been committed in different countries.”

[9] In Japan, the convention is also known as the “International Convention of Prohibition Against Trafficking of Women for Prostitution.”

3) International Convention for the Suppression of the Traffic in Women and Children

The League of Nations adopted the International Convention for the Suppression of the Traffic in Women and Children on September 30, 1921, and Imperial Japan ratified this convention in 1925 (reserving application to its colonies such as the Korean peninsula and Taiwan, and leased territory of Kwantung). According to this convention, any act of persuading, enticing, or kidnapping a woman younger than 21 years old for purposes of the sex industry that gratify the passions of another person, is a crime even with the consent of that person.

The League of Nations also adopted the Slavery Convention on September 25, 1926, and announced it on March 9, 1927. This convention defined slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” It stipulated the complete abolition of slavery and prohibition of slave trade and forced labor, which developed into customary international law.

4) ILO Convention No. 29

The International Labour Organization adopted the ILO Convention No. 29 in 1930, and Imperial Japan ratified the convention on November 21, 1932. According to this convention, the signatories should abolish forced or compulsory labor within the shortest possible time and, during the transitional period, should exclude women completely from such labor, limit the period and time of such labor, provide reasonable wages and industrial compensation, and provide labor conditions that safeguard the health of the workers.

5) Penal Code of Imperial Japan

Article 226 of the Imperial Japan’s Penal Code (Imperial Japan Law no. 45, passed in 1907, hereinafter the “Defendant’s past Penal Code”), which was applied to the Korean peninsula at the time under the Korea-Japan Annexation Treaty, prohibited “kidnapping, enticement, or trafficking of other persons for the purpose of transporting them from one country to another.”[10]

[10] Article 226 of the current Japanese Penal Code also stipulates that
“所在国外に移送する目的で、人を略取し、又は誘拐した者は、二年以上の有期懲役に処する.” (A person who captures or kidnaps a person for the purpose of transferring him/her to another country is subject to imprisonment for at least 2 years.)

E. Establishment of the Defendant

Following the cessation of the Pacific War, the Constitution of Japan was promulgated on November 3, 1946, and the Defendant was established.

F. Agreement on War Issues Between the Republic of Korea and the Defendant After the End of the War

1) Conclusion of the San Francisco Treaty

After the Asia-Pacific War ended, the Allied Forces including the United States and the United Kingdom, and the Defendant concluded a peace treaty to resolve the issue of post-war compensation (hereinafter the “San Francisco Treaty”) in San Francisco on September 8, 1951. Article 4(a) of the San Francisco Treaty stipulated that “the disposition of property of Japan and of its nationals in the areas referred to in Article 2 [including Korea], and their claims, including debts, against the authorities presently administering such areas and the residents (including juridical persons) thereof, and the disposition in Japan of property of such authorities and residents, and of claims, including; debts, of such authorities and residents against. Japan and its nationals, shall be the subject of special arrangements between Japan and such authorities.”

2) Conclusion of the Treaty on the Basic Relations between the Republic of Korea and the Defendant and its supplementary treaty

After the San Francisco Treaty was concluded, the Government of Republic of Korea and the Government of the Defendant concluded the Treaty on the Basic Relations between the Republic of Korea and Japan and its supplementary treaty, the Agreement on the Settlement of Problems concerning Property and Claims and on Economic Co-operation between the Republic of Korea and Japan (hereinafter the ‘Claims Agreement’) on June 22, 1965. It was stipulated in Article I of the Claims Agreement that the Defendant shall supply to the Republic of Korea USD 300,000,000 on a non-repayable basis and USD 200,000,000 in loans over a period of ten years. In Article II, it was stipulated that “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."

The Claims Agreement was given consent to ratification by the Korean National Assembly on August 14, 1965, the House of Representatives of Japan on November 12, 1965, and the House of Councilors of Japan on December 11, 1965. The Claims Agreement was then promulgated in both countries around that time and entered into force on December 18, 1965, after the two countries exchanged instruments of ratification.

3) Measures taken by the Republic of Korea following the conclusion of the Claims Agreement

The Republic of Korea enacted the Act on the Operation and Management of the Claims Fund on February 19, 1966, to provide the basic framework necessary for using the funds paid under the Claims Agreement. Subsequently, the Act on the Declaration of Civilians' Claims Against Japan (hereinafter the "Claims Declaration Act") was enacted on January 19, 1971, to provide for matters necessary in collecting accurate evidence and information on civilians' rights to claim against Japan that would be subject to compensation. The Claims Declaration Act limited the eligibility to make a declaration to those who were "Korean citizens who had not lived in Japan between August 15, 1947, to June 22, 1965, and had claims against the Defendant and Japanese citizens before August 15, 1945, and had been recruited or conscripted by Japan as a soldier, an army civilian, or a laborer, and had died before August 15, 1945." "Comfort women" victims were not eligible under the Act.

G. Official Statement Made by the Defendant

On August 4, 1993, Japan's Chief Cabinet Secretary Yohei Kono announced the following statement.

> 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.

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 research related thereto.

H. Additional Measures Taken by the Republic of Korea and the Defendant

1) The Republic of Korea enacted the Act on Livelihood Stability and Commemorative Projects, Etc., for Sexual Slavery Victims Drafted for the Japanese Imperial Army[11] on June 11, 1993, and has provided subsidies for livelihood stability to "comfort women" victims.
2) In a statement made by Prime Minister Tomiichi Murayama on August 31, 1994, the Defendant expressed the stance that the Government of the Defendant could provide individual consolation money or settlement money in a humanitarian perspective based on moral responsibility for the violation of the honor and dignity of military "comfort women" victims, and that it shall not be on the government level but on the private level such as raising fund for the development of women in Asia.
3) The Republic of Korea publicly disclosed a part of the documents related to the Claims Agreement around January 2005. The Joint Committee of Private and Public Sectors on Follow-up Measures for the Public Disclosure of the Korea-Japan Conference Documents (hereinafter the "Joint Private-Public Committee"), which was formed thereafter, issued an official opinion on August 26, 2005, that can be summarized as follows: (i) the purpose of the Claims Agreement was not to seek claim reparation from Japan for its colonial domination but rather to resolve the financial and civil credit-debt relations between Korea and Japan in accordance with Article 4 of the San Francisco Treaty; (ii) the unlawful acts against humanity such as the Japanese military "comfort women" issues, in which the Japanese Government, military, and other state powers were involved, cannot be deemed to have been resolved by the Claims Agreement, and the Japanese Government is still legally liable therefor; and (iii) the issues regarding the Korean nationals in Sakhalin and the victims of atomic bombs were not covered by the Claims Agreement either. The official opinion includes the following:

[11] The title of the Act has since changed to the Act on Protection, Support, and Commemorative Projects for Sexual Slavery Victims for the Japanese Imperial Army. It is also known as the "Comfort Women Victim Act."

- ❍ At the time of the Korea-Japan negotiations, the Government of the Republic of Korea requested political compensation based on the "historical fact of losses from affliction," as the Japanese Government did not concede legal reparation/compensation for the forced mobilization. It would be fair to deem that this request was reflected in the amount of funds that the two countries calculated to be given in grants.
- ❍ The USD 300 million that Korea received from Japan in grants based on the Claims Agreement should be deemed to comprehensively take into account individual property rights (insurances, bank deposits, etc.), the claims held by the Government of the Republic of Korea as a state including the claims of the Japanese Government-General of Korea against Japan, and the funds to resolve the issue of compensating the losses incurred from forced mobilization.
- ❍ Since the Claims Agreement was agreed upon by settling on a lump sum amount through political negotiation rather than determining the amount for each item of right to claim, it is difficult to approximate the amount received under each item. It appears, however, that the Government of the Republic of Korea has the ethical responsibility to use a considerable portion of the funds that it received in grants to provide relief to the victims of forced mobilization.
- ❍ It appears that, from an ethical point of view, the compensation given to the victims by the Government of the Republic of Korea in the year 1975 was insufficient, as such compensation, among others, excluded those who were physically injured during the forced mobilization from the scope of persons that received compensation.

I. 2015 Agreement on the Japanese Military "Comfort Women" Issue

1) The Government of the Republic of Korea and the Government of the Defendant held a joint press conference on December 28, 2015, to announce the following agreement regarding the Japanese military "comfort women" victims.

(Government of the Defendant)

① The issue of “comfort women” was a matter which, with the involvement of the military authorities of the day, severely injured the honor and dignity of many women. In this regard, the Government of Japan painfully acknowledges its responsibility. Prime Minister Abe, in his capacity as Prime Minister of Japan, expresses a new sincere apologies and remorse from the bottom of his heart to all those who suffered immeasurable pain and incurable physical and psychological wounds as “comfort women.”

② The Government of Japan has treated this issue with all seriousness, and on the basis of such experience, will take measures with its own budget to heal the psychological wounds of all the former “comfort women.” More specifically, the Government of the Republic of Korea will establish a foundation for the purpose of providing assistance to the former “comfort women.” The Government of Japan will contribute from its budget a lump sum funding to this foundation. The Governments of Korea and Japan will cooperate to implement programs to restore the honor and dignity and to heal the psychological wounds of all the former “comfort women.”

③ Along with what was stated above, the Government of Japan confirms that through today’s statement, this issue will be finally and irreversibly resolved on the condition that the above-mentioned measures are faithfully implemented. Also, the Government of Japan, along with the Government of the Republic of Korea, will refrain from mutual reprobation and criticism in international forums, including at the United Nations in the future.

(Government of the Republic of Korea)

① The Government of the Republic of Korea takes note of the statement by the Government of Japan and the measures leading up to the statement, and, along with the Government of Japan, confirms that through today’s statement, this issue will be finally and irreversibly resolved on the condition that the above-mentioned measures stated by the Government of Japan are faithfully implemented. The Government of the Republic of Korea will cooperate in the measures to be taken by the Government of Japan.

② The Government of the Republic of Korea is aware of the concern of the Government of Japan over the memorial statue placed in front of the Embassy of Japan in Seoul with respect to the maintenance of the peacefulness and respectability of its mission, and will make efforts to appropriately address the concern, including through consultations with relevant groups on possible responses.

③ The Government of the Republic of Korea, along with the Government of Japan, will refrain from mutual reprobation and criticism in international forums, including at the United Nations in the future, on the condition that the measures stated by the Government of Japan are faithfully implemented.

2) On July 28, 2016, the Reconciliation and Healing Foundation was established with money contributed in full from the Defendant's budget. Some of the money was provided as subsidies to applicants among surviving victims or bereaved families of deceased victims.

J. The Determination and Registration of the Plaintiffs as Persons Eligible for Livelihood Stability Support as per the Comfort Women Victim Act

The Plaintiffs were determined and registered as persons eligible for livelihood stability support by the Minister of Gender Equality and Family after deliberation by the Deliberation Committee based on the Comfort Women Victim Act between 1993 and 2001.

K. Death of Several Plaintiffs and Subsequent Successions

During the course of this lawsuit, the Plaintiff OOO passed away on June 8, 2014; the Plaintiff OOO on July 23, 2017; the Plaintiff OOO on December 5, 2018; the Plaintiff OOO on July 10, 2016; the Plaintiff OOO on February 14, 2018; the Plaintiff OOO on June 11, 2015; and the Plaintiff OOO on December 6. 2016, respectively.[12] The child of the Plaintiff OOO succeeded the litigation.

[12] When a party dies but the litigation process is not suspended due to the presence of an attorney (Article 238, Article 233 (1) of the Civil Procedure Act), in principle, no issue of litigation succession will arise and the attorney shall perform the litigation for all successors. Even if the judgment marks the name

[Reason for Recognition] Exhibit 2, 4, 5 to 7, and 13 to 23 (with branch number), salient facts in this court, and whole purport of pleadings

2. The Plaintiffs' Arguments

The Plaintiffs are victims of the "comfort women" system, which had been systematically planned and operated by Imperial Japan during the war of aggression. Imperial Japan organized and operated the "comfort women" system to carry out its war of aggression during the Second World War. In need of "comfort women," Imperial Japan abducted the Plaintiffs from the Korean peninsula, which was under its colonial rule at the time, and forcibly transported them out of the peninsula. The abducted Plaintiffs were confined in comfort stations and exposed to constant violence, torture, and sexual assaults. The Plaintiffs were never paid proper wages or stipends throughout the process. It is clear that such series of acts (hereinafter collectively referred to as "the acts of this case") is illegal, and had inflicted serious physical and psychological damages to the Plaintiffs. As such, the Defendant, the successor of Imperial Japan, should recompense 100,000,000 KRW as part of solatium.

3. Assessment on Jurisdiction (Applicability of State Immunity)

A. International Law Trends Regarding State Immunity

1) Traditional international legal theory on state immunity

State immunity or sovereign immunity (hereinafter collectively referred to as "state immunity") is a customary international law which explains that domestic courts do not have jurisdiction over lawsuits against foreign countries and the state is not compelled to foreign jurisdiction over its actions and property. State immunity is based on the basic principle of the state that all countries with sovereignty are equal and independent from each other or the principle of '*par in parem non habet imperium* (equals do not have authority over one another)'. The concept of state immunity was widely supported until the end of the 19th century for reasons such as the need for the state to maintain amicable relations by acknowledging foreign authorities from the viewpoint of reciprocity as a result of the principle of sovereign equality.

2) The rise of restrictive (relative) doctrine of state immunity

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of the deceased for the party in the case, the judgment becomes effective for all successors (see Supreme Court Decision 94Da54160, September 26, 1995, etc.).

Since the end of the 19th century, a more restrictive approach was used to the concept of state immunity, and many countries have established domestic laws or have signed treaties stating that state immunity does not apply to private and commercial acts. Academic theories arguing that state immunity should not be recognized when a lawsuit is filed for crimes against humanity or human rights have also emerged.

B. Assessment on Whether the Acts of This Case Falls Within the Jurisdiction of the Courts of the Republic of Korea as Private Acts

1) Relevant legal principles

a) Judgments of the Supreme Court of Korea

According to customary international law, in principle, the sovereign acts of a state would be exempted from the jurisdiction of other states. However, current international law and customs do not exempt the private acts of a state from the jurisdiction of another state. Thus, in regard to a private act by a foreign country taking place within the territory of Korea, the courts of Korea can generally exercise jurisdiction with the foreign country as a defendant, except when there are special circumstances such as the private act in question falling under the scope of or bearing close relation to the sovereignty of the foreign country, thus posing the risk of unfairly interfering with the sovereignty of the foreign country (*see* Supreme Court en banc Decision No. 97Da39216, December 17, 1998, Supreme Court Decision No. 2009Da16766, December 13, 2011, etc.).

b) Decision of the Constitutional Court

As per customary international law, private acts that do not belong to the sovereign acts of a state are not exempt from the jurisdiction of another state (*see* Constitutional Court en banc Decision No. 2016Hun-Ba388, May 25, 2017).

2) Assessment

The Plaintiffs are demanding indemnification of damages inflicted upon them due to the acts of this case. As such, this section first examines whether the acts of this case are private acts that are not exempt from jurisdiction.

Private operators were involved in some of the acts of this case argued by the Plaintiffs, and as such, some commercial benefits may have been accrued by

private operators. However, the acts of this case should not be deemed as commercial or private acts, but rather as sovereign acts, as the acts have the following characteristics argued by the Plaintiffs:[13]

① The purpose of Imperial Japan in the acts of this case seems to be the physical and emotional comfort of Japanese soldiers and the effective command and control of the military. A state's act of possessing and commanding of the military is one of the most clear *acta jure imperii* of a state.

② In the acts of this case as argued by the Plaintiffs, several state agencies other than the military were involved. The above state agencies did not act on an equal footing with others for the purpose of achieving profits as private economic entities.

③ Underlying the acts of this case were readjustment of laws and allocations of budget based on policy decisions of the then Government of Imperial Japan.

C. Assessment on the Jurisdiction of Sovereign Acts

1) The premise of the discussion

As the written laws of the Republic of Korea have not stipulated exceptions to state immunity and the Republic of Korea has not ratified international conventions or concluded treaties with the Defendant regarding this issue, the jurisdiction of the courts of the Republic of Korea shall be determined in accordance with the customary international law. Therefore, international trends regarding state immunity are examined for assessment on the matter.

2) International conventions and legislative trends in various countries regarding state immunity

a) International conventions regarding state immunity

[13] The United States Washington D.C. Federal District Court judgment (Hwang Geum Joo v. Japan 172 F. Supp 2d 52, 2001) ruled that the Defendant's acts argued by the "comfort women" are not commercial acts, and that even if the Japanese military had paid for sexual service, this is insufficient to justify characterizing the challenged conduct as commercial in nature. Rather, it was judged that the conduct was an abuse of the Defendant's military power that was "peculiarly sovereign in nature." Such decision was made in regards to the Plaintiff's argument that "comfort women" including Hwang Geum Joo were "taken" from Korea which was occupied by Japan, and "pursuant to a premeditated master plan," which "was planned, ordered, established, and controlled by Japan for the benefit of its soldiers and certain others," the Plaintiffs resided in buildings that "were either appropriated by the Japanese military or makeshift constructions built by the army specifically to house 'comfort women'" to force them into sexual slavery of the Japanese military.

States in the European Community concluded the European Convention on State Immunity (hereinafter the “European Convention”) on May 16, 1972, and the United Nations General Assembly adopted the United Nations Convention on Jurisdictional Immunities of States and Their Property (hereinafter the “UN Convention”) on December 2, 2004, based on the discussions of UN International Law Commission (ILC). The European Convention[14] and the UN Convention[15] stipulate that state immunity cannot be invoked in exceptional cases.

b) Legislative trends in various countries

The United States enacted the Foreign Sovereign Immunities Act (FSIA) in 1976, which stipulates that foreign states shall not be immune from jurisdiction in cases related to commercial acts, proceedings related to property taken in violation of international law, proceedings related to rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States, cases in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property occurring in the United States and caused by

[14] The European Convention listed the following reasons for which states cannot claim immunity: ① if the proceedings relate to an obligation of the State, which, by virtue of a contract, falls to be discharged in the territory of the State of the forum, ② if the proceedings relate to a contract of employment between the State and an individual where the work has to be performed on the territory of the State of the forum, ③ if the proceedings relate to participation in a company, association or other legal entity having its seat, registered office or principal place of business on the territory of the State of the forum, ④ if the proceedings relate to an office, agency or other establishment through which it engages in an industrial, commercial or financial activity on the territory of the State of the forum, ⑤ if the proceedings relate to intangible property rights on the territory of the State of the forum, ⑥ if the proceedings relate to tortious acts on the territory of the State of the forum, ⑦ if the proceedings relate to the validity of arbitration agreements that has taken or will take place on the territory of the State of the forum.

[15] The UN Convention listed the following reasons for which states cannot claim immunity: ① commercial transactions, ② contracts of employment, ③ death, physical injuries and damage to property (the full text of Article 12 is as follows: Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to pecuniary compensation for death or injury to the person, or damage to or loss of tangible property, caused by an act or omission which is alleged to be attributable to the State, if the act or omission occurred in whole or in part in the territory of that other State and if the author of the act or omission was present in that territory at the time of the act or omission.), ④ ownership, possession, and use of property, ⑤ intellectual and industrial property rights, ⑥ participation in companies or other collective bodies, ⑦ ships owned or operated by a State, ⑧ effect of an arbitration agreement.

the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment,[16] and cases in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial act of the foreign state. Furthermore, the United Kingdom enacted the State Immunity Act in 1978, Japan enacted the Act on Civil Jurisdiction Against Foreign States (外国等に対する我が国の民事裁判権に関する法律) in 2009, and Singapore enacted the 「State Immunity Act」 in 1979. These laws restrictively list exceptions to state immunity of a foreign state. Various other countries including South Africa, Australia, Canada, and Argentina have also enacted laws that stipulate exceptions to state immunity.

c) Judgment of the International Court of Justice (hereinafter the “ICJ”)

(1) Ferrini, an Italian, was arrested by German soldiers on August 4, 1944, and forced to labor at a German munitions factory until April 20, 1945, but was not recognized as a prisoner of war. In 1998, he filed a lawsuit for indemnification for damages in Arezzo District Court of Italy. The court rejected the suit in recognition of Germany’s claims of state immunity, and the Court of Appeals also rejected the plaintiff’s appeal. However, the Supreme Court of Italy reversed the judgment of the original court on March 11, 2004, noting that state immunity cannot be applied to the acts of a state which constitute international crimes in violation of *jus cogens*. The lower court then ruled in favor of the plaintiff.

(2) As similar judgments were made in lawsuits against Germany in the courts of Italy after the above Ferrini judgment on December 23, 2008, Germany filed a lawsuit against Italy before the ICJ for ‘the Italy’s failure to respect the jurisdictional immunity which Germany enjoys under

[16] The original text is as follows: Chapter 97. - Jurisdictional immunities of foreign states §1605(a)(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious acts or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to - (A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or - (B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit or interference with contract

international law through its judicial bodies' execution of adjudication, thereby violating its obligations under the international law.' The ICJ, based on the premise that whether Italy has jurisdiction over Germany shall be determined according to customary international law given that the European Convention and the UN Convention do not apply between Germany and Italy, judged on February 3, 2012, that "The Court considers that the rule of State immunity occupies an important place in international law and international relations. It derives from the principle of sovereign equality of States, which, as Article 2, paragraph 1, of the Charter of the United Nations makes clear, is one of the fundamental principles of the international legal order." The ICJ ruled that the Italian courts' decisions cannot be justified because customary international law on state immunity is applied to civil lawsuits regarding damages to individuals' life, health, and property by armed forces and other organs of a state in the course of conducting an armed conflict.

Furthermore, the ICJ ruled that the law of state immunity is essentially procedural and that a state is not deprived of immunity by reason of the fact that it is accused of serious violations of international human rights law or the international law of armed conflict. ICJ also ruled that whether a state is entitled to immunity before the courts of another state is a question entirely separate from whether the international responsibility of that state is engaged and whether it has an obligation to make reparations, and that the entitlement of a state to immunity is not dependent upon the existence of effective alternative means of securing redress.

(3) After the ICJ judgment, the Italian Constitutional Court decided on October 22, 2014, that customary international law of state immunity violates the basic value of Italian constitutional order which is based on the recognition and guarantees of the dignity and worth of the human person and the right of access to courts and thus cannot be accommodated within the Italian legal order.

3) Assessment

Even according to the customary international law of state immunity which established that, in principle, sovereign acts of a state are exempted from the

jurisdiction of another state, the above customary international law does not exempt all acts of a state from the jurisdiction of another state without exceptions. Rather, it recognizes exceptions in certain cases. Considering the circumstances stated below, comprehensively acknowledged by each evidence and the whole purport of pleadings discussed before the basic facts, the acts of this case were, as assessed by the basic facts above and in paragraph 5 below, crimes against humanity committed systematically and extensively by Imperial Japan in violation of international *jus cogens* against the Plaintiffs who are Korean nationals in the Korean Peninsula, which was under illegal occupation by Imperial Japan at the time. Thus, even if the acts of this case were sovereign acts, state immunity cannot be applied. It is reasonable that in this exceptional case, the court of the Republic of Korea has jurisdiction over the Defendant.

① Article 27 (1) of the Constitution states, "All citizens shall have the right to trial in conformity with the Act by judges qualified under the Constitution and the Act." and guarantees the right of access to courts as a basic right of the people. The right of access to courts is a basic right necessary to guarantee other basic rights since it is the right to request remedy or prevention when basic rights are in danger of being infringed upon or violated [Constitutional Court en banc Decision No. 2015Hun-Ba77, 2015Hun-Ma832 (combined), December 27, 2018]. If the effectiveness of a remedy is not guaranteed, the right of access to courts under the Constitution becomes void. Therefore, the right of access to courts is a basic right that should be sufficiently protected and guaranteed along with other substantial basic rights. In addition, Article 8 of the Universal Declaration of Human Rights proclaimed at the UN General Assembly on December 10, 1948, states, “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” In light of the above regulations on basic rights, the decision to limit the right of access to courts, which is an effective right to guarantee basic rights, must be made with utmost care.

② State immunity is in regards to procedural requirements, as it is a theory applied to determine jurisdiction prior to assessing merits. However, adjective law ought to be construed to the effect that it best realizes the rights and status under substantive law. This is because the significance of adjective law

lies in its role as a means to realize substantive legal order. The lack of adjective law may at times limit the realization of rights under substantive law or change the substantive legal order to a certain degree, but such substantive rights and legal order should neither become non-existent or distorted (*see* Supreme Court en banc Decision 2015Da232316, October 18, 2018).

③ The doctrine of state immunity is not permanent nor static. It continuously evolves in accordance with the changes in the international order. This is reflected in international conventions such as the European Convention and the UN Convention which have evolved from the theory of absolute state immunity and does not exempt jurisdiction over a state in certain cases. National laws in various countries such as the Foreign Sovereign Immunities Act (FSIA) of the United States of America, the State Immunity Act of the United Kingdom, the Act on Civil Jurisdiction Against Foreign States of Japan, and the State Immunity Act of Singapore have also stipulated exceptional elements where state immunity is not applicable. This change seems to reflect the changes in the international legal order towards protection of individual rights.

④ According to the theory of state immunity, acts “conducted during armed conflict (war)” are exempted from jurisdiction as unpredictable damages are anticipated. However, the battlefronts of the Asia-Pacific War were China, Southeast Asia, and the South Pacific Islands, of which the Korean peninsula was not included at the time. Thus, it is difficult to conclude that Imperial Japan’s deceit and abduction of the Plaintiffs for mobilization as “comfort women” were “conducted during armed conflict.”

⑤ Article 53 of the Vienna Convention on the Law of Treaties, adopted in 1969, stipulates that “a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” Based on such consensus of the international community, it can be said that a distinction exists between peremptory norm (*jus cogens*), which is a higher norm, and a lower norm. The lower norm should not deviate from

jus cogens. Examples of *jus cogens* norms mentioned in the commentary of the 2001 ILC's Draft Articles on Responsibility of States for Internationally Wrongful Act include the prohibition of aggression, the prohibition of slavery, the prohibition of genocide, the prohibition of crimes against humanity, the prohibition of apartheid and racial discrimination, the prohibition of torture, the basic rules of international humanitarian law during armed conflicts, and the right to self-determination.

⑥ When interpreting and applying law, the results should be considered and if the interpretation leads to an unreasonable or unjust conclusion, measures should be taken to seek ways to exclude such interpretations. To do so, several interpretative methods such as logical and systematic interpretation, historical interpretation, and purposive interpretation are utilized. These interpretation methods are constitutionally conforming interpretations that conform to the principles of the Constitution and the law and realize them as much as possible. Interpreting that the Defendant is exempt from jurisdiction in a civil suit that was chosen as a forum of last resort in a case where the Defendant state destroyed universal values of the international community and inflicted severe damages upon victims would result in unreasonable and unjust results as shown in the following.

i. Customary law refers to social norms generated through repeated customs of the society which are approved and enforced to be legal norms through the legal confirmation and recognition of the society, and such customary law is effective as legal rules as a source of law, as long as it does not violate the legal provisions. For a certain social norm generated through repeated customs of the society to be approved as a legal norm, it shall not be in violation of the overall legal order whose highest norm is the Constitution and shall be recognized as just and reasonable. Other social norms, even if they are generated through repeated customs of the society, shall not be deemed effective as customary law (*see* Supreme Court en banc Decision 2002Da1178, July 21, 2005, etc.). Even though state immunity is a customary international law that has become established through customs, if customary law is applied to exempt the Defendant from jurisdiction even in cases where the Defendant has committed grave crimes against humanity, it would be

impossible to sanction a state for violating international conventions that prevent it from committing grave crimes against humanity against citizens of another state, thereby depriving victims of their right of access to courts guaranteed by the Constitution and not providing a remedy for their rights. Such results are unreasonable and unjust as they are not in accordance with the overall legal order that positions the Constitution as the highest norm. Thus, customary international law that applies state immunity is not effective in such cases.

ii. The damages suffered by the “comfort women” victims remained silenced after the end of the Asia-Pacific War and were not made a subject of reparations or compensation between the Republic of Korea and Japan. The issue was brought to the forefront in the 1990s when “comfort women” victims came forward and demanded the Defendant’s apologies and reparations. Through the Chief Cabinet Secretary’s statement, the Defendant officially admitted the Japanese military’s operations of the “comfort women” system and apologized at the government level. However, reparations and/or compensations for individual victims were not made. As such, “comfort women” victims filed civil lawsuits multiple times in the Defendant’s courts, but all were either rejected or dismissed. The results of lawsuits filed in other countries such as the United States were similar. The Claims Agreement between the Governments of the Republic of Korea and the Defendant as well as the 2015 Agreement on the Japanese Military “Comfort Women” Issue also failed to include reparations for individuals who have suffered damages. The Plaintiffs, who are merely individuals who do not have negotiation power or political power, do not have measures to receive reparations for specific damages other than this lawsuit.

⑦ The significance of the theory of state immunity shall be found in its respect for sovereign states and not obeying the jurisdiction of other states. It must not have been formed to allow states that violated peremptory norms (international *jus cogens*) and inflicted severe damages upon individuals of other states to evade reparations and compensation behind such theory. Thus, in such cases, exceptions should be allowed in the interpretation regarding customary international law on state immunity.

4. Assessment on International Jurisdiction

A. Relevant Legal Principles

Article 2 (1) of the Private International Act provides that "In case a party or a case in dispute is substantively related to the Republic of Korea, a court shall have the international jurisdiction. In this case, the court shall obey reasonable principles, compatible with the ideology of the allocation of international jurisdiction, in judging the existence of the substantive relations." Paragraph (2) of the same Article provides that "A court shall judge whether or not it has the international jurisdiction in the light of jurisdictional provisions of domestic laws and shall take a full consideration of the unique nature of international jurisdiction in the light of the purport of the provision of paragraph (1)." Such being the case, determination of international jurisdiction should follow the basic objective of ensuring to achieve impartiality between the parties, and appropriateness, promptness, and economy of adjudication, and should, more specifically, take into account not only private interest such as impartiality between the parties, convenience, and predictability, but also interests of the judiciary of the state as well such as appropriateness, promptness, and efficiency of adjudication, and effectiveness of judgment. The issue of which among such diverse interests deserves protection should be determined in accordance with the principle of reasonableness, applying, in each individual case, the objective criteria of substantial relationship between the court and the parties, and substantial relationship between the court and the case in dispute (*see* Supreme Court Decision 2010Da18355, July 15, 2010, and Supreme Court Decision 2009Da22459, May 24, 2012, etc.). Determination of predictability ought to be made on the basis of whether the defendant could have reasonably predicted the filing of a suit at a court in the relevant jurisdiction because of “substantive relations” between the defendant and the jurisdiction (*see* Supreme Court Decision 2016Da33752, June 13, 2019). Furthermore, given that treaties or generally accepted principles of international law on international jurisdiction are yet to be established, no statutes regarding this matter is established in the Republic of Korea, and the provisions on the land jurisdiction of the Korean Civil Procedure Act were established in accordance with the above basic principles, it is reasonable to determine that the Republic of Korea has jurisdiction over litigation related to extraterritorial cases when the venue is in Korea according to the above provisions (*see* Supreme Court Decision 91Da41897, July 28, 1992).

B. Assessment

The circumstances acknowledged under the evidence and the whole purport of pleadings discussed above recognize the following: ① The Plaintiffs' claims in this case seeks to establish the illegality of and ask for indemnification of damage largely based on the Civil Law of the Republic of Korea for acts of Imperial Japan, which had waged war of aggression in areas from East Asia to South Pacific Islands and forcibly abducted, enticed, and deceived citizens of the Republic of Korea from the Korean peninsula, which they had illegally occupied at the time, to meet the operational needs of its military. ② Some of the series of illegal acts above took place in the Korean peninsula which is the territory of the Republic of Korea. ③ The Plaintiffs, who are the victims, are citizens of the Republic of Korea and are all residing within the territory of the Republic of Korea. ④ The material evidence such as comfort stations where the acts of this case had taken place are almost lost due to the passage of time and war, and little evidence that could identify comfort station operators or users remain, while having little need for investigation of evidence at the Defendant's location as materials including the basic materials of Chief Cabinet Secretary Kono Yohei's statement and report from the UN Commission on Human Rights have already been published. ⑤ "Comfort women" victims including the Plaintiffs have filed lawsuits for damages in courts of various countries including the Defendant's domestic courts and the United States court, which makes it difficult to determine that the Defendant could not have reasonably predicted the filing of a suit at the court of the Republic of Korea, where the Plaintiffs reside. ⑥ International jurisdiction is not exclusionary but rather can coexist, so even if this case is closely related to the Defendant, the international jurisdiction of the court of the Republic of Korea shall not be naturally excluded. ⑦ Considering the fairness of the parties to the litigation, the appropriateness of the trial, the ease of collecting evidence, and the burden of carrying out the litigation, obliging the Defendant to respond to the suit does not lead to extraneous circumstances that would bring severely unjust results in light of the ideology of civil procedure. As per the circumstances and the legal principles examined above, the Republic of Korea has

substantial relationship with the parties of this case and the contested issues. Thus, the court of the Republic of Korea has international jurisdiction of this case.

5. Assessment on the Merits

A. Responsibility for Indemnification of Damage

1) Determination of applicable laws

The applicable law, which is the criterion for determining whether the right to claim damages due to illegal acts in this case is established, shall be decided by the norm of the applicable law to legal relation having foreign elements in the Republic of Korea which is the venue in this case (hereinafter “conflict of law norm”). According to the facts recognized above, the legal relations regarding the illegal acts of the Defendant and the damages incurred had occurred before January 15, 1962, the date of enforcement of the former Private International Act (enacted by Act No. 996 of January 15, 1962). The Republic of Korea's conflict of law norm applied to the legal relation occurring before January 15, 1962, is Japanese “Rules concerning the application of law” (Law No. 10 of June 21, 1898) which was incorporated as “current law” through the military government law No. 21 and by Article 100 of the Republic of Korea’s Original Constitution Addendum into the Republic of Korea’s law order after it had been applicable in our country by the Emperor of Japan's Edict No. 21 from March 28, 1912. Under the Japanese Rules concerning the application of law which was the Republic of Korea's conflict of law norm applicable at the time when the Plaintiffs' rights to claim were established, establishment and validity of the right to claim reparations for damages follow the law of where a tort occurred (Article 11). The places in which illegal acts in this case occurred are located in the Republic of Korea, China, the Defendant, and South Pacific Islands, and as such, the applicable laws to determine the right to claim reparations for damages due to illegal acts include laws of the Republic of Korea, China, Japan, etc. The Plaintiffs are clearly asking the Defendant’s responsibilities for illegal acts with the Republic of Korea’s law as the applicable law. As such, it is held that the law of the Republic of Korea is applied in determining whether the Plaintiffs’ right to claim reparations for damages due to illegal acts is established (*see* Supreme Court Decision 2009Da22549, May 24, 2012).

Furthermore, the applicable Act to the decision of unlawfulness of cases before Jan. 1 of 1960, when the original Civil Act was enforced, is the "current Civil Act," not the “past Civil Act (Japanese Civil Act)” under Article 2 of its Addendum.

2) Assessment on the illegality of the acts of this case

a) According to the above basic facts and the whole purport of pleadings, Imperial Japan had devised a system to manage the so-called “comfort women” to boost the morale of soldiers, reduce local complaints, and pursue effective command over soldiers in the process of carrying out war of aggression such as the Second Sino-Japanese War and the Asia-Pacific War. It had institutionalized the system, reorganized laws, mobilized and secured people through systemic planning by the military and government institutions, and operated historically unprecedented “comfort stations.”

The Plaintiffs, who were under-age or had just come of age having only been in their early-to-mid-teens or 20 years old, were mobilized through deceit by private recruiters or government officials of Imperial Japan claiming that they would be able to “earn money at a factory” to help their impoverished households, forcible abduction, or recommendations of parents or acquaintances who did not accurately understand the system. Upon the mobilization as “comfort women,” the Plaintiffs were forcibly subjected to sexual acts of soldiers against their will under the systemic, and direct or indirect control of Imperial Japan. It is horrendous that such acts happened dozens of times per day. Soldiers lined up for sexual acts in front of rooms where the young Plaintiffs were confined, such that limits on duration were imposed. The Plaintiffs had to risk not only injuries from severe sexual acts themselves, but also of sexually transmitted diseases and unwanted pregnancy, and even had to undergo unsafe gynecological treatments. Moreover, they were exposed to constant violence, not provided with sufficient clothing and meals, deprived of minimal freedom, and forced to live under surveillance.

b) According to Article 98 (2) of the Defendant’s current constitution (promulgated on November 3, 1946), “the treaties concluded by Japan and established laws of nations shall be faithfully observed.” Even before the enactment of the current constitution, the above provision is declaring the

natural obligation of the state rather than imposing a new statutory regulation. Therefore the Japanese Empire before the establishment of the current constitution is also obligated to faithfully comply with the treaty and international laws. The acts of this case violate the following conventions that Imperial Japan had ratified at the time: ① "The belligerent party's duty to respect family honour and rights" as stipulated in the Article 3 of the Hague Convention and Article 46 of the Annex of Regulations had not been abided. The serious infringement of the rights to sexual self-determination of women, who are members of the family, was a breach of the state duty to respect their honor and rights. ② The provision of the International Convention for the Suppression of the White Slave Traffic that prohibited prostitution, as well as abduction and human trafficking for the purpose of prostitution,17 had not been abided. ③ The acts constituted deceit and abduction of under-age women as prescribed in the International Convention for the Suppression of the Traffic in Women and Children. ④ The provision on the abolition of slavery under the League of Nations' Slavery Convention (The Temporary Slave Commission of the League of Nations defined slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised." However, the abovementioned McDougall report of the UN Sub-Commission on the Promotion and Protection of Human Rights views "comfort women" as "sex slaves." As "comfort women'" at the time were limited from exercising some or all of their rights by the Japanese military, many view them as "sexual slaves.") had not been abided. ⑤ The article that mandated the immediate abolishment of forced labor of women in ILO Convention No. 29 had not been abided. ⑥ The then government officials of Imperial Japan did not abide by Article 226 of the Defendant's past Penal Code, and the Government of Imperial Japan actively encouraged and assisted such acts.

[17] The original text is as follows: "Article 1 The Parties to the present Convention agree to punish any person who, to gratify the passions of another: (1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; (2) Exploits the prostitution of another person, even with the consent of that person."

c) Article 5 (c) of the Charter of the International Military Tribunal for the Far East (also known as the Tokyo Charter) which was promulgated on January 19, 1946, defined enslavement and other inhumane acts as crimes against humanity,[18] and the war criminals who perpetrated such crimes were punished retroactively. The Charter of the Nuremberg International Military Tribunal, which started in November 1945, includes the same provision in Article 6 (c).[19]

d) Considering the facts acknowledged above, international treaties at the time of the acts of this case, customary international law, domestic laws of Imperial Japan, the charter of the International Criminal Court regarding war crimes, and the whole purport of pleadings, the previously acknowledged acts of this case constitute a crime against humanity with direct links to the Japanese Government's unlawful colonial domination of the Korean Peninsula and waging of wars of aggression.

3) Conclusion

It is clear that the Plaintiffs have suffered psychological damages due to the illegal acts of Imperial Japan as discussed above. As such, the Defendant, which is recognized as the successor of Imperial Japan, is obligated to pay reparations for the psychological damages suffered by the Plaintiffs due to the illegal acts unless otherwise specified.

B. Scope of Responsibility for Indemnification of Damage

[18] The original text is as follows: "Article 5 (c) Crimes against Humanity: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or prosecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan."

[19] The original text is as follows: "Article 6 The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes. The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility: (c) Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."

Imperial Japan has deceived or forcibly arrested the Plaintiffs and forced them to serve as "comfort women"' to actively pursue forced mobilization policy to carry out illegal colonization of the Korean Peninsula and war of aggression. The Plaintiffs, especially as young women, were separated from their families, deprived of their freedom of movement, and forced to perform sexual acts in a dangerous and harsh environment. The Plaintiffs were beaten countlessly throughout the process and suffered from not only hunger, injuries, and diseases, but also frequent fear of death. Even after the end of the war, the history of "comfort women" left them with stigmatized memories that continued to inflict huge psychological damages to them. As such, the Plaintiffs could not lead normal lives afterward. Furthermore, such experiences were left as indelible regrets to not only the victims themselves but also to their families.

Considering the degree of the illegality of such crimes, the age of Plaintiffs at the time, the length of the period in which they had to suffer as "comfort women," the degree of damages inflicted upon the Plaintiffs including the degree of suppression of freedom and the environment at the time, the social and economic difficulties that the Plaintiffs experienced upon their return, the fact that redress has not been made for a long time after the crime, and other circumstances made in the arguments of this case, the Defendant should recompense at least 100,000,000 KRW to each Plaintiff.[20]

C. Conclusion

Therefore, the Defendant should recompense at least 100,000,000 KRW to each Plaintiff (As the Plaintiffs are not seeking compensation for damages for delay of the case, no separate judgment is made on the matter).

D. Complementary Argument - Assessment on the Applicability of Statute of Limitations[21]

1) The Expiration of rights to claim due to the Claims Agreement

[20] Considering that the Plaintiffs were of a young age from early to mid-teens to 20 years of age, and had in some cases were deceived by the fraud and enticement of Imperial Japan under false promises of work, the amount of solatium is not differentiated regardless of whether they were deceived into mobilization or otherwise mobilized through coercive measures. As long as the Plaintiffs make a partial claim with the limit of 100,000,000 KRW, no separate judgment is made on the amount of solatium.
[21] As the Plaintiffs are arguing that the right to claim does not extinguish due to the 'Claims Agreement' or the '2015 Agreement on the Japanese Military "Comfort Women" Issue,' this matter is complementally examined even though the Defendant is not directly arguing on this point in the case.

a) This section examines whether the compensation and other rights to claim of Koreans mobilized as “comfort women” have extinguished due to the conclusion of the Claims Agreement.

b) Considering the circumstances acknowledged under the evidence and the whole purport of pleadings discussed above, the Plaintiffs’ right to claim reparations for damages against the Defendant was not included in the scope of application of the Claims Agreement (see Supreme Court en banc Decision No. 2013Da61381, October 30, 2018, etc.). Thus, the Plaintiffs’ right to claim reparations for damages against the Defendant has not extinguished.

① The Plaintiffs are not claiming unpaid wages or compensation against the Defendant, but rather are claiming solatium premised upon a crime against humanity with direct links to the Imperial Japan’s unlawful colonial domination of the Korean Peninsula and waging of wars of aggression.

② According to the developments leading up to the conclusion of the Claims Agreement and the preceding and subsequent circumstances thereof, it appears that the Claims Agreement did not seek to claim damages for the unlawful colonial domination by Imperial Japan, but was basically intended for the resolution of the financial and civil credit-debt relations between Korea and Japan via a political agreement based on Article 4 of the San Francisco Treaty.

③ It is unclear whether the economic cooperation funds that the Defendant provided to the Government of the Republic of Korea in accordance with Article I of the Claims Agreement are in consideration of the resolution of the rights issue in Article II.

④ The Defendant did not admit to the unlawfulness of Imperial Japan’s colonial domination during the course of the negotiations regarding the Claims Agreement, fundamentally denied legal reparations for the “comfort women” victims, and accordingly, the Governments of the two countries were unable to come to an agreement with respect to the nature of the Japanese occupation of the Korean Peninsula. Given such circumstances, it is difficult to say that the right to claim solatium against the Defendant was included in the scope of application of the Claims Agreement.

⑤ The opinions of the president or related administrative departments cannot restrain the judgment of the judiciary. The view that the state not only abandons diplomatic protection rights in signing a treaty but also extinguishes citizens' individual rights to claim without the consent of individual citizens who have a juridical status separate from the state contradicts the principles of contemporary law. Even if international law allows the state to extinguish its citizen's rights to claim through a treaty, considering that the state and individual citizens are separate legal entities, it cannot be determined that the individual rights to claim other than the state's diplomatic protection rights were extinguished by the conclusion of the treaty unless there is a clear basis in the treaty. It is difficult to find adequate evidence in the Claims Agreement that the Governments of the Republic of Korea and Japan have reached a consensus regarding the extinguishment of individual rights to claim.

⑥ The Joint Private-Public Committee expressed an opinion on August 26, 2005, that the claims to reparation for damages due to unlawful acts against humanity or unlawful acts with direct links to colonial domination in which the Japanese state power was involved cannot be deemed to have been resolved by the Claims Agreement.

2) Assessment on the expiration of rights to claim due to "2015 Agreement on the Japanese Military 'Comfort Women' Issue"

Considering the circumstances acknowledged under the evidence and the whole purport of pleadings discussed above, the Plaintiffs' right to claim reparations for damages against the Defendant was not included within the scope of application of the above Agreement. Thus, the Plaintiffs' right to claim reparations for damages against the Defendant has not extinguished.

① On July 31, 2017, the Ministry of Foreign Affairs (MOFA) established the Task Force on the Review of the Korea-Japan Agreement on the Issue of "Comfort Women" Victims (consisting of a chairperson, two vice chairpersons, three non-governmental members, and three MOFA members) directly under the jurisdiction by the Minister; and began assessing the Agreement. The report published by the Task Force on December 27, 2017, views the Agreement as follows: "The Agreement is

an official undertaking that is jointly announced by the Foreign Ministers and endorsed by the leaders of both countries, and thus it is not a treaty but a political agreement in nature."

② In light of the progress of the Agreement, it is obvious that the Agreement is an official commitment jointly announced by the Foreign Ministers of Korea and Japan and then endorsed by the leaders of the two countries. Nevertheless, the Agreement was not made in writing; and it uses neither a title usually given to treaties nor any form of provisions used in treaties. Moreover, the Agreement neither manifests the intention of both parties as to the validity of the agreement nor includes any content creating specific legal rights and obligations.

③ Article 60 (1) of the Constitution stipulates that "The National Assembly shall have the right to consent to the conclusion and ratification of treaties pertaining to mutual assistance or mutual security; treaties concerning important international organizations; treaties of friendship, trade, and navigation; treaties pertaining to any restriction on sovereignty; peace treaties; treaties which will burden the State or people with an important financial obligation; or treaties related to legislative matters." At the same time, Article 73 of the Constitution grants the President the authority to enter into treaties; and subparagraph 3 of Article 89 of the Constitution provides that a proposed treaty shall be referred to the State Council for deliberation. While the Agreement addresses the issue of redressing harm inflicted upon "comfort women" victims, which involves a sharp conflict between Korea and Japan and also is related to the people's basic rights, the Agreement did not undergo any procedures for entering into a treaty pursuant to the Constitution such as deliberation by the State Council or approval from the National Assembly. Also, unlike treaties with simple contents which are dealt with in accordance with practice and enter into force by public notice, the Agreement neither uses any treaty number nor was given public notice thereof. The same is also true of the Defendant.

④ The above Agreement was made without entrusting the Government of the Republic of Korea to exercise the right to claim civil damages for the

victims of 'comfort women.' Since the state cannot dispose of individual rights without separate delegation or provisions of laws and regulation, it cannot be concluded that the Plaintiffs' right to claim damages has been finally and irreversibly resolved by the Agreement.

⑤ The above Agreement is limited to declaring that there was a state-to-state political agreement on the issue of “comfort women” between the Republic of Korea and Japan.

6. Conclusion

Therefore, as the Plaintiffs’ claims are reasonable, it is accepted by this court.

Judge (Presiding Judge) Kim, Jeong-gon
Judge Kim, Kyeong-sun
Judge Jeon, Kyeong-se