
A Consideration of the so-called Comfort Women Problem in Japan-Korea Relations: Embracing the Difficulties in the International Legal and Policy Debate

Koji Teraya*

The main purpose of this short essay is to mitigate harsh debate about 'comfort women.' Although it is not expected to be resolved in the foreseeable future, understanding the structure of the problem based on the fact-finding and legal analysis would enable the two peoples to seek a better solution. The author claims that: (1) although some of the historical facts remain unclear, and some people tend to focus too much attention on fact-finding, from the viewpoint of international law, sufficient evidence has been revealed to confirm Japan's responsibility for its conduct in the Second World War, and Japan does not and should not deny the relevant historical facts; (2) Japan was absolved of its responsibility by the 1965 Agreement in a legal sense; and (3) having said that, this case reveals the limits of the positivistic legal approach, and the Asian Women's Fund can be one legitimate way of dealing with this problem.

* Professor of International Law at the University of Tokyo, Japan. LL.B. (Tokyo). The author would extend the deepest appreciation to Professors Enzo Cannizzaro, Naoki Iwatsuki and Akira Kotera for their helpful comments. The author appreciates helpful comments in *Ciclo di Seminari 2011/2012: Jus Cogens* after "Germany v. Italy," *Sapienza Università di Rome*, June 11, 2012. Appreciation should be also given especially to Professor Enzo Cannizzaro and Professor Naoki Iwatsuki. The author also thanks the participants in his seminar "Theory and Practice of International Human Rights Law" at the University of Tokyo in 2012-13, and in a research meeting about international responsibility led by Prof. Akira Kotera held in March 2013. The views expressed in this article are those of the author and does not necessarily reflect the position of the Japanese government. The author accepts full responsibility for the facts and views expressed herein. Address: Building 3 of Faculty of Law, the University of Tokyo, 7-3-1 Hongo, Bukyo-ku, Tokyo, Japan 113-0033.

Keywords

Comfort Women, State Responsibility, The 1965 Japan-Korea Agreement, Asian Women's Fund, Human Rights, Feminist Perspective

1. Introduction

The so-called comfort women problem is, together with the 'dispute/conflict' over 'Takeshima/Dokdo' Islands, one of the most controversial issues in relations between Japan and Korea. Those relations have deteriorated somewhat in recent times, especially since the visit of former President Lee Myung-bak to Takeshima/Dokdo in August 2012. According to him, it was necessary to take a concrete stand in response to Japan's negative attitude towards the 'comfort women' issue in the summit meeting at the end of 2011.¹ It is both surprising and regrettable that a close neighbor friend sharing common institutional values² argues so harshly as if their wide-ranging cooperative relation should be reduced just to these nationalistic issues. The 'comfort women' issue would often stimulate nationalism in both States, but the strength of feeling on the two sides tends to make a solution unreasonably difficult to find.

The author feels hesitation in dealing with this delicate matter in a short essay such as this. He even holds the pessimistic belief that the issue will not be resolved in the near future. Even the term 'solution' is the subject of some debate. However, the author also believes that understanding the structure of the problem based on facts and legal analysis would serve to mitigate the harshness of the current unfruitful conflict. Embracing the difficulty enables people in both states to seek a better solution.

This research focused on the issue in the Republic of Korea, because it most clearly demonstrates difficulties. This paper is composed of five parts including Introduction and Conclusion. Part two will examine the fact-finding and responsibility of Japan. Part three will analyze the 1965 Agreement relating to the 'comfort women' problem. Part four will discuss the Asian Women's Fund. Due to

¹ Staff Writer, *Korean President visited Takeshima and made a decision on 'comfort women' issue* (available only in Japanese), THE NIKKEI, Aug. 13, 2012, available at http://www.nikkei.com/article/DGXNASGM1304L_T10C12A8FF2000/?dg=1 (last visited on Aug. 13, 2012).

² See Remarks of the former President Myung-bak Lee on National Liberation Day on August 15, 2012, available at http://digital.asahi.com/articles/TKY201208150147.html?ref=comkiji_txt_end (last visited on Apr. 13, 2013).