

Crimes against peace/humanity in the Asia-Pacific Japan's annexation of Korea & military sexual slavery

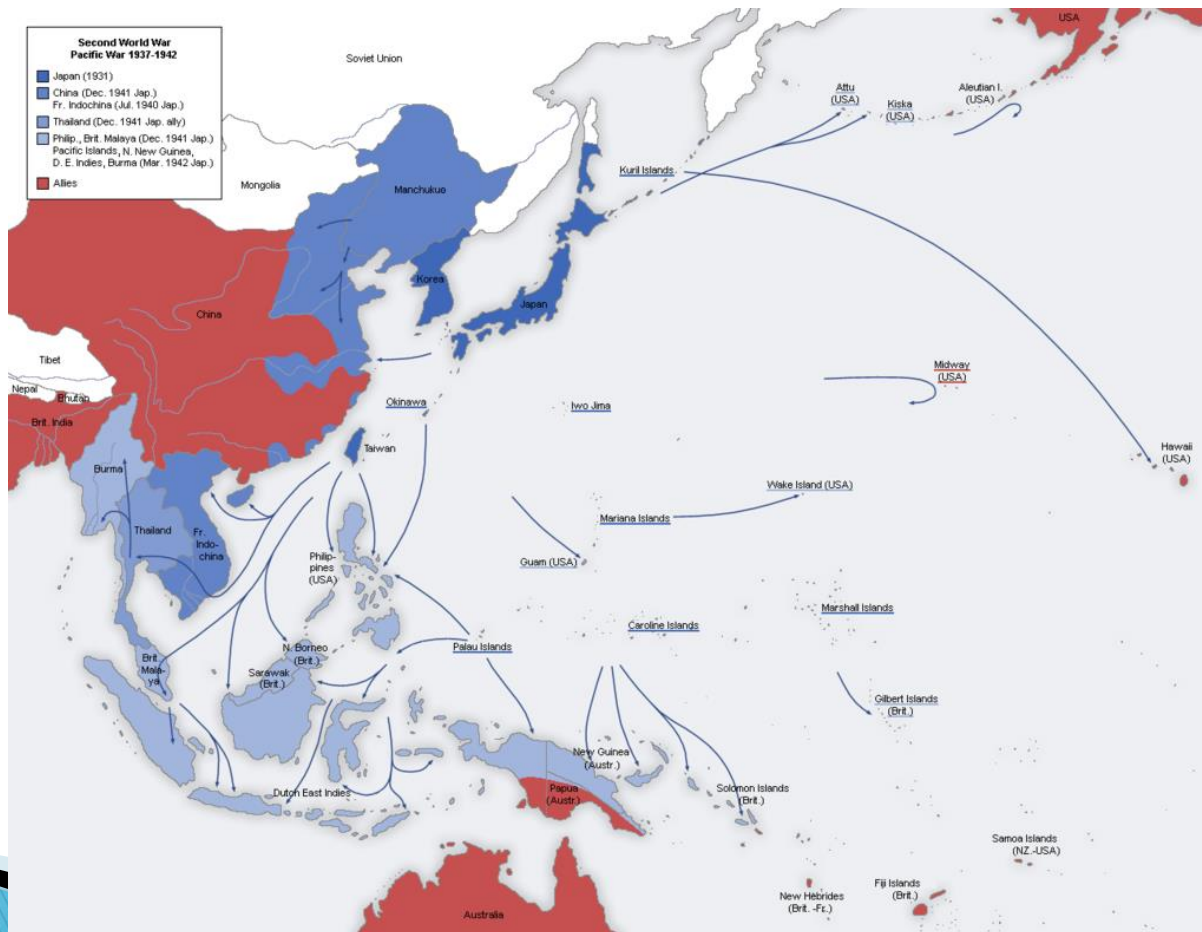
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Transitional Justice Working Group (TJWG)

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Japan's aggression

▶ Asia-Pacific War (1931–1945)



Japan's aggression

- ▶ Crimes against peace found guilty by the IMTFE
 - Count 1
 - 1928/01/01 – 1945/09/02 a common plan or conspiracy to secure domination of East Asia and of the Pacific and Indian Oceans and for that purpose waged declared or undeclared war or wars of aggression, and war or wars in violation of international law, treaties, agreements and assurances cf) no declaration of war until 1941/12/07
 - Count 27
 - 1931/09/18 – 1945/09/02 waged a war of aggression ... against against the Republic of China
 - Count 29
 - 1941/12/07 – 1945/09/02 waged a war of aggression ... against the USA

Japan's aggression

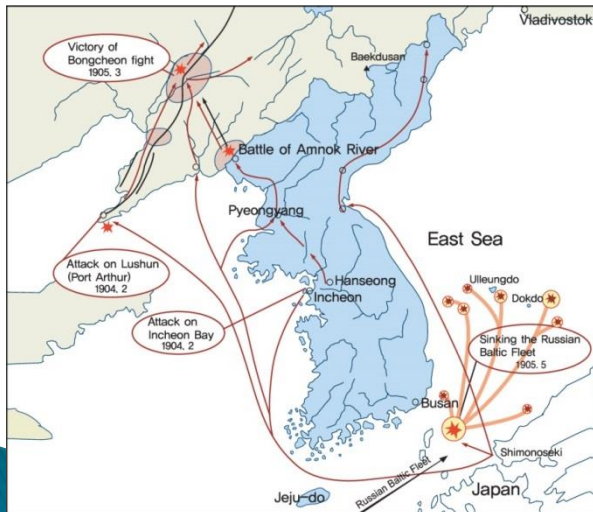
- ▶ Crimes against peace found guilty by the IMTFE
 - Count 31
 - 1941/12/07 – 1945/09/02 waged a war of aggression ... against the British Commonwealth of Nations
 - Count 32
 - 1941/12/07 – 1945/09/02 waged a war of aggression ... against the Netherlands
 - Count 33
 - 1940/09/22~ waged a war of aggression ... against France
 - Count 35
 - Summer 1938 waged a war of aggression ... against USSR
 - Count 36
 - Summer 1939 waged a war of aggression ... against USSR/
Mongolia

Japan's aggression

- ▶ Treaty of Peace with Japan (Signed at San Francisco, 8 September 1951)
 - Preamble
 - WHEREAS Japan for its part declares its intention ... in all circumstances to conform to the principles of the Charter of the United Nations; to strive to realize the objectives of the Universal Declaration of Human Rights; ...
 - Article 11
 - Japan accepts the judgments of the International Military Tribunal for the Far East and of other Allied War Crimes Courts both within and outside Japan, and will carry out the sentences imposed thereby upon Japanese nationals imprisoned in Japan.

Japan's aggression

- ▶ *De facto* occupation of Korea from 1904 during the Russo-Japanese War
 - Precedes declaration of war cf) 1941 /12 Pearl Harbor
- ▶ Japan's annexation of Korea (1910)



<p>○ 詔書</p> <p>朝鮮</p> <p>譯文</p>	<p>御名 御璽</p> <p>明治四十三年八月十九日</p> <p>內閣總理大臣 侯爵桂 太郞 陸軍大臣 伯爵小村 正毅 外務大臣 伯爵齋藤 實 海軍大臣 伯爵齋藤 實 文部大臣 伯爵後藤 新平 司法大臣 子爵岡部 長賴</p>
<p>○ 詔書</p> <p>朝鮮</p> <p>譯文</p> <p>朕以東洋和平相持水遠時時帝國之安全將受威脅... 朕特頒布此詔以昭大信... 朕特頒布此詔以昭大信... 朕特頒布此詔以昭大信...</p>	<p>○ 詔書</p> <p>朝鮮</p> <p>譯文</p> <p>朕以天壤無窮之基業私理之國國家常應維持... 朕特頒布此詔以昭大信... 朕特頒布此詔以昭大信... 朕特頒布此詔以昭大信...</p>

Japan's aggression

- ▶ Japan's violation of Korean neutrality during the Russo-Japanese War
 - Korea's declaration of neutrality prior to the war
 - WWI German occupation of neutral Belgium & Luxembourg
- ▶ 1943 Cairo Declaration by USA, UK & ROC
 - "... The aforesaid three great powers, mindful of the **enslavement of the people of Korea**, are determined that in due course Korea shall become free and independent."
 - Early recognition of right to self-determination

Japan's aggression

- ▶ The legality of the treaties concluded between the Empire of Japan and the Empire of Korea
 - '69 Vienna Convention on the Law of Treaties (VCLT)
 - Art 51: Coercion of a representative of a State
 - Art 52: Coercion of a State by the threat or use of force
 - 1905 Protectorate and 1910 Annexation "Treaties"
 - Criticism of Francis Rey & Jean Perrinjaquet
 - article 32 (Duress) of the Harvard International Law Draft on the Law of Treaties by Professor Garner (1935)
 - Second report on the law of treaties, by Sir Humphrey Waldock, Special Rapporteur (1963)
 - Ratification & other procedural defects
 - Contradiction with earlier treaties

Japan's aggression

▶ 1965 ROK–Japan Basic Treaty

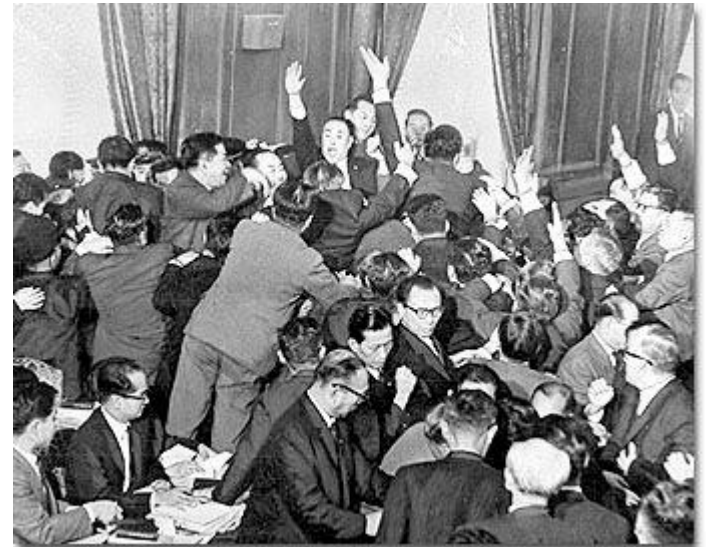
◦ Article II

- It is confirmed that all treaties or agreements concluded between the Empire of Japan and the Empire of Korea on or before August 22, 1910 are **already null and void**.

→ agree to disagree

◦ Japanese Diet debate

- Controversy over the DPRK
- No remorse about history



Japan's aggression

- ▶ Murayama Statement (1995/08/15): high water mark of Japan's apology in the 1990s
 - During a certain period in the not too distant past, Japan, following a mistaken national policy, advanced along the road to war, only to ensnare the Japanese people in a fateful crisis, and, through its colonial rule and aggression, caused tremendous damage and suffering to the people of many countries, particularly to those of Asian nations. ...

Japan's aggression

- ▶ PM Abe Shinzo's pseudo-legal denial
 - 2013/04/23 House of Councillors Budget Committee
 - “Concerning the definition of aggression, it is not defined academically or internationally [侵略という定義については、これは学界的にも国際的にも定まっていない]”
 - “In the relation between states, it differs depending on from which side it is viewed [国と国との関係において、どちら側から見るかということにおいて違う]”
 - Contradiction with article 11 of the 1951 Peace Treaty with Japan
 - Utter disregard for the 2010 Kampala Amendment which Japan did not object as a state party to the Rome Statute

Japan's aggression

- ▶ Japan's occupation/annexation of Korea as “aggression” or crime against peace
 - Retroactive application of international law?
 - Comparison with “genocides” prior to the 1948 Genocide Convention
 - Ottoman genocide of the Armenians
 - Nazi genocide of the Jews
- ▶ Japan's occupation/annexation: aftermath
 - Partition of Korea in 1945 between US & USSR
 - Denationalization of c. 600,000 ethnic Koreans in Japan by administrative fiat of 1952/04/19

Victims of Japan's aggression

- ▶ Medical experiments on human subjects and use of biological/chemical weapons
 - Unit 731 Gen Ishii Shirō (石井四郎): Japan's Dr Mengele
- ▶ Forced labor: largest number of victims
 - Korean, Chinese, SE Asian civilians
 - Allied POWs
- ▶ Gender-based violence
 - Military sexual slavery known as “comfort women”
 - Rape and other forms of sexual violence

Victims of Japan's aggression

- ▶ Maps of “comfort stations” in Japanese-controlled territories during WW2



Victims of Japan's aggression

- ▶ Nationality of “comfort women” & other victims of sexual violence
 - Japanese women
 - Colonial territories: Korea & Taiwan
 - Occupied territories: China & SE/South Asia



Korean comfort women who survived and were protected in Lameng, Yunnan September 3, 1945. The US National Archives



Victims of Japan's aggression

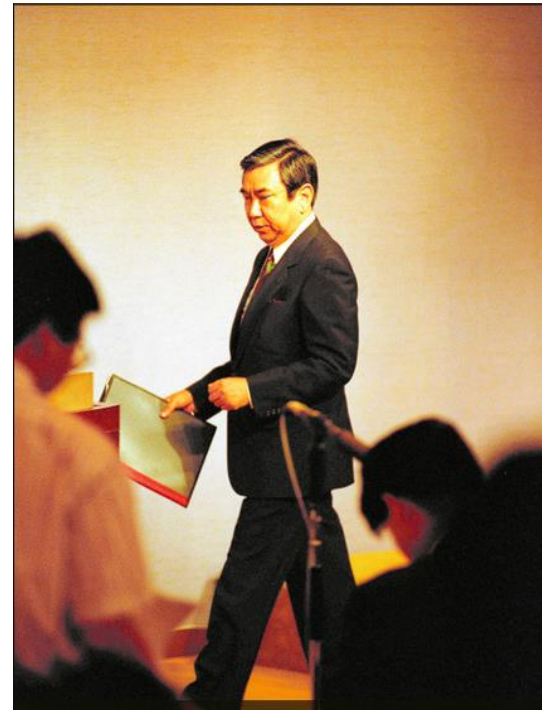
- ▶ Japan's military sexual slavery in the Allied war crimes trials
 - Not addressed as a crime *per se*
 - Batavia trials (Netherlands)
 - IMTFE judgment (1948)
 - “During the period of Japanese occupation of Kwelin, they committed all kinds of atrocities such as rape and plunder. They recruited women labour on the pretext of establishing factories. They forced the women thus recruited into prostitution with Japanese troops.”
(p.1022)

Victims of Japan's aggression

- ▶ The continued suffering of the victims of sexual violence in the post-war era
 - Secondary victimization by patriarchal society
 - Internalization of patriarchal norms
 - Difficulty in marriage/pregnancy: physical & psychological trauma & social stigma
 - “lost generations”
 - Suppression of redress claims by the victim states
 - Dictatorships
 - Prioritization of economic development over victims' claims

Victims of Japan's aggression

- ▶ Reparation movement from the 1990s
 - 1991/08/14 Kim Hak-Soon "comes out" followed by victims from other countries
 - 1992/01 Prof Yoshimi discloses gov't documents
 - 1993/08 Kono Statement
 - UN reports

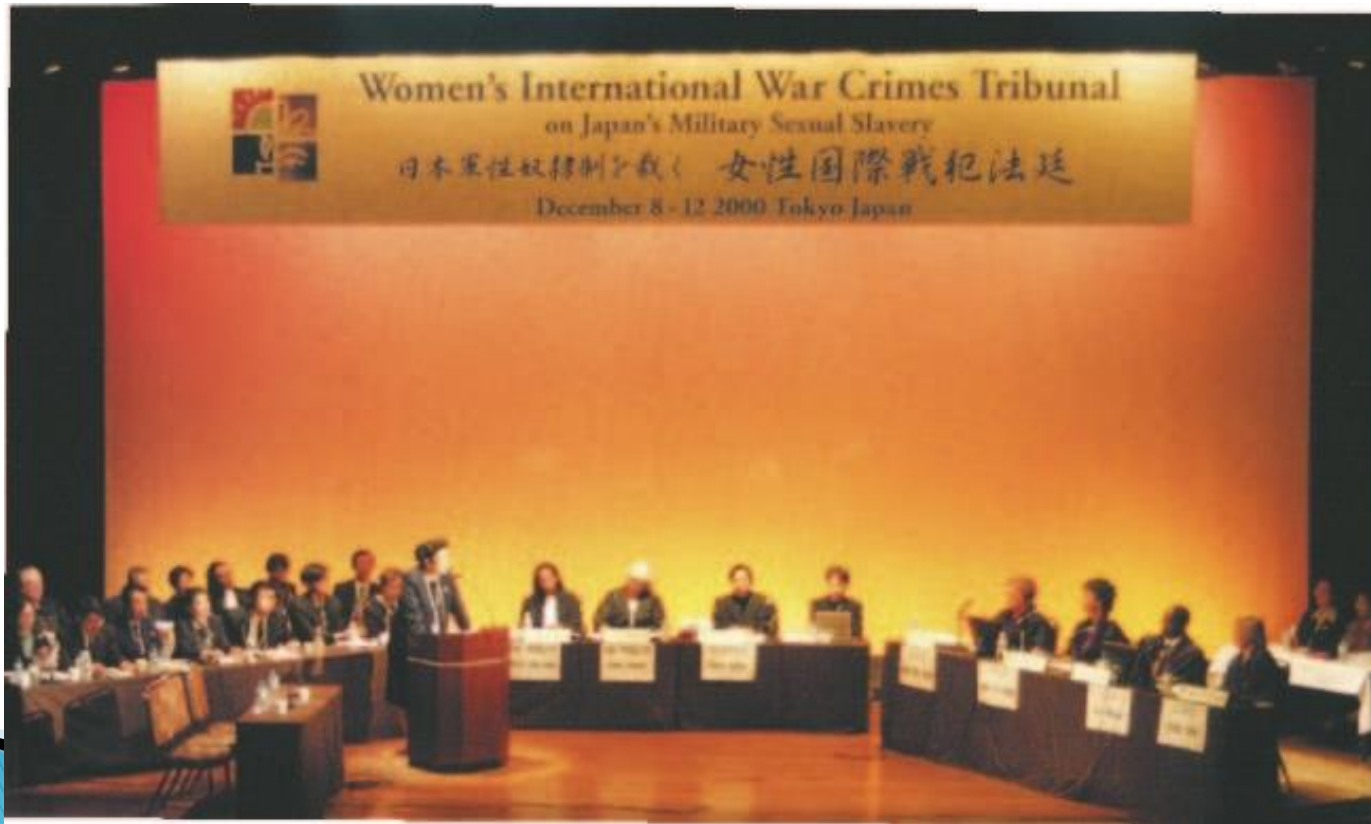


Victims of Japan's aggression

- ▶ 7 demands for justice & reparation
 - Admit the Japanese military sexual slavery system as war crimes, crimes against humanity and grave violations of human rights
 - Fact-finding including disclosure of official documents
 - Deliver an official apology
 - Pay reparations to the victims
 - Punish those responsible
 - Record the sexual slavery system in history textbooks
 - Erect a memorial monument and build an archive
- 2005 Basic Principles and Guidelines** (GA res 60/147)

Victims of Japan's aggression

- ▶ Women's International War Crimes Tribunal on Japan's Military Sexual Slavery (2000)



Victims of Japan's aggression

- ▶ The Japanese government's position (MOFA website)
 - “Forceful taking away” of comfort women by the Japanese military and government authorities could not be confirmed in any of the documents that the Government of Japan was able to identify. (This position is stated, for example, in a written answer approved by the Cabinet on December 16, 1997 to the question by a member of the House of Representatives.)
 - The expression “sex slaves” contradicts the facts so that it should not be used. This point was confirmed with the ROK at the occasion of the Japan–ROK Agreement in December 2015 and the expression “sex slaves” is not used in the agreement.

Victims of Japan's aggression

- ▶ South Korean court decisions
 - 1st lawsuit (2021 / 01 / 08): compensation for CAH
 - 2nd lawsuit (2021 / 04 / 21): Japan's immunity
- ▶ Grandma Lee Yong-Soo's call for CAT/ICJ referral



Victims of Japan's aggression

- ▶ Convention against Torture
 - Art 14 (1) Each State Party shall ensure in its legal system that the **victim of an act of torture** obtains **redress** and has an **enforceable right to fair and adequate compensation**, including the means for as **full rehabilitation** as possible. In the event of the death of the victim as a result of an act of torture, **his dependants** shall be entitled to **compensation**.
 - Art 22: inter-state mediation by the Committee against Torture (CAT)
 - Art 30: referral to the International Court of Justice (ICJ)