

CEACR:
Individual Observation concerning Convention No. 29, Forced Labour, 1930 Japan
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Wartime "comfort women" and industrial forced labour

1. Further to its previous observations under the Convention, the Committee has noted a communication of the All Japan Shipbuilding and Engineering Union, received by the ILO on 6 June 2001, a copy of which was transmitted to the Government on 26 June 2001, as well as a letter dated 9 October 2001 from the Government, referring to its views concerning the Union's communication.

2. The Committee notes that in its communication of June 2001, the All Japan Shipbuilding and Engineering Union indicates that, with regard to war-related compensation, the position of the Japanese Government is that a treaty had put an end to the right to demand compensation and the right to diplomatic protection at the state level but not the right of individuals to damages. The Government is stated to have made this position clear on many occasions, as shown by the examples quoted below in the terms of the Union's communication.

Since Japan lacked diplomatic relations with the Republic of Korea (South Korea) and the People's Republic of China for a long period after the end of WWII, it was virtually impossible for individual victims in these countries to seek redress and payment of overdue wages from Japan and Japanese firms. As for the Democratic People's Republic of Korea (North Korea), Japan has yet to normalize bilateral relations even today.

In 1992, the Japanese government for the first time acknowledged that these individual victims still hold the right to seek damages. Shunji Yanai, then chief of the Foreign Ministry's Treaties Bureau, told an Upper House Budget Committee session on Aug. 27 that the Japan-South Korea Basic Treaty of 1965 had not deprived individual victims of their right to seek damages in domestic legal terms. "(The treaty) only prevents Japanese and South Korean governments from taking up issues as exercise of their diplomatic rights," Yanai told the Diet session. The turnaround in government position prompted many victims to take legal action with Japanese courts.

In other words, the Japanese government admitted that individual (legal) right to seek compensation did not become void due to a bilateral treaty for a decade. Before Yanai, the government officials made a statement to that effect twice as follows.

1. The Japanese Government's Statement in Atomic Bomb Victims Lawsuit (Final Judgement in 1963)

"5. Waiver of the Right to Damage under the Treaty of Peace with Japan.

The item (a) of the article 19 in the San Francisco Treaty does not mean that the country of Japan has given up the right of individual Japanese people to demand compensation for the damages from Truman or the country of the United States of America."

(Article 19(a) of the Treaty of Peace with Japan, signed in San Francisco on 8 September 1951, is quoted in the Union's communication in the following terms:)

Article 19

(a) Japan waives all claims of Japan and its nationals against the Allied Powers and their nationals arising out of the war or out of actions taken because of the existence of a state of war, and waives all claims arising from the presence, operations or actions of forces or authorities of any of the Allied Powers in Japanese territory prior to the coming into force of the present Treaty.

2. Government Statement for the Siberian Internee Compensation Lawsuit (Final Judgment in 1989)

"3. Waiver of the Right to Damages Clause 6 item 2 under the Joint Declaration of Japan and Soviet

The plaintiff insist that Japan waived all claims to Soviet legally or in substance as a result of the Joint Declaration of Japan and Soviet. However, the right Japan waived under the Clause 6 item 2 are claims and the right of diplomatic protection the state of Japan had, but not the claims of individual Japanese people. When we say the right of diplomatic protection, it means the internationally acknowledged right of state to seek the responsibility of a foreign country for the damages Japanese people suffered in the foreign territory arising out of violation of the international laws on the side of such foreign country.

As stated before, Japan did not give up any right belonging to individual Japanese nationals under the Joint Declaration of Japan and Soviet."

In its communication of June 2001, the All Japan Shipbuilding and Engineering Union supplied further information and comments on the settlement reached in the Hanaoka court case, referred to by the Committee in point 12 of its previous observation.

3. By letter dated 9 October 2001, the Government of Japan referred to its views concerning the communication dated 6 June 2001 of the All Japan Shipbuilding and Engineering Union in the following terms.

The Government of Japan is now making efforts to prepare its comments on the matters raised therein and wishes to express its intention to submit the comments to the ILO before the session of the Committee of Experts on the Application of Conventions and Recommendations to be held in 2002. This is due to the fact that more time is needed to allow the Government to gather sufficient information on the basis of which it will examine the issue.

The Committee takes due note of these indications. In its previous observation, it had noted that there were still a number of claims by former prisoners and others pending in different instances, and in view of the age of the victims and the rapid passage of time, it had hoped that the Government would be able to respond to claims of these persons in a satisfactory way. One year later, the Committee hopes that the Government will be in a position to supply particulars to the Conference at its 90th Session in 2002, as regards both its comments on the matters raised in the communication of the All Japan Shipbuilding and Engineering Union, and action taken to respond to the claims of wartime "comfort women" and industrial forced labour.