
HUMAN RIGHTS QUARTERLY

Human Rights and Sexual Abuse: The Impact of International Human Rights Law on Japan

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ABSTRACT

This article examines three major recent human rights issues in Japan relating to sexual behavior, and the measures taken to remedy them. It finds that although international human rights law and norms played a major role in each of these episodes, the influence of international law has been uneven. To explain this variation, the article focuses on the domestic balance of power in Japan and identifies three significant factors: (1) shared common interests between pro-human rights constituencies and their political opponents; (2) consensual decisionmaking; and (3) transnational coalition-building through international conferences.

I. INTRODUCTION

While human rights studies tend to focus on developing countries where human rights protection is often lacking, human rights abuses also occur in advanced industrial democracies. Furthermore, advanced democracies "export" human rights abuses abroad, as in the case of commercial sexual exploitation. Thus, an examination of the causes of and cures for human rights violations in advanced industrial societies is equally important. This article focuses on how Japan has grappled with some of its worst human rights problems in recent years. In particular, it will examine three cases relating to issues of sexual abuse. Despite recent *de jure* improvements such

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as the legal guarantee of equal employment opportunity, Japan is still a male-dominated society. Furthermore, Japanese people tend to be reticent about subjects relating to sexual behavior. For these reasons, sexual abuse is one human rights violation that is more likely to occur. The three cases examined in detail here are: (1) commercial sexual exploitation of children (CSEC), (2) eugenics, and (3) wartime sexual slavery. In all three cases, Japan appeared to be in violation of international humanitarian and human rights law. The first case involving CSEC was resolved with the greatest success, the second with mixed success, and the third was a failure. This article's major task is to explain these different outcomes.

In his pioneering work, Yuji Iwasawa argued that bureaucratic discretion has often led to human rights abuses against Korean residents in post-war Japan.¹ Politicians are the only ones who can rectify these kinds of problems by justifying intervention on the grounds that it is necessary for Japan to comply with international human rights law. Thus, according to Iwasawa's interpretation, the balance of power between politicians and bureaucrats is an important factor in continuing attempts to improve Japanese human rights law.

Adopting a slightly broader angle, this article focuses on the balance of power between pro-human rights groups and their opponents. As far as the issues treated in this article are concerned, the pro-human rights camp consists of women politicians and other progressive politicians, human rights NGOs, some progressive media, and human rights lawyers and scholars. Their adversaries include conservative politicians, conservative media and opinion leaders, and bureaucrats. The influence of pro-human rights groups in compelling the Japanese state to comply with international human rights norms and standards depends on three factors: common interest, consensual decisionmaking, and transnational coalitions.

Factor 1: When pro-human rights groups and their adversaries discover common "interests," it is conducive to compliance with human rights norms.

In the highly successful CSEC case, "compensated dating" (*enjo kosaï*) with teenage girls was growing into a significant social problem in Japan precisely at the time that the coalition government was drafting the anti-CSEC bill. Although this was not exactly the problem that the pro-human rights groups were trying to solve in drafting the anti-CSEC bill, conservative politicians had an interest in combating "compensated dating," which they considered an instance of juvenile delinquency. Thus, the pro-human rights camp was able to increase their chances of success by "co-opting" some of the conservatives into their cause.

1. Yuji Iwasawa, *Legal Treatment of Koreans in Japan: The Impact of International Human Rights Law on Japanese Law*, 8 HUM. RTS. Q. 131 (1986).

Factor 2: A consensual style of cross-party decisionmaking helps pro-human rights groups.

Since the Liberal Democratic Party (LDP) lost its majority in the House of Representatives in 1993, it has been forced to form coalitions with other parties to stay in power. As demonstrated by the cases described in the latter half of this paper, all the major human rights improvements during the 1990s occurred after the Social Democratic Party (SDP) joined the coalition. The SDP later left the coalition, but the form of decisionmaking in relation to human rights underwent a subtle shift. Using the same consensual model adopted in the drafting of the anti-CSEC bill, women politicians from the LDP, the Democratic Party of Japan (DPJ), and the SDP went on to draft several other important bills, including the anti-domestic violence bill and the anti-stalking bill. This approach gives members of the opposition parties considerable access to policy making processes in social and human rights areas.

Factor 3: International organizations and conferences provide a forum for pro-human rights groups to increase their power by forming domestic and transnational coalitions.

As the following case study shows, the effect of the Stockholm conference in the CSEC case cannot be clearer. The Cairo conference helped pro-human rights groups in the eugenics case, although less decisively. The Vienna, Jakarta, and Beijing conferences all helped NGOs build international and domestic coalitions in the sex slave case. Regular sessions of UN human rights organizations such as the Human Rights Commission and Subcommission provided forums that produced similar effects, although not to the same extent as the conferences mentioned above. Margaret E. Keck and Kathryn Sikkink characterize this phenomenon as a "boomerang pattern," as borne out in the following analysis.² The rest of this article is devoted to detailed analysis of the three cases, which will be described chronologically, with occasional departures to highlight points of significance.

II. COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

Globalization has both positive and negative aspects. One of the negative aspects is the globalization of the sex industry. In many industrialized countries prostitution is a crime, although enforcement in many countries is often lax. In the 1980s, with the increase in air travel due to the lowering of

2. MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998).

airfares following deregulation of the aviation industry, sex tours to Southeast Asian countries—Thailand and the Philippines in particular—became extremely popular in industrialized countries. Among these sex tours, the most insidious and morally reprehensible were those involving minors. These tours were not necessarily targeted at “pedophiles;” the tourist industry marketed these tours to ordinary people, even though many of the prostitutes were children.

Thus, in the host countries child prostitution and pornography became a social problem by the early 1980s. However, child prostitution did not receive any policy attention from the countries of departure until one tragic incident occurred in the Philippines. On 20 May 1987, a girl living on the streets in Olongapo, north of Manila, died from complications resulting from sexual exploitation by an Austrian doctor. A Swedish non-fiction author wrote a book based on this tragic event, and it became an instant best seller in Sweden.³ Since 1991, when the then Swedish Minister for Economic Development directed the Ministry to tackle this problem, combating commercial sexual exploitation of children (CSEC) has been a key policy priority of the Swedish Government.

Another important development was the adoption by the UN General Assembly of the Convention on the Rights of the Child (CRC) in November 1989.⁴ Japan immediately signed the CRC, but it was not ratified until 1994. At the time the children’s convention was adopted, the Japanese media noted that Japan lacked the necessary domestic legislation to fulfill its commitments under the Convention,⁵ but no concrete action was taken.

Civic groups began to mobilize international action to combat CSEC at around the same time. The Ecumenical Coalition on Tourism in the Third World (ECTWT), a division of the World Council of Churches, hosted a conference in Chiang Mai in May 1990. At this conference, various reports were presented regarding the victims of CSEC in various countries. At the end of the conference, participating groups adopted a resolution to establish an international campaign to End Child Prostitution in Asian Tourism (ECPAT).⁶ From then on, ECPAT has engaged in a concerted campaign to

3. MAIGULL AXELSSON, *ROSARIO IS DEAD* (1997).

4. Convention on the Rights of the Child, adopted 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (entered into force 2 Sept. 1990), reprinted in 28 I.L.M. 1448 (1989) (hereinafter CRC).

5. Yayori Matsui, *Jidō no Kenri Jōyaku wo Kokuren de Saitaku he: Fujūbunna Nihon no Kokunaihō*, ASAHI SHIMBUN, 10 Oct. 1989, morning ed., at 4.

6. Junko Miyamoto, *Kodomono Shogyoteki Sakushu Kinshini Kansuru Kokusai Doko to Nihon no Jōkyō: ECPAT to Nihon: 1999-nen Tokubetsuho Seiritsu made no Ugoki*, in KODOMO HAKUSHO 20 (Nihon Kodomowo Mamorukai ed., 1999). ECPAT became an NGO in 1996 and was renamed End Child Prostitution, Child Pornography, and Trafficking in Children for Sexual Purposes, while the acronym remained the same.

raise public awareness of this problem. A Japanese NGO, the Japan Women's Christian Temperance Union (*Nihon Kirisutokyo Fujin Kyofukai*), sent Junko Miyamoto to this conference, and in January 1992 the Temperance Union became one of the Japanese chapters of ECPAT under the name of ECPAT/STOP. ECPAT Kansai, another women's group in the Kansai region, and the Franciscan Chapel in Tokyo, also later became participating Japanese members.

From then on, Southeast Asian countries became active in prosecuting the perpetrators of CSEC, and as early as 1991 several Japanese men were arrested by local law enforcement authorities.⁷ Due to heightened public awareness of this problem in many countries of both departure and destination, new legislation was enacted in the early 1990s (Philippines 1992; Germany 1993; Australia, the United States, and France 1994; Sri Lanka, Taiwan, New Zealand, and Belgium 1995; Thailand 1996). In addition, Sweden and Norway tightened their enforcement of existing legislation. The only major country lagging behind in this movement was Japan.

ECPAT/STOP stepped up lobbying from this period on. Women politicians were eager to collect more information, and ECPAT and other NGOs arranged to invite foreign speakers to meet with Japanese politicians. For instance, an Australian ECPAT representative came to Tokyo and spoke at the House of Councilors in March 1994, explaining recent legislative progress in Australia.⁸

Japanese politicians were concerned about CSEC as the Japanese Diet deliberated over ratification of the Convention on the Rights of the Child (CRC). Article 34 of the CRC calls for signatories to make every effort to prevent CSEC and Japan was clearly not living up to this obligation.⁹ On 29 March, Councilor Sumiko Shimizu of the SDP questioned the government about this issue in the Foreign Affairs Committee of the House of Councilors, but the government was of the opinion that existing legislation was adequate.¹⁰ Trips to investigate the problem in Southeast Asia heightened politicians' concern. One politician recalls that she was shocked to see ordinary Japanese men buying children abroad.¹¹ The Japanese were

7. Yayori Matsui, *Sutoppu Jidō Kaishun (Shinkairyū: Henshūin no Me)*, ASAH SHIMBUN, 27 July 1991, evening ed., at 3.

8. Interview with anonymous NGO representative, 28 Nov. 2001 (on file with the author); *Kodomo Baishun de Hōkaisei Yōkyū no Ugoki: Kaigai deno Kōi mo Shobatsu*, ASAH SHIMBUN, 10 Apr. 1994, at 4.

9. CRC, *supra* note 4, art. 34.

10. Miyamoto, *supra* note 6, at 21.

11. Interview with Masako Ohwaki, member of the House of Councilors, 6 Feb. 2002 (on file with author).

notorious for producing pornographic materials in Southeast Asia as well. The Temperance Union did research on 110 bookstores in thirty-two municipalities between 1995 and 1996, finding that over 96 percent of stores carried material related to child pornography.¹²

In the meantime, Sweden was getting ready to host a major international meeting to focus on this problem. Helena Karlen, an activist of the NGO Save the Children, lobbied the Swedish government to host an international conference. Queen Silvia agreed to defray the costs of the conference, and an old friend of Karlen's at the Foreign Ministry was posted to the Swedish Embassy in Tokyo and became a powerful lobbyist behind the scenes. ECPAT held an executive meeting at the Swedish Embassy in Tokyo in the spring of 1996. Several politicians from the SDP and Seiko Noda from the LDP attended the meeting. Prime Minister Ryutaro Hashimoto sent a message as well. The ECPAT decided to expand the scope of the campaign and extend the campaign by five more years to 2002.¹³

Karlen wanted the Japanese government to send an official delegation to the First World Congress Against CSEC in Stockholm.¹⁴ However, Japan's Ministry of Foreign Affairs (MOFA) was reluctant; Japanese bureaucrats, who were averse to NGOs, wanted to dismiss the conference as too "informal." However, it happened that Sumiko Shimizu was a Parliamentary Vice Minister at the Economic Planning Agency, and managed to obtain Cabinet approval to go to Stockholm. She wanted MOFA to write her speech giving a pledge that the government would pass new legislation to comply with Article 34 of the CRC, but she was not able to prevail, and both the Justice Ministry and MOFA remained firm on this point.¹⁵

The First World Congress against CSEC, based on an equal partnership between governments, NGOs, and international organizations, was convened from 27–31 August 1996 in Stockholm, with 122 countries participating. According to the University of Minnesota Law School, special legislation against child pornography was already on the books in forty-six countries. By then, thirty-one countries had banned not only manufacture and sales, but also possession of child pornography.¹⁶ At one of the regional meetings in Stockholm, Japan was singled out and came under pressure.¹⁷

Soon after Stockholm, Japanese NGOs began to take concrete action.

12. Interview with Junko Miyamoto, ECPAT/STOP, 28 Nov. 2002 (on file with author).

13. *Kodomo Kaishun Konzetsu Daihyōsha Kaigi ga Heimaku*, ASAHI SHIMBUN, 20 Apr. 1996, at 34.

14. Helena Karlen-san, *ECPAT Fukugichō (Hito)*, ASAHI SHIMBUN, 30 Apr. 1996, at 3.

15. Interview with Anonymous Former Diet Member, 22 Jan. 2002 (on file with author).

16. Maki Okubo, *Kodomo wo Tsukatta Poruno Hōkisei Fukume Taisaku Isoge: Sekai Kaigi de Tainichi Hihan mo*, ASAHI SHIMBUN, 11 Sept. 1996, at 4.

17. Interview with Anonymous Former Diet Member, *supra* note 15.

The Japan Federation of Bar Associations (JFBA) publicized policy proposals that would enable the Japanese government to punish Japanese nationals who organized child prostitution abroad. The existing law required a complaint by the victim, and therefore even though it was theoretically possible to lodge a complaint, there had so far been no prosecutions.¹⁸ In order to publicly demonstrate the deficiencies in the existing legislation, lawyers in Tokyo filed a complaint with the Chiba Prefecture Police against a former college professor who had raped an eleven-year-old Myanmar girl. The lawyers commented that "the extraterritorial prosecution clause has been dormant. In the course of the investigations and trial, legal deficiencies will be highlighted."¹⁹

At the time of the Stockholm meeting, MOFA and the Swedish Foreign Ministry informally agreed that another meeting on the same problem should be held in Tokyo. The Swedish government approached the Japan Committee for UNICEF, which readily agreed to co-host a follow-up meeting. In preparing for the follow-up seminar, SDP politicians met with the top leaders of the LDP and requested establishing a project team, and the LDP leaders agreed to the proposal.²⁰

On 28 May 1997, the first follow-up seminar was held at the Swedish Embassy in Tokyo, jointly hosted by the Japan Committee for UNICEF, Japanese ECPAT groups, and the Swedish Embassy. At this meeting, Sadakazu Tanigaki from the LDP promised to work on the problem.²¹ Swedish Ambassador Valquist and Satoshi Sumita, President of the Japan Committee for UNICEF, visited Prime Minister Ryutaro Hashimoto on 9 June, and handed him the text of the declaration from the follow-up meeting. On that day, the three ruling parties formally decided to establish a Project Team to consider legislation to ban child prostitution.²² Over the next year, the Project Team formally met more than twenty times, or over forty times if informal meetings are included.

Around this time, teenage prostitution involving Japanese high school girls had become a major social issue. Due to the proliferation of cellular phones among teenagers, it became increasingly easy to arrange anonymous prostitution. A customer could simply dial a certain number to arrange

18. "Kodomo Kaishun" ni Keijibatsu Kyōka wo: Hōkaisei nadono Kaisei Motomeru: Nichibenren ga Teigen, ASAHI SHIMBUN, 26 Oct. 1996, evening ed., at 16.

19. Kokunai demo Tsumi Tou: Yōgi no Zen-jōkyōju Kokuso: Myanmā Shōjo Gōkan Chisō, ASAHI SHIMBUN, 16 Nov. 1996, Chiba Local.

20. Interview with Anonymous Former Diet Member, *supra* note 15.

21. Junko Miyamoto et al., *Partnership building Japan-Sweden as follow up of the Stockholm World Congress*, on file at the Swedish Embassy, Tokyo.

22. Hōmu Pēji ni, Jidō Poruno wo Keisei Yōgi de Taiho: Kinshihō wo Hatsu Tekiyō, ASAHI SHIMBUN, 10 June 1997, at 7.

a date with a teenage girl, who would often agree to have sex. Since this was particularly prevalent in Tokyo, the local government began to consider countermeasures around this time. Thus, discussions by the ruling coalition's Project Team often drifted to the problem of "compensated dating," but human rights groups tried repeatedly to refocus attention on child prostitution abroad and extraterritorial enforcement. After arduous discussion, the Project Team (PT) came up with a draft bill on CSEC and announced the key points on 30 March 1998. Two months later, the PT-drafted bill was submitted to the House of Representatives. However, deliberations on the bill were postponed because of opposition from the DPJ. In November, the DPJ announced its own version of the anti-CSEC bill. In January 1999, a Study Group on Child Prostitution including all the major parties started its work. Some major differences between the original PT draft and the DPJ version had to be bridged, but finally a consensus bill was submitted to the Diet in March, and by May had been passed by both houses.

The third follow-up seminar was held at the Swedish Embassy in May and at that time Karlen secretly broached the idea of hosting a second CSEC Congress in Japan. Two months later, Swedish Ambassador Kumlin sent a letter to Prime Minister Obuchi, asking the Japanese government to host a second World Congress in 2001. Two months later, the Swedish government received a reply from the Japanese government that Japan would positively consider hosting a world congress.²³

On 1 November 1999, the new CSEC Law came into effect. The police were very aggressive in enforcing this law. As soon as it came into force, the Kanagawa Police made the first arrest; a man from Saitama Prefecture was detained on suspicion of displaying child pornography on his website.²⁴ The following year, the Kanagawa Police arrested seven men for the manufacture and distribution of child pornography produced in Thailand. This was the first arrest for extraterritorial crimes under the 1999 Law.²⁵

Each of the governments represented at the Stockholm Conference had pledged to develop a National Plan of Action, but the Japanese government had failed to do so. It would be highly embarrassing if the host country of the Second World Congress had no Plan of Action. A shaming strategy orchestrated by NGOs was successful, and the Japanese government finally

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23. Kaj Reinius, *Swedish-Japanese Exchanges generated by World Congress against Commercial Sexual Exploitation of Children in Stockholm*, Aug. 1996 (personal memo, on file with Swedish Embassy, Tokyo). It was not until May 2000, however, that the Japanese government formally announced convening the second World Congress in Japan.
 24. *Hōmu Pēji ni Jidō Poruno wo Keisai Yōgi de Taiho; Kinshihō de Hatsutekiyō*, *ASAHI SHIMBUN*, 12 Nov. 1999, at 39.
 25. *NGO "Sarani Kisei Kyōka wo": Jidō Poruno Kokugai Jiken Hatsu Tekihatsu: Kanagawa*, *ASAHI SHIMBUN*, 8 Nov. 2000, at 31.

announced its Plan of Action on 16 February 2001, barely ten months before the Congress. On 1 March, the Cabinet approved a bill to revise the Amusement Businesses Law (*Fuzoku Eigyo Ho*) to ban minors under the age of 18 from using telephone clubs—a form of dating service that had allowed minors to engage in prostitution. The revised law would also oblige Internet providers to monitor their servers so that they would not inadvertently show child pornography on the web.²⁶ On 23 November, the Japanese government signed the Anti-Cyber Crime Convention, the first international treaty to deal with Internet crimes.²⁷

On the first day of the Second World Congress against CSEC in Yokohama, Foreign Minister Makiko Tanaka gave an opening address, appealing for concerted action by governments and NGOs to combat the problem.²⁸ At the press conference after the closing of the Yokohama Congress, Cherry Kingsley, a Canadian survivor of CSEC, spoke out. She had been raped at the age of ten by her family and was forced into prostitution from the age of fifteen to twenty-two. Junko Miyamoto commented that “at the previous (Stockholm) Congress, there were few appeals from survivors. This is a result of steady efforts made over the past five years.”²⁹ The organizers and participants of the Congress felt that it had been a great success. This was one of the first major international conferences on human rights that Japan had ever hosted, and there had been much more attention from the media compared to the Stockholm conference.³⁰

III. EUGENICS AND REPRODUCTIVE HEALTH RIGHTS

Eugenics in Japan dates back to the pre-war period, when parliamentarians devised radical methods of improving the genetic pool by preventing “inferior genes” from reproducing. Although the Japanese law is generally considered to have been modeled on the similar Nazi sterilization law, the pre-war measures that had been proposed were far more intrusive than their Nazi counterparts.³¹

26. *Terekura 18-sai Miman Kinshi he: Netto Poruno Kisei mo: Kaiscihō Kakugi Kettei*, ASAH SHIMBUN, 21 Mar. 2001, evening ed., at 26.
27. Kazuhiro Taira, *Kokunaihō Seibi ni Kadai: “Saibā Hanzai Jōyaku” Nihon mo Shomei*, ASAH SHIMBUN, 26 Nov. 2001, at 13.
28. *Kodomo Kaishun Nakuse: Yokohama de Sekai Kaigi Hajimaru*, ASAH SHIMBUN, 17 Dec. 2001, evening ed., at 14.
29. Katsura Ishibashi, *Seiteki Sakushu kara Kodomo wa Mamoru Sekai Kaigi ga Heimaku: Kanagawa*, ASAH SHIMBUN, 24 Dec. 2001, at 25.
30. Interview with Yoko Komiyama, then member of the House of Councillors, currently member of the House of Representatives, 21 Jan. 2002 (on file with author).
31. Yoko Matsubara, *Minzoku Yusei Hogo Hoan to Nihon no Yusei Hogoho no Keifu*, 36 KAGAKUSHI KENKYU DAI 2-KI, 42–50 (1997).

The first post-war law on eugenics, the Eugenic Protection Law, was enacted in 1948, when Japan was still under Allied Occupation, and had two legislative purposes: (1) the original idea of eugenics, viz., to legalize the forced sterilization of the mentally ill as well as patients with hereditary diseases; and (2) to partially legalize abortion through the "economic hardship" clause.³² The 1952 revision, however, went beyond these original purposes by adding diseases that were not necessarily hereditary. For instance, Hansen's disease is by now firmly established to be a weakly-communicable disease that is not hereditary. In those days, however, it was considered hereditary because it tended to affect family members. Therefore, Hansen's disease was also added to the list of diseases subject to forced sterilization.

Groups representing persons with disabilities felt that the eugenics law not only institutionalized social discrimination against people with disabilities, but also legitimized numerous human rights abuses. There were movements to revise the eugenics law twice in the post-war era. In both cases, the key instigators were conservative politicians who wanted to prohibit abortion by removing the "economic hardship" clause. In 1972, the Ministry of Health and Welfare submitted an amendment bill to the Diet, trying to remove this clause and insert a new provision permitting abortion in cases where the fetus was suffering from a high degree of disability. Owing to opposition from women's groups and groups representing people with disabilities, the bill was rejected. In 1983, the LDP formed a pro-life caucus and tried to remove the economic hardship clause once again. Due to opposition from women's groups, they were not able to introduce the bill.

In November 1989, the National Liaison Council for the Liberation of the Disabled issued a report at a meeting in Osaka, on a case in Okayama which involved the illegal removal of a psychiatric patient's uterus without her consent. The woman in question had been institutionalized in Okayama Prefecture. As a result of contracting polio, she had developed a psychiatric illness and had difficulty walking. According to the institution, she was susceptible to fits of anger if she could not have her own way, especially during menstruation. In February 1982, she was operated on at a hospital in Okayama at the request of her family.³³

Another scandal relating to forced sterilization was revealed by the media in 1993. Doctors at national university hospitals admitted to operating on three women with disabilities to remove their uteruses.³⁴ Thus,

32. Abortion had been a punishable crime under the Meiji Criminal Code.

33. 'Seiriji ni Seishin Fuantei': Shōgaisha no Shikyū Tekishutsu: Okayama no Shisetsu, ASAHI SHIMBUN, 18 Nov. 1989, at 30.

34. Shōgaisha kara Seijo Shikyū Tekishutsu: 3-rei, Ishiga Mitomeru: Kokuritsu Daigaku Fuzoku Byoin 'Seiriji no Kaijo Keigen,' MAINICHI SHIMBUN, 12 Mar. 2003, morning ed., at 1;

Japanese were becoming increasingly aware of the problems associated with the eugenics law, but in order for a breakthrough to occur, international input was required. The Cairo Conference on Population and Development offered such an occasion. The Ministry of Foreign Affairs (MOFA) had become more willing to listen to the NGOs, because by this time their voices already had become prominent in UN conferences. Japan had been lagging behind in this trend, and MOFA was now ready to catch up by convening a meeting of NGOs in Tokyo prior to the Conference. According to MOFA, this was the first time that the Ministry had solicited comments from NGOs before an international conference. The focus of the conference was to be women's rights and the key concept of "reproductive health," which referred to the reduction of child mortality and the birth rate through women's choice and decisions based on correct information. However, because there was a conflict between the United States and the Vatican as to whether women's rights included the right to abortion, Foreign Minister Yohei Kono was to refrain from referring to this point. However, NGOs participating in the Japanese delegation believed that abortion should be considered part of women's rights.³⁵

The UN International Conference on Population and Development (ICPD) opened on 5 September 1994 in Cairo. The conference was dogged from the beginning by a huge controversy over whether or not "reproductive rights" included a right to abortion. Unperturbed by such controversies, Yuho Asaka launched a denunciation from her wheelchair stating that "Japan's population policy has been implemented through the Eugenic Protection Law, which is designed to prevent the birth of 'inferior offspring.' Uterus operations have been carried out on the mentally ill without their consent." NGOs criticized Japan for its eugenics policy.³⁶ Asaka's presentation received much attention both at home and abroad.

By the time the conference ended on 13 September, a 113-page Program of Action aimed at controlling the world's population over the next twenty years had been adopted.³⁷ Japanese MP Akiko Domoto, who participated in the Conference, commented that "in order to follow up on

'Oya ya Shisetsu ga Komarukara': Shujutsu no Kyoju 'Shikyu Tekishutsu ha Tozen,' MAINICHI SHIMBUN, 12 Mar. 2003, morning ed, at 26; *Josei Shōgaisha no Shikyu Tekishutsu: Jinken Dantai ga Chosa he,* MAINICHI SHIMBUN, 12 Mar. 2003, evening ed., at 11.

35. *NGO to Sekkyoku Taiwa he: Seifu Daihyō Enzetsu no Gaiyō Katamaru (Kairo Jinkō Kaigi),* ASAHI SHIMBUN, 26 Aug. 1994, at 34.

36. Miki Morimoto & Mieko Takenobu, *Jinkō Seisaku 'Senshin Nippon' no Naijitsu ha (Kairo Kaigi gono Kadai: Jō),* ASAHI SHIMBUN, 1 Oct. 1994, at 19.

37. *Report of the International Conference on Population and Development,* U.N. Doc. A/CONF.171/13 (1994) available at gopher://gopher.undp.org:70/00/ungophers/popin/icpd/conference/of_feng/poa.

the Cairo Program of Action, we need to work on the approval of the birth-control pill, the abolition of the Eugenic Protection Law and the decriminalization of abortion. I undertake to argue in the Diet in favor of a law comprehensively protecting women's health."³⁸

Another impetus for the revision of the eugenics law came from a different direction: Hansen's disease. As already mentioned, under the Eugenic Protection Law, sufferers of Hansen's disease could be subjected to forced sterilization or abortion procedures. However, by this time it was known that Hansen's disease was neither hereditary nor contagious enough to warrant quarantine. Under the Leprosy Prevention Law of 1907, as amended (1953), patients suffering from this illness had been forcibly institutionalized for many years, completely isolated from the rest of society. Groups representing these patients were organizing themselves to seek redress. The National Council of Hansen's Disease Patients decided at a chapter chiefs' meeting in January 1995 to submit nine demands regarding official support for institutionalized patients. Previously, in November 1994, the association of the heads of national sanatoriums for patients with Hansen's disease had issued a statement calling for new legislation to abolish the Leprosy Prevention Law and to guarantee medical care and social welfare for patients who had formerly been institutionalized.³⁹ In April 1995, the Japanese Leprosy Association issued a proposal for abolishing the law, which it now considered to be without medical foundation,⁴⁰ and the Ministry of Health and Welfare began a process of review. In December, the review panel of the Ministry proposed the abolition of the Leprosy Prevention Law, and in 1996 the Ministry introduced a bill to abolish it. The bill was passed unanimously on the floor of the House of Councilors on 27 March.⁴¹ Thus, Hansen's disease was removed from the list of diseases included in the Eugenic Protection Law.

Women's groups continued their push to legitimize the idea of "reproductive rights," meaning the right to contraceptives such as the pill, as well

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38. An Anonymous Ministry of Health, Labor and Welfare official says that since the Eugenic Protection Law was enacted through the initiative of parliamentarians, it was only right to revise it through legislation drafted by parliamentarians. Interview, 8 Nov. 2001 (on file with author).
39. Hajime Hirokawa, *Sabetsu wo Nokosu, Rai Yobōho no Haishi wo (Kisha Nōto)*, ASAHII SHIMBUN, 10 Feb. 1995, at 4.
40. It appears that the national sanatoriums functioned as vested interests to maintain this regime. A member of the Japanese Leprosy Association commented, "Sanatorium doctors play a major role in the association, and for this reason, some members did not want to speak out in favor of amending the law." Tateki Kato, *Hansen's Disease May Come Out of Closet*, DAILY YOMIURI, 5 May 1995, at 13.
41. *Rai Yobōho Haishihō ga Seiritsu: "Kyōsei Kakuri" no Konkyo ni Shūshifu*, ASAHII SHIMBUN, 27 Mar. 1996, evening ed., at 1.

as the right to safe, legal abortion on the basis of a woman's own free will. In preparing for the Beijing Conference on Women, NGO representatives met with Health and Welfare Minister Ide in July 1995 and requested that the Japanese government push for endorsement of "reproductive health and reproductive rights" at the Conference. The Minister promised that he would do so. NGOs presented a petition signed by seventy women, including twenty-four women members of the Diet. The petition called for the establishment of a new reproductive health section in the Ministry of Health and Welfare, the inclusion of NGO representatives in the Japanese delegation to the Beijing Conference and an increase in the choice of contraceptives, including approval of the pill.⁴² At the Fourth World Conference on Women held in Beijing, China, on 4–15 September 1995, Japanese NGOs held a joint workshop in which they reported on the situation of women with disabilities in Japan.⁴³

As in the case of Hansen's disease, groups representing people with disabilities began to lobby the government. In April 1995, the National Association for the Families of the Mentally Disabled requested the abolition of involuntary eugenic operations. Since the 1970s, many countries, including the United States, the United Kingdom, and Germany had enacted new laws on this issue after nationwide controversies. However, the Japanese Ministry of Health and Welfare was unwilling to submit an amendment bill, stating that "it involves bioethics, and there are wide differences of opinion among the population. With this kind of problem the bureaucracy should not take the initiative."⁴⁴

The LDP began examining this problem in early 1996. On 29 May, the Social Affairs Division of the LDP agreed on a rough outline of a draft bill to amend the Eugenic Protection Law. In the Division, some conservative members demanded the removal of the "economic hardship" clause for abortion, but the Division decided to limit revision to the abolition of eugenics.⁴⁵ According to this proposal, the name of the law would be changed to the "Maternity Protection Law." The term "eugenic operation" would be replaced by "sterilization operation" and the clause about involuntary operations would be removed.⁴⁶ On 4 June, the LDP submitted

42. "Hinin no Sentakushi Kakudai wo" Josei Dantai-ra Kōshō ni Yōsei: Pekin Josei Kaigi garami, ASAHI SHIMBUN, 14 July 1995, at 33.

43. Keiko Takayama and Yuka Hamano, *Josei Shōgaisha no Genjo to Kongo: Yuseihogoho kara Botai hogoho heno Iko no nakade*, 37 YOKOHAMA KOKURITSU DAIGAKU KYOIKU KIYO 131 (1997).

44. Yukio Uchiyama, *Yūsei Hogohō Kaisei, Tachiba de Sa: Jimintō nai ni Giin Rippō no Ugoki*, ASAHI SHIMBUN, 14 Feb. 1996, at 4.

45. "Furyō na Shison no Shusseji Bōshi" Yūsei Shisō wo Sakujo: Yūsei Hogohō de Jimin ga Kaiseian, ASAHI SHIMBUN, 29 May 1996, evening ed., at 1.

46. *Jimintō Bukai ga Matometa Yūsei Hogohō Kaiseian no Yōkō*, ASAHI SHIMBUN, 29 May 1996, evening ed., at 2.

a bill to the Health and Welfare Research Committee of the ruling coalition proposing to amend the Eugenic Protection Law. On the same day, several women members of the Diet proposed adding a clause specifying that abortion should be based on self-determination by women.⁴⁷

Yuho Asaka and Keiko Higuchi (Women and Health Network), Akiko Domoto and other women members of the Diet decided to set up a network to debate the proposed revisions to the Eugenic Protection Law. They also started drafting a new bill tentatively called "Women's Health and Hygiene Law." This draft bill was inspired by the principle of reproductive rights approved at the Cairo Conference.⁴⁸

Mayumi Moriyama (LDP), Sumiko Shimizu, and Akiko Domoto met with the leaders of the ruling coalition to change the proposed title of the Eugenic Protection Law to "Law on Sterilization and Abortion" or "Law on Protection of Health in Relation to Abortion."⁴⁹ On 13 June, the Policy Coordination Council of the ruling coalition decided to change the proposed title of the law to "Maternal Body Protection Law." The new bill would remove the word eugenics from the law, striking out the provisions for sterilization and abortion for patients with hereditary and other listed diseases.⁵⁰ The following day, Chairman Sadao Wada of the Health and Welfare Committee of the Lower House submitted the amendment, which passed in the Committee without dissent. On the afternoon of the same day, it passed the floor of the Lower House and was sent to the House of Councilors. The Maternal Body Protection Law came into effect on 26 September 1996.

Against the backdrop of renewed international attention to this issue in 1997, groups representing people with disabilities as well as women's groups went on the offensive. They handed a request to the Ministry of Health and Welfare calling for investigations and compensation. A total of seventeen groups requested: (1) apologies and compensation to people sterilized under the Eugenics Law; (2) the establishment of a special investigative committee; and (3) investigations into uterus extraction operations on women with disabilities.⁵¹ The Group Demanding Apologies for Forced Sterilizations, which was formed in September, held a meeting in

47. *Chūzetsu, Josei ni Ketteiken wo: Josei Giin kara Shūsei Yōkyū: Yūsei Hogohō Jimintō Kaiseian*, ASAH SHIMBUN, 5 June 1996, at 7.

48. *Hinin/Seibōryoku: Josei wo Mamoru Hō wo: Giin/NGO ga Nettowāku*, ASAH SHIMBUN, 9 June 1996, at 21.

49. *Josei Giin, Chōtōha de Meishō Henkō Motomeru: Yūsei Hogohō Kaiseian "Bosei Hogohō"*, ASAH SHIMBUN, 13 June 1996, at 7.

50. *Yūsei Hogohō no Kaiseian wo Teishutsu he: "Sabetsu" Kitei Minaoshi: Yotō Gōi*, ASAH SHIMBUN, 14 June 1996, at 2.

51. *Honjin no Dōinashi no Funin Shujutsu, Nihon demo Jittai Shirabete: Kōseishō ni Yōbōsho*, ASAH SHIMBUN, 17 Sept. 1997, at 21. According to the official statistics, 16,520 involuntary sterilization operations were conducted between 1949 and 1994.

Tokyo on 13 November to discuss sterilization under the former Eugenic Protection Law. The Group decided to set up a hotline for three days starting on 24 November for victims of sterilization without consent.⁵² Seven cases of sterilization were reported to the group.⁵³

Eugenics is a difficult issue to analyze in terms of the impact of international law. In the course of debates over the abolition of eugenics, no specific international law was invoked, except that of "reproductive rights" which had been endorsed at the Cairo and Beijing conferences. Rather than being a two-way battle between pro-human rights groups and their opponents, the political conflict within Japan became a three-way conflict between: (1) groups representing people with disabilities who wanted to abolish forced sterilization and abortion, but did not want to expand the right to abortion too broadly for fear of worsening social prejudice against people with disabilities; (2) women's groups who wanted to expand women's access to abortion and other reproductive rights, such as approval of birth control pills;⁵⁴ and (3) conservatives who wanted to restrict the right to abortion. Reconciling all three interests was not easy. However, this case is similar to other cases in that the pro-rights groups effectively used international forums to advance causes to their advantage. Without these international forums and an international abhorrence of eugenics, amendment of the Eugenic Protection Law would have been very difficult, if not impossible.

IV. WARTIME SEXUAL SLAVERY

The practice of systematic sexual slavery by the Japanese military before and during World War II is clearly a crime against humanity. However, international law was not strong enough to compel the Japanese government to prosecute perpetrators and compensate victims. Undoubtedly, intransigent and entrenched conservatism as well as ineffectual legal institutions in Japan were also important factors.

On 6 December 1991, a group of three Korean women surprised Tokyo by filing a lawsuit against the Japanese government demanding compensation for the abuses they had endured as so-called "comfort women,"⁵⁵ a

52. "Kyōsei Funin Shujutsu, Kaimei wo": *Shōgaisha-ra Shūkai, Taiken Kataru: Hottorain mo*, *ASAHI SHIMBUN*, 15 Nov. 1997, at 23.

53. *9-nin no Taiken, Akirakani: Kyōsei Funin Shujutsu de Shimin Gurūpu no Chōsa*, *ASAHI SHIMBUN*, 10 June 1998, at 19.

54. The low-dose pill was finally approved in June 1999.

55. The UN uses the term "sexual slaves" to refer to these women, while the term "comfort women" (*jūgun ianfu*) is customarily used in Japan.

Japanese euphemism for the systematic and organized sexual abuse of mainly Asian women by Japanese frontline soldiers during World War II. The women's action was daring for several reasons. First, although the existence of these "comfort women" was well-known before this time, no actual victims previously had identified themselves because such an admission was considered too shameful. Second, until this lawsuit the Japanese government had categorically denied any involvement, maintaining that if such activities had existed at all, they were purely private operations.⁵⁶ Thus, it was highly unlikely that the Japanese government would admit complicity without further evidence. Therefore, when thirty-five Koreans, including three former sex slaves, filed suit at the Tokyo District Court in December 1991 the Japanese government immediately reacted by repeating the official line; "in general terms, when it comes to individual claims to be handled between Japan and Korea, it has been settled completely and for good in the agreement of claims and economic cooperation in 1965."⁵⁷

As with all other previous efforts, this suit would have come to nothing had it not been for the surprise discovery at the same time by historian Yoshiaki Yoshimi of six documents strongly implicating the Imperial Army in the management of brothels for Japanese soldiers.⁵⁸ Yoshimi handed these documents over to the *Asahi Shimbun* newspaper, which reported the finding a few days before Prime Minister Kiichi Miyazawa's scheduled visit to South Korea on 16–18 January.⁵⁹

The Japanese government immediately went into damage control mode, but was able to achieve very little. The new information clearly constituted "smoking gun" proof, and the Japanese government issued an official apology to the Korean women on the eve of the Miyazawa visit. Prime Minister Miyazawa, addressing South Korea's National Assembly on 17 January, admitted that tens of thousands of Korean women were dragooned into Imperial Army brothels a half-century ago, and said that this aspect of history must be taught to future generations. "Recently, the issue of 'comfort women' in the service of the Imperial Japanese Army has come to light. I cannot help feeling acutely distressed over this and I express my sincerest apology," he commented.⁶⁰

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56. *Wartime Korean "Comfort Women" to Demand Compensation*, JAPAN ECON. NEWSWIRE, 21 Aug. 1991.
 57. *Spokesman Says Japan Sympathizes With "Comfort Women,"* JAPAN ECON. NEWSWIRE, 6 Dec. 1991.
 58. YOSHIMI YOSHIKAKI, *COMFORT WOMEN: SEXUAL SLAVERY IN THE JAPANESE MILITARY DURING WORLD WAR II* (Suzanne O'Brien trans., Columbia University Press 2000) (1995).
 59. Interview with Anonymous Former Diet Member, *supra* note 15.
 60. *Miyazawa Apologizes for Abuse of "Comfort Women,"* JAPAN ECON. NEWSWIRE, 17 Jan. 1992.

However, this was only the beginning of the controversy. At this point, two major issues were prominent: compensation and the admission of coercion. Miyazawa was very careful not to touch on the issue of compensation to the former "comfort women." Tokyo was afraid that once compensation had been made to these women, it would open a floodgate of other claims not only by "comfort women," but also by other victims of Japanese atrocities during the war. The second issue was whether there was any coercion involved in the recruitment of these women. The Japanese government had so far maintained the myth that these women were privately recruited with the promise of monetary remuneration. This line was maintained until August of the following year, when the government finally admitted to coercion.

After the filing of the December 1991 action, other plaintiffs followed suit. In April 1992, four other South Korean women filed a suit against the Japanese government at the Shimonoseki branch of the Yamaguchi District Court, seeking an official apology and compensation for suffering. This case would lead to a landmark ruling in 1998, described below. The following year, eighteen Filipino women filed a suit, claiming that the behavior of the Japanese Imperial Army violated their human rights under international law. By 2001, over fifty damage suits had been filed.

Multilateral organizations also became involved in this issue from February 1992 on, when a South Korean civic group asked the UN Commission on Human Rights to support its demands for an apology and compensation from Japan.⁶¹ Etsuro Totsuka, a Japanese lawyer representing a US NGO, also urged the United Nations to investigate wartime forced prostitution by Japan. He said Japan had violated the International Labor Organization (ILO) convention against forced labor, which Japan had ratified in 1932.⁶² Responding to these demands, the Commission decided to send Theo van Boven, a Dutch professor and former foreign minister, as special UN inspector to North and South Korea in December to draw up a report on Korean "comfort women."⁶³ Thereafter, the UN forums became sordid battlegrounds between the Japanese government on the one hand and NGOs and lawyers on the other.

Further evidence of the creation and management of "comfort stations" by the Japanese Army kept pouring in. It was found that General Hideki Tojo was involved as War Minister in establishing frontline brothels overseas

61. *S. Korean Group Takes "Comfort Women" Issue to U.N.*, JAPAN ECON. NEWSWIRE, 26 Feb. 1992.

62. *U.N. Urged to Investigate Japan's Use of Comfort Women*, JAPAN ECON. NEWSWIRE, 6 May 1992.

63. *Human Rights Commission to Probe "Comfort Women" Issue*, JAPAN ECON. NEWSWIRE, 25 Aug. 1992.

during World War II.⁶⁴ After investigating documents culled from various ministries, Japan officially acknowledged in July that it had organized recruitment, but said that there was no evidence the women had been forced into slavery. The government said documents justified the scheme on the basis that it would prevent the "rape of civilians by Japanese troops and thus avoid inflaming anti-Japanese sentiment." The documents also stated that the brothels also met the aims of bolstering troop morale, maintaining discipline and preventing the spread of sexually-transmitted diseases. The report found the women were taken from Korea, Taiwan, China, Indonesia, Japan, and the Philippines.⁶⁵ Activists immediately denounced the report as a "whitewash." The Japanese refusal to state that the women had been coerced or tricked evoked a bitter reaction, especially in South Korea.⁶⁶

The Japanese government began to sound out a compromise solution. In the summer of 1992, MOFA came up with the idea of establishing a semipublic welfare fund for former sex slaves in South Korea, which would be administered by a private welfare organization such as the Red Cross Society.⁶⁷ A MOFA official visited South Korea in October for informal talks. However, opposition to this idea was unexpectedly strong in Korea, and the government decided to postpone its decision.⁶⁸

Kim Young Sam won the December 1992 presidential election in South Korea and became the first civilian leader in three decades. The "comfort women" issue was one of the priority issues tackled by his administration upon taking office in February. Instead of continuing the previous government's policy of gently nudging Japan on the compensation issue, he decided to take the moral high ground. President Kim Young Sam revealed in March that he did not wish to seek compensation from Japan. Kim also instructed his staff to pay compensation to the victims living in South Korea out of the national budget.⁶⁹

Finding that historic documents alone were insufficient, the Japanese government decided to hear testimony from individuals who were directly involved.⁷⁰ A team of investigators from the Prime Minister's office visited

64. *Documents Show War Minister's Role in "Comfort Women,"* JAPAN ECON. NEWSWIRE, 6 Feb. 1992.

65. Bill Lamp, *Japan Admits Recruiting Prostitutes During World War II,* UNITED PRESS INT'L, 6 July 1992.

66. Paul Blustein, *New Clash Over "Comfort Women"; Many Criticize Japan's Claim that There is No Evidence of Coercion,* WASH. POST, 10 July 1992, at A13.

67. *Japan to Create Fund to Assist Former "Comfort Women,"* JAPAN ECON. NEWSWIRE, 27 Aug. 1992.

68. *Compensation for "Comfort Women" Shelved,* REPORT FROM JAPAN (YOMIURI NEWS SERVICE), 18 Nov. 1992.

69. *Seoul Not to Seek Compensation on "Comfort Women,"* JAPAN ECON. NEWSWIRE, 13 Mar. 1993.

70. *Gov't to Hear Testimony of "Comfort Women,"* JAPAN ECON. NEWSWIRE, 23 Mar. 1993.

Seoul in July 1993 to hear the testimony of former sex slaves. One survivor told the Japanese officials: "when an woman tried to run away, the army would torture her with red-hot iron stakes."⁷¹ In separate interviews, lasting two to three hours each, sixteen women recounted their ordeals.

Finally, on 4 August, one day before Miyazawa left office, the Japanese government released a report and statement from Chief Cabinet Secretary Yohei Kohno, who admitted that coercion had taken place:

The Government study has revealed that in many cases they [the women] were recruited against their own will, through coaxing, coercion, etc., and that, at times, administrative/military personnel directly took part in the recruitments 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 [of remorse].⁷²

As a result, political pressure for compensation began to emerge in Japan. In August, a group of Japanese women legislators demanded that the government offer apologies and compensation to victims of sexual slavery. In a statement presented to Prime Minister Morihiro Hosokawa, thirty-two women politicians stated that special measures needed to be taken quickly because many of the victims were advanced in age.⁷³

As Asian countries maintained multilateral pressure, Japan came under criticism at a regional conference in June 1994. In advance of the opening of the Second Asia and Pacific Ministerial Conference on Women, a conference drafting committee approved a Jakarta Declaration on 11 June that went far beyond the Vienna Declaration that had been adopted by the UN World Conference on Human Rights in 1993. The Vienna Declaration had only indirectly touched upon wartime sexual slavery, while the Jakarta Declaration accepted pressure from NGOs to include a statement to the committee calling for punishment of those held responsible for wartime sexual slavery. The "Japanese delegate demanded that the draft adhere to the main thrust of the conference—advancement of the position of women—and not dwell on past issues."⁷⁴ The committee eventually approved a draft that included a denunciation of wartime violence against women, but did not refer to any specific historical incidents.⁷⁵

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71. T.R. Reid, *Japan May Admit Army's WWII "Sex Slavery,"* WASH. POST, 27 July 1993, at A11.
 72. *Tokyo Admits Forced Recruitment of "Comfort Women,"* JAPAN ECON. NEWSWIRE, 4 Aug. 1993.
 73. *Dietwomen Seek Settlement of "Comfort Women" Issue,* JAPAN ECON. NEWSWIRE, 30 Aug. 1993.
 74. *Penalties Sought for Wartime Violence Against Women,* DAILY YOMIURI, 12 June 1994, at 2.
 75. *Id.*

After the two short-lived administrations of Hosokawa and Hata, the SDP's Tomiichi Murayama formed a coalition government in June 1994 with the LDP and the small New Party Sakigake. The first Socialist to head the Japanese government in nearly half a century was very eager to find a solution to the sex slavery issue. The Social Democrats had long demanded state compensation for victims of sexual slavery. However, in the face of staunch opposition from the LDP and MOFA to state compensation on the grounds that the issue had been settled by treaties and bilateral agreements, the Socialists had to compromise and to look for other alternatives. Not surprisingly, the first plan to emerge was the idea of setting up a private fund under the auspices of the Red Cross—essentially the same idea that MOFA had broached two years before. The government hoped to have measures in place by 1995 to mark the 50th anniversary of the end of World War II. Prime Minister Murayama discussed the issue with South Korean President Kim Young Sam when he visited Seoul in late July. In what was dubbed an “apology tour,” Murayama also toured Southeast Asian countries in August to sound out reactions to his ideas. Around this time, consensus was emerging back in Japan around the idea of collecting private donations for the former sex slaves.⁷⁶ With favorable responses from South Korea and the Philippines, the Japanese government announced a rough outline of the “Murayama plan” on 31 August; the establishment of a government-initiated fund based on private donations.

It was this critical phase that resulted in a great missed opportunity. The plan still had not been finalized, and some input in terms of international law could have made an important contribution in terms of tipping the domestic balance of power in Japan. The International Commission of Jurists (ICJ) did in fact provide exactly the kind of input needed.⁷⁷ In its interim report handed to Japan's Mission to the UN in Geneva, the NGO urged Japan to pay state compensation, but the report was ignored by MOFA. In the meantime, the ruling coalition set up a committee on the sex slave issue in October, and on 6 December, the committee, unaware of the ICJ interim report, agreed to create a private fund administered by the Japanese Red Cross Society. Ten days later, the government approved a policy aimed at setting up a private fund as early as 1995 to pay compensation to the former sex slaves.⁷⁸ The ICJ sent a mission in late

76. *Gov't. Planning 100 Billion Yen Project for Asian War Victims*, DAILY YOMIURI, 14 Aug. 1994, at 2. See also Kazuma Yoshida, *Murayama Offers Aid to Manila; Also Expresses "Remorse" Over "Comfort Women"*, DAILY YOMIURI, 25 Aug. 1994, at 1.

77. USTINIA DOLGOPOL & SNEHAL PARANJPE, JAPAN—COMFORT WOMEN: AN UNFINISHED ORDEAL: REPORT OF A MISSION (1994).

78. *Private Fund to be Set Up for Comfort Women*, BBC Summary of World Broadcasts, 19 Dec. 1994.

December to dissuade the Japanese government from the private fund idea, but this intervention was a little too late. In June 1995, a detailed plan for the operations of the private fund was announced.

Responding to NGO pressures, the UN Commission on Human Rights had in the meantime created the position of Special Rapporteur on Violence against Women, and appointed Radhika Coomaraswamy of Sri Lanka to the position in March 1994. In the first official UN fact-finding team to visit Japan, Coomaraswamy arrived in Tokyo in July 1995, and met with a number of government officials, NGO representatives, and former "comfort women." The Coomaraswamy report, released in early 1996,⁷⁹ urged the Japanese government to pay compensation to victims of wartime sexual slavery. It recommended that the government acknowledge its legal responsibility for the practice, which it said violated international law. It also called on the Japanese government to make a written apology to the victims, identify those responsible for wartime sexual slavery, and punish them to the fullest possible extent. The Japanese delegation in Geneva lobbied to quash the Coomaraswamy report. A resolution on violence against women, adopted by the UN Human Rights Commission on 19 April, merely "took note" of the Coomaraswamy report, commenting that it "welcomes the comments of the special rapporteur on violence against women, its causes and consequences, and takes note of her report." Ambassador Minoru Endo told reporters, "[w]e are satisfied with the resolution. It is very obvious that the report on sex slavery was not accepted by the Commission. He said the Commission's 'taking note' of the report indicates that it was not appreciated at all."⁸⁰

Another multilateral battleground was the International Labor Organization (ILO). The ILO called on Japan on 4 March 1996 to swiftly consider the issue of "comfort women." The ILO expert committee on international treaties made the request in a report that was to be submitted to the International Labor Conference in June. The request for the ILO to investigate the matter had been made in 1995 by a union of foreign English teachers working at high schools in Osaka. The committee commented that a judgment based on the Osaka organization's arguments would conclude that the women were forced into sex slavery, which was prohibited under

79. *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy, Submitted in Accordance with Commission on Human Rights Resolution 1995/85, a Framework for Model Legislation on Domestic Violence*, U.N. ESCOR, Comm'n on Hum. Rts., 52d Sess., Agenda Item 9(a), addendum, at 137, U.N. Doc. E/CN.4/1996/53/Add. 2 (1996).

80. *U.N. Gives Only Lukewarm Welcome to Sex Slave Report*, JAPAN ECON. NEWSWIRE, 20 Apr. 1996.

ILO Convention 29 against forced labor,⁸¹ adding that the women had the right to receive unpaid wages for forced labor. Tokyo voiced its displeasure over the ILO's view, which had been formulated without consulting Japan on the issue.⁸² However, the ILO subsequently issued two further reports in 1997 and 1999, reaffirming its position that Japan had violated the convention against forced labor.

The Asian Women's Fund (AWF), a private fund created under the Murayama plan, had a rocky start from the beginning. South Korea rejected requests by the AWF to hand over a list of surviving South Korean "comfort women." The South Korean government had 162 South Korean women officially registered as former sex slaves. The group representing the former sex slaves was strongly opposed to any compensation by the private fund. The AWF sent missions to South Korea, the Philippines, and Taiwan in August 1996, but found the South Korean and Taiwanese victims and their support groups were determined to obtain compensation directly from the Japanese government, and not from the private fund.⁸³

However, Maria Rosa Luna Henson, the first Filipina to identify herself openly as a former sex slave, said in July 1996 that she would withdraw from a class action suit against the Japanese government and stop demanding official compensation once she received money from the AWF. Three former wartime sex slaves who wanted to accept money from the AWF formally submitted the necessary documentation to the Justice Department of the Philippines. Letters of apology from Prime Minister Hashimoto were presented to the three women in Manila on 14 August 1996 along with a pledge that each would receive 2 million yen in "atonement" money from the AWF.

For former sex slaves and their supporters pursuing a remedy through the judicial process, their court strategy finally paid off in 1998, but only temporarily. On 27 April 1998, the Shimonoseki branch of the Yamaguchi District Court ordered the Japanese government to pay 300,000 yen in consolation money to each of the three former sex slaves.⁸⁴ Presiding Judge

81. Convention Concerning Forced or Compulsory Labour (ILO No. 29), adopted 28 June 1930, 39 U.N.T.S. 55, Geneva Conference 14th Sess. (entered into force 1 May 1932) (hereinafter ILO Convention No. 29).

82. *ILO Urges Quick Response by Japan on Sex-Slave Issue*, JAPAN ECON. NEWSWIRE, 4 Mar. 1996.

83. *S. Korea Rejects Japan's Request on Sex Slave Fund*, JAPAN ECON. NEWSWIRE, 7 Aug. 1996; *See also Former Taiwan Comfort Woman to Accept Indemnity*, JAPAN ECON. NEWSWIRE, 10 Aug. 1996; *Hashimoto Admits Japan's Moral Blame for Sexual Slavery*, JAPAN ECON. NEWSWIRE, 14 Aug. 1996.

84. *The "Comfort Women" Case: Judgment of April 27, 1998, Shimonoseki Branch, Yamaguchi Prefectural Court, Japan*, 8 PAC. RIM L. & POL'Y J. 63 (Taihei Okada trans., 1999).

Hideaki Konoshita ruled that the government had neglected its duties of restitution for the damages inflicted to the women. He said that the government's duty to initiate compensation dated from 1993, when the then Chief Cabinet Secretary had apologized. "This made the government responsible for compensation under the State Redress Law," the judge ruled.⁸⁵ The government immediately lodged an appeal. The plaintiffs also appealed, finding the amount of damages awarded to be too small.

The survivors soon discovered the court victory in Shimonoseki to be the exception rather than the rule. Six months later, a Tokyo court rejected a similar case filed by Filipino women. On 9 October 1998, Presiding Judge Yoriaki Ichikawa of the Tokyo District Court dismissed their suit on the grounds that international law did not provide for individual claims for compensation against a former occupying country. The key point in the Filipino women's lawsuit was whether an individual's right to seek compensation could be acknowledged under international law and the Hague Convention, which stipulated reparations and other responsibilities for former occupiers. Ruling that international laws pertained to relations between or among countries, the court said such laws did not acknowledge the right of individuals to seek compensation from foreign countries. The court ruled that the right to make claims had lapsed already under Japanese law, since the case had been brought before the court more than twenty years after the end of World War II, thus exceeding the statute of limitations. From then on, negative rulings kept on pouring in. Finally, the only ruling that had thus far been positive was easily overturned on appeal. On 29 March 2001, the Hiroshima High Court reversed the earlier ruling by the Shimonoseki court.⁸⁶

The US courts were the last resort. Fifteen women from South Korea, China, Taiwan, and the Philippines filed a class action lawsuit against the Japanese government in Washington D.C. on 18 September 2000. The plaintiffs sued Japan under the Alien Tort Claims Act, a law enacted by Congress in the 18th century that provided foreign citizens with the right to sue other foreign citizens and entities for abuses of international law. The complaint stated that "the actions of the Japanese Government in establishing and maintaining a system of sexual slavery from 1932 until 1945 violated *ius cogens* norms of international law, and are not subject to the defense of sovereign immunity."⁸⁷ However, US District Court Judge Henry Kennedy ruled on 4 October 2001 that although the treatment of hundreds of Asian

85. *Court Orders Government to Pay "Comfort Women,"* DAILY YOMIURI, 28 Apr. 1998, at 1.

86. The plaintiffs appealed to the Supreme Court, where the suit is currently pending.

87. Keiji Urakami, *Ex-Comfort Women Sue Japan in U.S. Over Sex Slavery*, JAPAN ECON. NEWSWIRE, 18 Sept. 2000.

women who were forcibly raped, beaten, and tortured was "unquestionably barbaric," it amounted to an abuse of Japan's military power, something "peculiarly sovereign in nature." "Because Japan enjoys sovereign immunity and this action, in any event, presents a non-justiciable dispute, dismissal is required under Federal Rules of Civil Procedure," Kennedy wrote in his ruling.⁸⁸ The plaintiffs appealed, but the Court of Appeals for the D.C. Circuit affirmed the district court's October 2001 ruling.⁸⁹

In the summer of 1998, the United Nations issued another report, written by Gay McDougall, an expert on international law and deputy representative of the United States at the UN Commission on Human Rights. In a final report presented to the Subcommission, McDougall requested that the UN High Commissioner for Human Rights (UNHCHR) should "appoint, together with the Government of Japan, a panel of national and international leaders with decision-making authority to set up a swift and adequate compensation scheme to provide official, monetary compensation to the 'comfort women.'" The report recommended that the UNHCHR ensure that those responsible for the "comfort women" scheme be prosecuted. The report also dismissed as "wholly inadequate" Japan's efforts to settle the "comfort women" issue through monetary payment of atonement by the AWF, partly financed by the Japanese government. Japan's claim that it had already settled all claims from World War II through peace treaties and reparations agreements was also dismissed.⁹⁰ On 21 August, the Subcommission adopted a resolution on slavery in wartime, and welcomed the McDougall report.⁹¹

With multilateral and domestic legal forums proving ineffective, the final strategy taken by NGOs was to set up a private tribunal composed of international luminaries in an attempt to make an impact on international public opinion. Organized by a Japanese NGO, Violence Against Women in War Network Japan, together with groups from the victims' countries and human rights experts, the tribunal was convened in downtown Tokyo in December 2000.⁹² The tribunal consisted of four judges, headed by Gabrielle Kirk McDonald, former President of the International Criminal

88. *Hwang Geum Joo v. Japan*, 172 F. Supp.2d 52 (D.C. Cir., 2001).

89. *Hwang Geum Joo v. Japan*, 332 F.3d 679 (C.A.D.C. 2003).

90. *Final Report of Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-Like Practices During Armed Conflict, Submitted by Ms. Gay J. McDougall, Special Rapporteur, In Accordance With Commission on Human Rights Resolution 1997/114, U.N. ESCOR Comm'n on Hum. Rts., 50th Sess., Provisional Agenda Item 6, U.N. Doc. E/CN.4/Sub.2/1998/13* (1998).

91. Since the McDougall report, opposition parties have introduced state compensation bills to the Diet several times, but none have passed.

92. Christine M. Chinkin, *Editorial Comments: Women's International Tribunal on Japanese Military Sexual Slavery*, 95 *Am. J. Int'l L.* 335-41 (2001).

Tribunal on the Former Yugoslavia, two chief prosecutors and country prosecutors from South Korea, North Korea, China, Taiwan, and the Philippines. The Japanese government did not respond to the tribunal's invitation to participate in the event. On the final day, the judges ruled that the late Emperor Hirohito was guilty of accepting institutionalized sexual slavery before and during World War II, and urged Japan to compensate the victims. Judge Christine Chinkin, Professor of Law at the University of London, held that Japan had violated treaty obligations such as the 1930 ILO Convention Concerning Forced Labor⁹³ and laws such as the 1926 Slavery Convention.⁹⁴ Chinkin also found that a statute of limitations could not be applied to international law in the case of crimes against humanity, and countered Japan's argument that compensation issues had been settled through the 1951 San Francisco Peace Treaty⁹⁵ and other bilateral treaties. She found that such treaties could not be applied to the current context as "states cannot agree by treaty to waive the liability of another state for crimes against humanity," and that Japan therefore could not attempt to evade liability by hiding behind the terms of a "peace treaty."⁹⁶

One year later, the Women's International War Crimes Tribunal on Japan's Sexual Slavery held its concluding session in The Hague, the Netherlands, and brought down its final judgment. Emperor Hirohito and nine named Japanese officials were found guilty of sexual slavery and rape, which were found to be crimes against humanity. The representatives of the tribunal presented the ruling to Foreign Minister Yoriko Kawaguchi in May 2002, but received only the cursory response that all the issues already had been settled.

The AWF stopped receiving applications on 1 May 2002. By that time, it had paid atonement money to 236 women in Korea, the Philippines, and Taiwan. It is difficult to evaluate the contribution made by this fund—the only tangible outcome from the decade-long struggle by the human rights community. Despite all the diplomatic "praise" showered on this fund, it was ultimately a failure in absolving Japan of its past crimes against humanity. Hence, the Japanese government will continue to be challenged over this issue in the near future.

93. ILO Convention No. 29, *supra* note 81.

94. Slavery Convention, 60 L.N.T.S. 253, *adopted* 25 Sept. 1926 (*entered into force* 9 Mar. 1927).

95. Treaty of Peace with Japan, Signed at San Francisco, 8 Sept. 1951 (*entered into force* 28 Apr. 1952).

96. Chinkin, *supra* note 92.

V. CONCLUSION

This article has analyzed Japan's compliance with international human rights and humanitarian law from the perspective of domestic political struggles between pro-human rights groups and their opponents. Three factors turned out to be important in "empowering" the pro-human rights groups: (1) common interests with their opponents; (2) cross-party decisionmaking among women politicians; and (3) international conferences. In the most successful case relating to CSEC, progressives were able to garner support from some conservatives interested in combating teenage prostitution at home during the process of cross-party Project Team discussions. The Japan-Sweden policy nexus created through the anti-CSEC World Congresses also played a crucial role. In the eugenics case, women's groups and disabilities groups had slightly different interests, but they managed to reconcile their differences and overrule conservatives who instead wanted to change abortion policy. The Cairo Population Conference provided crucial legal legitimacy to the anti-eugenics claims. In the wartime sexual slavery case, conservatives would not budge in their opposition to state compensation. Therefore, cross-party decisionmaking within the Murayama government had to settle for the least common denominator.