

# **A Critical Review on the Damage Claim against Japan - Focusing on the Victims in the Pacific War -**

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## **Abstract**

This paper aims to falsify the Japanese Government's argument that Japan has already completed the compensation of the damage on the side of Korea during the Pacific War, by showing that the Korea-Japan agreement on the damage claims in 1965 does not conform to the international customs, and did not fully take the victims into consideration. Henceforth, this paper argues that the Korean Government must claim the newly identified damage against Japan by resuming the negotiation. Specifically, things to be discussed in this paper include the following: First, we briefly review the present situation of the damage compensation, especially for the Sakhalin residents, the A-bomb victims, the women in 'Cengsindae,' and the Korean residents in Japan, Second, we look into the illicitness of the treaty in 1965, by showing that it did not respect the international customs. Finally, we seek for the solutions that may support the victims and their concerned families. In connection with this, we will examine the role of the Korean and Japanese Governments, and moreover the cooperation between the south Korea and the North Korea to cope with the issue of the damage claim.

## **I. Introduction**

Japan, having been defeated in the Pacific War less than half a century ago, now appears to be spending her aspirations that has lurked during the elapsed years. On Feb, 1, 1992, the Japanese prime minister 'Miyajawa' happened to address his speech in the summit talks in the U. N. Security Council, by the delivery of which he called for crossing out the U. N. provision regarding the old enemy countries, which amounts to distinctively revealing that Japan aims to be included in the permanent members in the U. N. Security Council.

If Japan's unrivalled economic power over her Asian neighbors accompanies its counterpart in the political role and the subsequent cooperation with neighboring countries, it will contribute to enhancing the benefits of most countries and righteously earn Japan good reputations. However, as the history tells us, most of the Asian countries that may be influenced by the increasing role of Japan had once experienced Japan's ruling or persecution over them. Moreover, Japan's damage compensation for her neighbors has been in no way a complete one, and it follows that her national basis is not morally sound and proper, Provided the events left behind in the past are not referred to in an appropriate measure, Japan cannot confirm us that the efforts to increase her role does never foreshadow the advent of Japan's hegemony. Therefore, it is not without the bottom line that we argue that Japan must redeem herself morally by compensating for the damage she had brought forth in the past, as well as acknowledging her faults regarding what had happened in the past.

In particular, it has been arguably said by the Japanese Government that every matter regarding the compensation had already been settled by the agreements on June, 22, 1965, such as 'the treaty about the basic Korea-Japan relation', 'the agreement about the damage claim and economic cooperation', 'the agreement about the solutions for the property and claim rights, and the economic cooperation.' Herewith, it is a regret that the agreements were underlied by the so-called 'Kim-Ohira's memorandum' that partially motivated the otherwise weak ontological basis of the Korean Government that was urged to speed the process of economic developments, right after the 5.16 military coup.

Furthermore, Japan has continued to prevent the concerned form gaining access to the relevant materials that may officially identify what really happened in the wheels of the history, even without showing her unpretentious apologies for her earlier wrong doings. In line with this tendency, the Japancse officials have categorically remarked that some newly identified damage cannot lead us to resume the negotiation, since Japan had already completed, in a bundle, the compensation for every kind of damage, by the fulfillment of the Korea-Japan agreement of the damage claim right

that was signed up on June 22, 1965.

This paper raises a couple of questions against the argument that, by the Korea-Japan agreement of the damage claim right, Japan is already out of the things in the past and hence doesn't have to be bothered to be embroiled in the recurrent debates over the damage compensation. Alongside of this, this paper suggests an alternative solution for providing appropriate support to the victims and their concerned people in the Pacific War.

## **II. The present situation with regard to the damage and compensation**

During the period of Japan's reigning over the Korean peninsula, the amount of the damage was uncalculably a large one. By the way, right after the end of the Pacific War, Korea was regarded as not having declared war toward Japan, due to the Japan's mischivance of the three treaties prepared for the Japanese invasion. Accordingly, Korea was not able to count among the concerned parties in deriving 'the peace treaty with Japan' that had been held between the allied nations and Japan, at Sanfrancisco, on Sep. 8, 1951. For the same reason, Korea, being not a winning country, was not acknowledged as having the right to claim, in accordance with the 14th provision of the Sanfrancisco treaty, as one of the winning countries, and later, according to the right of damage claim prescribed in the 4th provision of the Sanfrancisco threaty, the compensation on the basis of the Korea-Japan agreement, on Jun 22, 1965, was merely a partial one.

### **1. The Korea-Japan agreement on the rights of claim**

What has been taken to compensate for the damage was only 'the Korea-Japan agreement of the damage claim rights' that was entered into effect at the time of restoring diplomatic relations between Japan and Korea, and later nothing more than that. This shows a sharp contrast with the situation, in which the Korean people were pillaged, plundered, and burtalized during the Japan's annexation period. However, under the effect of the agreement, the Korean Government enacted a couple of laws, such as 'the Law for managing the fund of claimed damages' in 1965, 'the Law for reporting the private damage claims' in 1971, 'the Law for the compensation of the damage claims against Japan' in 1974, which laid out the criteria for determining the amount of the damages for each individual claim. According to these laws, the provided amount of the damages was at the rate of three hundred thousand Won for a death, and at the rate of thirty Won to 1 for the lost properties, at the reported moment. In summation, 25 billion 65 million 6 hundred thousand Won for the 8552

deaths, 66 billion 22 million 9 hundred thousand Won for the property claims of 74967 cases. Combined the two, 92 billion is the amount for the damage compensation.

## **2. The matters with regard to the damage compensation**

### **(1) The matter of the Korean people left behind in Sakhalin:**

The Japanese Government did not admit that the Korean people having resided in Sakhalin until the end of the War would move into the Japanese territory, simply for the reason that they must be stipulated not to be Japanese according to the Japanese Nationality Law. Only a striking chance of temporary family reunion was provided by the support of some nongovernmental organizations in the eighties. Until recently, the Japanese Government has constantly denounced the responsibility regarding the return of the Korean people left behind in Sakhalin, while arguing that the Sakhalin-residents' claim rights against Japan was already disclaimed through 'the agreement of Korea-Japan damage claim' held in 1965. However the director of the provisions department, in the Ministry of Foreign Affairs, of the Japanese Government, ever admitted, in his address given in the course of budget deliberation in the Diet, that the agreement in 1965 did not consider the Korean residents at Sakhalin, since those people were not taken to be Koreans. He also stated that the Sakhalin-residents' claim against Japan had still remained as a still unsettled problem. From this, it follows that the Japanese Government itself recognized that they hadn't completely settled the problem concerning the Korean residents at sakhalin.

### **(2) The matter with regard to A-bomb victims**

When the Japanese Government enacted the Medical Services Law in 1957, for the medical diagnostic and treatments for the A-bomb victims, the people to whom the law may apply were exclusively limited to the residents in Japan, and hence the A-bomb victims residing in Korea were not able to gain access to the necessary medical services offered in Japan. Later, the campaign of the damage claim in Korea led the Japanese Government to pay, in 1992, 40 billion in support of the victims. Nonetheless, ways to utilize the fund are still highly limited, and more fundamentally, the size of the fund for the Korean victims shows a sharp contrast with that of Japanese victims.

### **(3) The matter of the compensation for the conscripted people in the War.**

Under Japanese imperialism, a great number of Koreans, among the ones that are mobilized into the War, were killed or injured during the process of War. Ever since the end of the War, the Japanese Government has established a variety of support

measures, the beginning of which was initiated by enacting 'the Law for supporting the bereaved families' in 1952. By contrast, it has been the Japanese Government's stand that Japan does not have more liability for compensating the Korean victims, since all the pertinent issues were presumably settled by concluding the agreement of Korea-Japan damage claim in 1965. In this vein, on the side of Japan, there has never come out any discussion for supporting the Korean victims.

(4) The matter of the comforting-women('Cengsindae') in the War

The Japanese military force had forcefully mobilized a large number of women, from several Asian countries, into the military front, so that the women may sexually comfort the Japanese soldiers. The pretension for this activity was based on the laws in 1937. As proven at the present time, the number of Korean women in that category reaches an approximation of 22 hundred thousand. For a simple instance, on Aug 22, 1944, the enactment of by the 512th Royal Decree, had resulted in mobilizing even the elementary-school women students into the war front.

However, the Japanese Government has kept this issue in line with other ones, by equally arguing that the problem of this kind is also settled by concluding the agreement in the year 1965. In particular, the Japanese Government had denied any official involvement of the Japanese authorities in such an anti-humanitarian activity. However, due to an increasing number of written evidence, all the claimed facts regarding the comforting-women(hereafter 'Cengsindae') has turned out to be true. Herewith, the Japanese Government's reluctant acknowledgement of the facts has been led to introduce the relief fund into the Government budget. Nonetheless, it goes without saying that the solutions so far are still unsatisfactory in many respects.

(5) The matter of Koreans residing in Japan

Certain class of Korean people were not able to return to the Korean peninsula right after the War, and has continued to reside in Japan. the Koreans in Japan never did acquire the franchise, and hence so far, they still do not receive any form of support or compensation from the Japanese government, under the Japanese Nationality Law. Regretfully, the Korean Government at the moment of 1965 did not take Koreans in Japan into consideration. Besides, Japan has not entered into the diplomatic relations with the North Korea. With this background, the damage claim is being done only in Japan, by the Korean residents themselves, but not elsewhere.

### **III. Reconsideration of the agreement on Korea's property claims against Japan.**

We have examined so far the stand of the Japanese Government with regard to a couple of the damage claim issues. The problem here is that, by the Japanese Government, the compensation was arguably said to be completed by concluding the agreement in the year 1965. However, the validity of such an opinion must presuppose a couple of requirements like the following.

First of all, according to the Japanese Government, if a man of Korean origins keeps the record of the Japanese nationality, he or she must respect the laws in Japan. Here arises the question; Does the Japanese nationality of the Koreans fall under the effect of the international laws? Did the laws apply indiscriminatingly to the Korean people, as was the case in ordinary Japanese.

Second, until the moment the agreement in 1965 was concluded, hadn't the Japanese Government tried to block the reference to the inter-related facts, that was supposed to bring forth a problem later?

Third, how can the crimes that are defined by the international laws be settled by concluding the agreement between two countries? Did the agreement in 1965 cover all the damages that was brought forth by the War.

Finally, with all of these presuppositions, does the agreement in 1965 have the status of denying the debate over the ontological basis of the agreement? If debated again, is it unprecedented in the tradition of the international affairs?

Based on the presuppositions classified in the above, we will continue to examine the problematic consequence of the 1965 agreement in the ongoing process of our discussion.

#### **1. The continuance of the damage claims**

The Japanese Government's argument that the agreement in 1965 settled all the post-war problems presupposes that the Korean victims during the War may well have followed the Japanese Laws since they were of Japanese Nationality. However, it is a well-known fact that the Imperial Japan deprived Korea of the diplomatic rights, by forcing the sign-up of the 'Eulsa' treaty in 1905. The King Kojong's letter to reveal the illicitness of the treaty was sent to H. B. Hulbert, the foreign consultant at the Korean dynasty, and the King himself announced the nullity of the agreement by dispatching representatives to the Conference of the International Peace convened in Hague, Netherlands. Notwithstanding, the Imperial Japan, depriving Korea of the police authority and the jurisdiction in turn, forcefully concluded the agreement to justify the

Japanese annexation of Korea in the year of 1910.

However, a series of agreements in the U. N. Charter in 1945, prohibiting the employment of threatening activities, have no choice but to nullify the treaties that are concluded by threats. Accordingly, the treaties such as the 'Eulsa' treaty, the 'Cengmi' treaty, the Korea-Japan annexation treaty are the ones that must be nullified, and it does not stand to reason at all that the Japanese Government still argues that the conscripted Koreans were taken to the fields, in respect of the valid Laws during the annexation period. We argue, without reference to the agreement in 1965, that the Japanese Government will have to compensate for the damaged ones, who had not received considerations during the elapsed years.

## **2. The Treaty encroaching 'Jus Cogens' in the International Laws:**

The argument by the Japanese Government in connection with the treaty in 1965, if taken to stand to reason, must be free of encroaching the 'Jus Cogens' in the international Laws. Namely, treaties disregarding the basic human rights, such as the rights of the 'Cengsindae', are nullified since these breaks the 'Jus Cogens', even though the treaty itself between two countries has the valid form.

The 53th provision in the treaty in 1965, labelled 'Vienna' treaty, also confirms us the fact that "Every treaty encroaching the 'Jus Cogens' of the general International Laws has to be nullified." Here, let's notice that the existence of the 'Jus Cogens' had been internationally recognized even before the advent of the treaty. What is important here is that the conscripted Koreans were deprived of their basic rights that are supposed to be guaranteed without fail by the International Laws, by being enslaved into the Japanese barracks. A natural consequence of this is that each individual may claim the damage against Japan. Since the claim of this kind bears close relation with the inborn human rights, the damage claim cannot be taken to be distinguished from the human rights. On this ground, Japan still has the liability of damage compensation for those Koreans.

## **3. The nullifiability of the Korea-Japan agreement in 1965**

Every participants in a treaty must faithfully observe what has been manifested in the treaty. However, conversely, a participant may argue for the nullification of the treaty, in case there comes out an important change of situation after the conclusion of the treaty. This is motivated by the principle of 'the changed state of affairs,' as recognized in the 28th provision of the 'harvard' treaty and the 62th provision of the 'Vienna' treaty.

In 1965, the moment of concluding the treaty, the Korean authority did not acknowledge the problem of 'Cengsindae.' The facts concerning this issue, however, are recently elucidated. According to the principle of the changed state of affairs, this is a good reason enough to argue the termination of the 2nd provision in 1965 agreement. It is a great regret that the Korean Government takes the position of not resuming the negotiation over the damage claim, mainly in apprehension of the conflicts in the Korea-Japan diplomatic relations.

#### **4. A precedent: resumed negotiations between German and French**

German and French has come to an agreement in 1960 regarding the post-war compensation problems, but later the French Government called for resuming the negotiation regarding the compensation. In this line, the novel agreement in 1981 has led German to provide additional compensation to French.

In analogy with this, if the agreement in 1965 turns out to be problematic in its exhaustiveness, it does not go beyond the scope of the international customs that the Korean Government may ask for the additional compensation against Japan. Moreover, the amount of the compensation per person in 1965 fell short of \$120. It is quite dubious that such a small amount may complete the compensation for what the damaged would have suffered from.

### **IV. Solutions for the victims in the Pacific War.**

#### **1. Resuming the negotiation over the damage claim against Japan**

##### **(1) The role of the Japanese Government**

The give an overall sketch of what has been explicated earlier in this paper is like the following;

First, all the Imperial Japan's Laws over the Korean peninsula were originatively invalid and nullifiable, in much the same way as the three treaties for Japan's invading Korea in the beginning of this century. It is completely unreasonable that the Japanese Government still argue that they don't have to compensate for the conscripted Koreans on the basis of the imperial Laws that had been valid during the annexation period.

Second, when the agreement in 1965 being concluded, the Japanese prime representative 'Kubota' declared, "Since Japan has done nothing illicit in Korea, there's nothing more to compensate for. But if any, Japan will compensate for it." Then, what is true regarding the problem of 'Cengsindae' has already been revealed, and Japanese



Prime Minister 'Miyajawa' once distributed an official apology for this. However, more importantly, Japan must compensate for the illicit activities done in the past.

Third, if the Japanese Government continues to argue that they have already completed the compensation regarding the problem of 'Cengsindae,' this means that Japan does not have the morals of respecting the internationally established laws, and therefore is not prepared to be included in the permanent members in the U. N. Security Council, as one of the most influential countries in the world.

Finally, since Japan received a variety of aid from the West in the process of the post-war rehabilitation, she should recognize what it takes to be worthy of entering into one of the leading countries. Therefore, without completing the post-war problems in line with the precedents of setting the post-war problems as in German, Japan will not deserve the reputation of 'one of the leading countries in the world', comparable to her economic power.

## (2) The role of the Korean Government

As of now, the 'Eulsa' treaty is identified to have been fabricated, which was obscure at the moment of concluding the Korea-Japan Agreement in 1965. Some officials in the Japanese Socialistic Party, the leading party in Japan, has come to ground the policy of compensating the women in 'Cengsindae', In the midst of this situation, nonetheless, the Korean Government laid the line of policy not to seek for resuming the negotiation, but to merely think highly of the Japanese Government's trial to lay bare the truth while being more concerned with the acute aggravation of the Korean-Japanese relations. The Japanese Government's reaction to the lukewarm attitude of the Korean Government is still to maintain what they have argued up to the present. However, any political body does not have the right of giving up the damage claim, without the consent of the victims, over the encroachment of the human rights caused by the anti-humanitarian crimes. Therefore, now is the time for the Korean Government to verify the truth on behalf of the victims. Alongside this, the Government must get down to a political settlement with the Japanese Government, with regard to the damage compensation claims, otherwise appeal to the International Court.

## 2. The Enactment of the Law supporting the victims in the Pacific War.

By the sign-up of the treaty in 1965. the Korean Government received 5 billion dollars from Japan. From out of the fund, only 92 billion dollars were payed to compensate for the damage, and the rest of the fund had been utilized for speeding the process of the industrialization, such as the construction of 'Pohang' Steel Mill

Company, and the compensation problem has been almost neglected. Even though the campaign by a couple of non-governmental organizations has occasionally aroused the nation-wide attentions, the only activity that involved the Korean Government was to enact 'the Law for supporting the lives of the comforting-women under the Japan imperialism', on June, 1993. However, the Korean government will have to devote more endeavors to enhancing the living condition of the post-war victims, while also considering the so far disregarded Koreans abroad.

### **3. The founding of the Organization for preventing the anti-humanitarian crimes and supporting the victims in the Pacific War:**

It is only recently that the monologue of the strife by the victims and their families earned the attention of our society. The people concerning to this issue has continued in part to raise suits to the Japanese Court against the Japanese Government, and in part to let the unearthed truth under scrutiny. Moreover, on Aug, 1992, the Korean organization over the issue 'Cengsindae' had the chance of delivering a speech in the U. N. Council of Human Rights.

Some activities in this direction has brought us partial achievements, However, such a strife is not enough to get over the stubbornness of the big Japan. Thus, in this state of our continuing efforts, the Korean Government should establish an organization on the governmental dimension, and initiatively guide the activities of the organization into coming to fruition.

### **4. The founding of South-North collaborate Organization in support of the victims in the Pacific War**

During the elapsed years, the South Korea and the North Korea, the residents of which had equally suffered from the Japanese imperialism, could not cope uniformly with the problem of the damage claims, since each of the two is represented by distinct political body, the main cause of which also goes back to the Japanese program of invasion, Post-War Japan recognized Republic of Korea as the only licit political body, and provided a partial compensation for the damage under the annexation by fulfilling the provisions of the treaty in 1965. However, this does not mean the completion of settling the post-war problems. In another direction, the absence of the diplomatic relation between Japan and the North Korea rendered an important part of the post-war problems to be still undealt with.

On the other hand, since a women organization (labeled 'Cengdaehyup') is beginning to communicate with its counterpart in the north Korea, in order to seek for the

solution for the victims in the Pacific War, the South-North cooperative claims against Japan happen to possibly provide a good chance to restore the identity of the Korean people. In the light of this situation, the establishment of a cooperative organization between the South and the North will be an important component in the process of preparing the unification, as well as reconstructing the past history in its right position.

## V. Conclusion

We have shown that, if Japan continues to argue that she has already completed the compensation of the damage claims, it is absolutely falsifiable on the grounds that are highlighted in this paper. Although the Korea-Japan agreement in 1965 still hold for the damage compensation, what cannot be overridden is that the imperial Japan's illicit activities broke the compulsory rules in the realm of the international laws, and therefore Japan has not yet discharged from the liability of the compensation. In particular, on the side of the Japanese authorities, it has been emphatically argued, the conscription was motivated licitly by the valid laws at that time. However, since the three provisions for the invasion were the ones to be fabricated, they are obviously illicit. Let's notice here again that the damage compensation for the things that had been illicitly done, especially regarding the issue of 'Cengsindae,' was not mentioned in the process of deriving the agreement in 1965. All the relevant things being turned out to be true, the principle of 'the changed state of affairs' must be good reason to resume the bi-lateral negotiation. By getting down to resuming the negotiation, the Japanese Government may enter into the process of completing the post-war problem of the damaged Koreans, and, more broadly, may confirm the Asian neighbors that Japan has grown out of the ruinous program of expansion and invasion.

On the other hand, the present Korean Government still has its own role that must be fulfilled. If more emphasis is given to the present interests rather than the post-war problem, this amounts to thinking less of the national pride and rights of the Korean people, and moreover to keep on ice the distortion of the national history. Thus, what must be advanced by the Korean Government include the following:

First, the Korean Government must direct its efforts to resuming the negotiation, during the process of which the distorted national history will goback to its right position.

Second, the Korean Government must prepare the solution to the problem of the so far disregarded victims, by enacting 'the law for supporting the victims in the pacific War,' though Such a problem was overwhelmed by the urgency of the economic developmic development during the elapsed years.

Third, the Korean Government must provide appropriate support to founding the juridical foundation that will strive to let there be no recurrency of the anti-humanitarian crimes against the mankind. A simple instance of that kind is 'the Council of the victims in the Pacific War,'

Fourth, the South part and the North part in the peninsula, may be in line with the movement to claim the damage. For example, the two parts may develop a bi-lateral organization, an effective working of which will possibly be directed to restoring the identity of the Korean people between the South and the North and hopefully to initiating the early step toward the unification.

Finally, Japan, largely indebted to her economic power, seeks for becoming one of the permanent members in the U. N. Security Council, and has being increased her role in the Asian-Pacific area. However, Japan's covert ability to develop the nuclear weapons is enough to provoke us some doubts. Herewith, by founding the so-called 'Joint Meeting in the Asian-Pacific area,' the countries in the Asian-Pacific area may collaborate in being constantly vigilant of Japan being swooped toward the militarism or the like.

In particular, Korea will have to devote keen interests to preventing a new advent of Japan imperialism, reflecting that Korea was most damaged during the annexation period and resultantly remains to be separated into two bodies.