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IANFU: NO COMFORT YET FOR KOREAN COMFORT WOMEN AND THE IMPACT OF HOUSE RESOLUTION 121

JAMES LADINO *

I. INTRODUCTION

Although World War II and its accompanying war crimes trials have long since ended, Japan has yet to candidly atone for its involvement in the death and enslavement of thousands of women. Female sex slaves, or *ianfu* (comfort women), were heavily recruited in Korea by the Imperial Japanese Army during the Second Sino-Japanese War and World War II. These women, who either enlisted under false pretenses or were simply abducted from their homes, were placed in organized encampments and used to satisfy the sexual appetites of imperial troops. The Japanese Imperial Government, fearing global reproach, kept their usage of *ianfu* a secret from the international community. Following the war, the peace treaties signed by Japan with the Allies and Japan's Asia-Pacific neighbors ignored the issue of comfort women as most of the evidence of enslavement was destroyed. The Japanese government has since denied its direct involvement in the exploitation of comfort women and has thus far effectively hidden behind international law to avoid any significant legal punishment or retribution.

In light of past failures to adequately resolve the comfort women issue, the United States House of Representatives passed House Resolution 121 in 2007.¹ The resolution provides a brief history of *ianfu*, including facts discovered following post-war investigations and tribunals, and a list of four demands which includes an official Japanese statement of responsibility and atonement.² Although immediately popular with the Korean-American community, the resolution has faced significant criticism from both the Japanese government and the former Bush administration. Similar to past attempts at retribution, the House Resolution has no binding legal effect. While optimists believe that measures such as House Resolution 121 continue to keep the comfort women issue relevant, without the

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¹ H.R. Res. 121, 110th Cong. (2007) (enacted).

² *Id.*

threat of legal repercussions, the Japanese government continues to admit only marginal involvement. House Resolution 121, therefore, like its predecessors, is a feeble attempt to adequately resolve the comfort women issue.

This note will attempt to prove House Resolution 121's negligible effect on the plight of comfort women. Part II of this Note addresses the identity of comfort women, the history of their usage by Japan, and their struggle for recognition during the post-World War II era. Part III analyzes two lawsuits filed by comfort women against Japan: *Ha v. Japan* and *Hwang Geum Joo v. Japan*. Part IV discusses the past attempts at obtaining reparations for comfort women, including: the Asian Women's Fund ("AWF"), the United Nations Human Rights Commission ("UNHRC") Report of Violence Against Women and the Women's International War Crimes Tribunal ("WIWCT"). Part V addresses House Resolution 121, the international response to the resolution, and offers reasons for the resolution's ultimate failure to change Japan's policy towards comfort women. Part VI concludes by acknowledging that so long as those countries best positioned to assist comfort women rely on Japan for socio-economic stabilization, we should expect little change in Japanese policy.

II. WHO ARE *IANFU*?

A. Before and During World War II

Although comfort women were widely used by the Imperial Japanese Army during World War II, the practice of employing sex slaves was precipitated by Japan's quest to colonize Asia. As Japan's military presence in Asia expanded at the turn of the twentieth century, Emperor Hirohito enacted Imperial Ordinance No. 519 which officially sanctioned the creation of an organized system of comfort women.³ In December 1937, during the Second Sino-Japanese War, Japan invaded China and laid waste to its capital city Nanjing.⁴ During what has become known as the "Rape of Nanking," an estimated 20,000 to 80,000 Chinese women, including pregnant mothers, young girls, and elderly women, were raped and murdered by Japanese Imperial Soldiers.⁵ Taking issue with these genocidal-like tactics, the international community publicly admonished Japan's Imperial Government.⁶ Reasoning that the Rape of Nanking was the result of the soldiers' physical and sexual frustration, "comfort stations" were established at which

³ Jamie S. Jeffords, *Will Japan Face Its Past? The Struggle for Justice for Former Comfort Women*, 2 REGENT J. INT'L L. 145, 149 (2003-2004).

⁴ Richard J. Galvin, *The Case for a Japanese Truth Commission Covering World War II Era Japanese War Crimes*, 11 TUL. J. INT'L & COMP. L. 59, 64 (2003).

⁵ *Id.*

⁶ Carmen M. Argibay, *Sexual Slavery and the "Comfort Women" of World War II*, 21 BERKELEY J. INT'L L. 375, 376 (2003).

soldiers could satisfy their sexual desires in a regimented and supervised manner with comfort women.⁷

The increased usage of comfort women following Imperial Ordinance No. 519 forced the military to erect comfort stations wherever Japanese troops were stationed.⁸ As the presence of the Imperial Army spread throughout the Pacific and East Asia during the remainder of the Second Sino-Japanese War and up until the Pacific War, the number of comfort stations increased exponentially. As a result, an increasing number of women were needed to staff the comfort stations. Initially, Japanese prostitutes were used as comfort women.⁹ The government eventually decided to recruit women from occupied territories, however, to meet the swelling number of soldiers frequenting comfort stations and to prevent the spread of venereal disease from the prostitutes to the soldiers.¹⁰

For the imperial government, Korea was the most logical place to recruit comfort women. While Japanese women were given the admirable task of bearing children who would be loyal subjects of the ever-expanding empire, Koreans were seen as an inferior race and its women best suited for sexual exploitation.¹¹ Employing Koreans as comfort women, therefore, did little to shock the conscience of Japan's populace. Furthermore, Korea was already under Japanese colonial rule, having been annexed in 1910.¹² The strong military presence in Korea made it easy for the imperial army to systematically abduct women from villages and towns who would not go willingly.¹³ Destitute and uneducated women were the easiest to recruit and were promised meaningful, well-paying jobs such as field-nurses.¹⁴

Once conscripted, comfort women struggled to survive. They lived in "barracks-style stations divided into tiny cubicles measuring approximately three-by-five feet."¹⁵ The women worked twenty-four hours each day, and in that time, were forced to have intercourse with up to as many as thirty soldiers.¹⁶ Comfort women also withstood forms of physical abuse other than sexual intercourse. Each soldier was allotted thirty-minutes per visit and after each, most women were left

⁷ Chunghee Sarah Soh, *The Korean "Comfort Women": Movement for Redress*, 36 ASIAN SURVEY 1226, 1227-28 (1996).

⁸ *Id.* at 1227.

⁹ Kristl K. Ishikane, *Korean Sex Slaves' Unfinished Journey For Justice: Reparations From the Japanese Government for the Institutionalized Enslavement and Mass Military Rapes Of Korean Women During World War II*, 29 U. HAW. L. REV. 123, 126 (2006).

¹⁰ Soh, *supra* note 7, at 1228.

¹¹ Ishikane, *supra* note 9, at 128.

¹² *Id.*

¹³ Galvin, *supra* note 4, at 67.

¹⁴ *Id.*

¹⁵ Ishikane, *supra* note 9, at 127.

¹⁶ USTINIA DOLGOPOL & SNEHAL PARANJAPE, *COMFORT WOMEN: AN UNFINISHED ORDEAL* 48 (1994).

with bruises, broken bones, stab wounds, and even cigarette burns.¹⁷ One former comfort woman described her experience as the following:

I saw so many deaths, so much illness. Girls arrived; they got sick and pregnant. The Japanese injected us with so many drugs like “#606” that we would have miscarriages. Sometimes our bodies would swell up like balloons but the Japanese soldiers did not care. They would line up for sex day after day. They did not care whether the girls were bleeding or what. They would still force sex on them.¹⁸

Comfort women also faced psychological abuse. The Japanese instituted assimilation programs, which were meant to destroy the women’s Korean national identity.¹⁹ Comfort women were forced to participate in the “Pledge of the Imperial Subjects,” the hoisting of Japan’s national flag, and open worship of the Japanese emperor.²⁰ In order to complete the assimilation process, Korean comfort women were forced to change their names to those reflecting Japanese descent.²¹ It is arguable that for many comfort women, their loss of national identity was even more painful than the physical and sexual abuse they were forced to bear.

B. Post World War II

In the years following World War II, Japan successfully hid its usage of comfort women from the international community. The Japanese government immediately mandated the destruction of all potentially implicating documents.²² Although actual numbers are unknown, it is estimated that between 70,000 to 200,000 women were used as sex slaves; less than thirty percent survived.²³ Moreover, while women were taken from Japan, Taiwan, the Philippines, Indonesia, Burma, and the Pacific Islands, up to eighty percent of all comfort women were from Korea.²⁴ Despite these astonishing numbers and evidence of the atrocities, not a single Japanese leader was punished by the International Military Tribunal for the Far East following the conclusion of the Pacific War.²⁵ Escaping reproach, Japan began a fifty-year practice of writing comfort women out of its national history and denying its usage of an organized system of comfort stations.²⁶

¹⁷ Ishikane, *supra*, note 9, at 128.

¹⁸ COMFORT WOMEN SPEAK: TESTIMONY BY SEX SLAVES OF THE JAPANESE MILITARY 7 (Sangmie Choi Schellstede ed., 2000).

¹⁹ Soh, *supra* note 7, at 1228.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 1226-27.

²³ *Id.*

²⁴ Jeffords, *supra* note 3, at 146.

²⁵ *Id.* at 154. Also known as the Tokyo War Crimes Tribunal, the Tribunal was convened to charge leaders of the Imperial Japanese Empire with crimes similar to those charged in the Nuremberg Trials.

²⁶ Ishikane, *supra* note 9, at 129.

Beginning in the late twentieth century, educated Korean women were threatening to expose Japan's usage of comfort women. In April 1988, the Korean Church Women United held the International Conference on Women and Tourism at which Yun Chung-Ok of Ewha Womans University presented evidence of the existence of comfort women.²⁷ A small-scale but galvanized grassroots movement began to form thereafter. In 1989, members of Korean women's organizations marched in Seoul, protesting Korea's plan to send an emissary to attend Japanese Emperor Hirohito's funeral.²⁸ One year later, Korean women protested against Korean President Roh Tae Woo's visit to Japan.²⁹ After several requests that Japan investigate its involvement with comfort women failed, Yun Chung-Ok and Lee Hyo-Chae officially formed the Korean Council for the Women Drafted for Military Sexual Slavery by Japan ("KCWS").³⁰

Despite the KCWS's formation in 1990, Japan's involvement with comfort women remained speculative at best. This changed in 1991 when Kim Hak-Sun became the first woman to publicly share her story of abduction.³¹ Kim described how, at the age of seventeen, she was taken from Korea to China, and forced to become a sex slave for the Japanese Imperial Army.³² Kim's testimony provided the impetus for other women to come forward and for a formal investigation into Japan's usage of comfort women. In 1992, Yoshimi Yoshiaki, a history professor at Japan's Chuo University, discovered official government documents implicating the Imperial Government's involvement with comfort women.³³ Furthermore, Yoshimi obtained testimony from former Japanese soldiers that substantiated the claims of Korean women such as Kim.³⁴

Faced with official, substantiated documentation, the Japanese government finally admitted to a limited involvement.³⁵ An official report published in 1993 entitled, "On the Issue of Wartime 'Comfort Women,'" concluded that comfort stations were established at the request of the military and that a large but incommensurable number of women were used as sex slaves.³⁶ Despite these conclusions, the Japanese government continued to ignore any discussion of possible reparations and refused to issue a formal apology. Worse, Japan continued to misrepresent its history by excluding any mention of comfort women in textbooks through a strict screening process conducted by the Japanese Education

²⁷ Soh, *supra* note 7, at 1232.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 1232-33.

³¹ GEGORE HICKS, THE COMFORT WOMEN SEX SLAVES OF THE JAPANESE IMPERIAL FORCES 148 (1995).

³² *Id.*

³³ Ishikane, *supra* note 9, at 129.

³⁴ *Id.*

³⁵ ERIC YAMAMOTO ET AL., RACE, RIGHTS, AND REPARATION 435 (2001).

³⁶ Ishikane, *supra* note 9, at 129-30.

Ministry.³⁷ Thus, while Japan admitted its limited involvement, the government remained staunchly opposed to any formal apology or official gesture of reparation.

III. PERTINENT LAWSUITS

A. Ha v. Japan

Former comfort women resorted to the legal process once it became clear that no form of atonement or reparation from the Japanese government was forthcoming. Unfortunately, the Japanese government was successful in dismissing all lawsuits filed against it by former comfort women. To date, only two lawsuits by former comfort women have actually been adjudicated. *Ha v. Japan* was filed on December 25, 1992 at the Yamaguchi Prefectural Court in Japan by ten Korean women, three of whom were former comfort women.³⁸ Although the plaintiffs were Korean, jurisdiction was proper as Korea was a Japanese colony and subject to Japanese law at the time the allegations took place.³⁹ The women asserted that Japan had the "duty of a moral state" to make reparations to its victims and that their right to live in peace, as granted by the Japanese constitution, had been violated.⁴⁰ They also sought an official apology from the government and \$2.29 million as punitive damages.⁴¹

The Japanese court issued its ruling more than five years later on April 27, 1998.⁴² While the court rejected the plaintiffs' arguments, it found a salient cause of action in tort under the Japanese State Liability Act, which requires Japan to compensate individuals injured by a public servant's violation of his public duty.⁴³ The court found the Japanese government guilty of negligence due to its failure to enact legislation compensating the comfort women and ordered it to pay 300,000 yen (at that time, approximately US \$2,270.00) to the three former comfort women plaintiffs.⁴⁴ Both parties immediately appealed; the plaintiffs claimed the sum was insufficient while the Japanese government alleged that all claims arising from the Pacific War were previously settled in post-war peace treaties.⁴⁵ While the judgment was initially a victory for comfort women, it was short lived. The

³⁷ Sue R. Lee, Comment, *Comforting the Comfort Women: Who Can Make Japan Pay?*, 24 U. PA. J. INT'L. ECON. L. 509, 545 (2003).

³⁸ Shellie K. Park, Comment, *Broken Silence: Redressing the Mass Rape and Sexual Enslavement of Asian Women by the Japanese Government in an Appropriate Forum*, 3 ASIAN-PAC. L. & POL'Y J. 26, 40 (2002).

³⁹ Christopher P. Meade, Note, *From Shanghai to Globocourt: An Analysis of the "Comfort Women's" Defeat in Hwang v. Japan*, 35 VAND. J. TRANSNAT'L L. 211, 236 (2002).

⁴⁰ Etsuro Totsuka, *Commentary On A Victory For "Comfort Women": Japan's Judicial Recognition Of Military Sexual Slavery*, 8 PAC. RIM L. & POL'Y J. 47, 55 (1999).

⁴¹ Soh, *supra*, note 7, at 1233.

⁴² Ishikane, *supra* note 9, at 134.

⁴³ Meade, *supra* note 39, at 235.

⁴⁴ Ishikane, *supra* note 9, at 134.

⁴⁵ Meade, *supra* note 39, at 236.

Hiroshima High Court sided with the government on appeal, finding that the Japan-Korea Settlement of Claims Agreement precluded any further litigation concerning war-era allegations.⁴⁶

B. Hwang Geum Joo v. Japan

Convinced they would never succeed in a Japanese court, former comfort women searched for a new jurisdiction. Their search eventually brought them to the United States. Fifteen former comfort women filed a class action lawsuit against Japan on September 18, 2000 in the United States District Court for the District of Columbia.⁴⁷ Although none of the plaintiffs were United States citizens, jurisdiction was proper under the Alien Tort Claims Act (“ATCA”).⁴⁸ Under ACTA, federal district courts have original jurisdiction over any civil action by an alien plaintiff for a tort committed in violation of the law of nations or a treaty of the United States.⁴⁹ The plaintiffs alleged that by using comfort women and failing to admit guilt or pay reparations, the Japanese government had violated ACTA.⁵⁰ Even if the court felt Japan had violated the law of nations or a treaty, however, ACTA is difficult to apply when used to sue a foreign government. Under ACTA, when a “cause of action is brought against a sovereign nation, the only basis for obtaining personal jurisdiction is through an exception to the Foreign Sovereign Immunities Act (‘FSIA’).”⁵¹

As expected, similar to its position in *Ha*, Japan argued that the post-war treaties precluded any additional claims dealing with reparations.⁵² Furthermore, Japan claimed that under FSIA, the district court did not have proper jurisdiction. Under FSIA:

- (a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case
 - (1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;
 - (2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign

⁴⁶ *Id.* at 237.

⁴⁷ Ishikane, *supra* note 9, at 135.

⁴⁸ *Id.*

⁴⁹ Alien Tort Claims Act, 28 U.S.C. § 1350 (2000).

⁵⁰ Ishikane, *supra* note 9, at 135.

⁵¹ Jeffords, *supra*, note 3, at 158.

⁵² Afreen R. Ahmed, *The Shame of Hwang v. Japan: How the International Community Has Failed Asia’s “Comfort Women,”* 14 TEX. J. WOMEN & L. 121, 142 (2004).

state elsewhere and that act causes a direct effect in the United States; . . .⁵³

On October 4, 2001, the district court ruled against the former comfort women, holding that the court lacked personal jurisdiction over Japan as a sovereign nation. Specifically, the district court held that “[t]here is no question that this court is not the appropriate forum in which plaintiffs may seek to reopen . . . discussions nearly a half century later [E]ven if Japan did not enjoy sovereign immunity, plaintiffs’ claims are nonjusticiable and must be dismissed.”⁵⁴

The plaintiffs promptly appealed the district court’s ruling, arguing that the court erroneously interpreted FSIA as denying them personal jurisdiction. The plaintiffs argued that Japan had both explicitly and impliedly waived its sovereign immunity under FSIA.⁵⁵ First, plaintiffs argued that by accepting the terms of the Potsdam Declaration following the war, Japan explicitly waived its protection of sovereign immunity in respect to war crimes committed during World War II.⁵⁶ Alternatively, the plaintiffs argued that Japan impliedly waived its protection of sovereign immunity because its usage of sex slaves violated *jus cogens* norms of international law.⁵⁷ A Latin phrase literally meaning “compelling law,” *jus cogens* is “a mandatory or peremptory norm of general international law accepted and recognized by the international community as a norm from which no derogation is permitted.”⁵⁸

In their second issue on appeal, plaintiffs argued that the district court had proper jurisdiction due to the commercial activity exception under 28 U.S.C. § 1605(a)(2).⁵⁹ The commercial activity exception only applies when a claim is: (1) based on acts committed outside the United States, (2) directly connected with a foreign nation’s commercial activity outside the United States, and (3) have a direct effect on the United States.⁶⁰ In order to satisfy the three elements of the exception, the plaintiffs first sought to establish that the sexual enslavement of comfort women was a commercial activity. The House Report on FSIA defines commercial activities to include “a foreign government’s sale of a service or a product.”⁶¹ The plaintiffs argued that comfort stations satisfied the definition of “commercial activity” because the Japanese government occasionally charged fees for the women’s services⁶² and because the comfort stations were often run as

⁵³ Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(a)(1)-(2) (1994).

⁵⁴ Hwang Geum Joo v. Japan, 172 F. Supp. 2d 52, 67 (D.D.C. 2001).

⁵⁵ Meade, *supra* note 39, at 262.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ BLACK’S LAW DICTIONARY 876 (8th ed. 2004).

⁵⁹ Ishikane, *supra* note 9, at 136.

⁶⁰ Ahmed, *supra* note 52, at 143.

⁶¹ H.R. REP. NO. 94-1487, at 16 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6604.

⁶² Meade, *supra* note 39, at 264.

licensed businesses in conjunction with restaurants.⁶³ As commercial ventures that were established and operated outside the United States, the comfort stations satisfied the first two elements of the commercial activity exception.

To satisfy the third element, the plaintiffs argued that comfort stations had a direct impact on the United States. Under FSIA, the United States includes “all territory and waters, continental or insular, subject to the jurisdiction of the United States.”⁶⁴ Furthermore, for an activity to have a direct effect on the United States, the effect must “follow as an ‘immediate consequence’ of that activity.”⁶⁵ When Japan surrendered to the United States, the territories that were previously under Japanese military control as well as the Japanese mainland itself became subject to United States jurisdiction.⁶⁶ Following the surrender, most comfort women, including a number of the plaintiffs, were abandoned throughout these territories.⁶⁷ According to the plaintiffs, the direct impact on the United States occurred via the United States’ interaction with these abandoned comfort women:

[T]he U.S. military had to address their medical concerns, as well as their need for food, shelter, and clothing. Many were debriefed after their “capture,” and held as POWs or refugees. Repatriation became a U.S. concern, and large amounts of money and resources were devoted to the efforts. Finally . . . there is evidence that “comfort houses” were erected for the use of U.S. soldiers during U.S. occupation. Some “comfort women” who had formally been Japanese sex slaves were given over for U.S. use.⁶⁸

With both the commercial activity and explicit and implicit waiver exceptions satisfied, the plaintiffs contended that Japan could not argue improper jurisdiction under FSIA.

The appellate court ultimately decided against the plaintiffs and affirmed the district court’s holding.⁶⁹ It found that the waiver and commercial exceptions did not apply, making the U.S. courts an inappropriate forum for adjudication.⁷⁰ With respect to Japan’s explicit waiver of its sovereign immunity through the signing of the Potsdam Declaration, the court held that the waiver “needs to be clear, intentional, and unambiguous.”⁷¹ Since the Potsdam Declaration did not specifically state that Japan waived its immunity from being sued in a United States court, it did not explicitly waive its sovereign immunity under section 1605(a)(1).⁷²

⁶³ Ahmed, *supra* note 52, at 144.

⁶⁴ 28 U.S.C. § 1603(c) (1976).

⁶⁵ Meade, *supra* note 39, at 264.

⁶⁶ *Id.*

⁶⁷ *Id.* at 264-65.

⁶⁸ *Id.* at 265.

⁶⁹ Hwang, 172 F. Supp. 2d (D.D.C. 2001).

⁷⁰ *Id.* at 59.

⁷¹ *Id.*

⁷² *Id.* at 60.

The court also found no authority in support of the plaintiffs' allegation that Japan impliedly waived its immunity by violating a *jus cogens* norm. The court stated that "a sovereign cannot realistically be said to manifest its intent to subject itself to suit inside the United States when it violates a *jus cogens* norm outside the United States."⁷³ The court noted that the Second, Seventh, and Ninth Federal Circuits had previously held that a violation of *jus cogens* does not constitute an implied waiver under FSIA.⁷⁴ Specifically, the court cited *Princz v. F.R.G.*, which held that Germany did not impliedly waive its immunity despite the human rights violations perpetrated during the Holocaust.⁷⁵ The court also disagreed with the plaintiffs' allegations that Japan's actions were commercial in nature. In its opinion, the court stated that:

The described conduct is unquestionably barbaric, but certainly is not commercial in nature. Japan's use of its war-time military to impose "a premeditated master plan" of sexual slavery upon the women of occupied Asian countries might be characterized properly as a war crime or a crime against humanity. This conduct, however, was not in connection with a commercial activity. As plaintiffs correctly recognize, this system "required" the resources at the government's disposal. Such conduct is not typically engaged in by private players in the market.⁷⁶

In dicta, the court also reasoned that even if Japan was not entitled to sovereign immunity due to the FSIA exceptions, the issues raised by plaintiffs were non-justiciable political questions.⁷⁷ After the signing of the Treaty of Peace in 1951, it was understood that Japan could not be sued in United States courts for its actions during World War II.⁷⁸ The court explained that "the series of treaties after the war was clearly aimed at resolving all war claims against Japan There is no question that this court is not the appropriate forum in which plaintiffs may seek to reopen those discussions nearly a half century later."⁷⁹

In their last attempt at adjudication, the plaintiffs appealed to the Supreme Court of the United States, which granted their petition for a writ of certiorari.⁸⁰ The Supreme Court vacated the prior judgment and remanded the case back to the Court of Appeals in light of its recent holding in *Republic of Austria v. Altmann*, which held that FSIA applied to conduct prior to its enactment.⁸¹ The Court of Appeals reaffirmed its prior decision, however, stating that "[as] much as we may feel for the plight of the appellants, the courts of the United States simply are not

⁷³ *Hwang Geum Joo v. Japan*, 332 F.3d 679 at 686 (D.C. Cir. 2003).

⁷⁴ *Hwang*, 172 F. Supp. 2d at 60.

⁷⁵ *Princz v. F.R.G.*, 26 F.3d 1166, 1174 (D.C. Cir. 1994).

⁷⁶ *Hwang*, 172 F. Supp. 2d at 63.

⁷⁷ *See id.* at 67.

⁷⁸ *Ishikane*, *supra* note 9, at 136.

⁷⁹ *Hwang*, 172 F. Supp. 2d at 67.

⁸⁰ *Hwang Geum Joo v. Japan*, 542 U.S. 901 (2004).

⁸¹ *Republic of Austria v. Altmann*, 541 U.S. 677 (2004).

authorized to hear their case.”⁸² Although the plaintiffs petitioned for another writ of certiorari, on February 21, 2006, the Supreme Court denied the petition.⁸³

IV. OTHER FAILED ATTEMPTS AT REPARATIONS

A. The Asian Women's Fund

The Asian Women's Fund (“AWF”) was an invention of the Japanese government and was its first attempt to repay comfort women through monetary compensation. Established in July 1995, the AWF was controlled by the Japanese government and was scheduled to last for five years.⁸⁴ The fund's purpose was to “show ‘atonement of the Japanese people, through expressions of apology and remorse to the former so-called wartime comfort women,’ to ‘restore their honor, which was affronted,’ and to ‘indicate in Japan and abroad [Japan’s] strong respect for women.’”⁸⁵ In order to achieve its goals, the AWF instituted a policy of monetary reparations and education. Former comfort women would receive payments in the form of “atonement money,” research was to be conducted in an attempt to recreate an accurate historical record of the atrocities, welfare programs for survivors would be instituted, and educational activities would be conducted addressing violence against women.⁸⁶

On January 11, 1997, the official launching of the AWF in Korea was met with harsh criticism.⁸⁷ Many Koreans believed that the AWF was simply a self-serving institution of the Japanese government.⁸⁸ Despite the AWF's multifarious goals, it neither issued a formal apology on behalf of the government nor indicated Japan's legal responsibility. Ultimately, the AWF attempted to deflect public attention by instituting a sundry of welfare and educational programs.⁸⁹ Furthermore, the government only subsidized the AWF's administrative costs, leaving the majority of the “atonement money” to be paid by private donations.⁹⁰ Ultimately, the AWF was a way for the Japanese government to establish complacency amongst former comfort women without admitting culpability. According to one former comfort woman, the AWF's establishment was an “attempt to buy comfort women's silence and end negative publicity for the state, not an act of sincere atonement”⁹¹ Ellen van der Ploeg, a former comfort woman, also expressed her dissatisfaction with the AWF, stating: “[i]f this were a

⁸² Hwang Geum Joo v. Japan, 413 F.3d 45, 53 (D.C. Cir. 2005).

⁸³ Hwang Guem Joo v. Japan, 546 U.S. 1208 (2006).

⁸⁴ Ishikane, *supra* note 9, at 137.

⁸⁵ *Id.*

⁸⁶ Jeffords, *supra* note 3, at 155.

⁸⁷ Ishikane, *supra* note 9, at 138.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Ahmed, *supra* note 52, at 128.

⁹¹ Lee, *supra* note 37, at 545.

pure government fund, I could have accepted it. Why should I accept money from private Japanese people? They were also victims during the war.”⁹² Finally, Kim Soo-Ja, a former comfort woman, stated in 1995 that:

[i]t is more important to get a sincere apology than simply get a monetary compensation. I am not merchandise that can be traded for money. Even if they give me Japan as a whole, they cannot compensate for my lifelong suffering. I will never accept money from the Asian Women’s Fund. The Japanese Government should make a sincere apology and directly compensate me.⁹³

Mounting public opposition against the AWF caused its board of directors to suspend its operations for over two years.⁹⁴ When the AWF was eventually dissolved in 2002, only seven Korean women had accepted atonement payments.⁹⁵

*B. United Nations Human Rights Commission (“UNHRC”)
Report on Violence Against Women*

In 1992, the Korean Council for the Women Drafted for Military Sexual Slavery by Japan (“KCWS”), submitted a petition to the United Nations Human Rights Commission (“UNHRC”), asking for their assistance in investigating crimes committed by Japan against Korean women and pressuring Japan to pay reparations to the women who had filed lawsuits.⁹⁶ The UNHRC formally placed the issue on its agenda and appointed Radhika Coomaraswamy as the issue’s special investigator.⁹⁷ Issued in 1996, the UNHRC’s report reaffirmed Japan’s guilt in forcing Korean women to act as sex slaves for the imperial army.⁹⁸ More specifically, the UNHRC listed a number of demands, including that “Japan must admit its legal responsibility, identify and punish those responsible for the sex slavery during the war, compensate the victims, apologize to the survivors in writing, and teach its students this hidden chapter in Japanese history.”⁹⁹ Outside of these demands, however, the UNHRC has taken no further action. Indeed, during the UNHRC’s investigations, pressure from Tokyo officials prevented the commission from adopting any formal resolutions addressing reparations at its general assembly meeting in Geneva in April 1996.¹⁰⁰ Similar to the AWF, the

⁹² Norimitsu Onishi, *Japan’s Atonement to Former Sex Slaves Stirs Anger*, N.Y. TIMES, Apr. 25, 2007, available at <http://www.nytimes.com/2007/04/25/world/asia/25japan.html?scp=13&sq=%22comfort+women%22>.

⁹³ Pyong Gap Min, *Korean “Comfort Women”: The Intersection of Colonial Power, Gender, and Class*, 17 GENDER & SOC’Y 938, 946 (2003).

⁹⁴ Ishikane, *supra* note 9, at 138.

⁹⁵ See Jeffords, *supra* note 3, at 156.

⁹⁶ Soh, *supra* note 7, at 1234-35.

⁹⁷ *Id.* at 1226.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 1238.

UNHRC also failed to produce any adequate forms of compensation for Korean comfort women.

C. *Women's International War Crimes Tribunal*

The Women's International War Crimes Tribunal ("WIWCT") was a "people's tribunal" established by a number of Asian women, human rights organizations, and supported by an international coalition of non-governmental organizations ("NGOs").¹⁰¹ First proposed in 1998, the WIWCT convened in Tokyo in 2000 to discuss the issue of comfort women.¹⁰² Specifically, the WIWCT aimed to "adjudicate Japan's military sexual violence, in particular the enslavement of 'comfort women,' to bring those responsible for it to justice, and to end the ongoing cycle of impunity for wartime sexual violence against women."¹⁰³

A large amount of evidence was presented to the tribunal for examination. Sixty-four former comfort women from Korea and other surrounding territories in the Asia-Pacific region testified before the court.¹⁰⁴ Testimony was also presented by historical scholars, international law scholars, and two former Japanese soldiers.¹⁰⁵ Additional evidence was submitted by the prosecution teams of ten different countries, including: North and South Korea, China, Japan, the Philippines, Indonesia, Taiwan, Malaysia, East Timor, and the Netherlands.¹⁰⁶ After examining the evidence for more than a year, the tribunal issued its final verdict on December 4, 2001, finding the former Emperor Hirohito and the State of Japan guilty of crimes against humanity for the rape and sexual slavery of women.¹⁰⁷ The final judgment contained a number of provisions, including the court's recommended scheme of reparations.¹⁰⁸

Like the AWF and the UNHRC's report on violence against women, however, the WIWCT has had little effect in bringing closure to the comfort women issue. Although the tribunal included prosecutors, witnesses, and judges, its judgment was not legally binding since the tribunal itself was organized by private citizens. Essentially, while the tribunal sought to exercise its moral authority, its judgments had no legal significance and placed little pressure on Japan to change its policies. The tribunal's greatest success was bringing the plight former comfort women to the attention of the international community while

¹⁰¹ Christine M. Chinkin, *Women's International Tribunal on Japanese Sexual Slavery*, 95 AM. J. INT'L L. 335 (2001).

¹⁰² Violence Against Women in War-Network Japan, What is the Women's Tribunal?, <http://www1.jca.apc.org/vaww-net-japan/english/womenstribunal2000/whatstribunal.html> (last visited Oct. 16, 2008).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Chinkin, *supra* note 101, at 336.

¹⁰⁷ Violence Against Women in War-Network Japan, *supra* note 102.

¹⁰⁸ Chinkin, *supra* note 101, at 338.

casting Japan in the shadow of moral reproach. Indeed, the tribunal hinted at this achievement when it stated in its final opinion, “through this judgment, this Tribunal intends to honor all the women victimized by Japan’s military sexual slavery system.”¹⁰⁹

V. HOUSE RESOLUTION 121

A. The Resolution

On January 31, 2007, United States Representative Michael Honda of California, along with six co-sponsor representatives, introduced House Resolution 121. The resolution called for Japanese action in light of the ongoing struggle for closure by former comfort women. The House of Representatives formally passed the resolution on July 30, 2007.¹¹⁰ The bipartisan resolution lists the many historical findings that have been unearthed regarding Japan’s involvement with sex slaves during the post-war era. The resolution also makes four distinct demands:

[I]t is the sense of the House of Representatives that the Government of Japan (1) should formally acknowledge, apologize, and accept historical responsibility in a clear and unequivocal manner for its Imperial Armed Forces’ coercion of young women into sexual slavery, known to the world as “comfort women”, during its colonial and wartime occupation of Asia and the Pacific Islands from the 1930s through the duration of World War II; (2) would help to resolve recurring questions about the sincerity and status of prior statements if the Prime Minister of Japan were to make such an apology as a public statement in his official capacity; (3) should clearly and publicly refute any claims that the sexual enslavement and trafficking of the “comfort women” for the Japanese Imperial Army never occurred; and (4) should educate current and future generations about this horrible crime while following the recommendations of the international community with respect to the “comfort women.”¹¹¹

Unlike the AWF, UNHRC report, and WIWCT, House Resolution 121 does not call for monetary compensation. Instead, it calls for a comprehensive solution which includes atonement by the Japanese government through an official apology, an end to the controversial textbook screening process, and most importantly, an official and public atonement by the Prime Minister of Japan.

¹⁰⁹ Violence Against Women in War- Network Japan, *supra* note 102.

¹¹⁰ Press Release, Congressman Mike Honda, Rep. Honda Calls on Japan to Apologize for World War II Exploitation of “Comfort Women” (Jan. 31, 2007), *available at* http://www.house.gov/list/press/ca15_honda/COMFORTWOMEN.html.

¹¹¹ H.R. Res. 121, 110th Cong. (2007) (enacted).

B. The Japanese Response

The Japanese government adamantly lobbied against House Resolution 121, indicating that its passage could be detrimental to the already strained relationship between Japan and the United States. Indeed, in late 2007, Japan informed the United States that due to its impending budget crisis, it was planning to cut funding for U.S. military support bases in Japan.¹¹² Further exacerbating tensions, former New York Senator Hilary Rodham Clinton stated in *Foreign Affairs Magazine* that, “[o]ur relationship with China will be the most important bilateral relationship in the world in this century.”¹¹³ In an attempt to prevent further discord, the former Bush administration said little in support of the resolution. Japan has accused Honda, who is of Japanese-American descent, of being an agent for the Chinese government and attempting to humiliate Japan in the United States.¹¹⁴ In response to Japan’s diatribe against him, Honda took great care to explicitly explain the motives and objectives of the resolution during his Congressional Record speech. Before introducing the Resolution, he stated:

I would like to emphasize in the strongest terms that the purpose of this resolution is not to bash or humiliate Japan. This legislation, rather, seeks to achieve justice for the few remaining women who survived these atrocities, and to shed light on a grave human rights violation, that has remained unknown for so many years.¹¹⁵

Honda also mentioned in his introductory statement that he did not believe the resolution aimed to strain the relationship between the two countries, but that it was an effort to bring about a public and official apology sanctioned by the Japanese government. To this end, he stated:

[s]ome question whether this resolution is necessary and warn that it could affect our nation’s strong friendship and alliance with Japan. Some even argue that Japan has already apologized, and this resolution fails to recognize that. It is true that Japan’s previous Prime Ministers have issued statements related to comfort women. However, it is clear that these statements are not viewed by the Government of Japan with unequivocal respect, and the comfort women themselves do not consider them formal apologies. Japan has equivocated its stance on this issue, which is made

¹¹² The Comfort Women—A History of Trauma, http://taiwan.yam.org.tw/womenweb/conf_women/index_e.html (last visited Mar. 26, 2009).

¹¹³ Hillary Rodham Clinton, *Security and Opportunity for the Twenty-First Century*, 86 FOREIGN AFFAIRS, Nov./Dec. 2007, available at <http://www.foreignaffairs.org/20071101faessay86601-p40/hillary-rodham-clinton/security-and-opportunity-for-the-twenty-first-century.html>.

¹¹⁴ Norimatsu Onishi, *A Congressman Faces Foes in Japan as He Seeks an Apology*, N.Y. TIMES, May 12, 2007, available at http://www.nytimes.com/2007/05/12/world/asia/12honda.html?_r=1&scp=2&sq=Japan%27s+Reaction+House+Resolution.

¹¹⁵ Honda, *supra* note 110.

clear in their recent attempts to alter previous public statements and their school textbooks.¹¹⁶

Indeed, Honda was critical of Japan's frequent issuance of unsanctioned and unofficial apologies. Under Japanese policy, an apology is not sanctioned by the government if it is merely issued by its Prime Minister or some other government official. Instead, an apology or statement issued by the government is only official if it is made by the Diet itself.¹¹⁷ Thus, Honda attempted to draw attention to the public apologies issued by Japanese government officials that were later recanted. For example, in 1993, Japan's Chief Cabinet Secretary Yohei Kono issued a statement offering former comfort women the government's apologies following Japan's own investigation of its war crimes.¹¹⁸ Yohei stated,

We shall face squarely the historical facts as described above instead of evading them, and take them to heart as lessons of history. We hereby reiterated our firm determination never to repeat the same mistake by forever engraving such issues in our memories through the study and teaching of history.¹¹⁹

Instead of acknowledging Kono's apology, members of Japan's Liberal Democratic Party have made attempts to revise the statement.¹²⁰

Statements by U.S. government officials indicate that the issue of comfort women was also being treated delicately by the former Bush administration. When State Department Deputy Spokesmen Tom Casey was questioned regarding the Bush administration's position on comfort women and Japan's handling of the issue, he stated, "[I] think this is a very difficult issue, and we certainly would want to see the Japanese continue to address the this and to deal with it in a forthright and responsible manner that acknowledges the gravity of the crimes that were committed."¹²¹

The Japanese government voiced its opposition to the resolution even before its adoption. In March 2007, Shinzo Abe, formerly Japan's Prime Minister, stated that the Japanese government would refuse to comply if the United States Congress demanded an apology for Japan's use of sex slaves during World War II.¹²² In

¹¹⁶ *Id.*

¹¹⁷ Tom Zeller, Jr., *The Politics of Apology for Japan's 'Comfort Women'*, N.Y. TIMES, March 5, 2007, available at <http://thelede.blogs.nytimes.com/2007/03/05/the-politics-of-apology-for-japans-comfort-women/>.

¹¹⁸ *Id.*

¹¹⁹ The Ministry of Foreign Affairs of Japan, Statement by the Chief Cabinet Secretary Yohei Kono on the Result of the Study on the Issue of "Comfort Women" (Aug. 4, 1993), available at <http://www.mofa.go.jp/policy/women/fund/state9308.html>.

¹²⁰ Honda, *supra* note 110.

¹²¹ Norimitsu Onishi, *Japan Leader Who Denied State Role in Wartime Sex Slavery Still Apologizes*, N.Y. TIMES, Mar. 27, 2007, available at <http://www.nytimes.com/2007/03/27/world/asia/27japan.html?scp=2&sq=Japan+comfort+women>.

¹²² Martin Fackler, *No Apology for Sex Slavery, Japan's Prime Minister Says*, N.Y. TIMES, Mar. 6 2007, available at <http://www.nytimes.com/2007/03/06/world/asia/06japan.html?scp=1&sq=Japan+>

1993, Japan issued a declaration which stated, “[t]he government study has revealed that in many cases [comfort women] were recruited against their own will, through coaxing, coercion, etc., and that, at times, administrative/military personnel directly took part in the recruitments.”¹²³ Notwithstanding the 1993 statement, Abe has continuously reaffirmed Japan’s innocence. Speaking to the Japanese Parliament, he reaffirmed the position of conservative Japanese scholars that independent contractors used by the Japanese military were to blame for the actual enslavement of women and that any involvement of the Japanese government and military officials was indirect.¹²⁴ Referring to a study conducted in the early 1990s, the Japanese cabinet stated that, “among the materials it discovered, it did not come across any that directly show[ed] that the military or authorities so-called forcibly led away [comfort women].”¹²⁵

Following the passage of House Resolution 121, Japan’s position has remained the same. Abe publicly stated that, “[t]he resolution’s approval was regrettable,”¹²⁶ indicating that an officially sanctioned apology is not forthcoming. Moreover, when asked whether he would comply with the resolution’s demands, Abe responded that, “[t]he 20th century was an era in which human rights were violated. I would like to make the 21st century into an era with no human rights violations.”¹²⁷ Japan has also questioned the authenticity and historical support for the resolution’s findings. According to Abe, “testimony to the effect that there had been a hunt for comfort women is a complete fabrication,” and that the resolution “was not based on objective fact, and does not consider the Japanese government’s measures so far.”¹²⁸ When asked personally to make a statement towards surviving comfort women, Abe stated, “I express my sympathy for the hardships they suffered and offer my apology for the situation they found themselves in.”¹²⁹ Clearly, despite the passage of the resolution, Japan still refuses to accept responsibility for their enslavement of comfort women.

C. The International Response

House Resolution 121’s largest effect on the comfort women issue has been in motivating other countries and organizations to pressure Japan into making

comfort+women.

¹²³ Norimitsu Onishi, *Japan Repeats Denial of Role in World War II Sex Slavery*, N.Y. TIMES, Mar. 17, 2007, available at <http://www.nytimes.com/2007/03/17/world/asia/17japan.html?scp=3&sq=Japan+comfort+women>.

¹²⁴ Fackler, *supra* note 122.

¹²⁵ Onishi, *supra* note 114.

¹²⁶ Norimitsu Onishi, *Call by U.S. House for Sex Slavery Apology Angers Japan’s Leader*, N.Y. TIMES, Aug. 1, 2007, available at <http://www.nytimes.com/2007/08/01/world/asia/01japan.html?scp=4&sq=Japan+comfort+women>.

¹²⁷ *Id.*

¹²⁸ Fackler, *supra* note 122.

¹²⁹ Onishi, *supra* note 114.

amends. In December 2007, the European Parliament, the governing body of the European Union, drafted a resolution similar to House Resolution 121.¹³⁰ The resolution was largely instigated by the appeals of three former comfort women, seeking legal compensation and a formal apology from the Japanese government.¹³¹ Entitled, “Justice for Comfort Women,” the resolution has three major demands: (1) a formal acknowledgment of responsibility by the Japanese government; (2) a removal of the legal obstacles preventing compensation; and (3) unabridged education of the past.¹³² The resolution also stresses the urgency with which Japan should act on these issues, stating: “the right of individuals to claim reparations against the government should be expressly recognized in national law, and cases for reparations for the survivors of sexual slavery, as a crime under international law, should be prioritized, taking into account the age of the survivors.”¹³³ Although the European Parliament represents the opinions of twenty-seven nations, Japan has yet to respond to its demands.

The Canadian and Dutch parliaments have each followed suit in drafting resolutions against Japan. Canada’s resolution demands the Japanese government to issue a formal apology, to admit that its Imperial Military coerced or forced hundreds of thousands of women into sexual slavery, and to restore references in Japanese textbooks to its war crimes.¹³⁴ The Dutch parliament’s resolution simply calls for the Japanese government to uphold the 1993 declaration of remorse made by Chief Cabinet Secretary Kono.¹³⁵ Similar to the European Parliament, the Dutch resolution was drafted in response to a number of former comfort women who petitioned the state to act against Japan.¹³⁶ Specifically the resolution:

asks from Japan that it fully recogni[z]es the fate of the comfort girls, offers apologies, takes full responsibility for this war crime, offers damages to the comfort girls still alive and sees to it that there is objective lesson material about Japan’s role in WWII in general and in relation to the comfort girls in particular.¹³⁷

Amnesty International has also championed the cause of the comfort women as part of its “Stop Violence Against Women” campaign.¹³⁸ Amnesty’s campaign on behalf of former comfort women calls for Japan to publicly accept full

¹³⁰ European Parliament, Human rights: Chad, Women's Rights in Saudi Arabia, Japan's Wartime Sex Slaves, Dec. 17, 2007, <http://www.europarl.europa.eu/sides/getDoc.do?language=EN&type=IM-PRESS&reference=20071210BR114639&secondRef=ITEM-008-EN>.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ The Comfort Women—A History of Trauma, http://taiwan.yam.org.tw/womenweb/conf_women/index_e.html (last visited Mar. 26, 2009).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Amnesty International Australia, Stop Violence Against Women, <http://www.amnesty.org.au/svaw/> (last visited Nov. 1, 2008).

responsibility for the comfort women system, to restore the dignity of the survivors, to issue an apology from the Japanese Diet that is acceptable to the comfort women, to offer adequate and effective compensation directly from the Japanese government, to guarantee non-repetition by ratifying the Rome Statute of the International Criminal Court, and finally, provide an accurate account of the sexual slavery system in its textbooks.¹³⁹

D. Why it Matters

As the sixty-fourth anniversary of the end of the Pacific War draws closer, there is increasing international concern that the dwindling number of former comfort women will perish without closure or reparations. The majority of these women simply want Japan to take responsibility for its actions during World War II through the issuance of a sanctioned government apology. Lee Yong-soo, a seventy-eight year-old former comfort woman who offered her testimony to the U.S. House of Representatives prior to the drafting of House Resolution 121, stated, "I want Japan and the Japanese prime minister to apologize. As a victim who was forcibly taken, as someone who lived through those events, I'm a living witness."¹⁴⁰ Jan Ruff O'Herne, an eighty-four year-old former comfort woman, has also championed on behalf of her fellow comfort women. Testifying before one congressional committee, she stated simply that: "[a]n apology is the most important thing [comfort women] want—an apology that comes from the government, not only a personal one—because this would give us back our dignity."¹⁴¹

E. A Problem Unsolved

Unfortunately for O'Herne, Yong-soo, and the countless other former comfort women, it has become clear that without the threat of legal repercussions, Japan will not accept responsibility. Thus, while House Resolution 121 has been effective at galvanizing support for the comfort women, its lack of legal authority severely hampers its ultimate efficacy. Without legal force, the resolution's demands are up against the political and financial ties that Japan has established since the end of World War II. One such example is the reemergence of Japanese and Chinese relations. Prior to Abe's succession as Japan's Prime Minister, his predecessor, Junichiro Koizumi, had incensed Chinese government officials by his frequent visits to the Yasukuni Shrine.¹⁴² The shrine contains the remains of fallen

¹³⁹ *Id.*

¹⁴⁰ Fackler, *supra* note 122.

¹⁴¹ Norimitsu Onishi, *Denial Reopens Wounds of Japan's Ex-Sex Slaves*, N.Y. TIMES, Mar. 8, 2007, available at <http://www.nytimes.com/2007/03/08/world/asia/08japan.html?pagewanted=2&sq=>.

¹⁴² William Gao, *Overdue Redress: Surveying and Explaining The Shifting Japanese Jurisprudence On Victim's Compensation Claims*, 45 COLUM. J. TRANSAT'L L. 529, 547 (2007).

Japanese soldiers, including those of war criminals.¹⁴³ Koizumi's visits caused both China and Korea to cancel scheduled summits with Japan.¹⁴⁴ Following Abe's succession, however, relations between Japan and China have changed considerably. In 2003, Japan's total exports to China exceeded those to the United States and since then, China has become an invaluable trading partner to Japan.¹⁴⁵

Despite Japan's increasing number of exports to China, the relationship is not symbiotic. Although trade with China continues to dominate Japan's exports, China's exports to Japan have consistently decreased since the late 1990s as its trade with the United States and the European Union has increased.¹⁴⁶ China is therefore in a significant position to pressure Japan into meeting the demands of the various international resolutions on comfort women. To date, however, Chinese government officials have appeared indifferent to Japan's stance. Although China's foreign minister, Li Zhaoxing, has publicly urged Japan to accept responsibility for its use of comfort women during World War II, he has also stated that Japan's failure to accept responsibility would not hamper its relations with China.¹⁴⁷ Pressure from the international community on China to change its position could cause a drastic change in Japanese policy. Facing pressure from one of its most valued trading partners could potentially compel Japan into finally meeting the demands of the resolutions.

The Philippines also has the ability to put significant pressure on Japan to change its policy towards comfort women. On September 9, 2006, Philippine President Gloria Macapagal-Arroyo and then Japanese Prime Minister Koizumi signed the Japan-Philippines Economic Partnership Agreement ("JPEPA").¹⁴⁸ The agreement offers a number of advantages to Japan, which, if removed, could negatively affect its economic position in the East. For example, the JPEPA is projected to increase Japan's Gross Domestic Product by 0.03% and important Philippine exports to Japan by fifteen percent.¹⁴⁹ A worker-exchange program will also be instituted, under which Philippine caregivers will be sent to Japan to meet industry quotas.¹⁵⁰ While not as vital as its economic relationship with China,

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 546.

¹⁴⁶ *Id.*

¹⁴⁷ Jim Yardley, *China Stresses Ties With Japan Despite Sex Slavery Issue*, N.Y. TIMES, Mar. 7, 2007, available at <http://www.nytimes.com/2007/03/07/world/asia/07china.html?scp=4&sq=%22comfort+women%22>.

¹⁴⁸ SENATE OF THE PHILIPPINES, 14TH CONGRESS, SENATE ECONOMIC PLANNING OFFICE, POLICY BRIEF PB-07-01, JAPAN-PHILIPPINES ECONOMIC PARTNERSHIP AGREEMENT (JPEPA): AN ASSESSMENT (Sept. 2007), available at [http://www.senate.gov.ph/publications/PB%202007-01%20-%20Japan-Philippines%20Economic%20Partnership%20Agreement%20\(JPEPA\),%20An%20assessment.pdf](http://www.senate.gov.ph/publications/PB%202007-01%20-%20Japan-Philippines%20Economic%20Partnership%20Agreement%20(JPEPA),%20An%20assessment.pdf).

¹⁴⁹ *Id.* at 6.

¹⁵⁰ Joint Press Statement, Ministry of Foreign Affairs of Japan, A Japan-Philippines Economic Partnership Agreement (Nov. 29, 2004), available at <http://www.mofa.go.jp/region/asia-paci/philippine/joint0411.html>.

Japan's reliance on the JPEPA could provide considerable motivation for compliance with a Philippine comfort women resolution.

Korea could also play a crucial role in pressuring Japan to change its stance on comfort women. On December 18, 1965, Japan and Korea reestablished diplomatic relations for the first time since Japan's annexation of Korea.¹⁵¹ Following this watershed event, Korea, similar to China, has become one of Japan's most vital trading partners. For example, in 2002, Korea's exports to Japan totaled over 15 billion dollars.¹⁵² Additionally, Korea's Foreign Direct Investment in Japan has grown exponentially, ballooning from \$24 million in 1998 to \$139 million in 2000.¹⁵³ This lucrative economic relationship has developed into the Japan-Korea Free Trade Agreement ("JKFTA").¹⁵⁴ The JKFTA's economic effects are similar to those of the JPEPA but on a greater scale. Again, with a vital economic relationship at stake, it would be difficult for Japan to ignore the demands of a Korean comfort women resolution.

Finally, similar to its relations with China, the Philippines, and Korea, Japan also has significant economic ties to the United States. According to U.S. Department of Commerce data for 2000, bilateral merchandise trade between the United States and Japan totaled \$212 billion.¹⁵⁵ Furthermore, the United States is Japan's largest trading partner, accounting for one quarter of Japan's total trading activities.¹⁵⁶ Similar to the economic relationship between Japan and China, the United States and Japan do not share a reciprocal relationship. Japan ranks on average as the third or fourth largest trade partner of the United States, accounting for less than ten percent of U.S. trade activity.¹⁵⁷ With Japan more dependent on U.S. exports than the U.S. is dependent on Japanese imports, the U.S. should be able to apply significant economic pressure on Japan to abide by House Resolution 121.

Despite its economic position with Japan, however, the United States is at a disadvantage in making significant demands due to the fact that Japan has become invaluable to its security strategy and military positioning in the Asia-Pacific region. The largest offshore contingent of U.S. military forces is based out of Japan, which provides the U.S. with ready access to positions in the Pacific and

¹⁵¹ Ministry of Foreign Affairs of Japan, Japan-Republic of Korea Relations, <http://www.mofa.go.jp/region/asia-paci/korea/index.html> (last updated October 2008).

¹⁵² Byung-Woon Lyou, *Building the Northeast Asian Community*, 11 *IND. J. GLOBAL LEGAL STUD.* 257, 292 (2004).

¹⁵³ *Id.*

¹⁵⁴ JOINT STUDY GROUP PROJECT, MINISTRY OF FOREIGN AFFAIRS OF JAPAN, JAPAN-KOREA FREE TRADE AGREEMENT 15-19 (Oct. 2, 2003), available at <http://www.mofa.go.jp/region/asia-paci/korea/fta/report0310-4.pdf>.

¹⁵⁵ C. FRED BERGSTEN ET AL., *NO MORE BASHING: BUILDING A NEW JAPAN-UNITED STATES ECONOMIC RELATIONSHIP* 114 (2001), available at http://www.iie.com/publications/chapters_preview/105/4iie2865.pdf.

¹⁵⁶ *Id.* at 115.

¹⁵⁷ *Id.*

Central-Asia.¹⁵⁸ Furthermore, the Japanese government defrays three-fourths of the total cost of the troops stationed in Japan and accounts for over fifty percent of the total sum that allied nations pay the United States for maintenance of U.S. forces overseas.¹⁵⁹ Under Koizumi, Japan also proved invaluable to the United States' anti-terrorism campaign by supporting allied operations in Iraq and Afghanistan.¹⁶⁰ Thus, while economic relations between Japan and the United States are important, Japan's ties to the U.S.'s domestic and foreign security policies run even deeper. Any push by the United States to take legal action against Japan for its involvement with comfort women could have drastic effects on its economic and military security.

The United States could have insulated itself from the economic and security issues it now faces with Japan if the issue of comfort women was dealt with during the Tokyo War Crimes Trials. During these trials, twenty-eight military and civilian Japanese officials were tried before the International Military Tribunal for the Far East.¹⁶¹ While the trials mainly focused on "Class A" charges which alleged "crimes against peace," lower level Japanese military and government officials were charged for "Class C" crimes which alleged "crimes against humanity."¹⁶²

Despite attempts by Japan to hide its enslavement of comfort women following its surrender, enough evidence was available to hold them accountable at the trials. Following its surrender, the Japanese government ordered the destruction of virtually all documentation relating to its comfort women system.¹⁶³ Additional attempts to conceal the system's existence involved disguising comfort women as nurses and hiding them in mental institutions and sanatoria.¹⁶⁴ Not all of Japan's attempts were successful, however, and during the liberation of previously occupied Japanese territories, U.S. troops provided aid to abandoned comfort women.¹⁶⁵ Two reports were issued, based on statements from prisoners of war that corroborated the Japanese implementation of the comfort women system.¹⁶⁶ The first report, issued in 1944 by the U.S. Office of War Information, Psychological Warfare Team, documented interviews with Korean comfort women in Burma.¹⁶⁷ The second, issued one year later, detailed the infrastructure of the

¹⁵⁸ James L. Schoff, *Transformation of the U.S.-Japan Alliance*, 31 WTR FLETCHER F. WORLD AFF. 85, 86 (2007).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 87.

¹⁶¹ Jenny S. Martinez, *Understanding Mens Rea In Command Responsibility*, 5 J. INT'L CRIM. JUST. 638, 652 (2007).

¹⁶² Tokyo War Crimes Trials (1946-1948), <http://www.pbs.org/wgbh/amex/macarthur/peoplevents/pandeAMEX101.html> (last visited Jan. 21, 2008).

¹⁶³ Ahmed, *supra* note 52 at 129.

¹⁶⁴ *Id.*

¹⁶⁵ See Hwang, 172 F.Supp.2d at 61.

¹⁶⁶ Ahmed, *supra* note 52, at 130.

¹⁶⁷ *Id.*

comfort women system and the methods by which the Japanese government retained control.¹⁶⁸ Furthermore, a number of convictions during the trials were for “Class C” crimes committed during the Rape of Nanking.¹⁶⁹ Thus, since intelligence existed to charge Japanese officials with implementing the comfort women system even before the war’s end, the inadequacies of House Resolution 121 could have been avoided by charging Japan during the Tokyo War Crimes Trials.

VI. CONCLUSION

In sum, House Resolution 121 has done little to change Japan’s official position towards its involvement with comfort women. While the resolution has led to a UNHRC investigation, a private tribunal hearing, and influenced the signing of similar resolutions by Canada, the Netherlands, and Amnesty International, House Resolution 121 still offers only moral reproach. The best opportunities that the comfort women had for legal repercussions were at the Tokyo War Crimes trials and through the United States court system in *Hwang v. Japan*. The failure to resolve this issue has led to an ethical and international quagmire: the countries that have the greatest stake in punishing Japan, namely the United States, Korea, China, and the Philippines, are all fettered by deeply intertwined economic and military interests in Japan. Japan’s lack of response to House Resolution 121 makes clear that in today’s international society, morality and ethics are far less important than economic and military security. Worse, while the resolutions are slowly fostering change by appealing to Japan’s conscience, the number of surviving comfort women continues to dwindle. Even with admirable ambitions, it has become clear that House Resolution 121 is not the answer comfort women have been hoping for.

¹⁶⁸ *Id.*

¹⁶⁹ Tokyo War Crimes Trials, <http://www.cnd.org/mirror/nanjing/NMTT.html> (last visited Jan. 21, 2007).

