

# THE AMBIGUITIES OF AMENDING HISTORICAL INJUSTICES AND ESPOUSING A SHARED COLLECTIVE MEMORY: THE WWII FORCED LABOUR NARRATIVES IN GERMANY AND JAPAN

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**Abstract:** This paper examines WWII forced labour memory politics in Germany and Japan by drawing from Barkan's concept of amending historical injustices. After lengthy negotiations, Germany reached in 2000 a milestone agreement compensating victims individually, while in Japan, settlements, consolation payments and apologies have been overshadowed by a revival of revisionist historical narratives and victim denial. It is argued that the official recognition of forced labour as historical injustice made a mutually acceptable outcome possible in Germany and helped to shape a genuine historical memory in victim nations. In Japan, by contrast, an alliance of politicians, bureaucrats and academics has been reconsecrating revisionism as official position. The revisionist inability to recognize victims and admit mistakes has implications for South Korea as the rift between right-wing pro-revisionists and left-wing nationalists divides the country and prevents the formation of a shared collective memory. Unintended consequences have dimmed prospects for a settlement.

**Keywords:** WWII forced labour; Japan; Korea; Germany; revisionism; collective memory; reparations

*This place is not about who did wrong or whose fault it was. This place is for helping more people know the painful history correctly, and helping more people feel and work hard not to have this kind of things happen again. (Kim Woo-lim of the National Memorial Museum of Forced Mobilization Under Japanese Occupation in Busan)*

## Introduction

How do nations amend historical injustices in which they are implicated? How perpetrator nations address questions of historical responsibility and moral redress

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is a political struggle over competing interpretations of history (Barkan 2002). Forced labour victims of Nazi Germany and colonial Japan have been called the “forgotten victims” (Goschler 2017: 36) because they did not enter public awareness and space for a long period. After 1945 they were ignored in the perpetrator states for being foreign nationals and in the occupied victim states were stigmatized as collaborators. And, indeed, some victims have had ambiguous biographies (Goschler 2017: 222).

After a lengthy and bitter controversy, forced labour finally became absorbed into Germany’s collective memory when it enacted in 2000 a settlement agreement that satisfied victims and perpetrators alike without anyone apologizing or being legally held liable. In Japan and South Korea, by contrast, painful experiences such as forced labour, sexual slavery, military conscription or collaboration have obscured ambiguities in the collective memory of both countries (Tsutsui 2009; Kim 2015).

When contrasting forced labour in Germany with Japan, it becomes clear that the deportation patterns were similar: at the beginning, labour mobilization was less coercive but gradually, as the war gained intensity, civilian workers were increasingly coerced due to the shortage of civilian labour in the aggressor states Germany and Japan. Competing claims about numbers make it difficult to assess the scale of the phenomenon as records have been destroyed or lost, but it has been estimated that as many as 7.2 million Korean cases (Brandon 2005), 40,000 mainland Chinese,<sup>1</sup> 34,000 Formosa-Chinese<sup>2</sup> (Taiwanese) and an estimated total of 11.37 million<sup>3</sup> foreign nationals in Nazi Germany have been affected by forced labour, among them civilian workers, POWs and concentration camp detainees. As for the country of origin most German labourers compensated by Germany after 2000 are from Poland, Belarus, Russia and the Ukraine (Table 1), while Japanese labourers came mostly from Korea and a smaller number from mainland China and Chinese Formosa (Taiwan).

Japan’s labourers were sent to labour in shipyards, factories, farms and mines located in the Korean peninsula, Manchuria (Manchukuo) and on the Japanese mainland (mostly Kyushu and Hokkaido regions), including Karafuto Prefecture (now Sakhalin and part of Russian territory where the remains of thousands of Koreans are still buried).

As for Germany, foreign nationals were either deported to labour in the German Reich or confined to work in their occupied home countries. Nazi Germany was actively involved in the labour programme as it issued work recruitment decrees, coordinated the recruiting and received a brokerage fee from the companies for every worker introduced and placed. Several studies on the topic have been

Table 1 Individual compensation to forced labourers in Germany by country since 2000

Country	Number of Recipients
Ukraine	456,672
Russia	227,685
Belarus	119,699
Others Eastern Europe	43,346
Poland	484,025
Israel	78,744
Czech Republic	75,805
US	48,804
Hungary	15,040
Canada	14,481
Australia	12,044
Serbia-Montenegro	8,604
France	8,475
Netherlands	4,500
Belgium	3,893
Italy	3,393
Others Western Europe	23,987
Total	1,665,690

Source: <https://www.bpb.de/fsd/zwangsarbeit/ze-karte-entschaedigung.swf>

published for Germany (Herbert 1997; Saathoff et al. 2017; Goschler 2017; Heinelt 2010) and for Japan (in Japanese: Takeuchi 2013–15 and Park 1965; in English: Webster 2019; Nakano 1998; Naitou 2005; Yoshida 2017; Palmer 2005; Kratoska 2005; Kang 2005; Richardson 2016; Park 2007).

This article argues that three major factors explain the outcome of the German forced labour case: first, a cultural and political paradigm shift in historical awareness that laid the foundation for a self-critical reappraisal of forced labour and a victim-centred approach in Germany; second, the consolidation of a legitimate and consensual collective memory in European victim states as a consequence of Germany's self-appraisal; and third, the international context in which the US exercised their leverage and put diplomatic pressure on German officials and company heads. This article will proceed as follows: first, the international post-war contexts in Germany and Korea that created a different dynamic and the reasons for focusing on Korea (and not China) will be discussed. Next, the reasons for a victim-centred history framing will be examined, before looking briefly at the post-war discourse in North Korea and the German Democratic Republic. The patterns of the post-war approach in Germany are contrasted with the approach in Japan before a concluding section.

## Contextual similarities and differences

The analysis of the insufficiencies of Japan's post-war reconciliation with its neighbours Korea and China, does not infer that Germany sets the standard for successful reconciliation that can or should be applied to Japan. The purpose is to compare two similar cases of WWII injustice in a different international and political context (for an overview refer to Appendix I). They are similar because both Japan and Germany have in the past attacked and victimized nations and made use of forced labour on a large scale to sustain the war effort and compensate for the freeing up of soldiers fighting on the fronts.

They are different, first, because the Korean victim nation was divided into two enemy states after WWII, before suffering a quasi-fratricidal civil war between 1950 and 1953 that prevented the consolidation of a shared national memory. In addition, victim organizations, governments, courts, academics and revisionist groups have been divided over the legacy of collaboration, comfort women and forced labour (Phillips, Lee and Yi 2020; Kim 2015). In Europe, by contrast, the remorseful dialogue initiated by Germany in the late 1980s led to a reappraisal of forced labour in victim states and therefore forced labour could finally become a legitimate and established part of a late but stable national collective memory in those countries (Fedor, Lassila and Zhurzhenko 2017).

Secondly, a critical and decisive role was played by the Clinton administration in mediating the conflict between forced labour associations in the US and officials and private companies in Germany. The political pressure from the US was critical in convincing Germany to agree to a settlement and avoid litigation. As Stuart E. Eizenstat, the chief negotiator for forced labour compensation and former US Ambassador to the European Union, asserted:

*In fact, courts are not suitable instruments to resolve historical wrongs. Class action lawyers may be able to raise a historical wrong but are incapable of solving the problem themselves. It was only the direct intervention of the Clinton Administration in mediating the Holocaust cases that led to our dramatic results – \$8 billion in settlements for victims, Jewish and non-Jewish alike; payment by private companies to some one-and-a-half million surviving laborers (most non-Jewish).<sup>4</sup>*

In exchange for agreeing to settle, German companies obtained legal closure and protection from future lawsuits in the US. It is possible, according to Barkan (2002), to pursue a negotiated settlement that espouses reconciliation between perpetrators and victims. He argues that, for all their ambiguities, restitution agreements validate victims and perpetrators alike. The very process of negotiating

restitutions between past perpetrators and victims reshapes the way both sides understand themselves.

As mentioned, circumstances in Korea had been different from those in Europe after 1945. Painful experiences such as the national trauma caused by the 1950–3 Korean War; the sacrifices of more than 300,000 South Korean troops fighting in the Vietnam War; the role played by American authorities in trying to suppress grievances against Japan; the repressive dictatorial rule between 1948 and 1987 and the protracted political situation on the Korean peninsula preventing a rapprochement between Japan and North Korea led to a post-war atmosphere where disturbing questions about colonial perpetrators, victims and collaborators could not be properly addressed. According to Ludi (2012) the perception of past wrongs and the definition of victim is subject to political, social and generational change and determined by the political rhetoric and “condemnable attitude” (Ludi, 2010: 95) of perpetrator states.

As mentioned, forced labourers in imperial Japan included workers from Korea, China, Chinese-Formosa and Allied prisoners of war. This article puts the emphasis on Korea for two reasons: first, Koreans formed the largest group of displaced foreign populations in Japan and secondly, most importantly – unlike Korea – China did not sign away the rights for individual claims. For contrast, the equivalent of Korea’s normalization treaty for China (from paragraph 5 of the 1972 Joint Communiqué) states that:

*The Government of the People’s Republic of China declares that in the interest of the friendship between the Chinese and the Japanese peoples, it renounces its demand for war reparation from Japan.<sup>5</sup>*

China holds that it renounced its right to state-to-state reparations but not individual claims. In other words, whereas the Korean government signed away the rights of its nationals, the Chinese government did not. Hence, Japan has fewer legal grounds to protect Japanese companies operating in China than in Korea against individual claims, in spite of the 2007 Supreme Court of Japan verdict (refer to Appendix I).

## Framing history

Revisionists in both Japan and Korea and left-wing activists in both countries have criticized and attacked each other over the framing of historical narratives. Particularly, revisionists in Japan only consider the evidence that suits their views and pick up on factual errors to discredit and disregard narratives they do not like.

That forced labourers came voluntarily to Japan and were fairly treated and paid is, for them, a foregone conclusion. Interestingly, similar views have been echoed in right-wing circles in Korea, while Korean left-wing government officials have been silencing and censoring Korean academics who question the nationalist history narrative (Phillips, Lee and Yi 2020).

The way one conceives history inevitably influences the way one interprets past events. Two things should be kept in mind. First, interpretations of the past should foremost be based on the surviving victims' authentic testimonies and voices. Before judging victims or imposing an identity on them that might not reflect their real-life experiences and perceptions, it is essential to listen to their stories and open up to their narrated experiences. It was one of the greatest achievements of the 1961 Adolf Eichmann war criminal trial in Jerusalem that victims were given a voice to tell their stories as *they* saw it. In this regard, it is noteworthy that the key representatives of the perpetrator nation in Japan have shunned, to this day, a direct and personal dialogue with the victims. Among the few politicians who met personally with, and talked directly to, Korean WWII survivors have been two former Prime Ministers: Hatoyama Yukio and Murayama Tomiichi.

Secondly, history is not objective, but socially constructed. The question then is who defines victims and more importantly how are they defined? In the current debate, both revisionists and left-wing activists – not only in Japan but also in Korea – define the victims according to pre-conceived cognitive frames. Women in military brothels are defined according to stereotype categories of either commercial prostitutes (revisionists) or sexual slaves (left-wing).<sup>6</sup> But it is neither possible nor desirable to neatly categorize victims: consider for example a female prisoner in a German prison camp performing sexual services for other inmates and guards, what do we know about her mental anguish and her personal situation? Did she have any choice or the freedom to say no? (Sommer 2009).

At this point, the use of the term “forced labour” needs to be explained. According to the ILO, “forced labor refers to situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means”.<sup>7</sup>

Revisionists tend to take issue with the word “forced” without considering the context of forced labour in imperial Japan. What were the recruits promised and what were their expectations? Did they have any choice? What was the driving force behind the ever-growing need for foreign labour in Japan: was colonial control a system of structural assimilation that no one could escape? What were the exact circumstances of recruitment? How can anyone answer these questions without listening to the most concerned and relevant party first: the victims?

Instead of categorizing victims from the perspective of someone who did not witness history, revisionists and left-wing activities should talk to and listen to the

stories of survivors and, in particular, accept their claims to victimhood. In other words, someone who thinks he has been victimized should be given credibility. How could anyone judge the veracity or accuracy of a survivor testimony who claims, for example, that he was either pressured, intimidated, kidnapped or drafted, lured with false promises, mollified or simply “invited” to work in Japan and held in inhuman conditions?

### **North Korea and German Democratic Republic (GDR)**

Interestingly, the first scholarly works that examined the problem of forced labour in Nazi Germany have been published by historians from the GDR, the most well-known among them being Dietrich Eichholtz (1968). Despite the fact that these works were written from a Marxist class struggle perspective and with the intent to damage the reputation of West Germany, they contain a wealth of factual details and information. Why, though, did compensation for forced labour remain a taboo topic *within* the GDR? After the GDR had been founded in 1949, West Germany took over the role and responsibilities as successor state to Hitler Germany. By contrast, the communist GDR leadership upheld the myth of anti-fascist bulwark and refused to accept any liability for Nazi crimes until its collapse in 1989. Although it had paid significant reparations to the Soviet Union in the 1950s, it later refused to do the same for other states, including to allied European communist states. In addition to not paying reparations, it refused to acknowledge individual claims. Hence, former forced labourers – most of them living outside the GDR – were excluded from compensation. The only victims that were compensated were those who had fought with the communist resistance against Hitler.

The situation in Korea has been complicated by the division of the country into two enemy states: whereas South Korea obtained assurances from Japan that it would not negotiate over possible claims with North Korea, as South Korea vows to represent both the North and the South, North Korea has bilaterally demanded compensation (reparations) and economic assistance from Japan. Japan provided economic, humanitarian and financial support for a long period. Under Abe, however, Japan has discarded the idea of normalizing ties with North Korea, as long as the issue of abductions of Japanese citizens is not properly addressed.

### **Towards a shared collective memory and genuine victim recognition: the German case**

Contrary to what one might think, Germany has by no means been a post-war role model in terms of forced labour reparations. According to Ludi (2012) reparation encompasses in a broad sense not only financial compensation, but also restitution

(return of wrongly taken goods) and symbolic satisfaction (recognition, non-recurrence and remembrance). After 1945, German legislation had excluded forced labourers from compensation. At least until the early 1980s, the topic remained a taboo topic in the public space. First, no political party represented in parliament showed any interest in representing this victim group, mostly composed of Eastern Europeans living abroad. During WWII, they had figured on the lowest rank among all foreign civilian workers and had been submitted to the harshest labour conditions. After 1945, the outbreak of the Cold War prevented compensation to victims from communist countries regarded as enemy states. Secondly, it was argued that, legally, forced labourers were not eligible for compensation because they had neither lived in Germany (territorial principle) nor had they been actively resisting and fighting against Nazism (resistance principle). Legal scholars even defined forced labour as being an “act of war” to be excluded from compensation. Nazi-burdened politicians, including former Nazi party members, were determined to protect Germany from allegedly illegitimate and unjust claims by foreign nationals. Moreover, Germany strongly believed that international law was on its side as the 1953 London Agreement on German External Debts had stipulated that reparation claims against Germany were deferred and to be addressed by a future international peace treaty. Meanwhile the Soviet Union and Poland both waived their reparation claims in the early years after the war but clarified that the renouncement did not affect individual claims arising out of unlawful acts.

A turning point in the compensation debate was the upsurge of Holocaust litigation cases in the US in the 1990s and a change of government in Germany bringing to power in 1998, at the federal level – and for the first time in German history – a coalition of Greens (Green Party) and Social Democrats (SPD). Domestically, the Green Party had played a critical role in promoting the issue of forced labour because they embodied and represented a radically transformed political culture that was serious about admissions of guilt, sincere remorse and a moral duty to unequivocally atone for past wrongdoings. Although the Greens were not the first nor the only ones to publicize the forced labour issue, their legislative activism was the main force for fundamental change to overturn the results of the rigged post-war reparations debate (Goschler 2017). They took a much stronger stance on the issue of compensation than the left-wing Social Democrats (Authers 2006). In 1986, the Greens in the European Parliament submitted a resolution that urged the German government to compensate forced labour. From 1987, they had proposed bills in the German Parliament to establish a compensation scheme. Then, finally, ten years later, in 1997, they proposed a memorable bill in parliament to establish a foundation compensating former forced labour victims. Indeed, the Greens were encouraged by an important ruling of the German Supreme Court of 1996 that demystified the idea that only

states could deal with reparations, thus re-allowing plaintiffs to file individual claims against German companies under German law. In the 1997 bill, they urged the German government to “put pressure on German companies so that these would fulfil their historic duty towards the victims of forced labour” (Green Party, 1987, translation by author). The legal foundation scheme was proposed because it promised swift payment without too much of an administrative burden or hassle. Surprisingly, ten years after the first resolution on forced labour had been passed, the foundation became a reality. After difficult negotiations, the parties agreed to a total endowment of DM 10 billion (US\$ 5.5 million) that was to be provided jointly by private companies and the state. There was doubt whether the allocated sum was large enough to satisfy all remaining compensation claims as the amount represented a fixed distribution ceiling. Critics found the amount too small as it represented the equivalent of a mere one-tenth of profits gained from forced labour in Nazi Germany (totalling 96 billion German Marks).<sup>8</sup>

From an international perspective the pressure and threat prompted by US class action suits based on the US “Alien Tort Claims Act” warranted urgent action. Yet, German companies’ top managers remained alert to the risks involved. In exchange for contributing to the foundation, companies wanted to be exempted from future lawsuits (known as legal peace or closure). Germany reached an agreement to this effect with the US that stipulated that the US Government would make sure that future class action cases were dismissed so that German companies operating in the US were granted judicial immunity for slave labour lawsuits.

The Greens had insisted in their bill in 1987 that companies pay victims individually: “The German Parliament insists that the former beneficiaries of forced labour pay an individual damages deficiency payment to the victims” (translation by author). The lawmakers were very careful to avoid discussions about reparations because the term reparations covers the legal responsibility of states to financially redress past war damages to victim states. Germany had already settled its war guilt in global agreements after the war with Israel and Western countries and was not willing at all to reopen Pandora’s Box (Heinelt 2010: 16). The West German government concluded between 1959 and 1964 agreements with twelve Western European countries: Austria, Belgium, Denmark, France, Greece, Italy, Luxembourg, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom to compensate victims of Nazi persecution. Later again, between 1991 and 1998, similar bilateral global agreements were also concluded with Poland, Belarus, the Russian Federation and Ukraine as well as Hungary, Romania, Bulgaria, Slovakia, Albania and the former Yugoslavia (Goschler 2017).

Germany had insisted that those payments were future-oriented voluntary payments. Likewise, the federal act to set up the foundation does not contain any reference to reparations. As Goschler (2017) notes:

*In the language of the Foundation Law, the programme was concerned with providing “humanitarian benefits” (humanitäre Leistungen), “payments” (Zahlungen) or “deficiency payments” (Ausgleichszahlungen). (2017: 6)*

By strictly avoiding references to compensation in the sense of reimbursement, the lawmakers intended to deflect legal liability. An additional feature of the scheme was the lump-sum payment. The individualized approach to legal action requiring the extensive hearing of evidence was felt to be a source of renewed trauma for the victims. Moreover, the lump-sum payments represented a shift in focus from quantifiable damages towards a symbolic redress that was deemed more appropriate. And lastly, the lump-sum arrangement was chosen in order to simplify procedures. The foundation act separates victims into two categories depending on the deemed gravity of sufferings: it ruled that forced labour in concentration camps was the worst form of treatment as it was a form of slave labour. In addition to compensation for slave and forced labourers, the

*German Foundation Act also set up a separate fund for victims of “other personal injuries”, which was available to victims of medical experiments, to children who were separated from their parents and lodged in a home for children of slave and forced laborers, and to parents whose children died in such homes. (IOM 2008: 30)*

Due to previous international agreements, the law did not include prisoners of war if they had not been imprisoned in concentration camps. Excluded were, for example, prisoners of war from the Soviet Union. The Italian military internees taken captive in 1943 also did not receive compensation. Western and Southern European forced labourers were only recognized if they were forced to work under prison conditions. Persons forced by the Germans to work in their own home country were taken into account in the Czech Republic, Poland and Belarus.

### **Towards thoughtlessness and victim denial: Japan’s case**

In Northeast Asia, neither the consequences of WWII and the subsequent Cold War, nor the legacies of the Japanese colonial empire have been sufficiently reconciled and rectified, because Japanese society has been sharply divided about the nature of Korean forced labour and because there exists no generally accepted consent on the illegitimacy of Japan’s colonial rule in Korea from 1910 to 1945. The Japanese remain far from agreement with South Koreans about how to come to terms with this major aspect of their nations’ shared past. Post-war attempts to squarely face the past and reconsider history in Japan have overall been reluctant and inconsistent (Orr 2001). The 1990s have been marked by

a hopeful – albeit transitory – change in attitude and awareness (Fukuoka 2015): two influential politicians, the conservative Kono Yohei from the Liberal Democratic Party (LDP) and the Social Democrat Murayama Tomiichi demonstrated bipartisan leadership in establishing the Asian Women's Fund to compensate former comfort women; the historian Yoshiaki Yoshimi published his seminal and ground-breaking study on comfort women; a Japanese drama *Three Trips across the Straits* (Japanese: *Mitabi no Kaikyou*) that realistically depicted forced labour in Korea was released in cinemas; three Korean forced labourers reached historical out-of-court settlements with Japanese companies between 1997 and 2000 and in the same year a Russell Tribunal-like mock hearing organized in Tokyo and presided by well-known US judge Gabrielle Kirk McDonald heard and acknowledged the testimonies of former comfort women of Asian and European descent.

Thereafter, memory disputes have resurfaced again: the October 2018 ruling by the Supreme Court of Korea on forced labour compensation and the early 2019 dissolution of the Korean comfort women "Reconciliation and Healing Foundation" by the new left-wing Moon administration have ignited a serious diplomatic conflict and set off a domestic debate in South Korea with right-wing and critical academics challenging Moon's anti-Japanese rhetoric and populism (Phillips, Lee and Yi 2020). While South Korean administrations bear responsibility for having ignored public sentiments for a long time, the main responsibility for the current impasse lies nevertheless with Japanese revisionism.

How is it possible that a minority of politicians and academics can leverage its narrative against a majority? There are many Japanese citizens who do oppose the rewriting of history, who protest against anti-Korean hate speech, who contest the government's interpretation of the 1965 treaty. In addition, a wide (but dispersed) range of memorials, exhibits and testimonies is available for public viewing and scrutiny (refer to Appendix II for an overview of forced labour outreach educational tools and actors in both Germany and Japan). The key point is that Japanese revisionists were in power from 2006 to 2007 and again since 2012 and their view is a practical reality and dominant variable within the current tailspin in Japanese–Korean relations (Dudden 2007). Their revival overlaps roughly with the first (2006–7) and second Abe terms (since 2012). Two issues that made international headlines reflect this reality: the denial of use of forced labour in the Aso mine and on the Hashima industrial site (known as Battleship Island or Gunkanjima in Japanese) and other UNESCO designated sites. In 2008, it was reported in the media that one of the most influential members of the current Abe administration, Vice-Prime Minister Aso Taro from the LDP, had lied about his family past. Aso's rise had been somewhat controversial: during WWII his immediate family ran the Aso Mining Company (now known as the Aso Group), which extensively utilized

forced labour. His family's wartime legacy thus became a prime target for opposition parties wishing to discredit him. In fact, as soon as Aso took office, a law-maker from the Democratic Party of Japan submitted a question to the Diet as to whether Aso's family's mine had subjected Allied POWs to forced labour. This practice had previously been denied by the LDP, but as the DPJ (Democratic Party of Japan) opposition bloc had won a sweeping victory in 2007, it had greater control within the Diet and better access to government information. Ultimately this led to a revelation by the Health and Welfare Ministry that 300 British, Dutch and Australian prisoners (as well as Korean labour conscripts) had worked at the Aso family mine from April 1945 until Japan's surrender. The incident drew no political or legal consequences for Aso. International media again paid attention to the contentious issue in 2015 when South Korea, North Korea and China objected strongly to the UNESCO world heritage listing of the industrial ruins on Hashima Island, 15 km off the coast from Nagasaki, where their nationals had been used as forced labour before and during WWII. South Korea had opposed the application for world heritage status unless clear reference was made to the use of an estimated 60,000 labourers forced to work at seven of the sites, including Hashima, during Japan's colonial rule over the Korean peninsula. Japan insisted that Koreans "supported" Japanese industry there. Again, the Abe administration did not change its basic stance, denying that there had been forced labour (Palmer 2018; Center for Historical Truth and Justice and Network for Fact Finding 2017).

The revisionist roots of Abe Shinzo can be traced to the dark historical legacy left by his grandfather Kishi Nobusukue who, as senior official and Hitler admirer, laid the foundations for the Japanese slave labour and comfort women empire in the former puppet state of Manchukuo in Manchuria between 1936 and 1939 (Driscoll 2010). Abe Shinzo is believed to admire his grandfather, who had been imprisoned as an alleged war criminal. It was in Manchuria that Kishi met Park Chung-hee, a Korean soldier of the Japanese Imperial Army who later, as President of South Korea, normalized relations with Japan and modernized the country. The scholar Ian Burumahas has described the close relationship between Kishi and Park as follows:

*One of Kishi's greatest Cold War allies – apart from Nixon – was South Korean president Park Chung-hee, a strongman who came to power in a military coup a year after Kishi resigned as prime minister. Park, too, had a dubious wartime career. Under the Japanese name of Takagi Masao, he served as an officer in the Japanese Imperial Army. He graduated from a military academy in Manchuria, where Kishi had once ruled over an industrial empire that was built on Chinese slave labor.*  
(Buruma 2013)

According to Delury (2015), Kishi and Park pursued similar economic and industrial strategies and had similar nation-building visions in mind. Under the Meiji era-inspired banner of “rich nation, strong army”, Park pursued a pragmatic approach towards normalizing relations with Tokyo. His 18-year rule (1962–79) brought about enormous economic expansion, but at the detriment of civil liberties and political freedoms.

Forced labour had initially been on the agenda of the 1965 treaty negotiations, but – as negotiations progressed – the colonial past was shelved, and priority was given to an economic package. According to declassified documents, South Korea had demanded US\$ 364 million in compensation for Koreans forced into labour and military service during the Japanese occupation. It demanded compensation not only for deaths but also for survivors at a rate of US\$ 200 per survivor, US\$ 1,650 per death and US\$ 2,000 per injured person. As for Koreans forced into labour, it was believed there were 930,081 survivors, 77,603 dead and 25,000 wounded. The documents also revealed that the South Korean government claimed that it would handle individual compensation to its citizens who suffered during Japan’s colonial rule, while rejecting Japan’s proposal to directly compensate individual victims and receiving the whole amount of grants on the behalf of victims.<sup>9</sup>

It is unclear why South Korea gave up the idea of asking for individual payments. Park’s confidant, Kim Jong Pil, head of the Korean Central Intelligence Agency and a fluent Japanese speaker, had good connections with Japanese elites and was keen to normalize relations with the former enemy. The former chief negotiator was quoted as saying in his memoirs that he wanted to achieve a financial deal that would benefit the Korean people and economy as a whole:

*he recalled in his memoir that the settlement funds were the blood-ridden money of the country. If Korea had given the money to individuals or built facilities such as resorts like in the Philippines and Indonesia, the opportunity for an economic leap would have been lost.<sup>10</sup>*

Notwithstanding the issue of individual compensation, the conclusion of the 1965 normalization treaty satisfied the domestic needs of both sides: Japan did not need to offer an apology and did not need to pay reparations. It also got assurances that North Korean property claims would become obsolete in case of future reunification and was reassured by the fact that Park was a staunch anti-communist who shared Japan’s security worries on the Korean peninsula. South Korea, for its part, received assurances that Japan was giving up its claims to property left in South Korea and ended up getting US\$ 800 million from Japan in grants and loans,

which was a massive sum given that South Korean exports were US\$ 119 million and the per capita income US\$ 100 (Tae-Ryong 2008). The funds allowed Korea to import much needed capital, advanced technology and knowhow from Japan and opened up the Korean market for substantial Japanese direct investment. Nevertheless, the Park administration could not completely ignore the grievances of former victims: according to Richardson (2016), after channelling the funds received from the Japanese government into infrastructure projects, as a token gesture, Park's government opened up a ten-month window for victims of the Pacific War from May 1971 to March 1972 but placed severe restrictions on who qualified: labourers who remained in Japan, Manchuria and Sakhalin, were excluded. In April 1973, 20,000 claimants and family members formed the Pacific War Bereaved Families Association to protest their treatment. They condemned the cumbersome application procedures for compensation and the paltry sum of 300,000 won (US\$ 268) per person offered by the Korean government.

Post-war Korean administrations have been at odds over handling the highly sensitive and contested legacies of the past, namely, pro-Japanese colonial collaboration, comfort women and forced labour. For instance, former conservative President Syngman Rhee and his allies had in 1948 undermined a Committee investigating collaboration, whereas the left-wing President Roh Moo-hyn had the assets of alleged pro-Japanese former collaborators confiscated in 2005. Likewise, the left-wing President Moon dropped the comfort women deal concluded between then conservative President Park Geun-hye, the daughter of General Park, and Abe Shinzo. The 2015 agreement had been at least partly implemented when the office of the foundation disbursing the money was closed in July 2019 by Moon. About half of the 1 billion yen (almost US\$ 9 million) from Tokyo had been spent, including payments to 34 of the 47 surviving comfort women. Finally, forced labour has continued to be a contested issue: most scholars agree that Korea waived its right for individual reparations from Japan when it ratified the 1965 treaty (Lee and Lee 2016). According to Park, Korea was fully aware of what it consented to and ratified the treaty in full independence and with full knowledge of the legal implications (at the time of ratification):

*South Korean delegates rejected the Japanese suggestion of individual compensation directly to each victim by the Japanese government. Instead, the South Koreans suggested lump sum compensation from state to state, with the waiver of any further compensation from Japan implied. It became clear that the South Korean government waived its claim for individual compensation. (Park 2007: 69)*

It is ironic that in 2005 a left-wing government, the Roh Moo-hyn administration (2003–2008) – for the first and only time – confirmed that compensation for forced

labour had been included in the money paid by Japan to South Korea (US\$ 300 million). He also concluded that South Korea had a moral obligation to distribute the money to individual victims. He disbursed amounts that exceeded the US\$ 300 million foreseen in the treaty to a large number of victims:

*The government paid 66,985 victims of forced labor and their family members up to 20 million won (USD 17,843) each in compensation, with 540 billion won (USD 481.4 million) disbursed altogether.<sup>11</sup>*

Thereafter, the conservative Lee Myung-bak (2008–13) and Park Geun-hye (2013–17) administrations maintained the position of their predecessor that all claims had been settled, until the newly elected left-wing President Moon Jae-in abandoned and replaced it in 2017 with a radical attempt of retributive justice.

### **Legal implications of the dispute: do individual rights go beyond inter-state treaties?**

The ongoing legal dispute between Japan and Korea is a dispute about the legitimacy of Japanese colonial rule and the individual rights of victims for compensation (Lee and Lee 2016; Hofmann 2012). The Japanese government asserts that its annexation of Korea in 1910 was concluded by the signing of a legitimate annexation treaty which only became invalid at the end of the war in 1945, thereby making the Japanese occupation of and colonial rule over Korea between 1910 and 1945 lawful and legal. Therefore, it also argues that Korea, as a colony, had not been at war with Japan and that it had no entitlement to war reparations as other Asian victimized states did. Indeed, Korea was the only victim nation that had not taken part in the San Francisco peace treaty negotiations in 1951 and not been considered for war reparations from Japan, apart from communist China and the Soviet Union (Nam Sang-gu 2018).

Until 2011, the general understanding that prevailed in both Korea and Japan had been that all claims had been settled with the 1965 treaty. However, in 2012, and then again in 2018, in a landmark ruling, the Supreme Court of Korea ordered Nippon Steel and Sumitomo to pay 100 million won (US\$ 83,000) to each of four forced labour plaintiffs in Korea. This ruling not only reversed previous lower court rulings but threatened the foundations of revisionist legal and historical perceptions. First and foremost, the Supreme Court of Korea rejected the argument of lawfully annexed territory by insisting that the occupation of Korea had been illegal from the beginning in 1910. Secondly, the Court recognized that forced labour was by itself wrong and inhumane because it arose out of Japan's unlawful colonial rule. Third, according to the court, because the 1965 treaty did not refer to the

illegality of Japan's colonial rule, it was not intended to settle claims for Japan's colonial rule over Korea. Its scope was limited to resolving financial and civil debts/credit issues between the two states as referred to in the normalization treaty under "property, rights and interests". In other words, the normalization treaty was not aimed at settling war reparations. Japan too had acknowledged in the past that the "issue of property claims was *not* an issue of overall damages inflicted on South Korea during the colonial period" (Byung-Kook and Vogel 2011: 442). Fourth, the Court determined that compensation not only included the right to claim unpaid wages from Japanese companies but in a broader sense the right to claim for compensation for damages for psychological suffering caused by Japan's illicit colonial rule. Fifth, the Court determined that, because Japanese colonial rule had been illegal, individual claims for compensation were to be regarded as separate from treaty provisions and could not be waived by states or treaties without individual consent (Lee and Lee 2019).

In a Q&A factsheet posted online in December 2018 on an Embassy webserver, the Korean government further comments on the Supreme Court ruling:

*The judgments pertain to the claims of individuals against private companies. They do not negate the validity of the Agreement on the Settlement of Problems concerning Property and Claims and on Economic Cooperation between the Republic of Korea and Japan (the "Agreement"), but rather address the scope of the application of the Agreement. The Supreme Court of the Republic of Korea has decided that, in light of the internationally accepted rules of treaty interpretation, specific claims for damages for the psychological distress suffered by the victims of forced labor had not come under purview of, and therefore had not been settled by the Agreement.<sup>12</sup>*

The symbolic importance given by the 2018 Court ruling to the legitimacy and validity of individual claims reflects the evolution of international law since 1965. At the time of the 1965 negotiations, the dominant view had been that compensation payments were to be made to states, not individuals. The South Korean government did not seriously consider the possibility of the existence of individual claims as separate from state claims. Likewise, after 1965, successive governments in South Korea had implicitly accepted the interpretation that all claims had been settled by the normalization treaty until 2011 when the South Korean Constitutional Court reprimanded the South Korean government for prohibiting its citizens from filing individual claims against Japanese companies in South Korea.

To sum up, it can be said that, on one hand, the legal position of victims within South Korea has been strengthened by the Supreme Court ruling. On the other

hand, from the perspective of contemporary international law, as it stands, it is not unlikely that Japan could win the case, if the International Court of Justice were to rule on the issue of alleged breach of international treaty.

## Conclusion

The German-Japanese case demonstrates that agreements between states and legal mechanisms alone cannot offer solutions which satisfy all stakeholders including governments, victims, lawyers, civil society and private companies. The German and Japanese examples offer many points of comparison: forced labour was officially treated as a taboo issue for decades, individual claims were consistently rejected by states and courts and private companies escaped their moral responsibilities of redress. The key factors that brought about the changes in Germany were domestic mobilization and international class action litigation threats against German companies. In particular the Greens mobilized public opinion for victim recognition and a morally and politically acceptable settlement as they were fully committed to admitting the mistakes of the past and atoning, as a country and people, for the wrongdoings of previous generations. This key message inspired victim nations to pursue a legitimate collective memory in their own countries. By contrast, in a political climate of thoughtlessness and victim denial, Japanese revisionists – in power for 14 years with a short interruption – have leveraged their history narrative against the majority.

Three reasons explain the intractable forced labour conflict: first, the post-war general unwillingness and inability of Japanese leaders – apart from a few exceptional people such as Kono Yohei or Murayama Tomiichi – to enter into a direct, frank and unbiased dialogue with victims and recognize their sufferings has prevented the emergence of a consensual post-war collective memory not only in Japan but also in South Korea; secondly, post-war South Korean governments have neglected or politicized the history issue for too long (except for President Roh Moo-hyun). Instead of acting on behalf of victims and supporting their legitimate claims, they focused narrowly on their own interests or on discrediting political opponents; and third, the context in Korea after 1945 created a much more protracted dynamic compared to the post-war situation in Germany and Europe. Korea suffered a territorial division in 1945 and a fratricidal civil war in the 1950s, South Korea went through the hardships of the Vietnam War and was subject to military and authoritarian rule until 1987, while the geopolitical situation in North Korea prevented a rapprochement both with Japan and with South Korea. In addition, one should bear in mind the historical window of opportunity that opened up in the German case – with a global class action suit threat against German companies and the direct intervention and mediation by the US – but not in the Korean case.

In conclusion, the unintended consequences of historical thoughtlessness and victim denial, from hate speech over territorial and military cooperation disputes to product boycotts and trade sanctions, have dimmed prospects for a symbolic settlement. As a nation, Japan seems to have missed a final opportunity to pave the way towards a mutually acceptable settlement. The final say is now with South Korean courts.

#### Appendix I Overview of redress for forced labour in Germany and Japan

	Japan-Korea	Germany-Eastern Europe
Numbers	7.2 million Koreans (Palmer 2005), thousands of mainland Chinese and Formosa Chinese as well as allied POWs worked in or for the Japanese Empire.	An estimated total of 11.37 million labourers (excluding concentration camp detainees) worked in or for the German Reich.
Legal framework for post-war “reparations”	A bilateral settlement treaty between Japan and Korea concluded in 1965.	Establishment of a foundation in 2000. The state and the private sector contributed each half of the funds.
Actual compensation	The Park government paid out in the 1970s 300,000 won (US\$ 268) to each of around 8,000 victims of forced labour and their families. In 2005, the Roh Moo-hyun administration paid out a total of 540 billion won (US\$ 481.4 million) to 67,000 victims.	1.67 million applicants received lump payments between US\$ 2,700 and US\$ 8,270 depending on the victim status. Recipients had to sign a legal waiver. All claims expired after 31 December 2006. 678,000 cases were dismissed as unfounded. The foundation distributed a total of DM 8.7 billion (US\$ 4.78 billion) to victims in 89 countries.
Private lawsuits against private companies	Dozens of lawsuits filed but dismissed in Japan, Korea and China. However, settlements were reached with Kajima, Nishimatsu and Mitsubishi for Chinese plaintiffs and for Koreans settlements were reached with Nippon Steel, Japan Steel and Fujikoshi.	About 80 litigation cases filed. All cases dismissed except for one famous case <i>Wollheim v. IG Farben</i> where a global out-of-court settlement was reached.
Private lawsuits against the state	Yes, but dismissed on sovereign immunity grounds, statute of limitations and ineligibility. The US Supreme Court (2006) confirmed the rejection of Korean comfort women's claims for compensation from the Japanese state before US courts ( <i>Hwang GeumJoo v. Japan</i> )	Yes, but dismissed on state immunity grounds which bars any civil action of citizens against Germany for past war crimes in the courts of other states. ( <i>Germany v. Italy</i> ICJ verdict 2012).

	Japan-Korea	Germany-Eastern Europe
Other landmark rulings	<p>In 2007, the Japanese Supreme Court held that the 1972 Japan-China Joint Communiqué provides for the mutual waiver of all claims, including claims held by individuals, and, therefore, dismissed claims by plaintiffs. (<a href="http://www.courts.go.jp/app/hanrei_en/detail?id=893">www.courts.go.jp/app/hanrei_en/detail?id=893</a>).</p> <p>This ruling has been rejected by China. In 2011, a ruling by the Korean Constitutional Court found it unconstitutional for the South Korean government to prohibit its citizens from filing individual claims against Japanese companies in Korea.</p> <p>In 2012 the Korean Supreme Court ruled that a line should be drawn between the 1965 inter-governmental treaty and individual damages claims, and that colonial rule itself had been illegal.</p> <p>Again in 2018 the Supreme Court of Korea ruled that the 1965 pact does not apply to “claims for consolation money” and that the 1910–45 colonial rule was illegal under international law.</p>	<p>The German Supreme Court ruled in 1996 that the treaty leading to the unification of Germany (2 + 4 treaty) was de facto a peace treaty as addressed by the London Debt agreement of 1953 and therefore international law did not preclude forced labourers from pressing individual claims on the basis of German national law.</p>
Apology statement or admittance of legal liability by private companies	No for Korea, yes for China.	No

#### Appendix II Keeping memories alive: non-exhaustive overview of outreach programmes and activities in Germany and Japan

Forced labour outreach actors and resources	Germany	Japan
National forced labour public archives and databases	Central Archive for Forced Labour ( <a href="https://www.bundesarchiv.de/zwangsarbeit">https://www.bundesarchiv.de/zwangsarbeit</a> ).	NA
National forced labour political education institutions	Federal agency for public political education.	NA

(continued)

## Appendix II (continued)

Museums and exhibitions	Documentation Center for Nazi forced labour (Forced labour museum and memorial site in Berlin); German Historical Museum Berlin; LeMO/ The Living Museum Online site (forced labour chapter). Forced labour exhibitions in most former concentration camps on German territory. Exhibits in city museums.	Exhibits on forced labour in the regional museum of Kitami in Hokkaido and in the Nagasaki Peace Museum. Tanba Manganese Mining Museum Kyoto (“And in Japan during WWII, forced labor, including people from Japan and burakumin were transported to manganese mines to work” ( <a href="https://www.kyoto-museums.jp/en/museum/west/3867/">https://www.kyoto-museums.jp/en/museum/west/3867/</a> ). History Museum of Japan-Koreans in Tokyo.
School education (history textbooks and other classroom resources)	“The contents of all textbooks are comprehensive and largely adhere to the stipulations contained in state curricula; the principal topics covered are the Nuremberg Laws, the November pogrom, types of discrimination and humiliation, the ghettos, shootings, gassings and deportations during WWII, and the Wannsee Conference and the camps” (UNESCO 2015: 107). The online platform Forced Labor 1939-1945 contains oral history resources (interviews with survivors, documentaries) that can be used for the classroom ( <a href="https://lernen-mit-interviews.de/hilfe">https://lernen-mit-interviews.de/hilfe</a> ).	“All textbooks effectively relativize the Holocaust by naming it together with Guernica, the dropping of atomic bombs, the forced labor imposed by Japan in Asia (T1, T2 and T3) and the Japanese invasion of ‘China and other Asian countries’ (T4 and T5)” (UNESCO 2015: 118). History textbook sample quote: “There were also Koreans and Chinese who were recruited in Japan’s mines and factories and forced to hard labor” ( <i>New Japan History</i> , 238).
Cross-national youth exchanges	Cross-border youth meetings (Poland, Czech Republic, etc.), youth exchanges and workshops focusing on forced labour.	Ritsumeikan Asia Pacific University East Asia Peace and Human Rights Camp.
Memorials	Leipzig Nazi Forced Labour Memorial. Memorial to the Former Forced Labour Camp in Berlin, Schöneweide. The Forced Labourer Memorial Transit in Nuremberg. Memorial Victims Forced Labour Krefeld. Memorial Forced Labor Cologne. Memorial Site Oberhausen.	Monument in Takasaki to commemorate forced Korean labourers. Miike Coal Mine Memorial. Monument for Koreans forced workers and monuments at other Japanese UNESCO World Heritage Sites. Monument in Tanba manganese mine. Monument dedicated to Korean victims in Hiroshima. Monument dedicated to Korean forced labourers at Chosei Coal Mine in Yamaguchi.

Private business companies	Commission external experts to investigate and document inhouse use of forced labour during Nazi era.	NA
Movies that feature forced labour	<i>Schindlers List</i> (1993).	<i>Mitabi no Kaikyou/Three Trips across the Strait</i> (1995).
Think tanks affiliated with political parties, federal associations and grass root activism	<p>Foundation Remembrance, Responsibility and Future (Federal corporation that has compensated forced labourers and now supports reconciliation projects) (<a href="https://www.stiftung-evz.de/start.html">https://www.stiftung-evz.de/start.html</a>).</p> <p>Friedrich-Ebert Stiftung (SPD Party).</p> <p>Heinrich Boell Stiftung (Green Party).</p> <p>Konrad Adenauer Stiftung (CDU Party).</p> <p>Association of Former Forced Labourers under the NS Regime (no webpage).</p> <p>Federal Association for Information and Counseling of Nazi victims (<a href="https://www.nsberatung.de/index.php/en/">https://www.nsberatung.de/index.php/en/</a>).</p> <p>Redress Fund Protestant and Catholic Churches (<a href="https://www.landeskirchenarchiv.berlin.de/">https://www.landeskirchenarchiv.berlin.de/</a>).</p> <p>The Action Reconciliation Service for Peace (<a href="https://www.asf-ev.de/english/start/">https://www.asf-ev.de/english/start/</a>).</p>	NGO National Network for Research on Forced Labor Mobilization (Japan) ( <a href="https://www.ksyc.jp/sinsou-net/">https://www.ksyc.jp/sinsou-net/</a> ).

## Notes

1. *The Department of State Bulletin*, 13 (1945): 531–2.
2. *The Department of State Bulletin*, 13 (1945): 531–2.
3. <https://www.bpb.de/fsd/zwangarbeit/ze-karte-entschaedigung.swf>.
4. Source: <https://www.indian.senate.gov/sites/default/files/upload/files/Eizenstat.pdf>.
5. <https://www.mofa.go.jp/region/asia-paci/china/joint72.html>.
6. The issue of the unfulfilled reconciliation for comfort women has been analyzed in detail in a separate paper (Hein, 2016) and is therefore not examined in this paper.
7. [https://www.ilo.org/global/topics/forced-labor/news/WCMS\\_237569/lang--en/index.htm](https://www.ilo.org/global/topics/forced-labor/news/WCMS_237569/lang--en/index.htm).
8. <https://www.linksnet.de/artikel/20829>.
9. [http://english.chosun.com/site/data/html\\_dir/2005/01/17/2005011761044.html](http://english.chosun.com/site/data/html_dir/2005/01/17/2005011761044.html).
10. <http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=3065806>.
11. [http://english.hani.co.kr/arti/english\\_edition/e\\_national/869269.html](http://english.hani.co.kr/arti/english_edition/e_national/869269.html).
12. [http://overseas.mofa.go.kr/rw-en/brd/m\\_9983/view.do?seq=758681](http://overseas.mofa.go.kr/rw-en/brd/m_9983/view.do?seq=758681).

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