CEACR:

Individual Observation concerning Convention No. 29, Forced Labour, 1930 Japan (ratification: 1932) Published: 2003

The Committee notes the Government's report, received on 1 November 2002, in which it has provided responses, including four attachments, to the Committee's last two observations, as well as to a number of comments received from workers' organizations. The Committee also notes the Government's report, also received on 1 November 2002, containing additional responses to the communications of the trade unions.

The Committee notes the communication of the Tokyo Local Council of Trade Unions, received on 6 June 2002, along with five attachments, a copy of which was transmitted to the Government on 29 July 2002, as well as a communication of the All Japan Shipbuilding and Engineering Union dated 29 July 2002, and seven attachments, received by the ILO on 12 August 2002, a copy of which was transmitted to the Government on 2 September 2002. The Committee also notes a communication of the Korean Confederation of Trade Unions (KCTU) and the Federation of Korean Trade Unions (FKTU) dated 27 August 2002, received on 4 September 2002, as well as of its 11 attachments received on 1 October 2002, a copy of which was transmitted to the Government on 1 October 2002.

The Committee recalls that in several recent sessions it has considered the application of the Convention to two issues relating to the Second World War and the years leading up to it: military sexual slavery, of which the victims are referred to as wartime "comfort women", and wartime industrial forced labour.

1. Victims of wartime sexual slavery

The Committee has previously considered the occurrence, during the Second World War and the years leading up to it, of a system by which women and girls, referred to euphemistically as "comfort women", were confined to military camp facilities, so-called "comfort stations", and forced to provide sexual services to military forces, and it has found that this conduct fell within the absolute prohibitions contained in the Convention. The Committee has recognized that this conduct involved gross human rights abuses and sexual abuse of the women and girls detained in the military "comfort stations", and that it should be characterized as sexual slavery.

In paragraphs 8 and 10 of its 2000 observation, the Committee noted the considerable number of claims which had been commenced in Japanese courts by comfort women which were pending examination or had been decided or alternatively were awaiting appeal to superior courts. The Committee also noted in paragraph 5 of the observation that, under the Committee's terms of reference, it did not have the power to order the relief which could be given only by the Government as the responsible body under the Convention. However, in paragraph 10 of that observation, the Committee expressed that the Government would find an alternative way, in consultation with the comfort women and the organizations representing them, to compensate them before it was too late and in a manner which met their expectations.

Subsequently in its 2001 observation, the Committee following receipt of a communication from a workers' organization and the Government correspondence in reply, again reiterated its hope that the Government would be able to respond to the claims made by the comfort women in a satisfactory way and that it would be in a position to supply particulars to the International Labour Conference in 2002.

The Government by response in its latest detailed report in relation to the topic of comfort women makes three major points.

Firstly, it considers that there are procedural irregularities in the preparation of the 2001 observation in that in its view the observation:
- was prepared and published in reliance on the communication from the trade union pending further submissions from the Government on the trade union communication;
- "jumped to the conclusion" without scrutiny of the contents of the communication of the trade union that the issue should be discussed in the International Labour Conference;
- took up the issue of the comfort women when the trade union had addressed another issue in relation to conscription of forced labour.

Secondly, the Government expressed the view that there is no legal basis for individual claims for compensation arising from the issues related to the circumstances of comfort women and that the trade union assertions are wrong. It therefore urges the Committee to bring its deliberations to an end and declare the case closed.

Thirdly, the Government contends that although there is no legal liability in relation to individual claims, it has nevertheless expressed its apologies and remorse on numerous

occasions and refers to the Asian Women's Fund subsidized by the letters sent by the Japanese Prime Minister expressing apologies.

(a) Procedural issues

In relation to the first issue raised, the Committee rejects that there has been any procedural irregularity. The trade union communication addressed the issue of war-related compensation in general which was also relevant to the circumstances of comfort women. The serious matters raised by the Committee in its 2000 observation concerning comfort women as at that time had not been dealt with by the Government and regardless of whether the trade union specifically raised the matter, the Committee is fully entitled to pursue the situation and request that it be taken up at the Conference.

(b) Legal basis for individual claims

In relation to the second issue, the Committee notes that the Government takes the position, as it has previously, that with regard to reparations, property, and claims arising out of the Second World War, "including the issues known as 'wartime comfort women' and 'conscription as forced labourers'", it has "fulfilled its obligations". It argues that the provisions of post-war multilateral and bilateral peace treaties and agreements with governments of the Allied Powers and the States of the Asia-Pacific region, waive or renounce war reparations and other claims between the government parties and their nationals.

(i) The treaties

The treaties referred to by the Government include, but are not limited to:

- Article 14(b) of the 1951 Treaty of Peace with Japan ("San Francisco Peace Treaty") under which the Allied Powers "waive all reparations claims ... and other claims of the Allied Powers and their nationals";
- article 2 of the 1965 Agreement on the Settlement of Problems concerning Property and Claims and on Economic Cooperation between Japan and the Republic of Korea, which states in part: "The Contracting parties confirm that (the) problem concerning property, rights and interests of the two contracting parties and their nationals ... is settled completely and finally"; and
- article 5 of the Joint Communiqué of the Government of Japan and the Government of the People's Republic of China which stated that China "renounces its demand for war reparations".

The Government states: "In this sense, the issues of claims, including claims of individuals under domestic law, are settled completely and finally between Japan and its nationals and the Allied Powers and their nationals."

(ii) Previous government statements

In its previous observation, the Committee noted that the All Japan Shipbuilding and Engineering Union indicated in its communication of June 2001 that, with regard to war-related compensation, the position of the Japanese Government is that a treaty had put an end to the right to demand compensation and the right to diplomatic protection at the state level, but not the right of individuals to damages. The union stated that the Government had made this position clear on many occasions, such as:

- the Government's statement in Atomic Bomb Victims Lawsuit (Final Judgement in 1963), that "item (a) of the Article 19 in the San Francisco Treaty does not mean that the country of Japan has given up the right of individual Japanese people to demand compensation for the damages from Truman or the country of the United States of America";
- the Government's statement in relation to the Siberian Internee Compensation Lawsuit (Final Judgement in 1989), in which it took the position that the waivers, under clause 6, item 2, under the Joint Declaration of Japan and the Soviet Union, "are claims and the right of diplomatic protection the State of Japan had, but not the claims of individual Japanese people. When we say the right of diplomatic protection, it means the internationally acknowledged right of States to seek the responsibility of a foreign country for the damages Japanese people suffered in the foreign territory arising out of violation of the international laws on the side of such foreign country ... As stated before, Japan did not give up any right belonging to individual Japanese nationals under the Joint Declaration of Japan and Soviet (Union)";
- a statement by Shunji Yanai, then chief of the Foreign Ministry's Treaties Bureau, to an Upper House Budget Committee session on 27 August 1991, that the Japan-South Korea Basic Treaty of 1965 had not deprived individual victims of their right to seek damages in domestic legal terms, but "only prevents the Japanese and South Korean governments from taking up issues as exercise of their diplomatic rights".

The Committee notes that, in its reply to the union's reference to these comments, the Government indicates that the statement of Mr. Shunji Yanai "was intended to explain that all the issues of reparations claims related to the last war between Japan and the Allied Powers, including the claims of individuals, had been settled from the viewpoint of the right of

diplomatic protection that is a concept of general international law. In other words, he explained that even if Japanese nationals' claims against the Allied Powers or their nationals were dismissed, Japan could no longer pursue state responsibilities of the Allied Powers". The Government further notes an additional statement by which "Mr. Yanai clearly explained at the Committee on Foreign Affairs of the House of Representatives of the Diet of Japan on 26 February 1992 that, 'with regard to substantive rights with legal basis, namely property rights, the Government of Japan nullified the property rights of the nationals of the Republic of Korea with certain exceptions by this Agreement', and therefore that 'the Korean nationals are no longer able to claim against Japan these property rights with legal basis either as private rights or rights in domestic law'".

The Committee notes that the Government did not provide any comments which refute the other examples cited by the union, namely, its statement in the Atomic Bomb Victims Lawsuit (Final Judgment in 1963) and its statement of interpretation of article 6 of the Joint Declaration of Japan and the Soviet Union, in relation to the Siberian Internee Compensation Lawsuit (Final Judgment in 1989), other than to quote the text of article 6 of that declaration.

(iii) Reports to United Nations human rights bodies

The Committee also notes the final report of 22 June 1998 on systematic rape, sexual slavery and slavery-like practices during armed conflict (UN document E/CN.4/Sub.2/1998/13), submitted by Ms. Gay McDougall to the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Promotion and Protection of Human Rights) at its 50th session. The Committee notes that Ms. McDougall, who was appointed by the Sub-Commission as UN Special Rapporteur, is the Executive Director of the International Human Rights Law Group, and that her report, which was forwarded with the observation of the KCTU and the FKTU, has been cited by the International Criminal Tribunal for the former Yugoslavia as an authoritative statement of international criminal law. The Committee also notes the appendix to the report, "An analysis of the legal liability of the Government of Japan for 'comfort women stations' established during the Second World War".

In her report, Ms. McDougall finds that "the Japanese military's enslavement of women throughout Asia during the Second World War was a clear violation, even at that time, of customary international law prohibiting slavery ... As with slavery, the laws of war also prohibited rape and forced prostitution" (appendix, paragraphs 12 and 17). The Committee also notes the further findings: "The widespread or systematic enslavement of persons has also been

recognized as a crime against humanity for at least half a century. This is particularly true when such crimes have been committed during an armed conflict ... In addition to enslavement, widespread or systematic acts of rape also fall within the general prohibition of 'inhumane acts' in the traditional formulation of crimes against humanity ..." (appendix, paragraphs 18 and 20).

Referring to article 2 of the 1965 Settlement Agreement between Japan and the Republic of Korea and Article 14(b) of the 1951 Treaty of Peace, the report of Ms. McDougall states: "The Government of Japan's attempt to escape liability through the operation of these treaties fails on two counts: (a) Japan's direct involvement in the establishment of the rape camps was concealed when the treaties were written, a crucial fact that must now prohibit on equity grounds any attempt by Japan to rely on these treaties to avoid liability; and (b) the plain language of the treaties indicates that they were not intended to foreclose claims for compensation by individuals for harms committed by the Japanese military in violation of human rights or humanitarian law" (appendix, paragraph 55).

The Committee also notes the reference in the trade unions' comments to paragraph 58 of the appendix to the McDougall report, which states: "It is also self-evident from the text of the 1965 Agreement on the Settlement of Problems concerning Property and Claims and on Economic Co-operation between Japan and the Republic of Korea that it is an economic treaty that resolves 'property' claims between the countries and does not address human rights issues (citation omitted). There is no reference in the treaty to 'comfort women', rape, sexual slavery, or any other atrocities committed by the Japanese against Korean civilians. Rather, the provisions in the treaty refer to property and commercial relations between the two nations. In fact, Japan's negotiator is said to have promised during the treaty talks that Japan would pay the Republic of Korea for any atrocities inflicted by the Japanese upon the Koreans (citation omitted)." The Committee notes further that in paragraph 59 of the appendix, the report states: "Clearly, the funds provided by Japan under the Settlement Agreement (with Korea) were intended only for economic restoration and not individual compensation for the victims of Japan's atrocities. As such, the 1965 treaty - despite its seemingly sweeping language - extinguished only economic and property claims between the two nations and not private claims ...".

The Committee further notes the points made in paragraph 62 of the appendix to the report: "As with the 1965 Settlement Agreement between Japan and Korea, moreover, the interests of equity and justice must prevent Japan from relying on the 1951 peace treaty to avoid liability when the Japanese Government failed to reveal at the time of the treaty the extent of the

Japanese military's involvement in all aspects of the establishment, maintenance and regulation of the comfort stations (citation omitted). As an additional principle of equity, when jus cogens norms are invoked, States that stand accused of having violated such fundamental laws must not be allowed to rely on mere technicalities to avoid liability. And, in any event, it must be emphasized that Japan may always voluntarily set aside any treaty-based defences to liability that may be available to them in order to facilitate actions that are clearly in the interests of fairness and justice." The report, at paragraph 12, recognizes that "the prohibition against slavery ... has clearly attained jus cogens status (citation omitted)". The Committee notes that, according to Article 53 of the Vienna Convention on the Law of Treaties of 23 May 1969 (UN document A/Conf.39/28), a jus cogens (peremptory) norm is "a norm accepted and recognized by the international community of States as a norm from which no derogation is permitted ...".

The Government in its comments on the report of UN Special Rapporteur McDougall, states that resolutions based on the report were adopted annually by the Sub-Commission on Promotion and Protection of Human Rights from 1998 to 2002, and that "these resolutions only 'welcomed' the report of Special Rapporteur McDougall and made no reference at all to Japan, nor to the issue known as 'wartime comfort women'. There was absolutely no language in the resolutions making any recommendations to Japan or condemning Japan for anything".

The Committee points out, however, that whilst the resolutions of the Sub-Commission, such as resolution 2000/13 on the June 2000 update to the final report of Special Rapporteur McDougall do not include specific references to, or recommendations for, any individual country, the resolutions have taken general note of the report and also call upon the UN High Commissioner for Human Rights to monitor and report to the Sub-Commission on the status and implementation of the resolution and of the recommendations made in the Special Rapporteur's report of which note is taken.

The Committee notes the 1996 "Report on the mission to the Democratic People's Republic of Korea, the Republic of Korea, and Japan on the issue of military sexual slavery in wartime", submitted by Ms. Radhika Coomaraswamy, UN Special Rapporteur, to the 52nd session of the UN Commission on Human Rights (UN document E/CN.4/1996/53/Add.1). Addendum 1 of that report, which was forwarded as an attachment to the observation of the Korean Confederation of Trade Unions (KCTU) and the Federation of Korean Trade Unions (FKTU), refers in paragraph 107 to the report of the International Commission of Jurists (ICJ) of a mission on "comfort women" published in 1994, which states that the treaties referred to by the Government of Japan "never intended to include claims made by individuals for inhumane treatment. (The ICJ) argues that the word 'claims' was not intended to cover claims in tort and

that the term is not defined in the agreed minutes or the protocols. It also argues that there is nothing in the negotiations which concerns violations of individual rights resulting from war crimes and crimes against humanity. The (ICJ) also holds that, in the case of the Republic of Korea, the 1965 treaty with Japan relates to reparations paid to the Government and does not include claims of individuals based on damage suffered".

(iv) Tribunal rulings

Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery

The Committee notes the report of the New York Times of 4 September 2001, referred to by the Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery, in its "Judgment on the Common Indictment and the Application for Restitution and Reparation" (Case No. PT-2000-1-T), delivered on 4 December 2001 (corrected 31 January 2002), a copy of which was forwarded by the All Japan Shipbuilding and Engineering Union in its communication. The report, authored by Steven C. Clemons refers to a recently (April 2000) declassified exchange of letters between Prime Minister Shigeru Yoshida of Japan and the Minister of Foreign Affairs of the Government of the Netherlands, and occurring just prior to the signing of the San Francisco Treaty of Peace in 1951, in which Prime Minister Yoshida conveyed the understanding that "the Government of Japan does not consider that the Government of the Netherlands by signing the Treaty has itself expropriated the private claims of its nationals so that, as a consequence thereof, after the Treaty comes into force these claims would be non-existent".

The Committee notes the "Judgment on the Common Indictment and the Application for Restitution and Reparation" (Case No. PT-2000-1-T), of the Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery, delivered on 4 December 2001 (corrected 31 January 2002), a copy of which was forwarded by the union in its communication. The Committee notes that the Tribunal, which sat in Tokyo from 8 to 10 December 2000, is a People's Tribunal, which was established to adjudicate gender-related crimes that the International Military Tribunal for the Far East, the original Tokyo Tribunal, failed to redress. The Committee notes the indication of the All Japan Shipbuilding and Engineering Union, that the judges, chief prosecutors, and legal advisers of the Tribunal were "internationally renowned experts involved in International Criminal Tribunals for the former Yugoslavia and the International Criminal Court for Rwanda", as well as its reference to several of the important

findings in the Judgment. The Committee further notes the comments of the Korean trade union organizations, the FKTU and the KCTU, on the Tribunal as "a civilian initiative, with a highly respected panel of judges".

The Committee notes the indication of the Tribunal, in the Introduction and Background of the Proceedings of its Judgment, that the Registry of the Tribunal served the Government with notice of the proceedings, including an invitation to participate in the proceedings, on 9 November 2000 and 28 November 2000, but received no reply. The Tribunal nevertheless endeavoured to consider all defences the Government might conceivably raise on its own behalf had it agreed to participate. To that end, it requested that the anticipated arguments of the Government be compiled by an attorney assisting as amicus curiae (or "friend of the court") and it received an amicus curiae brief submitted in response to this request. The Tribunal further considered arguments advanced by the Government in cases pending before its courts, and the responses of the Government to the reports of the United Nations Special Rapporteurs who have investigated the military sexual slavery system.

The Committee notes the finding of the Tribunal at paragraph 1034 of the Judgment, with regard to the 1965 Agreement between Japan and the Republic of Korea: "It can be questioned whether 'property, rights and interests' includes claims such as those of the 'comfort women' against Japan. The two States adopted Agreed Minutes of their negotiation of the Peace Treaty in which they agreed that 'property, rights and interests means all kinds of substantial rights which are recognized under law to be of property value'. This would appear to exclude the 'comfort women's' extensive claims. Korea submitted an outline of claims of the Republic of Korea (called the Eight Items) at the negotiations. There is no evidence that this list included that claims of the comfort women for crimes against humanity committed against them and indeed the Treaty provisions encompass 'either the disposition of property or the regulation of commercial relations between the two countries, including the settlement of debts'" (citation omitted).

The Tribunal in turn quoted a 1970 Opinion of the International Court of Justice (Barcelona Traction, Light and Power Co. Ltd., 1970 ICJ Rep. 3, paras. 33-34 (5 February)), which articulates the notion of obligations of a State which, by their very nature, are owed erga omnes - to the international community as a whole: "Such obligations derive ... from the principles and rules concerning basic rights of the human person, including protection from slavery and racial discrimination." Referring also to the third report of the UN Special Rapporteur on State Responsibility (UN document A/CN.4/507/Add.4, 4 August 2000), the Tribunal found that: "the category of norms which are generally acceptable as universal in scope

and non-derogable as to their content, and in the performance of which all States have a legal interest, is small but includes 'the prohibitions of genocide and slavery ...'" In light of these principles, the Tribunal found that "it is legally impossible for bilateral or multilateral agreements, even agreements concluded by States of which the victims are nationals, to waive the interests of non-participating States in redressing injury done to all" (paragraphs 1041-1043).

The Committee notes that, on the basis of the reasoning of these and other legal points, the Tribunal concluded that, with regard to Japan's reliance on the Peace Treaties, "the negotiating parties had no power to waive the claims of individuals for harm suffered as a result of the commission of crimes against humanity and we reject the assertion that these claims were effectively or permanently waived".

The Government, in its comments on the Women's International War Crimes Tribunal and the Judgement it delivered in December 2001, states: "The Tribunal was privately organized by the people concerned and was not an official organization. Therefore, the Government of Japan is not in a position to make any comments on the statements made by the Tribunal, nor any views expressed therein."

(v) Japanese and American court decisions

In its report, the Government states that its interpretation that Article 14(b) of the San Francisco Peace Treaty waived all individual claims "is consonant with a series of court rulings", and it then quotes from rulings in two cases involving claims brought by former prisoners of war: a ruling of 21 September 2000 of the United States District Court for the Northern District of California, in the case of In re: World War II Era Japanese Forced Labor Litigation, and a ruling of 11 October 2001 of the Tokyo High Court on a lawsuit filed by former Dutch prisoners of war. The Committee notes the ruling of the United States District Court of California, as set out by the Government: "(T)he treaty waives 'all' reparations and 'other claims' of the 'nationals' of Allied powers 'arising out of any actions taken by Japan and its nationals during the course of the prosecution of the war.' The language of this waiver is strikingly broad, and contains no conditional language or limitations, save for the opening clause referring to the provisions of the treaty. ... The waiver provision of Article 14(b) is plainly broad enough to encompass the plaintiffs' claims in the present litigation. ... The court ... concludes ... that the Treaty of Peace with Japan was intended to bar claims such as those advanced by the plaintiffs in this litigation."

The Committee also notes that the portion of the ruling quoted by the Government in the U.S. case omits the court's finding which specifies only that the Treaty, by its terms, adopted a settlement plan "for war-related economic injuries." (emphasis added)

Further, the Government in its latest report indicates that, during the period from 1 January 2001 to 30 June 2002, there were two cases in high courts and three in district courts in Japan involving claims by victims of the wartime practice of military sexual slavery. The Government indicates that the courts "rejected the plaintiffs' claims against the Government of Japan in all the cases". With regard to the April 1998 judgement of the Shimonoseki Branch of the Yamaguchi District Court, the Government states that both the defendant and plaintiffs appealed to the Hiroshima High Court. The Government states that the High Court issued its judgement on 29 March 2001, accepting the plea of the Government and ruling that it was not clear that the Government had a constitutional obligation to legislate, and that how to deal with post-war settlement should be left to the discretion of the legislature in terms of comprehensive policy-making. The Government also states that the plaintiffs appealed to the Supreme Court in March 2002 and are awaiting its final judgement.

The Committee notes that the rulings in this case were discussed in the December 2001 judgement of the Women's International War Crimes Tribunal: "The Hiroshima High Court reversed the Shimonoseki judgement on the ground that the individuals lack standing under international law. Not only does this Tribunal disagree with the Hiroshima court ruling as a matter of international law; we note also that, as a matter of principle, international law does not extinguish domestic law or remedies that are more protective of human rights."

Conclusions on legal basis for individual claims

The Committee has set out these matters in some detail in order to reflect the complexity of the issue and also to demonstrate the diversity of opinions which have been expressed as to whether there is a legal basis for the comfort women to claim compensation. In the view of the Committee the issue remains an open question. The Committee notes that the Government in the recent past has expressed the view that such rights have been extinguished by treaties; however, the texts quoted above demonstrate that such a view is not necessarily supported by independent experts.

This Committee has already previously emphasised that it does not have power to order relief for breach of the Convention. The Committee in its 2000 observation, has also accepted

that "the Government is correct in stating that compensation issues have been settled by treaty". The Committee has however refrained from expressing any legal view on whether those treaties have or have not resulted in individual claims of comfort women being extinguished as a matter of law. The Committee does not have any mandate to rule on the legal effect of bilateral and multilateral international treaties. The Committee is therefore unable and does not finally pronounce on that legal issue, which is the remit of other bodies.

(c) Government response to claims of comfort women

As to the third major issue raised by the Government, in its report the Government indicates once again that, in recognition of the issue of the so-called wartime "comfort women", it has expressed its apologies and remorse on numerous occasions. It states that it has cooperated to the fullest extent possible with the Asia Peace National Fund for Women, or "Asian Women's Fund" (AWF) set up to provide "atonement" money to the victims by, among other things, bearing the operational costs of the fund and sending letters of apology from the Prime Minister. The Government indicates that in September 2002 the AWF completed the implementation of its programmes for the provision of atonement money. The Government states that, since October 2000, when the Government submitted its previous views to the Committee, an additional 114 victims had accepted the atonement money, and that the AWF has delivered atonement money to a total of 285 victims in the Philippines, the Republic of Korea and Taiwan.

The Committee also notes from the comments of the trade union organizations, that in 2002 the AWF announced the closure of its programmes. In its communication of 29 July 2002, the All Japan Shipbuilding and Engineering Union noted that on 20 July 2002, the AWF announced that 285 survivors had accepted atonement money. It points out, however, that this number does not include survivors from China, the Democratic People's Republic of Korea, or Indonesia, and that only some of the survivors from the Republic of Korea, Taiwan, the Philippines and the Netherlands had accepted atonement money.

In their observation, the KCTU and the FKTU point out that the "goodwill" of the AWF is refuted by many Korean victims who had to suffer the various "approaches" made by Fund-related persons to persuade them to accept the so-called "consolation money". The union organizations point out that, while the Fund may be an expression of goodwill by the Japanese people, Korean victims have not regarded the Fund and its activities as a valid response of the Government to their demands or as a resolution of the legal responsibilities of the Government

under international law. They indicate further that the AWF is perceived as an effort by the Government to make a financial contribution without any prior official acknowledgement of responsibility and to evade the essential process of an official inquiry.

In its reply, the Government refers to statements in its report indicating, in part, that the Government came to consider the Asian Women's Fund as "the only feasible means for providing a practical remedy for former 'comfort women' who were already of an advanced age, because the issue of claims had been legally settled between the Governments and peoples of the parties to the treaties and agreements". The Government replies further, in part, that a number of the beneficiaries of the programmes "expressed their appreciation in one way or another", and that the Government considers that the Fund's programmes "have been steadily implemented and welcomed by a large number of the former 'comfort women' as illustrated by their words of appreciation".

The Committee notes the 1998 final report of UN Special Rapporteur McDougall, which states: "The Sub-Commission (on Prevention of Discrimination and Protection of Minorities) has joined other United Nations bodies in 'welcoming' the creation in 1995 of the Asian Women's Fund. The Asian Women's Fund was established by the Japanese Government in July 1995 out of a sense of moral responsibility to the 'comfort women' and is intended to function as a mechanism to support the work of NGOs that address the needs of the 'comfort women' and to collect from private sources 'atonement' money for surviving 'comfort women'. The Asian Women's Fund does not, however, satisfy the responsibility of the Government of Japan to provide official, legal compensation to individual women who were victims of the 'comfort women' tragedy, since 'atonement' money from the Asian Women's Fund is not intended to acknowledge legal responsibility on the part of the Japanese Government for the crimes that occurred during the Second World War" (appendix, paragraph 64).

The Committee has noted that organizations seeking additional measures from the Government have not considered the AWF to be a sufficient response, as there has been no compensation paid to victims directly by the Government and no apology based on an acknowledgement of legal responsibility towards the victims. In view of the latest comments and indications supplied by the Government and trade union organizations, the Committee considers, as it has previously, that the rejection by the majority of "comfort women" of monies from the AWF because it is not seen as compensation from the Government, and that the letter sent by the Prime Minister to the few who have accepted monies from the AWF is also rejected

by some as not accepting government responsibility, suggest that the expectations of the majority of the victims have not been met.

The Committee further notes the recommendations of UN Special Rapporteur Coomaraswamy in Addendum 1 to her 1996 report. Pointing out that she "counts, in particular, on the cooperation of the Government of Japan, which has already shown, in discussions with the Special Rapporteur, its openness and willingness to act to render justice to the few surviving women victims of military sexual slavery carried out by the Japanese Imperial Army", Special Rapporteur Coomaraswamy recommended, inter alia, that the Government of Japan should: (a) acknowledge that the system of "comfort stations" set up by the Japanese Imperial Army during the Second World War was a violation of its obligations under international law and accept legal responsibility for that violation; and (b) pay compensation to individual victims of Japanese military sexual slavery according to principles outlined by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms.

The Committee further notes the similar recommendations in paragraphs 63-67 of the final report of UN Special Rapporteur McDougall, as well as those in paragraph 1086 of the December 2001 Judgment of the Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery.

The Committee notes the comments of the KCTU and the FKTU that the Government, despite the repeated recommendations of the UN human rights bodies and this Committee's observations, there has been no change by the Government in its approach. The Committee also notes the comments of the All Japan Shipbuilding and Engineering Union that aged victims are having great difficulty in traveling to Japan either for appearing before the court or for negotiating with government officials, and it expresses the fear that "most of the victims would pass away in a few years and that the chance of correcting the wrongdoings of the past would be lost forever".

Final conclusions on victims of wartime sexual slavery

This Committee reiterates that it has no mandate to rule on the legal effect of bilateral and multilateral international treaties and is therefore unable and does not finally pronounce on that legal issue. It has previously indicated its concerns about the ageing of the victims of the Government's earlier breach of the Convention and the failure of the Government to meet their

expectations in spite of similarly publicly expressed views by other reputable bodies and persons on the issue. The Committee repeats its hope that the Government will take measures in the future to respond to the claims of these victims. The Committee asks to be kept informed as to any relevant court decisions, legislation or government action. The Conference Committee may wish to consider whether to look at the matter on a tripartite basis.

2. Wartime industrial forced labour

The Committee has previously considered the wartime practice involving the forcible conscription of hundreds of thousands of labourers from other Asian countries, including China and the Republic of Korea, to work under private-sector control in Japanese wartime factories, mines and construction sites. The Committee has noted a 1946 report of the Japanese Ministry of Foreign Affairs (MOFA) entitled "Survey of Chinese labourers and working conditions in Japan", which details very harsh working conditions and brutal treatment, including a death rate of 17.5 per cent, and up to 28.6 per cent in some operations. Although these workers had been promised pay and conditions similar to those of Japanese workers, they in fact received little or no pay. The Committee has found that the massive conscription of labour to work for private industry in Japan under such deplorable conditions was a violation of the Convention.

In its last two observations, the Committee noted that there were still a number of claims by former prisoners and others pending in different instances, and in view of the age of the victims and the rapid passage of time, it had hoped that the Government would be able to respond to the claims of these persons in a satisfactory way.

The Committee notes in its latest very detailed report, that the Government remains of the view that, with regard to the issue of wartime industrial forced labour, it has "fulfilled its obligations" in accordance with the post-war treaties and agreements it entered into with the governments of the Allied Powers and other governments of the Asia-Pacific region, and that the issue has been "legally settled" by the parties to these agreements.

As it has indicated previously, the Government points out that it has actively promoted friendship and cooperation with the governments of its neighbouring countries. It refers in particular to the economic development assistance it has provided to the Republic of Korea and to China. The Government also indicates that it has formally expressed apologies for "past history" on various occasions, citing:

- the 1972 Joint Communiqué of the Government of Japan and the Government of China, which includes a statement that the Government of Japan "deeply feels responsible for the serious

damage it caused in the past to the Chinese people through the execution of the war, and profoundly reproaches itself";
- the 1993 statement by Chief Cabinet Secretary Yohei Kohno on the results of the study of the issue of wartime "comfort women", in which he said: "It is incumbent upon us, the Government of Japan, to continue to consider seriously, while listening to the views of learned circles, how best we can express this sentiment (of apology). We shall face squarely the historical facts as described above instead of evading them ...";
- the statement of Prime Minister Tomiichi Murayama on the "Peace, Friendship and Exchange Initiative" in 1994 in which he stated that one way to demonstrate such feelings (of apology) is "to face squarely to the past and ensure that it is rightly conveyed to future generations";
- the statement delivered by Prime Minister Murayama on 15 August 1995 on the occasion of the 50th anniversary of the war's end; and
- the letters sent out in 2002 from Prime Minister Junichiro Koizumi to the victims of wartime sexual slavery. The letters state in part: "We must not evade the weight of the past, nor should we evade our responsibilities for the future. I believe that our country, painfully aware of its moral responsibility, with feelings of apology and remorse, should face up squarely to its past history and accurately convey it to future generations."

The Committee notes that the statements and expressions of apology cited by the Government include repeated references to the expression of an intent by the Government to "squarely face" its past history and not to evade its "moral responsibility".

In its 2001 observation, the Committee noted that a settlement was reached in one of the pending court cases, by which the contracting firm Kajima agreed to establish a 500 million yen (approximately $4.5 million) fund to compensate survivors and relatives of conscripted Chinese labourers who died at its Hanaoka copper mine during the war, with the fund to be administered by the Chinese Red Cross. The Committee requested the Government to provide additional information on this case and its impact on similar lawsuits against other firms.

The Committee notes the Government's indication that is not in a position to provide the Committee with information on the Hanaoka case in any detail because it was a civil law case brought by Chinese nationals against a private company and because certain lawsuits of a similar nature are currently pending at the Japanese courts. The Government notes that the settlement has not involved an admission of any legal responsibilities on the part of the company defendant for apologies or compensation.

The Committee notes the comments of the Tokyo Local Council of Trade Unions, indicating that the implementation of the settlement is moving forward. Kajima has set up the Hanaoka Friendship Fund with a donation of half a billion yen. The Council notes that on 26 March 2001, the executive committee of the fund held its first meeting at the Chinese Red Cross headquarters in Beijing, that on 27 September 2001, an initial allocation of funds was presented to 21 survivors, and that on 15 December 2001, a similar ceremonial presentation was made to 40 members of the bereaved families.

The Tokyo Local Council of Trade Unions refers to decisions on wartime forced labour compensation claims in three recent court rulings at the district court level. These include two against the Government: the judgment of the Tokyo District Court on 12 July 2001 in the Liu Lianren case, and a judgment of the Kyoto District Court on 23 August 2001 in the case of the Ukishima-Maru incident; and one against a private enterprise: the judgement of the Fukuoka District Court on 26 April 2002.

With regard to the judgements in the Liu Lianren and Ukishima-Maru cases, the Council indicates that these rulings are considered to be major victories. It points out that, while the court did not recognize the liability of the Government based directly on its policy and practice of wartime conscription and exaction of forced labour, the rulings are important in that they found that the Government had a duty to rescue and protect conscripted Chinese labourers who were the victims of that policy and to promote their repatriation, and because they found the Government to be liable for compensatory damages in negligently failing, in these cases, to meet these obligations. The Council indicates that the Government has appealed these rulings to the higher courts "based on the statute of limitations and other legal technicalities". The Council expresses the view that the Government "is trying to evade its responsibilities counting out all possible legal excuses". The Council further states that the Government has "continued to turn down all forced labour-related claims and demands".

In its reply, the Government indicates that, during the period from 1 January 2001 to 30 June 2002, there were five rulings in high courts and two rulings in district courts in cases involving claims for compensation from the Government over its wartime policy of industrial forced labour, and that in all of these cases the plaintiffs' claims were dismissed. The Government states that, therefore, the two favourable rulings mentioned in the comments of the Tokyo Local Council of Trade Unions "are very exceptional" and "cannot be over-evaluated". The Government has noted that "it is not responsible for compensation claims for damages", and that it has appealed both rulings to the High Court. The Government indicates that, since the

claims of Chinese and Korean nationals were "legally settled" according to post-war peace treaties and bilateral agreements to which the Government of Japan was a party, the district court rulings in the Liu Lianren and Ukishima-Maru cases "were not based on correct understanding of the settlement reached by these treaties, and were completely inappropriate".

The Committee notes the judgment of the Fukuoka District Court dated 26 April 2002, in which the court, while dismissing the claims against the Government, held the Mitsui Mining Company liable for damages in the amount of 11 million yen to each of 15 Chinese workers because of its actions, planned and carried out jointly with the Government, involving the wartime conscription and exaction of forced labour of the plaintiffs. In its comments, the All Japan Shipbuilding and Engineering Union points out that this is the first case in which a court has issued a ruling ordering the payment of damages caused by the practice of forced labour and forced recruitment during the Second World War. In its opinion, the court referred to article 5 of the 1972 Joint Communiqué of the Governments of Japan and the People's Republic of China, and to the Treaty of Peace and Friendship between the two governments, in which China renounced its demands for war reparations. The court also referred, on the other hand, to a finding that at the time the San Francisco Peace Treaty was concluded in 1951, the Government of China maintained the position that individual Chinese citizens were in a position to bring claims, and to a public statement in March of 1995 by Qian Qichen, then Vice-Premier and Foreign Minister, indicating that the Government of China had renounced war reparations claims only at the state level, and not those of individual Chinese citizens. The court, taking these facts into consideration, held that it was unclear as a matter of law whether the claims of individual Chinese citizens had been finally renounced, and it concluded that it "does not recognize that the plaintiff's claim for damages has been renounced by the Joint Communiqué and the Treaty of Peace and Friendship between the two countries".

In commenting on the judgment of the Fukuoka District Court, the Government points out that the court dismissed the claims against the Government and that the court ruled that there was a legal doubt as to whether individual claims of Chinese nationals for damages suffered during the war between Japan and China were renounced by the Joint Communiqué of the Government and the Government of the People's Republic of China. The Government states further that the judgment "is based on the trivial and biased information which the plaintiffs provided without considering the views of the Government and the Government of the People's Republic of China, regarding the Joint Communiqué ... and others". The Government notes that the Mitsui Mining Company did not accept this ruling and has appealed it to the Fukuoka High Court, which is examining the case. With reference to the court's finding that, in March of 1995, Qian Qichen, then Vice-Premier and Foreign Minister made a public statement indicating that

the Government had renounced war reparations claims at the state level but not those of individual Chinese citizens, the Government states that "this remark was reported only by the media and has not been confirmed by the Government of the People's Republic of China". The Government proceeds to cite three other remarks by Chinese government officials reported by the media, which appear to conflict with the March 1995 remark by the then Vice-Premier Qian Qichen.

The Committee notes the reference of the All Japan Shipbuilding and Engineering Union to H.R.1198, the Justice for United States Prisoners of War Act of 2001 ("Rohrabacher Bill"), introduced in the 107th Congress of the United States on 22 March 2001 in the House, and on 29 June 2001 in the Senate, of which the aim is "to preserve certain actions in federal courts brought by members of the United States armed forces held as prisoners of war by Japan during World War II against Japanese nationals seeking compensation for mistreatment or failure to pay wages in connection with labor performed in Japan to the benefit of the Japanese nationals". Section 3(a)(1) stipulates that courts "shall not construe section 14(b) of the Treaty of Peace as constituting a waiver by the United States of claims by nationals of the United States" against Japanese nationals, so as to preclude such actions. The Committee notes the union's comment that the Rohrabacher Bill exemplifies that opinions are gaining ground in favour of a position that the San Francisco Peace Treaty should not preclude individual forced labour compensation claims.

In its response, the Government states that the Rohrabacher Bill "has serious problems because the Bill would change the settlement by the Treaty of Peace retrospectively. Moreover the Government of the United States has strongly opposed to this Bill which would violate the obligation stipulated in the San Francisco Peace Treaty, and would undermine the relations between Japan and the United States".

Final conclusions on wartime industrial forced labour

As with the victims of wartime sexual slavery, the Committee indicates that it has no mandate to rule on the legal effect of bilateral and multilateral international treaties. The Committee takes the same approach, namely, that it requests to be kept informed as to the outcome of the Liu Lianren, Ukishima-Maru and Fukuoka District Court cases and any relevant court decisions, as well as any legislation or government action. The Conference Committee may wish to consider whether to look at the matter on a tripartite basis.