

**APPENDIX No.4**

**ILO**  
**Committee of Experts on the Application**  
**of Conventions and Recommendations (CEACR)**

**Observation on the "Comfort Women" Issue**

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**Contents**

**Observation (CEACR) concerning Forced Labour Convention, 1930 (No. 29)**  
**Japan (Ratification: 1932)**

Observation (CEACR) - adopted 1995, published 82nd ILC session 1996.....	p1
Observation (CEACR) - adopted 1996, published 85th ILC session 1997.....	p1
Observation (CEACR) - adopted 1998, published 87th ILC session 1999.....	p3
Observation (CEACR) - adopted 2000, published 89th ILC session 2001 .....	p5
Observation (CEACR) - adopted 2001, published 90th ILC session 2002.....	p8
Observation (CEACR) - adopted 2002, published 91st ILC session 2003.....	p9
Observation (CEACR) - adopted 2003, published 92nd ILC session 2004.....	p20
Observation (CEACR) - adopted 2004, published 93rd ILC session 2005.....	p20
Observation (CEACR) - adopted 2006, published 96th ILC session 2007.....	p22
Observation (CEACR) - adopted 2007, published 97th ILC session 2008.....	p24
Observation (CEACR) - adopted 2008, published 98th ILC session 2009.....	p25
Observation (CEACR) - adopted 2010, published 100th ILC session 2011.....	p27
Observation (CEACR) - adopted 2012, published 102nd ILC session 2013.....	p29

## **Observation (CEACR) - adopted 1995, published 82nd ILC session 1996**

The Committee takes note of the observations of the Osaka Fu Special English Teachers' Union (OFSET), dated 12 June 1995, concerning the application of the Convention during the years prior to the Second World War, and during that war. The Committee notes that the Convention was in force for Japan during that period. The allegations refer to gross human rights abuses and sexual abuse of women detained in so-called military "comfort stations", a situation which falls within the prohibitions contained in the Convention. The Committee recognizes that such conduct should be characterized as sexual slavery in violation of the Convention. The Government has made no comment on OFSET's letter, a copy of which was sent to it on 31 August 1995.

OFSET has asked for wages, compensation and other benefits arising from the forced labour of the women concerned. On the basis of the allegations as they appear in the trade union's communication, it would appear that these women would have been entitled to wages and other benefits under the Convention.

Under the Convention and the Committee's terms of reference, the Committee does not have the power to order the relief sought for compensation and wages. This relief can be given only by the Government. The Committee hopes that, in view of the time that has elapsed since these events, the Government will give proper consideration to this matter expeditiously.

## **Observation (CEACR) - adopted 1996, published 85th ILC session 1997**

The Committee has noted the information supplied by the Government in reply to earlier comments in its reports dated 31 May 1996 and 30 October 1996, as well as the comments made by the Japanese Trade Union Confederation (JTUC-RENGO) in a communication dated 30 September 1996, a copy of which was transmitted to the Government on 14 October 1996.

In its previous observation, the Committee took note of observations of the Osaka Fu Special English Teachers' Union (OFSET) dated 12 June 1995 concerning the application of the Convention during the years prior to the Second World War and during the war. The allegations referred to gross human rights abuses and sexual abuse of women detained in so-called military "comfort stations", and OFSET asked for appropriate compensation to be made.

The Committee had noted that the abuses referred to fell within the absolute prohibitions contained in the Convention. The Committee further considered that such unacceptable abuses should give rise to appropriate compensation, since the Convention had provided, even for forms of compulsory service that could be tolerated under Article 1(2) during a transitional period after its coming into force, that the persons called up for such service were to be paid compensation and entitled to disability pensions under Articles 14 and 15.

The Committee had, however, noted that under the Convention and the Committee's terms of reference, it did not have the power to order the relief sought. This relief could be given only by the Government and, in view of the time that had elapsed, the Committee expressed the hope that the Government would give proper consideration to the matter expeditiously.

In its report dated 31 May 1996, the Government indicates that, irrespective of whether or not there was a violation of the Convention, regarding the issues of reparations and/or settlement of claims relating to the war, including those of former wartime "Comfort Women", Japan has sincerely fulfilled its obligations according to the relevant international agreements and, therefore, the issues have been legally settled between Japan and the parties to those agreements.

The Government indicates that it has been expressing its feeling of apologies and remorse on the issue of wartime "Comfort Women". As a way of demonstrating such feelings, the Government has been working to face squarely the facts of history, including the issue of wartime "Comfort Women", in order to ensure that they are properly conveyed to future generations and thus promote better mutual understanding with the countries and areas concerned. In this context, the Government has inaugurated a "Peace, Friendship and Exchange Initiative".

In addition, the Government reports that it has been providing its maximum support to the Asian Women's Fund, which was established with the aim of achieving the atonement of the Japanese people for former wartime "Comfort Women" and protecting women of today from menaces to the honour and dignity of women in full cooperation with the Japanese people at large including both employers and workers. The Government states that, through these efforts, Japan has been sincerely addressing the issue of wartime "Comfort Women". The Committee also notes that in its comments on the application of the Convention, the Japanese Trade Union Confederation (JTUC-RENGO) considers that these measures, in which it has been actively participating, could constitute significant progress for the compensation of the victims, if carried out smoothly.

In its report of 31 May 1996, the Government further states that the Committee's observation was based solely on the letter dated 12 June 1995 from the Osaka Fu Special English Teachers' Union (OFSET) and that the Government was not given appropriate notice to comment on that letter, contrary to established practice. Also prior to the submission of the letter by OFSET, a separate representation had already been made in March 1995 by the Federation of Korean Trade Unions (FKTU) to the International Labour Office under article 24 of the ILO Constitution regarding the same issue, and the Government considers that the Committee's observation was made while the examination of the separate representation was in progress.

The Committee has taken due note of these indications. As regards the representation made on 20 March 1995 under article 24 of the ILO Constitution by the FKTU, the Committee notes that the ILO Governing Body did not examine the substance of the representation, nor take a decision on its receivability by the time the FKTU withdrew the representation by letter of 30 May 1996.

As regards the question of whether or not there was a violation of the Convention, the Committee also has noted the discussion that took place at the 48th Session of the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities in August 1996 on the issue of systematic rape, sexual slavery and slavery-like practices during wartime. During the discussion, a question was raised regarding the relevance of the Convention to the issue of wartime "Comfort Women" in the light of the exemptions in Article 2 of the Convention.

In this regard, the Committee refers to the explanations provided in paragraph 36 of its General Survey of 1979 on the abolition of forced labour concerning the exemption made in Article 2(2)(d) of the Convention for "any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population". The Committee has pointed out that the concept of emergency - as indicated by the enumeration of examples in the Convention - involves a sudden, unforeseen happening calling for instant counter-measures. To respect the limits of the exception provided for in the Convention, the power to call up labour should be confined to genuine cases of emergency. Moreover, the extent of compulsory service, as well as the purpose for which it is used, should be limited to what is strictly required by the exigencies of the situation. In the same manner as Article 2(2)(a) of the Convention exempts from its scope "work exacted in virtue of compulsory military service laws" only "for work of a purely military character", Article 2(2)(d) concerning emergencies is no blanket license for imposing - on the occasion of war, fire or earthquake - any kind of compulsory service but can only be invoked for service that is strictly required to counter an imminent danger to the population.

The Committee concludes that the present case does not fall within the exemptions contained in Article 2(2)(d) and 2(2)(a) of the Convention, and clearly therefore there was violation of the Convention by Japan.

The Committee recalls that, under Article 25 of the Convention, the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying the Convention to ensure that the penalties imposed by law are really adequate and strictly enforced. The Committee notes that, under sections 176 and 177 of the Penal Code of Japan (Act No. 45 of 24 April 1907) indecency through compulsion and rape are punishable offences.

The Committee has taken note of the detailed information supplied by the Government in its report of 30 October 1996 on measures it has taken to express its apologies and remorse to the "wartime Comfort Women" and to support the whole operational cost of, and provide all possible assistance to, the "Asian Women's Fund" set up to offer atonement money to the former "Comfort Women", as well as medical and welfare support through the use of governmental resources. The Committee trusts that the Government will continue to take its responsibility for the measures necessary to meet the expectations of the victims and will provide information on further action taken.

## Observation (CEACR) - adopted 1998, published 87th ILC session 1999

The Committee notes the Government's report in reply to its previous comments, as well as a number of observations received from workers' organizations. The matters raised in these comments, and addressed by the Government, concern two main issues, which are dealt with in turn.

### I. Wartime "Comfort Women"

A. In its previous observations, the Committee took note of observations made by the Osaka Fu Special English Teachers' Union (OFSET) alleging gross human rights abuses and sexual abuse of women detained in so-called military "comfort stations" during the Second World War and the years leading up to it, when the women confined were forced to provide sexual services to the military. The Committee has found that this was contrary to the requirements of the Convention, that such unacceptable abuses should give rise to appropriate compensation, but that it did not have the power to order relief. The Committee also stated that this relief could only be given by the Government and that in view of the time elapsed, it hoped that the Government would give proper consideration to the matter expeditiously.

B. In its last observation adopted at its session in 1996, the Committee noted the Government's position that, irrespective of whether or not there was a violation of the Convention, it has sincerely fulfilled its obligations under international agreements and, therefore, the matter had been settled between the Government of Japan and the other governments which are parties to the agreements. The Government stated that it had been expressing its apologies and remorse in this regard; and it has been providing the maximum support to the "Asian Women's Fund" (AWF), which was established in 1995 with the aim of achieving the atonement of the Japanese people to the former wartime "Comfort Women", and providing atonement money to them. The Committee noted the detailed information provided, including the fact that the Government has supported the operational cost of the AWF, as well as providing medical and welfare support through the use of government resources. The Committee expressed its trust that the Government would continue to take responsibility for the measures necessary to meet the expectations of the victims, and asked it to provide information on further action taken.

C. One of the workers' organizations (OFSET), in a letter dated 14 October 1998 together with enclosures, made the following points. The union states that the problem remains basically unchanged and that there has been no compensation paid by the Government and no apology based on legal responsibility towards the victims. The union provided information to the effect that the majority of the Korean, Taiwanese, Indonesian and Filipino "Comfort Women" have refused to accept monies from the AWF on the basis that money from the Fund is not compensation from the Government but consists of money raised by donations from private organizations. The union also indicated that five Filipino "Comfort Women" who have accepted AWF monies, have refused to accept the letter of apology sent by the Prime Minister and have returned it as not being a recognition of the Government admitting its official accountability for the abuses committed against them by the military. The union provided information about payments made by the Government of South Korea and Taiwan to women victims in their own countries who have refused AWF monies. The Korean Confederation of Trade Unions, in a communication dated 31 July 1998 together with enclosures, makes similar points. The trade union stated that the Government had not yet taken proper measures, as it had not changed its argument that the issue of military sexual slavery had been legally settled by Japan and the victimized Asian countries, and cited consideration of the matter by the present Committee, the United Nations and others. It noted that although some women had accepted funds from the AWF, most have rejected them, stating that this was "sympathy" money and not legal compensation.

D. The Committee was also provided with copies of a judgment, issued on 27 April 1997 by the Yamaguchi Lower Court, Shimonishi Branch, Section 1. The case is one of the 50 suits filed in Japanese courts. The judge ordered the Government to pay three plaintiffs, former South Korean Comfort Women, 300,000 yen plus interest. The judgment was based in part on the present Convention, and principally on the failure of the Government to legislate a necessary law, where the failure to legislate infringed basic human rights, and compensation was ordered under the State Tort Liability Act.

E. The Korean Federation of Trade Unions noted that the compensation was small. It also indicated that the Government has appealed against the decision to a higher court, that it could take ten to 20 years for appeal procedures to be exhausted and that the women were already advanced in age.

F. The Government reviews in its report its role in the establishment of the AWF and indicated that in the Philippines, the Republic of Korea and Taiwan, approximately 85 to 90 women received "atonement money" from the AWF and that some had expressed their gratitude in various ways. The Government also indicated that women who were given atonement money also received a letter of apology from the Prime Minister. The Government states that with the support of individuals, enterprises, trade unions and others more than 483 million yen has been donated to the AWF. In March 1997, it began providing financial support for facilities for the elderly in Indonesia, with priority to be given to those who state they are former "Comfort Women", as the Government of Indonesia has found it difficult to identify those who were concerned. It concluded an agreement on 16 July 1997 with a non-governmental group in the Netherlands for a project aimed at helping to enhance the living conditions of those who suffered incurable physical and psychological wounds during the war. The Government also reports efforts to make the historical facts better known through school education, and outlines measures to address contemporary issues concerning the honour and dignity of women. The Government has provided no information in relation to the above-mentioned judicial decision.

G. The observation received from the Japanese Trade Unions Confederation (JTUC-RENGO) adds that, as regards the Korean wartime "Comfort Women", the Government of the Republic of Korea has started providing support allowances to them on condition that the women concerned do not receive any donation from the AWF or, if they have, that they return it. JTUC-RENGO believes that "the settlement of this tragic history is in the hands of the Korean and Japanese Governments" and expects that "dialogue will lead to a final settlement of the problem".

H. The Committee notes this very detailed information. It notes further the report of the United Nations Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict (UN document E/CN.4/Sub.2/1998/13, 22 June 1998), who examined inter alia the situation of "Comfort Women" and the liability of the Japanese Government. The Committee again repeats its trust that the Government will take responsibility for the measures necessary to meet the expectations of the victims. 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 requests the Government to take steps expeditiously, and also to respond on measures taken further to the court decision and any other measures to compensate the victims. With each passing year this becomes more urgent.

## **II. Wartime industrial forced labour**

A. The Committee has also received observations from the Kanto Regional Council, All Japan Shipbuilding and Engineering Union (in September and December 1997, and March 1998), as well as from the Tokyo Local Council of Trade Unions (Tokyo-Chiyo) in August and September 1998. These communications raised, for the first time in the ILO, concern about conscripted labourers from China and Korea in industrial undertakings, during the Second World War. It is stated by the All Japan Shipbuilding and Engineering Union that some 700,000 workers from Korea and some 40,000 from occupied areas of China were conscripted as forced labourers and made to work under private-sector control in mines, factories and construction sites. Conditions of work were said to be very harsh, and many died. Though these workers had been promised pay and conditions similar to those of Japanese workers, they in fact received little or no pay, according to the allegations. The Union -- supported by more than 35 other workers' organizations which signed the communication -- asks that these workers receive compensation for unpaid wages, and damages, from the Government and from the companies that benefited. It indicates that, because of poor relations between the countries concerned and Japan for many years after the war, it was virtually impossible for individuals to make any claims against either the Government or the companies concerned until relations had been re-established. Tokyo-Chiyo has communicated a report said to have been drawn up by the Japanese Ministry of Foreign Affairs (MOFA) in 1946 entitled "Survey of Chinese Labourers and Working Conditions in Japan" intended to account to Chinese authorities after the war. The report disappeared, but was rediscovered in 1994, independently in China and in the United States. The report details very harsh working conditions, and brutal treatment including a death rate of 17.5 per cent, up to 28.6 per cent in some operations.

B. The Government states in its report in response to these observations that it has repeatedly acknowledged regret and remorse to the South Korean Government for damages and suffering caused through its colonial rule. The Government also indicated that it had similarly stated to China that it was keenly conscious of the serious damage it had caused to Chinese people in the war. The Government states that it has taken many positive steps towards

establishing friendly relations with both China and the Republic of Korea. This includes high-level visits and accompanying statements and agreements as recently as October-November 1998. The Government states that it has furnished detailed information to both countries on the situation of conscripted labourers, including 110,000 Korean workers. It has concluded agreements with both countries, including legal settlements of the issue of reparations, property and claims relating to the Second World War, with the Republic of Korea in 1965 and with China in 1972. Negotiators from Japan and the Republic of Korea concluded during the discussions leading up to this agreement that the loss of documentation was so severe that only a general approach could be taken, and in consequence Japan and the Republic of Korea agreed that the problems of claims related to the war would be deemed to be completed and finally settled with the extension of \$500 million in economic assistance from Japan to the Republic of Korea in 1965. The Government also indicated that it had provided to the Republic of Korea a total of 0.67 trillion yen by the fiscal year 1997 since 1965, making significant contributions to that country's economic growth. In addition the Government had provided assistance to China of a total of 2.26 trillion yen by the fiscal year 1997. The Government has also taken steps to make the historical record accurate. Neither of the other two Governments is requesting further compensation, but the Government indicates that some individual cases are now pending before Japanese courts.

C. The Committee has noted the information placed before it and the Government's response. The Committee notes that the Government does not refute the general contents of the MOFA report but instead points out that it has made payments to the respective governments. The Committee considers that the massive conscription of labour to work for private industry in Japan under such deplorable conditions was a violation of the Convention. It notes that no steps have been taken with a view to personal compensation of the victims, though claims are now pending in the courts. The Committee does not consider that government-to-government payments would suffice as appropriate relief to the victims. As in the case of the "Comfort Women", the Committee recalls that it does not have power to order relief, and trusts that the Government will accept responsibility for its actions and take measures to meet the expectations of the victims. It requests the Government to provide information on the progress of the court cases and on action taken.

### **Observation (CEACR) - adopted 2000, published 89th ILC session 2001**

The Committee recalls that in several recent sessions, it has considered the application of the Convention to two situations which occurred during the Second World War: that of wartime "Comfort Women" and of wartime industrial forced labour. It notes that since the last such examination, there has continued to be considerable volume of correspondence from workers' organizations, requesting the Committee to examine the case further, as well as substantial replies from the Government recalling the reasons for which it considers the questions to be closed.

In its report, the Government states that it "has made it clear from the outset that Japan has already settled the issues of reparation, property and claims relating to the last war with the governments concerned, and that the issues raised by the Committee of Experts are within the scope of these issues which have been settled. Accordingly, the Government of Japan considers that they should not be taken up for deliberation by the ILO". In this regard, the Government refers to the San Francisco Peace Treaty, bilateral peace treaties, and other relevant treaties and agreements between Japan and Indonesia, China, the Republic of Korea and the United States, all of which included provisions foreclosing individual claims against Japan by citizens of those countries. The Government also refers to various formal expressions of apology, as well as to substantial development assistance to a number of the countries concerned. The Government adds that: "It is quite clear that ... these issues hold no relevance to the ILO as current topics for deliberation. The Government of Japan therefore strongly hopes that this will be the last time for the Committee of Experts to take up and deliberate on these issues." The Government also refers to the comments of the Japanese Trade Union Federation (JTUC-Rengo), in a letter dated 20 October 2000, indicating that "Rengo supports the report of the Japanese Government" and that "Rengo insists also strongly that it is appropriate for the Committee to close deliberations on these cases".

The Committee recognizes that, as a matter of law, the Government is correct in stating that compensation issues have been settled by treaty. It feels, nonetheless, that it is important to continue to deal with the extensive comments of trade unions on this subject, to note developments in how claims for compensation are handled, and to provide information on how the Government views the question. It hopes that it will be unnecessary to do so again at future sessions.

The Committee notes that in addition to the workers' organizations' observations it discusses below, it has also received observations from Tokyo Local Council of Trade Unions - Tokyo-Chihyo, in a letter dated 1 November 2000. This communication has been sent to the Government for any comments it may wish to make, and will be examined when any such comments arrive.

## **I. Wartime "Comfort Women"**

A. In its previous observations, the Committee has noted the gross human rights abuses and sexual abuse of women detained in so-called military "comfort stations" during the Second World War and the years leading up to it, when the women concerned were forced to provide sexual services to the military. The Committee has found that this was contrary to the requirements of the Convention, and that such unacceptable abuses should give rise to appropriate compensation, while noting also that it did not have the power to order relief. The Committee has stated that this relief could only be given by the Government as the responsible body under the Convention and that, in view of the time elapsed, it hoped that the Government would give proper consideration to the matter expeditiously. The Committee notes that the Worker members of the Conference Committee on the Application of Standards stated in 1998 that, while the case was not to be discussed in full by the Conference Committee, they hoped that the Government would meet with the trade unions and the representative organizations of the women concerned, as well as with other governments, to find an effective solution which met the expectations of the majority of the victims.

B. The Committee has also noted in previous observations that the Government has indicated that, while it was not directly liable for compensation to these women, it has provided the maximum possible support to the "Asian Women's Fund" (AWF), which was established in 1995 with the aim of achieving the atonement of the Japanese people and providing funds to the women concerned. The Committee also noted the Government's indication that it has also provided considerable medical and welfare support to countries in which the victims live through the use of government resources. The organizations which have asked for additional measures from Japan have taken the position that the AWF is not 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. They have noted that most of the women concerned have not availed themselves of the assistance of the AWF, though the Government has indicated some 170 cases in which assistance from this fund has been accepted.

C. Further comments have been received on this question from several workers' organizations. The Federation of Korean Trade Unions and the Korean Confederation of Trade Unions, in a letter of 8 September 2000, forwarded information on the consideration by the United Nations Sub-Commission on the Promotion and Protection of Human Rights of the issue of wartime sexual slavery, in particular the report by Ms. Gay McDougall, Special Rapporteur on systematic rape, sexual slavery and slavery-like practices (UN doc. E/CN.4/Sub.2/2000/21) and the resolution on the same issue adopted by the Sub-Commission in 2000. (Similar references have been made by other organizations, but will not be repeated below.) The Government has noted that although the report did deal in part with Japan, the resolution makes no mention of Japan, but refers instead to ongoing and more recent situations. The Committee notes, however, the opinion expressed in the resolution on an earlier report of the Special Rapporteur that "the rights and obligations of States and of individuals referred to in the present resolution cannot, as a matter of international law, be extinguished by treaty, peace agreement, amnesty, or by any other means" (UN document E/CN.4/Sub.2/RES/1999/16).

D. The two unions also indicate that eight lawsuits are being examined by Japanese courts in which wartime "Comfort Women" are demanding compensation and formal apologies from the Government. The Government has indicated that - as noted by the Committee in its previous comment - in April 1998 the Shimonoseki Branch of the Yamaguchi District Court (the lowest of three tiers of courts) ordered the Government to pay consolation money to each of three plaintiffs who had brought lawsuits in Japan, as state compensation for failure to legislate a necessary law, but that this was appealed to the Hiroshima High Court in May 1998, and is still under examination. The Government states that the reasoning behind the earlier ruling was rejected by the Tokyo High Court in another lawsuit in August 1999. In three of the cases mentioned by the two unions which are pending in high courts, lower courts ruled in favour of the State; the five others are still under examination by district courts. The Committee requests the Government to keep it informed of developments regarding these lawsuits.

E. In another communication, the Netherlands Trade Union Confederation (FNV), by a letter of 23 November 1999, submitted documentation provided to it by the "Foundation of Japanese Honorary Debts". The Government has questioned the validity of this communication as the information did not originate with the workers' organization;



but the Committee recalls that it has always considered that information provided by trade unions in these circumstances falls within the bounds of its practice in dealing with workers' and employers' comments. The FNV communication indicates that Japan has not provided compensation to women of Dutch nationality who were forced to become "Comfort Women". The Government has stated in reply that as the identification of wartime "Comfort Women" in the Netherlands has not been carried out by the Dutch authorities, the Government of Japan and the AWF, "in consultation with the Dutch people concerned", have explored projects to be implemented in the Netherlands, including, for instance, the provision of goods and services in the medical and social welfare areas. The Government also refers to expressions of appreciation for these actions made by the Dutch Prime Minister during Japan-Netherlands summit talks on 21 February 2000.

F. The Committee notes the considerable number of claims and actions still under way. In view of the fact that many of the claimants do not consider the AWF compensation to be acceptable, the Committee hopes the Government will find an alternative way, in consultation with them and the organizations which represent them, to compensate the victims before it is too late to do so, in a manner that will meet their expectations.

## **II. Wartime industrial forced labour**

A. In this case as well the Committee has previously found forced conscription of many thousands of persons from other Asian countries to work in Japanese wartime factories to have been contrary to the Convention. The Government indicates in its response that all legal claims were settled by treaties after the Second World War, and by formal apologies by the Government, and that no further individual claims are admissible. It has detailed relations with several governments in this regard, including China, Indonesia, the Republic of Korea and the United States. The Government indicates that in this case as well, court actions are proceeding in Japan, and that seven cases raised by Korean nationals and seven others by Chinese nationals are in the courts. In two cases by Korean nationals and two by Chinese nationals, the lower courts ruled in favour of the Government and appeals are now pending, while the ten others are being examined by district courts. Three other cases raised by Korean nationals have been settled out of court, without any recognition of legal responsibility by the companies concerned pertaining to the conscription of these persons.

B. The Committee understands, however, that during its session 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 requests the Government to provide additional information on this case, and its impact on similar lawsuits against other firms.

C. The Committee notes that the two Korean trade unions which submitted comments compared the response of the Government and of Japanese companies to that of governments and companies in Europe and North America that were asked to compensate former wartime slave labourers. The Government indicates that it is difficult and inappropriate to simply compare and evaluate actions taken by different countries since they involve different historical, social and economic backgrounds and circumstances. It notes, for instance, that Germany did not conclude any treaties which covered questions of reparations, property and claims in a comprehensive manner, because it was divided into two countries after the war.

D. The Kanto Regional Council of the All Japan Shipbuilding and Engineering Union submitted comments in a letter of 1 October 1999, referring to actions taken in the US State of California. It indicates that the state adopted a law in June 1999 which extended the statute of limitations for forced labour victims from the Second World War to bring claims. The Government indicates in response that Japan and the United States are in full agreement that the two countries have already settled the issues concerned by the San Francisco Peace Treaty. It notes that several former United States prisoners of war filed a series of suits against Japanese companies and their subsidiaries in the United States, but that on 21 September 2000, the United States District Court for the San Francisco Division of the Northern District of California dismissed the claims on the grounds that the Peace Treaty waived all the reparations claims against Japan by the United States and its nationals. Other similar suits are pending but have not yet been resolved. The Committee has also received information on other lawsuits which have been brought in the United States in this regard, but has not been notified of their disposition. The Engineering Union has also stated, however, that some lawsuits brought against companies in Japan which benefited from wartime forced labour (or are successors of those companies) have resulted in settlements by the companies without recognition of liability.



E. As concerns claims by Indonesian survivors of forced labour in Thailand and Myanmar, the Government repeats that this issue has also been settled by a comprehensive treaty of peace with the Government of Indonesia. There are also indications of the conscripted labour of more than 8,000 children from Taiwan under Japanese rule in Japanese fighter plane factories. In this instance the Government indicates that the Taiwanese authorities were to deal with the issues of property and claims, but that it became impossible for Japan to deal with the issues after it normalized relations with China. The Government indicated that it provided "condolence money" under special legislation to Taiwanese people who were soldiers or civilian workers in the Japanese military.

F. In the light of the information referred to above, it is apparent that a number of former prisoners and others still feel that they were not adequately compensated by inter-state peace agreements and other arrangements, and that there are still a number of claims pending in different instances. In view of the age of the victims, and the rapid passage of time, the Committee again expresses the hope that the Government will be able to respond to claims of these persons in a way which is satisfactory both to the victims and to the Government.

## Observation (CEACR) - adopted 2001, published 90th ILC session 2002

### **I. Wartime "Comfort Women" and Industrial Forced Labour**

A. Further to its previous observations under the Convention, the Committee has noted a communication of the All Japan Shipbuilding and Engineering Union, received by the ILO on 6 June 2001, a copy of which was transmitted to the Government on 26 June 2001, as well as a letter dated 9 October 2001 from the Government, referring to its views concerning the Union's communication.

B. The Committee notes that in its communication of June 2001, the All Japan Shipbuilding and Engineering Union indicates 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 Government is stated to have made this position clear on many occasions, as shown by the examples quoted below in the terms of the Union's communication.

Since Japan lacked diplomatic relations with the Republic of Korea (South Korea) and the People's Republic of China for a long period after the end of WWII, it was virtually impossible for individual victims in these countries to seek redress and payment of overdue wages from Japan and Japanese firms. As for the Democratic People's Republic of Korea (North Korea), Japan has yet to normalize bilateral relations even today.

In 1992, the Japanese government for the first time acknowledged that these individual victims still hold the right to seek damages. Shunji Yanai, then chief of the Foreign Ministry's Treaties Bureau, told an Upper House Budget Committee session on 27 August that the Japan-South Korea Basic Treaty of 1965 had not deprived individual victims of their right to seek damages in domestic legal terms. "(The treaty) only prevents Japanese and South Korean governments from taking up issues as exercise of their diplomatic rights," Yanai told the Diet session. The turnaround in government position prompted many victims to take legal action with Japanese courts.

In other words, the Japanese government admitted that individual (legal) right to seek compensation did not become void due to a bilateral treaty for a decade. Before Yanai, the government officials made a statement to that effect twice as follows.

C. The Japanese Government's Statement in Atomic Bomb Victims Lawsuit (Final Judgment in 1963)

"5. Waiver of the Right to Damage under the Treaty of Peace with Japan.

The 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."

(Article 19(a) of the Treaty of Peace with Japan, signed in San Francisco on 8 September 1951, is quoted in the Union's communication in the following terms:)

## Article 19

(a) Japan waives all claims of Japan and its nationals against the Allied Powers and their nationals arising out of the war or out of actions taken because of the existence of a state of war, and waives all claims arising from the presence, operations or actions of forces or authorities of any of the Allied Powers in Japanese territory prior to the coming into force of the present Treaty.

### 2. Government Statement for the Siberian Internee Compensation Lawsuit (Final Judgement in 1989)

#### "3. Waiver of the Right to Damages Clause 6 item 2 under the Joint Declaration of Japan and Soviet

The plaintiff insist that Japan waived all claims to Soviet legally or in substance as a result of the Joint Declaration of Japan and Soviet. However, the right Japan waived under the Clause 6 item 2 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 state 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."

In its communication of June 2001, the All Japan Shipbuilding and Engineering Union supplied further information and comments on the settlement reached in the Hanaoka court case, referred to by the Committee in point 12 of its previous observation.

D. By letter dated 9 October 2001, the Government of Japan referred to its views concerning the communication dated 6 June 2001 of the All Japan Shipbuilding and Engineering Union in the following terms.

The Government of Japan is now making efforts to prepare its comments on the matters raised therein and wishes to express its intention to submit the comments to the ILO before the session of the Committee of Experts on the Application of Conventions and Recommendations to be held in 2002. This is due to the fact that more time is needed to allow the Government to gather sufficient informations on the basis of which it will examine the issue.

The Committee takes due note of these indications. In its previous observation, it had 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 claims of these persons in a satisfactory way. One year later, the Committee hopes that the Government will be in a position to supply particulars to the Conference at its 90th Session in 2002, as regards both its comments on the matters raised in the communication of the All Japan Shipbuilding and Engineering Union, and action taken to respond to the claims of wartime "Comfort Women" and industrial forced labour.

### **Observation (CEACR) - adopted 2002, published 91st ILC session 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.

## **I. Victims 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 'conscripted 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.

### 1. 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."

### 2. 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 Judgment 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 Judgment 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.

### 3. 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".

#### 4. Women's International War Crimes Tribunal Rulings 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 "Judgement 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 Judgment 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."

##### 5. 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 judgment 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 judgment 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 judgment.

The Committee notes that the rulings in this case were discussed in the December 2001 judgment of the Women's International War Crimes Tribunal: "The Hiroshima High Court reversed the Shimonoseki judgment 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."

### **C. 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.

#### **1. 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 travelling 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".

#### **D. 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.

## **II. 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 judgment 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.

## **Observation (CEACR) - adopted 2003, published 92nd ILC session 2004**

The Committee in its last observation discussed at some length the extent of the mandate of the Committee in respect of the two historical breaches by the Government of the Convention relating to the Second World War and the years leading up to it; namely military sexual slavery referred to as the "Comfort Women" and wartime industrial forced labour. The Committee concluded in each case that it had no mandate to rule on the legal effect of the bilateral and multilateral treaties and whether they extinguished individual claims for compensation; it refers to its previous observation on the Convention. The Committee in all the circumstances asked the Government to inform it of any future decisions, legislation or government action in respect to the long-running claims being made by the victims. The Committee also suggested that the Conference Committee "may wish to consider whether to look at the matter on a tripartite basis".

The Committee notes the information provided by the Government in a lengthy report on 14 January 2003, responding to the observations of the Committee. In its report the Government reiterates its point of view on the legal issues; refers to the expressions of apologies and remorse which have already been made; refers to the activities undertaken by the Asian Women's Fund and provided information on the results of past proceedings before various judicial bodies.

The Committee also notes that during the Conference Committee on the Application of Standards in June 2003, whilst there was some general discussion in response to the observation of this Committee, the Conference Committee did not include this issue for examination in more detail on a tripartite basis.

### **I. Additional comments received**

- Comments made by the Korean Confederation of Trade Unions (KTCU) and the Federation of Korean Trade Unions (FKTU), received on 8 September 2003;
- Comments made by the All Japan Shipbuilding and Engineering Union, received on 29 August 2003;
- Comments made by the Japanese Trade Union Confederation (JTUC-RENGO), received on 30 September 2003.

A report is due from the Government in relation to this Convention in 2004 and the Committee requests the Government at that time to comment on the above communications and any changes occurring in relation to further decisions, legislation or Government action on these issues.

## **Observation (CEACR) - adopted 2004, published 93rd ILC session 2005**

The Committee has discussed on a number of occasions the application of this Convention to sexual slavery (so-called "Comfort Women") and industrial slavery, both during the Second World War.

The issues have been examined at length in earlier comments by the Committee, and there is no need to repeat them again. The Committee noted in 2001, after a very detailed examination of the situation, 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". This statement has been repeated in later observations in 2002 and 2003.

## **I. Additional Comments Received**

In the Committee's previous observation, in 2003, it requested the Government to reply to observations received from workers' organizations under article 23 of the Constitution, as follows:

- Comments made by the Korean Confederation of Trade Unions (KCTU) and the Federation of Korean Trade Unions (FKTU), received on 8 September 2003;
- Comments made by the All Japan Shipbuilding and Engineering Union, received on 29 August 2003;
- Comments made by the Japanese Trade Union Confederation (JTUC-RENGO), received on 30 September 2003.

Since the Committee's last session, three additional sets of observations have been submitted by the All Japan Shipbuilding and Engineering Union, which were communicated to the Government between June and September 2004. A 347- page observation (which included many historical documents) was also received from the Federation of Korean Trade Unions (FKTU) and the Korean Confederation of Trade Unions (KCTU), which was communicated to the Government on 2 September 2004. The Government communicated its comments on all these in a 794-page observation (much of which consisted of the text of Court decisions) on 8 October 2004. Additional information from the All Japan Shipbuilding and Engineering Union was also received by the Office only very shortly before its session began, and it had been sent to the Government on 10 November 2004.

Save the most recent information forwarded to the Government on 10 November, the Government has replied to these observations in its communication of 8 October 2004 with minor amendments indicated by letter of 20 October 2004. The Committee notes that the Government has once again stated that the Committee should desist from further examination of this case, in particular since in 2004 the Conference Committee declined to take up the Committee's comments in a tripartite discussion.

The Government referred to the observation received from JTUC-RENGO on 30 September 2003 which stated that there is no violation of the Convention in current legislation or practice in Japan, and that it is beyond the mandate of the ILO to examine a case in which there has been no violation for 55 years. In this respect, the Committee has earlier indicated the basis on which it has kept the situation under review. In addition, the Government in its response referred, as it has done previously, to the Asian Women's Fund (AWF), which is supported by the Government. The AWF is comprised of donations from private Japanese corporations and citizens in a public-private partnership with the Government. The Government has again emphasized its financial contribution to the AWF which consists of bearing administrative costs and sending the Prime Minister's letter of apology to women victims. The Government also referred to the payment of atonement money from the AWF to 285 former Comfort Women in the Philippines, the Republic of Korea and Taiwan.

## **II. Relevant court decisions.**

The Government's response and observations from workers' organizations have detailed a number of lawsuits filed by victims of sexual or industrial slavery, seeking compensation for damages against the Government, the corporations concerned, or both. This information is provided in response to the Committee having asked to be kept informed of relevant court decisions. The Government has informed the Committee that in relation to women's claims for compensation for damages against the Government, court rulings in the Japanese Supreme Court, High Court and district court, as well as in the United States district court in cases which have so far been completed through the relevant processes, have resulted in their claims against the Government being dismissed. The Committee also notes that, at the time of the Government's report, some cases were still awaiting finalization of appeal processes. The Committee further understands that, in at least one case, one of the companies sued has decided to offer a monetary settlement to wartime victims of forced labour, at the suggestion of the court, before the



appeals process was concluded.

The Committee notes this information, and asks the Government to continue to inform it in future reports of the results of those cases still not finally resolved, and of any others that may be filed.

### **Observation (CEACR) - adopted 2006, published 96th ILC session 2007**

The Committee refers to its last examination published in 2005 of the application of this Convention concerning the issue of sexual slavery (so-called Comfort Women) and industrial slavery during the Second World War. In its observation of 2005 the Committee recalled its earlier conclusion 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 Committee had requested the Government to comment on communications received from workers' organizations and on any changes occurring in relation to further decisions, legislation or government action on these issues.

Since this last examination, the Committee has received the following observations from workers' organizations: from the Kanto Regional Council of the All Japan Shipbuilding and Engineering Union (ZENZOSEN) dated 24 May, 29 August and 9 September 2005, copies of which were forwarded to the Government on 16 September and 14 October 2005; from the Federation of Korean trade Unions (FKTU) and the Korean Confederation of Trade Unions (KCTU) dated 31 August 2005, which were sent to the Government on 1 September 2005; from ZENZOSEN dated 30 May 2006, sent to the Government on 26 June 2006; and from the Tokyo Regional Council of Trade Unions (Tokyo-Chihyo) on 25 August 2006 transmitted to the Government on 14 September 2006.

The Committee notes the Government's communications dated 9 August and 20 October 2005, and 31 October 2006, in response to the comments of workers' organizations, as well as its report and attached comments received on 26 September 2006.

In addition, the Committee notes the communications on these matters sent by ZENZOSEN dated 25, 27 and 28 August 2006 and forwarded to the Government on 27 September 2006 and in relation to which it has not yet provided any comments. The Committee notes that the Government should have the opportunity to respond to those matters in its next report.

#### **I. Industrial forced labour**

A. The Committee notes that, according to ZENZOSEN and Tokyo-Chihyo, most of the cases of industrial forced labour brought by Chinese victims have been dismissed, usually on procedural grounds, and that the few favourable rulings in the lower courts have been reversed on appeal, also on procedural grounds. ZENZOSEN also states that in one lawsuit, filed against the Nishimatsu Construction Company, the plaintiffs won a favourable judgement in the Hiroshima High Court, which reversed a district court judgment and ordered a payment of compensation. A number of these cases were specifically referred to in these communications from the workers' organizations.

B. The Committee notes that the Government, in its report received on 26 September 2006, has referred to cases and supplied copies of judgments, which appear to coincide with the cases referred to by the workers' organizations. The Committee notes that, according to information supplied by the Government, there were 19 cases concerning this issue, 14 had been decided and other cases were pending. In each of those 14 cases which had been decided, the respective courts had dismissed the plaintiff's claims for compensation, save for one case which appears to be the lawsuit, filed against the Nishimatsu Construction Company, in which the High Court sustained the claim for compensation "concerning the atomic bomb benefit".

C. In addition, the Government also advised the Committee that the following cases were pending, being those referred to in the ZENZOLEN communication, namely in:

- The Miyazaki District Court, filed by former Chinese victims of forced labour in the Makimine mine of Miyazaki Prefecture, on 10 August 2004, against the Japanese Government and Mitsubishi Material Co.;
- The Yamagata District Court, filed on 17 December 2004, against the Japanese Government and the Sakata Land-and-Sea Transportation Company, (based in Sakata-Shi) by former victims of forced labour from the Sakata harbour in the Yamagata Prefecture;
- The Kanazawa District Court, filed by former victims of forced labour in the Nanao Land-and-Sea Transportation Company (based in Nanao-Shi) by former victims of forced labour in the Nanao harbour of the Ishikawa Prefecture, on 19 July 2005.

D. Further, the Committee also notes the Government's reference to a case in the Osaka High Court, in which a financial settlement was reached with the defendant company, Nippon Yakin Kogyo Co., Ltd., and that a related claim in which the Government is the party-defendant is still pending in the Osaka High Court.

E. The Committee notes the Government's indication that it will provide further information to the Committee about each of these pending cases in due course. The Government has also reported on cases which have been taken in the California State Court against Japanese companies, which it reported have also been dismissed.

### **III. Sexual slavery**

A. The Committee notes from the communications of the FKTU and KCTU that a global petition with 200,000 signatures calling on the Government to comply with the recommendations of the United Nations Commission on Human Rights and the ILO Committee of Experts and provide an official apology and reparations, which was forwarded in March 2005 to the Director-General of the ILO by the Chairperson of the Workers' group, on behalf of the KCTU and the FKTU. The Committee further notes the information from the observation of the FKTU/KCTU, dated 25 August 2006, that 106 victims of military sexual slavery have passed away in the Republic of Korea over the past 11 years, and 11 in the last year alone.

B. The Government further reports that during the period from 1 June 2004 to 30 June 2006, six court judgments and decisions were issued in military sexual slavery cases, all of which have entailed dismissals of plaintiffs' claims for compensation.

C. The Committee notes the information from ZENZOLEN that, in the case filed against the Government in the Tokyo District Court in 2001 concerning alleged practices of sexual violence occurring on Hainan Island in China, hearings and court sessions were concluded in March 2006, with no date set for final judgment. The Committee also notes the information from ZENZOLEN concerning a second case by Chinese victims involving similar alleged acts in the Shanxi Province of China. According to the same information, in that case the Tokyo High Court, on 17 March 2005, upheld a lower court's ruling, finding the government liable but rejecting the claims for compensation as being extinguished by the 1952 Treaty of Peace.

D. In relation to the two abovementioned cases, the Committee notes the Government's indication in its report that the Hainan Island case is still pending before the Tokyo District Court and, that in the second case, the plaintiffs have appealed the March 2005 ruling of the Tokyo High Court to the Supreme Court, where the case is still pending. The Government indicates that it will provide the Committee with information about developments in both these cases in due course.

E. In relation to the issue of the Asian Women's Fund (AWF), the Government reports among other matters that, "Since all the projects to assist former 'Comfort Women' have been concluded as planned, the AWF has decided to be dissolved in March 2007". The Government further states in its report, received on 26 September 2006 that it "will continue to make efforts to seek further reconciliation with the victims and obtain their understanding for the sincere sentiment of the GOJ Government and its people".

F. The Committee firmly repeats its hope that the Government will in the immediate future take measures to

respond to the claims of these victims, the number of whom are continuing to decline with the passing years. The Committee asks that the Government continue to inform it about the course and outcomes of pending cases and also to provide any other related information to the Committee.

### **Observation (CEACR) - adopted 2007, published 97th ILC session 2008**

I. In its previous comments, the Committee has discussed at length the limits of its mandate in respect of the two historical breaches by the Government of the Convention relating to the Second World War and the years leading up to it namely, military sexual slavery (the system of so-called “Comfort Women”) and wartime industrial forced labour. It will not repeat them here.

II. The Committee, in its last two observations, has requested the Government to continue to inform it about the course and outcomes of litigation in relation to claims of the victims and also to provide information about any related action. Next year is the reporting year for the Government under this Convention.

III. This year, following its previous observation, the Committee has received further information from numerous workers’ organizations, including communications from:

- The All Japan Shipbuilding and Engineering Union received on 28 May, 27 and 28 August 2007, copies of which were forwarded to the Government on 5 June and 5 September 2007;
- The Japan Dockworkers Union (Nagoya Branch), received on 24 July 2007, of which a copy was forwarded on 21 August 2007;
- The All Toyota Labour Union (ATU), received on 10 August 2007, with a copy forwarded on 17 August 2007;
- The Heavy Industry Labour Union (Japan), received on 27 August 2007, with a copy forwarded to the Government on 5 September 2007;
- The Federation of Korean Trade Unions (FKTU) and the Korean Confederation of Trade Unions (KCTU) received on 30 August 2007, with a copy forwarded to the Government on 11 September 2007;
- The Federatie Nederlandse Vakbeweging (FNV) received on 30 August 2007 with a copy forwarded on 13 September 2007. A second communication was received on 28 November 2007; and
- The International Trade Union Confederation (ITUC), received on 13 September 2007, of which a copy was forwarded to the Government on 21 September 2007.

IV. The Committee notes that the communications essentially referred to a number of recent judgments by Japanese courts in cases involving individual claims by victims of wartime industrial forced labour and military sexual slavery, in which the courts have dismissed the claims, finding that the legal basis of the claims has been extinguished by post-war treaties (or barred by statutes of limitation). At the same time, factual findings have been made in favour of the victim plaintiffs and encouraging the party defendants to settle the claims on moral or humanitarian grounds. Some cases may be the subject of future appeal on legal grounds.

V. In addition, the communications of the workers’ organizations referred to above include reference to public remarks in October 2006 and March 2007 by then Prime Minister Shinzo Abe and other Cabinet officials. The communications assert that the remarks amount to assertions denying proof of the use of direct, physical coercion by the Japanese military to recruit women and girls into conditions of wartime sexual slavery, which statements appeared to repudiate the August 1993 statement of the then Chief Cabinet Secretary, Mr Yohei Kono, reporting on the findings of a government inquiry, and noted by this Committee in its 2002 observation.

VI. The Committee notes the communication submitted by the Government dated 30 November 2007, informing it that, given the volume of communications it has received, it will provide a comprehensive report in 2008, which is its regular reporting year for this Convention. The Government however provided a copy in Japanese of the Supreme Court judgment on the Nishimatsu Corporation case on 27 April 2007. It also stated as regards the issue of “Comfort Women” that the position of the Government expressed in the statement of the then Chief Cabinet Secretary, Mr Yohei Kono, on the result of the study on the issue of “Comfort Women” in 1993 remained

unchanged and that the then Prime Minister Abe has expressed his support for this statement.

VII. The Committee requests the Government to fully respond to the recent judicial and related developments referred to in the communications from the workers' organizations referred to above as well as to the observation contained in its last report.

## **Observation (CEACR) - adopted 2008, published 98th ILC session 2009**

In its earlier comments, the Committee examined the issues of sexual slavery (so-called "Comfort Women") and industrial slavery during the Second World War. The Committee refers in this connection to its earlier considerations concerning the limits of its mandate in respect of these historical breaches of the Convention. In 2006, the Committee in its observation firmly repeated its hope that the Government would in the immediate future take measures to respond to the claims of the surviving victims, the number of whom have continued to decline with the passing years. The Committee also requested the Government to continue to inform it about any recent judicial decisions and related developments. In its 2007 observation, the Committee, in addition, requested the Government to respond to the communications by the workers' organizations.

The Committee notes the information communicated by the Government in its reports received on 10 July 2008, 1 September 2008 and 17 October 2008, as well as the Government's electronic communications dated 10 and 18 October 2008.

### **I. Comments received from workers' organizations**

A. In 2008, the Committee has received further information from a number of workers' organizations, such as:

- All Japan Shipbuilding and Engineering Union (dated 25 May and 21 August 2008);
- Tokyo Regional Council of Trade Unions (Tokyo-Chihyo) (dated 27 May and 20 August 2008);
- All Japan Dockworkers Union-Nagoya Branch (dated 25 May and 2 June 2008);
- Federation of Korean Trade Unions (FKTU) and the Korean Confederation of Trade Unions (KCTU) (dated August 2008);
- Heavy Industry Labor Union (Japan) (dated 25 August 2008);
- Teachers' Union of Nagoya Municipal High School (dated 26 August 2008);
- Aichi Union Seibonoie Branch (dated 25 August 2008);
- International Trade Union Confederation (ITUC) (dated 2 September 2008);
- Japanese Trade Union Confederation (JTUC-RENGO) (dated 17 September 2008).

Copies of these communications were forwarded to the Government for any comments it might wish to make. The Committee notes the Government's response to these communications received on 19 November 2008.

B. The above communications of the workers' organizations referred, inter alia, to the status of cases pending in Japanese courts involving claims by victims of wartime industrial forced labour. The Committee notes that, according to the information communicated by the Tokyo Regional Council of Trade Unions (Tokyo-Chihyo), as of 31 July 2008 there were five such cases pending in the appellate courts. In all of these cases the lower courts had dismissed the claims, either on procedural grounds as time-barred and barred by state immunity or as having been waived by post-war treaties and communiqué. In two cases, final judgments dismissing the appeals were issued in July of 2008 by the Supreme Court of Japan, including the Niigata case, which involved a favourable decision on 26 March 2004 by the Niigata District Court and a judgment awarding compensation of 8 million yen to each victim, but which was subsequently overturned by the Tokyo High Court on 14 March 2007.

C. The Committee notes the indication of the Tokyo Regional Council of Trade Unions (Tokyo-Chihyo), in its communication dated 20 August 2008, that in one of the cases pending before the Fukuoka High Court, the court issued a ruling on 21 April 2008, in which it recommended that the parties, including the Government of Japan as one of the defendants, seek reconciliation and an amicable settlement of the claims involved. The All Japan Dockworkers Union- Nagoya Branch, in its communication dated 2 June 2008, referred to a petition for a recommendation for reconciliation and amicable settlement lodged with the Japan Supreme Court, in the case against the Government of Japan and Mitsubishi Heavy Industries, Ltd, brought by Korean victims of wartime

industrial forced labour, the petition having been lodged after the Government of Japan declined to respond to a recommendation for settlement made by the Nagoya High Court in its judgment on 31 May 2007.

D. The communications from the workers' organizations also referred to the issue of military sexual slavery as it continues to be taken up by several UN bodies, in particular, in the form of recommendations of the Working Group (of the UN Human Rights Council) on the Universal Periodic Review adopted in May 2008 (A/HRC/8/44, paragraph 60); as an item on the List of Issues taken up by the UN Human Rights Committee (CCPR/C/JPN/Q/5), in connection with its consideration in September 2008 of the Government's fifth periodic report under the International Covenant on Civil and Political Rights; and in recommendations of the UN Committee against Torture in connection with its consideration, in May 2007, of the first periodic report of the Government under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/JPN/CO/1, paragraphs 12 and 24).

E. The communications from the workers' organizations also referred to recent motions and resolutions on the issue of military sexual slavery adopted by several parliamentary bodies, which call for further measures to be taken by the Government of Japan. These include: a unanimous resolution passed by the lower house of the Netherlands Parliament on 20 November 2007; Motion 291 passed by the House of Commons of Canada on 28 November 2007; a joint motion for a resolution on "Justice for Comfort Women", adopted by the European Parliament on 13 December 2007; as well as resolutions adopted by the Japanese District Councils of Takarazuka and Tokyo Kiyose on 25 March 2008 and 25 June 2008, respectively, urging the Government to take measures to examine and reveal the historical truth about the issue, to restore dignity and justice to the victims, to provide them with compensation, and to further educate the public.

## **II. Government's response**

A. The Committee notes the Government's indication, in its report received on 1 September 2008, that as of 31 May 2008 there were 13 cases still pending in the Japanese courts involving claims by victims of military sexual slavery and wartime industrial forced labour (one and 12 cases, respectively). According to the report, during the period from 1 June 2006 to 31 May 2008 the courts pronounced on these issues in three "Comfort Women" cases (two cases by the Supreme Court and one at the district court level) and in 17 "conscripted forced labour" cases (seven cases by the Supreme Court, five judgments at the high court level, and five at the district court level). The Government also indicates that: "In all these cases, the courts have dismissed the plaintiffs' claims for compensation against the GOJ in accordance with domestic law and international law including the relevant treaties settling war-related issues".

B. The Committee notes the Government's indications in its report received on 1 September 2008 and in its electronic communications of 10 and 18 October 2008 that, with regard to the issue of "Comfort Women", the position of the Government expressed in the August 1993 statement of the then Chief Cabinet Secretary, Yohei Kono, in connection with a report on the findings of a government inquiry, had remained unchanged and continued to represent the Government's present position on this matter, and that the new Prime Minister Taro Aso had recently reaffirmed his support for this statement. The statement reads in part as follows:

Undeniably, this was an act, with the involvement of the military authorities of the day that severely injured the honour and dignity of many women. The Government of Japan would like to take this opportunity once again to extend its sincere apologies and remorse to all those, irrespective of place of origin, who suffered immeasurable pain and incurable physical and psychological wounds as Comfort Women ... 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 ...

C. The Committee has noted from the Government's statements in its report received on 1 September 2008, as well as in its replies to and comments on the recommendations of UN bodies referred to above, that with regard to non-legal measures to respond to the claims of surviving victims of wartime industrial forced labour and military sexual slavery and to meet their expectations, the Government has placed a heavy, almost exclusive emphasis on the Asian Women's Fund (AWF) and its related activities, an initiative launched in 1995 and continued until the Fund was dissolved on 31 March 2007, and that the AWF appears to constitute the sole measure the Government has contemplated taking to fulfill its acknowledged moral responsibility to the victims. The Committee recalls that in its 2001 and 2003 observations it considered that the rejection by the majority of former "Comfort Women" of monies from the AWF because it was not seen as compensation from the Government, and the rejection, by some,

of the letter sent by the Prime Minister to the few who accepted monies from the Fund as not accepting government responsibility, suggested that this measure had not met the expectations of the majority of the victims. The Committee therefore expressed the hope that the Government would make efforts, in consultation with the surviving victims and the organizations which represent them, to find an alternative way to compensate the victims in a manner that would meet their expectations. The Committee recalls in this connection the Government's statement in its report received on 26 September 2006, with reference to the dissolution of the AWF in March 2007, that it "will continue to make efforts to seek further reconciliation with the victims".

D. The Committee hopes that in making these further efforts to seek reconciliation with the victims, the Government will, in the immediate future, take measures to respond to the claims being made by the aged surviving victims. The Committee also requests the Government to continue to provide information about recent judicial decisions and related developments.

### **Observation (CEACR) - adopted 2010, published 100th ILC session 2011**

I. Referring to its earlier comments, the Committee notes the information provided by the Government in its reports received on 13 and 30 September 2010, as well as in the Government's communications received in November 2009 and November 2010.

In its earlier comments, the Committee examined the issues of wartime industrial forced labour and sexual slavery (so-called "comfort women") during the Second World War. It refers in this regard to its earlier considerations and conclusions concerning the limits of its mandate in respect of these historical breaches of the Convention. In its previous observation, the Committee expressed the hope that, in making further efforts to seek reconciliation with the victims, the Government would take measures in the immediate future to respond to the claims of the aged surviving victims. The Government was also requested to continue to provide information about recent judicial decisions and related developments.

-The Committee notes communications received in 2009 and 2010 from the following workers' organizations:  
-All-Japan Shipbuilding & Engineering Union (AJSEU) (dated 10 August 2009 and 20 August 2010);  
-Federation of Korean Trade Unions (FKTU) and the Korean Confederation of Trade Unions (KCTU) (dated 26 August 2009 and 27 August 2010);  
-Teachers' Union of Nagoya Municipal High School (dated 12 August 2009 and 20 August 2010);  
-National Federation of Construction Engineering Workers' Unions for Japan (JCEW) (dated 18 August 2010);  
-International Trade Union Confederation (ITUC) (dated 16 September 2009 and 1 September 2010);  
-The Netherlands Trade Union Confederation (FNV) (dated 30 August 2010).

Copies of the above communications from workers' organizations were forwarded to the Government for any comments it might wish to make on the matters raised therein. The Committee notes the Government's response to these communications received on 13 September and 19 November 2010.

Some of the above communications of the workers' organizations referred, inter alia, to positive developments, such as settlement of certain forced labour cases. Thus, the Nishimatsu Construction Company, a private company profiting from industrial forced labour during the Second World War, reached an agreement with all 360 former victims of forced labour at the Yasuno Power Plant in Hiroshima Prefecture on 23 October 2009; it also reached an agreement with 183 Chinese victims of forced labour at a power plant in Niigata Prefecture on 26 April 2010. These settlements were reached after the decision of the Supreme Court of Japan of 27 April 2007, according to which Chinese plaintiffs had no legal right to seek compensation for the damages caused by forced labour exacted by the Nishimatsu Construction Company, but the Court suggested in conclusions that the parties involved (the Nishimatsu Company and the Government) take voluntary measures to relieve the pain of the victims. The settlement provides 250 million yen to 360 victims in the Hiroshima case and 128 million yen to 183 victims in the Niigata case.

The communications from the workers' organizations also referred to the issue of military sexual slavery as it continues to be taken up by the United Nations bodies, in particular, in the form of recommendations of the Committee on the Elimination of Discrimination Against Women (CEDAW), which examined the issue of "comfort women" at its forty-fourth session (20 July to 7 August 2009). This issue was also referred to in the report of the



Special Rapporteur on violence against women, its causes and consequences, submitted to the United Nations Human Rights Council on 23 April 2010 (A/HRC/14/22).

Some of the above communications also referred to resolutions adopted by the local councils of Japan. Since March 2008 and up to August 2010, 30 local councils adopted resolutions urging the Government to solve the Japanese military sexual slavery issue, to restore dignity and justice to the victims, to provide them with compensation, and to further educate the public.

The Committee notes the Government's indication in its report received on 13 September 2010 that, during the period from 1 June 2008 to 31 May 2010, the courts "pronounced" on two cases regarding the "comfort women" issue (one decision by the Supreme Court and one judgment at the high court level) and on 16 cases regarding "conscripted forced labourers" (six decisions by the Supreme Court, nine judgments at the high court level and one judgment at the district court level), in which the plaintiffs claimed state compensation for damages. The Government states that, in all these cases, the plaintiffs' claims for compensation against the Government of Japan have been dismissed, in accordance with the relevant international agreements and joint communiques on the settlement of problems. The Government also indicates that, as of 31 May 2010, there were no cases pending in the Japanese courts concerning the "comfort women" issue and only five cases still pending in courts concerning "conscripted forced labourers".

The Committee takes due note of the Government's statement in the report that the Government of Japan has sincerely and faithfully dealt with the issues of reparations, property and claims relating to the Second World War, including those related to the issue of "comfort women", in accordance with its obligations under the San Francisco Peace Treaty, bilateral peace treaties and other relevant treaties and agreements. Concerning, more particularly, the issue of "comfort women", the Government reiterates that it remains committed to the position expressed in the August 1993 statement of the then Chief Cabinet Secretary, Yohei Kono, where he expressed sincere apologies and remorse to the former "comfort women", while recognizing that this issue was, with the involvement of the military authorities of the day, a grave affront to the honour and dignity of a large number of women. This statement embodies the Government of Japan's official position on this matter which remains unchanged. The Government also states that the Government of Japan has since expressed its sincere apologies and remorse on many occasions. In addition, when the activities of the Asian Women's Fund (AWF) were implemented, the Prime Minister, on behalf of the Government of Japan, sent a letter expressing apologies and remorse directly to each former "comfort woman".

The Committee previously noted from the Government's earlier statements in its reports that, with regard to non-legal measures to respond to the claims of surviving victims of wartime industrial forced labour and military sexual slavery and to meet their expectations, the Government has placed emphasis on the AWF and its related activities, an initiative launched in 1995 and continued until the Fund was dissolved in March 2007, after it had completed its objectives. As the Committee has considered in its 2001 and 2003 observations, the rejection by the majority of former "comfort women" of monies from the AWF because it was not seen as compensation from the Government, and the rejection, by some, of the letter sent by the Prime Minister to the few who accepted monies from the Fund as not accepting government responsibility, suggested that this measure had not met the expectations of the majority of the victims. The Committee therefore expressed the hope that the Government would make efforts, in consultation with the surviving victims and the organizations which represent them, to find an alternative way to compensate the victims in a manner that would meet their expectations.

The Committee notes the Government's statement in its report that it will continue to implement follow-up activities of the AWF. The Government indicates that, as part of such follow-up, the Government of Japan has entrusted the people who were involved in the AWF to implement visiting care activity and group counselling activity (Republic of Korea and the Philippines), as well as exchange of opinions with government officials and academia (Indonesia and the Philippines). The Committee also notes the Government's statement in its communication received on 19 November 2010, that the Government of Japan is arranging an occasion for a government member in a responsible position to meeting with former "comfort women" to directly convey the views of the Government of Japan and to listen carefully to their current living circumstances, past experiences and their personal sentiments.

**Given the serious long-standing nature of the case and noting the abovementioned government indications, the Committee reiterates its hope that, in making these further efforts to seek reconciliation with the victims, the Government will take measures, in the immediate future, to respond to the claims being made by the**



**aged surviving victims of wartime industrial forced labour and military sexual slavery, the number of whom has continued to decline with the passing years. Please provide information, in particular, on the implementation of the follow-up activities of the AWF referred to above and on any other measures, taken or envisaged, including any follow-up to the information received on 19 November 2010.**

### **Observation (CEACR) - adopted 2012, published 102nd ILC session 2013**

For a number of years, the Committee has been examining the issues of wartime industrial forced labour and sexual slavery (so-called “comfort women”) during the Second World War. It has referred in this regard to its earlier considerations and conclusions concerning the limits of its mandate in respect of these historical breaches of the Convention. On numerous occasions, the Committee expressed the hope that, in making further efforts to seek reconciliation with the victims, the Government would take measures to respond to the claims of the aged surviving victims. The Government was requested to continue to provide information about any developments in this regard.

The Committee notes the information provided by the Government in its reports received on 5 September and 1 October 2012, as well as in the Government’s communications received on 28 February and 14 and 16 November 2011.

The Committee notes communications received in 2011 and 2012 from the following workers’ organizations:

- All-Japan Shipbuilding & Engineering Union (AJSEU) (dated 24 and 28 August 2011 and 17 August 2012);
- Federation of Korean Trade Unions (FKTU) and Korean Confederation of Trade Unions (KCTU) (dated 27 August and 5 October 2011 and 28 August 2012);
- National Confederation of Trade Unions (ZENROREN) (dated 21 September 2012).

Copies of the above communications from workers’ organizations were forwarded to the Government for any comments it might wish to make on the matters raised therein. The Committee notes the Government’s response to most of these communications received on 5 September and 14 November 2012.

The Committee notes that, in the above communications, the workers’ organizations express concern about the position of the Government with regard to the issue of “comfort women” and call on the Government to take urgent measures to resolve the issue. Some of the above communications deny the role of the Asian Women’s Fund (AWF) in restoring the victims’ dignity, since the surviving victims largely rejected the compensation offered by the Fund and expressed their opposition to its activities. Some of the workers’ organizations also express their scepticism about the follow-up activities of the AWF being implemented by the Government. They also call on the Government to review national laws with a view to removing existing obstacles to obtaining full reparations before Japanese courts and to settle the wartime forced labour issue.

Some of the above communications refer to a decision of the Constitutional Court of the Republic of Korea passed on 30 August 2011 on the constitutional appeal filed by 109 surviving victims of military sexual slavery, in which the Constitutional Court urged the Korean Government to take proactive action to restore the violated human rights of the victims. In compliance with this decision, the Korean Government proposed bilateral talks to settle the issue with the Government of Japan. Following the above ruling of the Constitutional Court, the Korean Supreme Court ordered the lower courts of the Republic of Korea to retry two cases of wartime industrial forced labour on 24 May 2012.

The communications from the workers’ organizations continue to refer to the issue of military sexual slavery as it had been taken up by the United Nations bodies, in particular, in the report of the Special Rapporteur on violence against women, its causes and consequences, submitted to the United Nations Human Rights Council on 23 April 2010 (A/HRC/14/22). Some of the above communications also referred to resolutions adopted by the local councils of Japan and the Republic of Korea. Thus, since March 2008 and up to August 2012, 36 Japanese city councils and 54 Korean city councils adopted resolutions urging the Government to solve the Japanese military sexual slavery issue, to restore dignity and justice to the victims, to provide them with compensation, and to further educate the public.

The Committee has taken due note of the Government’s repeated statement in its reports that it remains committed to the position expressed in the August 1993 statement of the then Chief Cabinet Secretary, Mr Yohei Kono, where

he expressed sincere apologies and remorse to the former “comfort women”, while recognizing that this issue was, with the involvement of the military authorities of the day, a grave affront to the honour and dignity of a large number of women. The Government reiterates that this statement embodies its official position on this matter which remains unchanged. It recalls that the Government of Japan has since expressed its sincere apologies and remorse on many occasions, based on the then Prime Minister Tomiichi Murayama’s statement in August 1995. The Government also refers once again to a letter expressing apologies and remorse, which was sent by the Prime Minister, on behalf of the Government of Japan, directly to each former “comfort woman”, in connection with the activities of the AWF.

As regards the non-legal measures to respond to the claims of the surviving victims of wartime military sexual slavery and to meet their expectations, the Government refers once again to the activities of the AWF, which was established in 1995 in order to extend atonement from the Government and people of Japan to the former “comfort women” and was dissolved in 2007, after it had completed its objectives. The Committee has noted the Government’s indication that it provided all possible assistance for the AWF, including bearing its total operational costs, fully supporting its fund-raising activities and providing the necessary funds to implement its activities. In this regard, the Government once again indicates that it contributed approximately US\$60 million from the national budget and Japanese people donated approximately US\$7 million to the AWF. However, the Committee recalls that it has considered in its earlier observations that the rejection by the majority of former “comfort women” of monies from the AWF, because it was not seen as compensation from the Government, suggested that this measure had not met the expectations of the majority of the victims. The Committee therefore expressed the hope that the Government would make efforts, in consultation with the surviving victims and the organizations which represent them, to find an alternative way to compensate the victims in a manner that would meet their expectations.

The Committee notes that the Government repeats its previous statement that it will continue to implement follow-up activities of the AWF. The Government reiterates that, as part of such follow-up, the Government of Japan has entrusted the people who were involved in the AWF to implement visiting care activity and group counselling activity (Republic of Korea and the Philippines), as well as exchange of opinions with government officials and academia (Indonesia and the Philippines). The Committee also notes from the Government’s report, and from a communication received in February 2011, that Mr Yutaka Banno, then State Secretary for Foreign Affairs, and Ms Makiko Kikuta, then Parliamentary Vice-Minister for Foreign Affairs, met with former “comfort women” in November 2010 and January 2011 in Japan and explained in person the Government’s views and listened to their current living circumstances, past experiences, wishes and personal feelings. The Government also indicates that, in the light of the meetings, it has increased the budget of the visiting care activities and group counselling activities and will continue to implement follow-up activities of the AWF, while continuing its efforts to grasp the needs of former “comfort women”.

Finally, the Committee notes the Government’s indication in its report that, during the period from 1 June 2010 to 31 May 2012, the courts “pronounced” on five cases regarding “conscripted forced labourers” with regard to lawsuits in which the plaintiffs claimed state compensation for damages. The Government indicates that, in all these cases, the plaintiffs’ claims for compensation against the Government of Japan have been dismissed by reason that all these cases do not fall under the reasons of final appeals of the Code of Civil Procedure. There were no court decisions regarding the “comfort women” issue. The Government also indicates that, as of 31 May 2012, there were no cases pending in the Japanese courts concerning the “comfort women” and “conscripted forced labourers” issues.

While observing that representatives of the Government met with the “comfort women” in 2010 and 2011, the Committee notes with **concern** that no concrete outcome has been noted. *The Committee expresses the firm hope that, given the seriousness and long-standing nature of the case, the Government will continue to make further efforts to achieve reconciliation with the victims, and that measures will be taken, without further delay, to respond to the claims being made by the aged surviving victims of wartime industrial forced labour and military sexual slavery. The Committee requests the Government to provide information on the implementation of the follow-up activities of the AWF referred to above and on any other measures taken or envisaged, including any follow-up to the meetings with former “comfort women” referred to above.*