

# Troubling Legacy: World War II Forced Labor by American POWs of the Japanese

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By Kinue Tokudome

*[Japan Focus has previously introduced the cases of Chinese and Korean World War II forced laborers, and of comfort women from many Asian nations filed against the Japanese government and corporations. Here Kinue Tokudome reviews the claims filed in U.S. courts against Japanese corporations by American POWs who worked as forced laborers more than sixty years ago. In all of the above-mentioned cases, the outcomes pertain not only to justice for victims, but also to transcending animosities associated with the war and paving the way for reconciliation. The issues are particularly salient at a time when Japan is embroiled in conflicts over war, colonialism and historical memory with its Chinese and Korean neighbors.]*

During World War II, massive forced labor took place in two instances. [1] Nazi Germany used about 10 million forced laborers from Eastern Europe in order to sustain her wartime economy. In contrast to Jewish slave laborers in concentration camps and ghettos who were worked to death, most of these laborers survived. [2] The other major instance of forced labor took place throughout Asia under Japanese government, military and corporate control. Those forced to work at construction sites, mines, factories and docks throughout the Japanese conquered territories and in Japan proper included Allied POWs and civilians who were forcibly taken from Korea, China and

occupied areas of Southeast Asia. The total number of forced laborers under the Japanese is said to have exceeded one million [3], many of whom died due to appalling living conditions, lack of medical care, dangerous working conditions and abuse from guards. According to the Japanese military's own record, nearly 25% of 140,000 Allied POWs perished while interned in Japanese prison camps where they were forced to work. [4] Of 27,000 American POWs 11,000 did not survive. [5]

In recent years, 1.4 million former Nazi forced labor victims were compensated through the German foundation "Remembrance, Responsibility, and the Future" created in 2000. [6] The \$5 billion foundation was a result of negotiations that stemmed from lawsuits filed by former slave and forced labor victims against German companies. The German government and German companies equally contributed to the foundation. Compensation to victims was made with the understanding by all parties involved in the negotiations, including former victims and the U.S. government, which facilitated the settlement, that the German government and companies bore no legal responsibility to compensate former victims. It was explained, "The Foundation symbolizes the historical and moral responsibility which German enterprises and the Federal Republic assume for these deeds." In addition to paying compensation to individual victims, the Foundation supports hundreds of educational projects to ensure that the history of Nazi forced labor will not be forgotten. [7]

The history of Japanese forced labor has also been revisited in recent years. Since 1999,

almost 60 Japanese companies that engaged in wartime forced labor, including such well-known companies as Mitsubishi and Mitsui, have been sued in U.S. courts by former Allied POWs seeking unpaid wages and proper compensation for damages. [8] Both the U.S. government and the Japanese government were heavily involved in these cases, in every instance supporting the contention of the defense that the Peace Treaty of 1951 had settled all POW claims. After four and a half years of pre-trial proceedings, the companies successfully had the courts declare that they too bore no legal responsibility to compensate. [9] After the dismissal of these cases, Japanese companies and the Japanese government failed to take any actions comparable to those taken by the Germans. They neither compensated individual victims nor acknowledged the historical fact of POW forced labor. Nor did the Japanese government initiate any educational projects to disseminate information on the history of POWs of the Japanese.



A World War II era Mitsui mineshaft (U.S. National Archives)

This article examines the troubling legacy of WWII forced labor by American POWs of the Japanese.

**Individual Claims: Sole Defense, Disingenuously Claimed**

In the legal proceedings on POW forced labor,

the factual claims by plaintiffs were never disputed. That former POWs of the Japanese suffered horrendously as forced laborers was accepted by U.S courts from the outset. The only major issue contested was whether individual POW claims against Japanese companies were waived by the San Francisco Peace Treaty. Article 14(b) of the Peace Treaty reads:

Except as otherwise provided in the present treaty, the Allied Powers waive all reparation claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the War, and claims of the Allied Powers for direct military costs of occupation.

Although not a party in these cases, the U.S. government filed an amicus brief arguing that the Peace Treaty had indeed waived all claims including individual claims of former POWs. The Japanese government also submitted a diplomatic note stating:

The government of Japan fully shares the position of the United States Government that claims of the United States and its nationals (including prisoners of war) against Japan and its nationals arising out of their actions during World War II were settled by the Peace Treaty." [10]

The record shows, however, that the Japanese government had never taken the position that individual claims were waived until former POWs brought their lawsuits in the U.S. courts. In fact, the opposite was true. The Japanese

government had consistently stated that individual claims were *not* waived by the Peace Treaty or by other bilateral agreements. The following are several examples of such records: [11]

*Peace treaty waiver of claims case (1956)*

When first confronted with the issue of waiver of individual claims in a case, the Japanese government took the position that the Peace Treaty did not waive individual claims. The position arose out of a 1956 case involving two American soldiers stationed in Japan during the U.S. occupation, who shot a Japanese civilian while committing a robbery. In this case, the Japanese victim believed that he could not sue the offenders because of the Peace Treaty. Thus, the victim brought suit against the government of Japan for damages since it was the government of Japan that had waived his individual claims against the offenders by Article 19(a) of the Peace Treaty.

Article 19(a) of the Peace Treaty stipulates:

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. [12]

The Japanese government responded:

What is covered by Article 19(a) was, when compared with (c) of the same Article, only the claims of our country against the country

that the offenders belong to, namely diplomatic protection, and it is understood that claims of the victim against the offenders have not been waived.

The court rejected the government's interpretation of the "waiver" clause of the Peace Treaty and declared that Article 19(a) waived not only diplomatic protection but also individual claims of Japanese nationals against nationals of Allied Powers. The court, therefore, dismissed the case stating that the plaintiff could not hold the government liable for damages that could not be recovered because of signing the Peace Treaty. It reasoned that Japan, as a defeated nation, had no choice but to sign the Treaty. [13]



WPA-65-06035 12 Sept 45

Living quarters and mess hall of Prison Camp No 3 (near Hosokura, northern Honshu, Japan) showing POWs enjoying a meal of dog meat stew, a much cherished diet, when dogs were available.

Photog: Pierce

12752

Liberated POWs in the camp near Hosokura Mitsubishi lead and zinc mine (Sendai Camp 3). (U.S. National Archives)

### *Shimoda case (1963)*

The 1963 Shimoda decision explicitly addressed the issue of the waiver of individual claims. In this case, the Japanese court addressed the question of whether the Japanese government owed compensation to atomic bomb victims of Hiroshima and Nagasaki for waiving their claims to compensation by signing the Peace Treaty. The victims and their families held that the Japanese government had an obligation to pay damages for waiving their potential claims against the United States. To this, the government responded:

The government of Japan, by Article 19(a) of the Peace Treaty, did not waive its nationals' individual claims for damages against the government of the United States and President Truman ... It is a government's right to negotiate with foreign countries based on international law and therefore there is no doubt that its rights can be waived by an agreement with foreign countries... Individual right to seek compensation without going through his/her government is different. No matter what a nation promised by signing a treaty with another foreign country, it will not directly affect it.... Claims of Japanese nationals in Article 19(a) should be interpreted as only that of Japanese government based on its nationals' claims, so-called diplomatic protection of Japan.

The Japanese government continued to argue that individual claims were not waived, in spite of its own court's ruling that individual claims had in fact been waived by the Peace Treaty. The trial court ruled for the government by dismissing the case. However, it disagreed with the government's theory yet again, holding that the Peace Treaty had waived individual claims. [14]

### *Tsunoda testimony (April 8, 1980)*

On April 8, 1980, during the House of Representatives Cabinet Committee meeting, questions arose regarding claims of 600,000 Japanese soldiers who were captured by Soviet forces at the end of World War II and forced to work under harsh conditions in Siberia for two to five years. One diet member argued that claims for compensation against the Soviet government should have been made. Tsunoda

Reijiro, Director-General of the Cabinet Legal Bureau, answered:

As for the claims waived by Article 6 of the Joint Declaration by the Union of Soviet Socialist Republics and Japan, the waiver was the same as in Article 19(a) of the Peace Treaty and it has been the basic position of the government of Japan that except for the government's own claims, it was diplomatic protection that was waived and that claims owned by Japanese nationals as individuals were not waived.

*Siberian internee compensation case (1989)*

In 1981, former Siberian internees brought a suit against the Japanese government. They argued that because the government waived their individual claims against the Soviet Union by the Joint Declaration of the USSR and Japan, the Japanese government was obligated to compensate them for the labor they performed in the Soviet Union. Consistent with the arguments in the Shimoda case, the Japanese government maintained that individual claims had not been waived. It stated in its brief:

The claims that Japan waived by Article 6(2) of the Joint Declaration by the USSR and Japan were claims owned by the government of Japan itself and diplomatic protection, and the claims owned by the Japanese national individuals were not waived.

The court held that the government had no obligation to compensate the former Siberian internees. This time, however, the court did not expressly state that plaintiffs' individual claims

were waived. Instead it argued that even if only diplomatic protection was waived by the Treaty, (meaning that individual claims were not waived) plaintiffs did not possess any means to realize their individual claims other than through the government's exercise of its diplomatic protection. The Supreme Court denied plaintiffs' appeal in 1997. [15]

*Prime Minister Obuchi's statement (1997)*

In 1997, Aizawa Hideyuki of the House of Representatives again raised the issue of Siberian internees' individual claims. In response to Aizawa's written questionnaire, then Acting Prime Minister Obuchi Keizo repeated the earlier position of the government:

As to the claims waived by Article 6 of the Joint Declaration by the Union of Soviet Socialist Republics and Japan, except for the government's own claims, it was diplomatic protection that was waived and claims owned by Japanese nationals as individuals were not waived.

*Siberian internee compensation case (2000)*

Another Siberian internee compensation case was filed in 1999. The Japanese government filed an answer brief in 2000 in which it repeated:

The claims that Japan waived by Article 6(2) of the Joint Declaration by the Union of Soviet Socialist Republics and Japan were claims owned by the government of Japan itself and diplomatic protection, and the claims owned by Japanese nationals as individuals were not waived... By the Joint Declaration

by the Union of Soviet Socialist Republics and Japan, Japan never waived any rights owned by Japanese nationals.

The case was dismissed on the same grounds as the 1989 Siberian internee compensation case. [16]

The dismissal of POW forced labor cases in the U.S. courts made the inconsistency of the Japanese government's position on the crucial issue of individual claims legally irrelevant. But these records reveal that the Japanese government was disingenuous when it stated that American POW claims were waived by the Peace Treaty.

### **Lost Opportunity for an Honorable Closure**

What was lost in the former POWs' unsuccessful legal challenge was far more than their unpaid wages. The following reflections by participants in the German settlement painfully reveal what was lost for American POWs of the Japanese and for bringing to closure a painful episode in the U.S.-Japan relationship.



A Hitachi prisoner of war camp (U.S. National Archives)

Roman Kent, the leader of the victim group in the German forced and slave labor settlement negotiation, wrote recently:

...I put on the table two conditions that would

not be subject to negotiation, and without which no agreement would be accepted by us.

1. There must be a full and sincere apology on the part of German government and German industry for the crimes they committed during the Holocaust.

2. Slave and forced laborers will be referred to only by name; under no circumstances will they be denoted by numbers as we were referred to in the concentration camps. [17]

Lothar Ulsamer who represented DaimlerChrysler wrote:

Many former forced laborers I talked to emphasized that the suffering they were subjected to is something that should not be forgotten. Their primary interest, however, was not that of ensuring that the horrors of National Socialism will be remembered. Instead, they urged that we not be fixed on the past but rather derive lessons from the past for the present and the future. It became evident in conversations with victims that for most of them this was their main interest. Every conversation with victims who experienced those times is of concern to us. Every personal destiny counts. [18]

I have never met a former POW of the Japanese who forgot his POW number in Japanese. After more than 60 years, they remain mere numbers as long as the Japanese companies, for whom they were forced to work, and the Japanese government, which arranged their dispatch to the companies, refuse to enter into a sincere dialogue comparable to one that their German counterparts had with their forced labor victims.

The last and probably the most troubling legacy of POW forced labor is the lack of knowledge and understanding by today's Japanese of the history of POWs of the Japanese. Recently, Japan's leading monthly magazine *Bungei Shunju* carried an article that questioned the credibility of former POWs' testimonies who survived the infamous Bataan Death March. [19] Victims of forced labor suffered numerous abuses by the Japanese military, such as the Bataan Death March and the horrific ordeal on POW transport Hellships, [20] before arriving in Japan. Yet their suffering is little known in Japan. In addition, although there were nearly 130 POW camps scattered across Japan and more than 30,000 Allied POWs including 11,000 American POWs were forced to work there, that fact is virtually unknown in Japan today. [21]

"Encounters with former forced laborers and other victims of National Socialism," which has invited back some 2,000 former forced and slave laborers to Germany. It is explained that the project is designed to enable civic initiatives to make a gesture of reconciliation between peoples and to keep alive the memory of National Socialist injustice. Another project called "Documentation of the life stories of former forced and slave laborers" is providing support in 28 countries for up to 550 interviews with former forced and slave laborers. [22] Such measures are essential for education and reconciliation. The Japanese government does have a program of inviting former British POWs, Dutch POWs, and their family members to Japan. However, American POWs and their family members have been excluded from that program. [23]



Liberated POWs at Omori Camp (Tokyo main camp)  
(U.S. National Archives)

One of the most remarkable projects supported by the German Foundation is called,

### Conclusion

The story of American POWs of the Japanese, the overwhelming majority of whom were captured in the Philippines, was not a small chapter in the history of the United States. Their surrender to the Japanese was the largest single defeat in the history of the United States Armed Forces to that time. What these soldiers endured as POWs will be told and retold by generations to come. [23] It is not in the best interest of the Japanese state or its corporations to have a troubling legacy of refusing to address this painful history and the larger history of forced labor of which it was a part. The Japanese government and companies should acknowledge the wartime POW forced labor by making related historical records available to the public, offer a sincere apology, and initiate meaningful educational/reconciliation projects to bring to an honorable closure this tragic event of World War II while some of the survivors are still with us. [24]

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*maintains a bilingual [website](#).*

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[1] Another large scale forced labor took place immediately after WWII when 600,000 Japanese soldiers in Manchuria were taken to Siberia by Soviet forces. Approximately 10% of them died while in captivity.

[2] “Slave laborers” were mostly Jewish workers who were earmarked for extermination and “forced laborers” were almost exclusively non-Jewish workers who were conquered civilian population and prisoners of war.

[3] According to the Japanese government, the number of Chinese forced laborers was 38,935, and their death rate was 17.5%. It is difficult to determine the number of forced workers from the Korean peninsula and other parts of Asia. South Korea informed the Japanese government during the 1965 normalization talks that 1.03 million South Koreans were forced to work for the Japanese military or companies. For detailed accounts of Asian forced labor, see Yumi Wijers-Hasegawa, “[Korean Forced Laborers: Redress movement presses Japanese government](#),” and William Underwood, “[Chinese Forced Labor, the Japanese Government and the Prospects for Redress](#).”

[4] Chaen Yoshio, ed., *Daitoa Senka Gaichi Furyo Shuyojyo* (Tokyo: Fuji Shuppan, 1987), pp. 23-24, pp. 35-36. This book was compiled from the records kept by the Furyo Joho Kyoku, available at Boei-Cho, Boei Kenkyujo (The National Institute for Defense Studies).

[5] CRS report for Congress, “U.S. Prisoners of War and Civilian American Citizens Captured and Interned by Japan in World War II: The Issue of Compensation by Japan,” Updated December 17, 2002. pp. 6-7.

[6] In addition to forced labor victims, 143,000

Jewish slave labor victims were compensated. For more information, see “[Report to Congress: German Foundation ‘Remembrance, Responsibility, and the Future,’](#)” U.S. State Department, Bureau of European and Eurasian Affairs, March 2005.

[7] For more information on the German Foundation, see [this](#).

[8] For details on these cases, see Kinue Tokudome, “[POW Forced Labor Lawsuits Against Japanese Companies](#),” Japan Policy Research Inst. Working Paper No. 82 (Nov. 2001).

[9] For the federal court decision, see *In re World War II Era Japanese Forced Labor Litigation*, 114 F. Supp. 2d 939 (N.D. Cal. 2000). For the California court decision, see *Mitsubishi Materials Corp. v. Superior Court of Orange County*, 130 Cal. Rptr. 2d 734 (2003).

[10] “The Views of the Government of Japan on the Lawsuits against Japanese Companies by Former American Prisoners of War and Others,” Embassy of Japan (2000).

[11] For a more detailed discussion on these records, see Kinue Tokudome and Azusa K. Tokudome, “Individual claims: are the positions of the U.S. and Japanese governments in agreement in the American POW forced labor cases?”, *UCLA Pacific Basin Law Journal* 21:1 (Fall 2003), pp. 1-28.

[12] The U.S. government interprets 14(b) and 19(a) of the Peace Treaty as having the same effect. “Article 19 (a) similarly closed off the possibility of claims being brought by Japanese nationals against the United States or its nationals arising out of both the war and the subsequent occupation of Japan.” *Former U.S. World War II POWs: A Struggle for Justice Before the Senate Judiciary Committee*, 106th Cong. 12 (2000) (statement of Ronald J. Bettauer, Deputy Legal Adviser, U.S. Department of State).



- [13] Horimoto v. Japan (Tokyo Dist. Ct., Aug. 20, 1956).
- [14] Shimoda v. Japan (Tokyo Dist. Ct. Dec. 7, 1963).
- [15] Nikaido v. Japan (Sup. Ct., Mar. 13, 1997).
- [16] Matsumoto et al. v. Japan, (Osaka Dist. Ct. 2000).
- [17] Roman Kent, "It's Not about the Money: A Survivor's Perspective on the German Foundation Initiative," Michael Bazylar and Roger P. Alford, eds., *Holocaust Restitution: Perspectives on the Litigation and Its Legacy* (New York: New York University Press, 2006), p. 207.
- [18] Lothar Ulsamer, "German Economy and the Foundation Initiative: An Act of Solidarity for Victims of National Socialism," Michael Bazylar and Roger P. Alford, eds., *Holocaust Restitution: Perspectives on the Litigation and Its Legacy*, p. 183.
- [19] Yukie Sasa, "Bataan Shino Koshin Onna Hitori De Toha," *Bungei Shunju* (December, 2005), pp. 200-209. For an English summary of this article and subsequent developments, see the 1/14 and 2/13 entries of the [NEWS section](#).
- [20] Conditions on Hellships are described in the [inscription](#) on the recently dedicated Hellships Memorial in Subic Bay, the Philippines.
- [21] It was only recently that a group of volunteers, not the Japanese government, compiled an online list of wartime POW camps in Japan and a roster of those who died there.
- [22] For more information on educational projects supported by the Foundation, see [this](#).
- [23] Email response by the Japanese Foreign Ministry to the inquiry from the author. June 16, 2004.
- [24] See, for example, two well-researched books recently published by children of POWs. Duane Heisinger, *Father Found: Life and Death as a prisoner of the Japanese in World War II* (Xulon Press, 2003), and John A. Glusman, *Conduct Under Fire: Four American Doctors and Their Fight for Life as Prisoners of the Japanese 1941-1945* (New York: Viking, 2005).
- [25] Even an American foundation, the Humanitarian Aid Foundation, tries to assist not only European forced/slave labor survivors but also those of Japanese forced labor. Stuart Eizenstat, Deputy Secretary of the Treasury in the Clinton Administration who represented the U.S. government in the German slave/forced labor settlement negotiations, helped to create this foundation. More information can be found [here](#).