

Legal Discussion Points for forming a future oriented, cooperative, mutually trustworthy relationship between Korea and Japan through consensual resolution of Past Issues^{*}

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〈국문초록〉

나당연합군과 백제부흥운동을 위한 백제와 왜의 연합세력의 충돌과 관련된 서기 663년의 백강전투는 한반도를 둘러싼 뿌리 깊고 역사적인 갈등의 시작으로 자주 강조된다. 백강전투는 일본(야마토)과 한반도를 둘러싼 중요한 역사적 사건이지만, 현대 국제법이나 표준적인 역사 분석에 비추어 볼 때 일본의 한국 식민 통치(1910~1945)를 정당화하는 근거로 사용될 수는 없다. 백강전투는 일본(야마토)과 한반도를 둘러싼 중요한 역사적 사건이지만, 현대 국제법이나 표준적인 역사 분석에 비추어 볼 때 일본의 한국 식민 통치(1910~1945)를 정당화하는 근거로 사용될 수 없다.

1965년 6월 22일에 체결된 한일기본조약은 대한민국과 일본의 외교 관계를 정상화하고 전후 배상 문제를 해결하기 위한 것이었다. 한일기본조약과 그에 부속된 배상 청구 합의는 외교 관계를 정상화했지만, 일본의 한국 식민 통치(1910~1945)의 법적 성격과 배상 문제 해결에 대해서는 근본적인 해석 차이를 남겼다. 한국은 역사적으로 한일병합조약이 일본의 강압에 의한 것이었으므로 처음부터 무효(불법)이며, 일본에 의한 한국병합은 부당하고 불법적인 점령이었다고 주장한다. 이에 대해 일본은 일제강점해 당시 국제법상 적법한 합법이었다고 반박한다.

한국의 일본의 식민지 지배에 대한 배상 청구는 일제강점시에 행해진 전시 동원에 대한 배상금을 요구하는 것으로 집약된다. 그러나 한국은 제2차 대전 이후에 체결된 샌프란시스코 강화조약에 당사자로 참여하지 않았기 때문에 '배상'이나 '보상금'과 같은 용어를 사용할 수 없었다. 1965년 한일기본조약과 그에 따른 배상금 청구협정은 일본의 식민지 지배에 대한 '배상금 청구권'을 명시적으로 인정하지 않

* This paper is a submission of the academic presentation given at The 7th Korea-Japan Joint Workshop / International Symposium: Human Rights and Justice from the Periphery: Memory, Coexistence, and Environment in East Asia, held at Seinan Gakuin University in Fukuoka, Japan, on April 18, 2026.

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았으며, 대신 일본의 강압적 지배에 대한 3억 달러의 무상보전과 2억 달러의 차관을 제공하는 조건으로 재산 및 배상금 문제를 해결했다.

2018년, 대한민국 대법원은 일제강점제가 불법이며 그로 인한 강제노동 또한 불법이라고 공식적으로 판결을 하였다. 이에 따라 법원은 1965년 합의로 개인의 손해배상 청구권이 소멸되지 않았다고 판시했다. 이러한 한국 대법원의 판결에도 불구하고, 일본은 협상 과정에서 식민 통치의 불법성에 대한 법적 책임을 인정하지 않았다.

2023년, 윤석열 정부는 한국의 강제동원 피해자들의 권리청구의 정당성을 인정하면서도 1965년의 한일간의 합의를 유지하기 위한 노력을 시도하였다. 이를 위해 한국 기업들의 기금을 활용하여 이른바 제3자 배상 방식을 통해 피해자들에게 보상하는 국내 재단을 설립하려고 하였다. 이러한 노력은 2018년 대법원 판결과 1965년 합의의 강제노동 및 반인도적 범죄 배상 책임을 조화시킬려고 한 것이었다. 2018년 판결 이후 5년 만인 2023년, 한국 대법원은 피해자와 유족들이 제기한 소송에서 피고 기업인 미쓰비시와 니폰 스틸이 1인당 1억~1억 5천만 원의 배상금을 지급해야 한다고 확정했다.

한국의 일본강제징용 피해자들이 일본 기업들을 상대로 제기한 손해배상 청구 소송에서, 한국 대법원은 “한일청구권협정 체결을 근거로 하여, 한국의 강제징용 피해자들의 배상청구 소송 진행을 막을 수 없다”고 판결했다. 2월 12일, 대법원 제1민사부(노태약 재판장)는 강씨와 다른 피해자 및 유족들이 미쓰비시중공업 등 일본 기업들을 상대로 제기한 손해배상 청구 소송의 최종심에서 피고 측의 모든 항소를 기각하고, 사건을 1심으로 환송한 항소심 판결을 확정했다.

전후 독일과 일본의 배상 모델은 연합군의 점령 전략, 냉전의 발발, 지역 정치 역학, 그리고 전시 만행에 대한 국내·사회·정치적 반응 등 여러 요인으로 인해 상당한 차이를 보이고 있다. 독일은 홀로코스트에 대한 도덕적 의무감에 따라 국가 차원에서 조기에, 광범위하게, 그리고 지속적으로 배상하는 방식을 취했다. 반면 일본의 배상은 1950년대에 양자 간 협상과 경제 원조를 통해 이루어지는 경우가 많았다. 한일 간 갈등 해소를 위해서는 독일의 강제노동 피해자 배상 문제를 비교법적 관점에서 살펴보는 것이 시급하다. 이와 관련하여 독일의 기억, 책임 그리고 미래 재단의 설립을 통한 전후 배상문제 해결은 한국과 일본의 전후 배상에 대한 개인적 청구권 인정과 관련하여 중요한 의미를 지닌다.

한나 아렌트의 악의 평범성의 개념을 적용하면, 한국 피해자들에게 강제노동에 대한 배상 책임을 묻는 과정에서 부분적인 개별 배상이 아닌, 불법 행위의 체계적 성격을 규명하는 구조적 배상과 공식 사과를 요구할 수 있다. “고의는 없었다”거나 “당시에는 단지 법의 명령을 따랐을 뿐”이라는 변명은 받아들일 수 없으며, 일본과 같은 침략국의 강제노동 배상 책임에 있어서는 생각의 부재가 면책 사유가 될 수 없음을 보여준다. 신일본제철소 사건과 유사한 소송들은 이러한 간극을 메우기 위한 시도이며, 법적 메커니즘을 통해 이러한 “평범하지만 파괴적인” 착취 시스템을 인정하도록 강제하는 것이다. 이는 독일의 전후 성찰처럼 양국 모두에게 “새로운 헌법적 애국 정체성”을 확립하는 데 중요한 단계로 인정된다.

해결의 인정 철학을 한국과 일본의 과거사와 관련된 역사적 분쟁에 적용할 때,

화해는 (1965년 조약처럼) 일회성 해결이 아니라 지속적인 대화와 협상의 과정을 통해서 행해진다. 이러한 접근 방식은 과거에 대한 완전한 합의를 반드시 달성할 필요 없이 “트라우마”를 해소하고, 상대방의 관점을 지속적으로 인정하는 데 초점을 맞춘 것이다. 양국이 상대방의 정당성과 안보 문제, 특히 북한과 같은 지역적 위협과 세계적 불확실성 속에서 서로의 입장을 인정할 때 신뢰가 구축된다. 본질적으로 해결의 인정 이론을 적용한다는 것은 한국과 일본이 서로의 정당성을 상호 인정하고, 역사적 트라우마에도 불구하고 세계화된 세상에서 없어서는 안 될 파트너로서 공동의 운명을 개척해 나가는 것을 서로 가능하게 만드것을 의미한다.

주제어 : 과거문제의 합의적 해결을 통한 한국과 일본의 미래지향적, 협력적 신뢰관계 구축을 위한 법적인 논의점들, 한일기본조약과 일본의 식민지 지배와 관련된 한일 간의 청구권 협정, 한국의 강제징용 피해자들의 일본기업에 대한 배상청구에 대한 한국 대법원 판결들, 해결의 인정철학의 한국과 일본의 발전적인 미래적 관계 형성에 적용

• 투고일 : 2026.06.30. / 심사일 : 2026.07.23. / 게재확정일 : 2026.07.25.

I . Introduction

The Battle of Baekgang(白江) (or Battle of Baekchon River(白村江)/Hakusukinoe), fought in 663 AD, stands as one of the most critical turning points in ancient East Asian history. It was a massive naval confrontation where the allied forces of Tang China and Silla(新羅) decisively defeated the allied forces of Baekje(百濟, Kutara) and Yamato Japan(大和, 倭). Regarding the reason why Japan participated in the international conflict known as the “Battle of Baekchon River,” in which ancient East Asian empires became entangled, the explanation that it was a “preventive war” is found in the fact that following the death of Emperor Kōtoku((孝德), who had maintained a pro-Silla policy in Japan at the time, Emperor Saimei(齊明) and Prince Naka no Ōe((中大兄)) shifted to a pro-Baekje policy. When Baekje, which was allied with Japan, was destroyed by the Tang and Silla, the Yamato royal power felt a sense of crisis that Japan itself would be the next target. Consequently, they judged that by using the Korean Peninsula as a battlefield and cooperating with the Baekje restoration forces and Goguryeo, they could deter the Tang and

Silla armies¹⁾.

This battle did more than just decide the fate of the Korean Peninsula; it fundamentally reshaped the geopolitical, cultural, and diplomatic relationships between Korea and Japan for centuries to come. Essentially, the Battle of Baekgang is a historical event in which the ‘shared history’ between early Yamato Japan and the Korean Peninsula is suddenly severed and disappears. It is a moment when Korea and Japan are inevitably forced to develop in new directions as separate, independent nations.

Although not a generalized official historical perspective, there is also an opinion that the crucial event providing clues to the historical relationship between Korea and Japan lies in the ancient battles of Baekgang or Baekchon River. Following the fall of Baekje in 660 AD and the subsequent Battle of Baekgang, the alliance between the Baekje restoration movement and Yamato Japan represented a significant, albeit failed, attempt at military cooperation. This effort was driven by a deep, long-standing relationship between the two states, often supported by the Japanese court, particularly in the context of Queen Saimei (often referred to in early scholarship regarding this era, though the prompt mentions “Uihu,” historical records primarily focus on Saimei’s direct involvement in supporting the restoration). Although Japan participated in the Battle of Baekchon River, contrary to the intention of a “preventive war,” it experienced a devastating defeat, which led to a busy preparation for the upcoming war. Amidst a sense of crisis that the combined forces of Tang and Silla might invade Japan at any time, he devoted himself to building a centralized state together with the refugees who had crossed over following the reorganization of the Korean Peninsula²⁾.

The defeat resulted in the total collapse of Baekje and the withdrawal of Japanese influence from the Korean peninsula for nearly 900 years. According to the so-called theory of revenge regarding the severance from

1) Whanbhum Song, International Wars in Ancient and Medieval Japan, and East Asia—Focused on the Baekchon River(白村江)Battle and Mongol Invasion, Sa-Chong vol., no.92., the institute for the study of history of Korea University 2017, 208.

2) Song, ibd., 209.

Korea resulting from this defeat, some historians and interpretations suggest this crushing defeat created a “hidden trauma” or “inherited resentment” within Japanese consciousness. The loss broke the shared cultural ties between the ancient Japanese aristocracy and Baekje, beginning a long process where Japan sought to re-establish dominance over the region.

Fukuoka is directly connected to the Mongol-Korean invasions of Japan as the primary landing site and main battlefield where the allied fleets of the Mongol Empire and Goryeo Dynasty attacked Japan in 1274 and 1281. Hakata Bay in modern-day Fukuoka served as the focal point for these historic amphibious assaults and Japan’s subsequent coastal defenses. 1274 and 1281 failed primarily because of fierce Japanese defense and catastrophic typhoons that destroyed the invading armadas, which the Japanese named kamikaze or “divine wind”³⁾.

While many historians cite Toyotomi Hideyoshi’s desire for conquest and the redirection of internal samurai military energy as the primary drivers, the “revenge” argument suggests a deeper, symbolic ambition. Hideyoshi, aiming to rule East Asia, may have viewed his invasion as an overturning of the 663 AD verdict—a reassertion of Japan’s authority in the region. The annexation treaty (1910) can be seen as the ultimate culmination of the goal to “correct” the outcome of 663 AD. From this perspective, this treaty can be seen as the fulfillment of Japan’s long-term ultimate goal. It represented the final, complete subjugation of the Korean peninsula.

While the “long-term revenge” theory provides a compelling narrative for historical resentment, most scholars focus on more immediate causes for the Imjin War (e.g., Toyotomi Hideyoshi’s ambition) and the annexation (e.g., geopolitics of the late 19th/early 20th century). However, the memory of 663 AD is often highlighted as the start of a deep-seated, historically rooted conflict over the Korean peninsula. The Battle of Baekgang (663 AD), while a significant historical event involving Japan (Yamato) and the Korean peninsula, cannot be legitimately used to justify Japan’s colonial

3) Mongol invasions of Japan, https://en.wikipedia.org/wiki/Mongol_invasions_of_Japan, kamikaze of 1274 and 1281, <https://www.britannica.com/event/kamikaze-of-1274-and-1281>.

rule over Korea (1910 - 1945) under modern international law or standard historical analysis.

Conversely, can the Battle of Baekgang or Baekchon River be used as a pretext to justify Japan's colonial rule over Korea? While imperial Japanese historians and nationalists have historically used such ancient alliances to construct a narrative of "historical rights" over Korea, this argument is considered a political fabrication rather than a sound historical justification.

II. The Treaty on Basic Relations between Korea and Japan (韓日基本條約) and Case Law of Korean and Japanese Courts on the Recognition of Individual Claims for Damages

How do legal disputes related to Japan's colonial rule over Korea act as variables in establishing a future, trustworthy, and cooperative relationship between Korea and Japan? Japan's colonial rule over Korea (1910 - 1945) remains a foundational, structural, and deeply emotional factor shaping modern Korean perceptions of Japan, acting as the primary barrier to building lasting trust between the two nations. The memory of forced assimilation, resource exploitation, and wartime atrocities forms the bedrock of Korean national identity and historical consciousness, ensuring that disputes over this period frequently derail diplomatic, economic, and security cooperation. Imperial Japan's colonial rule of Korea from 1910 to 1945 was a period in which it structurally distorted Joseon society through military oppression, economic exploitation, and policies of national annihilation. Research has primarily focused on the debate between the [exploitation theory] (denial of endogenous development) and the [colonial modernization theory] (claim of contribution to modernization)⁴⁾.

The 35-year occupation, characterized by policies like name changes,

4) Kye-Hyung Lee, The opinion of the "Colonial beautification theory" in Japan in the 1950s-1960s and the response of the Korean historical academia, 2021, vol., no.54, institute for historical studies at Chung-Ang University 2021, 115-153.

language bans, and the destruction of cultural sites, created a lasting memory of trauma and a strong, protective nationalism. Korean perceptions as wartime exploitation memories are heavily influenced by specific, unresolved issues from the Pacific War, including forced labor, sexual slavery (“comfort women”), and conscription.

The difficulty of expressing an apology for one’s own wrongdoings in South Korea and Japan stems from deep-rooted cultural dynamics surrounding shame, collective identity, social harmony, and face-saving mechanisms. While both nations belong to what anthropologists call “shame cultures” (where moral behavior is governed by social judgment rather than internal guilt), they experience, demand, and express apologies in fundamentally different ways. According to the general sentiments of Korea and Japan, an act of apology that may be accompanied by personal shame and humiliation is unlikely to be well accepted. The Constitutional Court of Korea maintains a precedent that legally compelling apologies from media organizations, such as broadcasters, is unconstitutional on the grounds of infringing upon the general personality rights of the person being compelled to apologize. Based on its previous precedents, the Constitutional Court of Korea declared unconstitutional the order for an apology advertisement under the Civil Act⁵⁾ and the order for an ‘apology to viewers’ under the Broadcasting Act⁶⁾.

The Kono Statement released by Chief Cabinet Secretary Yōhei Kōno on August 4, 1993 is a landmark 1993 official apology and acknowledgment by the Japanese government concerning “comfort women”. Since the Kono Statement several Japanese politicians, primarily prime ministers and foreign ministers, have apologized for Japan’s colonial rule over Korea (1910 - 1945), expressing remorse for suffering caused. Key figures include Tomiichi Murayama (1995), Keizo Obuchi (1998), Naoto Kan (2010), and Katsuya Okada, who apologized for the “tragic” annexation. the courage and sincerity of Japan’s progressive and liberal politicians who apologized for Japan’s colonial rule over Korea as a measure to promote bilateral relations

5) The Korean Constitutional Court April 1, 1991 Decision 89헌마160.

6) The Korean Constitutional Court August 23, 2012 Decision 2009헌가27.

between the two countriesI would be highly appreciated, despite criticism from far-right conservative forces within Japan.

Nevertheless the historical consciousness of many Koreans is defined by the view that Japan has not adequately acknowledged or apologized for these actions, which contrasts with Japanese claims that all issues were settled by the 1965 treaty normalizing relations. How will the disagreement be overcome between Korea, which harbors a victim mentality toward Japan—the perpetrator—due to the constant lack of genuine reflection on its past wrongdoings and direct reparations for damages, and Japan, which views Korea as continuously complaining about damages regarding a dispute that has already been resolved through an agreement on compensation?

The Treaty on Basic Relations between Korea and Japan(韓日基本條約), signed on June 22, 1965, was intended to normalize diplomatic relations between the Republic of Korea and Japan and resolve post-war reparations issues. It was signed after 14 years of negotiations and entered into force on December 18. The treaty faced strong criticism and protests at the time labeling it “humiliating diplomacy” as it settled claims in a lump sum, accepting economic compensation (Japan providing Korea \$300 million in grants and \$200 million in loans over 10 years, totaling \$500 million) without an apology for colonial rule.

Japan’s ‘colonial glorification theory’ regarding Korea following liberation from Japan’s colonial rule is based on the statement made by Kanichiro Kubota(久保田貫一郎) the chief representative of the Japanese side during the 3rd Korea–Japan Talks in October 1953, that “Japan’s 36-year forced occupation of Korea was beneficial to the Korean people”—in other words, the argument of the colonial modernization theory⁷⁾.

In response to Kubota’s claims, Hong Jin-ki(洪璉基), the chief representative of the Korean side, strongly refuted them. He directly challenged the logic that Imperial Japan’s colonial rule benefited Korea, arguing that “if Japan had not occupied the country, Koreans would have built a modern nation

7) Lee, op. cit. (fn. 4), 116.

on their own”. Furthermore, Hong asserted Korea’s right to demand compensation from Japan for damages. Pointing out that Japanese property in Korea had already been seized under U.S. Military Government Order No. 33, Hong made it clear that Korea had the right to claim compensation for 36 years of imprisonment, massacres, human rights deprivation, forced requisition, and labor exploitation. From the perspective of Koreans, the outrageous remark known as the “Kubota statement” was nothing more than sophistry representing the Japanese government’s true intention that it could not recognize Korea’s demand for property claims itself; however, it became a stumbling block that caused the talks to drag on for four years⁸⁾. Due to these remarks by Kubota, the Korea-Japan talks were unable to take place for four and a half years. Many progressive and liberal intellectuals in Japan acknowledge reflection on and responsibility for Japan’s colonial rule over Korea. Furthermore, they agree with the fundamental perspective that a constructive future relationship between Korea and Japan must be established through this reflection on the past and the acknowledgment of responsibility. Nevertheless, Kubota’s remarks can be interpreted as expressing the underlying sentiment among many Japanese people that Korea developed thanks to Japan⁹⁾. The issue of whether to recognize claims for reparations related to Japan’s colonial rule over Korea, discussed amidst these debates between Hong and Kubota, remains an unresolved hard issue between the two countries to this day.

1. Differences in perception between Korea and Japan regarding legal issues concerning the interpretation of the Korea-Japan Basic Treaty

The Korea-Japan Basic Treaty, signed on June 22, 1965, was established after approximately 14 years of negotiations that began with the first talks in October 1951. The Park Chung-hee government normalized diplomatic

8) <Korea-Japan Talks> The Full Story of the ‘Kubota Outrageous Remark,’ Maeil Shinmun 80, Maeil Shinmun Input 2005-08-26 09:19:07. <https://www.imaeil.com/page/view/2005082609384820117>.

9) Hoon Park, The History of Modern Japan Seen Through Korean Eyes, 2025, 333-335.

relations to secure funds for economic development and for trilateral security cooperation among Korea, the U.S., and Japan, while Japan evaded responsibility by providing reparations funds without apologizing for its colonial rule. It was the United States that enabled Korea and Japan to resume diplomatic relations through the signing of the Korea-Japan Basic Treaty. The U.S. viewed the establishment of a cooperative relationship between Korea and Japan as essential for implementing its containment policy against communism as part of its policy toward Asia under the East-West Cold War structure¹⁰⁾. The 1965 Treaty on Basic Relations between Japan and the Republic of Korea (Korea-Japan Basic Treaty) and its accompanying Claims Agreement normalized diplomatic relations, but left fundamental differences in interpretation regarding the legal nature of Japanese colonial rule (1910-1945) and the settlement of compensation. These differences arise from the “constructive ambiguity” used to finalize the agreement despite opposing views.

1) Interpretation of the 1910 Annexation Treaty (Article 2)

Korea has historically maintained that the treaty of annexation was forced and therefore null and void from the beginning (illegal), meaning Japanese colonial rule was a wrongful, illegal occupation¹¹⁾. In response to Korea's argument that this treaty is invalid, Japan argues that the annexation was legally valid at the time it occurred under international law. Japan interprets the treaty clause “already null and void” to mean the agreements were valid until 1945 but lost effectiveness (“lapsed”) upon Korea's liberation and the normalization of relations in 1965. The validity of the 1910 Korea-Japan Annexation Treaty remains a core dispute. Korea

10) Won-Duck Lee, The Problems of the Postwar Korea-Japan Relation ‘1965-Year System’: Implication for the Normalization Negotiation between the North Korea and Japan, *International Regional Studies* vol. 9 no. 4, 2000, 41.

11) Pae-Keun Park, Discussion Concerning the Legality of the 1919 “Annexation” of Korea by Japan, *Korea Journal* Winter 2010, 21-22; Ji-Hyung Kim, The Japanese Annexation of Korea as Viewed from the British and American Press: focus on The Times and The New York Times, *International Journal of Korean History* vol. 16 No. 2, 2011, 92-95.

argues the treaty was coercive, fraudulent, and void from the beginning due to invalid signatures. Japan argues it was legally valid under contemporary international law and only became invalid after Korea's 1945 liberation. During the 1965 normalization of relations, the issue was addressed in the Treaty of Basic Relations, which stated that treaties signed before Aug. 22, 1910, were "already null and void". However, this did not bridge the gap: Korea interprets "already" to mean void from the start, while Japan maintains it was valid until 1945.

2) The Scope of the "Settlement" of Claims (Claims Agreement)

Korea's property claims against Japan refer to the right to claim compensation or reparations for Japan's colonial rule and war mobilization. However, because Korea did not participate in the San Francisco Peace Treaty with Japan, it could not use terms such as 'compensation' or 'reparations.' Therefore, the original meaning was reduced to civil and financial claims. However, as Japan conversely raised property claims against Korea, property claim negotiations in the 1950s still encountered many obstacles¹²⁾.

The 1965 Korea-Japan Basic Treaty and accompanying Claims Agreement did not explicitly recognize a "right to claim reparations" for Japan, but rather settled property and claims issues, with Japan providing \$300 million in grants and \$200 million in loans. Japan asserts that this settled all claims "finally and completely," while Korea has historically contested whether this covered individual claims for atrocities. The 1962 Kim Jong-pil - Ohira Agreement (or Memorandum) was a pivotal, yet highly controversial, political deal between South Korea and Japan that finalized the structure and amount of funds for property claims regarding Japan's colonial rule (1910 - 1945). It occurred on November 12, 1962, between Kim Jong-pil, then-head of the Korean Central Intelligence Agency, and Masayoshi Ohira, then-Japanese Foreign Minister. In 1962, Kim Jong-pil and Ohira agreed

12) Jaejoon Shin, Getting Off on the Wrong Foot: Rethinking the Title and Amount of Korea's Property Claims against Japan, *International Journal of Korean History* vol. 27 no. 2, 2022, 105.

only on the amount of the fund to resolve the property claim issue, and drafted an outline leaving the name of the amount blank. The deal failed to define the funds as “reparations” or “compensation,” choosing instead to call them “economic cooperation” in order to bypass Japanese legal constraints and Korean public opposition to accepting a small amount. At the time not only Kim and Ohira, the two parties to this agreement, but also the governments of both countries that approved this agreement may have thought that handling the dispute over reparations claims indirectly, by defining the amount to be provided vaguely rather than explicitly would resolve the issue of compensation claims between the two countries, but leaving the fund’s name blank and including commercial loans in the fund caused immediate problems, and the dispute continues to this day¹³⁾.

Japan’s argument regarding the inclusion of the right to claim reparations in the 1965 Korea-Japan Basic Treaty—formally the Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Cooperation—is that all individual and state claims arising from Japan’s colonial rule (1910 - 1945) were “completely and finally” settled. Japan maintains that this agreement nullified the right of individuals to pursue compensation against Japanese companies or the government, arguing that the \$300 million in grants and \$200 million in loans provided to the South Korean government was the final settlement.

Korea’s position regarding these Japanese arguments can be summarized in the following three claims: ① The 1965 treaty resolved only claims between the two governments (the right to diplomatic protection) and did not nullify the right of individual victims to sue Japanese companies for war crimes. ② Since Japan denied the illegality of its colonial rule in 1965, this treaty cannot be interpreted as compensation for damages caused by illegal occupation. ③ The funds received were primarily for economic cooperation and development, and were not comprehensive reparation.

In 2018, the Supreme Court of South Korea officially ruled that Japan’s colonial rule was illegal and that the resulting forced labor was illegal.

13) Shin, *ibid.*, 125.

Consequently, the court ruled as follows: individual claims for damages were not extinguished by the 1965 settlement. Conversely, Japan did not acknowledge legal responsibility for the illegality of its colonial rule during the negotiation process¹⁴⁾.

In 2023, under the Yoon Suk-yeol administration, South Korea attempted to uphold the 1965 settlement while acknowledging the legitimacy of the victims' rights. This was achieved by establishing local foundations to compensate victims using funds from South Korean companies through so-called third-party compensation, thereby harmonizing the 2018 court ruling with the 1965 treaty.rations for forced labor and crimes against humanity.

In 2023, five years after the 2018 ruling, the Supreme Court of South Korea confirmed that the defendant companies, Mitsubishi and Nippon Steel, must pay compensation ranging from 100 million to 150 million won per person in a lawsuit filed by victims and their bereaved families¹⁵⁾.

In a damages claim lawsuit filed against Japanese companies by victims of forced mobilization during the Japanese colonial period, the Supreme Court of Korea ruled that "the lawsuit itself cannot be blocked on the grounds of the Korea-Japan Claims Agreement." With the case, which was dismissed in the first instance, remanded by the appellate court and subsequently confirmed by the Supreme Court, the substantive trial is set to proceed. On February 12, the First Civil Division of the Supreme Court (Presiding Justice Noh Tae-ak) dismissed all appeals by the defendants in the final appeal of the damages claim lawsuit filed by Mr. Kang and other victims and bereaved families against Japanese companies including Mitsubishi Heavy Industries, and confirmed the appellate court's ruling to remand the case to the first instance¹⁶⁾.

As a starting point for a comparative legal analysis of the differences in positions between Korea and Japan, I consider the establishment of the

14) The Supreme Court of Korea en banc decision 2013da61381 decided on October 30, 2018.

15) The Supreme Court of Korea Judgment 2018da303653, Dec. 21, 2023.

16) The Supreme Court of Korea Judgment 2024da228777, Feb. 12, 2026; Supreme Court Ruling: "Korea-Japan Agreement Cannot Prevent Forced Mobilization Damages Lawsuits," Law Times Reporter Ahn Jae-myung, Updated 2026.03.26. 12:31.

Foundation for Remembrance, Responsibility and Future, which serves as a significant example of Germany's reparations model for victims of forced labor, and the reparations process based on it. Regarding the fundamental differences in the positions of Germany and Japan on post-war reparations, I believe that national interests surrounding Northeast Asia, the unspoken relationship with China, as well as the political dynamics between Korea and Japan and the ruling status of conservatives versus progressives, play a crucial role. While I believe that considering these geopolitical national interests and domestic political situations is critical for Japan's statement of position, I consider a review of this matter to be beyond the scope of this presenter's research capabilities.

Where can we find the reasons why the recognition of the existence of memories representing their perception of the past, the acknowledgment of voluntary responsibility regarding them, and the formation of a future developmental relationship through the recognition of responsibility based on these two memories—all of these—have not been achieved in the reparations for forced labor victims between Korea and Japan? In this regard, I judge that the cause can be found in the differences between the post-war reparations models of Japan and Germany. While Korea wants a reparations model similar to Germany's, Japan is adhering to its own independent method of resolving past issues.

III. A Review of the Causes of Differences in the Post-War Reparations Models of Germany and Japan

The post-war reparations models of Germany and Japan differed significantly due to variations in Allied occupation strategies, the onset of the Cold War, the nature of wartime atrocities, and domestic political factors. While Germany (particularly West Germany) adopted a policy of broad, ongoing financial compensation (*Wiedergutmachung*) for the Holocaust and war crimes, Japan handled reparations primarily through

state-to-state agreements signed in the 1950s-70s, often focusing on infrastructure and economic aid rather than individual compensation.

The Germany's post-war reparations model known as the 'Wiedergutmachung Model (making good again)' and the Japanese Compensation Model represent fundamentally different approaches to post-war reconciliation, reparations, and the pursuit of accountability for war crimes. While Germany has established a consistent model over decades that acknowledges responsibility and compensates individual victims, Japan's approach has prioritized legal finality, often excluding or limiting individual compensation by relying primarily on inter-state agreements. The core basis for the claim that all issues were finally settled through these "inter-state negotiations" (intergovernmental agreements) is rooted in a legal interpretation that all matters concerning Japan's post-war responsibility were definitively established in the 1951 San Francisco Peace Treaty and subsequent bilateral treaties with relevant nations. In this regard, Korea was unable to participate in the San Francisco Peace Treaty, and political considerations at the time of its conclusion—specifically regarding Japan's geopolitical importance in responding to the threat of China's communization—made the situation highly favorable to Japan, as it was deemed impossible to impose heavy post-war reparations liability on the country. Ultimately, the basis for the reparations models of Korea and Japan must be found in the Korea-Japan Basic Treaty, but the difference in interpretation between Korea and Japan regarding this remains an unresolved issue.

The post-war reparations models of Germany and Japan differed significantly due to variations in Allied occupation strategies, the onset of the Cold War, regional political dynamics, and domestic, societal, and political responses to wartime atrocities. Germany's approach was characterized by early, extensive, and continuous state-level compensation, largely driven by the moral imperative of the Holocaust. In contrast, Japan's reparations were often handled through negotiated bilateral agreements and economic aid in the 1950s, focused on settling claims with neighboring nations that suffered under its colonial and wartime policies.

The "1965 System" Conflict: The 1965 normalization treaty is viewed by

many Koreans as flawed because it did not fully address individual claims, causing regular legal and political crises when Supreme Court rulings contradict the treaty-based diplomatic framework.

The legal conflict over reparations for Korean victims of forced labor during Japanese colonial rule (1910 - 1945) centers on the conflict between Korean court precedents favoring individual rights and the Japanese government's position that all claims were "settled completely and finally" in 1965. Japanese Court Precedents and Japan's Position on the Recognition of Individual Claims for Reparations Against Japanese War Criminal Enterprises by Korean Courts to the 1965 Claims Agreement: Japan maintains that the 1965 Treaty on the Settlement of Problems concerning Property and Claims and on Economic Co-operation, which provided \$300 million in grants and \$200 million in loans, resolved all claims, including individual claims.

Judicial Immunity: Japanese courts have generally supported the government's position, ruling that while forced labor occurred, the right to claim compensation has expired or was extinguished by the 1965 treaty. Japanese courts granted judicial immunity to the Japanese government by recognizing their established precedents. Japan claims that Korean court rulings against Japanese firms violate international law. Tokyo insists that any responsibility is moral, not legal, and that Korean courts lack jurisdiction over Japanese companies regarding these issues. This interpretation by Japanese courts and the government regarding the recognition of individual claims is seen as a final and irreversible stance.

IV. The Positions of Korea and Japan on the Recognition of Third-Party Payment in Korea

The third-party payment plan, announced by the South Korean government in March 2023, represents a significant, albeit controversial, attempt to resolve the long-standing conflict over individual compensation for forced labor victims during Japan's colonial rule (1910 - 1945). The plan

involves compensating victims through a domestic public foundation rather than directly from the Japanese companies ordered by the Korean Supreme Court to pay damages, marking a major shift in the positions of both countries¹⁷⁾.

Yoon Suk Yeol's administration in 2023 proposed this plan to improve strained relations with Tokyo, framing it as a pragmatic, forward-looking solution to "restore healthy Japan-South Korea ties". The government aimed to avoid the liquidation of Japanese corporate assets in Korea, which it feared would cause an irreparable rupture in bilateral relations. The plan uses the "Foundation for Victims of Forced Mobilization by Imperial Japan," funded by donations from Korean companies that benefited from the 1965 normalization treaty, such as POSCO. Strong internal backlash and criticism within South Korea were raised regarding these proposals.

The specific details of this third-party repayment plan involve the Korean Foundation for the Support of Victims of Forced Mobilization under Japanese Rule assuming the liability for damages borne by the perpetrators, the Japanese war criminal companies, in accordance with three final Supreme Court rulings handed down in 2018, and receiving donations from Korean companies that benefited from the 1965 Korea-Japan Claims Agreement, such as POSCO, to compensate the victims. Considering that this third-party repayment plan did not include the participation of the perpetrators, such as Nippon Steel and Mitsubishi Heavy Industries, in compensation, nor an apology from the Japanese government, the victims of forced labor strongly protested against the government's proposal, criticizing it as a "disgrace to South Korean diplomacy" and announcing their stance that they would "not accept money given like alms"¹⁸⁾.

The South Korean Supreme Court has maintained that the 1965 treaty did not extinguish the individual rights of victims to claim compensation

17) The Korea Times, Korean forced labor victim accepts 'third-party' compensation, Published Oct 23, 2024 4:37 pm KST.

18) So-Jin Kim, A Critical Review on Yoon Suk Yeol Government's "performance by third person" of Forced Mobilization Damages, *Democratic Legal Studies*, Vol. 82 (2023. 7), 107.

for crimes against humanity. In stark contrast to such a ruling of the Korean Supreme court Japan maintains that all compensation issues were “completely and finally” resolved under the 1965 Agreement on the Settlement of Problems concerning Property and Claims. Therefore, Japan’s basic position is compliance with the 1965 Treaty. Japan “welcomed” the third-party payment plan as a step toward improving ties but has not formally apologized or recognized the illegality of its colonial rule. Japan has stated it will not interfere with Japanese companies making “voluntary” donations to the compensation fund, but as of late 2024, no Japanese companies have contributed directly to the plan, and the foundation remains underfunded. Japan has strongly protested the South Korean supreme court rulings (2018, 2023) against its companies, calling them “extremely regrettable and absolutely unacceptable”. The plan created a “1+1” style proposal (voluntary donations from both sides), but in practice, it is largely “1+0” (Korean side only), as Japanese companies refuse to pay, citing the 1965 treaty. The push for a solution is largely driven by the United States, encouraging both allies to cooperate against shared security threats from North Korea and China.

1. Critical Stance on Third-Party Payments in Korea

Despite the Yoon Suk-Yeol administration’s attempt to resolve the issue of compensation for forced labor victims indirectly through a third-party settlement—intended to promote the national interests of both nations and improve economic and military ties—civil societies in both countries remain skeptical¹⁹⁾. In particular, numerous critical opinions have been voiced by civil society organizations and academic societies in Korea. The Japanese government’s assertion that all compensation claims were settled through the 1965 agreement is based on the judgment that, at the time, the number of forced laborers was estimated to be at most several hundred. This

19) Kim Yeong-hwan/Sven Saaler/Yano Hideki, Japanese and Korean Perspectives on the Issue of Forced Labor in the Asia-Pacific War, *Asia-Pacific Journal: Japan Focus*. October 17, 2023.

assumption that the number of forced laborers was merely a few hundred was subsequently overturned by historical research, and by the 1980s, large-scale labor conscription in Korea came to be widely accepted as a historical fact. Both Japan and Korea acknowledge this academic research as it is²⁰⁾.

The most contentious point regarding the third-party repayment plan is the permissibility of a method that thoroughly excludes the Japanese perpetrator companies—the debtors—despite the vehement refusal of the creditors, the victims of forced mobilization. At the time the Korean government implemented this, there was no discussion in academia, nor were there any relevant Supreme Court precedents²¹⁾.

This critical view emphasizes that, from a legal perspective, third-party payment is not permitted pursuant to the proviso of Article 496, Paragraph 1 of the Civil Code, as the victim, as a party involved, has explicitly opposed such payment since the announcement of the 2023 Korean government proposal. Furthermore, it points out that in the case of Japan, Article 474 of the Civil Code explicitly stipulates that payment by a third party cannot be made against the creditor's will regarding the repayment of debt (Article 474, Paragraph 3 of the Japanese Civil Code)²²⁾.

A key point of discussion regarding the legal judgment on this matter is whether such third-party payment constitutes a “legitimate interest in making payment” as a third party, as stipulated in the statutory subrogation provisions of the Korean Civil Code. The interest involved is not a direct legal interest, but rather a political and diplomatic interest between Korea and Japan. It has been suggested that in situations where the creditor explicitly opposes such third-party payment, respecting the creditor's will and interests over those of the third party is consistent with civil law principles²³⁾. The core of the critical views regarding third-party settlement

20) Sven Saaler, Introduction, *ibid.*

21) Kim, Jewan/Lee, Bodurae, A Study on the Forced Mobilization under the Japanese Occupation and the Forced Compensation by the Korean Government, *Human Rights and Justice* vol., no. 523, 2024, 12.

22) Kim, *op. cit.* (fn. 18), 121.

23) Kim/Lee, *op. cit.* (fn. 21), 24.

in Korea is the non-participation of Japanese companies in third-party settlement.

2. Reasons why Japanese companies did not participate in third-party payments for the compensation of victims of forced labor in Korea

Japanese companies, specifically those like Nippon Steel and Mitsubishi Heavy Industries, did not participate in the South Korean government's 2023 third-party settlement plan for forced labor victims primarily due to legal and diplomatic positions held by the Japanese government. Reliance on the 1965 Normalization Treaty: The Japanese government and companies maintain that all claims related to Japan's 1910 - 45 colonial rule were "completely and finally" settled under the 1965 Agreement on.

On June 22, 1965, the "Treaty on Basic Relations between the Republic of Korea and Japan" and its annexed agreement, the "Agreement on the Settlement of Problems Concerning Property and Claims Between the Republic of Korea and Japan and on Economic Cooperation" (Treaty No. 172, hereinafter referred to as the "Claims Agreement"), were concluded. The Preamble of the Claims Agreement stipulated, "The Republic of Korea and Japan, desiring to resolve issues concerning the property of both countries and their nationals and claims between both countries and their nationals, and desiring to promote economic cooperation between the two countries, have agreed as follows." Article 1 stipulated that "Japan shall provide the Republic of Korea with 300 million dollars in grants over a period of 10 years and provide a loan of 200 million dollars," and subsequently, Article 2 stipulated as follows. 1. Both Contracting States confirm that the property, rights and interests of both Contracting States and their nationals (including legal persons) and the issues concerning claims between both Contracting States and their nationals are completely and finally settled, including those set forth in Article 4(a) of the Peace Treaty with Japan signed in San Francisco on September 8, 1951²⁴).

Regarding the interpretation of this provision, the Supreme Court of Korea stated that neither the text of the Claims Agreement nor its annexes contains any mention of the illegality of Japanese colonial rule. The Court ruled that although there is room for interpretation that claims other than those specified in Article 4(a) could be subject to the Claims Agreement—as Article 2(1) of the Claims Agreement states that “issues concerning claims, including those stipulated in Article 4(a) of the San Francisco Treaty, have been completely and finally resolved”—it is difficult to consider claims falling outside the scope of Article 4(a)—that is, claims directly linked to the illegality of colonial rule—to be included in the scope, given that the illegality of Japanese colonial rule is not mentioned at all²⁴⁾.

The Supreme Court of Korea cited the fact that the Public-Private Joint Commission also expressed an official opinion in 2005 stating that “the Claims Agreement is fundamentally not intended to claim reparations for Japanese colonial rule, but rather to resolve financial and civil creditor-debtor relationships between Korea and Japan based on Article 4 of the San Francisco Treaty.” Furthermore, the Supreme Court of Korea held that it was unclear whether the economic cooperation funds provided by the Japanese government to the government of the Republic of Korea pursuant to Article 1 of the Claims Agreement could be regarded as having a legal reciprocal relationship with the resolution of rights issues under Article 2. This is because Article 1 of the Claims Agreement stipulates the “provision of \$300 million in grants and the execution of a \$200 million loan (paid),” but contains no specific details regarding the nominal nature of these funds. In response to this, the Supreme Court of Korea noted that the position of the Japanese side at the time was also that the money under Article 1 of the Claims Agreement was fundamentally of the nature of economic cooperation, and that there was no legal reciprocal relationship between Article 1 and Article 2 of the Claims Agreement²⁵⁾.

The Supreme Court of Korea determined that it is difficult to regard

24) Supreme Court of Korea en banc Decision 2013da61381, Decided October 30, 2018.

25) Supreme Court of Korea en banc Decision 2013da61381, Decided October 30, 2018.

26) Supreme Court of Korea en banc Decision 2013da61381, Decided October 30, 2018.

claims for consolation money for forced mobilization as being included in the scope of application of the Claims Agreement, considering that during the negotiation process, the Japanese government fundamentally denied legal compensation for damages caused by forced mobilization without acknowledging the illegality of colonial rule, and consequently, the governments of both countries failed to reach an agreement regarding the nature of Imperial Japan's rule over the Korean Peninsula²⁷⁾.

I personally believe that examining the reason why the Japanese side defined the funds provided by Japan to Korea in the Korea-Japan Claims Agreement as economic cooperation funds and did not mention whether post-war reparations were included is the starting point for solving the difficult problem where the precedents of the Korean Supreme Court conflict with the positions of the Japanese government and courts.

Japan defined the 1965 Claims Agreement funds as “economic cooperation” rather than “reparations” to avoid acknowledging the illegality of its colonial rule, which would have legally mandated compensation. By framing it as economic aid, Japan avoided legal liability, minimized costs, and aligned with its position that colonial rule was lawful, while South Korea, prioritizing economic development, accepted this terminology. Japan maintained that its 35-year colonial rule over Korea was legal, and therefore, they did not owe compensation or reparations for that period. Using terms like “reparations” would imply wrongdoing (Denial of Legal Responsibility). The funds (\$300 million grant, \$200 million loans) were deliberately labeled as economic cooperation or “independence congratulatory money” to define the payment as a voluntary, forward-looking economic act rather than a legal duty to make amends (Economic Cooperation Frame). By structuring the deal as a total, final settlement (“settlement of property and claims”) rather than specifically listing reparations, Japan aimed to ensure that no further individual or collective compensation claims could be made, allowing them to dodge responsibility for forced labor or military sexual slavery (Preventing Future Claims).

27) Supreme Court of Korea en banc Decision 2013da61381, Decided October 30, 2018.

The United States influenced this arrangement by prioritizing a strong, stable, and economically rebuilt Japan over compensation for Asian neighbors, facilitating a diplomatic approach that overlooked the legal nuances of the past (Context of the Cold War:). Declassified documents showed that Japan deliberately avoided using the word “reparation” to keep the legal liability to a minimum, ensuring that even if Korea argued for compensation, the treaty itself framed the money as aid (Internal Legal Strategy).

This strategy by the Japanese government to deny liability for compensation to victims of forced mobilization is judged to be the result of a strategic choice aimed at preventing the disadvantages and hardships that would arise from acknowledging legal responsibility for the damages and the resulting individual claims. By denying direct liability while hoping to restore relations with the victimized nation through the provision of substantial financial aid, it appears that the South Korean government accepted this Japanese strategy to some extent, given the desperate need for Japanese financial support for its economic development at the time. The problem with this agreement is that the circumstances of the time, which completely disregarded the suffering, human dignity, and human rights of the victims, continue to create ongoing conflict between South Korea and Japan regarding this issue. From Japan’s perspective, they continue to criticize the South Korean government for accepting economic aid—which could be interpreted as a de facto settlement (which cannot be referred to as legal responsibility toward the victims of forced mobilization)—for the sake of their national interests. Meanwhile, given that the South Korean government at the time could not represent the will of all Korean citizens, Korean courts and civil society are shifting the responsibility for the victims’ psychological and human rights damages onto the Japanese government. How should this chaotic situation be resolved?

In this regard, Kim Young-hwan emphasizes the necessity of acknowledging the historical records of the struggles and efforts to restore the human rights and dignity of victims of forced mobilization, citing the words of Hideki Yano, who has lived with the victims of forced labor the longest,

addressing those who claim that the enforcement of the Supreme Court ruling will damage diplomatic relations between Korea and Japan, those who threaten the victims, and those who trade the value of human rights for business opportunities²⁸⁾.

In order to resolve the conflicting issues between Korea and Japan, it is deemed necessary to examine the reparations for victims of forced labor in Germany—ranging from remembrance and responsibility to reparations by the Future Foundation—as a comparative legal study that holds significant meaning regarding the recognition of individual rights to post-war reparations.

V. A Review of Reparations via the German Foundation for Memory, Responsibility and the Future

In international law practice, there is an increasing focus on individual claims filed against states that have committed war crimes or crimes against humanity, shifting from typical inter-state reparations claims²⁹⁾. Examining whether the strengthening of the recognition of individual claims for compensation—separate from the resolution of reparations issues through treaties between states in international law practice—can be directly invoked and applied to the compensation of forced laborers between Korea and Japan is of great significance.

A key aspect of the external burdens of war is the expenditure on reparations, that is, the costs of economic compensation or damages payments that Germany was obligated to make to other countries, particularly the victorious powers, for war damages. In this respect, Part IV of the Potsdam Agreement of August 2, 1945, stipulated that each occupying power should satisfy its reparations claims for the burdens of

28) Yeong-hwan Kim, The “Anguish,” “Human Rights,” and “Dignity” of the Victims of Forced Mobilization, *Human Rights and Justice* vol., no. 523, 2024, 12.

29) Jerzy Kranz, Kriegsbedingte Reparationen und individuelle Entschädigungsansprüche im Kontext der deutsch-polnischen Beziehungen, *ZaöRV* 2020, 326.

war on people, property, real estate, and assets through dismantling and the supply of goods from its own occupation zone³⁰⁾. The reparations stipulated in the 1945 Potsdam Agreement consisted of in-kind payments that each occupying power was required to collect from its territory (removal of industrial equipment, delivery of production arbitrated, and confiscation of foreign assets). On the other hand, the issue of individual compensation for war and persecution was not addressed in this agreement³¹⁾.

However, with the onset of the Cold War (1947), these reparations by the Western Allies soon ceased, and the Allies postponed the assertion of further reparations claims until the conclusion of a peace treaty. In the Soviet Occupation Zone/German Democratic Republic (GDR), on the other hand, reparations did not end until 1953; the Soviet Union also subsequently deferred its claims until the conclusion of a peace treaty (Friedensvertrag)³²⁾.

Through the London Debt Agreement (Londoner Schuldenabkommen), also known as the Agreement on Germany's Debts to Foreign Countries (Abkommen über deutsche Auslandsschulden), which was signed on February 27, 1953, and ratified on August 24, 1953, following a long period of negotiations, the Federal Republic of Germany defined compensation for foreign forced laborers as a claim for damages (Reparationsansprüche) in legal terms and postponed negotiations for a final legal settlement (Friedensvertrag).

In the London Debt Agreement of 1953 between the Federal Republic of Germany and more than 30 signatory states (excluding the Soviet Union and Poland), no agreement was reached regarding individual claims for damages. Article 5, Paragraph 2 merely deferred the examination of specific categories of claims until further notice. However, according to principles of international law and the precedents of the courts of the Federal Republic of Germany, it was concluded that this deferral was intended to protect the national economy and state finances and encompassed all claims for damages resulting from World War II, including individual claims for

30) Hermann Butzer, in: Dürig/Herzog/Scholz, Grundgesetz, Werkstand: 108. EL August 2025, Art. 120 Rn. 111.

31) Kranz, op. cit. (fn. 29), 332.

32) Butzer, op. cit. (fn. 20), Art. 120 Rn. 111.

crimes committed by civilian entities under Nazi rule (e.g., commercial enterprises that benefited from forced labor, so-called institutions of the Third Reich). However, this interpretation was criticized abroad³³⁾.

The London Debt Agreement stipulated in Article 26 and Annex 8 that the provisions set forth in Article 5, Paragraph 2 did not apply to previously agreed compensation. This concerned the compensation agreed upon between the Federal Republic of Germany and Israel in 1952³⁴⁾.

Simultaneously with the London Agreement, the Reparations Agreement between Israel and West Germany—referred to as the Luxemburg Agreement (Luxemburger Abkommen, or Luxemburg Reparations Agreement)—was concluded on September 10, 1952, between the Federal Republic of Germany, Israel, and the Jewish Claims Conference (JCC). In this agreement, the return of monetary value to victims by the state, society, and government was agreed upon. It was a political decision by the then-Chancellor Adenauer that clearly confirmed Germany's responsibility internationally through the conclusion of the Luxemburg Agreement³⁵⁾. The ratification of these London and Luxemburg Conventions was a political prerequisite for the removal of the Allied occupation status over Germany and the restoration of the full sovereignty of the Federal Republic of Germany³⁶⁾.

The postponement of reparation payments agreed upon at the Potsdam Agreement politically justified the postponement of reparations payments until a peace agreement was reached in the early 1950s. This justification was based on the need to prevent the expansion of Soviet communism in Europe by rebuilding the war-torn or weakened West German economy and strengthening democracy and human rights, in light of the unfolding new Cold War situation. From this perspective, there was a growing conviction that the burden of reparations on Germany posed a potential threat to

33) Kranz, op. cit. (fn. 29), 332-333.

34) Kranz, op. cit. (fn. 29), 333.

35) Jochen Abr. Frowein, Der Versuch der Wiedergutmachung der deutschen NS-Verbrechen, in: Michael Brenner/Peter M. Huber/Markus Möstl (Hrsg.), Der Staat des Grundgesetzes – Kontinuität und Wandel, Festschrift für Peter Badura zum siebzigsten Geburtstag, Tübingen 2004, S. 97, 105.

36) http://de.wikipedia.org/wiki/Luxemburger_Abkommen.

Europe³⁷⁾. However, the postponement of reparations decided at the intergovernmental level could not serve as grounds to exclude urgent reparations for individual (especially non-German) Nazi victims. In the early 1950s, a significant turning point occurred regarding the recognition of individual claims for reparations. Subsequently, negotiations to resolve the issue of reparations focused solely on individual claims for compensation resulting from violations of international law. The concrete implementation of these payments was the responsibility of the Federal Republic of Germany, and it was emphasized that they were provided primarily in the form of voluntary payments (gratitude/consolation payments) made without legal obligation or liability—that is, *ex gratia*—constituted monetary compensation or settlements provided without acknowledging any responsibility. Such voluntary payments were mainly provided for crimes under international law that were the subject of significant international pressure at the time³⁸⁾.

In the late 1950s, West Germany concluded the so-called Global Agreement with 12 Western European countries, agreeing to pay a lump sum of compensation to citizens who had been victims of National Socialism. The payment of reparations under this agreement was provided generally in the form of ‘benefits’ or ‘aid,’ without a clear legal definition, and in this regard, terms such as reparations or compensation were intentionally excluded. The total amount of these payments reached approximately 1 billion German marks (DM)³⁹⁾.

The East German government, namely the German Democratic Republic (Deutsche Demokratische Republik (DDR)), refused to recognize reparations for all foreign victims of state socialism, based on its self-interest in establishing a new anti-fascist state. However, following German reunification, Germany concluded the Global Agreement (Globalabkommen) in 1990—once again as an extension of the 2+4 Pact (Vertrag)—with Poland (500 million marks), Belarus, Ukraine, and Russia (totaling over 1 billion marks). In this process, Russia and Belarus had to consider the

37) Kranz, op. cit. (fn. 29), 335.

38) Kranz, op. cit. (fn. 29), 335.

39) Kranz, op. cit. (fn. 29), 335–336.

victims within the Baltic states that had gained sovereignty and independence between them. Through the payment of these reparations, the German government and the business community also viewed their responsibilities as having been fulfilled at that time⁴⁰⁾.

The Two Plus Four Agreement (Der Zwei-plus-Vier-Vertrag) of 1990, which paved the way for German reunification, contained no new provisions for reparations payments to the victorious powers. It is considered the conclusion of the foreign policy consequences of the Second World War and represents a final settlement that regarded reparations issues as already resolved⁴¹⁾. With the treaty's entry into force on March 15, 1991, no new reparations were agreed upon for the unified Germany. The dismantling of industrial facilities, confiscation of foreign assets, and forced labor (primarily by the Soviet Union) that had already been carried out since 1945 were not renegotiated. The treaty is considered the fundamental international legal document that concludes the reunification process with regard to Germany and thus resolves the issue of reparations. Independently of this treaty, the Federal Republic of Germany has concluded bilateral agreements on reparations with various states.

It was only after reunification in the early 1990s that the Federal Republic of Germany paid individual compensation to former Nazi victims from Eastern Europe through special foundations established in Poland, Russia, Belarus, and Ukraine. The total amount paid reached 1.5 billion German marks, of which 500 million marks went solely to the "German-Polish Reconciliation" Foundation. Additional individual compensation payments began after multilateral negotiations concluded in Berlin on July 17, 2000. Nazi victims residing in Poland at the time received a total of 1.812 billion German marks⁴²⁾. Within the reparations system for National Socialist persecution, Germany's compensation continues to this day in various forms. As before, the largest portion of these benefits will go to Holocaust

40) <http://www.zwangsarbeit-archiv.de/zwangsarbeit/entschaedigung/entschaedigung-2/index.html>.

41) Butzer, op. cit. (fn. 30), Art. 120 Rn. 111.

42) Kranz, op. cit. (fn. 29), 337-338.

victims⁴³⁾. According to the Federal Constitutional Court (BVerfG), individual claims for compensation under international law do not necessarily always require a contractual basis. While the BVerfG considers a clear legal basis necessary, it recognizes that such a basis can be found not only in an international treaty, but also in a federal law, which, independently of a treaty, can form the basis for the separate assertion of individual claims for damages⁴⁴⁾.

With regard to the issue of recognizing the right to claim compensation for victims of forced labor between Korea and Japan, the question arises as to the legal basis on which victims of international crimes can assert individual claims for compensation. Must these claims be based on specific norms of international law, and can they only be pursued through the mediation of the victims' home state⁴⁵⁾?

At the end of the 20th century, reparations for forced laborers once again became a subject of interest both domestically in Germany and internationally. In the late 1990s, legal and political pressure was raised in the United States. In 1998, the parliamentary factions of the German Federal Parliament agreed to establish a foundation for the reparations of forced laborers through the financial participation of the German business community. The numerous lawsuits filed in the United States and the threat of boycotts served as a catalyst for export-oriented large German conglomerates to take the lead in establishing the foundation—on the grounds of humanitarian action, without acknowledging liability—without the approval of the business community.

The strengthening of the individual's status as a recipient of international legal norms, resulting from the development of international law since 1945, has made it possible for individuals to file individual claims for compensation against violations of international law by states or their legal entities (e.g., state-owned enterprises) through domestic and foreign courts.

43) Kranz, op. cit. (fn. 29), 338.

44) BVerfG, Beschluss des Zweiten Senats vom 13.5.1996 - 2 BvL 33/93; Kranz, op. cit., 339.

45) Kranz, op. cit. (fn. 29), 342.

Claims for compensation filed by Jewish residents in the United States through U.S. courts regarding damages from forced labor during the German National Society era placed a significant burden on Germany, which would bear the liability for such compensation. This pressure on Germany through U.S. courts often leads to intergovernmental agreements regarding the establishment of special (state or international) foundations or commissions to fully satisfy the victims' individual compensation claims.

The German business community also demanded a guarantee of legal security against the ongoing lawsuits filed in the United States as a condition for leading the establishment of the foundation⁴⁶⁾. The German Federal Parliament (Bundestag), together with the German business community (Deutsche Wirtschaft), acknowledged the political and moral responsibility of the victims of National Socialism (NS-Opfer) and those subjected to slave labor and forced labor through the National Socialist State (NS-Staat). Serious illegal acts were committed against them through various human rights violations, such as deportation, imprisonment, exploitation, and annihilation through labor (Vernichtung). Consequently, numerous lawsuits were filed against German companies, particularly in U.S. courts. The legal resolution of these legal disputes also served as a significant motivation for the establishment of this foundation.

In order to provide financial compensation to the forced laborers of the former National Socialist era, the German Federal Parliament established the Federal Foundation for Remembrance, Responsibility and Future (Stiftung Erinnerung, Verantwortung und Zukunft) in 2000 under the leadership of Volker Beck and Otto Graf Lambsdorf. On July 17, 2000, in Berlin, the governments of Germany and the United States entered into the Agreement between the Government of the Federal Republic of Germany and the Government of the United States of America concerning the Foundation of Memory, Responsibility and Future. The purpose of this agreement is

46) <http://www.zwangsarbeit-archiv.de/zwangsarbeit/entschaedigung/entschaedigung-2/index.htm>. Zin-Wan Park (Trans.), Collection of Reports of the Truth and Reconciliation Commission Abroad II, Truth and Reconciliation Commission for the Rectification of Past Events, 2008, 301-308.

specified in detail within the preamble of the agreement⁴⁷⁾.

On August 2, 2000, the German Federal Government and the German business initiative (Stiftungsinitiative der deutschen Wirtschaft), in which over 6,000 German companies participated, each contributed half of 10 billion German Marks (D-Mark) to establish a legally competent public foundation named “Memory, Responsibility and Future” for the purpose of reparations to forced laborers under the previous National Socialist government. The foundation is established upon the entry into force of the Act on the Establishment of the Memory, Responsibility and Future Foundation (Article 1, Paragraph 1 of the Act on the Establishment of the Memory, Responsibility and Future Foundation). Furthermore, the location of this foundation is Berlin (Article 1, Paragraph 2 of the same Act). Article 1 of the Foundation’s Articles of Association (StiftungSatzung) stipulates the following regarding the Foundation’s name, legal form, and location: “The ‘Memory, Responsibility and Future’ Foundation is a public legal foundation with legal capacity with a domicile in Berlin pursuant to Article 1 of the Act on the Establishment of the Memory, Responsibility and Future Foundation (EVZStiftG).”

Following a long period of international negotiations, the Memory, Responsibility and Future Foundation was established by federal law on August 12, 2000. The Foundation commenced its operations on the premise of acknowledging political and moral responsibility toward the victims of forced labor.

By 2007, the Foundation had provided reparations to 17 million forced laborers in over 100 countries. On June 12, 2007, the Foundation officially ceased the payment of compensation. However, the Foundation continues to provide funding for projects aimed at reconciliation. In this regard, I believe that examining the compensation provided by the Foundation for Remembrance, Responsibility, and the Future as an attempt to settle the past regarding illegalities under Germany’s National Socialist government holds significant comparative legal meaning for our own legal review of post-war reparations issues with Japan. This is because, having

47) Park, *ibid.*, 295-298.

experienced the issue of compensation for victims of forced labor under Japanese colonial rule, we must examine the reparations process through the establishment of the Foundation, as well as the provisions in the Act on the Establishment of the Foundation and its Articles of Incorporation that provided the legal basis for such reparations.

VI. A Review of Hannah Arendt's Model of the Banality of Evil

I intend to examine whether Hannah Arendt's model of the banality of evil (*Banalität des Bösen*)⁴⁸⁾ and Hegel's model of the philosophy of recognition can be applied to the issue of Japan's postwar reparations as legal theoretical analysis models regarding Japan's postwar reparations liability. The applicability of Hannah Arendt's concept of the "banality of evil" to the settlement of past issues between South Korea and Japan provides a philosophical lens to analyze state-sanctioned illegal acts not as the result of singular, monstrous malice, but as the consequence of bureaucratic thoughtlessness, conformity, and systemic, "orderly" perpetration. The banality of evil stems from the 'thoughtlessness' pointed out by Hannah Arendt, which signifies a lack of the ability to think from the other's perspective. Other-centered ethics seeks to overcome this evil by moving beyond self-centeredness and adopting an attitude of empathy and responsibility for the suffering and dignity of others. In the context of Korean forced labor, comfort women, and other wartime injustices, this framework challenges the notion that responsibility rests solely on individual perpetrators, highlighting instead the systemic nature of legal and corporate complicity.

It could be also considered the possibility that, like all totalitarian states, Imperial Japan possessed a structure in which sacrificial devotion to its national interests justified the oppression and victimization of all other

48) Hannah Arendt, *Hannah Arendt, Eichmann in Jerusalem. Ein Bericht von der Banalität des Bösen*, München 1964, Tranlated by Kim Seonwook, 2006 Hangilsa.

nations and peoples that opposed it, as well as the indifference or intentional attempts to forget elements conflicting with those interests, which are connected to this proposition. Nevertheless, if we view the guarantee of human rights as a global citizen—transcending such national interests—from the perspective of human solidarity, this model of the banality of evil could be surmountable. In relation to this issue, how Hannah Arendt’s concept of the “Banality of Evil” and Emmanuel Levinas’s “Other-Centered Ethics” apply to illegal acts committed during Japan’s colonial rule of Korea (1910 - 1945) will be reviewed.

Arendt argued that “evil” is often committed by ordinary people who become functional parts of an overarching, efficient system. In the context of the 1965 treaty-related disputes (e.g., New Nippon Steel Case), this suggests focusing on the corporate and governmental machinery that mobilized labor and organized exploitation, rather than merely identifying “wicked” individuals (core aspects of applicability systemic evil over individual malice). From this perspective, the records of the legal struggles of forced labor workers in Japan and Korea can be recognized as core aspects of applicability systemic evil over individual malice.

The “banality of evil” stems from a lack of judgment and a refusal to think about the consequences of one’s actions, often hidden behind legalism. This applies to Japanese bureaucrats and corporate actors who, after 1945, often treated wartime illegal acts as mere “legal” or “administrative” matters, failing to recognize the profound human rights violations (problem of “thoughtlessness”). Individuals and nations, too, may feel remorse for the exercise of wrong choices they are forced to make for their survival and for the consequences of such actions; however, it is very difficult to publicly reveal this and voluntarily assume legal responsibility for it. It can be argued that the explosive power of disadvantages arising from the acknowledgment of legal responsibility, combined with Japan’s unique national identity and culture, resulted in Japan’s refusal to acknowledge the issue of compensation for forced laborers being “the problem of thoughtlessness.”

The atrocities were carried out through organized, “lawful” processes—paperwork, transportation, and official policy. This mirrors the systematic,

legalistic approach of the Japanese state in implementing forced labor, which was viewed as a legitimate, albeit coerced, endeavor at the time (role of bureaucracy). The issue of forced labor mobilization during the conduct of imperialist wars appears as a facet of wartime mobilization bureaucracy that contributes to the state's objective of winning the war. Critics have argued that the "banality of evil" can risk minimizing the severity of atrocities, making them seem "ordinary" or trivializing the immense suffering of victims, which can complicate efforts to address trauma in Korea.

The application of Arendt's concept provides a basis for demanding structural compensation and official apologies that address the systemic nature of the illegal acts, rather than accepting partial, individual compensations with regard to liability for compensation for forced labor to the Korean victims. It challenges the defense that "no one intended to cause such harm" or that "we were only following legal orders at the time," highlighting that lack of thought does not absolve the state of responsibility in the case of an aggressor such as Japan regarding liability for compensation for forced labor. The New Nippon Steel Case and similar lawsuits are attempts to bridge this gap, using legal mechanisms to force recognition of these "banal" (yet devastating) systems of exploitation, which is a crucial step for achieving a "new, constitutional-patriotic identity" for both nations, similar to Germany's post-war reckoning.

Emmanuel Levinas posited that morality begins with the "Face of the Other," which places an infinite, non-negotiable responsibility on us to care for the vulnerable⁴⁹⁾. Examining legal liability for illegal acts related to Japan's colonial rule over Korea inevitably leads to a conflict between legality and morality. Acts deemed "legal" under Japanese imperial decree were fundamentally illegal and criminal under universal ethical laws. The

49) Schlak Ten Kate, *The Levinasian Other*. Schalk ten Kate. Introduction: Totality and Infinity. Emmanuel Levinas (1906–1995), <https://opentextbooks.rug.nl/climatephilosophy/chapter/the-ethical-phenomenology-of-emmanuel-levinas/>; Amit Pinchevski, Emmanuel Levinas *The Other*, In: *An Encyclopaedia of Communication Ethics: Goods in Contention*, Eds. Ronald C. Arnett, Annette M. Holba and Susan Mancino (Peter Lang, 2018), 278–282.

combination of bureaucratic obedience (Arendt) and the refusal to see the victim as a human “Other” (Levinas) enabled mass-scale human rights abuses. It demands a Levinasian face-to-face recognition of victim trauma and an Arendtian commitment to critical thinking against state pressure.

VII. The Necessity of Applying Hegel’s Philosophy of Recognition to Establish a Relationship Between Korea and Japan for Future-Oriented Cooperation and Trust Building

This paper examines the issue of recognition regarding Japan from the perspective of Hegel’s philosophy of recognition, aimed at establishing a future-oriented relationship between Korea and Japan that transcends past issues. The concept of recognition holds significant meaning not only for the evaluation and respect of others but also serves as a core concept that justifies the understanding and respect of an individual subject’s identity in the struggle for recognition. In this regard, in what form should Korea and Japan further expand the scope of mutual recognition to ensure the future interests and security of both nations?

The sufficient conditions for appropriate recognition are reciprocity and mutuality. Paul Ricoeur distinguishes 23 diverse types of recognition, separating the concept of mutual recognition from identification and recognizing oneself⁵⁰⁾.

As an essential prerequisite for recognition, mutuality functions as an important explanatory element of the concept of recognition. At the same time, mutuality serves as an important normative criterion for judgment regarding the concept of recognition, which can be considered not only in socio-normative elements such as the Constitution but also in the realm of international law concerning recognition between states. From this perspective, the key keyword for our continued existence while engaging in joint cooperation based on the principles of reciprocity and mutuality, not

50) Paul Ricoeur, *The Course of Recognition*, Cambridge, Mass.: Harvard University Press 2005, 5-15.

only with others and within society but also in relations between states, is recognition.

Applying Hegel's philosophy of recognition to South Korea-Japan relations is essential for moving beyond historical disputes and establishing future-oriented cooperation based on deep trust. Hegel argues that true self-consciousness and freedom can only be achieved through mutual recognition—an interactive, ongoing process where two parties recognize each other as equals, rather than a master-slave dynamic.

For Japan and Korea, this philosophical framework provides a mechanism to reconcile contentious historical memories and build a cooperative future. The necessity of Hegel's Recognition in Korea-Japan Relations leads beyond Hegel's the Master-Slave Dialectic in Hegel's philosophy of recognition a relationship of mutual recognition. Hegel's framework suggests that a lopsided relationship (reminiscent of the colonial past) restricts both parties. True reconciliation requires transforming the relationship from one of struggle to one of mutual, respectful recognition, where both nations acknowledge the other's inward humanity and rights.

Hegel's philosophy, when applied to historical disputes, views reconciliation not as a one-time settlement (like the 1965 treaty), but as an ongoing process of dialogue and negotiation. This approach allows for addressing "trauma" without necessarily achieving total consensus on the past, focusing instead on continued mutual recognition of the other's viewpoint. Trust is built when both nations recognize the other's legitimacy and security concerns, particularly in the context of regional threats (e.g., North Korea) and global uncertainties. In essence, applying Hegel's recognition theory means that Korea and Japan must mutually affirm each other's legitimacy and, despite historical trauma, commit to a shared destiny as indispensable partners in a globalized world.

VIII. Conclusion

Building a constructive future relationship between Korea and Japan requires reconciling differing legal interpretations of the 1965 Claims Settlement Agreement, addressing individual human rights versus state-level pacts, and establishing forward-looking institutional frameworks⁵¹⁾. According to the Supreme Court of South Korea, individual compensation claims by Korean citizens for forced labor in Japanese factories during World War II were not covered by the 1965 bilateral agreement between the two countries, in which both sides (taking into account corresponding economic and financial aid from Japan) mutually waived their right to compensation on behalf of their citizens⁵²⁾. Korea maintains that the 1965 treaty settled financial and property-related state claims but did not extinguish individual rights to seek damages for illegal acts. Japan argues that all claims, state and individual, were completely and finally resolved⁵³⁾.

Consequently, in its 2018 ruling, the Supreme Court of South Korea ordered several large Japanese companies (but not the Japanese state) to pay certain damages⁵⁴⁾.

The peace treaty concluded with Japan in 1951 stipulated that immediate reparations to the victorious nations were impossible due to Japan's difficult economic situation. At the same time, Japan explicitly recommended that it engage in bilateral negotiations only with nations possessing territories occupied during World War II. Consequently, while specific amounts or their scope were not determined, this did not hinder the takeover of Japanese assets within the jurisdiction of the Allied victors⁵⁵⁾.

51) Seung Jin Oh, *Revisiting the 1965 Claims Agreement between Korea and Japan*, Seoul International Law Journal vol.28, 2021, no.1, 73-76.

52) Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Cooperation between Japan and the Republic of Korea, 22.6.1965, Art. II. 1.; Kranz, op. cit., 350.

53) Oh, op. cit. (fn. 51), 73.

54) Patrick Eckerd, *South Korea Court Orders Mitsubishi of Japan to Pay for Forced Labor During WWII*, 29.11.2018, <<https://www.jurist.org>>; Manny Marotta, *South Korea Court Orders Japan Steelmaker to Compensate WWII Slave Laborers*, 31.10.2018, <<https://www.jurist.org>>. Kranz, op. cit. (fn. 29), 350.

Furthermore, Japan and the victorious Allies agreed in this peace treaty to waive mutual reparations (in their own names and in the names of their citizens, in comparison to other signatory nations and their citizens). However, it was not explicitly stated whether this waiver affected claims for damages arising from crimes under international law, a point that subsequently became the starting point for legal disputes and court proceedings⁵⁶⁾.

In the case of a waiver of damage claims, a public interest not based on law is exercised at the expense of individual claims (e.g., foreign policy, military, or economic security considerations). In exceptional cases, the victim may file a lawsuit against the home country's decision to waive individual damage claims.

Applying the conceptual framework of “the Good,” “the Bad,” and “the Victims” to the settlement of historical unlawful acts between nations—often involving colonialism, war crimes, or genocide—is increasingly considered necessary to achieve substantive justice rather than merely legalistic closure⁵⁷⁾. While international law often prioritizes legal technicalities, this moral framework addresses the lingering structural, psychological, and economic harm faced by victims. The necessity lies in centering the narrative on the harmed group, shifting from abstract state-to-state negotiations to reparative justice. The harm from historical wrongs often persists across generations, meaning “victims” are not merely the original individuals, but communities currently experiencing disadvantages directly linked to that past. Recognizing victims involves moving beyond monetary compensation to include restitution, rehabilitation, and guarantees of non-repetition. It validates their suffering and restores dignity, which is often as important as material reparation.

55) Kranz, op. cit. (fn. 29), 354.

56) Kranz, op. cit. (fn. 29), 354.

57) The idea of applying the distinction between the good, the evil, and the victims to overcome and settle the nation's past historical wrongdoings was conceived through the following paper of Emeritus Professor Alexander Blankengael at Humboldt University of Berlin. Verfassungsgerichtliche Vergangenheitsbewältigung, in: Zeitschrift für Neuere Rechtsgeschichte (ZNR) 13 (1991), 67 - 82.

Identifying the “bad” is essential for legal and ethical accountability under international law, which mandates that a state responsible for an wrongful act must make full reparation. The state responsible for an internationally wrongful act has an obligation to stop the action and provide full reparations for injury, including both material and moral damages. While some argue descendants cannot be victims of past actions, identifying the specific “bad” actions allows for identifying the “group harms” or “constitutive harms” that current generations face.

“The Good” represents the adherence to international law, human rights, and the ethical imperative to correct historical injustices. Applying this framework ensures that the settlement aligns with international human rights law. A purely legalistic approach may fail to address the systemic inequalities created by the historical wrongdoing. Historical crimes against humanity are not individual, random acts; they are systemic. Using these concepts allows for addressing the collective memory and trauma. It allows for a formal acknowledgment of the injustice, which is necessary for reconciling the relationships between the two nations or ethnic In conclusion, applying the concepts of good, bad, and victims is necessary to move from merely “forgetting the past” to actively addressing the legacies of wrongful acts, ensuring that reparations are meaningful, and preventing future abuses of power.

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[Abstract]

Legal Discussion Points for forming a future oriented,
cooperative, mutually trustworthy relationship between Korea
and Japan through consensual resolution of Past Issues

Park, Zin-Wan*

While the “long-term revenge” theory provides a compelling narrative for historical resentment, most scholars focus on more immediate causes for the Imjin War (e.g., Toyotomi Hideyoshi’s ambition) and the annexation (e.g., geopolitics of the late 19th/early 20th century). However, the memory of 663 AD is often highlighted as the start of a deep-seated, historically rooted conflict over the Korean peninsula. The Battle of Baekgang (663 AD), while a significant historical event involving Japan (Yamato) and the Korean peninsula, cannot be legitimately used to justify Japan’s colonial rule over Korea (1910 - 1945) under modern international law or standard historical analysis. The Battle of Baekgang (663 AD), while a significant historical event involving Japan (Yamato) and the Korean peninsula, cannot be legitimately used to justify Japan’s colonial rule over Korea (1910 - 1945) under modern international law or standard historical analysis.

The Treaty on Basic Relations between Korea and Japan(韓日基本條約), signed on June 22, 1965, was intended to normalize diplomatic relations between the Republic of Korea and Japan and resolve post-war reparations issues. The 1965 Treaty on Basic Relations between Japan and the Republic of Korea (Korea-Japan Basic Treaty) and its accompanying Claims Agreement normalized diplomatic relations, but left fundamental differences in interpretation regarding the legal nature of Japanese colonial rule (1910 - 1945) and the settlement of compensation. These differences arise from the “constructive ambiguity” used to finalize the agreement despite opposing views.

Korea has historically maintained that the treaty of annexation was forced

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and therefore null and void from the beginning (illegal), meaning Japanese colonial rule was a wrongful, illegal occupation. In response to Korea's argument that this treaty is invalid, Japan argues that the annexation was legally valid at the time it occurred under international law.

Korea's property claims against Japan refer to the right to claim compensation or reparations for Japan's colonial rule and war mobilization. However, because Korea did not participate in the San Francisco Peace Treaty with Japan, it could not use terms such as 'compensation' or 'reparations.' The 1965 Korea-Japan Basic Treaty and accompanying Claims Agreement did not explicitly recognize a "right to claim reparations" for Japan, but rather settled property and claims issues, with Japan providing \$300 million in grants and \$200 million in loans.

In 2018, the Supreme Court of South Korea officially ruled that Japan's colonial rule was illegal and that the resulting forced labor was illegal. Consequently, the court ruled as follows: individual claims for damages were not extinguished by the 1965 settlement. Conversely, Japan did not acknowledge legal responsibility for the illegality of its colonial rule during the negotiation process.

In 2023, under the Yoon Suk-yeol administration, South Korea attempted to uphold the 1965 settlement while acknowledging the legitimacy of the victims' rights. This was achieved by establishing local foundations to compensate victims using funds from South Korean companies through so-called third-party compensation, thereby harmonizing the 2018 court ruling with the 1965 treaty. In 2023, five years after the 2018 ruling, the Supreme Court of South Korea confirmed that the defendant companies, Mitsubishi and Nippon Steel, must pay compensation ranging from 100 million to 150 million won per person in a lawsuit filed by victims and their bereaved families.

In a damages claim lawsuit filed against Japanese companies by victims of forced mobilization during the Japanese colonial period, the Supreme Court of Korea ruled that "the lawsuit itself cannot be blocked on the grounds of the Korea-Japan Claims Agreement." With the case, which was dismissed in the first instance, remanded by the appellate court and subsequently confirmed by the Supreme Court, the substantive trial is set to proceed. On February

12, the First Civil Division of the Supreme Court (Presiding Justice Noh Tae-ak) dismissed all appeals by the defendants in the final appeal of the damages claim lawsuit filed by Mr. Kang and other victims and bereaved families against Japanese companies including Mitsubishi Heavy Industries, and confirmed the appellate court's ruling to remand the case to the first instance.

The post-war reparations models of Germany and Japan differed significantly due to variations in Allied occupation strategies, the onset of the Cold War, regional political dynamics, and domestic, societal, and political responses to wartime atrocities. Germany's approach was characterized by early, extensive, and continuous state-level compensation, largely driven by the moral imperative of the Holocaust. In contrast, Japan's reparations were often handled through negotiated bilateral agreements and economic aid in the 1950s, focused on settling claims with neighboring nations that suffered under its colonial and wartime policies.

In order to resolve the conflicting issues between Korea and Japan, it is deemed necessary to examine the reparations for victims of forced labor in Germany—ranging from remembrance and responsibility to reparations by the Future Foundation—as a comparative legal study that holds significant meaning regarding the recognition of individual rights to post-war reparations.

The application of Arendt's concept provides a basis for demanding structural compensation and official apologies that address the systemic nature of the illegal acts, rather than accepting partial, individual compensations with regard to liability for compensation for forced labor to the Korean victims. It challenges the defense that “no one intended to cause such harm” or that “we were only following legal orders at the time,” highlighting that lack of thought does not absolve the state of responsibility in the case of an aggressor such as Japan regarding liability for compensation for forced labor. The New Nippon Steel Case and similar lawsuits are attempts to bridge this gap, using legal mechanisms to force recognition of these “banal” (yet devastating) systems of exploitation, which is a crucial step for achieving a “new, constitutional-patriotic identity” for both nations, similar to Germany's post-war reckoning.

Hegel's philosophy, when applied to historical disputes, views reconciliation

not as a one-time settlement (like the 1965 treaty), but as an ongoing process of dialogue and negotiation. This approach allows for addressing “trauma” without necessarily achieving total consensus on the past, focusing instead on continued mutual recognition of the other’s viewpoint. Trust is built when both nations recognize the other’s legitimacy and security concerns, particularly in the context of regional threats (e.g., North Korea) and global uncertainties. In essence, applying Hegel’s recognition theory means that Korea and Japan must mutually affirm each other’s legitimacy and, despite historical trauma, commit to a shared destiny as indispensable partners in a globalized world.

Keywords : legal points of discussion for establishing a future-oriented and cooperative relationship of trust between Korea and Japan through the consensual resolution of past issues, the Korea-Japan Basic Treaty and the Claims Agreement concerning Japan’s colonial rule, the South Korean Supreme Court rulings regarding compensation claims by Korean victims of forced labor against Japanese companies, application of Hegel’s philosophy of recognition to the formation of a progressive future relationship between Korea and Japan, The Historical Connection Between the Battle of Baekgang and the Annexation of Korea by Japan

