

fort women" by soldiers of the Japanese Army in the territory of the Philippines during World War II brought a suit claiming compensation from the Government of Japan. The plaintiffs raised a claim pursuant to customary international law, crimes against humanity, domestic law of the Philippines, and the Civil Code of Japan. All of the plaintiffs are Philippine nationals and resided in the Philippines throughout the period of the Japanese military occupation.

Held: '1. All claims of the plaintiffs shall be dismissed.'

Upon the grounds stated below:

'The court begins by examining whether the plaintiffs have the right to claim compensation for damages.'

I. On the Claim Based on Customary International Law

'The plaintiffs argue that Article 3 of the Hague Convention on Law on Land of 1907"<sup>1</sup> (hereinafter the Hague Convention) provides residents of an occupied territory with the right to claim compensation for damages caused by the acts of members of the occupying force in violation of the Hague Regulations annexed to the Convention"<sup>2</sup> (hereinafter the Hague Regulations). They maintain that this had been established as a rule of customary international law, at the latest, by the outbreak of the World War II. The Court, therefore, first examined whether or not the alleged rule had been established at the time of the offenses.

1. Elements Constituting Customary International Law

(1) Equated with international custom as general practice

Customary international law is "international custom, as evidence of a general practice accepted as law."<sup>3</sup> The existence of a rule of customary international law is recognized by the general practice and *opinio juris* of states.

(2) General principle of international law

It is a general principle of international law that it regulates relations between

Tokyo District Court, Judgment, October 9, 1998

Maria Rosa Henson et al. v. State of Japan

Philippine women who were assaulted, confined, and raped as "com-

(1) Convention (IV) Respecting the Laws and Customs of War on Land, 1907.

(2) Regulations Respecting the Laws and Customs of War on Land Annexed to the Convention (IV) Respecting the Laws and Customs of War on Land, 1907.

(3) Article 38(1)(b) of the Statute of the International Court of Justice.

States. In case of a violation of rights and benefits of individuals, the general principle of international law intends to provide remedies for the individual victims indirectly through the exercise of diplomatic protection by the national states of the victims. When individual persons seek to remedy the violation of their rights and benefits directly from foreign States, they need a special norm of international law that provides them rights to claim redress.

(3) Method of Interpretation of Treaties

The Vienna Convention on the Law of Treaties<sup>(1)</sup> (hereinafter the Vienna Convention) prescribes rules of interpretation of treaties in Articles 31 and 32.

The plaintiffs assert that Article 3 of the Hague Convention is a codification of a principle of customary international law which recognizes the right of individual persons to claim compensation for damages directly against other States. The Court agrees that the rule of interpretation prescribed in Articles 31 and 32 of the Vienna Convention is recognized as the rule of interpretation of treaties and customary international law which was in effect during World War II. According to the rule of interpretation mentioned above, texts of treaties should be interpreted in accordance with the ordinary meaning to be given to the terms in their context, having recourse to the preparatory work of the convention and the circumstances of its conclusion. Therefore the Court examines the validity of the alleged interpretation of Article 3 of the Hague Convention as follows according to these rules of interpretation.

2. Purpose of Article 3 of the Hague Convention

(2) Interpretation of Article 3 of the Convention

In view of the purpose of the clauses of the Hague Convention and the Regulations, Article 3 of the Convention should be understood as imposing liability for reparations on a belligerent party as a sanction against the violation of the Hague Regulations committed by its army or persons forming part of its army in order to secure effective observance of the Convention. It does not provide any right of individuals to demand compensation for damages and injury caused by the violation of the Regulations directly against belligerent State parties.

The following facts will support the interpretation of the Court. First, the general principle of international law provides that international law is a law governing relations between States. Secondly, Article 2 of the Hague Convention prescribes that the provisions of the Regulations and the Convention "do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention." Thirdly, there is no statement in Article 3 of the Convention referring

(1) Vienna Convention on the Law of Treaties, 1969.

to individuals as the subject to whom wrongdoing States are liable and obliged to pay compensation.

Referring to Article 709 of the Civil Code and Article 1(1) of the Tort Claims against the State Act,<sup>(1)</sup> the plaintiffs point out that these clauses provide the right of individuals to claim compensation for torts without question although they refer only to the liability of the wrongdoer. Therefore, according to the plaintiffs, Article 3 of the Hague Convention, which makes no reference to the claim right of individuals, also should be understood as a clause entitling individuals to claim compensation for damages. However, the Court cannot accept this reasoning, since there is a wide difference between legal relations under international law and those under domestic law.

The plaintiffs also claim that they have the right to claim compensation under Article 3 of the Hague Convention because the article constitutes a substantial part of the Hague Regulations, which are directly applicable to the relationship between residents in an occupied territory and members of the occupying force. However, the Regulations, as examined above, are nothing more than rules of conduct for the military and its members, and Article 3 of the Convention provides nothing more than State responsibility as a sanction against the State of a wrongdoer. Therefore, it is not possible to recognize that the article provides the right to individuals to claim directly against an occupying State.

Furthermore, the plaintiffs insist that the drafters of Article 3, Sentence 1 had it in mind to deal with the claims of individual victims, pointing out that the article utilizes the term "compensation" instead of the general term "reparation" in the same way as the terms prescribed in Articles 53 and 54 of the Regulations. However, even if the article imposes payment of compensation on the belligerent parties, it does not lead directly to the recognition of the right of individuals to file claims.

(3) Summary

To summarize, according to the ordinary meaning to be given to the terms in their context, Article 3 of the Hague Convention cannot be understood as a clause that entitles individual victims to bring a claim for compensation directly against a wrongdoing State. Accordingly, it is impossible to recognize that the article is a codification of a rule of customary international law.

3. Drafting Process of Article 3 of the Hague Convention

The plaintiffs assert that it is possible to identify Article 3 of the Hague

(1) *Kobika Banzai Ho*, the Tort Claims against the State Act (1947 Act, No. 125).

Convention as a rule of customary international law by examining the drafting process of the article.

(2) Meanings of the suggestions

Throughout the examination of the statements of delegations at the drafting process of the article, no overt expression was found to affirm that the article provides individual victims the right to claim compensation directly against belligerent States, nor was any statement referring to the method of realization of the alleged rights.

(3) Summary

Consequently, after examining the text of the article and its drafting process, the Court cannot recognize the existence of the alleged principle that admits the right to claim compensation directly against belligerent States.<sup>67</sup>

4. Reconfirmation of the Principle of Article 3 of the Hague Convention since World War II

(1) Geneva Conventions and Additional Protocol

The plaintiffs maintain that the principle of Article 3 of the Hague Convention has been reconfirmed in Article 154 of the Geneva Convention (IV) of 1949<sup>68</sup> and Article 91 of the Additional Protocol.<sup>69</sup>

These clauses, however, confirm only the rules defined in articles of the Hague Convention and its Regulations, and do not recognize the alleged principle providing the right of individuals to claim compensation directly against belligerent States.

(2) State practices

The plaintiffs further insist that the alleged principle has been reconfirmed and developed by the following State practices, and that they strengthen the interpretation of Article 3 of the Hague Convention presented by the plaintiffs.

However, the Court cannot identify these State practices as evidence of the existence of the alleged principle of customary international law.

1) The Mixed Arbitration Tribunals

These tribunals were established after World War I, and they allowed individual victims to pursue litigation directly

<sup>68</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949.

<sup>69</sup> Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977.

to the courts regardless of the intention of their governments. These tribunals, however, were special courts established by specific agreements between States, their jurisdiction was limited to specific damages, and nationals of defeated States were refused the right to sue at these tribunals. Considering these points, the establishing of these tribunals itself does not lead directly to the recognition of the alleged principle.

2) Judgment of the Administrative Court of Appeals of Munster

This decision concerned a claim raised by a German national for damages and injuries resulting from a traffic accident caused by a British soldier who was a member of the occupying force in occupied Germany. The court accepted the claim on the basis of Article 3 of the Hague Convention.

However, this is a case in which an individual victim brought a claim not against the occupying power but against his own government, and the court recognized not the alleged principle which provides the right of individuals to file such claims but only the principle of State responsibility. Therefore, this case cannot be considered as evidence of the alleged principle.

3) Practices of the United Nations

(a) The United Nations paid compensation directly to Belgian nationals for damages caused by the United Nations Forces in the Congo in the 1960s. The United Nations acknowledged that the UN Forces had violated the laws of war and that the victims had the right to seek compensation from the United Nations.

(a) Regarding the settlement of the Gulf War, the United Nations Security Council adopted Resolution 687 under Article 25 of the UN Charter reconfirming the liability of Iraq under international law for compensation for damages caused by Iraq. The Governing Council of the United Nations Compensation Commission, established under Resolution 687, acknowledged the right of civilians and prisoners of war to claim compensation for damages caused by violations of the laws of war.

(a) The United Nations General Assembly acknowledged in its resolution on December 23, 1994 that States are responsi-

three-year period of prescription, and that the latter part provides a 20-year period of exclusion. It is incompatible with the purpose of the article, which aims to settle legal relations concerning torts promptly. Therefore, the latter part of the article should be understood as a provision invalidating claims simply by the certain passage of time, regardless of the subjective recognition of victims.<sup>120</sup> Consequently, the Court observes that the claim of the plaintiffs has become invalid by the period of exclusion despite the lack of a claim by the defendants.

#### 4. Summary

To summarize, the Court decrees that the claim of the plaintiffs based on the law of the Philippines has no grounds even without examining the other points at issue.

#### IV. On the Claim Based on the Civil Code of Japan

##### 1. Doctrine of Sovereign Immunity

The plaintiffs insist that the Emperor and the members of the staff of the Imperial Headquarters neglected their obligation to supervise and control the members of their army, and since the omission was committed in the territory of Japan, according to Article 11 of the Act concerning the Application of Laws, the State of Japan is responsible for employer liability under the law of Japan where the torts were committed.

However, even though the existence of the offenses and the fact that they were committed in the territory of Japan would be recognized, and if it is possible to acknowledge Articles 709 and 715 of the Civil Code as the proper law to be applied in the case, still the Court maintains that the defendant is not liable to compensation because these articles were not applicable to governmental acts of the organs of the government under the doctrine of sovereign immunity.

The plaintiffs also maintain that these articles of the Civil Code were applicable to the offenses at the time they were committed because the article of the Hague Convention, which had already been incorporated into the domestic law of Japan, limited sovereign immunity to a certain extent and allowed the application of the clauses of the Civil Code concerning torts to governmental acts by the State.

Nevertheless, as examined above, Article 3 of the Hague Convention does not recognize the right of individuals to claim compensation for damages directly against violating States. Therefore, the claim of the plaintiffs cannot be accepted.

(20) 3 *Mitsuba* 112, 2309 (1987).

#### 2. The latter part of Article 724 of the Civil Code

Furthermore, even if the offense itself and the application of the Civil Code were recognized, the claim has already become invalid by the period of exclusion.

The plaintiffs assert that even though it was appropriate to understand the latter part of Article 724 as the period of exclusion, it should not be applied in this case. They maintain that the delay in making the claim was beyond the control of the plaintiffs, since the delay was caused by the political situation in the Philippines, the conclusion of the reparations treaty between Japan and the Philippines, and the view of Japan on the treaty. In addition, they point out, the delay did not affect the capacity of the defendant to defend herself. Therefore, they allege, the application of the period of exclusion to this case would be against the principle of good faith and an abuse of privilege.

However, the Court applies the period of exclusion to this case and recognizes the extinguishing of the claim. The period of exclusion purports to extinguish claims simply by the passage of twenty years.<sup>121</sup> In view of the nature of the period of exclusion, the Court is bound to apply it regardless of the existence of the claim by the defendant, since the litigation was raised more than twenty years after the commission of the offenses.

#### V. Conclusion

From the points examined above, it is clear that the claim of the plaintiff has no grounds, even without examining further issues. Therefore the Court shall dismiss the claim.

Judge Yoriaki Ichikawa (presiding)  
Judge Naoyuki Iwai

(21) *Ibid.*