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**The Role of Law in Promoting Reconciliation in East Asia:
The Accomplishments and Challenges of the Ienaga Textbook Trials and Compensation
Trials for the Chinese Victims of Japanese Aggression**

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It is my belief that in order to promote reconciliation in East Asia it is urgent for Japanese ministers, politicians, and the Ministry of Education, Culture, Sports, Science and Technology (MEXT) to acknowledge past wrongdoings as historical facts. It is also essential that they offer a faithful apology, compensation, and support for public education about Japan's wartime past. In my presentation, I will first discuss the three Textbook Lawsuits from 1965 to 1997 filed by Saburô Ienaga, a modern Japanese history professor at the Tokyo University of Education (now renamed Tsukuba University). I will then examine several compensation lawsuits brought about since 1995 by Chinese victims seeking redress for Japan's aggression during World War II.

Let me first briefly summarize the history of the authorization system that arose in the postwar years to control the contents of textbooks. It is prohibited for MEXT to publish textbooks directly, but there is still a system of textbook authorization in place, which clearly represents another kind of censorship. During the American occupation, however, the Supreme Commander for the Allied Powers maintained the system in order to prevent nationalistic and militaristic tendencies from creeping into textbooks.

As the Cold War began, the policies of the Allied occupying powers shifted from demilitarization and democratization and took a more nationalistic direction. When Japan concluded the San Francisco Peace Treaty and regained its independence in 1952, the Japanese government followed the Occupation-era policy of cultivating nationalism. The textbook authorization system was also influenced by the Cold War politics. In particular, the standards of the textbook authorization system were tightened after 1955. Since then, the Ministry of Education has tended to exclude any description of the war that might be seen as critical, including any mention of the suffering of the Japanese citizens during the war years.

In the 1962 authorization examination, the Ministry of Education gave Ienaga's *New Japanese History* a failing grade even though it had been used in schools prior to that year. In the 1963 examination, the textbook passed with some conditions for revision. In the latter inspection, the Ministry demanded Ienaga to revise or delete more than 300 items in total. In response, Ienaga filed a lawsuit in 1965 against the Japanese government, demanding compensation under the State Redress Law. He argued that the authorization system and the demand for revision and deletion were unconstitutional and violated the Fundamental Law of Education. In 1967 and 1984, he filed his second and third lawsuits.

The 1967 lawsuit was filed administratively to demand that the Ministry reverse the rejection of his textbook in the 1966 inspection. In 1970, the Tokyo District Court ruled in favor of Ienaga. Judge Sugimoto found the demand of the Ministry not only violates the Fundamental Law of Education, but it also falls under the category of censorship as defined by the Constitution. The rejection of Ienaga's textbook by the state was invalidated. This judgment, which won the approval of many people at the time, prevented the state from implementing a strict standard in its authorization process in the 1970s.

Nevertheless, in the early 1980s, the Ministry again imposed a strict standard on authors

of textbooks. In the 1980 inspection, for example, the Ministry demanded Ienaga revise or delete approximately 420 items in his *New Japanese History*. In 1983, the Ministry requested approximately seventy revisions or deletions. The following year, Ienaga filed his third lawsuit against the Japanese government, demanding compensation for eight particular revisions requested by the Ministry. In this lawsuit, he not only insisted that the authorization system and the request of the revisions and deletions were unconstitutional, but he also argued that the Minister of Education unjustly abused his power.

It was during this third lawsuit that the court considered victimization inflicted by imperial Japan on other nations and the colonies. In this particular edition, Ienaga detailed Japanese wartime aggression drawing upon studies of Japanese war crimes such as the Nanjing Massacre and Japan's biological warfare. Such studies had become increasingly available and were widely accepted as historical facts in the academy.

The Tokyo High Court issued a ruling in October 1993. By this time, both the social and political contexts were in favor of Ienaga. Responding to the lawsuit filed by the Korean survivors forced into sexual slavery against the Japanese government, Cabinet Secretary Yōhei Kōno acknowledged that the "military was, directly or indirectly, involved in the establishment and management of the comfort stations and the transfer of comfort women" and stated that the Japanese government "would like to ... extend its sincere apologies and remorse to all those, irrespective of place of origin, who suffered immeasurable pain and incurable physical and psychological wounds as comfort women." The court ruled that while the authorization system was constitutional, there was a certain abuse of discretion on the part of the Ministry when it came to examining of the descriptions of the Nanjing Massacre and the sexual assaults of Chinese women by the military. This, the court determined, was illegal. Furthermore, in August 1997, the Supreme Court ruled that the Ministry's inspection regarding the description of Unit 731 was also illegal. In short, the legal system helped restrain the authorization system which had, in essence, tried to exclude references incompatible with a romanticization of Japan's imperial past. It is now essential that even pro-imperial revisionists and those lawmakers who condemn Kōno's 1993 statement in Japan must recognize the judgments of these trials.

The compensation lawsuits filed by Chinese survivors of Japanese wartime atrocities represent another important area in which the law is being used to combat revisionist conservatism. Since 1995, I and approximately 250 other attorneys have supported Chinese plaintiffs in various compensation lawsuits. More than ten cases have been filed. These include trials regarding the Nanjing Massacre, Japan's chemical and biological warfare, slave labor, forced mobilization, the case of Lianren Liu (who escaped from a mine and hid in the mountain for thirteen years without learning of Japan's defeat), violence against women, atrocities in Pingdingshan (where the Japanese military tried to kill the entire village, including children), and indiscriminate bombing. In addition, cases involving forced mobilization and slave labor have been filed in local courts across Japan.

In May 1994, the Minister of Law Shigeto Nagano denied that the Nanjing Massacre had taken place, and his denial prompted these lawsuits. Immediately after Nagano's denial of Nanjing, the attorney Toshitaka Onodera and several fellow lawyers who were visiting China to research its legal system strongly condemned Nagano's statement and sent a letter of protest to the press. One journalist in Beijing who helped Onodera send his protest to non-Japanese media, informed Onodera of survivors in China who wanted to file lawsuits in Japan. By the end of the year, a group of lawyers, including myself, visited China to conduct hearings from the survivors. Since then I have been leading some 250 lawyers as the head of the defense counsel.

Between 1995 and the present, various courts – district courts, appeals courts, and even the Supreme Court – have issued a total of twenty-one judgments. Of these, four district-level judgments ruled in favor of the plaintiffs (these were the judgments by the Tokyo District Court on Lianren Liu and abandoned chemical agents and rulings by the Fukuoka District and the Niigata District Courts on forced mobilization and slave labor). In the other seventeen cases, however, the courts rejected the claims of the plaintiffs.

As of March 1, 2007, six cases have been filed with the Supreme Court, six with the appeals courts, and five with the district courts. Regarding the Pingdingshan Trial, all three verdicts sided against the plaintiffs, and the case was closed. The judges rejected the claims of the victims on the grounds that the twenty-year statute of limitation had expired; moreover, they found the state was immune from lawsuits since the Meiji Constitution that had been in effect until 1947 contained no provision for redresses. These unfavorable judgments show just how difficult it is for Chinese survivors and victims to bring compensation lawsuits to the Japanese legal system.

In a compensation case filed against the Nishimatsu Construction Company for having forced them to perform unpaid labor, the Supreme Court recently informed the plaintiffs there will be a hearing on March 16, 2007. In 2004, the Hiroshima High Court had ruled in favor of the plaintiffs. The Supreme Court holds a hearing only when it reverses a previous judgment, and so it seems clear the court will overturn the ruling of the Hiroshima High Court. Mostly likely, the court will claim the plaintiffs had no right to seek individual compensation on the basis of the 1972 joint communiqué between Japan and China. If the Supreme Court does issue such a judgment, every single compensation lawsuit brought by Chinese plaintiffs will be buried in oblivion.

Although the courts have rejected the demands of the plaintiffs in many trials, in all the cases judgments recognized the suffering of the plaintiffs and the historical fact that the Japanese government and Japanese companies did commit atrocities. For example, in its ruling of a sexual violence trial in 2004, the Tokyo High Court declared that “the Eighth Route Army in northern China waged a large-scale counterattack in August 1940 and inflicted significant damage on the Japanese North China Expedition Army. In response, the Japanese military put in place the so-called ‘Three-All Operation’ (‘kill all, plunder all, and burn all’) and left it active until 1942 in order to destroy and isolate the Eighth Route Army; as a result, Japanese troops often carried out atrocities against Chinese civilians. There were instances when Japanese troops abducted Chinese women, including girls living near the base, imprisoned these women, and raped them daily, or turned the women into ‘comfort women.’”

In the case of Mianhuan Liu (b 1927), a victim of sexual violence, the high court ruled, “Around March 1943 in the Chinese Lunar Calendar, three Chinese and three armed Japanese soldiers abducted Liu from her home and took her to the Japanese army post in Jingul Village. In order to stop her from resisting, the Japanese soldiers struck her left shoulder with their rifle butt and tied her hands behind her back. They imprisoned her in a cave. On the day of the abduction, the three Chinese [kidnappers] and many Japanese soldiers raped her in the cave or a room inside the fort... This imprisonment and rape lasted approximately forty days.”

These judgments in the last twelve years, in my view, are nothing to be ignored. I believe that reconciliation is possible only when assailants acknowledge their wrongdoings and such recognition will be the basis for reconciliation. One cannot deny the Japanese government has at least moral responsibility for the historical facts that the courts have recognized. Whereas the Japanese government has argued that the government is not responsible to pay restitution simply

because the courts have not recognized legal responsibility, this is not entirely true. The judgments have not declared that the government is without responsibility.

On this matter, the Japanese government must learn from the German experience. The German government recognized its moral and political responsibilities and issued a special law to compensate the victims of wartime atrocities, and the President of Germany issued a sincere apology. On December 17, 1999, the German President Johannes Rau issued the following statement on the Agreement of the Level of Foundation Funding for the Compensation of the Victims of Forced Labor:

We all know that no amount of money can truly compensate the victims of crime. We all know that the suffering inflicted upon millions of women and men cannot be undone. I know that for many it is not really money that matters. What they want is for their suffering to be recognized as suffering and for the injustice done to them to be named injustice. (<http://www.germany.info/relaunch/politics/speeches/121799.html>)

About seven months later, on July 6, 2000, the German parliament passed a law to compensate the victims of forced labor in the concentration camps.

I firmly believe that the Japanese government must issue a special law based on the German model and provide compensation to the victims of Japanese atrocities for damages recognized by the courts. Even if the government does not pass a law, it is possible for them to offer sincere apologies that the victims might accept as apologies (not as insults) and to include details on Japanese wartime atrocities in textbooks in order to educate the next generation. When used alone, the law has limitations due to legal theories, but the law might be rendered an effective means to promote reconciliation if it combines its power with politics and education.