Japan Focus

Mitsubishi, Historical Revisionism and Japanese Corporate Resistance to Chinese Forced Labor Redress

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By William Underwood

Just as Nazi Germany did in Europe during World War II, Imperial Japan made extensive use of forced labor across the vast area of the Asia Pacific it once occupied. Today, however, Japan's government and corporations are dealing with the legacy of wartime forced labor very differently than their German counterparts.

This article examines the corporate counter-offensive to reparations claims for Chinese forced labor in Japan, as presented by defense lawyers for Mitsubishi Materials Corp. in a compensation lawsuit to be decided by the Fukuoka District Court on March 29. In startling closing arguments last September, Mitsubishi issued a blanket denial of historical facts routinely recognized by other Japanese courts, while heaping criticism on the Tokyo Trials and openly questioning whether Japan ever "invaded" China at all. Mitsubishi has ominously warned that a redress award for the elderly Chinese plaintiffs, or even a court finding that forced labor occurred, would saddle Japan with a "mistaken burden of the soul" for hundreds of years.

First, a look at the German approach. The "Remembrance, Responsibility and the Future" Foundation was established in 2000, with $6 billion from the federal government and more than 6,500 industrial enterprises. As redress payments drew to a close last fall, about 1.6 million forced labor victims or their heirs, residing in more than 100 countries, had received individual apologies and symbolic compensation of up to $10,000 each. Altogether, 12 million people are believed to have worked for the Nazi regime involuntarily.[1]

Commemorations and truth telling through history education are related aspects of the reparations process in which Germans have manifested a strong commitment to reconciliation. The Berlin state government has purchased an eight-acre former forced labor camp and is turning it into a memorial museum set to open in summer 2006. These latest steps in a longstanding, if sometimes fitful, pattern of atonement underscore the discontinuity between wartime and postwar Germany. Mostly non-Jews from Eastern Europe and the former Soviet Union, forced laborers were the last major class of uncompensated victims of German war crimes. Smaller numbers of persecuted ethnic, religious and sexuality minorities were also included in the German redress fund.

"In a political and in a moral sense, this chapter will never be closed," the redress foundation's chairman observed last October. "What is at stake here—and this is the responsibility of our generation and future generations—is to keep these very tragic events, these human rights violations firmly in the national memory."[2]

Chinese plaintiffs enter the Nagasaki District Courthouse in December 2004 for a lawsuit against Mitsubishi, Nagasaki Prefecture and the state. Motoshima Hitoshi, the city's former mayor who was seriously wounded in an assassination attempt by an ultranationalist in 1990, is in the center of the group wearing a necktie.

In December 2005, for its part, the Austrian Reconciliation Fund finished paying out nearly $350 million to 132,000 workers, or their families, forced to toil for the Nazi war machine in that country. As in the German case, Austrian redress payouts were higher for "slave laborers," whom the Nazis intended to work to death under the most horrific conditions, than for "forced laborers," who worked under less onerous conditions and in some cases received nominal wages during the war.[3]

"Rough justice" refers to a novel legal concept employed in the late 1990s by forced labor redress activists, American class action trial lawyers, U.S. State Department officials, and European governments and corporations. Swiss and French banks and insurance companies used the same approach to settle waves of claims stemming from the looted assets of Holocaust victims. A basic consensus that a historical injustice had been committed and the political will, achieved through a combination of pressure and incentives, to rectify the wrongdoing came first. Details like determining precise numbers of slave laborers and forced laborers were hammered out only after the redress foundations were established. Rough justice aimed to compensate as many aged victims as possible, so eligibility requirements were often relaxed even when documentation was lacking.[4]

Japan's passive legalism

Japan's track record, by contrast, reveals a fundamentally different approach to coming to terms with the past. An intractable "civil war" over national memory of the colonization of Korea, aggressive warfare in China, and the military occupation of large areas of East Asia has left Japanese history textbooks the subject of continued passionate contestation today, both domestically and within the region. Commemorative prime ministerial visits to Yasukuni Shrine, which honors convicted war criminals and is symbolically linked to Japan's Greater East Asian War, together with official support for a revisionist narrative of Japan's past, are so bitterly opposed by Chinese and Koreans that summit meetings of top leaders have become impossible. The return of cultural and private assets looted from across Asia by Japan remains far off the agenda.

Victims of Japanese war crimes have virtually never received apologies or compensation, as Tokyo contends that peace treaties and other state-level agreements extinguished all legal claims decades ago. The 1995 Asian Women's Fund for military sexual slavery represented a partial exception. Yet

most of the so-called comfort women indignantly refused the condolence money from private sources because it was decoupled from a full admission of state responsibility. State apologies, debatably, are the lone area in which Japan has sincerely attempted to atone for its war misconduct.[5] But because these have repeatedly been negated by contrary government actions, such as the Yasukuni visits and revisionist "gaffes" by senior politicians, and because they have never been accompanied by appropriate reparations to victims, the issues continue to fester.

Whereas Germany continued to investigate its own citizens for war crimes well into the current century, Japan never held any war crimes trials, opting instead to grant early release and amnesty to Japanese convicted of such charges during the Allied Occupation. Kishi Nobusuke spent three years in Sugamo Prison as a Class A war crimes suspect before going on to occupy the prime minister's office from 1957-60, vividly illustrating the continuity between wartime and postwar Japan.[6] Kishi was the founding father of the long-dominant Liberal Democratic Party and his grandson, Abe Shinzo, is considered the front runner to replace Koizumi Junichiro as prime minister later this year.

The three main programs for forced labor in Japan involved Allied prisoners of war, Koreans and Chinese. Millions of Asians are thought to have worked against their will for the empire outside of Japan, but the historical record remains underdeveloped and is not considered here.

Aided by Japanese supporters, forced labor survivors in wheelchairs return to the Gunma Prefecture mine where they toiled without pay more than sixty years ago.

Forced labor redress efforts by former Allied POWs highlight how the United States has helped Japan sidestep war responsibility. Thousands of Allied prisoners died en route to Japan aboard the notorious "hellships," many of them unmarked as POW ships and shot out of the water by American submarines, while systematic mistreatment and the withholding of Red Cross shipments of food and medicine contributed to high prison camp death rates. American ex-POWs received token payments from forfeited Japanese assets soon after the war, but the U.S. State Department vigorously opposed their reparations campaign from the late 1990s. Despite playing a central role in redress activities targeting Germany, and the fact that Congress as well as state legislatures were keen to aid the former POWs' fight, the American executive branch pushed the nation's courts to

interpret the San Francisco Peace Treaty as precluding individual claims against Japanese companies.[7] Other Allied nations, having been pressured by Washington into accepting the 1951 treaty's lenient reparations terms, have compensated their own ex-POWs with domestic funds in recent years. It appears the United States will never do so.

In her book Unjust Enrichment, in a chapter called "Mitsubishi: Empire of Exploitation," leading researcher Linda Goetz Holmes writes: "Mitsubishi occupies a unique place in the history of corporate Japan's use of POW slave labor during World War II. This company built, owned, and operated at least seventeen of the merchant 'hellships' that transported prisoners to their assigned destinations; and this company profited from prisoner labor over a larger range of territory than any other."[8] Mitsubishi also supplied 225 miles worth of wooden crossties for the infamous Burma-Siam Railway. Regarding a large Allied POW camp near the Unit 731 site in Manchuria, Holmes says "the impression remains that the Mitsubishi facility at Mukden was the site of the most frequent and systematic incidents of medical experimentation on American prisoners of war."[9]

In addition, Mitsubishi has faced a slew of lawsuits in Japan, the U.S. and South Korea for its extensive domestic use of Korean forced labor (KFL). Hundreds of thousands of Korean workers, including teenage girls, were conscripted and brought to Japan through various means of coercion and deception that grew more heavy-handed as the war progressed.[10] Corporations funneled their wages into mandatory "patriotic savings accounts" while withholding deductions for pensions and health insurance, and retaining full control of the relevant passbooks. Promises to send money home to families in Korea were mostly broken.

Korean workers began demanding their unpaid wages immediately after Japan's surrender and continue to do so today. In 1946, however, the Japanese government quietly instructed companies to deposit the wages and related monies with state agencies including the Bank of Japan. Apparently, the funds were later commingled with unpaid wage deposits for Chinese laborers, but kept separate from money that was never paid out to Korean soldiers and civilians who worked for the Japanese military. The KFL-linked funds are now held by the national bank in the amount of 215 million yen (or roughly $2 million, unadjusted for six decades of interest or inflation).[11]

Instead of informing the former Korean conscripts, Tokyo withheld vital information about the KFL deposits, their unpaid wages, in the years leading up to the Japan-South Korea normalization treaty of 1965 in order to avoid taking responsibility for this conspicuous feature of colonial rule. The Seoul government, stymied in attempts to formally advance this compensation claim on behalf of its citizens, was forced to accept the intensely unpopular "economic assistance" formula that treated the unpaid wages as property claims to be waived at the time of the treaty.

In the past year, the long-running quest for KFL redress has been transformed. Under relentless pressure from South Korea's Truth Commission on Forced Mobilization under Japanese Imperialism, which continues to dispatch investigators to former worksites across the country, the Japanese government has asked corporations, municipalities and temples to cooperate in the belated search for name rosters and the repatriation of human ashes long held in communal graves. While the South Korean government is expected to eventually compensate surviving labor conscripts itself, an act that might rightly shame the Japanese government and people, Japan's intentions regarding the large KFL wage deposits remain unclear. A handful of out-of-court settlements over the past decade have benefited only a small number of former Korean workers. Japanese law does not allow class action lawsuits.

Record of Chinese forced labor

The reparations movement for Chinese forced labor (CFL) is a useful lens for looking more closely

at how the Japanese state and corporations have interacted over the past 60 years to evade accountability for their joint wartime actions.

A previous Japan Focus article described how in 1946 the Ministry of Foreign Affairs (MOFA) and 35 corporations secretly compiled an exhaustive record of the forced labor program at 135 worksites nationwide, essentially for self-defense purposes in anticipation of war crimes prosecutions that mostly materialized.[12] The government later suppressed the five-volume Investigative Report on Working Conditions of Chinese Laborers (better known as the Foreign Ministry Report, or FMR) in order to prevent state reparations claims from China and to obstruct the determined efforts of domestic redress activists, who sought to repatriate Chinese remains and reveal the truth about the slavery-style conditions. More than one out of six (6,830 out of 38,935) Chinese men between the ages of 11 and 78 died, according to meticulous FMR statistics. At some sites fully half of all workers perished, despite having arrived in Japan during the war's final year.

In the compensation case now before the Fukuoka District Court, the three defendants are the state, Mitsubishi and Mitsui Mining Co. Six corporations active at 16 sites in Fukuoka Prefecture, whose Chikuho coalfields fueled the domestic war machine, received 6,090 Chinese workers altogether, second only to Hokkaido. Mitsui operated three mines involved in this case and used a nationwide total of 5,696 Chinese, which was nearly 15 percent of all workers and more than any other company. Mitsubishi ran two mines involved in this case and used a nationwide total of 2,709 Chinese, or seven percent of all workers. Eighty-seven out of the 352 workers at Mitsubishi's Katsuta worksite died. That 25 percent death rate ranked highest in the prefecture but in only twenty-eighth place overall.

During the war some 500 Koreans and 200 Chinese were forced to mine coal 600 meters below sea level at Hashima, a Mitsubishi-owned island in Nagasaki Bay better known as Battleship Island. Mining ceased in 1974 and the island is now uninhabited.

MOFA documents declassified in 2002 revealed that the administration of Prime Minister Kishi, who had played an indispensable wartime role in authorizing the CFL scheme, devised an explicit cover-up strategy and carried it out by lying to the Diet and citizens groups about the state's possession of CFL records, while painting an untrue picture of "voluntary contract labor." In 1993 a complete Foreign Ministry Report, and more than 100 of the individual site reports upon which the FMR was based, were given to the NHK broadcasting network by the Tokyo branch of the Overseas Chinese Association, which had received the documents via a ministry leak around 1950. This led to the state's current position that the program had consisted of "half-forced" labor. In July 2003, MOFA apologetically announced that it had searched its own basement storeroom and found 20,000 pages worth of CFL site reports submitted by companies 57 years earlier, compounding the falsity of previous denials that it retained any such records.[13]

Corporate Japan, led by the construction and mining industry organizations, first approached the government with the idea of importing Chinese workers in 1939. As Japan's domestic heavy labor shortage became increasingly critical, the state turned this corporate vision into administrative

reality in two steps: the November 1942 “cabinet resolution” that led to the trial introduction of 1,411 laborers beginning in April 1943; and the February 1944 “vice-ministers’ resolution” that led to the full importation phase beginning in March 1944. Kishi authorized both measures, first as Minister of Commerce and Industry and later as Vice-Minister of Munitions; both portfolios included extensive oversight of forced labor operations.

After worker allocation requests were approved by the state, companies concluded contracts with the North China Industrial Labor Association, a collaborationist Chinese organization in Beijing that procured laborers with the violent help of the Imperial Japanese Army. Chinese prisoners comprised a large percentage of early Japan-bound laborers, although Japan’s Asia-wide policy was to accord POW status only to white Western soldiers. Search and destroy missions by Japanese and Chinese puppet forces included “laborer hunting,” meaning that any able-bodied male was liable to be abducted at gunpoint and shipped to Japan as war booty. Recruitment through deception was widely used, too. Forced laborers who survived the brutal ordeal say they were unaware of any contracts between Japanese companies and the China-side labor association, and very few ever received any remuneration for their harsh toil.

Indeed, there was little pretense of payment of wages until after Japan surrendered to the Allied coalition that included the Chinese Kuomintang government. By October 1946 many worksites were descending into chaos and retaliatory violence against Japanese company staff by Chinese demanding wages, food and material goods like clothing—in that order.[14] In Tagawa, site of the large Mitsui mine where some current Fukuoka plaintiffs worked, newly victorious Chinese POWs swaggered through town with armbands indicating their KMT military units. (Late in the war a major strike at Tagawa was led by “trial batch” workers who were still in Japan after more than two years, the term of the ersatz labor contract between Mitsui and the Beijing outfit. Company personnel were attacked with shovels and picks during the uprising, which ended only after hundreds of police and kempeitai entered the camp and dragged off the ringleaders.)

As the worried Japanese government urged American Occupation authorities to make repatriation of Chinese a top priority, some companies disbursed lump sums of cash to Chinese work unit leaders who often failed to properly distribute it. A plan to provide fixed amounts of “take home money,” implemented by the Japanese side with GHQ approval, soon broke down as well. Many departing workers were handed payment vouchers at dockside and told to redeem them for cash at Japanese-affiliated banks back home in China, which upon their arrival were found to be defunct.

The trail of unpaid wages for Chinese forced labor remains hard to pin down with precision, due partly to the variety of initial corporate responses but mainly by Japanese government design. During the Occupation as in the case of Korean labor, the government set up a “special deposit system” for money that companies failed to pay to Chinese workers before they left Japan. Tokyo, having never tried to notify potential recipients about the deposits, reluctantly admits that the funds are still being held by state agencies such as the Bank of Japan and regional customs offices and legal affairs bureaus. But Japan insists that poor records make the deposits difficult to match with individuals from specific countries, who in any case have lost all rights to claim the money. It has been confirmed that the Moji Customs Office alone today possesses some seven million yen in CFL-related funds, now worth perhaps seven billion yen or $70 million, a figure that excludes six decades of compound interest.[15]

In early 1946, just as remarkably, all 35 companies shared the generous total of 56 million yen, today worth around 56 billion yen or $560 million, from state coffers as indemnification for losses supposedly incurred through their use of Chinese labor.[16] Mitsui Mining received about 14 percent of the state compensation pie and Mitsubishi Materials got a five-percent slice, reflecting the basic proportions of workers used. The timing of these payments to corporations, just as authors

of the Foreign Ministry Report were portraying the labor scheme in the best possible light and GHQ was moving to dismantle the zaibatsu conglomerates, suggests a cynical effort to portray industry as an economic victim even as workers were being cheated out of their pay.

Corporations thereby became “triple winners” by directly benefiting from unpaid labor during the war and receiving public money for it afterward, in a manner which tended to whitewash their collective role as the program's instigator and exempt them from the necessity of paying their workers. While the motive of common greed cannot be discounted in evaluating the postwar evasion of CFL accountability by the state and private business interests, a deeper aim was the perpetuation of key features of the existing political and economic order.

Redress campaign ongoing

Citizen and Diet proponents of the CFL compensation fund proposal seek to focus public attention on the injustice of the present situation and the importance of moving to reconciliation. As the “zenmen kaiketsu” (comprehensive solution) proposal succinctly summarizes: the 1946 Foreign Ministry Report identifies the 38,935 Chinese who were brought to Japan; the state continues to hold large deposits that were never paid out to these workers; and corporations that used Chinese forced labor received substantial state compensation.[17]

The claim appears at least as compelling as the German and Austrian “rough justice” precedents. As less than ten percent of CFL victims are still alive today, fund backers say, national legislation should quickly be enacted to provide individual victims or heirs with an official apology and meaningful payments from the state and industry. An educational foundation for future generations would also be created.

Japanese judges in previous CFL court decisions have proven unusually sympathetic toward the Chinese plaintiffs, regularly finding that the state and corporations jointly engaged in illegal forced labor, and occasionally suggesting a legislative solution. There have been two court-mediated compensation agreements so far: Kajima Corp.’s November 2000 “relief fund” related to its former Hanaoka construction site, where 418 out of 986 workers died and an uprising took place, and a September 2004 payout involving Nippon Yakin Kogyo Co. Although the government refuses to participate in out-of-court settlement talks, a third settlement has been recommended by the Nagano District Court and may be finalized in March—if the three corporate defendants consent.

Court cases are pending in more than one dozen places from Hokkaido to Kyushu, where Mitsubishi alone is being sued in Fukuoka, Nagasaki and Miyazaki. The lawsuit involving Mitsubishi’s Miyazaki copper mine, whose death rate of 31 percent was nearly twice the national average, became possible only after MOFA released a previously unknown site report in 2003. Japanese courts usually let both the government and corporations off the hook on the grounds of state immunity and time limits for filing claims. But four major courtroom victories have given the CFL reparations movement a rare sense of momentum.

Liu Huanxin holds a portrait of his late father, Liu Lianren, who was abducted from Shandong Province in 1944, one month before his son's birth. Unaware the war had ended, Liu Lianren hid in the mountains of Hokkaido until 1958, when he returned home and met his 14-year-old son for the first time.

The Tokyo District Court in July 2001 ordered the state to compensate the family of Liu Lianren for the 13 years he spent in hiding after he escaped from a Hokkaido mine just before the war ended, but the Tokyo High Court overturned the ruling last June. (In an irony of history, Kishi was prime minister when Liu emerged from a snow cave in February 1958; his administration proceeded to investigate Liu for entering Japan illegally. Liu angrily demanded compensation for his abduction and forced labor, telling reporters to ask Kishi how he had come to be in the country. He turned down the government's proffered envelope containing 100,000 yen in sympathy money and returned to China as a national hero.)

In the first case decided by the Fukuoka District Court, judges found in April 2002 that Mitsui's conduct "can only be described as evil" and ordered the company to compensate plaintiffs. In March 2004, the Niigata District Court found both the state and the transport company Rinko Corp. liable for damages. More significantly, the Hiroshima High Court in July 2004 reversed a lower court ruling and ordered Nishimatsu Construction Co. to pay compensation.

The Fukuoka High Court, however, nullified the Mitsui compensation order in May 2004. Nonetheless, the ruling castigated the joint illegal conduct by the state and company, the "malicious destruction of evidence" and the government's false statements to the Diet. Finding that the "slave-like forced labor was an outrageous transgression of human dignity," the court stated: "The Chinese men, who had been living in peace and were not subject to Japanese national sovereignty, were, through the intentional use of violence and deception, separated from their families, taken to an enemy country and forced to work there."[18] The court uncharacteristically rejected the state immunity defense, with the chief judge stressing at a post-ruling press conference that the plaintiffs' claim was rejected only because it was filed too late.

The first Fukuoka case, the Hiroshima case, and the Liu Lianren case have been appealed to the Japan Supreme Court, where a pro-victim ruling would catapult the CFL fund proposal more squarely onto the parliamentary agenda.

Mitsubishi's denial of forced labor

The second Chinese forced labor lawsuit at the Fukuoka District Court was filed in February 2003 by 45 plaintiffs, either former workers or their surviving family members. Final hearings were held last September 21. The state, while remaining mute on the veracity of victims' descriptions of their wartime experiences, argues that the Japan-China Joint Declaration of 1972 waived all claim rights of Chinese citizens, that it cannot be sued for redress under the Meiji constitution that was in effect during the war, and that the claims are too old. Mitsui is also keeping a low profile, hamstrung by its previous defeat before the same court and by the appeal victory that accepted plaintiffs' historical accounts.

Mitsubishi Materials, successor to the mining arm of the wartime zaibatsu, has in the past typically relied on treaty bars, time bars and the "different company" defense to protect it against suits. Any mistreatment of foreign laborers has been characterized as general war damage that only sovereign states can address and, implausibly, as the result of top-down state policies that corporations were powerless to resist.

But today, with escalating Northeast Asian nationalism confronting increased efforts within Japan to "beautify" (bika suru) its war conduct, the Mitsubishi defense team has crossed a Rubicon of historical revisionism by denying that any forced labor occurred at its Fukuoka coal mines. More audaciously still, the company based these denials on its own 1946 site reports and the fact that Occupation authorities never brought CFL war crimes charges against it.

Mitsubishi attacked the elderly Chinese men's credibility by saying inconsistencies exist between their oral testimony in court and the complaint originally filed by their Japanese lawyers. The company further argued that because the lawsuit makes reference to the site reports, the documents should be accepted at face value and treated as totally reliable. The site reports, which Mitsubishi claims it no longer possesses, were compiled for exculpatory purposes and hence make no explicit reference to forced labor, malnutrition or torture. Mitsubishi says this proves such abuses never occurred.

In reality, as the "Guidelines for Controlling Imported Chinese Laborers," issued to corporations by the Interior Ministry in April 1944, spelled out in detail, living conditions were purposely made as wretched as possible and workers were deliberately treated harshly. The goal was to maximize industrial production, and to minimize the security risks of bringing young, male enemy nationals to the home islands, by crushing their will to resist. Enforced by regular ministry inspections, the directives called for extreme camp security, inferior clothing, overcrowded sleeping quarters, primitive sanitation with no bathing facilities, limited medical care, and minimal amounts of the poorest quality food—which was to be withheld as necessary to ensure discipline.[19] (Okazaki Eijo, who was in charge of the Interior Ministry's camp inspections, also headed the Special Higher Police. Postwar lustration kept him out of public office until 1952, but he was elected to the Diet on the maiden LDP ticket in 1955 and later served as Kishi's deputy cabinet secretary.)

The site report for Mitsubishi's Katsuta mine in Fukuoka claims that Chinese were fed better than Japanese, and worked eight-hour days with escorted trips out of the camp on holidays. Plaintiffs say they worked grueling 12-hour shifts with no days off ever and were constantly on the brink of starvation. Very high CFL death tolls, such as the 25 percent of workers who died at Katsuta, leave

little doubt about the program's true nature.

Here too, though, the government and corporations acted to hide the truth immediately after the war ended. Hokkaido prefectural police, in an "Important Notice for Preparing Name Rosters," directed town offices and local physicians to falsify death certificates by omitting references to starvation, overwork, torture and suicide. One doctor reported being told by police "not to write anything on the death certificates that could cause trouble later." The result was that innocuous-sounding fatalities due to colitis and gastrointestinal inflammation came to predominate.[20]

Press conferences stemming from lawsuits in a dozen Japanese cities have generated considerable media coverage, raising awareness about a historical injustice that had been almost totally forgotten.

Mitsubishi also brazenly asserted that the lack of CFL war crimes prosecutions against the company proves its innocence. Mitsubishi lawyers observed that the Tokyo Trials, formally the International Military Tribunal for the Far East (IMTFE), did hand down guilty verdicts in trials involving abuse and atrocities against foreign laborers by Japanese companies.

"However," Mitsubishi informed the court, "there was not one single prosecution involving the work sites being considered in this case. This important fact should be duly weighed. It shows that Mitsubishi Materials did not commit any illegal conduct for which it should be blamed. Indeed, acknowledgement by this court that treatment of these plaintiffs by Mitsubishi Materials involved illegal conduct would negate the survey results of the investigative team formed by the war's winning side. It is necessary to realize that such a finding would represent an addition to the Tokyo Trials."[21]

This depiction is flawed. Because a main goal of GHQ's "reverse course" was to rehabilitate conglomerates like Mitsubishi and Mitsui, prosecutions by the IMTFE at Yokohama of Chinese forced labor in Class B and C cases was limited to just two out of 135 sites. Four camp staffers and two local police were convicted at the Hanaoka trial in March 1948, with sentences ranging from 20 years at hard labor to death by hanging. No hangings took place, however, and all convicts were granted early release after the Occupation ended. The second trial involved an Osaka port enterprise

and was wrapped up over two days in October 1947; four guilty verdicts were handed down after charges of causing death by torture had been reduced to cruelty. The harshest sentence of 12 years went to the port's CFL supervisor. After his early release, he returned to a management position at the port and helped suppress organized labor activity. The IMTFE never considered the CFL culpability of corporate executives and state officials, as Mitsubishi is surely aware.

NHK, as part of its 1993 documentary that exposed the Foreign Ministry Report, went to Los Angeles to interview the former Allied war crimes investigator who led the initial CFL inquiry. William Simpson told the network that GHQ's decision to effectively drop the prosecutions "could have reflected the fact that there was a civil war in China and there was not much to be gained by the investment of effort by the United States. A judgment was made not to emphasize the shortcomings of Japanese corporate personnel at higher levels because these were people we wanted to work with in the Cold War as allies."[22] Yet abuse of white Allied POWs in forced labor camps was vigorously prosecuted in the Class B and C trials held in Japan and other Asian countries; numerous death sentences were carried out. This racial double standard devalued the suffering of Asian victims and was a glaring defect of the IMTFE process.

Plaintiffs' lawyers rebutted Mitsubishi's closing arguments by stressing another reason why Japanese industry was never held to account for Chinese forced labor: the wartime system of deception and the postwar cover-up conspiracy. According to the plaintiffs, "The forced deportation and forced labor involved in this case have, from the very beginning and throughout the postwar period until today, been camouflaged by the defendants' claim of 'labor importation based on voluntary work contracts.' The cases of forced labor that occurred at the defendants' work sites were not prosecuted at the Tokyo Trials only because of their conspiracy to conceal their crimes."[23]

This depiction gains support from the historical record, starting with the government's immediate post-surrender instructions to corporations to burn incriminating CFL records. By November 1945, the construction industry was planning a strategy for preventing the Hanaoka investigation from spreading beyond Kajima Gumi (now Kajima Corp.). The following spring the industry group retained a Kobe lawyer who, in an early postwar example of amakudari, successfully recruited the very MOFA official then supervising final production of the FMR. "To put it bluntly, the goal was to hide the trouble at Hanaoka from GHQ," the long-retired bureaucrat told NHK decades later. "That's why Kajima has continued until today without any problems."[24]

Twenty out of the 35 corporations that used Chinese forced labor are still in business, many of them on an international scale. Meanwhile, the fuller picture of how the state and industry dodged responsibility is becoming ever clearer. Additional MOFA archive documents made public in December 2003 show that the government stubbornly resisted GHQ requests for CFL records in 1947, and never handed over the vital FMR. Instead, the state once again solicited information from companies, which expressed displeasure at the renewed request and submitted only minimal material. In November 1948, the same month the IMTFE concluded its work in Japan, the government finally sent a "jeep-ful" of statistical data to GHQ, which returned the documents the following February.[25]

Time limits for filing claims remain the biggest barrier for suits against corporations, as CFL reparations efforts progress toward their climax within Japan's court system. While the question of when to start the clock is a complex legal issue, supporters point out the unfairness of expecting Chinese victims to have filed claims during the half century in which the Japanese side hid or destroyed the evidence they needed to do so. In the view of plaintiffs' lawyers, "It is clear that the defendants' plot to conceal their crimes was carried out for the sole purpose of evading responsibility and compensation claims from the plaintiffs. Indeed, the defendants' own behavior

eloquently illustrates the need in this case to provide judicial relief in the fundamental form of monetary compensation."

Bashing the Tokyo Trials, defending the China war

Despite concluding that the IMTFE proved its innocence, Mitsubishi proceeded to disparage the "Tokyo Trials view of history" and to cast doubt on the conventional understanding that Japan's 15-year military involvement in China included an aggressive invasion.

This move to deflect attention away from the company's use of forced labor mirrored recent statements by highly placed LDP politicians. Soon after becoming foreign minister last fall, for example, Aso Taro voiced support for the Yasukuni narrative by saying that the shrine's Yushukan museum "merely shows what the wartime situations were." Returning to the Yasukuni theme in January 2006, Aso provocatively said that "a visit by the emperor would be best." Last spring Morioka Masahiro, a ministerial Diet secretary, directly challenged the legitimacy of the Tokyo tribunal and the guilt of convicted Class A war criminals, thereby flouting a taboo for government officials.[26] Executives of major corporations such as Mitsubishi, in fact, sit on the boards of influential groups that promote these sentiments and are effectively advancing a neo-nationalist agenda.[27]

"Historical understanding regarding our nation's involvement in the past major war lies concealed at the root of this lawsuit," Mitsubishi told the court. "However, it is a well-known fact that there are many objections to the 'Tokyo Trials view of history' upon which the plaintiffs seem to rely."

Mitsubishi reviewed familiar criticism of the genuinely flawed IMTFE, citing the ex-post facto establishment of "crimes against peace" and "crimes against humanity" based upon "victor's justice." It also pointed out that Indian Justice Radhabinod Pal's dissenting opinions in voting for acquittal of all Japanese defendants were censored during the Occupation. Opining that the quest for objective knowledge of the past always involves "the philosophical problem of epistemology," the company urged the court to reject the forced labor claim without fact-finding because "it is not appropriate to engage in legal interpretation based on only one view of history."

Regarding the victims' testimony that their forcible abduction and transportation to Japan occurred within the context of Japanese military aggression, it was noted that Gen. Douglas MacArthur in May 1951, at the height of the Korean War and soon after being cashiered from active duty, described Japan's involvement in China to a U.S. Senate committee as a war of self-defense rather than invasion. Company lawyers also made passing reference to Helen Mears' 1948 book "Mirror for Americans: Japan," which argued that Japan should not be criticized for behavior in Asia that resembled American behavior in Latin American, and added that Mears' book was banned during the Occupation, too.

"Although countless wars have continued since the dawn of recorded history, these have been judged by future generations that arrived at a common historical understanding. Evaluation of the major war in question will also be left up to future generations. The debate continues today," Mitsubishi said. "This courtroom is not the place to judge whether it was a war of invasion or not."

The historical backsliding is obvious. The Murayama Statement, issued by the socialist prime minister in August 1995 and still held up as the government's official position, unequivocally apologized for Japan's colonial rule and aggression against neighboring countries. In fact, in unusual press conference remarks following the Fukuoka High Court's rejection of the Mitsui compensation order, the chief judge emphasized that the ruling did not alter the meaning of the Murayama Statement. Victims' lawyers in the present case decried Mitsubishi's "shameless attitude

in manipulatively invoking the Tokyo Trials."

"Common sense" as a defense strategy

"The error of judging the past according to today's common sense" was the subtitle of a section of Mitsubishi's written brief which sought to regularize any hardships the Chinese workers may have undergone, suggesting their treatment was wrong only according to contemporary sensibilities. "Common sense changes according to the age," the brief stated. "In one sense it is easy to evaluate, and even to adjudicate, past phenomena based on contemporary common sense. However, this ignores changes in values over time and is an extremely dangerous way of thinking."

Former laborers support each other during their return to Takashima, where they worked for Mitsubishi without pay. Such visits are finally giving victims a public voice and producing partial healing.

Mitsubishi observed that while racism is universally regarded as unjust today, even in the United States a mere 40 years ago discrimination against African Americans in the form of public school segregation was openly practiced and accepted, while the presence of Native Americans was erased from the Hollywood cowboy movies of that era. This illustrates how suddenly changes in collective consciousness can occur, lawyers said, without commenting on the mismatch of equating Jim Crow-type injustices with the Katsuta cruelty that claimed the lives of 87 previously healthy men in about one year. Turning to the more germane area of warfare, the battlefield deaths of a few soldiers today cause a country's domestic public opinion to boil over, in line with common sense that now recognizes the bloody slaughter of the past century's two world wars to have been the height of madness. But barely half a century ago, they said, countries were invading each other and maintaining hegemony in the name of justice.

The upshot, Mitsubishi defense attorneys held, was that there is no need to condemn Chinese forced labor and, by extension, Japanese war conduct as a whole. They implied that modern political correctness, along with Chinese education and diplomatic policies that demonize Japan for political gain, is actually behind the CFL redress movement. "The case before this court is a twenty-first-century genre of lawsuit that employs a thought war instead of a shooting war, and must be viewed

as essentially a political dispute."

The plaintiffs' legal team attacked this use of moral and historical relativism as a diversionary tactic. "Mitsubishi, a leading member of the wartime munitions industry, displays absolutely no remorse for its corporate role in the war of invasion that caused the immense tragedy of 20 million Asian deaths. Mitsubishi's use of the expression 'judging the past according to today's common sense' is itself an attempt to hide the true nature of this case. It is nothing but a means of deception that claims black is white."

The victims' side maintained that "the forced transportation and forced labor in this case were clearly recognized as lawless barbarism that went against the universal common sense, not to mention the national and international legal orders, of the time." The Fukuoka High Court had previously agreed, by rejecting state immunity on the grounds that CFL was "contrary to the natural law basis of the former (Meiji) constitution and grossly infringed upon justice and fairness." This finding, coupled with the defendants' cover-up conspiracy, seriously undermines the Mitsubishi premise that the labor program was seen as justifiable in its day.

In fact, the lawsuit charges that CFL plainly contravened the Forced Labor Convention of 1930, which Japan ratified in 1932, and that the government remains in open breach of the convention for failing to prosecute corporations, and itself, for the massive violations. The International Labor Organization, in a series of reports issued by its highly regarded committee of experts, has since 1999 strongly urged Japan to address the outstanding wartime issues of military sexual slavery and Chinese forced labor by paying individual compensation.

Japan's war responsibility: "mistaken burden of the soul"?

Mitsubishi's closing arguments aimed not only at avoiding payment of monetary damages, but also at convincing the court to withhold all comment on its wartime actions. "If we may presume to repeat ourselves," intoned the grand finale, "when courts lose sight of the true nature of these types of so-called postwar compensation cases, the effects of their judgments will go beyond 50 or 100 years. To exaggerate the point, the results will extend over hundreds of years by producing a 'mistaken burden of the soul' within the future people of our nation."

The corporation reiterated that the CFL claim is basically non-judicial in nature and does not involve Japanese industry. Companies and the state have engaged in mutual buck-passing when pressed on responsibility over the years. This time Mitsubishi contended that since the matter falls within the purview of state-level relations, any remedy must result from national legislative policy. With Japanese and Chinese leaders barely on speaking terms at present, there is little chance of such action by Diet lawmakers—unless Japanese courts eventually force their hand. Mitsubishi, with its financial deep pockets matched by its deep liability for forced labor, appears to be aggressively contesting the lawsuit so as to minimize the possibility of a German-style compensation fund ever taking shape in Japan.

Lawyers for the Chinese victims stressed that legal action was undertaken as a last resort, and that only a favorable judicial ruling can validate Japan's separation of powers. "From start to finish, Mitsubishi's failure to reflect on its immoral conduct and its confrontational evasion of responsibility indicate a shocking lack of historical awareness as well as an antisocial attitude. If the nation's courts should fail to correct this, Japan's trustworthiness among the peoples of Asia will be ruined and the Japanese people will continue to bear an irrevocable 'burden of the soul.'"

Shanghai victim's voice

Ten lawyers for the plaintiff side put on an impassioned, persuasive oral performance last September, contrasting sharply with the stony silence maintained by the state-industry phalanx of attorneys, who made all of the above arguments in writing only. They referred to Yasukuni, textbooks and the "magma" of anti-Japanese sentiment that erupted into street demonstrations in Chinese cities last spring. The court was rhetorically asked how the Japanese public might react if the North Korean agents who abducted Japanese citizens were absolved from all responsibility based on statutes of limitations.

The recent German and Austrian forced labor funds were highlighted, along with the American and Canadian compensation programs for ethnic Japanese unjustly interned during the war. The lead attorney from the successful Niigata suit explained that the Yokohama war crimes trials handed down 60 guilty verdicts, including eight death sentences, for atrocities committed against Allied POWs in Niigata Prefecture. But no charges were even filed in cases where the victims were Chinese, although they were often enslaved at the same port facilities and were twice as likely to have died.

Two visitors from China also testified before the court: Shi Huizhong, an 80-year-old Katsuta survivor from Shanghai, and Beijing attorney Kang Jian, known as "the window" between Japanese and Chinese CFL activists. Six other Chinese victims addressed the court on previous occasions.

A poised and fit-looking retired dance instructor, Shi's experience showed the diversity of worker procurement practices. Nearly 90 percent of laborers came from three provinces of North China and half came from Hebei Province. Violent "recruitment" methods sometimes involved the encirclement by Japanese and collaborationist Chinese soldiers of an entire farming hamlet, followed by the seizure of nearly all men for forced labor and some women for sexual slavery, or the use of nets to snatch men walking along rural roads. A claimant in the first Fukuoka suit testified that three Japanese soldiers barged into his family's home when he was 17; they dragged him away and bayoneted his mother to death as she protested. But Shi was tricked into CFL in his native Shanghai, where such murderous tactics could not be easily employed.

Shi was 18 in August 1944 when he joined a crowd gathered around a billboard announcing jobs in Taiwan: 100 men between the ages of 18 and 25 were being sought and the excellent work conditions included an annual trip home. Two or three men in the crowd told him that if he wanted to apply, he should jump into a waiting truck right away. He did. The next stop was a former British tobacco warehouse guarded by Japanese soldiers, and from there it was onto a ship with more soldiers that docked at Kyushu's Moji port four or five days later. Finally realizing they had been duped, the Chinese men were deloused, given work uniforms and taken to Mitsubishi's Katsuta coal mine. There they were photographed from front and side and given identification numbers, 81 in Shi's case. Twelve-hour shifts in the mine included ruthless beatings for resting. Food consisted of a single vegetable-filled rice ball per day.

In addition to atrocious conditions that claimed the lives of one out of six men, Japan's forced labor program left many workers permanently disfigured and led to ostracism and persecution within postwar Chinese society.

"We were forced into totally inhumane living conditions," Shi recalled for the three judges. "There were constantly fatal accidents in the mine due to gas explosions and roof cave-ins, because there were no safety measures. I became terrified, and there was also the daily starvation. My mind was faltering and my eyesight was growing dim, so I decided to escape. On the way to the mine one day, I saw a gap between Japanese supervisors and ran away." Shi and a dozen fellow escapees were spotted by local residents as they cleared the first mountain. A club-wielding search party from the mine, including Koreans, then quickly recaptured them. Harsh interrogation, including torture in front of the assembled workforce back in the camp, claimed the life of one already-ill worker.

As punishment, Shi was transferred to a more secure labor camp in Hokkaido, where he met several hundred countrymen from North China and got a new number, 68. He cut timber there, while daily military-style training led his group to believe they would be sent to some battlefront. Thin clothing, flimsy housing and a meager diet of pumpkin and potatoes led to much sickness and death that winter in Hokkaido, scene of the highest CFL fatality rates. With Japan's defeat and his return to Shanghai, barely one year after being tricked into the forced labor system, Shi's physical appearance had deteriorated so severely that his mother did not recognize him.[28]

Survivors of forced labor continued to suffer back in China even after the war, very often physically but also socially, as returnees were treated with suspicion for having been in Japan at all. Plaintiff Cui Shujin visited Fukuoka in July 2004 and presented a 59-year-old "safekeeping voucher" for 1,250 yen in unpaid wages to the Moji Customs Office, which declined his request to redeem the voucher for cash. Although all 200 workers in Cui's group received the vouchers from Mitsui Mining before boarding their ship at Moji, he said everyone else secretly burned theirs during the Cultural Revolution because discovery of such a direct link to Japan could have resulted in execution as a spy.[29]

Beijing lawyer's reaction

Kang Jian first became exposed to Japanese reparations issues at the UN Beijing Conference on Women in 1995, where she learned about comfort women redress. She has since become instrumental in pushing various claims as a member of the All China Lawyers Association, traveling around China to meet war crimes victims and help select the best plaintiffs for lawsuits in Japan. Working closely with Japanese lawyers, as well as other CFL redress supporters who prepare Chinese translations of legal documents, Kang regularly testifies in Japanese courtrooms. Her

demeanor during last September's appearance was distinctly more assertive than on previous occasions, perhaps in reaction to Mitsubishi's new line of defense.

Kang called attention to China's intense media coverage of the forced labor cases and blamed Japan's insincere handling of historical matters for causing the meltdown in bilateral relations. Her reference in open court to the possibility of a consumer boycott of Japanese goods and services was also significant, as leaders of the economically interdependent nations generally avoid discussing such a doomsday scenario. In a meeting with supporters after the court session, Kang observed that Mitsubishi Cement is currently engaged in major construction projects related to the 2008 Beijing Olympics.

Chinese courts will begin accepting CFL class action lawsuits against Japanese companies if Japanese courts ultimately fail to deliver justice, Kang bluntly told the Fukuoka judges. She pointed to a new Beijing-based foundation that is enabling Chinese citizens to financially assist such legal efforts.[30] Yet because lawsuits in China would be potentially explosive, she added later, the Chinese government hopes they do not become necessary. In fact, the idea of war compensation claims in Chinese courts has been floated before without ever coming to fruition. Other comments linked Japan's stance on its wartime past to Beijing's strong opposition to a permanent Japanese seat on the UN Security Council, and less directly to proposals for dropping the war-renouncing article of Japan's constitution.

Kang derided the legal concept of state immunity as an outdated relic of emperor-centered ideology that has never been applicable to Chinese who suffered under Japan's war of "invasion," a word she used no less than four times. "If present-day Japanese courts absolve the government of responsibility for illegal conduct committed against foreign nationals on the legal grounds of state immunity," Kang told the court, "it will produce doubts among the international community about whether Japan is a civilized society or a barbaric one, and about whether the Japanese legal system upholds human rights or denies them." She characterized the upcoming ruling as a "litmus test for whether today's Japan is a country that maintains peace and respects human rights or a country that endorses war and ignores human rights."[31]

Even if Chinese consumer boycotts and domestic litigation never come to pass, the center of gravity for CFL redress may already be shifting away from Japan's courts, where the relative disempowerment of elderly plaintiffs, forced to undertake difficult trips back to the land of their victimization in the role of supplicants, tends to replicate former imperial arrangements. Last July, amid the flood of Chinese projects commemorating the sixtieth anniversary of Japan's defeat, a Beijing publisher issued a five-volume collection of oral histories of more than 600 CFL victims, one quarter of whom had toiled in Kyushu. And the Chinese offices of Japanese corporations that used forced labor continue to receive direct demands for compensation, as widely reported in the Chinese media. Meanwhile, a certain redress mindset is being transferred to the Internet generation of Chinese. Younger family members of CFL victims now passing from the scene are picking up the reparations torch.

All of this means that claims against Japan may be just starting to gather steam. China's "history activists" also continue to carve out a more independent political space, motivated as much by popular nationalism as by the more easily harnessed state nationalism that Beijing authorities might prefer.[32] However, the state's ambivalent attitude limits the expansion of China-side redress efforts in the near term, as the pursuit of justice for individual victims of human rights violations could obviously become destabilizing under conditions in which the Chinese state itself uses forced labor in its penal system. Yet the South Korean experience suggests that the CFL legacy will grow in prominence with the eventual maturation of Chinese democracy.

Partial success despite uphill battle

The Mitsubishi view of history, which no major corporation publicly espoused ten years ago, confirms that forced labor victims and industry are entering a decisive phase of the redress process with historical truth claims that are radically opposed. Alongside this indicator of the inroads revisionism has made within Japanese society, though, the impressive achievements of progressive Japanese forces over this same decade should not be overlooked.

The national Lawyers Group for Chinese War Victims' Compensation Claims was launched in Tokyo in 1995, with local branches later forming in cities where litigation has been initiated. Working pro bono, committed human rights attorneys with experience in cases involving Ienaga Saburo's challenge to Japan's textbook censorship, burakumin rights, patient's rights, HIV, Hansen's disease, Minamata disease and black lung disease comprised the core of the group. The obstacles of language, culture, geography and the Chinese state's attitude loomed large. The concept of "suopei yundong", under which the Beijing government holds that state claims for reparations have been waived but individual claims remain open, was in its infancy.[33]

The Japanese lawyers estimated at the outset that it would take at least ten years to realize their twin objectives: to legally establish the basic facts about Japan's war conduct in China, and to forge a consensus within Japanese society for compensation. While the latter objective has proven elusive indeed, the former goal has been largely fulfilled. Dozens of decisions at all three levels of the Japanese court system have established, usually for the first time, an invaluable historical record in cases involving Unit 731, the Nanjing massacre, the Pingdingshan massacre, indiscriminate aerial bombing, comfort women, abandoned chemical weapons, and forced labor in Japan. Roughly half of the court cases have involved CFL, which many observers view as the best hope for obtaining justice for Chinese war victims in their lifetimes.

Due largely to the nature of the relationship between Japan's executive and judicial branches, there have been no finalized court-ordered monetary awards. And a redress consensus within Japanese society at large remains years away, due to the divergence of war memories. Nevertheless, under the most optimistic scenario of CFL supporters, the state and corporate world could choose to set up a compensation fund based on self-interest, if a shifting calculus of costs and benefits makes granting reparations less painful than perpetual intransigence. Factors like economics (the indispensability of trade with China), security (the need to alleviate Northeast Asian military tensions), and international reputation (Tokyo's keen desire for a permanent UNSC seat) might eventually produce such a new approach.

Although the Japanese state and corporations are resisting redress efforts, reconciliation is advancing at the grassroots level. Here former Mitsubishi laborers reconstruct the historical record with Japanese researchers in Nagasaki.

In fact, the vital "reparations groundwork" of historical consciousness-raising at the grassroots level has been accomplished through the sustained wave of lawsuits, and could bear fruit over time. Amid considerable media coverage, memorials have been erected and solemn commemorations have been held at former CFL sites around the country, educating local residents about a wartime reality that had been nearly totally forgotten. For long-marginalized CFL survivors finally being given a public voice, both in China and Japan, partial healing has occurred. The transnational activism involving Japanese and Chinese lawyers, academic researchers and citizen supporters has furthered the general state of human rights in both countries and the region.

Japan's collective sense of war responsibility likely peaked in the mid-90s, a time when there were high hopes for CFL redress in particular. NHK's 1993 documentary program, "The Phantom Foreign Ministry Report," together with its 1994 book of the same name, almost certainly represented the hardest-hitting investigation in the public broadcaster's history, especially since the primary target was the state itself. While examining a mountain of site reports and other primary historical materials on tight production deadlines, NHK tracked down and interviewed Japanese, Chinese and Americans directly connected to the forced labor program and its aftermath.

The NHK documentary featured a former Japanese soldier turned CFL historian, who admitted on camera to abducting Chinese during "subjugation operations" five decades earlier. In the book version, the man described common Japanese atrocities like bayonet practice on bound prisoners as well as unique ones like the tossing of hardcore CFL resisters, unblindfolded, into a blast furnace at a Qingdao steel mill. "I became a devil then. The regret will never leave my heart," the man told NHK. "Even now when I see a white-haired man on the street, I wonder, 'Did that guy also become a devil during the war?'"[34]

In a subsection of the book called "ongoing evasion of responsibility by the government and corporations," NHK called for redressing the injustice of Chinese forced labor. The network even conducted a survey of the corporations still in business, asking them if they felt responsible for deaths at their worksites and if they planned to apologize and pay compensation. The documentary won an Asia-wide broadcasting award and is regularly shown in forced labor courtrooms, typically after corporate objections have been overruled. CFL activists say they have asked NHK to rebroadcast the program on national television, but have been told that today's domestic political climate makes that impossible. Reflecting the current reality, NHK became embroiled in a controversy last year over charges it had bowed to political pressure in toning down a 2001 program dealing with the comfort women issue. [35]

The year 1995, the fiftieth anniversary of Japan's surrender, produced the Murayama Statement and the Asian Women's Fund, neither of which would easily make it past the state's more nationalistic gatekeepers now. Rightwing manga seeking to instill pride about Japan's wartime role have sold millions of copies since then, and historical depictions of Japanese war atrocities in state-authorized textbooks have grown more vague or disappeared entirely. Such domestic developments, and the regional discord they have spawned, form the backdrop for Mitsubishi's unconventional CFL defense, which mimics key aspects of the Yasukuni line.

Still, it is not totally clear why Mitsubishi has opted to play hardball now. The company may fear that the Fukuoka District Court, site of the first-ever corporate compensation order, is predisposed toward empathy for the Chinese plaintiffs. The same court more recently found Koizumi's Yasukuni visits to be unconstitutional, while the local high court ruled against the government in a

Korean hibakusha case last September. Also, the present China-Japan diplomatic impasse gives Mitsubishi political cover for advancing its non-standard version of history.

Korean forced labor (KFL) redress developments may even be playing an indirect role. Since last year Japanese corporations like Mitsubishi have been facing unprecedented pressure to provide facts about labor conscription of Koreans in Japan. The pressure is coming mainly from Seoul but also from Tokyo, which, having pledged cooperation, finds itself unable to rebuff the ongoing demands of the Roh administration'and progressive Japanese citizen networks.

Although municipalities and temples have generally cooperated by providing conscript name lists, cremation records and even human remains for DNA testing, many companies (including a former Fukuoka mining concern belonging to the family of Foreign Minister Aso) continue to fob off the persistent requests from the South Korean truth commission. Having been a major user of both Chinese and Korean forced labor, Mitsubishi in this CFL case may be seeking to contain any spillover effect from the KFL inquiry. A successful outcome for Mitsubishi's legal gambit could set an unfortunate standard for other companies facing forced labor claims.

A shipboard memorial ceremony in Nagasaki Bay, for fellow Chinese forced laborers who never returned from Mitsubishi's Hashima coalmine.

Chinese victims are being increasingly harassed by corporate defendants in other courts. In the ongoing Gunma case, Hazama Corp. accused forced labor survivors of exaggerating their mistreatment by selectively recalling only Japanese words with negative connotations. Co-defendant Kajima Corp. focused attention on the plaintiffs' former poverty in war-torn North China by asking if it was true they had lived in muddy holes in the ground. Apparently intended to minimize the relative severity of their abuse in Japan, the crude reference was to a traditional cave-like dwelling that is in fact well-suited to the North China climate and landscape. Such corporate behavior was not encountered in the recent European forced labor redress cases.

Meanwhile, the Japanese government's desire to become a militarily "normal nation" seems to be similarly predicated upon affirming the legitimacy of its wartime goals and actions. This inevitably triggers reactions of mistrust and hostility within neighboring countries. Japan's approach to coming to terms with the past is clearly retarding the political and social, if not yet economic, integration of Northeast Asia. If the trend of the last decade intensifies and is extrapolated forward

over the coming years, the security dilemma already taking shape could well lead to military conflict.

The worst-case scenario may have been glimpsed last October, a few days after closing arguments in the CFL lawsuit, at a Fukuoka junior high school very near the Katsuta mine. During a history lesson on the Asia Pacific War, a teacher distributed copies of a 60-year-old draft card to 200 students. The students were instructed to state their willingness to fight in a war by circling "yes" or "no" on the back of the copies, which the teacher collected. The draft cards were returned to several students who circled "no," with the word "unpatriotic" written on them.[36]

A more constructive alternative was offered by Fukuoka lawyers for the Chinese victims. "History cannot be erased," they said. "The Japanese state and the Japanese people must admit the mistakes we committed and continue to bear that responsibility. In the case before this court, the Chinese plaintiffs are offering Japan and the Japanese people the chance to take a historic step forward, to be once more warmly welcomed among the peoples of Asia."

Japan will take its next step, either forward or backward, at the Fukuoka courthouse on March 29.

William Underwood, a faculty member at Fukuoka Jo Gakuin University, is completing his doctoral dissertation at Kyushu University on the topic of Chinese forced labor redress. He can be reached at kyushubill@yahoo.com. *Posted at Japan Focus, February 8, 2006.*

Endnotes:

[1] Michael Marek, "Final compensation pending for former Nazi forced laborers." Deutsche Welle online, 27 Oct. 2005.

[2] Ibid.

[3] Alissa J. Rubin and Elisabeth Penz, "Former forced laborers laud Austrian fund." Los Angeles Times online, 6 Dec. 2005.

[4] See Michael J. Bazyler, Holocaust justice: the battle for restitution in America's courts. New York University Press, 2003; and Stuart E. Eizenstat, Imperfect justice: looted assets, slave labor, and the unfinished business of World War II. New York: Public Affairs, 2004.

[5] See most recently Jane W. Yamazaki, Japanese apologies for World War II: a rhetorical study. London: Routledge, 2006.

[6] Such continuity is the focus of Wakamiya Yoshibumi, The postwar conservative view of Asia: how the political right has delayed Japan's coming to terms with its history of aggression in Asia. Tokyo: LTCB International Library Foundation, 1998. One chapter is entitled "Why Kishi Nobusuke wasn't hanged as a war criminal."

[7] Until bringing its position into line with that of the U.S. in 2001, the Japanese government consistently contended that the SFPT and other treaties did not bar individual claims, apparently to preserve the possibility of claims against the Soviet Union by Japanese soldiers who were harshly interned there after the war. See Kinue and Azusa K. Tokudome, "Individual claims: are the positions of the U.S. and Japanese governments in agreement in the American POW forced labor

cases?" UCLA Pacific Basin Law Journal 21:1 (Fall 2003); 1-28.

[8] Linda Goetz Holmes, Unjust enrichment: how Japan's companies built postwar fortunes using American POWs. Mechanicsburg, PA: Stackpole Books, 2001; 84.

[9] Ibid.; 91. See also the chapter-length discussions in Sheldon H. Harris, Factories of death: Japanese biological warfare, 1932-1945, and the American cover-up. Routledge: rev. ed., 2002; and Tanaka Yuki, Hidden horrors: Japanese war crimes in World War II. Boulder, CO: Westview Press, 1996.

[10] Details can be found in Petra Schmidt, ""Japan's wartime compensation: forced labour."" Asia-Pacific Journal on Human Rights and the Law 2 (2000); 1-54.

[11] Cho Hun-Joo, ""Japan continues to conceal documents on unpaid wages for forced laborers."" The Dong-A Ilbo online, 23 Jan. 2005 is available.

[12] William Underwood, "Chinese forced labor, the Japanese government and the prospects for redress." Japan Focus, 8 July 2005. Available at http://www.japanfocus.org/products/details/1693.

[13] A total of 111 site reports were analyzed in Nishinarita Yutaka, Chugokujin kyosei renko. Tokyo Daigaku Shuppankai, 2002. Nishinarita suspects that a full 135 reports may never have been produced, as some sites received workers via intra-company transfers.

[14] See Nishinarita, chapter 8.

[15] "Chingin 'hokansho' wo shoji, genkoku Cui-san: 'kichinto taika harae,'" Nishinippon Shimbun, 15 July 2004.

[16] Current yen values are calculated by multiplying the wartime base amount by one thousand, following the common practice of the national CFL plaintiffs' legal team and activists in other redress cases. For simplicity the author then assumes a current yen-dollar rate of 100 to one. See Minami Norio, "Resolving the wartime forced labor compensation question." See Japan Focus.

[17] Onodera Toshitaka, "Ikensho" brief containing the fund proposal and commentary, submitted at Fukuoka District Court on 21 Sept. 2005. Proposal and commentary available

[18] English translations here and throughout are by the author unless otherwise indicated.

[19] NHK Shuppan Kyokai, Maboroshi no Gaimusho Hokokusho: Chugokujin kyosei renko kyosei rodo no kiroku. Tokyo: 1994, chapter 6. See also Nishinarita, chapter 6.

[20] NHK; 42-43. See also Sugihara Toru, Chugokujin kyosei renko. Tokyo: Iwanami Shoten, 2002; 154.

[21] "Junbi Shomen 5," brief submitted by lawyers for Mitsubishi Materials at Fukuoka District Court on 21 Sept. 2005. All Mitsubishi quotations are from this 12-page document, which the author can provide upon request.

[22] NHK; 191.

[23] "Junbi Shomen 22," brief submitted by lawyers for Chinese plaintiffs at Fukuoka District Court on 5 Oct. 2005 in response to Mitsubishi's Junbi Shomen 5. All quotations by plaintiffs'

lawyers are from this 7-page document, which the author can provide upon request.

[24] NHK; 61.

[25] “GHQ ni hokokusho dasazu,” Nishinippon Shimbun, 24 Dec. 2003; “Foreign Ministry dragged feet with GHQ,” Asahi Shimbun online, 25 Dec. 2003.

[26] Yoshida Reiji, “60 years on Japanese debate the Tokyo Tribunal's legitimacy,” Japan Focus, posted on 14 Oct. 2005, is available.

[27] John K. Nelson, “Signs of recovery for Japanese nationalism? The citizen’s committee for reclaiming cultural identity through textbook reform.” Pacific Rim Report, No. 15 (Jan. 2001) is available.

[28] Shi Huizhong, “Chinjutsusho” statement submitted at Fukuoka District Court on 21 Sept. 2005.

[29] “Chingin ‘hokansho’ wo shoji, genkoku Cui-san: ‘kichinto taika harae,’” Nishinippon Shimbun, 15 July 2004.

[30] The Chinese Embassy in Japan announced the new foundation on its homepage last August.

[31] Kang Jian, “Chinjutsusho” statement submitted at Fukuoka District Court on 21 Sept. 2005. Kang was also interviewed at her Beijing office in March 2003.

[32] See James Reilly, “"China's history activists and the war of resistance against Japan: history in the making."” Asian Survey 44:2 (March/April 2004): 276-294.

[33] Chugokujin Senso Higai Baisho Seikyu Jiken Bengodan, ed., Sajo no shoheki: Chugokujin sengo baisho saiban 10-nen no kiseki. Tokyo: Nippon Hyoronsha, 2005. The book, with a symbolic publication date of August 15, provides an excellent overview of major Chinese claims from 1995-2005.

[34] NHK; 200-201.

[35] See Tessa Morris-Suzuki, “Free speech – silenced voices: the Japanese media, the comfort women tribunal, and the NHK affair.” Japan Focus, 13 Aug. 2005 is available. Also available, by one of the principals involved, is Lisa Yoneyama, “"NHK's censorship of Japanese crimes against humanity."” Harvard Asia Quarterly, Winter 2002.

[36] “Teacher calls students ‘unpatriotic.’” The Japan Times online, 18 Dec. 2005.

Photo credits: Courtesy of Nagasaki Support Group for Chinese Forced Labor Lawsuits (Shien Suru Kai); and Support Group for Chinese War Victims' Claims (Suopei, national chapter)

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NOTE: The above article was reposted at http://www.japanfocus.org/products/details/1636 on March 29, 2006, with a new introduction as follows:

Chinese forced laborers have been waiting for a verdict for sixty years. They received it on March 29. The Fukuoka District Court judge announced the ruling—all claims rejected—and left the packed courtroom in less than one minute. Forty-five Chinese survivors of forced labor in wartime Japan, ranging in age from 74 to 91, had been seeking individual compensation of around $200,000 and a published apology from the Japanese government, Mitsubishi Materials Corp. and Mitsui Mining Corp.

As in most previous rulings regarding Chinese forced labor, the court found that the state and corporations jointly engaged in illegal conduct by forcibly bringing the plaintiffs to Japan and forcing them to work in Fukuoka coal mines between 1943 and 1945. However, the court ruled that the state is immune from lawsuits because the Meiji Constitution in effect until 1947 contained no redress provision. The private companies were let off the hook by the court's application of a 20-year statute of limitations, meaning that the deadline for filing claims expired in August 1965.

Plaintiffs' lawyers argued unsuccessfully that the filing deadline should be extended due to special circumstances such as the state-orchestrated cover up of extensive Chinese forced labor records that was exposed only in 1993. In addition, Sino-Japanese relations were not restored until 1972 and the Chinese government did not begin allowing its citizens to freely travel abroad until the late 1990s.

The case has attracted international attention partly because, in a landmark April 2002 decision involving different plaintiffs, the same Fukuoka court set aside time bars in ordering Mitsui Mining to pay damages for the "extremely wicked" forced labor at its worksites. In the current case lawyers for Mitsubishi Materials employed a novel, confrontational defense strategy based on revisionist historical arguments (described below). Mitsubishi claimed that, despite fatality rates as high as 25 percent, there had been no forced labor or mistreatment of any kind. The court did not agree. But nor did it penalize Mitsubishi.

The Nagano District Court, in a very similar ruling on March 10, turned down a claim against the state and four corporations—even while establishing their joint guilt for Chinese forced labor. The chief judge in that case, however, carefully explained his ruling to the courtroom audience, and then expressed his personal desire that forced labor victims be redressed through non-judicial means. Fourteen Chinese forced labor lawsuits remain pending in Japan's generally inhospitable court system.

At a press conference following today's decision, plaintiff Cui Shujin called the 20-year statute of limitations an invention of the Japanese state. He vowed to appeal the court defeat. "Even if we fail at the Japan Supreme Court, this fight will continue for generations," Cui said. "We will never give up." A lawyer from Beijing reiterated that preparations for filing class action suits against Japanese companies in Chinese courts are moving forward.

Until they honestly confront and make amends for the forced labor that Japan's own courts say took place, Japan and Japanese corporations will remain on a collision course with the Chinese government and society. Without reparations and reconciliation, as a Japanese attorney rhetorically asked: How can it be possible for Japanese companies to have good relations with Chinese consumers, for the Tokyo government to have good relations with its Beijing counterpart, and for the people of Japan and China to have good relations with each other?