cians and so on). But also, as stated above, this case is highly suggestive legally. Therefore, it is considered that this case will greatly affect discussions of legal systems for the liability of management, directors, and auditors in Japan.

YASUHIRO OSAKI
MUNEHISA WADA

7. International Law

Kobe District Court, November 27, 2000
Takao Kadoma v. Japan
1743 HANREI JIHŌ 108

Postal savings cannot be cashed in Japan on the basis of a certificate for repayment issued by Manchukuo.

Reference:

(1) Treaty between the Government of Japan and the Government of Manchukuo Relating to the Abolition of Extraterritoriality in Manchukuo and the Transfer of Administrative Authority over the South Manchuria Railway Zone, 1937;

(2) Agreement (II) Annexed to the Treaty between the Government of Japan and the Government of Manchukuo Relating to the Abolition of Extraterritoriality in Manchukuo and the Transfer of Administrative Authority over the South Manchuria Railway Zone, November 9, 1937;

(3) Business Agreement Appended to the Agreement (II) Annexed to the Treaty between the Government of Japan and the Government of Manchukuo Relating to the Abolition of Extraterritoriality in Manchukuo and the Transfer of Administrative Authority over the South Manchuria Railway Zone, November 30, 1937;

(4) Agreement between the Postal Authorities of the Two States on the Basis of the Understandings under the Business Agreement

(the commencement of services of the repayment of postal savings deposited in Manchukuo), January 21, 1939.

Facts:

In 1937, the three agreements listed above as (1) to (3) under Reference, were concluded between Japan and Manchukuo. Additionally, in 1939, a fourth agreement, listed above as (4), was signed between their Postal Authorities. (These four agreements are hereinafter referred to as "the Treaties in question".) As a consequence of the Treaties in question, it became possible from December 1, 1937 to use a savings passbook issued in Japan for receiving repayment of postal savings in Manchukuo, and postal savings became repayable in Japan from February 1, 1939 against a certificate of deposit (hereinafter referred to as "certificate for repayment") issued by Manchukuo.

The Plaintiff is a Japanese national. From March 1943 to August 5, 1944, he served the Japanese Army as an infantryman in Manchukuo. In August 1944, he was transferred to the southern front in the Philippines. When leaving Manchukuo, the Plaintiff, following the Army Regiment's instructions, left his savings passbook and his personal seal with the officer in charge in the remaining Army unit, requesting him to send the money and the passbook to his parents' home in Japan. No particular arrangements were made between the two with regard to the manner and the timing of remittance. The Plaintiff's money was deposited as postal savings with a post office in Manchukuo on April 17, 1945. The post office duly accepted the money and issued a certificate for repayment in the amount deposited, with apparently a fee deducted.

The certificate in question was received by his parents around February 1946. Immediately after receiving the certificate, the Plaintiff's father requested it to be cashed at the Toyooka Post Office. The Post Office, however, refused to do so for the reason that Manchukuo no longer existed. The Plaintiff himself, soon after his return to Japan in 1946, also made the claim, with the same result. He accordingly brought an action against the Government of Japan at the Kobe District Court, asking the Court to declare that the Government must pay the Plaintiff the money he had transferred from Manchukuo, with in-

terest accrued.

Opinion:

Plaintiff's claim denied.

While a treaty is an agreement between States with binding force for its parties under international law, a bilateral treaty is considered to lose its effect *ipso facto* when one of its parties ceases to exist. It is evident, in the Court's view, that Manchukuo disappeared in August 1945 with the end of the Second World War. It follows that the Treaties in question had lost their effect owing to its disappearance. The Plaintiff therefore cannot claim repayment of the money from the Defendant against the certificate issued by Manchukuo on the basis of the Treaties in question.

The Plaintiff further argued that the circumstances of its creation show that Manchukuo was merely a puppet State established by Japan with the intention of covering up its actual domination over Manchuria. He concludes therefore that Manchukuo may be considered to have been part of Japanese territory and consequently the certificate issued by the Manchukuo's postal authorities can in effect be identified with one issued by the Japanese postal authorities.

The circumstances surrounding its creation and the fact that Japan had a considerable influence over Manchukuo, however, do not necessarily lead to the denial of its status under international law as a State. Furthermore, insufficient evidence was produced to show that the certificate issued by the Manchukuo's postal authorities could be identified with one issued by the Japanese postal authorities. The Court therefore finds that the Plaintiff's claim for repayment at face value on the basis of the certificate is without ground.

Editorial Note:

What is beyond doubt in the present case are the facts that Manchukuo ceased to exist in 1945, when the whole area under its control was restored to China, that the Treaties in question had become legally ineffective at the same time, and that consequently the Plaintiff was unable to base his claim upon those the Treaties. Thus the Plaintiff corroborates his arguments with another point that Manchukuo was

not really a State at all for the purposes of international law. He argues that "while Manchukuo ... had the appearance of an independent State in form, it was in fact merely a puppet State having no autonomous or independent decision-making powers, and was thus part of Japanese territory." It is on the basis of this understanding that the Plaintiff considers it possible to treat the certificate for repayment issued by the Manchukuo's postal authorities in the same manner as one issued by the Japanese postal authorities.

Before examining the international legal issues relevant to these questions, it may be useful to review briefly some of the factual background of the creation of Manchukuo.

After the Russo-Japanese War of 1904–05, Japan obtained the leased territory of Kwantung and certain rights and interests in southern Manchuria centering on the South Manchuria Railway Company. Manchuria became an area of special strategic and economic importance for Japan after this. After the Chinese Revolution of 1911, Manchuria came under the control of Chang Tso-lin, and then of his son, Chang Hsueh-liang. Although the area in question was part of China in name, its connection with the Central Government was, according to the Lytton Commission of Enquiry dispatched by the League of Nations, "more nominal than real" (*see* REPORT OF THE COMMISSION OF ENQUIRY OF THE LEAGUE OF NATIONS SIGNED AT PEIPING, SEPTEMBER 4, 1932, *reprinted* in Taipei, 1971, at 50–51). On the night of September 18, 1931, the Kwantung Army set off an explosive charge on the South Manchuria Railway tracks at Liutiaohu in the suburbs of Mukden, and, after that, it launched large-scale military actions in Manchuria on a pretext of "self-defense" and placed the whole area under its control. The founding of "Manchukuo" as a State was declared on March 1, 1932, the deposed Emperor of China, Pu Yi having been inaugurated as Regent (subsequently Emperor) of Manchukuo under Japanese direction. But real power was kept in the hands of the Commander-in-Chief of the Kwantung Army, who concurrently held the post of Japanese ambassador to Manchukuo. On September 15, 1932, Japan gave formal recognition to Manchukuo in a Protocol signed by them, which stressed that Manchukuo had been voluntarily established according to the general will of its population

and constituted an independent State. In March 1933, however, having been defeated at the League Assembly by a vote of forty-two to one on the adoption of the Lytton Commission's report, which confirmed Chinese sovereignty over Manchuria and recommended the withdrawal of the Japanese Army therefrom, Japan withdrew from the League of Nations. It was against such a background that the Plaintiff described Manchukuo as a "puppet State" of Japan.

What is then the status under international law of a "State" which has been created thorough a process not generally acceptable to the international community? Is there any international obligation not to recognize such a "State"? A principle of non-recognition of "any situation, treaty or agreement which may be brought about by means contrary to the Covenant of the League of Nations or to the Pact of Paris" was advocated by the US Secretary of State, H. L. Stimson, in identical notes dated January 7, 1932 addressed to Japan and China (*see* G. H. Hackworth, 1 DIGEST OF INTERNATIONAL LAW 334). This is commonly known as the doctrine of non-recognition, or the Stimson doctrine. Not long afterwards the Special Assembly of the League of Nations recognized the principle contained in the doctrine by a resolution to virtually the same effect. It does not appear, however, that the Stimson doctrine was subsequently accepted as a legal principle in the general practice of States until the Second World War (*see*, for instance, the practice of States with respect to the Italian conquest of the Empire of Ethiopia in 1935; the German takeover of Czechoslovakia in March 1939; and a series of territorial acquisitions by the Soviet Union in 1940). In short the Stimson doctrine remained a policy, and not an established principle of international law during the years 1932–1945.

Another point may be worth mentioning here. There may be cases where international law does not prevent a certain situation from arising out of illegality, as indicated by the coexistence of the two conflicting principles *ex iniuria ius non oritur* and *ex facto ius oritur.* This is why many States, including great Powers, were in fact able to maintain certain "relations" (such as consular and postal relations) with Manchukuo for practical day-to-day needs, while making it clear that they had no intention of giving a formal recognition as a State.

The Advisory Committee of the League of Nations set up for coordinating the action of its Members in the matter of non-recognition did not oppose the replacement of consuls, the issue of travel documents by the consuls of the State concerned and technical agreements between the postal administrations of Members of the League and that of Manchukuo (H. Lauterpacht, RECOGNITION IN INTERNATIONAL LAW, 1948, at 433–434). These "relations" were expected to have certain specific legal effects irrespective of the general question of whether or not Manchukuo had the status of a State.

The Court did not address these points. Though it apparently drew its conclusions on the assumption that Manchukuo was a State, it did not make any clear determination to that effect in the relevant part of its Judgment. (The Court's reasoning on this point is indeed quite inadequate). At least for the practical purpose in dealing with this case, however, it appears that the Court should have shown that Manchukuo constituted a State *vis-à-vis* Japan and established various bilateral relations (including the postal relations) with the latter during 1932–1945, and that, even assuming that Manchukuo was a "puppet", it was its postal authorities, and not the Japanese authorities, that had issued the certificate for repayment in question in accordance with normal procedures.

MORITAKA HAYASHI
TAKAHIDE NAGATA

Tokyo High Court, December 6, 2000
Philippine Sexual Slavery Case
1202 Jurisuto 281 (2001)

Reference:

(1) Convention Respecting the Laws and Customs of War on Land, Art. 3;

(2) Rome Statute of the International Criminal Court, Art. 75;

(3) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

Facts:

The plaintiffs in this case are 46 women of Philippine nationality. In a lower court, they had brought claims for compensation (20 million yen per person) against the Japanese Government, alleging that, during the Second World War, they were abducted, interned and repeatedly raped by Japanese soldiers, and thereby suffered serious moral injuries. In the present Court, the main issues relevant to international law involved the applicability of:

(1) Customary international law embodied in the Article 3 of the Hague Convention Respecting the Laws and Customs of War on Land;

(2) Crimes against humanity; and

(3) State Redress Law of Japan.

Opinion:

All the claims asserted by the Plaintiffs are dismissed.

(1) Article 3 of the Hague Convention was drafted not for the purpose of protecting the rights of those individuals who have suffered injuries as such. It was intended to be a sanction clause for inducing persons forming part of armed forces of a state to comply with the Hague Regulations, which are annexed to the Convention. An examination of each provision of the Hague Convention and Regulations leads us to conclude that no clause exists which would appear to recognize any procedures for injured individuals to exercise their rights or any other rights of individuals. In addition, in the drafting process of the Convention, no agreement among participating states is found, nor can any statements by the delegates be found to indicate that they drafted Article 3 of the Convention for the purpose of enabling individuals to seek compensation directly from the wrongdoing state.

In order to show that individuals constituting a state have the right to make restitution for their injuries and damages conferred on them directly from a state other than the state to which they belong, there must be a specific rule of international law that permits such action. Such a rule does not have to be one that provides for specific procedures immediately available for individuals to exercise their rights. At least, however, it must be clear that foreign states are bound to recog-

nize such claims of individuals as legal right, for example, under international law to ensure the means by which such individuals may exercise their rights.

(2) The plaintiffs have also invoked certain provisions that permit some tribunals established to try crimes against humanity to order damages and other remedies. However, both article 24 (3) of the Statute of the International Tribunal for Yugoslavia and Article 23 (3) of the Statute of the International Tribunal for Rwanda have been adopted as provisions containing certain types of penalties, and therefore they cannot be interpreted recognizing the rights of victims or other persons. Further, article 75 of the Statute of the International Criminal Court dose not allow the victims to bring claims to any tribunal other than the International Criminal Court. It is thus not possible to interpret this article as recognizing the rights of individuals under international law.

(3) The plaintiffs finally complain of non-performance of the obligation to punish under Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The obligation under this convention, however, is one owed to the other relevant contracting parties, and not to individual victims. Even if such an obligation is breached, therefore, there is no possibility for the Defendant (Japanese Government) to be made liable for wrongdoing under the State Redress Law.

Editorial Note:

The present case is one of many cases involving claims for damages and injuries suffered by war victims during the Second World War that have been filed with the Japanese courts. But it is noteworthy in that this is the first time for a High Court to judge upon the post-war compensation case involving the admissibility of individuals' claim on the basis, notably, of the Hague Convention relating to the laws of war on land. Nevertheless, this decision has basically taken the same view as those in the previous judgements of the District Courts.

This decision of the Tokyo High Court dealt, *inter alia*, with the following issues: ① whether the acts which the Japanese Government allegedly committed during the Second World War violated interna-

tional law, in particular the laws of war; and if so, ② whether individual victims who suffered injuries from such acts can claim compensatory damages directly from the wrongdoing state based on customary international law or treaties; and ③ whether international law has direct applicability in Japan, or whether international law may be used as a criterion or guidance for interpreting domestic law.

The court has avoided considering ① above, and focused its attention to the question of *jus standi* of the Plaintiffs before Japanese courts. It dismissed their claims on the ground that individuals had no right to claim such compensation under international law.

The Japanese courts have maintained, since the "*Atomic bomb* Case" (also known as the *Shimoda* Case), decided in 1963, that the right of individual victims to claim compensation under international law against the wrongdoing state depends upon whether individuals can be subjects of international law. The courts have further stated that to be considered as subjects of international law, individuals must be able to have rights and assume duties in their own names under international law, which they can only do insofar as they are recognized as such in specific cases by treaties. Such a viewpoint has been upheld in a series of recent decisions on post-war compensation cases. Such a viewpoint has been upheld in a series of recent decisions on post-war compensation cases. It has also been generally accepted as the majority opinion among international law scholars in Japan.

Further, in the Japanese domestic legal order, it is generally understood that treaties concluded by Japan and established customary international law rank lower than the Constitution, but higher than domestic laws. In considering the question of the direct applicability and self-executing nature of a rule of international law, Japanese courts have mostly denied the principle of the supremacy of international law over domestic law. Among other things, in Japan, under the influence of dualist doctrine, according to which international law and domestic law of states are considered totally separate legal systems, matters falling into a crack between two systems, particularly the rights and duties of an individual, have been dealt with in a way that ignores the status of the individual.

In relation to the general theory of international law, a similar sit-

uation is found, for example, in the practice of diplomatic protection, pursuant to which a claim of an individual is subsumed under the claim of the state of which he/she is national. Circumstances around the individual victims of war symbolize a contradiction, contradiction between justice and the logic of legal formality. If the fundamental idea is generally accepted that the ultimate purpose of the law is the realization of justice, it would follow that some way should be found to avoid a situation that would totally deny justice to the victimized individuals.

A possible avenue to settle this problem would be the adoption of new legislation for compensation for war victims by the Government. Such an approach has already been taken by some states that have chosen to entrust compensation matters to the executive or legislative branches owing to the difficulty for the judiciary to order remedial measures. In some cases, states have done so in parallel with remedial measures taken by the judiciary.

MORITAKA HAYASHI
HIROYUKI BANZAI