



# INTERNATIONAL LAW, RECONCILIATION, AND REDRESS

## Lesson Four

### Overview

Through the vehicle of a mock justice tribunal, students weigh evidence provided to determine whether Japan has settled its obligations with regard to war crimes and crimes against humanity committed by Japanese Imperial forces.

### Teaching/Learning Strategies

Before starting this lesson, teachers may find it helpful to review the “Guidelines for Teaching About Controversial Issues” at the beginning of this resource. The issue of Japanese redress for its wartime violations of human rights is a contentious one and can be difficult to manage in a classroom discussion. Attempts to reach a judgement on questions like these can easily lead to a “chain” of grievances (“what about the Canadian internment of Japanese Canadians?; what about human rights in Tibet?” etc.). Students may also feel they have to “take sides” based on their own ethnic identity. Teachers might want to stress that this activity is about concepts of justice, not about taking sides.

1. Students use the various handouts in this resource as well as their own research to prepare a mock justice tribunal hearing.
  - Provide students with *Handouts 4.1-4.4* (Organizing a Mock Justice Tribunal) and review the main tasks and the hearing process.
  - Divide the class into three groups, each with one of the following roles: tribunal members (judges); advocates for victims (prosecution); representatives for the Japanese government (defence). Review with students the other handouts for this and the other lessons and how each can be used by the different groups.
  - Have each group identify research questions and additional sources of information.

### Time

60 to 90 minutes

### Materials

- *Handout 4.1* (Organizing a Mock Justice Tribunal)
- *Handout 4.2* (What Victims and Survivors Want)
- *Handout 4.3* (International Agreements Related to Compensation Claims)
- *Handout 4.4* (Japan’s Responses)

- Remind students that the success of the hearing depends on an imaginative and thorough representation by all three role-play groups. Encourage them to use the initial group discussion to identify research tasks to be carried out by each group member.
- During the hearing, have students keep a point-form record of the arguments and counter-arguments to use as a resource for writing their responses.
- Explain the meaning of the terms *redress*, *reconciliation* and *compensate*.

*Redress*: to acknowledge a wrong that was committed, the United Nations includes in its definition of redress violations of human rights (including war crimes and crimes against humanity). Redress is an act of amending injustice and may include apology, monetary compensation, as well as measures to prevent the recurrence of such injustices.

*Reconcile*: to harmonize; make compatible by overcoming a hatred or mistrust. To reconcile is to rebuild a sincere relationship without prejudice.

*Compensate*: to provide a payment of money to make up for a wrong that was committed. It may include payment to individual victims or their surviving family members. Compensation can also be funds established to victimized communities.

- Make students aware of the differences between legal and moral issues.
- Before students present and defend their views, remind them of the following guidelines:
  - the hearing process is meant to help them understand how international tribunal hearings are used to deal with conflicting positions, and to gain confidence in considering the political, moral and legal issues involved in reaching a judgement.
  - arguments are convincing to the degree that they are logical and supported by relevant facts

- the prosecution and defence address their arguments only to the tribunal and do not rebut each other directly.
  - whatever their role, their responsibility in the tribunal process is to listen carefully to the arguments presented and to respect the tribunal’s final verdict of the tribunal,
  - arguments include implications for individuals and society
  - To evaluate student’s work, consider awarding marks to students who deliver points for the prosecution or defence and additional marks for the quality of their points. Each tribunal member could be given marks for keeping a point-form record of the arguments and counter-arguments.
2. Students write a reflective response discussing what they think are the most viable solutions that will be fair to the victims and survivors of Japan’s wartime crimes and to the Japanese people.
- Have students consider the evidence from the tribunal hearing and from other lessons in this resource to develop their responses.
  - Work with students to develop criteria for assessment of their responses, for example:
    - clearly states your opinion regarding viable solutions
    - uses specific details and examples from the tribunal hearing, handouts, and other sources to support your opinion
    - groups related ideas together
    - comes to a logical conclusion regarding the most viable solutions that will be fair to the victims and survivors of Japan’s wartime crimes and to the Japanese people

**The Task**

Imagine that you are part of an international tribunal that has been given the task of deciding how justice can be served for the victims of Japan's war crimes and crimes against humanity during the Asia-Pacific War. The tribunal will hear arguments from victims' advocates (the prosecution) and from the government of Japan (the defence) on the following question:

“Has Japan settled its obligations with regard to war crimes and crimes against humanity committed by Japanese Imperial forces?”

The tribunal judges will then issue their judgement on the question and recommend any action they feel is necessary on the part of the government of Japan to restore justice.

You will take part in the Recovery of Justice Tribunal in one of the following roles:

- as a member of the team representing victims and survivors (the prosecution)
- as a member of the team representing the government of Japan (the defence)
- as a member of the tribunal (the judges)

**Preparing for the Tribunal Hearing**

First meet with the other members of your group and read through the directions (below) that apply to your group. Then, based on those instructions, your group can begin researching the information needed for the hearing.

***Tribunal members:*** This group has a unique responsibility because they must stay completely neutral during the trial. Discuss how you will ensure a fair trial in which the evidence from both sides is considered and weighed. Then decide how you will reach a verdict (by majority vote? by reaching consensus? by secret ballot?)

To prepare for the arguments of the prosecution and defence teams:

- review *Handout 1.1* (War Crimes and International Law) and *Handout 4.3* (International Agreements Related to Compensation Claims) so that you are familiar with relevant international law
- review the other handouts in this resource to be familiar with the issues under discussion.
- decide what other information you need to be prepared for the hearing and divide up the research tasks among the members of your group

- consider researching the work of real international tribunals and examining how other nations have dealt with issues of redress and reconciliation (for example, the Canadian government's settlements with Japanese Canadians who were interned during the Second World War, the South African Truth and Reconciliation Commission, the German government's agreements with Israel for compensation of the victims of the Nazi regime, the war crime tribunals related to the Balkans).

**Prosecution team:** This group needs to be familiar with the war crimes and crimes against humanity committed by the Japanese Imperial forces during the Asia-Pacific War.

To build a convincing case that Japan has not settled its obligations:

- Assign some members of your team as “witnesses” who present their testimonials directly to the tribunal. Use the details from the handouts for Lessons 2 and 3 to create eye-witness accounts.
- Be sure your team's presentation addresses Japan's obligations under international law (review *Handout 1.1* (War Crimes and International Law) and *Handout 4.3* (International Agreements Related to Compensation Claims)) and does not rely on appealing to the judges' sympathy.
- Read *Handout 4.2* (What Victims and Survivors Want) to be clear about what you are asking for.

**Defence team:** As the defence, your task is to represent the interests of the government of Japan to the best of your ability. To do so convincingly:

- You must be familiar with what victims want, what the government of Japan has already done, and why the Japanese government refuses to do more
- Review *Handout 1.1* (War Crimes and International Law) and *Handout 4.2* (Legal Basis for Claims) so that you are familiar with the relevant international law. Then use *Handout 4.4* (Japan's Response) to help build your defence. Decide what additional research your team needs to do to make its case. Then divide the research tasks among your team members.
- As your presentation will follow the prosecution's, you will need to anticipate their arguments and be well prepared to address the prosecution's claims. It is necessary to do this ahead of time, as you will not have time to prepare arguments during the activity.

**Conducting the Hearing**

The tribunal process follows this order:

1. *Presentation of the prosecution's case against Japan (8 minutes)*: The prosecution addresses its argument to the tribunal and then answers questions from the tribunal members.
2. *Presentation of the defence (8 minutes)*: The defence presents its argument to the tribunal and then answers questions from tribunal members.
3. *Rebuttal by the prosecution (2 minutes)*: The prosecution has the opportunity to present to the tribunal its response to any points raised by the defence.
4. *Rebuttal by the defence (2 minutes)*: The defence responds to the prosecution's rebuttal.
5. *Closing Statements (2 minutes each)*: Each side provides a clear and persuasive summary of: the evidence it presented; the weaknesses of the other side's case; the application of the law to the case; and why it is entitled to the result it is seeking.
6. *Deliberation and verdict of the tribunal*: The tribunal recesses to deliberate their verdict and then returns to class to announce their decision and their reasons for it.

The following summarizes information from various publications and web pages about what the victims and survivors of the Japanese atrocities want.

1. Survivors want a full and sincere apology resolution to be passed by the Upper House and the Lower House of the Japanese parliament (the Diet).
2. They want compensation for the damages and suffering inflicted.
3. They want the Japanese government to follow the example of Germany and make commitments such as the following to ensure that such atrocities never happen again:
  - provide school education on humanity issues of the Asia-Pacific War
  - establish museums for public education on crimes against humanity in the Asia-Pacific War
  - legislate a national day of remembrance for victims of Japanese Imperial forces aggression and atrocities
  - public denial of war crimes committed by the Japanese imperial forces is to be outlawed
  - legislate domestic laws to prosecute, for crimes against humanity, the many Japanese war criminals who escaped war crime trials after the end of the war

The following are quotations from various associations supporting victims and survivors.

*“Although they expressed their regret and sorrow about what they did to Koreans whenever the Japanese Prime Ministers had diplomatic meetings in Korea, especially with respect to Korean women during the colonization period, this was challenged and denied by Japanese cabinet members.” (The Korean Council for the Women Drafted for Military Sexual Slavery by Japan)*

*“ the Peace Treaty was a compromise between the principle that Japan was liable to pay compensation for violations of the law for which it was responsible and the recognition of the reality that the condition of Japan in the aftermath of the war was such that it could not be expected to pay full compensation at that time. The Allied States therefore waived most of their claims on the Inter-State level in order to assist Japanese recovery. It is entirely compatible with that approach that they intended to leave open the possibility of individuals bringing claims in the Japanese courts but based upon international law once that recovery had taken place.” (The Association of British Civilian Internees Far East Region)*

*“... the individual human rights of the Hong Kong Veterans are not affected by the Peace Treaty as the governmental representatives of the countries who were the signatories to the Treaty had no authority or mandate to release these basic legal rights...” (The War Amputees of Canada in association with the Hong Kong Veterans Association of Canada)*

*“While my report [study report for UN Sub-Commission on Human Rights on systematic rape and sexual slavery during armed conflict] welcomes the expression of atonement and support from the people of Japan, it maintains that the Asian Women Fund does not satisfy the legal responsibility of the Government of Japan toward the survivors of Japan military sexual slavery. The Fund has been the focus of a great deal of divisiveness and controversy, and a majority of survivors have not accepted it. So long as it is seen as vehicle for Japan to avoid its legal obligation to pay compensation, all the good that the Asian Women Fund tries to do will be under a cloud of suspicion and resentment.” (Gay J. McDougall, Special Rapporteur of United Nations Commission on Human Rights)*

*“If Japan’s ‘Peace Exchange Fund’ is used to propagate Japanese culture, then it cannot be used as a means of atonement for Japanese war crimes.” (The Korean Council for the Women Drafted for the Military Sexual Slavery by Japan)*



**San Francisco Peace Treaty of 1951**

## Article 14(a) of the treaty

“It is recognized that Japan should pay reparations to the Allied Powers for the damage and suffering caused by it during the war. Nevertheless, it is also recognized that the resources of Japan are not presently sufficient if it is to maintain a viable economy to make complete reparation for all such damage and suffering and at the same time meet its other obligations.”

## Article 14(b) of the treaty

“Except as otherwise provided in the present treaty, the Allied Powers waive all reparation claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war, and claims of the Allied Powers for direct military costs of occupation.”

**Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity**

(Adopted and opened for signature, ratification and accession by General Assembly of the UN resolution 2391 (XXIII) of 26 November 1968, *entry into force* 11 November 1970).

## Preamble of the convention states:

“Noting that the application to war crimes and crimes against humanity of the rules of municipal law relating to the period of limitation for ordinary crime is a matter of serious concern to world public opinion, since it prevents the prosecution and punishment of persons responsible for those crimes.

Recognizing that it is necessary and timely to affirm in international law through this convention the principle that there is no period of limitation for war crimes and crimes against humanity and to secure its universal application.”

## Article 1 of the convention states:

“No statutory limitation shall apply to the following crimes, irrespective of the date of their commission:

- (a) War crimes as they are defined in the Charter of the International Military Tribunal, Nuremberg, of 8 August 1945 ... for the protection of war victims;
- (b) Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nuremberg, of 8 August 1945...even if such acts do not constitute a violation of the domestic law of the country in which they were committed.”

### Japan's Position on Compensation

The San Francisco Peace Treaty (1951) between Japan and 47 nations (including Canada) and other subsequent agreements have settled all compensation issues between states (Articles 14(a) and 14(b) of the Peace Treaty).

Japan paid compensation to the military and civilian prisoners of wars of the Allied Powers in accordance with treaties between countries. Examples of compensation paid out are:

- \$1.50 for each imprisoned day paid to the former imprisoned Canadian Hong Kong veterans
- £76 to each British military prisoner of war and about £48.5 to each adult civilian internee
- \$1 (US) for each day of internment for the United States military and civilian prisoners of war and \$0.50 (US) for child internees

According to Japan's domestic laws, the legal expiry date (statutory limitation) is 15 years for legal responsibility of the most serious crimes. More than 50 years has passed since the end of the Asia-Pacific War, so Japan has no legal obligation to victims of atrocities that were committed so long ago.

The governments, including Canada, who signed the San Francisco Peace Treaty had agreed to waive their own citizens' right to make claims (Article 14(b) of the Peace Treaty). Since treaties govern relations between states, individual prisoners of war have no legal right to claim further compensation directly from the Japanese government.

In 1995 the Japanese government supported the establishment of the Asian Women's Fund.

Its primary aim is to settle compensation of the so-called "comfort women" issue. The fund gets donations from the Japanese public and distributes them to each former "comfort woman" — about \$19,000 (US). With the financial support of the government, it extends welfare and medical services to victims.

In 1995 Japan established the Peace, Friendship and Exchange Initiative to support historical research into relations between Japan and other countries and also to support exchanges with those countries. Approximately \$1 billion (US) over ten years would be allocated to this project.

### Japan's Position on Apology

#### *No War Resolution*

A No War Resolution that expressed Japan's apology was adopted by the Lower House of the Diet (Japanese Parliament) in 1995. This was to commemorate the 50th anniversary of the Asia-Pacific War.

"The House of Representatives resolves as follows:

On the occasion of the 50th anniversary of the end of World War II, this House offers its sincere condolences to those who fell in action of wars and similar actions all over the world.

Solemnly reflecting upon many instances of colonial rule and acts of aggression in the modern history of the world, and recognizing that Japan carried out those acts in the past, inflicting pain and suffering upon the peoples of other countries, especially in Asia, the Members of this House express a sense of deep remorse.

We must transcend differences over historical views of the past war and learn humbly the lessons of history so as to build a peaceful international society.

This House expresses its resolve, under the banner of eternal peace enshrined in the Constitution of Japan, to join hands with other nations of the world and to pave the way to a future that allows all human beings to live together.” (translation by the Secretariat of the Lower House of the Japanese Parliament)

### *Individual Apologies*

Dignitaries in Japan have offered their individual apologies to victims. The most acclaimed one is by Japan's Prime Minister Murayama Tomiichi. He issued the following statement on August 15, 1995, the 50th anniversary of the Asia-Pacific War, to express an apology to victims.

“Now that Japan has come to enjoy peace and abundance, we tend to overlook the priceless and blessings of peace. Our task is to convey to younger generations the horrors of war, so that we never repeat the errors in our history. I believe that, as we join hands, especially with the peoples of neighboring countries, to ensure true peace in the Asia-Pacific region — indeed in the entire world — it is necessary, more than anything else, that we foster relations with all countries based on

deep understanding and trust. Guided by this conviction, the Government has launched the Peace, Friendship and Exchange Initiative, which consists of two parts promoting: support for historical research into relations in the modern era between Japan and the neighboring countries of Asia and elsewhere; and rapid expansion of exchanges with those countries. Furthermore, I will continue in all sincerity to do my utmost in efforts being made on the issues arisen from the war, in order to further strengthen the relations of trust between Japan and those countries.

...During a certain period in the not too distant past, Japan, following a mistaken national policy, advanced along the road to war, only to ensnare the Japanese people in a fateful crisis, and, through its colonial rule and aggression, caused tremendous damage and suffering to the people of many countries, particularly to those of Asian nations. In the hope that no such mistake be made in the future, I regard, in a spirit of humility, these irrefutable facts of history, and express here once again my feelings of deep remorse and state my heartfelt apology. Allow me also to express my feelings of profound mourning for all victims, both at home and abroad, of that history.”