

PUNISHMENT WITHOUT REPARATION? THE TOKYO TRIBUNAL AND THE SAN FRANCISCO PEACE TREATY AS PARALLEL ACCOUNTABILITY REGIMES

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I. INTRODUCTION

The post-Second World War legal order is often described as the moment when international law learned to hold wrongdoers accountable. However, accountability for Japanese violations did not emerge through a unitary and linear path. Instead, Japan's wartime conduct was addressed through two parallel regimes that pursued

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distinct functions and, when taken together, produced a lasting structural gap for victims. On the one hand, the International Military Tribunal for the Far East (Tokyo Tribunal) institutionalized individual criminal responsibility through punishment. On the other hand, the Treaty of Peace with Japan (San Francisco Peace Treaty) established State responsibility primarily through interstate settlement and reparations arrangements.

The Tokyo Tribunal is typically examined alongside the Nuremberg Tribunal as part of the foundational moment in international law with an overwhelmingly punitive focus. By contrast, the San Francisco Peace Treaty translated Japan's responsibility into a political and economic settlement. By looking into these two regimes, this article studies whether, together, the Tokyo Tribunal and the San Francisco Peace Treaty were legally sufficient to address the harms caused by Japan's wartime conduct. This structural separation helps explain both the persistence of victim reparation claims and the legal obstacles encountered in later domestic litigation, revealing that although these regimes appeared legally sufficient for interstate settlements, they were insufficient to provide redress for individual victims.

II. TOKYO TRIBUNAL AND THE CONSOLIDATION OF INDIVIDUAL CRIMINAL RESPONSIBILITY

A. *Establishment and Purpose*

After the Second World War, a strong awareness emerged of the need to shape and codify international responsibility and prevent individuals from hiding behind the abstract entity of the state. This development led to the establishment of the Nuremberg and Tokyo Tribunals.¹ The 1945 London Agreement established the International Military Tribunal in Nuremberg (1945-1949), Germany, which tried the main perpetrators of the Nazi regime.² A few months later, the International Military Tribunal for the Far East was created, also

1. Edoardo Greppi, *The Evolution of Individual Criminal Responsibility Under International Law*, 81 Int'l Rev. Red Cross 531, 536 (1999), <https://international-review.icrc.org/sites/default/files/S1560775500059782a.pdf>.

2. *Id.* at 539.

known as the Tokyo Tribunal (1946-1948), which tried the Japanese military and political elite for their war crimes during World War II.³

Before these tribunals were established, international responsibility was largely confined to states, with few mechanisms for holding the officials who directed state action personally accountable. This reflected the core principle that states were the primary subjects of international law.⁴ Although certain domestic legal systems recognized limited forms of individual responsibility for conduct that would now be considered international crimes, no coherent or consolidated framework of individual criminal responsibility yet existed at the international level.⁵ For this reason, the Nuremberg and Tokyo Trials are often regarded as the starting point of modern international criminal law.

Early critics such as Hans Kelsen contested the inclusion of individuals as subjects of international law and justified individual responsibility through the ‘act of state’ doctrine.⁶ Nevertheless, earlier practices concerning crimes such as piracy and human trafficking already demonstrated a connection between international condemnation and national enforcement.⁷ These offenses had long been regarded as violations of international law, even though they were prosecuted before domestic courts and punished through national legal systems. Piracy, for instance, is considered the earliest international crime prohibited under customary international law.⁸

Against this background, the Nuremberg and Tokyo Tribunals marked a major turning point in the development of international law.⁹ The Nuremberg Tribunal articulated important new international criminal law principles, and these were further reinforced and developed by the Tokyo Tribunal.¹⁰ The postwar tribunals expanded

3. Giada Girelli, *Understanding Transitional Justice: A Struggle for Peace, Reconciliation, and Rebuilding* 125 (2017).

4. *Id.*

5. Cenap Çakmak, *A Brief History of International Criminal Law and International Criminal Court* 11-12 (2017), <https://link.springer.com/content/pdf/10.1057/978-1-137-56736-9.pdf>.

6. Andrea Gattini, *Kelsen's Contribution to International Criminal Law*, 2 J. Int'l Crim. Just. 795, 800 (2004).

7. *Id.*

8. Yoram Dinstein, Piracy Jure Gentium, in *Coexistence, Cooperation and Solidarity* 1125, (Rüdiger Wolfrum & Chie Kojima eds., 2012).

9. William E. Adjei, *The Development of Individual Criminal Responsibility Under International Law: Lessons from Nuremberg and Tokyo War Crimes Trials*, 25 J. Legal Stud. 69, 69 (2020).

10. Girelli, *supra* note 3, at 132.

international responsibility to individuals for their actions, even when acting under orders or in an official capacity.¹¹ The primary objective of these tribunals was punitive. They sought to hold perpetrators accountable and to deter the recurrence of atrocities such as crimes against humanity, war crimes and crimes against peace, commonly known as crimes of aggression.¹²

The International Military Tribunal at Nuremberg famously affirmed that “crimes against international law are committed by men, not by abstract entities,” and that only by punishing individuals could international law be effectively enforced.¹³ While scholarship often emphasizes Nuremberg as the origin of this principle, the Tokyo Tribunal played a crucial role in solidifying and advancing it.¹⁴ The Tokyo Trials significantly advanced this concept by prosecuting high-ranking military and political officials.¹⁵ The Tribunal was especially influential in relation to the concept of command responsibility, effectively applying the rule that superiors could be held liable for crimes committed by subordinates if they failed to prevent or punish such acts.¹⁶ This reinforced the principle that individuals, regardless of their official positions, could be held accountable under international law. The Tokyo Tribunal allowed trials against persons in their individual capacity, as members of organizations, or in both capacities.¹⁷ The precedents set by these trials laid the foundation for the modern construct of individual criminal responsibility, later

11. *Id.* at 132; Guénaél Mettraux, *Judicial Inheritance: The Value and Significance of the Nuremberg Trial to Contemporary War Crimes Tribunals*, in *Perspectives on the Nuremberg Trial* 599, 602 (Guénaél Mettraux ed., 2008).

12. Girelli, *supra* note 3, at 125; Kirsten Sellars, *Imperfect Justice at Nuremberg and Tokyo*, 21 Eur. J. Int'l L. 1085, 1092 (2010), <https://www.ejil.org/pdfs/21/4/2106.pdf>.

13. Judgment, International Military Tribunal (Nuremberg), Oct. 1, 1946, in 22 *Trial of the Major War Criminals Before the International Military Tribunal* 55 (1948), <https://www.legal-tools.org/doc/45f18e/pdf/>.

14. Yuma Totani, *The Case Against the Accused*, in *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited* 147, 150 (Yuki Tanaka, Timothy L.H. McCormack & Gerry Simpson eds., 2011), https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/A9B8696D-FF7E-4CF0-90B0-F47C4C2D9EAB/283891/Totanichapter_correctversion.pdf.

15. Yuma Totani, *Theories of Individual Responsibility at the Tokyo Trial*, 20 Eur. Stud. 95, 95 (2020), https://www.desk.c.u-tokyo.ac.jp/download/es20_totani.pdf.

16. Neil Boister & Robert Cryer, *The Tokyo International Military Tribunal: A Reappraisal* 304 (Oxford Univ. Press 2008).

17. Proclamation by the Supreme Commander for the Allied Powers Establishing an International Military Tribunal for the Far East art. 1, Jan. 19, 1946, T.I.A.S. No. 1589, at 317, <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=2132&context=ils>.

developed by the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC).¹⁸

B. *Findings of the International Military Tribunal of the Far East*

The Tokyo Tribunal focused on the prosecution of crimes against peace, conventional war crimes, and crimes against humanity.¹⁹ The Tokyo Charter set down the legal and procedural principles governing the Tribunal. It defined crimes against peace as “the planning, initiation, or waging of aggressive war, including conspiracy to do so; conventional war crimes as violations of the laws or customs of war; and crimes against humanity as inhumane acts or persecutions against civilians linked to war crimes.”²⁰ Leaders and participants in conspiracies to commit these crimes were held accountable for all acts carried out under such plans.²¹

Although three different categories are mentioned to be tried in the Tokyo Charter, the charter required that the principal charges brought be crimes against peace, with the other two categories, war crimes and crimes against humanity, left as additional charges.²² Due to the intensive focus on crimes against peace, other evidence of Japanese wartime atrocities was set aside, leading to limited discussion around crimes against humanity and war crimes.²³

The Tokyo Trials determined that Japanese leaders orchestrated a plan from 1928 to 1945 to wage aggressive wars, aiming for military, political, and economic domination. These wars targeted countries such as Australia, Canada, China, the Soviet Union, and the United States.²⁴ Individuals convicted of crimes against peace received life imprisonment or lesser sentences, with no death penalties issued.²⁵

A core focus of the trials was the Nanjing Massacre, one of the most infamous events preceding World War II.²⁶ Beginning on December 13, 1937, Japanese forces invaded Nanjing, China, and

18. Adjei, *supra* note 9, at 78.

19. Charter of the International Tribunal for the Far East art. 5, Jan. 19, 1946 [hereinafter: Tokyo Charter]; Totani, *supra* note 14, at 147.

20. Tokyo Charter, *supra* note 19, art. 5.

21. *Id.*, art. 5 (a), (b), (c).

22. *Id.*, art. 5.

23. Totani, *supra* note 14, at 147.

24. *Id.*, at 151.

25. Boister & Cryer, *supra* note 16, at 253.

26. W. Zhu, *Tokyo Trial and Nanjing Massacre*, 3 *Frontiers L. China* 325, 325 (2008).

committed mass atrocities over six weeks.²⁷ Known as the “Rape of Nanjing,” this massacre involved mass murder, mass rape, looting, and torture of Chinese civilians, with estimates of 200,000 to 300,000 murders and 20,000 rapes, though the figures remain contested.²⁸ Due to the gravity of the crimes, the Nanjing Massacre received extensive attention during the trials, with judges dedicating weeks to hearing witness testimonies and gathering evidence.²⁹ While the tribunal concluded that the Japanese government’s failure to meet its obligations under the Hague and Geneva Conventions to protect civilians and prisoners amounted to war crimes, many high-ranking officials including the emperor were not prosecuted.³⁰

Finally, although the tribunal had jurisdiction over crimes against humanity, the prosecution did not present a well-defined case for this category, resulting in it being strongly intertwined with war crimes. As a result, the Tokyo Trials did not make distinct findings on crimes against humanity, addressing them instead under the broader concept of war crimes.³¹ More than 5,700 lower-ranking personnel were charged with conventional war crimes in separate trials convened in different parts of the world.³²

C. *Victim Reparations in the Tokyo Tribunal: The Missing Dimension*

When examining the concepts that laid the foundation of the Tokyo Tribunal, it becomes clear that the creation of individual criminal responsibility was conceived primarily in symbolic and punitive terms. The objective was to hold perpetrators accountable

27. Hongtao Li & Shunming Huang, *From Atrocities to Massacre*, in *The Nanjing Massacre and the Making of Mediated Trauma* 30, 31 (1st ed. 2022).

28. Joshua A. Fogel, *Between China and Japan: The Writings of Joshua Fogel* 403 (Brill 2015).

29. Zhu, *supra* note 26, at 333.

30. Jean S. Fleury, *The Tokyo Trial*, in *Japan’s Empire Disaster* 7, 7 (2021).

31. Totani, *supra* note 14, at 153.

32. See, e.g., Robert Cribb, *The Burma Trials of Japanese War Criminals 1946-1947*, in *War Crimes Trials in the Wake of Decolonization and Cold War in Asia, 1945-1956* 117 (Kerstin von Lingen ed., 2016) (Burma); Narrelle Morris, *Justice for ‘Asian’ Victims: The Australian War Crimes Trials of the Japanese, 1945-51*, in *The Hidden Histories of War Crimes Trials* 348 (Kevin Jon Heller & Gerry Simpson eds., 2013) (Australia); Lisette Schouten, *Netherlands East Indies’ War Crimes Trials in the Face of Decolonization*, in *War Crimes Trials in the Wake of Decolonization and Cold War in Asia, 1945-1956* 143 (Kerstin von Lingen ed., 2016) (Netherlands East Indies); Sharon W. Chamberlain, *A Reckoning: Philippine Trials of Japanese War Criminals* (2019) (Philippines).

rather than to serve a restitutive purpose for victims.³³ While the Potsdam Declaration, which triggered the establishment of the Tokyo Tribunal, referred to “just reparations,” the Tokyo Charter did not refer to victims, and the Tokyo Tribunal neither offered reparations nor discussed the matter.³⁴ As illustrated above, crimes against humanity which center individual victims were largely disregarded as the trials instead focused on crimes against peace.

Under the Tokyo Charter, “crimes against peace” were defined as “the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law.”³⁵ This is closely linked to the contemporary notion of the crime of aggression.³⁶ Under the Rome Statute, an “act of aggression” means “the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State.”³⁷ This definition confirms that the crime is committed by individuals through state action, but the protected interest is primarily the state, not the individual. Although acts such as murder and torture inherently involve victim suffering, these were limited to mere references and were not intended to recognize the victims themselves. The Tokyo Tribunal, thus, positioned states, not individuals, as the main victims and prioritized the prosecution of criminals by emphasizing punitive measures rather than reparations for individual victims.³⁸ As a result, by focusing primarily on crimes against peace, the Tokyo Tribunal largely overlooked the rights, suffering, and reparative claims of individual victims.

A clear lacuna in the judgment is the Tribunal’s failure to adequately address the systematic sexual crimes committed during the war. Indeed, no explicit reference to sexual crimes can be identified in

33. Tokyo Charter, *supra* note 19, art. 1. “The International Military Tribunal for the Far East is hereby established for the just and prompt trial and punishment of the major war criminals in the Far East.”

34. Proclamation Defining Terms for Japanese Surrender, July 26, 1945, paras. 10-11, <https://www.ndl.go.jp/constitution/e/etc/c06.html> (Potsdam Declaration); Luke Moffett, *The Role of Victims in the International Criminal Tribunals of the Second World War*, 12 Int’l Crim. L. Rev. 245, 261 (2012).

35. Tokyo Charter, *supra* note 19, art. 5(a).

36. Sanji Mmasenono Monageng, *The Crime of Aggression: Following the Needs of a Changing World?*, 58 Harv. Int’l L.J. Online 1 (2017), <https://journals.law.harvard.edu/ilj/2017/04/the-crime-of-aggression-following-the-needs-of-a-changing-world/>.

37. Rome Statute of the International Criminal Court art. 8 bis (2), July 17, 1998, 2187 U.N.T.S. 90.

38. Moffett, *supra* note 34, at 262.

the Tribunal's reasoning. Although evidence was presented during the trials showing that rape was among the crimes committed by the defendants, the Tribunal did not engage in any direct discussion of sexual violence.³⁹

In particular, the total omission of the "comfort women," women forced into sexual slavery by the Japanese Imperial military, constitutes one of the Tribunal's most significant omissions. This omission contributed to prolonged litigation by victims seeking compensation from the Japanese government for these atrocities. Because holding the Japanese state directly accountable for such crimes proved difficult, alternative forums were later established, including the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery.⁴⁰

This tribunal was created in 1998 by NGOs after the International Conference on Violence Against Women in War and Armed Conflict Situations, as a forum to secure symbolic form of accountability for the former comfort women, led by civil-society.⁴¹ Although the perpetrators were long dead, the tribunal provided an opportunity for victims to testify about the atrocities they had endured.⁴² While it was not a formal judicial body, this people's tribunal expressed a powerful normative claim: that states cannot, through political settlements or diplomatic agreements, simply ignore or extinguish responsibility for crimes against humanity committed against individuals. As this tribunal had no legal authority in itself, it could not issue orders but only recommendations regarding reparations and responsibility supported by legal findings and evidence.⁴³ As C. Chinkin states, the value of such people's tribunals lies in their symbolic significance and in their

39. Peggy Kuo, *Prosecuting Crimes of Sexual Violence in an International Tribunal*, 34 Case W. Reserve Journal of Int'l L. 305, 307 (2002), <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1467&context=jil>.

40. *The Prosecutors & the Peoples of the Asia-Pacific Region v. Hirohito Emperor Showna et al.*, Case No. PT-2000-1-T, Judgment para. 4 (Women's Int'l War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery Dec. 4, 2001); Christine M. Chinkin, *Women's International Tribunal on Japanese Military Sexual Slavery*, 95 Am. J. Int'l L. 335, 336 (2001).

41. Women's Caucus for Gender Justice, *Tokyo Tribunal 2000 & Public Hearing on Crimes Against Women*, <http://iccwomen.org/wigdraft1/Archives/oldWCGJ/tokyo/index.html> (last visited June 10, 2026).

42. Kuo, *supra* note 36, at 307.

43. Christine M. Chinkin, *Women's International Tribunal on Japanese Military Sexual Slavery*, 95 Am. J. Int'l L. 335, 336 (2001).

representation of the central role that civil society plays in upholding the law.⁴⁴

These developments demonstrate the enduring importance of victim acknowledgement and reparative justice. Because international criminal law and institutional mechanisms were still in their formative stages at the time, many lacunae can be identified in the postwar tribunals. While a full assessment of these gaps goes beyond the scope of this article, the absence of reparations and the limited recognition of victims stand out as among the most significant missed opportunities in the postwar accountability process.

III. SAN FRANCISCO PEACE TREATY: STATE RESPONSIBILITY THROUGH INTERSTATE SETTLEMENT

A. *Peace Treaties as the Historical Vehicle of State Responsibility*

Until the 20th century, wars concluded with the ratification of peace treaties that accounted for state responsibility.⁴⁵ Today, state responsibility is no longer addressed exclusively through peace treaties, particularly in light of new mechanisms such as those operating through the ICJ. Historically, however, the legal consequences of major wars were primarily articulated through peace treaties, which constituted the principal framework for the recognition of state responsibility.⁴⁶

Japan's responsibility for war crimes committed during the Second World War was addressed through a peace treaty. The Treaty of Peace with Japan, signed in 1951, established the framework for reparations and the recognition of Japanese state responsibility. Its purpose was to settle "questions still outstanding as a result of the existence of a state of war between [the involved countries]."⁴⁷ Although at the time international law was not as developed as it is today, legal bases still existed for condemning atrocities under international law. Japan was a party to several treaties, including the

44. *Id.*, at 339.

45. Tanisha M. Fazal, *The Demise of Peace Treaties in Interstate War*, 67 Int'l Org. 695, 695 (2013).

46. Treaty of Peace Between the Allied and Associated Powers and Germany art. 231, June 28, 1919, 225 Consol. T.S. 188.

47. Treaty of Peace with Japan, Sept. 8, 1951, 136 U.N.T.S. 45 [hereinafter San Francisco Peace Treaty].

Hague Convention IV (1907),⁴⁸ the Forced Labor Convention (1930),⁴⁹ and the International Convention for the Suppression of the Traffic in Women and Children (1921)⁵⁰ and was subject to customary international law incorporating international humanitarian law.

B. *Article 11 and 14: Linking Individual Punishment and State Obligations*

The San Francisco Peace Treaty officially ended the state of war between Japan and the Allied Powers and established the terms for Japan's responsibility as a state.⁵¹ The Treaty does not explicitly declare Japan responsible for the international crimes it committed; however, such responsibility is implied through its provisions requiring Japan to comply with the judgments of the international tribunals and to provide reparations.

In Article 11 of the Treaty, Japan pledges to follow the judgments of the Tokyo Trials and other judgments from other Allied War Crimes Courts both within and outside Japan.⁵² Japan does not have the power to grant clemency to the perpetrators without the consent of the majority of the governments that were represented in the tribunal.⁵³ The article further clarifies Japan's obligation to carry out the sentences imposed on Japanese nationals, specifically referring to the 18 war criminals convicted and sentenced to imprisonment – 16 of whom received life sentences – as well as other war criminals transferred from the Netherlands to Sugamo Prison.⁵⁴ As such, if Japan fails to uphold individual criminal responsibility, it would be in breach of this agreement, thereby constituting an internationally wrongful act. To avoid incurring international responsibility, Japan instead turned to political negotiations aimed at recommending the release of war

48. Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land, Oct. 18, 1907, <https://www.refworld.org/legal/agreements/hague/1907/en/31788>.

49. Forced Labour Convention (No. 29), June 28, 1930, <https://www.ohchr.org/en/instruments-mechanisms/instruments/forced-labour-convention-1930-no-29>.

50. International Convention for the Suppression of the Traffic in Women and Children, Sept. 30, 1921, 9 L.N.T.S. 415

51. San Francisco Peace Treaty, art. 1.

52. *Id.*, art. 11.

53. *Id.*

54. Boister & Cryer, *supra* note 17, at 252; Fred L. Borch, *Aftermath: War Criminals Return to Japan*, in *Military Trials of War Criminals in the Netherlands East Indies 1946–1949* 221, 224 (2017).

criminals following the peace treaty.⁵⁵ With the political climate of the Cold War and the perceived necessity of maintaining a united Western front, most Japanese war criminals ultimately ended up being paroled or having their sentences reduced.⁵⁶

Unlike the Tokyo Tribunal which did not discuss victim reparation, Article 14 of the San Francisco Peace Treaty implements the conception of state responsibility by stipulating that Japan must pay reparations to the Allied Powers for the damage and suffering caused during the war.⁵⁷ At the same time, the article recognizes the economic state of Japan and the lack of resources to fulfill its obligations.⁵⁸ As a solution, the Peace Treaty grants the Allied Powers the right to seize, retain, liquidate, or otherwise dispose of all property, rights, and interests belonging to Japan, its nationals, individuals acting on their behalf, or entities owned by them.⁵⁹ As such, the Allied Powers acknowledged Japan's financial precarity, illustrating that, although state responsibility is engaged as punitive measure, it also considered the state's future reintegration into the international community.

Additionally, it allowed Japan to negotiate bilaterally with Allied Powers desiring reparations by offering the services of the Japanese people to assist in repairing and salvaging damages.⁶⁰ For the remaining damages, if countries had not reached bilateral treaties with Japan, they waived their rights to demand particularized reparations for Japan's actions during the war.⁶¹ The waiver includes any demands for compensation for damages or losses suffered during the war, any other legal claims arising from actions taken by Japan or its citizens during the war, and finally, any demands for repayment of the costs incurred by the Allied Powers during their military occupation of Japan after the war.⁶²

The intent of including waivers as articulated in Article 14, beyond achieving a complete settlement of claims and providing compensation to victims, was to rebuild Japan's economy and transform it into a

55. Y. Higurashi, *Law and Politics in the Tokyo Trial*, in *Modern Japan's Place in World History* 117, 130 (Masanori Yamauchi & Yuichi Hosoya eds., 2023).

56. *Id.*, at 131.

57. San Francisco Peace Treaty, art. 14 (a).

58. *Id.*

59. *Id.*, art. 14 (2).

60. San Francisco Peace Treaty, art. 14 (1); Hiroyuki Hoshiro, *Reconsidering Japan's War Reparations and Economic Re-Entry into Southeast Asia*, 34 *Diplomacy & Statecraft* 673, 676 (2023), <https://doi.org/10.1080/09592296.2023.2270320>.

61. San Francisco Peace Treaty, art. 14 (V), (b).

62. *Id.*

strong U.S. ally, which played an important role in negotiating and signing the treaty.⁶³ It was believed that maintaining indefinite legal liabilities for Japan would not lead to a constructive outcome.⁶⁴ The treaty was designed such that each signatory state would compensate its citizens for their losses using confiscated Japanese public and private assets or through other means.⁶⁵ More specifically, the treaty also allowed the Allied Powers to seize and confiscate property belonging to Japanese nationals.⁶⁶ The United States, for example, seized approximately 90 million dollars' worth of assets belonging to Japan and Japanese nationals (including Japanese companies) and utilized these funds to settle the financial claims of those affected by Japanese war crimes.⁶⁷ From a contemporary perspective, this raises a further question that will not be addressed in this article but is worth noting. Through this provision, the San Francisco Peace Treaty did not clearly distinguish between the international responsibility of the Japanese state and the property rights of Japanese nationals. In effect, it shifted part of the compensatory burden arising from Japan's international responsibility onto private individuals and companies. This is noteworthy because, as a matter of international law, nationals as a whole do not themselves bear the international responsibility of the state.

This settlement of state responsibility and reparations contained significant lacunae, as it applied only to the parties to the agreement, ignoring injured states that were not invited to or participated in the San Francisco Conference. As a result, the Allied Powers' decision to extend clemency to Japan was not accepted by all states that had suffered serious harm as a consequence of Japanese actions during the war.⁶⁸ For this reason, some states relied on Article 14 of the Treaty to seek separate reparations from Japan rather than accept the broader

63. Statement of Ronald J. Bettauer, Deputy Legal Adviser, U.S. Dep't of State, Before the S. Comm. on the Judiciary, 106th Cong., in *Former U.S. World War II POW's: A Struggle for Justice* 6 (2000) (S. Hrg. 106-585), <https://www.congress.gov/106/chr/CHRG-106shrg65766/CHRG-106shrg65766.pdf>.

64. *Id.*

65. San Francisco Peace Treaty art. 14(b); Statement of Ronald J. Bettauer, Deputy Legal Adviser, U.S. Dep't of State, Before the S. Comm. on the Judiciary, 106th Cong., in *Former U.S. World War II POW's: A Struggle for Justice* 57 (2000) (S. Hrg. 106-585), <https://www.congress.gov/106/chr/CHRG-106shrg65766/CHRG-106shrg65766.pdf>.

66. San Francisco Peace Treaty art. 14(b) para. 2.

67. Bettauer, *supra* note 63.

68. Hoshiro, *supra* note 53, at 676.

waivers of reparations. Four states in particular – the Philippines, South Vietnam, Burma (today commonly known as Myanmar), and Indonesia – requested reparations and concluded separate agreements with Japan, under which compensation was effectively paid.⁶⁹ While these states received formal war reparations, others obtained quasi-reparations in the form of economic cooperation arrangements that incorporated a reparative element.⁷⁰ Japan announced that, following the conclusion of these treaties, it renounced assets worth 2.8 billion dollars and provided 946 billion yen to several Asian states, including the Philippines, Indonesia, Malaysia, Singapore, and the Republic of Korea, by way of reparations.⁷¹

C. Joint Communiqué of The Government of Japan and The Government of The People's Republic of China

As China was not invited to the San Francisco Conference to draft the Peace Treaty, it did not have a say in renouncing its reparation claims.⁷² This is why it issued a Joint Communiqué with Japan in 1972, nearly two decades later, to establish friendly relations and formally renounce war reparations. In this Communiqué, the Government of Japan and the Government of the People's Republic of China agreed to settle all existing disputes peacefully, without resorting to force.⁷³ Most importantly, China declared that “in the interest of the friendship between the Chinese and the Japanese peoples, it renounces its demand for war reparation from Japan”.⁷⁴ This communiqué was later reinforced by the Treaty of Friendship between China and Japan.⁷⁵

69. Bert Edström, *Japan and the Myanmar Conundrum* 19 (Inst. for Sec. & Dev. Pol'y 2009).

70. Hoshiro, *supra* note 53, at 687.

71. Itaru Umezu, Consul-General of Japan in H.K., *Japan Has Faced Its Past*, Ministry of Foreign Affs. of Japan (Aug. 10, 2000), https://www.mofa.go.jp/j_info/japan/opinion/umezu.html.

72. Shin Kawashima, *China Rejects the “San Francisco System”: Beijing May Be Trying to Turn Back the Clock*, *The Diplomat* (Aug. 21, 2024), <https://thediplomat.com/2024/08/china-rejects-the-san-francisco-system/> (Last visited June 10, 2026).

73. Joint Communiqué of the Government of Japan and the Government of the People's Republic of China paras. 6, 8 (Sept. 29, 1972), Ministry of Foreign Affs. of Japan, <https://www.mofa.go.jp/region/asia-paci/china/joint72.html>.

74. *Id.*, at 6.

75. Sino-Japanese Treaty of Peace and Friendship, Ministry of Foreign Affs. of the People's Republic of China, https://www.mfa.gov.cn/eng/zy/wjls/3604_665547/202405/t20240531_11367537.html.

China's renunciation of reparations would become one of the core arguments used by the Japanese state to claim that it owed no reparations to individuals. Subsequent litigation, however, disputed the meaning of these provisions. Claimants argued that the Joint Communiqué waived only China's state-level "demands" for war reparations, not claims held by individual Chinese citizens.⁷⁶ The central issue was therefore whether the renunciation also extended to individual claims for compensation. They also challenged the applicability of the peace treaty, arguing that it had been signed by the Republic of China rather than the People's Republic of China.⁷⁷ On this basis, they sought to distinguish the treaty's legal effect and question whether it could bar claims brought by citizens of the People's Republic of China.

Seven years after the renunciation of reparations, Japan announced its intention to provide Official Development Assistance (ODA) to China. This was originally understood as a way to promote economic development in developing countries.⁷⁸ Some discussions arose about whether ODA was a substitute for the renounced war reparations to China, although not officially stated as such.⁷⁹ Whether these ODA consisted of war reparations or not seems to differ between scholars.⁸⁰ However, both governments appeared to frame them as a form of mutual economic cooperation, without referring explicitly to reparations.⁸¹ Ultimately, the ODA was used for specific construction and infrastructure projects, including railways, harbors, power generation facilities, and other infrastructure projects.⁸²

76. Supreme Court of Japan, Judgment, 2004 (Ju) No. 1658, 61 Minshū 1188 (July 9, 2007), pt. I, para. 4(4), <https://www.courts.go.jp/english/Judgments/search/893/index.html>.

77. *Id.*

78. Xianfen Xu, *Gratitude and Resentment in China-Japan Relations: Japan's Official Development Assistance and China's Renunciation of War Reparations*, 42 *Asian Persp.* 501, 503 (2018); Hoshiro, *supra* note 53, at 674.

79. Xianfen Xu, *Gratitude and Resentment in China-Japan Relations: Japan's Official Development Assistance and China's Renunciation of War Reparations*, 42 *ASIAN PERSP.* 501, 503 (2018).

80. Hoshiro, *supra* note 53, at 676.

81. Joint Press Communiqué on Prime Minister Ōhira's Visit to China, Japan-China, paras. 4-6 (Dec. 7, 1979) (Japanese), Ministry of Foreign Affs. of Japan Archives, <https://www.mofa.go.jp/mofaj/gaiko/bluebook/1980/s55-shiryō-10409.htm>; *Japan and China Announce a Wide Range of Accords*, N.Y. Times (Dec. 8, 1979), <https://www.nytimes.com/1979/12/08/archives/japan-and-china-announce-a-wide-range-of-accords-differences-on-2.html> (Last visited June 10, 2026).

82. Xu, *supra* note 79, at 510.

D. *The Incomplete Accountability Mechanism of the San Francisco Peace Treaty*

Although the San Francisco Peace Treaty aimed to hold Japan accountable for its war crimes, several issues remain, raising the question of whether the treaty was sufficient to fully hold Japan accountable for its actions. As accountability is not solely about establishing a state's responsibility in a punitive sense but also encompasses a restitutive character aimed at repairing the damages caused, two aspects need to be assessed to answer a central question: whether the Treaty provided sufficient accountability from both the perspective of state responsibility and the perspective of victim reparations.

From a state responsibility perspective, the San Francisco Peace Treaty succeeded in formally condemning Japan for its wartime conduct and addressing its responsibility under international law. The treaty's provisions allowed affected states to claim reparations when desired, and Japan (although contested) fulfilled its obligations by providing financial reparations or economic cooperation to multiple countries. However, the treaty's reliance on political negotiation rather than legal adjudication left critical uncertainties. For example, no independent judicial mechanism was used to assess Japan's responsibility based on objective legal norms, such as those later codified by the International Law Commission in the Articles on Responsibility of States for Internationally Wrongful Acts.⁸³ This lack of legal reasoning leaves the settlement open to contestation to this day. Furthermore, it excludes many injured states affected by Japanese crimes from the negotiations, further undermining its comprehensiveness.

Nevertheless, from a strictly doctrinal perspective, the establishment of state responsibility does not require adjudication. International law does not impose an obligation that responsibility be determined by a court or tribunal. Treaty-based settlements have historically functioned as a primary means of acknowledging and

83. E.g., in contemporary international law, the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) are generally considered to reflect customary international law and would provide the legal basis for such reparations. *See, e.g.*, Responsibility of States for Internationally Wrongful Acts arts. 1, 31, G.A. Res. 56/83, annex, U.N. Doc. A/RES/56/83 (Jan. 28, 2002) ("Every internationally wrongful act of a State entails the international responsibility of that State"; "The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act."); *Factory at Chorzów* (Ger. v. Pol.), Judgment, 1928 P.C.I.J. (ser. A) No. 17, at 47 (Sept. 13).

resolving responsibility between states. Although adjudication has become a more common pathway in contemporary practice, it is not a legal prerequisite. From this perspective, the treaty-based condemnation and settlement could be sufficient to establish Japan's accountability at the interstate level.

The limitations of the framework become much more apparent, however, when viewed from the perspective of victim reparations. In this regard, the San Francisco Peace Treaty fell short of providing meaningful justice. Contemporary international human rights law recognizes that victims of gross violations of human rights and international humanitarian law are entitled to reparations that are adequate, effective, prompt, and proportionate to the gravity of the harm suffered.⁸⁴ To this day, the reparation demands of victims of Japanese war crimes persist.⁸⁵

Two important cases illustrate this shortcoming: *Nishimatsu Construction Co. v. Song Jixiao* (a claim for forced labor) and *Ko Hanako v. Japan* (a claim for sexual slavery).⁸⁶ The Supreme Court of Japan dismissed these cases in 2007 and denied reparations to the victims based on arguments relating to the Japan-China Joint Communiqué of 1972, the Sino-Japanese Peace Treaty of 1952, and the San Francisco Peace Treaty. The Supreme Court stated that sovereign nations have, within their competence, the right to renounce their nationals' right to bring suit.⁸⁷ The Court interpreted Article 11 of the Japan-China Treaty as stating that, "*all claims of China and Chinese citizens arising from the prosecution of the Japan-China War have been waived in accordance with Article 14(b) of the San Francisco Peace Treaty.*"⁸⁸ Such ambiguity also existed in Article 5 of the Joint Communiqué, as it did not specify whose claims were renounced.⁸⁹ However, the court determined that it encompassed

84. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ch. VII, paras. 11(b), 15, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005).

85. Lou Newton, *Japan Ordered to Compensate Wartime 'Comfort Women'*, BBC News (Nov. 23, 2023), <https://www.bbc.com/news/world-asia-67512578> (Last visited June 13, 2026).

86. Mark A. Levin, *Nishimatsu Construction Co. v. Song Jixiao et al.; Ko Hanako et al. v. Japan*, 102 Am. J. Int'l L. 148, 151 (2008).

87. *Id.*

88. Supreme Court of Japan, Judgment, 2004 (Ju) No. 1658, 61 Minshū 1188 (July 9, 2007), <https://www.courts.go.jp/english/Judgments/search/893/index.html>.

89. Joint Communiqué of the Government of Japan and the Government of the People's Republic of China para. 5 (Sept. 29, 1972), Ministry of Foreign Affs. of

individual rights, reasoning that the communiqué was part of the San Francisco Peace Treaty framework and should not be interpreted independently of it.⁹⁰ As such, the individuals cannot receive any compensation based on either the Tokyo Tribunal findings or the San Francisco Peace Treaty.

To sum up, Japan's state responsibility for wartime reparations has been largely resolved through the San Francisco Peace Treaty and subsequent bilateral agreements, under which Japan provided reparations or financial aid to various claimant states. Thus, the San Francisco Peace Treaty was sufficient to hold Japan accountable under state responsibility and to provide reparations to states, albeit contested in some contexts. However, when it comes to victim reparations, neither the Tokyo Tribunal nor the San Francisco Peace Treaty addressed this issue, neglecting a crucial aspect of justice. By allowing sovereign nations to renounce their nationals' claims, the treaty prioritized state interests over individuals. Although the San Francisco Peace Treaty can theoretically be seen as sufficient to settle disputes between states, it ultimately closed the door on victim reparations and is thus insufficient in the broader context of justice.

IV. CONCLUSION

The postwar legal response to Japan's wartime conduct emerged through two distinct but interconnected accountability regimes. The Tokyo Tribunal significantly contributed to the development of modern international criminal law and laid the foundation for later institutions. However, at the same time, the Tribunal only focused on the punitive character of the prosecution, leaving the question of victim reparations largely untouched.

In parallel, the San Francisco Peace Treaty translated Japan's responsibility into an interstate settlement. Through its provisions on enforcement of criminal judgments, reparations, and waivers, the treaty sought to resolve the legal and political consequences of the war and to facilitate Japan's reintegration into the international community. From the perspective of state responsibility, this framework can be considered legally sufficient. International law does not require responsibility to be established through adjudication, and treaty-based

Japan, <https://www.mofa.go.jp/region/asia-paci/china/joint72.html> (“The Government of the People's Republic of China declares that in the interest of the friendship between the Chinese and the Japanese peoples, it renounces its demand for war reparation from Japan.”).

90. *Id.*

settlements have long served as legitimate mechanisms for acknowledging wrongdoing and resolving claims between states. Through bilateral agreements and economic cooperation, Japan engaged in a process that, at least formally, addressed its obligations toward affected states.

Still, when these two regimes are studied together, a structural gap becomes evident. While individual perpetrators were punished and interstate claims were settled, these did not provide a coherent mechanism for addressing the harm suffered by individual victims. The Tokyo Tribunal did not incorporate a reparative dimension, and the San Francisco Peace Treaty largely transferred responsibility for compensation to states, allowing them to waive claims on behalf of their nationals. The consequences of these legal and political decisions continue to resonate to this day through litigation by victims and continued public debates surrounding wartime responsibility.⁹¹ Understanding their structural division is essential not only for assessing the legal legacy of the postwar adjudications, but also for understanding the consequences of responsibility mechanisms that lack a victim-centered dimension. These limitations explain why contemporary international criminal law has moved toward a more victim-centered approach. The lessons of the postwar period should inform how contemporary international responses to mass atrocities are structured, so that future settlements do not reproduce the same gap between punishment and the repair of individual harm.

91. See, e.g., *South Korea: Lawsuits Against Japanese Government Last Chance for Justice for "Comfort Women"*, Amnesty Int'l (Aug. 12, 2020), <https://www.amnesty.org/en/latest/news/2020/08/south-korea-lawsuits-against-the-japanese-government-last-chance-for-justice-for-comfort-women/> (Last visited June 10, 2026).