

# Symposium: Managing Mixed Migration

## Margins of Empire: The Sakhalin Koreans’ Long Saga Home

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Migration carries with it many risks, from perilous journeys along risky corridors to hostile environments in the new country. But what happens when migrants cannot return home? This contribution examines the difficulties endured by Sakhalin Koreans, a group of ethnic Koreans who emigrated to Sakhalin Island during the Japanese colonial period and found themselves stranded in a foreign country for the next half century, in order to reveal the infirmities of the international human rights system and the challenges of repatriating a group of people when multiple countries are involved.

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Discussions of Japan’s World War II responsibility have reached a fever pitch in the past few years. Litigation, legislation, international agreements, and social activism have exposed the systematic abuses that Japan perpetrated against a range of victims during the war.<sup>1</sup> In the main, comfort women, forced laborers, and victims of medical experimentation have unsuccessfully sought redress in courts across the Asia-Pacific. A string of recent South Korean verdicts, however, has found in favor of plaintiffs, suggesting a more active role for domestic courts in redressing transnational wrongs.<sup>2</sup> These verdicts have

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1. See Timothy Webster, *Discursive Justice*, 58 VA. J. INT’L L. 161 (2018) (describing many of the most important decisions on war reparations in Japan).

2. See generally Timothy Webster, *South Korea Shatters the Paradigm: Corporate Liability, Historical Accountability, and the Second World War*, 26 UCLA J. INT’L L. & FOR. AFF. 123 (2022)

exacerbated tensions between Seoul and Tokyo, setting in motion a diplomatic spat with repercussions for those states' economies and alliances, and also for regional security more broadly.<sup>3</sup>

At the same time, another wartime issue has been sputtering towards resolution. In 2020, South Korea passed the Special Law to Support Sakhalin Compatriots,<sup>4</sup> the first legislation aimed specifically at addressing this lingering issue.<sup>5</sup> During Japan's colonization of Korea (1910-1945), Japan transported some 150,000 Koreans to Sakhalin Island, the southern half of which Japan prized from Imperial Russia under the 1906 Portsmouth Treaty.<sup>6</sup> Koreans started to emigrate voluntarily to Sakhalin in the 1920s. During the war, Japan—using increasing amounts of coercion—conscripted tens of thousands of Koreans to work in mines, forests, ports, and construction sites in Sakhalin.<sup>7</sup> Displaced Koreans remained on the island for the next half century, abandoned by Japan, marginalized by the Soviet Union, and ignored by South Korea. Sakhalin Koreans lived, in effect, as *personae nullius*: people belonging to no one. This Essay traces the legal, sociological, and political history of the Sakhalin Koreans.

The displacement of ethnic Koreans to Sakhalin is neither the gravest human rights violation of the twentieth century, nor even of the Second World War. It has, however, proven among the least tractable. Many Koreans returned home only in the 1990s and 2000s. Even now, several issues await resolution.<sup>8</sup>

The repatriation of Sakhalin Koreans concludes an important chapter in the complex histories of Japan's post-colonial and postwar responsibilities. It also highlights the precarity of immigrants and displaced persons under the current

(analyzing decisions from Korean courts, including the Supreme Court, holding Japanese corporations legally liable for wartime forced labor).

3. See Scott A. Snyder, *Why the Japan-South Korea Dispute Just Got Worse*, CFR IN BRIEF (Aug. 27, 2019), <https://www.cfr.org/in-brief/why-japan-south-korea-dispute-just-got-worse> (“the Japan-South Korea relationship has entered a dangerous new stage” following disagreements over a 2015 agreement and 2018 verdicts by the Supreme Court of South Korea).

4. Sahallin Dongpo Jiweon-e Gwanhan Teuk-byeolboeb [Special Law to Support Sakhalin Koreans], Law no. 17305 of 2020 [hereinafter Special Law].

5. See Anton Troianovski, *What's in a Name? For the Koreans of Sakhalin, an Anguished History*, N.Y. TIMES (Nov. 7, 2021), <https://www.nytimes.com/2021/11/07/world/europe/korea-sakhalin-japan-russia.html>.

6. Treaty of Portsmouth, Japan-Russ., Sept. 5, 1905, 199 Consol. T.S. 144. According to Article 9, “The Imperial Russian Government cedes to the Imperial Government of Japan in perpetuity and full sovereignty the southern portion of the Island of Saghalin [*sic*]” below the fiftieth degree of north latitude.

7. Many Koreans were mobilized to perform forced labor in Japan, as well as other parts of Southeast and East Asia. An unknown number of Korean women (the so-called “comfort women”) were also forced into sexual slavery at the hands of the Japanese military. See Timothy Webster, *Disaggregating Corporate Liability*, 56 STANFORD J. INT'L L 175, 183 (2020).

8. The 2020 law provides, *inter alia*, that the South Korean government shall provide support for the return and resettlement of Sakhalin Koreans, make efforts to recover and repatriate the remains of deceased Sakhalin Koreans, and promote commemoration projects to restore the honor of Sakhalin Koreans. See Special Law, *supra* note 4, at art. 3. Unfortunately, only the spouse and “one lineal descendant” can accompany a first-generation Sakhalin Korean back to South Korea. Special Law, *supra* note 4, at 2(2). This means that siblings must fight over who that descendant will be. See Troianovski, *supra* note 5. See also Kim Tong-Hyung, *70 Years Later, Families of Koreans Forced Into Labor Are Desperate For Answers*, THE DIPLOMAT (Aug. 12, 2020), <https://thediplomat.com/2020/08/70-years-later-families-of-koreans-forced-into-labor-are-desperate-for-answers/> (describing the difficulties of repatriating remains of deceased Sakhalin Koreans for proper burial in South Korea).

international human rights system. Sakhalin Koreans, as well as their supporters in Japan and South Korea, resorted to various tactics to demand repatriation from the Soviet Union. But as this Essay makes clear, two of the primary channels through which Sakhalin Koreans aimed to resolve their dispute suffered serious flaws. First, domestic litigation in Japan proved unavailing, as the Japanese government lacked the political will and diplomatic initiative to achieve the repatriation of Sakhalin Koreans. Second, appeals to international institutions, namely the United Nations, also failed, largely due to the imperviousness of superpowers such as the Soviet Union. Decade after decade, Sakhalin Koreans' pleas fell on deaf ears. Only with the dissolution of the Soviet Union and end (or perhaps abeyance) of the Cold War were Sakhalin Koreans allowed to return after a half century of exile.

### I. A BRIEF HISTORY

The following section briefly describes the saga of the Sakhalin Korea's voyage home. After World War II, Japan organized a multinational effort to repatriate roughly six million soldiers, colonial settlers, and others spread throughout East and Southeast Asia,<sup>9</sup> including hundreds of thousands of people sent to Sakhalin during Japan's period of occupancy. However, on August 23, 1945, after resuming sovereignty over Northern and Southern Sakhalin, the Soviet Union imposed a departure ban on "foreign residents" (i.e., Korean and Japanese still residing on Sakhalin).<sup>10</sup> In 1946, the United States and Soviet Union concluded an agreement to repatriate certain non-Russian residents of Sakhalin.<sup>11</sup> But only ethnically Japanese residents were allowed to return; some 43,000 ethnic Koreans remained on Sakhalin.<sup>12</sup>

Under Japanese law, both ethnic Korean and Japanese retained Japanese nationality during the immediate postwar period. But Japan denationalized Taiwanese and Korean residents in the early 1950s.<sup>13</sup> Thus, when the Japanese Empire fell, ethnicity—not nationality—proved the decisive factor in determining who returned home, and who did not.<sup>14</sup> This reveals the slippery nature of colonial legality; Japan promised equality to ethnic Koreans during the colonial period, but abandoned such pretensions after the war.

By 1949, with most ethnic Japanese evacuated from Sakhalin, Sakhalin Koreans found themselves alone on the margins of another empire, the Soviet

9. Mark Caprio & Mizuno Naoki, *Stories from Beyond the Grave: Investigating Japanese Burial Grounds in North Korea*, ASIA-PACIFIC JOURNAL | JAPAN FOCUS (Mar. 2, 2014), <https://apjpf.org/2014/12/9/Mizuno-Naoki/4084/article.html>.

10. Yi Shin Cheol [이신철], *Sakhalin Koreans: Victims of Colonization and the Cold War* [사할린 한인, 식민 과 냉전의 희생자], in *Seminar on Sakhalin Koreans* [사할린 한인 관련 세미나] 4, 12, National Archives of Korea [국가기록원] (2012), [https://museum.seoul.go.kr/common/file/NR\\_download.do?id=18388](https://museum.seoul.go.kr/common/file/NR_download.do?id=18388).

11. 高木健一 [Takagi Ken'ichi], サハリンと日本の戦後責任 [SAKHALIN & JAPAN'S POSTWAR RESPONSIBILITY] 58 (1991).

12. See Choung Il Chee, *Repatriation of Stateless Koreans from Sakhalin Island: Legal Aspect* [sic], 17 KOR. J. COMPAR. L. 1, 2 (1989).

<sup>13</sup> See Timothy Webster, *Legal Excisions*, 39 CORNELL INT'L L.J. 433, 447-448 (2006).

14. *Id.* at 12-14 (noting that Japan did not denationalize its Korean population until 1952 and that South Korea did not establish its citizenship regime until 1948).

Union.<sup>15</sup> Life under the Soviet regime was not easy, but one group had a particularly rough time. The Soviet Union provided three choices of nationality for Sakhalin Koreans: Soviet, North Korean, or stateless. About sixty-five percent of Sakhalin Koreans elected North Korea, while twenty-five percent opted for Soviet citizenship. Both choices ensured preferential treatment in education, housing, employment, and other social services.<sup>16</sup> But the remaining ten percent—perhaps 7,000 people—chose statelessness, because it seemed the most viable route back to South Korea.<sup>17</sup> The third option clearly represented a gamble for Sakhalin Koreans; the distant prospect of future repatriation was exchanged for forsaking the material, social, and legal comforts they would have enjoyed in the present. Stateless Sakhalin Koreans could not receive passports, one of many obstacles they had to surmount in returning home.<sup>18</sup>

When Japan and the Soviet Union reestablished diplomatic relations in 1956, another group of Sakhalin residents returned to Japan, primarily ethnically Japanese women (mostly wives of Korean men) and their family members of Korean descent.<sup>19</sup> Soviet authorities in Yuzhno-Sakhalinsk, the island's largest city, further inflated expectations by posting a sign, in Korean, that promised exit visas to stateless people.<sup>20</sup> Hundreds applied, a number that apparently surprised Soviet immigration authorities; Soviet authorities balked, took down the sign, and refused to issue a single visa.<sup>21</sup>

One Sakhalin Korean thus “liberated” was Pak Nohak, who had married a Japanese woman during the colonial period. On the boat back to Japan, Pak wrote a petition to then-South Korean President Syngman Rhee demanding the repatriation of his fellow Koreans.<sup>22</sup> Pak also spoke to fellow returnees about how to repatriate their compatriots. Upon arriving in Japan, Pak and others formed the Association of Resident Koreans Repatriated from Sakhalin, which played a leading role in the repatriation movement.<sup>23</sup> The Association has, among other things, facilitated correspondence between Sakhalin Koreans and their families in South Korea and Japan, compiled lists of persons seeking

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15. Technically speaking, the Russian empire ended with the 1917 Bolshevik Revolution. See SAMIR PURI, *THE SHADOWS OF EMPIRE: HOW IMPERIAL HISTORY SHAPES OUR WORLD* (2021). Yet as Puri persuasively argues, “the end of imperial Russia was *not* the end of Russia’s imperial story.” *Id.* at 137. Rather, “the USSR was an empire that had subjugated a variety of surrounding territories.”

16. JOHN J. STEPHAN, *SAKHALIN: A HISTORY* 163, 194 (1971).

17. *Id.* at 194. The population of Sakhalin Koreans grew from 43,000 in 1945 to approximately 70,000 by the late 1960s, as many bore children in the intermediary decades.

18. Andrei Lankov, *Forgotten People: The Koreans of the Sakhalin Island in 1945-1991*, NORTH KOREAN ECONOMY WATCH (2010), <https://www.nkeconwatch.com/nk-uploads/Lankov-Sakhalin-2010.pdf>.

19. See 半谷史郎 [Hanya Shirô], サハリン朝鮮人のソ連社会統合：モスクワ党文書が語る1950年代半ばの一段面 [*The Soviet Social Integration of Sakhalin Koreans—A Cross Section of What Moscow Party Documents Say in the Mid-1950s*], スラブ、ユーラシア学の構築研究補報告集 [Research Reports on the Construction of Slavic and Eurasian Studies] (Dec. 2004), 69, 72, <https://src-h.slav.hokudai.ac.jp/coe21/publish/no5/hanya.pdf>.

20. ÔNUMA YASUAKI, SAHARIN KIMIN: SENGO SEKININ NO TENKEI [SAKHALIN’S ABANDONED PEOPLE: SCENES OF POSTWAR RESPONSIBILITY] 44-45 (1992).

21. *Id.* at 45.

22. See TAKAGI, *supra* note 11, at 60.

23. In Japanese, the group is known as 樺太帰還在日韓国人会.

repatriation, and promoted family reunions.<sup>24</sup> The Association also petitioned national governments and international organizations to seek assistance in the repatriation efforts.<sup>25</sup>

In the early 1960s, as Japan and South Korea negotiated the reestablishment of diplomatic relations (and ultimately, the terms of what became the Basic Treaty),<sup>26</sup> Association members pressured Tokyo and Seoul to repatriate the remaining Sakhalin Koreans.<sup>27</sup> But the South Korean government reportedly did not raise the issue during negotiations with Japan; after signing the Basic Treaty, South Korea acquiesced on the issue for decades.<sup>28</sup>

In the 1970s, the Association compiled a list of approximately 7,000 Koreans who wished to return to South Korea. In September 1971, family members of Sakhalin Koreans formed a pressure group in Taegu, South Korea.<sup>29</sup> The Taegu group coordinated with Pak's group in Tokyo to facilitate communication and correspondence between Koreans stranded on Sakhalin and their family members in South Korea. Since South Korea and the Soviet Union did not recognize each other, direct contact was virtually impossible between Sakhalin Koreans and their families in South Korea; all communications had to pass through Japan.

In 1975, the cause of repatriation received another jolt of activism, diplomatic attention, and media coverage with the filing of two lawsuits, detailed below. Though ultimately unsuccessful, the lawsuits nonetheless raised awareness of the Sakhalin Koreans' plight, prodded state action, and mobilized supporters on both sides of the Tsushima Strait.<sup>30</sup>

In 1983, the Japan Civil Liberties Union (JCLU), a leading human rights organization, joined the struggle. The JCLU collaborated with the International League of Human Rights to petition the United Nations Human Rights Commission.<sup>31</sup> The petition noted the human rights elements of the Sakhalin Korean issue: specifically, Sakhalin Koreans could not exercise the right to leave a country, or enter another, in direct contravention of the International Covenant on Civil and Political Rights (ICCPR).<sup>32</sup> It further demanded that the Japanese

24. See TAKAGI, *supra* note 11, at 60.

25. *Id.*

26. After World War II, Japan and South Korea severed diplomatic relations, but the two states reestablished them through the Basic Treaty of 1965. See Treaty on Basic Relations between Japan and the Republic of Korea, Japan-S. Kor., June 22, 1965, 583 U.N.T.S. 33.

27. See TAKAGI, *supra* note 11, at 63.

28. 이신철 [Yi Shin-Cheol], 사할린 한인, 식민과 냉전의 희생자 [*Sakhalin Koreans, Victims of Colonization and the Cold War*], in 동토에서 찾은 통한의 기록: 사할린 한인 관련 세미나 [RECORDS OF A PASSAGE FOUND IN FROZEN GROUND: SEMINAR ABOUT SAKHALIN KOREANS] 4, 14 (National Archives of Korea, 2012) [https://museum.seoul.go.kr/cgcm/board/NR\\_boardView.do?bbsCd=1014&seq=00000000000001691&tr\\_code=m\\_sweb](https://museum.seoul.go.kr/cgcm/board/NR_boardView.do?bbsCd=1014&seq=00000000000001691&tr_code=m_sweb).

29. The group is known in English as the Association to Promote the Repatriation of Sakhalin Detainees [화태역류귀환촉진회].

30. In Soo Son, *Sakhalins in Korea*, 9 INT'L J. WORLD PEACE 3 (1992). The author notes that "The trial was instrumental in attracting public attention to the plight of Koreans in Sakhalin." *Id.* at 10.

31. U.N. Economic and Social Council, Commission on Human Rights Written Statement Submitted by the International League of Human Rights, U.N. Doc/E/CN.4/Sub.2/1983/NGO/9 (Aug. 29, 1983).

32. *Id.*

government reinstate the Japanese citizenship of Sakhalin Koreans, repatriate them to Japan, and issue them Japanese passports.<sup>33</sup> The petition called on Tokyo and Moscow to permit visits by Sakhalin Koreans to their families in Japan or South Korea. Unfortunately, these efforts, without a campaign of sustained pressure on the United Nations, made little progress towards ultimately resolving the issue.

Only with the dissolution of the Soviet Union (1989-92) did Sakhalin Koreans take meaningful steps towards resettlement in South Korea. The first temporary visits took place in April 1989. With the assistance of the Japanese and South Korean Red Cross organizations, over four thousand first-generation Sakhalin Koreans permanently resettled in South Korea between 1992 and 2012.<sup>34</sup> Nonetheless, as a condition of resettlement, this older generation of Koreans had to leave behind their kin in Sakhalin.<sup>35</sup> After a half century, the joy of reuniting with family members in South Korea commingled with the pain of leaving children and grandchildren in Sakhalin. Indeed, some repatriated Koreans ultimately went back to Sakhalin to live with their lineal descendants.<sup>36</sup>

## II. LITIGATION

With the saga of Sakhalin Koreans now charted, we turn to the role of law, and litigation in particular, in resolving this long-festering war reparations issue. The turn to litigation in the mid-1970s marked the convergence of two trends. First, civil society groups dedicated to war reparations had formed throughout East Asia.<sup>37</sup> These groups focused primarily on domestic mobilization— attracting members, raising capital, strategizing, and increasing awareness. Over time, they forged transnational linkages with Japanese activists, cause lawyers, and civil society groups to seek a wide range of compensation from corporations and state actors.

Second, Japanese attorneys had turned to litigation to address social problems, such as environmental pollution and employment discrimination.<sup>38</sup>

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33. *Id.*

34. 배덕호 [Pae Deok-ho], ‘해방되지 못한’ сах알린 한인의 역사적 현실과 실천과제 [The Historical Reality and Practical Tasks of ‘Unliberated’ Sakhalin Koreans], 6 역사와 책임 [HISTORY & RESPONSIBILITY] 12, 24 (2013), [http://forumtj.org/index.php?mid=pub&document\\_srl=303&ckattempt=1](http://forumtj.org/index.php?mid=pub&document_srl=303&ckattempt=1).

35. *Id.*

36. *Id.*

37. See, e.g., Timothy Webster, *The Taiwanese Roots of East Asia’s War Reparations Movement*, 70 AM. J. COMP. L. \_\_ (forthcoming 2022) (noting the formation of civil society groups dedicated to Taiwanese war reparations in Tokyo and Taipei in 1975); Matt VanVolkenburg, *Trial of Korean Atomic Bomb Survivors*, KOREA TIMES (Aug. 7, 2019), [https://www.koreatimes.co.kr/www/nation/2019/08/177\\_273470.html](https://www.koreatimes.co.kr/www/nation/2019/08/177_273470.html) (noting the 1967 formation of the Korean Atomic Bomb Victims Relief Association); Barbara Basler, *And Speaking of the World’s Wistful Causes*, N.Y. TIMES (Sept. 19, 1990), <https://www.nytimes.com/1990/09/19/world/hong-kong-journal-and-speaking-of-the-world-s-wistful-causes.html> (noting the 1968 formation of the Hong Kong Reparations Association).

38. See, e.g., Robert L. Kidder & Setsuo Miyazawa, *Long-Term Strategies in Japanese Environmental Litigation*, 16 L. & SOC. INQ’Y 605, 624 (1993) (recognizing that litigation in Japan “has become part of a strategy for organizing and expressing opposition to the dominant political and economic tendencies”); Frank Upham, *LAW AND SOCIAL CHANGE IN JAPAN* 58 (1987) (noting the role of Japanese courts in resolving major pollution incidents).

Japanese citizens had turned to Japanese courts to seek compensation for various harms suffered during the war.<sup>39</sup> But the war reparations movement became a transnational phenomenon in 1972, when a Korean victim of the atomic bombings sued the Japanese government to access medical benefits.<sup>40</sup> Over the next five decades, Japanese courts adjudicated scores of disputes about whether and how Japan should compensate its former colonial subjects (citizens of Taiwan and South Korea) and former enemies (citizens of China, Philippines, United States, Netherlands, and other Allied nations).<sup>41</sup> This section analyzes two seminal cases filed in Japan—the first discussion in English of either suit. However, due to space constraints, I omit discussion of three other cases brought by Sakhalin Korean.<sup>42</sup>

A. *Song Du-hoe v. Japan (filed January 16, 1974)*<sup>43</sup>

Song has played a seminal role in Asia's war reparations movement. By the time he filed the first lawsuit concerning Sakhalin Koreans, he was a “repeat player” in the Japanese legal system. Born in South Korea and raised in Kyoto and colonial Manchuria, Song was convicted of violating Japan's Foreign Resident Registration Act in 1964 and sentenced to a month in prison.<sup>44</sup> In 1969, he unsuccessfully sued the government of Japan to reinstate the Japanese nationality he had as a colonial subject.<sup>45</sup> In 1973, he made his most prominent

<sup>39</sup> See, e.g., *Fujimoto Akiyama v. Japan*, 22 MINSHŪ 12, p. 2808 (Sup. Ct. J., Nov. 27, 1968) (dismissing case brought by two Japanese citizens to regain property seized by Canada after the Second World War); *Shimoda Ryūichi v. Japan*, 355 HANREI JIHŌ 17 (Tokyo D. Ct., Dec. 7, 1963), *partially translated in* 8 JAPANESE ANN. INT'L L. 212 (1964) (dismissing claims brought by Japanese victims of the atomic bombing against Japan under principles of sovereign immunity).

<sup>40</sup> *Son Jin-du v. Governor of Fukuoka, Fukuoka Chihō Saibansho (Fukuoka D. Ct.)*, Mar. 30, 1974) (ordering provincial government to issue plaintiff a health certificate to access medical benefits for atomic-bomb survivors).

<sup>41</sup> For a summary of Japan's transnational war lawsuits, see Timothy Webster, *Japan's Transnational War Reparations Litigation: An Empirical Analysis*, 63 HARV. INT'L L.J. 571 (2022).

<sup>42</sup> In 1990, Lee Doo-hoon and other plaintiffs sought reparations for “Japan's illegal abduction and forced labor, non-performance of the duty to repatriate, and active interference in the return process, amounting to ‘crimes against humanity’ under customary international law.” *Lee Doo-hoon v. Japan, Tokyo Chihō Saibansho (Tokyo D. Ct., filed Aug. 21, 1990)* (case later withdrawn when Japan allocated funds to cover the repatriation of Sakhalin Koreans to South Korea and the construction of apartments and a nursing home). The complaint for the case is available online at [justice.skr.jp/petition/10.pdf](http://justice.skr.jp/petition/10.pdf). This passage comes from page twenty-three of the complaint. In 1991, family members of Sakhalin Koreans killed by Japanese police on suspicion of being spies during the end of World War II sued Japan for compensation and apologies. In 2007, eleven Sakhalin Koreans sued Japan to demand the reimbursement of postal savings accounts and insurance premiums that they took out in Sakhalin during the war. They withdrew their claims when the Korean Constitutional Court indicated that the Korean government acted unconstitutionally by “not making every effort to resolve” the comfort-women and atomic-bomb survivor issues. Sakhalin Korean plaintiffs thought that their efforts better targeted at the South Korean government. See 노영돈 [Loh Yeong Don, 사할린 한인 우편저금청구소송과 그 후의 동향 [*The Reimbursement Claim for Postal Savings of Sakhalin Koreans Unpaid by Japan during the World War II [sic]*], 29 [SUNGKYUNKWAN LAW REVIEW] 32, 62 (2017).

<sup>43</sup> *Song Du-hoe 宋斗会 v. Japan, Tōkyō Chihō Saibansho (Tokyo District Court, filed Jan. 16, 1974)*, complaint available at [justice.skr.jp/petition/3.pdf](http://justice.skr.jp/petition/3.pdf) (hereinafter “Song complaint”).

<sup>44</sup> See 李洙任 [Yi Su-Im], 日本の植民地支配に対する未来責任と特別永住者への処遇 [*Future Responsibility for Japanese Colonial Rule and Treatment of Special Permanent Residents*], 25 世界人権問題研究センター研究紀要 [WORLD HUMAN RIGHTS RESEARCH INSTITUTE BULLETIN OF RESEARCH] 77, 90 (2020), available at [khri.or.jp/publication/docs/202007025004%281519KB%29.pdf](http://khri.or.jp/publication/docs/202007025004%281519KB%29.pdf).

<sup>45</sup> *Id.* Many other Korean and Taiwanese citizens sued Japan to reinstate their Japanese

gesture of activism: burning his Alien Resident Certificate (ARC) in the lobby of Japan's Ministry of Justice (an act for which he was later criminally prosecuted).<sup>46</sup> At this time, Song met attorney Takagi Ken'ichi, a recent law graduate of the University of Tokyo, who helped Song draft his complaint on behalf of ethnic Koreans still residing in Sakhalin.<sup>47</sup> For the next several decades, activist Song and attorney Takagi played salient roles in litigating war compensation cases.<sup>48</sup>

The complaint combined social history, political protest, and formal legal request. In seeking the repatriation of some 8,491 Sakhalin Koreans, Song demanded that Japan (1) investigate which Sakhalin Koreans wanted to return to South Korea or Japan, (2) cover transportation costs, arrange necessary procedures, and issue supporting documents, and (3) "compensate Korean plaintiffs, who were forcibly mobilized during World War II, for the emotional and physical damages they endured in twenty-nine years apart from their families."<sup>49</sup>

Song was perhaps the first activist to file a lawsuit in East Asia's war compensation movement, presaging contemporary developments in several ways. First, Song's complaint narrated the history of Japanese colonialism from a *Korean* perspective, both complementing and complicating the dominant Japanese view. Take the following passage:

In 1910, Japan annexed the Korean state through invasion, and then colonized it. The Annexation Agreement abolished the Great Korean Empire, changed its name to Choson, and established the Governor-General of Korea, subjecting Koreans to immeasurably barbaric and inhumane abuses. This is an indisputable, historical fact. The forced mobilization of Koreans, in particular, is Japan's deepest stain during this period of Japan-Korea relations.<sup>50</sup>

While obviously tendentious, this passage challenges conventional Japanese history,<sup>51</sup> advancing a Korean-centric view of colonial Japanese history more akin to the narratives coming out of contemporary courts in Busan or Soule than Tokyo or Osaka. The notion that Japan *invaded* Korea reflected the idea that this was no benevolent annexation based on mutual interests, but rather imperial

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nationality at this time.

46. See Takagi, *supra* note 11, at 53.

47. *Id.*

48. Though not a lawyer, Song assisted in such cases as the Ukishima-Maru (1992-2004), BC-level war criminals (1995-2001), and the Siberian Korean Returnees (1992-2002). Takagi litigated a number of high-profile lawsuits, organized international symposia, and wrote several books about war reparations litigation.

49. Song complaint, *supra* note 43, at 3.

50. *Id.* (emphasis added).

51. As might be expected, Japan and South Korea have very different perspectives on their shared colonial history (1910-1945). For example, mainstream Japanese historians refer to the 1910 event as a legal annexation. But South Koreans, including justices on the Supreme Court, believe that that "Japan's control over the Korean Peninsula during the Japanese occupation period was an *unlawful* possession by force; and any legal interests resulting from such unlawful control... cannot be recognized as effective." See Park Chang-hwan v. Mitsubishi Heavy Industry, 2009 Da 22549, (Sup. Ct. S. Kor., May 24, 2012), translated by Seokwoo Lee, 2 KOREAN J. INT'L & COMP. L. 205, 214 (2014). As another example, Japanese courts consider the conscription of Korean forced laborers pursuant to Japan's 1938 National Mobilization Law to be legal, whereas Korean courts have deemed this action illegal forced mobilization. See *id.* at 214.



aggression.<sup>52</sup> The name change recalls Japan's colonial policy of forcing Koreans to adopt Japanese names to access social benefits, part of a broader strategy to extirpate Korean culture and to replace it with a Japanese core.<sup>53</sup>

Second, Song adopted a position vis-à-vis Japan more akin to today's plaintiffs than to litigants of the 1970s. In a word, Song sought *reparations*: a form of redress for "gross violations of international human rights law or serious violations of international humanitarian law."<sup>54</sup> This view resonates with the contemporary (1990-present) reparations movement, in which comfort women and forced laborers have demanded remediation for grave violations of international law. In the 1970s, by contrast, Taiwanese plaintiffs sought *compensation* from Japan,<sup>55</sup> that is, provision "for any economically assessable damage," such as "social benefits" and "medicine and medical services," already available to Japanese citizens.<sup>56</sup>

Third, Song planted the seeds of legal theories that bore fruit decades later. Many contemporary cases hinge on the *coerciveness* of Japan's wartime labor regime. In the above passage, Song referred to forced mobilization (*kyōsei renkō*), implying Japan forcibly recruited labor from the Korean peninsula, and rejecting the current formulation, popular in Japan, that the 1938 National Mobilization Law legalized the conscription of Korean laborers. Like many contemporary litigants, Song advanced the notion that Koreans went to Sakhalin against their will, and thus illegally.

Elsewhere in the complaint, Song referred to "harsh physical labor," "forced labor," and even "slave labor" that Koreans performed on behalf of Japanese interests.<sup>57</sup> This resonates in current debates about the nature of wartime forced labor, which often highlights the abject labor conditions, lack of food and clothing, verbal abuse, and physical assaults that Korean laborers endured at the hands of Japanese corporate and state interests. But in the 1970s, few were discussing Japan's wartime use of "forced labor."

Paradoxically, Song's case was both too early and too late. It was too early in the sense that the war reparations movement did not take off in earnest until the 1990s and 2000s.<sup>58</sup> But it was too late because, as the Tokyo District Court found, Song already lived in Japan; his had accomplished his own repatriation,

52. The term "invasion" (*shinryaku*) resonates with the textbook controversy of 1982, when Japanese textbooks sought to change the term "invade China" to "advance into China." See EZRA F. VOGEL, *CHINA AND JAPAN: FACING HISTORY* 351 (2019).

53. A short introduction to some of Japan's more brutal exploits—prohibition of the Korean language in educational systems, immolation of Korean historical documents, conversion of names into Japanese, widespread use of forced labor, recruitment of comfort women—is available at Erin Blakemore, *How Japan Took Control of Korea*, HISTORY (July 28, 2020), [www.history.com/news/japan-colonization-korea](http://www.history.com/news/japan-colonization-korea).

54. U.N. Basic Principles and Guidelines on the Right to Remedy and Reparation, UNGA Res. 60/147, Dec. 16, 2005, art. 15.

55. The relevant lawsuits include *Son Jin-du v. Japan* (Korean atomic bomb survivor sought medical benefits from Japanese government), and *Deng Sheng et al. v. Japan* (Taiwanese veterans sought pensions and solatia for harms suffered during World War II).

56. Basic Principles, *supra* note 54, at art. 20.

57. See *Song v. Japan*, *supra* note 43, complaint, p. 4 (including such terms as 苛酷な肉体労働, 奴隷労働), p. 9 (強制労働).

<sup>58</sup> See Webster, *supra* note 1, at 163-64 (describing the war reparations movement).

and he could not sue on behalf of Koreans still stranded in Sakhalin. His suit did, however, attract the attention of activists, domestic and international media, and Japanese attorneys, including the aforementioned Takagi.

*B. Lee Deok-rim v. Japan, filed December 1, 1975<sup>59</sup> (withdrawn June 15, 1989)*

Lee's lawsuit united activists from Japan, South Korea, and Sakhalin, making it among the first truly *transnational* instances of war reparations activism. In July 1975, nineteen Japanese attorneys, organized chiefly by Takagi, formed a lawyers' committee (*bengodan*) to investigate the Sakhalin Korean's legal claims.<sup>60</sup> Working with Pak Nohak's Association, the lawyers sent one hundred questionnaires to Sakhalin Koreans who wished to repatriate.<sup>61</sup> They received sixty-four responses, from which they secured power of attorney from four Koreans still residing in Sakhalin.<sup>62</sup> In this way, the lawyers ensured that they were prosecuting a live controversy in front of a Japanese court.

The lawsuit attracted media attention in Japan and South Korea the region, keeping the issue alive among domestic audiences. Across sixty-four hearings in the Tokyo District Court, litigants described decades of separation from family and country. In 1981, one witness captured headlines after banging on the witness table and demanding that Japan "give me back my brother."<sup>63</sup>

In the end, Japanese courts wore down the plaintiffs. Three died during the suit's pendency. When the fourth, lead plaintiff Lee Deok-rim, resettled to South Korea in April 1989, the case was withdrawn.

It would be easy to dismiss the lawsuit as a failure, for it led to repatriation of only one of the four plaintiffs. But it also prodded Japan into action. In 1976, the Japanese Ministry of Foreign Affairs issued hundreds of travel permits to Sakhalin Koreans. Takagi suggested that the litigation instigated this response from Japan.<sup>64</sup> Moreover, the Minister of Justice responded to questions about Sakhalin Koreans in the Japanese Diet, testifying that Japan retained "the moral

59. Plaintiffs included Lee Chi-myeong (이치명/李致明), Lee Deok-rim (이덕림/李德林), Cho Gyeong-gyu (趙敬奎/조경규) and Om Su-gap (嚴壽甲/엄수갑). See Takagi, *supra* note 11, at 76-77.

60. *Id.* at 76.

61. *Id.* at 71.

62. *Id.* at 72. See also 사할린 한국인교포귀환청구소송 준비 [*Sakhalin Koreans Prepare Lawsuit with Repatriation Claims*], 중앙일보 [JOONGANG DAILY] (Aug. 19, 1975), [www.joongang.co.kr/article/1414752#home](http://www.joongang.co.kr/article/1414752#home). See 데모하다 연행된 사할린 교포 [*Sakhalin Koreans Detained During Demonstration*], 중앙일보 [JOONGANG DAILY] (Oct 20, 1976), [www.joongang.co.kr/article/1448865#home](http://www.joongang.co.kr/article/1448865#home). This Essay reports that Sakhalin Koreans demonstrated outside City Hall in Yuzhno-Sakhalink in September 1976, shouting "Send me to Korea." Soviet police reportedly arrested the protestors, who then engaged in a hunger strike.

63. Japanese courtrooms are normally sedate, but filling the gallery with supporters has become a key tactic of war reparations activists. The witness, Cho So-gyeong, was the sister of plaintiff Cho Gyeong-gyu. See "일은 남편·동생 내놓아라" [*Japan, Give Me Back My Husband and My Brother*], 중앙일보 [JOONGANG DAILY] (Nov. 28, 1981), <https://www.joongang.co.kr/article/1606253#home>.

64. See Takagi, *supra* note 11, at 158. However, in a repeat of the 1957 incident, Soviet immigration authorities initially agreed to issue exit visas. When the North Korean Consul General protested, the Soviets withdrew their offer. Japan-Soviet Union relations rapidly deteriorated thereafter, when a Soviet air force pilot defected to Japan. This apparently ended the possibility of a comprehensive solution between Japan and the Soviet Union.

responsibility to return them to their original state in Japan.”<sup>65</sup> At the same hearing, Foreign Minister Miyazawa Kiichi<sup>66</sup> stated that “strictly speaking, putting aside the legal issue, we recognize that we cannot be indifferent to this issue. In fact, we raise it each time we meet with the foreign ministry.”<sup>67</sup>

The lawsuit also called attention to the plight of Koreans stranded in Sakhalin. Within Japan, the lawsuit is credited with illuminating an obscure chapter of Japan’s wartime past and how this injustice continued to have effects decades after the end of colonialism.<sup>68</sup> Within South Korea, media coverage informed Korean citizens about their compatriots, who otherwise had no direct contact with people stranded in Sakhalin.

However, neither lawsuit substantively changed the position of Sakhalin Koreans. Japan issued the necessary travel permits, signaling a previously unseen willingness to address the issue. But the Soviet Union balked after a Soviet Air Force pilot defected to Japan, heightening tensions between the two countries and dimming prospects for cooperation on the Sakhalin issue.

### III. HUMAN RIGHTS

The saga of the Sakhalin Koreans implicates a range of human rights, none more acutely than the right to nationality and freedom of movement.

#### A. Nationality

The right to nationality, like the right to life, is both fundamental and foundational: fundamental in the sense that numerous international treaties recognize the right,<sup>69</sup> and foundational in the sense that many rights depend upon its guarantee. Just as one cannot enjoy human rights after forfeiting the right to life, political rights (to vote, to hold office, etc.), freedom of movement, and liberty interests are sacrificed when one lacks a nationality.<sup>70</sup>

Various legal instruments ensure nationality rights. The 1930 Nationality

65. See Record of 112th Diet, House of Rep., Cab. Comm. No. 5, Apr. 14, 1988, <https://kokkai.ndl.go.jp/simple/detail?minId=111204889X00519880414&spkNum=267#s267> (referencing 1976 remarks made by Justice Minister Inaba Osamu). In the war reparations context, state and private actors alike frequently differentiate moral responsibility from legal liability. See generally Timothy Webster, *The Price of Settlement*, 51 N.Y.U. J. INT’L L. & POL. 301, 326 (2019) (describing settlement agreements wherein defendants accept or reject legal liability).

66. Miyazawa would later become Prime Minister of Japan, acknowledge the Japanese government’s role in the “comfort women” system of sexual slavery, and issue the first apology from a Japanese prime minister to South Korean comfort women in 1992.

67. Takagi, *supra* note 11, at 151.

68. See, e.g., 太田満 [Ota Mitsuru], サハリン残留、帰国者学習の教材開発：国際理解教育の視点から [*Development of Teaching Materials about the Studies of Left Behind and Returnees from Sakhalin: From the Perspective of International Education*], 17 共栄大学研究論集 [KYŌEI UNIVERSITY RESEARCH REVIEW] 69, 73 (2018) (noting the lawsuit made the issue “widely known” in Japan), <https://core.ac.uk/download/pdf/228688999.pdf>.

69. Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality: Report of the Secretary-General*, U.N. Doc. A/HRC/13/34, Dec. 14, 2009, para. 3 (locating the right in the UDHR, ICCPR, CERD, CEDAW, CRC, etc.).

70. Human Rights Council, *Human Rights and Arbitrary Deprivation of Nationality: Report of the Secretary-General*, U.N. Doc. A/HRC/19/43, Dec. 19, 2011 (listing a number of rights implicated by the right to nationality).

Convention empowered states parties to determine “who are its nationals,” and “whether a person possesses the nationality . . . under its own law.”<sup>71</sup> Japan was a founding member of the League of Nations and drafted many of its conventions. But Japan withdrew from the organization after the League condemned Japan’s invasion of Manchuria. The Convention, which Japan ratified, likely no longer bound Japan after 1935. The Soviet Union did not join the League.

After World War II, the Universal Declaration of Human Rights (UDHR) provided that “everyone has the right to a nationality”<sup>72</sup> and that “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”<sup>73</sup> The UDHR, as a mere declaration, is not legally binding; it places no direct obligations on any state. Still, scholars suggest much of the Declaration has crystallized into customary international law.<sup>74</sup>

The “implementing legislation” for the UDHR—the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR)—guarantees *children* the right to citizenship, but not all people. This is an important omission, born of a political stalemate where states could not agree on which nation bore the duty to grant nationality when another nation voided it.<sup>75</sup> In this way, delegates removed adult nationality from the ICCPR, and thus from international human right law.

Of course, nationality is a politically fraught issue, impinging on state sovereignty, political power, and ethno-national identity. International law cannot simply tell states to grant nationality to a particular person. Nevertheless, it is certainly true that nationality laws “marginalize and disenfranchise vulnerable groups such as racial and ethnic minorities and women.”<sup>76</sup>

International treaties do, however, regulate nationality in at least two ways.<sup>77</sup> First, some treaties forbid racial discrimination in ways that possibly concern nationality. The CERD Committee has reinforced this notion by calling “deprivation of citizenship on the basis of race, color, descent or national or ethnic origin . . . a breach of States Parties’ obligations.”<sup>78</sup>

Second, international law discourages states from withdrawing citizenship and rendering people stateless. The 1954 Stateless Persons Convention and the 1961 Convention on the Reduction of Statelessness reinforce the right to

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<sup>71</sup> League of Nations, *Convention on Certain Questions Relating to the Conflict of Nationality Law*, Apr. 13, 1930, 179 L.N.T.S. 89.

<sup>72</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), art. 15 (1) (Dec. 10, 1948).

<sup>73</sup> *Id.* at art. 15(2).

<sup>74</sup> Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT’L & COMPAR. L. 287, 289 (1995).

<sup>75</sup> Johannes Chan, *The Right to Nationality in International Human Rights Law*, 12 HUM. RTS. L.J. 1, 4 (1992).

<sup>76</sup> See Open Society Justice Initiative, *Human Rights and Legal Identity: Approaches to Combatting Statelessness and Arbitrary Deprivation of Nationality* 3 (May 2006), [aprn.info/1/wordpress/wp-content/uploads/2013/5/identity\\_20060501.pdf](http://aprn.info/1/wordpress/wp-content/uploads/2013/5/identity_20060501.pdf).

<sup>77</sup> *Id.* at 5-8.

<sup>78</sup> Comm. on the Elimination of Racial Discrimination, General Recommendation No. XXX on Discrimination against Non-Citizens, U.N. Doc. CERD/C/64/Misc.11/rev.3, para. 4 (2004).

nationality. The latter provides, in the pertinent part, that a state “shall not deprive a person of its nationality if such deprivation would render him stateless.”<sup>79</sup> Of course, neither the Soviet Union nor Japan signed or ratified either convention. Nonetheless, the Soviet Union violated the spirit of international law by failing to allow Sakhalin Koreans to take on South Korean citizenship,<sup>80</sup> and impeding their return to South Korea.

### B. Freedom of Movement

The ICCPR guarantees freedom of movement, including the right to “leave any country, including [the actor’s] own” (departure right),<sup>81</sup> and the “right to enter his own country” (entrance right).<sup>82</sup> Like all rights, the freedom of movement is not absolute. It can be restricted when “provided by law, [and] necessary to protect, national security, public order (*ordre public*), public health or morals or the rights and freedoms of others.”<sup>83</sup>

The Human Rights Committee (HRC) has clarified the elements of both departure and entrance rights in case law and general comments. For departure, human rights law imposes obligations on the state of residence and the state of nationality, including the issuance of travel documents (exit visas) and passports.<sup>84</sup> The HRC has listed an array of common impediments, many of which the Soviet Union erected to prevent repatriating Sakhalin Koreans, including *inter alia* lack of access to information regarding requirements, special forms to apply for passport and other travel documents, and unreasonable delays in issuing necessary documentation.<sup>85</sup>

The HRC further noted that the right should not be restricted by discrimination based on “sex, language... political or other opinion, national or social origin... or other status.”<sup>86</sup> By privileging ethnic Japanese, and Korean husbands of Japanese women over other ethnic Koreans, the repatriation process violated this aspect of the ICCPR.

The ICCPR also guarantees people the right to enter “their own country.” The HRC has defined the phrase “their own country” expansively, including people whose nationality had been stripped “in violation of international law” and “individuals whose country of nationality has been incorporated into or transferred to another national entity whose nationality is being denied them.”<sup>87</sup> To which country did Sakhalin Koreans belong? They entered Sakhalin as Japanese subjects, but Japan denationalized them after the war. The Soviet Union

79. Convention on the Reduction of Statelessness art. 8, Aug. 30, 1961, 989 U.N.T.S. 175..

80. To be sure, the fact that the Soviet Union did not recognize South Korea, and vice versa, made such a choice extremely unlikely, particularly during the frostiest moments of the Cold War.

81. International Convention on Civil and Political Rights (ICCPR) art. 12(2), Dec. 6, 1966, 999 U.N.T.S. 1711.

82. *Id.* at art. 12(4).

83. *Id.* at art. 12(3).

84. General Comment No. 27, Freedom of Movement (article 12), U.N. Doc. CCPR/C/21/Rev.1/Add.9, Nov. 1, 1999, para. 9.

85. *Id.*, at para. 17.

86. *Id.* at para. 18.

87. *Id.* at para. 20.

later permitted Sakhalin Koreans to take on Soviet or North Korean citizenship, which most of them did. But the roughly seven thousand Sakhalin Koreans who elected “statelessness” held only attenuated claims to South Korean citizenship: South Korea did not exist when they were transported to Sakhalin, and they never “lived” in South Korea. What is more, when South Korea finally emerged in 1948, it did not recognize the Soviet Union. In a sense, stateless South Koreans were beyond the scope of international law.

The Soviet Union prevented the emigration of many ethnic minorities from within its borders.<sup>88</sup> Having lost some twenty million people in World War II, the state needed labor, particularly in underdeveloped regions such as Sakhalin. Decades later, a mass exodus revealed that the Soviet Union was not the “workers’ paradise” proclaimed in state media. In the 1970s, under pressure from Western governments, the Soviet Union permitted approximately 300,000 Soviet (mostly Jewish) citizens to emigrate to Israel, Germany, Canada and the United States.<sup>89</sup> But without strong states advocating on behalf of Sakhalin Koreans, it took the dissolution of the Soviet Union to loosen its grip on Sakhalin Koreans.

#### IV. CONCLUSION

Sakhalin Koreans lived in exile, a racial minority in an authoritarian regime, for more than a half-century. Their desertion on a remote island reflects the convergence of several factors: Japan’s abandonment of colonialism and formerly colonial subjects, the fraught tensions of the Cold War, South Korea’s tenuous relationship to problems that arose during Japanese colonialism, and the Soviet Union’s status as both superpower and permanent member of the U.N. Security Council. Any one of these factors might have inhibited repatriation. But their amalgamation rendered the issue irresolvable for half a century.

Efforts to organize in South Korea, Japan, and Sakhalin created solidarity among these forsaken people and publicized their plight. While appeals to domestic courts and international institutions have altered Japan’s behavior in certain contexts, Japan was not the sole party involved. In the end, a combination of Japanese reluctance, Soviet imperiousness, and South Korean apathy doomed the Sakhalin Koreans.

Their saga illustrates the precarity of the international human rights system and the comparative powerlessness of individuals to challenge the authority of powerful states. Social activism, domestic litigation, and appeals to international institutions have been powerful catalysts in various human rights endeavors, from ending apartheid to restitution for the Holocaust. But it is also important to review cases where those same techniques and responses proved ineffective. Such investigations illumine both the advantages and drawbacks of these mechanisms to yield social, political, and legal change.

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88. See George Perkovich, *Soviet Jewry and American Foreign Policy*, 5 *WORLD POL’Y J.* 435 (1988) (describing U.S. pressure, as well as activism by Soviet Jews, to permit emigration); Zvi Gitelman, *Exiting from the Soviet Union: Emigrés or Refugees*, 3 *MICH. J. INT’L L.* 43 (1982) (providing figures on the numbers and ethnicities of Soviet emigrés).

89. Gitelman, *supra* note 88, at 44.