

# Evolution of Antitrafficking in Persons Law and Practice in Japan: A Historical Perspective

Yasuzo Kitamura\*

I.	INTRODUCTION: THE OLD AND NEW PROBLEM IN JAPAN .....	332
II.	MODERNIZATION AND THE PROHIBITION OF TRAFFICKING IN PERSONS UP TO THE EARLY MEIJI ERA—IMPACT OF THE MARIA LUZ INCIDENT AND THEREAFTER.....	334
	A. <i>Trafficking in Persons as Custom in Feudal Times</i> .....	334
	B. <i>The MARIA LUZ Incident and Its Influence</i> .....	336
	C. <i>Unsolved Problems</i> .....	340
III.	THE END OF LICENSED PROSTITUTION AND REMAINING PROBLEMS IN THE POSTWAR PERIOD .....	341
	A. <i>The End of Licensed Prostitution</i> .....	341
	B. <i>Some Cases Involving Women from Southeast Asian     Countries or “Japayuki-san”</i> .....	344
IV.	RECENT REVISION OF ANTITRAFFICKING LAW AND SYSTEM.....	347
	A. <i>Context Behind the Current Situation</i> .....	347
	B. <i>Recent Law Reform as Countermeasures to Human     Trafficking</i> .....	348
	1. Comprehensive National Action Plan .....	349
	2. Amendment of Laws and Regulations on Trafficking .....	349
	a. The Penal Code .....	349
	b. Immigration Act and Passport Law.....	350
	c. Other Laws .....	351
	3. Conclusion of the U.N. Protocol.....	351
	C. <i>NGO Support to the Victims</i> .....	352
V.	CONCLUSION .....	352

---

\* Professor of International Law, Chuo University Law School, Tokyo, Japan. Doctor of Law 1997, Master of Law 1977, Bachelor of Law 1975, Chuo University. The author wishes to express special gratitude to Professor Günther Handl of Tulane University School of Law for arranging the opportunity to publish this Article in the *Journal*.

## I. INTRODUCTION: THE OLD AND NEW PROBLEM IN JAPAN

The term “human trafficking” or “trafficking in persons” will be used in this article to mean using fraud, violence, threat, or other deception to induce people to leave their country with the promise of employment in order to exploit them through compulsory labor. Over half of these victims are trafficked for sexual exploitation.<sup>1</sup> For those reasons, human trafficking is often considered a modern form of slavery.<sup>2</sup>

For several decades, Japan has been a major destination country for transnational human trafficking.<sup>3</sup> This trafficking manifests in various forms. Typical cases are those of women coming from Southeast Asian countries, like Thailand or the Philippines, who are recruited to work at bars or nightclubs as entertainers.<sup>4</sup> After coming to Japan, they are threatened with violence and forced to repay the unreasonably large debt incurred from smuggling costs, of which they had no personal knowledge.<sup>5</sup> As a result, they are forced to work in the sex industry.<sup>6</sup> Since the women do not have visas, they do not seek help from the police because they fear arrest and deportation.<sup>7</sup>

To better cope with these situations, Japan recently revised its laws and regulations concerning human trafficking. However, because human trafficking is not a new phenomenon in Japan, it is doubtful that the recent legal reforms alone will be sufficient. Quite the contrary: human trafficking is deeply rooted in Japanese society. Despite a continuous legal prohibition dating back centuries and the official prohibition of human trafficking in modern Japan, the problem has not been resolved. Therefore, before assessing Japan’s recent series of legislative and administrative actions, it will be helpful to examine the historical development of the law in this area.

The treatment of human trafficking in Japan gradually evolved in three phases, each of which was substantially influenced by the outside

---

1. U.S. DEP’T OF STATE, 2004 TRAFFICKING IN PERSONS REPORT 6 (2004), *available at* <http://www.state.gov/documents/organization/34158.pdf> [hereinafter 2004 TIP REPORT].

2. *See, e.g.*, U.N. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, FACT SHEET No.14, CONTEMPORARY FORMS OF SLAVERY (1991), *available at* <http://www.unhcr.ch/html/menu6/2/fs14.htm>.

3. HumanTrafficking.org, *Japan*, <http://www.humantrafficking.org/countries/japan> (last visited Apr. 14, 2006) [hereinafter Human Trafficking: *Japan*].

4. *Id.* The victims are not only from Southeast Asian countries, but also from Latin American countries, like Columbia, or from Eastern Europe. *Id.*

5. INT’L LABOUR ORG., HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION IN JAPAN 15-18 (2004), *available at* [http://www.vitalvoices.org/files/docs/ILO\\_Japan.pdf](http://www.vitalvoices.org/files/docs/ILO_Japan.pdf) [hereinafter TRAFFICKING IN JAPAN].

6. *Id.* at 8-9.

7. *Id.* at 36.

world.<sup>8</sup> The first phase was the early Meiji era's (1870s) time of modernization.<sup>9</sup> The Meiji government was the first to criminalize all forms of trafficking in persons. The second phase occurred at the end of World War II, when the American democracy and the idea of fundamental human rights were introduced and implanted in the Japanese legal system. During this period, human trafficking and the sexual exploitation of women remained proscribed. At present, Japan is in a third phase, which involves reviewing the preexisting domestic laws and policies on this matter. The main influences on the legal structure of Japanese society now are originating from the developing international human rights standards<sup>10</sup> during the past few decades and the menace of transnational organized crime. When the Japanese government submitted the antitrafficking protocol to the United Nations Convention Against Transnational Organized Crime in 2005 (U.N. Protocol) to the Diet in May 2005,<sup>11</sup> Japanese law and systems relating to human trafficking were reviewed and amended to meet international standards. In the following Parts, I will touch briefly upon the significant matters of each phase.

---

8. See *infra* Parts II-IV for a more thorough discussion of these events.

9. "Meiji" refers to the period under the reign of the Emperor Meiji (1868-1912). *Meiji Period*, JAPAN REFERENCE, [http://www.jref.com/culture/meiji\\_period\\_era.shtml](http://www.jref.com/culture/meiji_period_era.shtml) (last visited Feb. 22, 2006).

10. Japan is a state party to major international human rights conventions, including the following: International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 666 U.N.T.S. 195 (entered into force Jan. 4, 1969; put into effect in Japan Dec. 15, 1995); International Covenants on Economic and Social Rights, G.A. Res. 2200A (XXI) (entered into force Mar. 23, 1976; put into effect in Japan June 21, 1979); International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 and 1057 U.N.T.S. 407 (entered into force Mar. 23, 1976; put into effect in Japan June 21, 1979); Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, A/RES/54/4 (Dec. 18, 1979) (entered into force Sept. 3, 1981; put into effect in Japan June 25, 1985); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984 (entered into force June 26, 1987; put into effect in Japan June 29, 1999). However, Japan is not a state party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, U.N. Doc. A/RES/45/158 (Dec. 18, 1990) (not ratified by Japan).

11. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex II, U.N. Doc. A/55/383 (Nov. 15, 2000); see also GLOBAL ORGANIZED CRIME: TRENDS AND DEVELOPMENT 85 (Dina Siegel et al. ed., 2003).

II. MODERNIZATION AND THE PROHIBITION OF TRAFFICKING IN PERSONS UP TO THE EARLY MEIJI ERA—IMPACT OF THE MARIA LUZ INCIDENT AND THEREAFTER

A. *Trafficking in Persons as Custom in Feudal Times*

In feudal society, before the establishment of the modern wage system, slavery-like labor relations were tolerated as a way to secure manpower and as a necessary evil to feed the poorest people. In Japanese feudal times, although trafficking in persons was technically prohibited, the practice of trading people (mainly women and children) was overlooked throughout the country and became deeply rooted in the social system.<sup>12</sup> According to the “*Nihonshoki*,” the second oldest official Japanese history book (finished in 720 A.D.), when a governor of the province of Shimotsuke (presently, the Tochigi prefecture) asked if a peasant farmer could sell his child during a famine, the Imperial Court denied the request.<sup>13</sup> This example indicates that human trafficking was indeed prohibited early during Japan’s history. Only the buying and selling of “*Nuhi*,” the lowest class of people in ancient Japan, was permitted.<sup>14</sup> However, the “*Nuhi*” class dissolved during Japan’s medieval times.<sup>15</sup> Later, during the Kamakura period (1185-1333), the Shogunate government maintained the prohibition of trafficking in persons.<sup>16</sup>

When Portuguese trade merchants arrived in Japan in the late sixteenth century, they targeted Japanese people for their slave trade. The ruler of Japan at that time, Hideyoshi Toyotomi, tried to stop this trade. By his authorized letter issued on June 18, 1587, he ordered that Japanese subjects may not be traded to foreigners.<sup>17</sup> The purpose of this ordinance was to maintain the vertical structure of the feudal class system and to maintain the manpower of the peasantry in each province by holding them inside.<sup>18</sup>

---

12. HIDEMASA MAKI, JINSHIN-BAIBAI [TRAFFICKING IN PERSONS], (1971) [hereinafter MAKI, JINSHIN-BAIBAI]; see also HIDEMASA MAKI, NIPPON HOSEISI NI OKERU JINSHIN-BAIBAI NO KENKYU [A STUDY OF TRAFFICKING IN PERSONS IN THE HISTORY OF JAPANESE LAW] (1961) [hereinafter MAKI, NIPPON HOSEISI].

13. See MAKI, JINSHIN-BAIBAI, *supra* note 12, at 12; MAKI, NIPPON HOSEISI, *supra* note 12, at 30-37.

14. *Slavery in Japan*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Slavery\\_in\\_Japan](http://en.wikipedia.org/wiki/Slavery_in_Japan) (last visited Apr. 14, 2006).

15. *Id.*

16. *Id.*

17. *Id.*

18. MAKI, JINSHIN-BAIBAI, *supra* note 12, at 54-77.

On the other hand, one aspect of human trafficking remained through the Edo period (1603-1867): that of keeping young women from poor villages in a position of servitude as licensed prostitutes.<sup>19</sup> In addition, boys and girls from poor peasant families were habitually sent to live and work as indentured servants in merchant or farmer households. In the cases of indentured prostitution contracts, a long-term contract was arranged between the girl's parents and the owner of a brothel ("yukaku").<sup>20</sup> Income from the girl's prostitution was then used to pay the family's debts. This form of trafficking in persons became an accepted custom during Japanese feudal times.<sup>21</sup>

When the Tokugawa Shogunate fell from power in 1867 through the Meiji Restoration (1868),<sup>22</sup> Japan began to dismantle the feudal system, but the situation concerning the status of licensed professional prostitutes did not change.<sup>23</sup> Before long, this practice became the target of criticism from Western countries.<sup>24</sup> In the process of finding a solution for the MARIA LUZ incident that broke out in June 1872, the new Meiji government faced sudden criticism and decided quickly to prohibit this custom by law.<sup>25</sup>

---

19. The law at that time prohibited the acts of kidnapping of a person for sale and taking commission thereof. The OSADAMEGAKI HYAKKAJO [CRIMINAL CODES AND CASES] (1742), or the Edict in One Hundred Articles, stipulated that "[a] kidnapper is to be put to death. Any one who in collusion with a kidnapper receives a commission for selling the victim is to be sentenced to major deportation." *Id.* art. 61; see MAKI, *supra* note 12, at 97. The English translation of the text is found in JOHN CAREY HALL, JAPANESE FEUDAL LAW 221 (1906).

20. See ANDREW GORDON, A MODERN HISTORY OF JAPAN 102 (2003).

21. The existence of the licensed quarter like the district of "Yoshiwara" in Edo (Tokyo) might be seen as a part of the Japanese traditional culture. In fact, lots of images of "ukiyoers" (woodblock printings) were prostitutes and Kabuki actors. We can also listen to stories peculiar to the events in licensed quarters in traditional comic story telling, "rakugo." However, if we look at them from today's gender perspectives, this history might be seen as an aspect of culture that was made up solely by men without consideration for girls' and women's positions. See Shinobu Ikeda, *How To Read "Gender in Japanese Art" Today: The Present Condition of Gender Studies in Japan*, 15 REV. JAPANESE CULTURE & SOC'Y 93-94 (2003); see also SHINOBU IKEDA, NIPPON KAIGA NO JOSEIZO [THE IMAGE OF WOMEN IN JAPANESE PAINTING: LOOKING FROM THE GENDER HISTORY] (1998).

22. In the Edo period there was a class system composed of four classes: the military (samurai), agricultural, industrial, and mercantile classes. After the Meiji Restoration, the feudal class system of Japan changed, but it did not completely vanish. A system of nobility and the class of descendants of samurais were recognized even after the Restoration. Most people, however, were positioned as commoners. The class of descendants of samurai formally vanished in 1914, but the system of nobility was maintained until 1947. RICHARD STORRY, A HISTORY OF MODERN JAPAN 94 (2d ed. 1991).

23. Hitomi Sone, *Prostitution and Public Authority in Early Modern Japan, in WOMEN AND CLASS IN JAPANESE HISTORY 169-185* (1999) (Hitomi Tonomura et al. eds., trans.).

24. See MAKI, JINSHIN-BAIBAI, *supra* note 12, at 174.

25. *Id.* at 170-87 (describing the MARIA LUZ incident).

*B. The MARIA LUZ Incident and Its Influence*

The MARIA LUZ was the name of a Peruvian sailing vessel that was engaged in coolie (unskilled laborer) trade between China and Peru.<sup>26</sup> The vessel's mast was heavily damaged in a storm while transporting 231 coolies from Macau to Peru, so the vessel made a port call in Yokohama for repair.<sup>27</sup> While the vessel was mooring at the port, one of the coolies on board, who could no longer endure the cruel treatment of the traders, jumped overboard into the harbor water and was rescued by a British warship anchored nearby. When a British minister received the report on this incident from a royal naval captain, he questioned this coolie about the situation onboard the MARIA LUZ, and discovered that the vessel contained many Chinese who were treated like slaves. Because the coolie was found within Japanese jurisdiction, the British warship's captain handed the coolie over to the Japanese authorities.<sup>28</sup>

The Peruvian owner of the MARIA LUZ claimed that the immigration contract was valid and requested that Japan hand over the Chinese coolie.<sup>29</sup> The Japanese government agonized over how to deal with this incident and spoke to foreign consultants for legal advice.<sup>30</sup> Eventually, Japanese authorities decided to refuse the vessel owner's request on humanitarian grounds.<sup>31</sup> In line with this conclusion, a special court was immediately established at Kanagawa and the legal action was

---

26. See Yasuo Ishimoto, Meiji-ki niokeru Chusai Saiban no Senrei(1) [Case Law of Arbitration Court in Meiji Era] 7-4 (1960); Andrew D. Morrison, Note, *Teen Prostitution in Japan: Regulation of Telephone Clubs*, 31 VAND. J. TRANSNAT'L L. 457, 462 (1998).

27. Japan maintained national seclusion as a policy from 1641 until 1854 when Commodore Perry came to Japan. Japan opened its doors to foreign countries by the Treaty of Peace and Amity Between Japan and the United States on March 31, 1854, between the Shogunate government and the United States. For the text of the treaty, see 111 CONSOL. T.S. 377. By the Treaty of Amity and Commerce of 1858, Japan founded trade and commercial relationships with the major Western powers. For the text of the treaty between Japan and the United States, see 119 CONSOL. T.S. at 254. However, Japan did not have any treaty relations with Peru until the MARIA LUZ incident broke out.

28. Morrison, *supra* note 26, at 462.

29. For more on the practices of the coolie trade, see Samuel Pyeatt Menefee, *The Smuggling of Refugees by Sea: A Modern Day Maritime Slave Trade*, 2 REGENT J. INT'L L. 1 (2003-2004).

30. Among such foreign advisors, Erasmus Peshine Smith supported the Foreign Office as the first American legal adviser. 1 PAYSON J. TREAT, *DIPLOMATIC RELATIONS BETWEEN THE UNITED STATES AND JAPAN 1853-1895*, at 459 (1932); see also famousamericans.net, Erasmus Peshine Smith, <http://www.famousamericans.net/erasmuspehinesmith> (last visited Apr. 14, 2006).

31. See 1 TREAT, *supra* note 30.

commenced.<sup>32</sup> On September 9, 1872, the special court found the vessel's captain guilty of maltreatment of the Chinese coolies and ordered the liberation of all on board.<sup>33</sup> Although the captain was exempted from execution of the judgment, Peru insisted that Japan lacked jurisdiction for this trial.<sup>34</sup> Therefore, they demanded restoration of the Chinese coolies, or, alternatively, compensation from Japan.<sup>35</sup> This case drew the attention of various foreign countries, including the United States.<sup>36</sup> Penultimately, the Imperial Russian Court offered to act as an arbitrator.<sup>37</sup> As a result of the negotiations between Japan and Peru, both states agreed to submit the case to the international arbitration court, established under the authority of the Russian Emperor Alexander II.<sup>38</sup>

This was Japan's first experience as a party to an international arbitration.<sup>39</sup> The adjudication of May 29, 1875, noted that the Japanese government acted in good faith in accordance with its proper law and usage without violation to general prescription of the law of nations or to any particular treaties' clauses.<sup>40</sup> In other words, the adjudication found

---

32. Matsumura Masayoshi, An Overview of the History of Russo-Japanese Relations (Oct. 2000), available at [http://www.coe.int/T/E/Cultural\\_Co-operation/education/History\\_Teaching/Reform\\_of\\_History\\_Teaching/](http://www.coe.int/T/E/Cultural_Co-operation/education/History_Teaching/Reform_of_History_Teaching/) (follow the "Russian Federation" hyperlink; then follow the "History Teaching—Japan and the Russian Federation" hyperlink).

33. See 7 NIPPON GAIKOBUNSHO [DIPLOMATIC DOCUMENTS OF JAPAN] 530 (1955) [hereinafter DIPLOMATIC DOCUMENTS]; Morrison, *supra* note 26, at 462.

34. At that time, Japan did not have criminal jurisdiction concerning citizens of the five major powers because it accepted consular jurisdiction under the Treaty of Amity and Commerce in 1858, but Japan did not have such treaty obligations towards the Peruvian state or its nationals. The United States had the position of mediator between Japan and any European power that did not have treaty relations with Japan under article 2 of the 1858 treaty, but Peru was by no means a European power in the sense of that article. FRANCIS CLIFFORD JONES, EXTRATERRITORIALITY IN JAPAN AND THE DIPLOMATIC RELATIONS RESULTING IN ITS ABOLITION (1853-1899) (1931). Article 2 stated, "The President of the United States, at the request of the Japanese Government, will act as a friendly mediator in such matters of difference as may arise between the Government of Japan and any European powers." 111 CONSOL. T.S. 377.

35. Masayoshi, *supra* note 32.

36. For the role and position of the United States with regard to the MARIA LUZ incidents, see 1 TREAT, *supra* note 30, at 450-83.

37. Morrison, *supra* note 26, at 462. There are some discussions about the reason why the Russian Emperor was designated as the arbitrator. It was generally believed that Russia had a neutral position towards both countries. But as one commentator points out, such an assessment would be an error, because at that time there was an outstanding territorial question over Sakharin between Japan and Russia. So by this view, Japan had conceded to Peru on the designation issue of the arbitrator. See Hidehiko Kasahara, *MARIA LUZ gou Jiken no Saikento [Rethinking the MARIA LUZ Incident]* 69-12 HOGAKU KENKYU (Keio University) 117 (1996).

38. The two parties agreed to submit the case to the arbitration of the Russian Emperor by the Protocol concluded on June 25, 1873. See Ishimoto, *supra* note 26, at 69.

39. See Hisashi Owada, *The Experience of Asia with International Adjudication*, 9 SING. Y.B. INT'L L. 9 (2005).

40. The authentic language of the arbitration was French, which stated as follows:

that Japan had not violated any national or international law, and upheld the Japanese judiciary's decision to liberate the Chinese coolies who had been restrained in slavery-like conditions.<sup>41</sup>

Meanwhile, this case gave rise to an unexpected by-product. In the course of the arbitration, the Peruvian party asserted that the slavery system and human trafficking was not prohibited by the law of Japan, though Japan insisted on the Chinese coolies' emancipation.<sup>42</sup> Moreover, the Peruvian party alleged that the trading or trafficking of prostitutes was a long-standing Japanese custom.<sup>43</sup> This allegation was based on the principle of "clean hands," and it attacked the most vulnerable point of the Japanese position. Although the buying and selling of persons was officially criminalized under the law of the Tokugawa Shogunate (1603-1867), the predecessor of the Meiji government, human trafficking was still common. To some Japanese politicians, criticism of Japan's hypocritical position was an affront to the national dignity; one described the criticism as "the maximum shame for the people of the Japanese Empire."<sup>44</sup>

In order to abolish the practice of human trafficking, a Cabinet decree, "Dajokan Hukoku No.295," called the Decree of Emancipation of Prostitutes ("*Shougi-Kaiho-Rei*"), was proclaimed in October 1872.<sup>45</sup> This decree stipulated that the buying and selling of people and exploiting them in slave-like conditions violated human morality.<sup>46</sup> Further, although such practice had been condoned for a long time, the decree provided that the official prohibitions would henceforth be strictly enforced.<sup>47</sup> The clear and direct prohibition of trafficking that had been

Nous sommes arrivés à la conviction qu'en procédant comme il l'a fait à l'égard du 'Maria Luz' de son capitaine, de son équipage et de ses passagers, le Gouvernement japonais a agi 'bona fide', en vertu de ses propres lois et usages, sans enfreindre le prescriptions générales du droit des gens, ni les stipulations de traits particuliers.

8 DIPLOMATIC DOCUMENTS, *supra* note 33, at 457.

41. *Id.* The arbitration concluded that "Le gouvernement du Japon n'est pas responsable des conséquences qui se sont produites à la suite du séjour du navire Péruvien le 'Maria Luz' dans le port de Kanagawa." *Id.*

42. Morrison, *supra* note 26, at 462.

43. See 8 DIPLOMATIC DOCUMENTS, *supra* note 33, at 457.

44. Peter F. Kornicki, *Collected Works of F.V. Dickins: Introduction* (1999), [http://www.ganesh-publishing.com/dickins\\_intro.htm](http://www.ganesh-publishing.com/dickins_intro.htm) (discussing Dickins' litigation tactics as Peru's counsel in this case).

45. *Shougi-Kaiho-Rei* [Emancipation of Prostitutes], Dajokan Hukoku Law No. 295 of 1872. One may compare this decree with the U.S. Emancipation Proclamation, which was issued ten years prior on January 1, 1863.

46. *Id.*

47. *Id.*



rooted in old Japanese customs was just and natural. However, because the attention to the issue had been elicited by the criticism of foreign countries, rather than by internal forces, the prostitutes' liberation order did not effect instantaneous change.

The licensed quarter for prostitution, once called "*Yukaku*" (brothels), changed its name to "*Kashi-Zashiki*" (rental drawing rooms) and was placed under the supervision of prefectures.<sup>48</sup> The "slave-like" labels were cast aside, and it was explained that the licensed prostitutes were voluntarily engaged in the business, rather than by compulsion.<sup>49</sup> This situation did not change after the promulgation of the Meiji constitution in 1889.<sup>50</sup>

A contract between a woman and an owner of a brothel presupposed advance payment and long-term labor, and the woman's income was allocated for repayment.<sup>51</sup> She was forced to continue to engage in prostitution because the penalty for breach of contract was a very large fine.<sup>52</sup> However, in February 1902, the Supreme Court<sup>53</sup> declared that the forced labor clauses in prostitution contracts were null and void.<sup>54</sup> Nonetheless, the Court acknowledged the effectiveness of advance payment clauses.<sup>55</sup> The judgment was ambiguous, but as a result it essentially gave effect to human trafficking contracts because the women could not quit or change their work as prostitutes until the debt was thoroughly settled.<sup>56</sup>

---

48. Morrison, *supra* note 26, at 468.

49. *See id.* at 469.

50. *See* MEIJI KENPŌ [MEIJI CONSTITUTION]. This was the first written constitution (in the modern sense) of Japan. Its fundamental character was based on the Prussian prototype. *See* HIROSHI ODA, JAPANESE LAW 21-29 (2d ed., Oxford University Press 1999) (1992) (discussing the adoption and structure of the constitution).

51. GORDON, *supra* note 20, at 102.

52. *See id.*

53. At that time the Supreme Court was called "Daishinin" under the Meiji constitution. Toru Miura, Independence, Transparency and Accountability of the Judiciary in Japan, Paper Presented at the Indonesia UNAFEI-JICA Joint Seminar on "Criminal Justice Reform" 4 (Dec. 18, 2002), available at [http://www.unafei.or.jp/english/pdf/PDF\\_indonesia/session4.pdf](http://www.unafei.or.jp/english/pdf/PDF_indonesia/session4.pdf).

54. *Okuma v. Watanabe*, 8-2 DAIHAN MINROKU 18 (Daishin-in Minji Hanketsoroku Feb. 8, 1902); Morrison, *supra* note 26, at 468 n.36.

55. This case was founded on the theory that labor contract prostitution was void against public policy, but advance payment contracts were valid. This dual principle was kept until the Supreme Court invalidated the precedent in 1955. Itaru Yamanaka, *Geishoji-Keiyaku to Henreiron no Tenkai* [*Geishoji-Contract and the Development of Its Case Theory*] 41 LEGAL HIST. REV. [HOSEISHI KENKYU] 1-44 (1991).

56. MAKI, JINSHIN-BAIBAI, *supra* note 12, at 217.

### C. *Unsolved Problems*

The MARIA LUZ settlement and the prompt promulgation of the Decree of the Emancipation of Prostitutes are sometimes evaluated as actions motivated by humanitarian concerns. However, others contend that the government's quick response was simply a result of the government's high sensitivity to criticism by foreign countries. At that time, the ultimate goal of the government's foreign policy was to revise and abolish the consular jurisdiction and regain the controlling power of tariffs once lost by the treaty of 1858, and to create equal relationships with other nations.<sup>57</sup> Japan wished and tried not to appear like an uncivilized nation.<sup>58</sup> Therefore, it may be inaccurate to view the decree of 1872 as a pure proclamation of prostitutes' human rights.<sup>59</sup>

In those days, the trafficking of young women for sexual exploitation was also conducted across the sea. Beginning from the time of opening of its ports in 1858 until just before the Second World War, Japanese women, mainly from Southwestern Japan, were sold abroad—especially to China or other Southeast Asian countries—to engage in prostitution.<sup>60</sup> These women were called “*Karayuki*,” or a “*Karayuki-san*”<sup>61</sup> which meant “persons go abroad for works.”<sup>62</sup> These girls came from the poorest peasant families and were sold to reduce the number of mouths to feed.<sup>63</sup> Often, they were deceived by vicious brokers and smuggled abroad, only to spend their lives in despair.<sup>64</sup>

---

57. See 1 TREAT, *supra* note 36, at 389.

58. Those treaties were unequal in the sense that consular jurisdiction was acknowledged, but Japan's autonomy over its tariffs was neglected. Under consular jurisdiction, Japan did not have jurisdiction over the cases concerning foreigners even if the incidents happened in its territory, but a consul of the foreigner's nationality ruled the case. Hisashi Owada, *Japan, International Law and the International Community*, in JAPAN AND INTERNATIONAL LAW PAST, PRESENT AND FUTURE 353-54 (Nisuke Ando ed., 1999); see also JONES, *supra* note 34, at 27-44.

59. See Owada, *supra* note 58, at 347 (discussing the Japanese position in the international community during the early Meiji period).

60. See Kyoko Tanaka, Book Review, 1 J. CONTEMP. ASIAN STUD. (forthcoming spring 2006), available at [http://www.waseda-coe-cas.jp/jcas/images/tanaka\\_jocas.pdf](http://www.waseda-coe-cas.jp/jcas/images/tanaka_jocas.pdf) (last visited Feb. 23, 2006).

61. The literal meaning of “*Karayuki*” is “bound for China.” So “*Karayuki-san*” means “a person bound for China.” But these women were also shipped to other Asian areas such as Singapore and Bangkok. See generally KAZUE MORISAKI, *KARAYUKI-SAN* (1986); KATSUMI MORI, *JINSHIN BAIBAI* (1966).

62. HIROSHI SHIMIZU & HITOSHI HIRAKAWA, *JAPAN AND SINGAPORE IN THE WORLD ECONOMY: JAPAN'S ECONOMIC ADVANCE INTO SINGAPORE 1870-1965*, at 19-50 (1999).

63. See generally sources cited *supra* note 61.

64. See *Sandakan No. 8 [Brothel No. 8]* (Sandakan Hachibanshokan 1974) (telling, in a Japanese film, the story of a young girl who had been sold into prostitution by her impoverished family).

In response, the Penal Code of 1907 prohibited trafficking in persons.<sup>65</sup> Article 226 provided that trafficking in persons from Japan to foreign countries was a punishable offense.<sup>66</sup> However, Article 226 is not applicable to the majority of current cases, which involve foreign women trafficked *into* Japan.<sup>67</sup> When the Penal Code was enacted, no one, including the drafters of the Code, imagined that prostitutes would be trafficked into Japan. Nonetheless, over time, the flow of human trafficking has totally reversed its original course.

### III. THE END OF LICENSED PROSTITUTION AND REMAINING PROBLEMS IN THE POSTWAR PERIOD

#### A. *The End of Licensed Prostitution*

After Japan's defeat in World War II in August 1945, the country moved toward abolishing its traditional practice of trafficking in persons. But the most immediate action taken against the buying and selling of persons was by the occupying power—the General Headquarters of the Supreme Commander of the Allied Powers (GHQ/SCAP)—when it issued an order to abolish licensed prostitution in January 1946.<sup>68</sup> In addition, the SCAP issued an order granting women the right to vote.<sup>69</sup>

Later, in January 1947, the “Imperial order concerning the punishment of those who forced women into prostitution” (the Imperial Ordinance No. 9) was issued.<sup>70</sup> Two groups opposed the law: owners in the sex industry and the soldiers of the occupation forces.<sup>71</sup> In response, private prostitution was allowed, but limited to an area on a map that was encircled in a red line and labeled, “Special Restaurants.”<sup>72</sup>

Also, at that time the idea of fundamental human rights gave important effects to the extant postwar practice of trafficking in persons. The SCAP order granting women voting rights was issued in January 1946 and the first general election under universal suffrage was carried

---

65. KEIHŌ [PENAL CODE] art. 226 (1907).

66. *Id.*

67. This provision is effective now. The reason for this limited application lies in the basic principle of territorial jurisdiction.

68. This order was among the many postwar reform measures promoted by the Allied Forces, which also included the promotion of equality of men and women, encouragement of trade unions, liberalization and democratization of education, liberation from autocratic rule, and liberalization of the economy. ODA, *supra* note 50, at 29.

69. *Id.*

70. M. Takeyasu, *Prostitution in Japan*, 5 INT'L REV. CRIM. POL'Y 51 (1954); Susan Tiefenbrun, *Copyright Infringement, Sex Trafficking, and Defamation in the Fictional Life of a Geisha*, 10 MICH. J. GENDER & L. 327 (2004).

71. See Morrison, *supra* note 26, at 463-65.

72. *Id.* at 468 n.73.

out on April 10, 1946. The legal status of women in Japan was greatly enhanced by the right to vote in national and local elections. Another important step was the promulgation of a new constitution on November 3, 1946, which went into effect on May 3, 1947. The 1947 constitution proclaimed a series of people's rights.<sup>73</sup> Among the provisions, particular attention should be paid to Article 13 (the right to be respected as individuals),<sup>74</sup> Article 14 (equality before the law),<sup>75</sup> and Article 18 (freedom from servitude).<sup>76</sup> Furthermore, the second sentence of Article 24 provides for the equality of the sexes.<sup>77</sup>

The human rights concepts promulgated under the constitution of Japan helped to abolish the practice of servitude. Soon after the occupation period ceased in 1951, efforts to abolish licensed prostitution were particularly strong among both female members of the Diet (Congress) and Christian groups, such as the Salvation Army.<sup>78</sup> Under these circumstances, on October 7, 1955, the Supreme Court delivered a judgment holding that a loan repayment request based on an advance contract was not permitted because it went against the "public order and good morals" in article 90 of the Civil Code.<sup>79</sup> This judgment finally ended the legal recognition of human trafficking in the form of an indentured contract.

Soon thereafter, the Diet passed the Law on the Prevention of Prostitution, which was promulgated in May 1956.<sup>80</sup> This law was the implementing legislation for the United Nations Convention for the

---

73. KENPŌ [CONSTITUTION] art. 10-40. For a general discussion of the Japanese Constitution, see Yashuhiro Okudaira, *Forty Years of the Constitution and Its Various Influences: Japanese, American and European*, in *JAPANESE CONSTITUTIONAL LAW* (Percy R. Luney, Jr. & Kazuyuki Takahashi eds., 1993).

74. KENPŌ [CONSTITUTION] art. 13 ("All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.").

75. *Id.* art. 14 ("All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin. Peers and peerage shall not be recognized. No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.").

76. *Id.* art. 18 ("No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.").

77. *Id.* art. 24, cl. 2 ("With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.").

78. Morrison, *supra* note 26, at 470.

79. Ninomiya & Fujita v. Okazaki, 9 MINSHU no. 11, p.1616 (Sup. Ct. Oct. 7, 1955).

80. Baishun-boshi ho [Law on the Prevention of Prostitution], Law No. 118 of 1956, translated in 2 EHS LAW BULL. SER. No. 2491 (1991).

Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.<sup>81</sup> This law terminated licensed prostitution in Japan<sup>82</sup> and proscribed the promotion of prostitution and related activities.<sup>83</sup> Moreover, this law aimed to prevent prostitution through education and provided protection to the women who were most likely to be trafficked into Japan for prostitution.<sup>84</sup> For rehabilitation, the women would have been sent to the Women's Guidance Home, where they would have received the necessary guidance for improving their situations; the maximum stay under this measure was six months.<sup>85</sup> Only the people who were involved in the act of soliciting or mediating prostitution were punished.<sup>86</sup> This law included brothel owners.<sup>87</sup> In short, the law did not prohibit prostitution itself, it only punished the person who profited by exploiting women for prostitution.<sup>88</sup> A prostitute's client, therefore, was not punished, as the act of prostitution itself ("simple prostitution") did not incur a penalty.<sup>89</sup> For these reasons, the Law on the Prevention of Prostitution has been called "a law with many loopholes."<sup>90</sup> The basic framework of antiprostitution and antitrafficking law has not been altered since.

Meanwhile, the covert sex industry has been prosperous, and the hidden practice of trafficking in persons, especially women from developing countries, has spread throughout the country. Thus, the Law on the Prevention of Prostitution has not proved to be an effective tool against modern human trafficking.

However, through the interpretation of other laws and regulations, some action can be taken to prosecute the crime of human trafficking. For example, if a person introduces someone for the purpose of prostitution, that person will be prosecuted for infringing the Employment Security Law.<sup>91</sup> Under article 73(2) of the Immigration

---

81. United Nations Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, 96 U.N.T.S. 271 (entered into force July 25, 1951).

82. Baishun-boshi ho, ch. 1, art. 3.

83. *See id.* ch. 2, arts. 5-13.

84. *Id.* ch. 4.

85. *Id.* ch. 3, arts. 17-18.

86. *Id.* ch. 1, art. 1.

87. *Id.* ch. 12 (stipulating penal servitude of up to ten years or a fine of up to 300,000 yen).

88. *See id.*

89. *See id.*

90. CONRAD TOTMAN, A HISTORY OF JAPAN 486 (2000).

91. Employment Security Law, Law No. 141 of 1947, art. 63(1)-(2), available at [http://www.jil.go.jp/laborinfo-e/docs/llj\\_law10.pdf](http://www.jil.go.jp/laborinfo-e/docs/llj_law10.pdf) (providing punishment for a person who

Control and Refugee Recognition Act (Immigration Act), if one arranges work for illegal foreigners, that person shall be prosecuted for the crime of promotion of illegal employment.<sup>92</sup>

In contrast to adult prostitution, soliciting prostitution from a child of less than eighteen years of age is punishable under the Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children.<sup>93</sup> Crime committed outside Japanese territory is also punishable under this law.<sup>94</sup> Nonetheless, before 2005, no law existed to generally prohibit human trafficking or to protect the victims thereof.<sup>95</sup>

*B. Some Cases Involving Women from Southeast Asian Countries or "Japayuki-san"*

In the late 1970s and early 1980s, the voluminous flow of people throughout Asia was remarkable. One reason for the significant migration was the end of the war in Indochina in 1975.<sup>96</sup> People from the Indochina Peninsula left their homeland on boats as refugees in droves. This migratory trend expanded throughout Asian countries, but most migrants headed toward the richer North, particularly Japan.<sup>97</sup>

---

carried on or engaged in employment placement, labor recruitment, or labor supply by means of violence, intimidation, imprisonment, or other restraint on mental or physical freedoms).

92. Immigration Control and Refugee Recognition Act, Cabinet Order No. 319 of 1951, art. 73(2), *available at* <http://www.moj.go.jp/ENGLISH/information/icrr-01.html> (providing punishment for a person who has "(1) had an alien engage in illegal work in connection to business activities, (2) placed an alien under his control for the purpose of having the alien engage in illegal work, or (3) repeatedly mediated either the procurement of an alien to engage in illegal work or the act specified in the preceding item").

93. Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children, Law No. 94 of 1999, art. 4, *available at* <http://www.interpol.int/public/children/sexualabuse/nationallaws/csajapan.asp> (directing that a person who commits child prostitution shall be punished by imprisonment with labor for not more than three years or a fine of not more than one million yen).

94. *See* Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, art. 10, U.N. Doc. A/RES/54/263 (May 25, 2000) (entered into force Jan. 18, 2002).

95. Human Trafficking: *Japan, supra* note 3.

96. John Christian Knudsen, Boat People in Transit: Vietnamese in Refugee Camps in the Philippines, Hong Kong and Japan (Bergen Occasional Papers in Social Anthropology, No. 31, 1985).

97. *See* TOTMAN, *supra* note 90, at 486.

People attempted to enter Japan in a variety of ways: as refugees,<sup>98</sup> as short-term visitors, by smuggling themselves into the country, or by presenting forged marriage certificates.<sup>99</sup> Among these immigrants were women called “*Japayuki-san*.” This term is a somewhat derogatory designation for the Southeast Asian women, particularly those from the Philippines or Thailand, who arrived and resided in Japan for employment in the adult entertainment business.<sup>100</sup> The term is a play on the word “*Karayuki*,” which referred to Japanese girls of impoverished families sold overseas to earn money as prostitutes.<sup>101</sup> Essentially, “*Japayuki-san*” is the inverse of “*Karayuki-san*.” There is also an undeniable, though concealed, ethnic prejudice in this term. Among the “*Japayuki-san*” were many women who were victimized by Yakuza<sup>102</sup>-linked brokers or employers engaged in the human trafficking business.<sup>103</sup> Japan responded to these human trafficking cases by deporting the women victims to their home countries as unlawful residents and by punishing the brokers.<sup>104</sup> The courts tried only the worst of these trafficking cases under the existing law.<sup>105</sup>

Certain cases illustrate the limited effect of the preexisting laws. In one case, a person engaged in an international matchmaking business tricked a Sri Lankan woman into marrying a Japanese man.<sup>106</sup> The woman came to Japan to receive job training, but upon her arrival in Japan she was persuaded to have an interview with a prospective marriage partner.<sup>107</sup> Although she tried to refuse, her passport was confiscated and she was forced to marry the man. When their marriage

---

98. Most of the refugees from Indochina drifted onto Japanese shores on route to other destination countries such as Canada or the United States. Japan ratified the United Nations Convention on the Status of Refugees and its Protocol in 1981 and put it into effect on January 1, 1982. Around the same time, Japan revised the Immigration Control and Refugee Recognition Act. At this time, Japan began to accept refugees. See Immigration Control and Refugee Recognition Act, Cabinet Order No. 319 of 1951, art. 1, available at <http://www.moj.go.jp/ENGLISH/information/icrr-01.html>; Convention Relating to the Status of Refugees, opened for signature July 28, 1951, 189 U.N.T.S. 137; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267.

99. See TOTMAN, *supra* note 90, at 486.

100. Takeyuki Tsuda, *Reluctant Hosts: The Future of Japan as a Country of Immigration*, [http://migration.ucdavis.edu/rs/more.php?id=39\\_0\\_3\\_0](http://migration.ucdavis.edu/rs/more.php?id=39_0_3_0) (last visited Apr. 14, 2006).

101. See *supra* notes 60-64 and accompanying text.

102. “Yakuza” is a generic Japanese word indicating the group of gangsters who live on gambling or other unlawful activities. This term is roughly equivalent to “Mafia.”

103. Human Trafficking: *Japan*, *supra* note 3.

104. See, e.g., TRAFFICKING IN JAPAN *supra* note 5, at 2.

105. See *id.*

106. Judgment of Nov. 25, 1993, 1480 HANREI JIHŌ 136, 853 HANREI TIMES 247 (Kyoto D. Ct. Nov. 25, 1993) (the names of the parties were concealed).

107. *Id.*

fell apart, the husband conspired with the matchmaker to present a forged divorce notice form and he was married to another Sri Lankan woman. This woman brought the case to court for compensation. The court held that these acts were illegal, finding them impermissible on humanitarian grounds, and awarded compensation. The court also noted that the disregard of the plaintiff's human rights was extreme, her life plan was upset, and, as a result, she had suffered severe emotional distress. In reaching its decision, the court considered a totality of the circumstances, such as the premeditated nature of the acts, the method, the mode, the level of illegality of the acts, and the victim's emotional distress.<sup>108</sup> However, this was a civil case. Under existing law, awarding damages is the only means of relief for victims of trafficking. Unfortunately, punishing the perpetrators through the criminal justice system is not a priority, even though such acts are a serious violation of basic human rights.

Some cases exist where the crime of promotion of illegal employment under the Immigration Act was applied to managers or owners of bars and nightclubs,<sup>109</sup> but these cases are only the tip of the iceberg. Even in racketeering cases, it is difficult to confiscate undue profit from prostitution kickbacks under the preexisting law. In most cases, substantive problems remain unsolved while victims endure their servitude in silence or face deportation before having the opportunity to complain before a court. Even after they are returned to their home countries, the social and economic conditions that caused the human trafficking in the first place remain unchanged.

In sum, even under the present constitution of Japan, in which respect for human rights is the basic principle,<sup>110</sup> the preexisting legal system concerning human trafficking placed an emphasis on the maintenance of public order under the immigration control system. The need to protect victims conceded to the demand for control of foreigners' illegal employment in Japan. Only victims in cases of serious human rights violations received partial protection under the law. Despite these setbacks, current policy is now shifting toward trafficking prevention, prosecution, and protection of victims.

---

108. *Id.*

109. Judgment of Tokyo District Court, 1506 HANREI JIHŌ 153, 853 HANREI TIMES 247, 846 HANREI TIMES 291 (Tokyo D. Ct. Nov. 11, 1993) (the names of the parties were concealed).

110. KENPŌ [CONSTITUTION] pmb1.



## IV. RECENT REVISION OF ANTITRAFFICKING LAW AND SYSTEM

A. *Context Behind the Current Situation*

For decades after World War II, Japan was not an attractive destination country for foreign workers, primarily because Japan had closed its doors to them. Specifically, unskilled workers were denied entry into Japan. But this situation changed drastically in the late 1980s when thousands of foreign workers, both legal and illegal, headed to Japan seeking high-wage employment.<sup>111</sup>

In response to pressures from industrial circles, the Japanese government decided to open its doors to foreign workers. Unskilled workers, however, were still not openly admitted.<sup>112</sup> Instead of tightening the enforcement of “short stay” visas, which were often abused by foreign workers, new categories of visas were created to accept certain types of workers, such as pre-college students,<sup>113</sup> trainees,<sup>114</sup> entertainers, or persons of Japanese ancestry.<sup>115</sup>

Unfortunately, these visa categories were also often abused as alternative means for unskilled laborers to enter Japan. Some foreigners came to Japan holding “short stay” visas, but worked illegally in shops, hotels, restaurants, bars, firms, or factories.<sup>116</sup> The total number of illegal immigrants increased to nearly 300,000 in the first half of the 1990s.<sup>117</sup> This increase is attributable to the creation of a hotbed of modern forms of human trafficking. For example, many Philippine women are admitted entry into Japan as “entertainers” with valid certificates issued by authorized agents in their home country.<sup>118</sup> However, if they engage in

---

111. TOTMAN, *supra* note 90, at 485-86.

112. *See id.*

113. “Pre-college students” are students who attend high schools, special vocational schools, or similar institutions. Most, however, attend Japanese language schools. These students are permitted to work part-time provided they are granted work permits. Yasuzo Kitamura, *Recent Developments in Japanese Immigration Policy and the United Nations Convention on Migrant Workers*, 27 U. BRIT. COLUM. L. REV. 126-27 (1993).

114. “Trainees” are those engaged in activities to obtain technology, skills, or knowledge. *Id.* at 127-28; TOTMAN, *supra* note 90, at 486.

115. “Persons of Japanese ancestry” are given long-term resident status with no limitation on their labor. Most of them come from Latin American countries such as Brazil or Peru. TOTMAN, *supra* note 90, at 486.

116. TRAFFICKING IN JAPAN, *supra* note 5, at 40.

117. *See* Immigration Office Web site, <http://www.immi-moj.go.jp/toukei/index.html> (last visited Apr. 14, 2006). As of January 2005, the number of illegal foreigners decreased to 207,299. The population of documented foreign residents in Japan is 197,374 as of December 31, 2004. The percentage of foreign residents in Japan is approximately 1.55%. *Id.*

118. *See Japan To Exempt Trafficking Victims from Deportation*, JAPAN ECON. NEWSWIRE, Dec. 3, 2004, available at [http://www.vitalvoices.org/desktopdefault.aspx?page\\_id=155](http://www.vitalvoices.org/desktopdefault.aspx?page_id=155) [hereinafter *Exempt*].

work not categorized as entertainment—often they are not well trained as singers or dancers, so they work as hostesses at bars or nightclubs—they are considered to be illegal workers.<sup>119</sup> Once they lose their legal status, they become easy targets for intimidation or exploitation by Yakuza groups because they face the risk of deportation if they are reported to the police.<sup>120</sup> Under the preexisting law in Japan, these women, who often had suffered serious bodily or mental harm, were not protected as victims of human trafficking. Instead they were treated as illegal foreigners and became the target of deportation under the immigration law.<sup>121</sup> The fact that the system did not guarantee the rights of victims made it difficult to investigate trafficking effectively. Moreover, no laws or regulations existed to directly punish the crime of trafficking in persons, even when organized criminal groups, such as the Yakuza, were systematically involved. Some citizen groups established shelters in an effort to protect victims,<sup>122</sup> but these activities received scant attention. Until recently, the mass media has not acknowledged this problem sufficiently.

The situation began to change when Japan was exposed to international criticism by the International Labour Organization,<sup>123</sup> international human rights nongovernmental organizations (NGOs) such as Human Rights Watch,<sup>124</sup> and the United States government (with its addition of Japan to the 2004 Trafficking in Persons Report watch list).<sup>125</sup> These international criticisms appear to have pressured the Japanese government into changing its approach in dealing with traffickers and their victims.

### *B. Recent Law Reform as Countermeasures to Human Trafficking*

In particular, the Japanese government was embarrassed by direct criticism from the United States government. Consequently, it did not take long for the government to reexamine and revise the legal system in order to prohibit human trafficking and protect the rights of victims of

---

119. According to the statistics published by the Immigration Bureau, a total of 134,879 people entered into Japan on entertainer visas in 2004: 82,741 from the Philippines, 8,277 from China, and 6,704 from the United States. DPA, *Revised Law in Japan Aimed at Fighting Human Trafficking*, DPA INT'L SERVS. IN ENGLISH, Dec. 13, 2005, at 03:45:33.

120. See *TRAFFICKING IN JAPAN*, *supra* note 5, at 36.

121. See Kitamura, *supra* note 113, at 113 (discussing the human rights implications of the Japanese Immigration Act).

122. See Tsuda, *supra* note 100.

123. See generally *TRAFFICKING IN JAPAN*, *supra* note 5.

124. See, e.g., Human Rights Watch, *OWED JUSTICE: Thai Women Trafficked into Debt Bondage in Japan* (2000), available at <http://www.hrw.org/reports/2000/japan/>.

125. 2004 TIP REPORT, *supra* note 1, at 96.

transnational organized crime.<sup>126</sup> In April 2004, the government established the Inter-Ministerial Liaison Committee (Task Force), which along with the Member Ministries/Agencies of the Task Force, has taken administrative and legislative measures.<sup>127</sup> The general description of these measures was integrated into the Comprehensive National Action Plan of Measures to Combat Trafficking in Persons (Action Plan), which was announced in December 2004.<sup>128</sup>

#### 1. Comprehensive National Action Plan

The Action Plan lists various measures to prevent trafficking in persons. These measures include the reinforcement of immigration controls, assurance of the security of travel-related documents, review of status of residence and visas for “entertainers,” countermeasures against false marriages, measures to prevent illegal employment, and measures to prevent prostitution.<sup>129</sup> These administrative measures are to be implemented as soon as possible, except for those measures dependent on budgetary constraints.

#### 2. Amendment of Laws and Regulations on Trafficking

In the area of legal reform and the advancement of international obligations, the Japanese government decided to amend the existing law concerning the punishment of trafficking in persons and to include provisions of the U.N. Protocol.

Thus, in the 2005 Diet session, various amendments of laws were passed to satisfy the minimum international standards to prevent human trafficking and to protect trafficking victims. As shown below, the amendments attach more importance to prevention than protection.<sup>130</sup>

##### a. The Penal Code

The Penal Code was amended to criminalize the conduct of buying and selling of persons, as well as transporting, transferring, and

---

126. *Exempt, supra* note 118.

127. *See* TRAFFICKING IN JAPAN, *supra* note 5, at i-ii.

128. *See* Ministry of Foreign Affairs of Japan, *Japan's Action Plan of Measures To Combat Trafficking in Persons*, [http://www.mofa.go.jp/policy/i\\_crime/people/index\\_a.html](http://www.mofa.go.jp/policy/i_crime/people/index_a.html) (last visited Apr. 14, 2006).

129. *Id.*

130. *See* Proceedings of the House of Representatives, June 7, 2005, <http://hourei.ndl.go.jp/SearchSys/> [hereinafter Proceedings].

harboring victims of kidnapping, abduction, buying, and selling.<sup>131</sup> Under the newly revised penal law, those who “purchase” people to place them under their control face imprisonment with labor for a period of three months to five years.<sup>132</sup> The maximum punishment will be increased to seven years of imprisonment with labor if the victim is a minor.<sup>133</sup> In cases of human trafficking for profit or sexual purposes, the penalty is even harsher—the prison term is one to ten years.<sup>134</sup> The person who transfers or delivers a victim of human trafficking is also criminally liable.<sup>135</sup>

Also, the Law for Punishment of Organized Crimes, Control of Crime Proceeds and Other Matters was amended to designate trafficking in persons as a predicate offense to money laundering.<sup>136</sup> This gives authorities one more tool with which to go after traffickers.

#### b. Immigration Act and Passport Law

The Immigration Act was revised to stipulate that a special status can be given to a victim of human trafficking for protection purposes, as well as to criminalize the conduct of procuring, providing, or possessing a fraudulent foreign passport for the purpose of facilitating illegal entry to Japan.<sup>137</sup> Victims of trafficking would be permitted to stay in Japan at the discretion of the Minister of Justice so they can receive social services before returning to their countries.<sup>138</sup>

In addition, the Passport Law was changed to prevent the production of forged passports, and the illegal use of passports, by embedding IC chips into them.<sup>139</sup> These amendments also criminalize the conduct of procuring, providing, or possessing a fraudulent Japanese passport.<sup>140</sup>

---

131. See KEIHŌ [PENAL CODE], Law No. 45 of 1907. On October 26, 2005, two women, one Taiwanese and one Indonesian, were arrested in Nagano on suspicion that they were trafficking an Indonesian woman for two million yen. This is the first arrest case since the introduction of the crime of trafficking in persons. The Asahi Shinbun Newspaper, October 27, 2005.

132. KEIHŌ art. 226(2) (2005).

133. *Id.* art. 226(2), para. 2.

134. *Id.* art. 226(2), para. 3.

135. *Id.* art. 226(3).

136. Law for Punishment of Organized Crime, Control of Crime Proceeds and Other Matters, Law No. 136 of 1999.

137. Immigration Act, revised by Law No. 66 of 2005, at 2(7).

138. *Id.* at 50(3).

139. Passport Law, Law No. 267 of 1951.

140. *Id.*

However, it is doubtful whether the strict control of immigration measures, like the newly introduced restriction on entertainer visas, will work. The recent trend has been for brokers to lure women in other parts of Asia by telling them they can get jobs as caregivers in Japan.<sup>141</sup> These amendments would work against that strategy.

### c. Other Laws

The Law Regulating Adult Entertainment Businesses was also revised. It now requires business owners to keep documents confirming that any foreign woman employed for “entertainment services” holds a work permit.<sup>142</sup> It also features measures to punish distributors of sex service leaflets and those who advertise sex businesses.<sup>143</sup> Violators face a fine of up to one million yen.<sup>144</sup> The revised law also contains provisions to restrain aggressive persuasion in adult entertainment districts.<sup>145</sup> This law stresses the prosecution of human traffickers rather than the protection of victims.

### 3. Conclusion of the U.N. Protocol

The Japanese government submitted the U.N. Protocol for approval in the 2005 Diet session.<sup>146</sup> The explanatory paper of the Protocol presented to the Diet described that “it is significant for Japan to conclude this protocol from the standpoint that contributes to the advancement of the international cooperation in order to combat the crime of human trafficking effectively.”<sup>147</sup> The Diet approved the conclusion of the Protocol in July 2005.<sup>148</sup> After the relevant laws are amended, the government will take the final step for its ratification.<sup>149</sup>

---

141. Japan and the Philippines agreed to let Philippine nurses and caregivers work in Japan with fewer restrictions as part of a bilateral free-trade agreement, but details are still under discussion. See Press Release, Ass’n of S.E. Asian Nations, Japan, Philippines To Begin Free-Trade Talks in Early February (Jan. 28, 2004), available at <http://www.aseansec.org/afp/19.htm>. The Japanese government submitted the bilateral agreement during the 164th Session of the Diet in 2006. See Ministry of Foreign Affairs, *Treaties To Be Submitted to the 164th Ordinary Session of the Diet*, <http://www.mofa.go.jp/policy/treaty/submit2/session164.html> (last visited Apr. 14, 2006).

142. The Law Regulating the Adult Entertainment Business, Law No. 122 of 1948.

143. *Id.*

144. *Id.*

145. *Id.*

146. Proceedings, *supra* note 130.

147. Ministry of Foreign Affairs, *Explanatory Note for the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons*, available at [http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/treaty162\\_1b.pdf](http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/treaty162_1b.pdf) (currently only available in Japanese).

148. In response to a question from an opposition member of the House of Representatives regarding the exact number of victims of human trafficking in Japan, a government official

### C. NGO Support to the Victims

Under the newly introduced Action Plan, human trafficking victims have the opportunity to receive rehabilitation, but the law does not guarantee health insurance for victims.<sup>150</sup> Thus, if victims do not have health insurance, it will be difficult for them to afford necessary medical care. The basic attitude of the Japanese government is that as long as a person's visa status is illegal, they lack the qualification for health insurance. Therefore, the opportunities for medical treatment depend upon the discretion of administrative bodies.

There are some publicly supported facilities for women in distress, such as the Women's Consulting Offices, but those facilities are regularly occupied by women victims of domestic violence.<sup>151</sup> Therefore, it is necessary to provide aid to the civic support groups for victims of human trafficking. Because these groups lack sufficient funds and personnel, they collectively formed the Japan Network Against Trafficking in Persons (JNATIP) in order to generate public support for and to draw attention to their cause.<sup>152</sup>

## V. CONCLUSION

In the combat against trafficking in persons it is said that there are Three P's: (1) prevention of the crime, (2) protection of victims, and (3) prosecution of the criminals. I do not deny the importance of these measures. However, I would like to present some points of view which are drawn from my historical analysis on the Japanese experience in human trafficking.

The Japanese experience demonstrates that the problem of trafficking in persons cannot be solved without taking measures to

---

replied that because of the secrecy of the criminal acts it is very difficult to count the exact numbers of the victims. Implementing the U.N. Protocol will have the opposite effect and help make this problem visible. Summary translation by the author from the Proceedings of the House of Representatives, on June 7, 2005. The Proceedings of the National Diet House is found at the Web site of the National Diet Library in Japan, <http://hourei.ndl.go.jp/SearchSys> (last visited Apr. 14, 2006).

149. Under article 73 of the Japanese constitution, the Cabinet has the power to conclude treaties with the prior or subsequent approval by the diet. KENPO [CONSTITUTION], art. 73.

150. See Ministry of Foreign Affairs of Japan, *supra* note 128.

151. For a showing of the low number of trafficking victims who are protected at Women's Consulting Offices, see Tbl. 3.

152. NGOs supporting victims of human trafficking are urging the government to step up measures to provide medical support and counseling to victims when they seek help at shelters and local clinics. See Tafjapan.org, About the Asia Foundation, <http://tafjapan.org/english/about.html> (last visited Apr. 14, 2006).

mitigate its underlying structural and fundamental causes. Those causes are threefold: poverty, ethnic prejudice, and the second-class status of women. Therefore, diminishing poverty, eliminating ethnic prejudice, and advancing women's status (particularly in the sending states) are three measures that ought to be adopted to eliminate the structural causes of human trafficking.

In line with these three points, the first induction from my brief analysis is that prohibiting or criminalizing the act of trafficking itself is not the final goal in the struggle against human trafficking. Throughout Japan's long history, the prohibition on trafficking in persons has always been maintained, but enforcement was too weak to overcome the problem given its widespread practice. Therefore, at times of increased poverty among the people of Japan, many impoverished women were doomed to be sold and victimized in the transnational market of human traffic. Therefore, the reduction of poverty levels among people in the sending states is more important than prohibition.<sup>153</sup> To avoid falling into a vicious cycle, it is essential to protect victims in receiving countries. Only recently has Japan taken steps in this direction. In addition to the adoption of legislative measures, the allocation of a sufficient budget for victim protection is needed. International cooperation between the states involved is also important to improve the situation.

Another cause of human trafficking is the existence of ethnic prejudice towards those Southeast Asian women engaged in the entertainment business ("*Japayuki-sai*"). Such latent prejudice among people hampers the effectiveness of protective measures. Behind the Japanese government's slow implementation of protective measures seems to be an attitude among ordinary Japanese people that these women are illegal aliens and deserve deportation. This attitude may also influence a court's judgment in cases involving the victims of human trafficking. Worse, such prejudice seems to be concealed in the routine policy of the immigration authority. For instance, the Japanese Immigration Bureau is opening an Internet site to receive anonymous tips on illegal foreign residents,<sup>154</sup> despite protests by the Japan Federation of Bar Association (JFBA)<sup>155</sup> and human rights NGOs. Law

---

153. A. Yasmine Rassam, *International Law and Contemporary Forms of Slavery: An Economic and Social Rights-Based Approach*, 23 PENN ST. INT'L L. REV. 809 (2005).

154. The Immigration Bureau's anonymous tips Web site can be found at <http://www.immi-moj.go.jp/zyouhou/index.html> (accessible only in Japanese) (last visited Apr. 14, 2006).

155. On March 17, 2005, the JFBA (the Japanese equivalent of the American Bar Association) issued a statement calling for a halt to this system because "the system encourages general citizens to perceive non-nationals as undocumented people, has an effect that intensifies the societal surveillance of such people, and promotes prejudice and discrimination that such

enforcement is certainly an important function of the state, but there should be moderate restraint by the administration, and a cautious balance crafted between this goal and the protection of human rights of foreigners. In this regard, it is the responsibility of the state to discourage such prejudice among Japanese people.<sup>156</sup>

In addition, the advancement of women's status should be a primary goal in the struggle against trafficking in persons. While, in Japanese feudal times, trafficking in persons had been superficially prohibited, the object of the prohibition did not originate from any humanitarian concern.<sup>157</sup> Even long after the modernization in the Meiji Period and notwithstanding the promulgation of the Emancipation of Prostitutes, trafficking in persons for purposes of sexual exploitation was practiced until the mid 1950s. Only after World War II did Japan abolish licensed prostitution and declare the complete nullity of a contract for indentured servitude.<sup>158</sup>

A strong influence behind most of the positive measures Japan has taken has been the concept of fundamental human rights derived from the 1947 constitution. Although the constitution itself was promulgated during the occupation by the Allied Forces, and heavily influenced by the United States, the constitution's statement of fundamental human rights remains universal.<sup>159</sup> Today, these beliefs are reflected in many international human rights instruments. Instruments such as the Universal Declaration on Human Rights, the International Covenant on Human Rights, and the Convention for the Elimination of All Forms of Discrimination Against Women apply to all persons regardless of

---

people are criminals or that they belong to groups that are the hotbed of crimes." JFBA, Opinion Statement on the System to Provide Information on the Web site of the Immigration Bureau Under the Ministry of Justice (Executive Summary) (Mar. 17, 2005) [http://www.nichibenren.or.jp/en/activities/statements/data/20050317\\_1.pdf](http://www.nichibenren.or.jp/en/activities/statements/data/20050317_1.pdf).

156. See International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195. The Convention provides, "[E]ach State Party undertakes to encourage, where appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division." *Id.*

157. MAKI, JINSHIN-BAIBAI, *supra* note 12, at 214.

158. U.S. DEP'T OF STATE, JAPAN: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (2002), available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18246.htm>.

159. The idea of human rights was first introduced in Japan before the promulgation of Meiji constitution in 1889. This provoked a wide range of discussion on the structure and contents of the constitution. However, the Meiji constitution provided the rights of man only within a limited range as prescribed by statutes. See Oda, *supra* note 50, at 25.



nationality.<sup>160</sup> Moreover, the U.N. Protocol obligates contracting States to protect victims' rights. As a contracting State to these international instruments, Japan is responsible for the protection and advancement of the status of trafficking victims regardless of their country of origin.

Table 1: The Number of Cleared Cases, Arrested Persons, and Victims<sup>161</sup>

	2002	2003	2004
Number of cleared cases	44	51	79
Number of arrested persons	28	41	58
Number of victims	55	83	77

Table 2: The Number of Prosecutions<sup>162</sup>

2002	26 offenders
2003	37 offenders
2004	48 offenders

Table 3: The Number of Victims Who Were Protected at Women's Consulting Offices<sup>163</sup>

2002	2 (2 Thais)
2003	6 (3 Thais and 3 Filipinos)
2004	24 (15 Thais, 4 Taiwanese, 3 Indonesians, 1 Colombian, 1 Korean)
2005 (as of July 1st)	29 (27 Filipinos, 1 Thai, 1 Korean)

---

160. Japan is a contracting party to each of these instruments. *See supra* note 10 and accompanying text.

161. Ministry of Foreign Affairs, The Recent Actions Japan Has Taken To Combat TIP (Aug. 26, 2005), [http://www.mofa.go.jp/policy/i\\_crime/people/action0508.html](http://www.mofa.go.jp/policy/i_crime/people/action0508.html).

162. *Id.*

163. *Id.*