

基調講演録

The Women's International War Crimes Tribunal —civil society's reframing of the search for justice

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本稿は「日本軍性奴隷制を裁く—2000年女性国際戦犯法廷」(以下、女性国際戦犯法廷)20周年を記念して開催された国際シンポジウム「女性国際戦犯法廷の判決／証言を未来にどう活かすか〜いまこそ性暴力不処罰と植民地主義を断ち切るために〜」(主催：女性国際戦犯法廷20周年実行委員会、後援：PRIME、2020年12月12日にオンラインにて開催)の基調講演「女性国際戦犯法廷 市民社会の正義の追求を再定義する」の英語原文である。講演者のウスティニア・ドルゴポル氏は南オーストラリア州・フリンダース大学国際法准教授として在職中の国際法学者であり、2000年の女性国際戦犯法廷では主席検事を務めた。掲載を快く許可して下さったドルゴポル氏並びに女性国際戦犯法廷20周年実行委員会に感謝する。なお、本講演の日本語訳は女性国際戦犯法廷20周年実行委員会編、金富子・梁澄子・岡本有佳・石田凌太責任編集『日本軍政奴隷制を裁く 女性国際戦犯法廷20年 判決／証言をどう活かすか』(世織書房、2021年)に、抄訳は『バウラック通信』第18・19号(VAWW RAC, 2021年8月)に掲載されている。あわせて参照されたい。

It is my great pleasure to be part of this global virtual conference. I would like to commend the organisers for deciding to move forward with this celebration in honour of the 20th anniversary of the Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery. It could not have been technologically easy to bring together the array of speakers as well as the intended audience in a manner that captures both the importance of the Tribunal itself as well as the necessity of continuing the struggle against the violence that is perpetuated against women during armed conflict.

I have been asked to discuss both the historical significance of the Tribunal in terms of its focus on the nature of the crimes committed against the women as well as its utilisation of the law to demonstrate that military and political figures in Japan, including the Emperor, were responsible for the gendered crimes that occurred during WW II. In addition the organisers indicated that given the present global dialogue around Black Lives Matter and the #MeToo

movement it would be useful to draw parallels with the movements in the Asia-Pacific region that helped to make the position of the 'Comfort Women' a matter of global concern and which brought about the Tribunal. Quite clearly this movement is not over. Many organisations and individuals continue to work on the issue and you would not be participating in this virtual conference if the historical impact of the 'Comfort Women' system and civil societies response to it were not of ongoing significance.

One important factor that should never be overlooked is that the civil society efforts behind the 'Comfort Women' issue were the result of an Asian women's movement that sought to correct an historical injustice as well as influence the content of international humanitarian and international criminal law. Over the years I have written a number of articles and book chapters about the Tribunal and have stressed in each of them the importance of the Asian women's rights activists who made the issue of the 'Comfort Women' one of global concern. I will return to this point later in my talk.

As the Tribunal would not have taken place without such a movement, it seems to me that in understanding the Tribunal it is better to start with the role of civil society in uncovering the evidence that persuaded the international community that the failure to address the crimes committed against the 'Comfort Women' highlighted a serious gap in the application of international humanitarian law, required full redress by the government of Japan, and demonstrated the manner in which gendered investigations and prosecutions leave a legacy of pain and injustice for victims.

Parallels between the Comfort Women movement and Contemporary Mass Movements

As all of you participating in the conference would be aware too often domestic and international justice systems fail women. Often the legislative list of crimes does not specify the myriad ways in which women can experience rape, torture, sexual assault and sexual harassment. This problem is then exacerbated by rules of evidence and procedure that do not give sufficient attention to the emotional well-being of victims and survivors. And finally, the decisions of prosecutors are influenced by their own biases which often result in gendered crimes being downplayed.⁽¹⁾

There is little doubt that the Allied Nations knew about the creation of the 'comfort' stations and the treatment of the women forced to live in those stations. Researchers located Allied documents showing the extent of their knowledge about the system as well as their knowledge of the treatment the women had had to endure. After the war newspapers had headlines about the 'comfort' stations and several novels written in the early 1950s referred to women being taken against their will and being systematically raped. However this wholesale atrocity was not addressed in a significant manner at the International Military Tribunal for the Far East (IMTFE) or at the class B trials held by individual Allied Nations.⁽²⁾ This had long term physical and psychological consequences for the women.

Sadly we have not progressed as far as many women's rights activists of the 1960s and 70s had hoped. One of the issues being raised by those responding to the #MeToo is the sense of shame they feel which contributes to their ongoing fear of discussing what happened to them. They worry that they will be judged by others as somehow having contributed to becoming a victim of a crime.⁽³⁾ On a positive note it appears that some women have been encouraged by responses to their posts and have found the courage to report the crimes of sexual violence committed against them.⁽⁴⁾

A similar newfound courage followed the first serious public attempts in Korea to document what had happened to women taken by the Japanese military and forced into sexual slavery. There are varying accounts of why South

Korean researchers became interested in the issue of the 'Comfort Women.'⁽⁵⁾ What we do know is that following the accumulation of documentary evidence there was a call out for women who had experienced the 'Comfort Women' system to come forward so that the history of this period could be better understood. Luckily several women did come forward. Their courage in doing so should not be underestimated. None of those who chose to speak out could have been sure of the reaction they would receive from their societies. And, of course, they could not assume that any action would be taken on their behalf to relieve their lifelong suffering.

Within a short time it became clear that the 'Comfort Women' system had affected women and girls throughout the Asia-Pacific region. Women from around the region began to speak about the horrific nature of what they had endured. Given the numbers of women coming forward and the overwhelming support they received from their societies it was not long before the international community began to focus on the issue. Although I am not a national of any of the countries in the Asia-Pacific region, it seems to me that there is a connection between the rise of a strong women's rights movement in many parts of the region and this matter becoming one of both regional and global concern.

For me one of the lasting legacies of this movement is the way a grassroots effort became a crucial player in the global women's rights movement. This was an Asian issue that was documented primarily by Asian women and men who worked tirelessly and usually without pay. Survivors and activists travelled the globe to raise awareness of the issue and to press for Japan to be made responsible for the crimes it had inflicted on hundreds of thousands of women. There are several reasons why this is important. The Global human rights movement continues to be North American and European centric. Much of the information that flows into the press about human rights concerns emanates from organisations which have their headquarters in the United States or parts of Europe. I am not disparaging these organisations. There is no doubt that the access these groups have to the global media and to various inter-governmental human rights organisations can be extremely helpful when trying to gain attention for serious human rights violations. However, the ability of grass roots organisations to gain strength and influence in their own right should not be underplayed or forgotten.

A second reason for highlighting this is the media's ability to overlook the important role played by minority women and people of colour in creating mass movements. It was a woman of colour who first coined the phrase #MeToo. Tarana Burke used the phrase 'to encourage Black and Hispanic girls and later women victimized by sexual misconduct to come forward with their experiences in a protected context of support...'⁽⁶⁾ Whilst the utilisation of the #MeToo space by celebrities has assisted in raising the public's awareness about the extent of rape and sexual assault in all of our societies, it is also true that a few high profile legal cases in the United States will not resolve entrenched societal problems in each of our countries. There is a continuing need for women and men to speak out about the utilisation of power to infringe on the dignity of women particularly through the use of sexual acts that are meant to deny women's autonomy. The power of the #MeToo movement will be lost if over time there is not a significant increase in the reporting of sexual violence. Perhaps more importantly the movement will not have succeeded in its goals if the power dynamics at play in each of our societies that continue to hinder women's ability to achieve true equality are not tackled. And this is where everyone in the audience especially the younger members of the audience have a role to play. Even the smallest act of calling out either blatant or subtle forms of discrimination and sexual assault can have an impact.

Fundamental change comes about through the sustained questioning of existing power-structures. It requires a huge effort by large numbers of people. Those of you who have followed the Black Lives Matter movement will know that the aim of this grassroots organisation is to focus on the systematic way in which Black people experience violence

at the hands of the state. Although much of the media attention is focused on the killing of Black men and women by police the aims of the organisation go further than calling out police violence. One aim is helping to establish local centres of power that can respond to the needs of local communities.⁽⁷⁾ It's overarching goal is to seek social, economic, and political equality for Black people globally.⁽⁸⁾ It continues to build international networks and celebrates the work of both Black and Indigenous people seeking freedom and justice.⁽⁹⁾

There is a similarity between the Black Lives Matter de-centralised method of operating and the way in which the various national groups working on the 'Comfort Women' issue functioned. Each group was able to utilise aspects of its own cultural context to bring the women together and to give them the support necessary to speak out about their experiences. By operating in this de-centralised manner each group was able to find ways of empowering the women so that they saw themselves as being in control of their stories and of their search for justice. These local efforts were the backbone of the work that was then undertaken by some individuals to engage with the international community.

In addition to the grassroots activists there were a range of professional groups and academics who played crucial roles in unearthing the evidence that convinced various international bodies that Japan should be asked to make full restitution to the women and to offer a full and unconditional apology. During the 1980s I worked in Geneva for the International Commission of Jurists and it became clear to me early in my work that those who offered accurate information and were deemed trustworthy were able to have the greatest influence over the work of the various United Nations human rights bodies.

The motivation to seek justice and to bring about societal change is a profound inspiration for many actors. When I first became involved in the 'Comfort Women' issue, I had the privilege of interviewing more than 20 of the women. A significant number said to me that one of the factors that contributed to their decision to come forward was the conflict in the Former Yugoslavia. Media reports were replete with the manner in which sexual violence was being used as a weapon of war. The women were shocked that the atrocities they had had to withstand were being repeated once again. They believed that by sharing their stories particularly emphasising the way in which their experiences had had such a profound negative impact on them through the entire course of their lives had the possibility of influencing discussions about punishment for the Yugoslav perpetrators and the way in which the global community handled its response to such crimes. Almost all of the women were aware that their suffering had not led to the punishment of military and political figures for the crimes perpetrated against them.

As groups focussing on the 'Comfort Women' issue began to form it was clear that some of the women were developing a sense of power that they had not felt previously. Over time they realised that by making their pain public they had the ability to influence discussions on human rights in general as well as the development of international law. The importance of creating a space for many voices and to ensuring that power is shared amongst groups and individuals wanting to bring about social change is a method of working the 'Comfort Women' movement shares with the Black Lives Matter movement.⁽¹⁰⁾

The 'Comfort Women' movement has gained phenomenal success in garnering international support. Due to time constraints I have put several examples of their success in a footnote.⁽¹¹⁾ The extraordinary depth of information that flowed from the Tribunal no doubt had an influence on the growth in reactions to Japan's failure to address the issue satisfactorily. United Nations treaty bodies have called on Japan to apologise and to undertake the full suite measures necessary to comply with its international obligations in respect of restitution and reparations. In addition numerous national and state parliaments as well as city councils have called on Japan to acknowledge its wrongdoing and to make

adequate restitution.⁽¹²⁾

Why a People's Tribunal

Throughout the 1990s various groups in Japan, Korea and the Philippines had held public meetings, symposia and conferences which were well attended and often had speakers of international repute. Despite public support for Japanese accountability within Japan and the repeated calls by the international community⁽¹³⁾ for Japan to apologise and to take other affirmative steps towards making restitution, a view developed among concerned individuals and civil society organisations that the government would never deal adequately with the harms the women had suffered.

The suggestion that a tribunal be held, and that specific military figures be named was first put forward at a seminar on violence against women held in Tokyo during November 1997.⁽¹⁴⁾ All of those present agreed that the format should differ from the various public hearings and seminars that had taken place in Tokyo and Seoul until that point in time. Most of those consisted of a few women coming forward to tell their stories with academics and activists commenting on the situation. The work being undertaken on the Rome Statute influenced the manner in which the tribunal was approached, that is that there should be evidence which would establish the responsibility of individual military officials for the crimes committed against the women and that findings should be made with respect to the obligation of the government of Japan to make reparations to the women. After extensive consultations with the women a decision was made to hold a people's tribunal which would resemble as closely as possible a formal judicial process. This meant putting forward the type of evidence that would be admissible in court and relying on arguments that utilise clear norms of international law. For the judges the process required that they offer a substantive analysis of the facts and the law, The organisations that took on the coordinating role were: The Korean council for Women drafted into Military Sexual Slavery, ASCENT and VAW-Net Japan. Representatives from China, Indonesia, North Korea and Taiwan quickly joined the steering committee and in mid-2000 representatives from East Timor began to participate in the organisation of the tribunal. Eventually the situation of Malay and Dutch women was included in the list of issues to be addressed by the Tribunal.

I would like to acknowledge here the extraordinary efforts that were undertaken by each of the national groups to find documentary evidence that would identify specific commanders and the location of the former 'comfort' stations. Hundreds of pages of documents were collected. The women who were to testify were offered emotional support prior to and at the time of the Tribunal. Many of the women gave their testimony via video. (The size of Kudan Kaikan Hall meant that 1500 attendees could be expected, and it was believed that this could be intimidating for some of the women.) Each day the third tier of the hall was filled with media personnel and throughout the Tribunal many of the women were interviewed by print, radio and TV journalists. I believe that one of the reasons the Tribunal received such an extensive amount of publicity was the evidence that was being introduced and the solemnity with which the proceedings were taking place.

The Tribunal also took evidence from several expert witnesses. Their evidence covered issues such as the organisation of the Japanese military; the content of documents concerning the Comfort System found in government archives; the structure of the Japanese government during the war, including the powers exercised by the Emperor; the incidence and effect of trauma on victims of mass rape; and the applicable rules of international law applying at the close of World

War II including the possibility of compensation for harm. Two former Japanese soldiers agreed to come forward to tell of their involvement in and experiences of the 'comfort' system.

One of the criticisms often lodged against Peoples' Tribunals is that they are biased, that is those who participate have reached a conclusion about the major issues being litigated prior the holding of the particular Tribunal.⁽¹⁵⁾ This however was not a criticism that had serious foundation with respect to the Tokyo Women's Tribunal as the government of Japan had acknowledged its responsibility for the commission of atrocities in the San Francisco Peace Treaty.⁽¹⁶⁾

As it is possible that some of you may not be familiar with the concept of people's tribunals I will say a few words about their use through the past sixty years. '[O]ver eighty international peoples' or citizens' tribunals' have been held since the 1960s.⁽¹⁷⁾ The scope of the issues covered in these tribunals has varied considerably from the war in Vietnam, to water disputes in Latin America, to the role of transnational corporations in encouraging or being complicit in violations of human rights.⁽¹⁸⁾ The vast majority of such efforts have included a discussion of and attempts at applying various norms of international law. Some of the tribunals have come about because there is 'a perceived gap in official structures of accountability'.⁽¹⁹⁾ Often they are organised out of a belief that international mechanisms for egregious violations of human rights norms, some of which may amount to crimes against humanity, will not be considered or condemned by the international community.⁽²⁰⁾

Certainly one of the most famous tribunals, the Russell Tribunals would appear to have originated from concerns about the manner in which the United States was conducting warfare in Vietnam⁽²¹⁾ and the belief that government and military officials would not be held accountable either within the United States or by an international tribunal convened through the United Nations. This is also true of the more recent World Tribunal on Iraq.⁽²²⁾ To some onlookers these tribunals might be deemed to have a 'political' bent, yet it is also the case that they engage with established norms of international humanitarian and human rights law.

The Iran Tribunal held in 2013 had similar although not identical aims to the Tokyo Women's Tribunal. The organisers were members of the Iranian diaspora who had been subjected to serious violations of their human rights such as torture, murder and rape as political prisoners in Iran during the 1980s.⁽²³⁾ A substantial effort was made to ensure that families and survivors of political prisoners of all persuasions would participate.

An Iranian commentator made this observation about the participants:

[T]hey were left feeling abandoned by the law and legal mechanisms. ... [Participants] considered the Iran Tribunal to be a manifestation of justice where justice had for so long been refused to them, by the Iranian government, by their diaspora host states, and by the higher international legal authorities.⁽²⁴⁾

This sentiment mirrors to a great extent the way the 'Comfort Women' felt about the various trials that took place following WWII. Many of the women believed, and for the most part rightly, that the International Military Tribunal for the Far East had not considered the crimes that could have been charged in relation to the 'comfort' stations. As I noted earlier the Allies had amassed substantial documentation about the 'comfort' stations. In addition they were aware of the rampant sexual violence that had taken place in various areas that were occupied by the Japanese Military. Only a fraction of this material was put before the IMTFE. One commentator has noted that this failure to deal with the crimes of sexual slavery and rape created a 'memory of injustice'.⁽²⁵⁾

The philosophy underpinning peoples' tribunals was discussed at paras 63–69 of the Judgement. Of critical im-

portance is the fact that sovereignty is not an attribute belonging to a state alone. It is connected to the sovereign will of the people. States have obligations to their populations as well as to the international community at large to take steps to rectify past wrongs. The Judges accepted the argument of the Prosecutors that ‘sovereignty ultimate resides in the people of each state and territory’ and therefore bringing proceedings in the name of the Prosecutors and the Peoples of the Asia Pacific Region was justified.⁽²⁶⁾

At this point I would like to turn to some aspects of the Judgment including the section which finds the Emperor of Japan responsible for war crimes and crimes against humanity.

The Judgment of the Tribunal

The Women’s International War Crimes Tribunal considered both the criminal responsibility of political and military leaders as well as the state responsibility of the Government of Japan. The question of state responsibility has sometimes been overlooked on commentary about the tribunal. Given the ongoing failure of Japan to address the women’s call for a full and frank apology as well as other measures of restitution this aspect of the Judgment is of equal importance to the findings on criminal responsibility. The Judges observed:

Article 4 of the Charter recognises that international wrongs committed by Japan arise both from the original crimes against humanity and from its subsequent failures to repair them as required by international law. The international wrongs include discrimination, concealment or failure to find and disclose the truth concerning international crimes, failure to prosecute and provide reparations, failure to take measures to protect the integrity, well-being, and dignity of the human person, and failure to take the necessary measures to prevent recurrence.

The Judgment sets out the specific violations of international law that give rise to state responsibility on the part of Japan. I have listed these violations in a footnote.⁽²⁷⁾

Crucial to a finding of state responsibility is the idea that an organ of the state committed the wrongful conduct or that there was or ought to have been a level of knowledge or control such that the behaviour should not have occurred. Having before them the testimonies of two distinguished professors the Judges concluded that the system of administration at the time the ‘comfort’ stations were established and maintained ‘facilitated the egregious violations of international law.’ They then went on to find ‘the chains of command linked officers in the field supervising the provisioning and operation of military “comfort’ stations” to the highest echelons of the War and Foreign Ministries and to the Emperor himself, where the establishment of the “comfort station system” was sanctioned, organised and/or managed.’⁽²⁸⁾

In addition to its responsibility for the violations that occurred during WWII the Judges concluded that Japan is responsible for continuing violations of international law. The judges referred to the ‘obligation of the state to acknowledge and disclose the truth of crimes against humanity and war crimes.’ The obligation requires a state ‘to declassify information concerning past wrongs and provide means for its preservation, analysis and accessibility to the public, both lay and scholarly.’⁽²⁹⁾ Clearly the government of Japan has not made a serious effort to declassify or retrieve information and, of course, we are all aware that the government intentionally destroyed documents at the close of the war. Evidence before the Tribunal indicted that Japan continued to conceal documentary evidence that would demonstrate

the involvement of civilian and military personnel in the Comfort System.⁽³⁰⁾

This continuing violation of international law is relevant to efforts of those who have been attempting to have records associated with the 'Comfort Women' system included in the UNESCO Memory of the World register. Japan has allowed powerful groups to contest the inclusion of those documents. These groups have made assertions about the 'Comfort Women' system that are untrue and would suggest there was limited involvement of its civilian and military authorities in the creation and maintenance of the 'Comfort Women' system. This tacit support for these efforts is itself another continuing violation of its responsibilities and should be condemned by all groups working on this issue.

I do not have time today to discuss the specific issue of reparations. However, I would recommend that those who work on this issue re-read the section of the Judgment that discusses the right to reparations. Criminal responsibility is aimed at the perpetrators. Whilst it is important for survivors to know that those responsible for the rapes and torture they suffered are considered to be criminals by the international community, this finding alone does not address the ongoing needs of survivors. Over the past several decades many countries have established funds for the Victims of Crime. This development in our thinking about the rights of victims was reflected when the Statute for the International Criminal Court was established. Article 75 of the Rome Statute⁽³¹⁾ states that the Court 'shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Funding reparations may come from the convicted person or from the Trust Fund created under Article 79.⁽³²⁾

As noted above Japan's failure to adhere to the law of state responsibility is one of the reasons that various United Nations bodies have called on it to make adequate reparations to the 'Comfort Women'. Its failure to do so was cited in 2010 by the Special Rapporteur on Violence against women in her commentary on the gendered aspects of reparations. The example she uses of the 'traditional neglect of women in the reparations domain' is 'the largely unsuccessful movement for reparations for the ... "Comfort Women".⁽³³⁾

Utilising this aspect of the Judgement would continue to make the 'Comfort Women' movement part of the global movement calling for the utilisation of a gender analysis of the application of international norms focused on reparations. Little attention has been given to this issue despite the fact that women are often the targets of violence during conflict and often 'bear the brunt of the consequences of violence' to their communities.⁽³⁴⁾ The Special Rapporteur's observations about the necessity to reach out to women, instilling a sense of agency in woman affected by conflict, the procedural aspects associated with reparations and the necessity of linking reparations to community education 'including attempts to subvert cultural understandings around the value of women's purity and sexuality'⁽³⁵⁾ mirror the consideration of the reparations issue in the Judgment of the Tokyo Women's Tribunal.

Accountability of Emperor Hirohito

As everyone attending this conference is aware, Emperor Hirohito was not tried after WWII. The decision was made by the Allied forces, with strong pressure being exerted by the United States, not to bring him to trial as the Allies feared that there would be civil unrest if he were to be charged. I am not in a position to comment on the accuracy of that belief. What is clear is that the failure to hold the Emperor accountable was not looked upon favourably by countries within the region. And it certainly is the view of the 'Comfort Women' that he as commander of the Japanese military should have borne responsibility for the atrocities committed in his name by the Japanese armed forces.

Because of the Women's desire to have the rules of international humanitarian law applied to him those designing the Charter for the Tribunal gave the judges the authority to rule on the Emperor's criminal responsibility. The judges agreed that international law by the end of the 1940s had evolved sufficiently to allow for the trial of a head of state. Those of you not familiar with international law may not be aware that for many centuries it had been the view that heads of states being the embodiment of the sovereignty of their countries could not be brought to trial. That view was tested during WWI and many of the victorious nations wanted to try the Kaiser (Emperor). Such a trial did not take place but debates about the limits of Head of State immunity became more frequent. There were suggestions by the WWII Allies that would try the leaders of the axis powers after the war but, as we know, such trials did not take place.

Because of these debates the Judges of the Tribunal had to determine whether or not international law had developed to the stage where heads of state were not immune from criminal proceedings. Although it was the case that international law had moved forward on this issue by the time the Tribunal was taking place, the principles set out in case law and the Rome Statute could not be applied retrospectively.⁽³⁶⁾

The judges found that the only possible conclusions to be drawn from the evidence before the Tribunal were that Hirohito either knew or should have known of the atrocities associated with the 'comfort' stations and that he had the power to end the 'Comfort Women' system. Summarising the evidence before them they stated:

The documented atrocities committed by the soldiers provide incontrovertible evidence that the Japanese military cultivated a culture of oppression and violence, including sexual violence, against both women and men. The evidence before us demonstrates that the "comfort system" was a cruel reflection and systematic extension of this culture, visited principally upon women who were treated as inferior and expendable by virtue of their gender, ethnicity, poverty, and subordinated status.⁽³⁷⁾

...

The scale of the "comfort system" was so enormous, the conditions so inhumane, and the operations so consistent, that no other conclusion can be reached but that the highest level political and military officials must have known of the criminal nature of the system which they set in motion and sustained. Indeed, a system so vast required the planning and knowing participation of a large number of actors at all levels of the hierarchy.⁽³⁸⁾

Given the widespread nature of the atrocities it was impossible to avoid a conclusion that those with command responsibility were aware of them or at a minimum showed an intent to avoid receiving information that would have given them knowledge of the particular events taking place. Further, whether he knew or should have known about the vast scale of abuses taking place at the 'comfort' stations the Emperor was obliged to end the comfort system.

The Judges firmly rejected the idea that the Emperor was a mere figurehead. Evidence put before the Tribunal by various experts as well as a statement made in 2000 by his youngest brother (Prince Mikasa) made it clear that the Emperor was kept informed of events by various military commanders as well as his brother. It was well known that the Emperor was concerned about the way in which the foreign media were portraying the behaviour of Japanese Troops.^{(39) (40)}

Throughout the time I have worked on this issue it has been impossible for me to fathom how politicians and commentators in Japan can continue to deny the state's responsibility for the comfort system. It is not conceivable that anyone could believe that a system which was so widespread, that imprisoned women from so many nationalities and which involved members of the military in the construction of buildings and the movement of women from one

country to another was the outcome of a private effort. Why would a system unconnected to the military be subject to detailed military regulations that specified days and times available to each military rank, the necessity for health checks and the amounts to be charged to each soldier? The enormity of the efforts required to establish and maintain the comfort system were apparent to the Allies. As much as one can criticise the Allied reports for their description of the women, the fact that they believed it necessary to gather information about the comfort system demonstrates just how integral it was to Japan's war effort.⁽⁴¹⁾ As the judges noted:

it is impossible to believe, given our findings regarding the urgency, extensiveness, logistical complexity and expense, and involvement of the highest level ministry and military officials in various aspects of the process, that HIROHITO was ignorant of the existence of the "comfort system" or was impotent to protest its activities.⁽⁴²⁾

Conclusion

In closing, I would like to urge each of you to become involved, even in a small way, in the ongoing struggle for women's equality. This includes the right of girls and women to be free from sexual violence. For some of you this may mean engaging with the #MeToo Movement, the Black Lives Matter movement or a similar contemporary grassroots effort to promote human rights. For others it might mean joining the ongoing efforts to hold Japan fully accountable for its failure to live up to its human rights obligations, including its refusal to accept and address fully and honestly its responsibility for the crimes committed against the Comfort Women. The best method of showing solidarity with the Comfort Women is to decry injustice.

Thank you

Notes

- (1) Tina Dolgopol 'A role for the Rome Statute system in gender-focused reform of criminal laws and procedures in the Pacific Islands', (2012) 18(2)*Australian Journal of Human Rights* 109–137.
- (2) For a discussion of the International Military Tribunal for the Far East and the Class B trials held by the Allies see Yuki Tanaka, Tim McCormack and Gerry Simpson, (eds) *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited* (Martinus Nijhoff Publishers 2011).
- (3) Kaitlyn Mendes, Jessica Ringrose, Jessalynn Keller, 'MeToo and the promise and pitfalls of challenging rape culture through digital feminist activism', (2018) 25(2) *European Journal of Women's Studies* 236–246 at 237–38.
- (4) *Id.*
- (5) Ustina Dolgopol and Snehal Paranjape, *Comfort Women, an Unfinished Ordeal* (ICJ 1994). Although Japanese and Korean scholars were aware of the 'Comfort' women system prior to the late 1980s, significant efforts on behalf of the Korean women forced into the system had to await the return to democracy in South Korea. See Christine Lévy, 'Le Tribunal international des femmes de Tokyo en 2000. Une réponse féministe au révisionnisme?' (2014) *Clio: Femmes, Genre, Histoire*, No. 39, *Les lois genrées de la guerre*, pp. 129–150 at 132–32.
- (6) Camille Gibson, Shannon Davenport, Tina Fowler, Collette B. Harris, Melanie Prudhomme, Serita Whiting and Sherri Simmons-Horton, 'Understanding the 2017 "Me Too" Movement's Timing', (2019) 43(2) *Humanity & Society* 217 at 219.

- (7) Celebrating Four Years of Black Lives Matter, report available at:
<https://drive.google.com/file/d/0B0pJEXffvS0uOHdJREJnZ2JJYTA/view>.
- (8) Id at 28.
- (9) Celebrating Four Years of Black Lives Matter at 8.
- (10) Russell Rickford, 'Black Lives Matter: Toward a Modern Practice of Mass Struggle', (2015) Vol. 25(1) *New Labor Forum* 34-42.
- (11) The International Commission of Jurists issued a major report on the 'Comfort Women' system (Ustina Dolgopol and Snehal Paranjape, *Comfort Women, an Unfinished Ordeal* (ICJ 1994) which received substantial publicity in the international media, two United Nations representatives undertook major reports and called on Japan to acknowledge its responsibility to the 'Comfort' Women (Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, Report on the mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the issue of military sexual slavery in wartime, E/CN.4/1996/53/Add.1; Final Report submitted by Ms Gay J. McDougall, Rapporteur, Systematic rape, sexual slavery and slavery-like practices during armed conflict, Appendix: An analysis of the legal liability of the Government of Japan for "comfort women stations" established during the Second World War, E/CN.4/Sub.2/1998/13) and the International Labour Organisation began to call on Japan to make adequate reparations. The Women's Active Museum on War and Peace contains references to these documents. and the In addition, the International Committee of the Red Cross and its national affiliates invited a number of the women to speak at various events it organised to highlight the issue of sexual violence during armed conflict. The same was true of Amnesty International.
- (12) The Women's Active Museum on War and Peace maintains a comprehensive list of the various resolutions. <https://wam-peace.org/en/ianfu-mondai>
- (13) The report of the International Commission of Jurists (Dolgopol and Paranjape, *Comfort Women, supra* received a significant amount of media attention and was referred to extensively in the reports to the then UN Commission on Human Rights (Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, Report on the mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the issue of military sexual slavery in wartime, E/CN.4/1996/53/Add.1.) and its then Subcommission on Prevention of Discrimination and Protection of Minorities (Final Report submitted by Ms Gay J. McDougall, Special Rapporteur, Systematic rape, sexual slavery and slavery-like practices during armed conflict, Appendix: Appendix: An analysis of the legal liability of the Government of Japan for "comfort women stations" established during the Second World War, E/CN.4/Sub.2/1998/13).
- (14) International Conference on Violence Against Women in War and Armed Conflict Situations, Tokyo November 1997.
- (15) Craig Borowiak, 'The World Tribunal on Iraq: Citizens' Tribunals and the Struggle for Accountability', (2008) 30(2) *New Political Science* 161.
- (16) San Francisco Treaty of Peace, 136 UNTS 45, Article 11.
- (17) Gabrielle Simm and Andrew Byrnes, 'International Peoples' Tribunals in Asia: Political Theatre, Juridical Farce, or Meaningful Intervention?', (2014) 4 *Asian Journal of International Law* 103, at 104.
- (18) Craig Borowiak, *supra*.
- (19) Simm and Byrnes, 'International Peoples' Tribunals', *supra* at 103.
- (20) Borowiak, 'The World Tribunal on Iraq, *supra* at 162-65.
- (21) Andrew Byrnes and Gabrielle Simm, 'Peoples' Tribunals, International Law and the Use of Force', (2013) *UNSW Law Journal*, 711 at 726-27.
- (22) Craig Borowiak, *supra*; Ayça Çubukçu, 'On Cosmopolitan Occupations', (2011) 13 (3) *Interventions: International Journal of Postcolonial Studies* 422.
- (23) Information about the Iran Tribunal as well as videos from its proceedings can be accessed at:

- <http://www.irantribunal.com/index.php/en/30-about-us/373-about-iran-tribunal>. See also, Crime and Impunity, Sexual Torture of Women in Islamic Republic Prisons (Justice for Iran 2012).
- (24) Pardis Shafafi, ‘The Iran Tribunal: defying international silence, Open Democracy, available at: <https://www.opendemocracy.net/opensecurity-projects/states-of-impunity#Peoples-Tribunals>
 - (25) Nicola Henry, ‘Memory of an Injustice: the “Comfort Women” and the Legacy of the Tokyo Trial’, (2013) 37 (3) *Asian Studies Review* 362.
 - (26) The Prosecutors and the Peoples of the Asia-Pacific Region v Hirohito *et al* and the Government of Japan (PT 2000-1-T) (corrected 31 January 2001) available at: <http://www1.jca.apc.org/vaww-net-japan/english/womenstribunal2000/Judgement.pdf>. at paras 63–74.
 - (27) The 1907 Hague Convention Respecting the Laws and Customs of War on Land, The 1921 International Convention for the Suppression of the Traffic in Women and Children, 1929 Geneva Convention, 1930 International Labour Organization Convention Concerning Forced Labour, Enslavement and Sexual Slavery and norms focused on non-discrimination. Each of these treaties, conventions and norms are discussed at paras 914-929 of the Judgement. The Prosecutors and the Peoples of the Asia-Pacific Region v Hirohito *et al* and the Government of Japan (PT 2000-1-T).
 - (28) J The Prosecutors and the Peoples of the Asia-Pacific Region v Hirohito *et al* and the Government of Japan (PT 2000-1-T) *supra* at para 934
 - (29) The Prosecutors and the Peoples of the Asia-Pacific Region v Hirohito *et al* and the Government of Japan (PT 2000-1-T) *supra* at para942
 - (30) The Prosecutors and the Peoples of the Asia-Pacific Region v Hirohito *et al* and the Government of Japan (PT 2000-1-T) *supra* at para 952.
 - (31) Rome Statute of the International Criminal Court, opened for signature 17 July 1998, entered into force 1 July 2002, 2187 UNTS 90.
 - (32) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), Entry into force: 7 December 1979
 - (33) Rashida Manjoo, Special Rapporteur on violence against women, its causes and consequences, A/HRC/14/22 (23 April 2010) at para 25.
 - (34) *Id* at para 25. See also, Judith Gardam, Michelle Jarvis, ‘Women and Armed Conflict: The International Response to the Beijing Platform for Action, (2000-2001) 32 *Colum. Hum Rts. L. Rev* 1
 - (35) Rashida Manjoo, Special Rapporteur on violence against women at para 50.
 - (36) I would note that the Pinochet case (*R v Bow Street Stipendiary Magistrate and ors ex p Pinochet Urgarte* (No 3) [1999] UKHL 17; [1999] 2 WLR 827 (HL) [*Pinochet* No 3]) made a crucial contribution to the law in this area by finding that acts of torture could never be considered an official function of a head of state. This inevitably means that they cannot claim head of state immunity for such acts. Also by the time the Tribunal was taking place the Rome Statute had been adopted and it included provisions which made it clear that the status of being Head of State was irrelevant to the Court’s ability to try someone for crimes within its jurisdiction. (Article 27) It also made clear that commanders and superiors could be tried for their failure to exercise control over their armed forces where they knew or should have known that war crimes and crimes against humanity were being committed.(Article 28).
 - (37) The Prosecutors and the Peoples of the Asia-Pacific Region v Hirohito *et al* and the Government of Japan (PT 2000-1-T) *supra* at para 782.
 - (38) The Prosecutors and the Peoples of the Asia-Pacific Region v Hirohito *et al* and the Government of Japan (PT 2000-1-T) *supra* at para 794.
 - (39) The Prosecutors and the Peoples of the Asia-Pacific Region v Hirohito *et al* and the Government of Japan (PT 2000-1-T) *supra* at para 823.
 - (40) Although not cited by the Judges evidence before the IMTFE included material from foreign citizens living in China

who were members of the International Committee for the Nanking safety zone which included information about the rapes of Chinese women. This information was relayed to the Foreign Office in Tokyo. Timothy Brook, *The Tokyo Judgement and the Rape of Nanking*, (2001) 60 (3) *The Journal of Asian Studies* 673 at 683. See Judgement at 823 for a discussion of Ishii Itaro, the Chief of the East Asia section of the Ministry of Foreign Affairs who received information from the International Committee. Itaro was tried before the IMTFE.

- (41) A brief overview of the Allied documents describing the extensive nature of the comfort women system is set out in Ustinia Dolgopol, 'Knowledge and responsibility: The Ongoing Consequences of Failing to give Sufficient Attention to the Crimes against the Comfort Women in the Tokyo Trial' in Yuki Tanaka, Tim McCormack and Gerry Simpson (eds.), *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited* (Martinus Nijhoff, 2011) 252-54; see also *The Prosecutors and the Peoples of the Asia-Pacific Region v Hirohito et al and the Government of Japan* (PT 2000-1-T) *supra* at para, paras. 99-108.
- (42) *The Prosecutors and the Peoples of the Asia-Pacific Region v Hirohito et al and the Government of Japan* (PT 2000-1-T) *supra* at para 830.