How Did The Final Judgment, Handed Down At The Hague, Adjudicate The Issue Of The “Comfort Women”?

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The Women’s International War Crimes Tribunal As A Landmark Event In Post-War Japanese Thought

The Women’s International War Crimes Tribunal, held in Tokyo in December 2000, found Emperor Hirohito guilty, and the Japanese government to have incurred state responsibility regarding the “comfort women” system.

The Final Judgment, handed down one year later in The Hague, considered the rest of the nine defendants, excluding the Emperor, who were charged with responsibility for the “comfort woman” system. The tribunal also tried Emperor Hirohito and Tomoyuki Yamashita for additional charges in connection with the mass rape of Mapanique. As a result, all nine accused were found guilty of rape and sexual slavery as crimes against humanity. Furthermore, regarding the mass rape of Mapanique, Yamashita was found guilty of crimes against humanity, while Emperor Hirohito was found guilty of superior responsibility, although he was absolved of individual responsibility.

Today, I’d like to talk about the issues of war and gender, while considering ways to combat nationalism, and realize the goals of the Women’s International War Crimes Tribunal. The Tribunal itself was a challenge to nationalistic forces. In the four years since its conception, it has had a palpable influence on the view of history and global civil society.

At the beginning of the process, when the idea of holding a Tribunal to punish those responsible for war crimes was first proposed to Japanese society it was met with considerable opposition. Even people involved in the “comfort women” issue tended to have doubts about the idea of punishing the guilty so many years after the war had ended. This shows how very difficult it was for Japanese society to accept the idea of a “People’s Tribunal,” or rather, to understand the concept itself. Some said that a People’s Tribunal would be a mere spectacle with no legal power. Furthermore, no matter how much we emphasized the fact that this was to be a “People’s Tribunal,” it was often described...
in the media as a “mock trial.” The mainstream opinion in Japanese society was that a Tribunal could only be legitimate if it was backed by state authority, which would comply with international law/which could apply international law. Nevertheless, the Women’s Tribunal was not a “revenge trial” that grew out of the victims’ desire for retaliation, but a People’s Tribunal in the truest sense, supported by global civil society, not subject to or influenced by any political power.

Women from various countries and regions, transcending state and national borders, organized this movement, the main purpose of which was and continues to be to abolish gender bias. Patricia V. Sellers, one of the Tribunal’s chief prosecutors, said in her closing remarks at the Tribunal in The Hague, “Women from Japan, the perpetrating country, held this Tribunal in an attempt to make their government acknowledge its responsibility. This in itself is important, because it can serve as a model for the rest of the world.” One of the significant points of the Tribunal is that it raised the issue of punishment for those responsible.

As I stated above, there was a lot of opposition to the idea of ‘punishment’ in Japanese society. But the idea gained greater acceptance through a series of meetings and seminars that were held to consider why punishment was needed now. It is often said that as a nation Japan does not like to take responsibility. Perhaps there is something in Japanese culture that makes it difficult for people to accept the idea of punishment. But the Tribunal broke through this cultural barrier. In this sense, the Tribunal can be said to be an event that challenged the thought pattern of Japanese society, or rather, of post-war society in Japan.

The Culture Of Impunity: From Past To Present

The Women’s International War Crimes Tribunal had two main objectives. One was to bring the issue of responsibility for war crimes committed in the past before the court. This meant restoring justice regarding the victims of the “comfort woman” system, who had been forgotten and ignored both by the historical record and society. In other words, the Tribunal aimed to make it clear that the “comfort women” system was a war crime even under international law at the time.

The Tribunal’s second objective was to have an impact on sexual violence in war and armed conflicts in the world today, in order to eventually eliminate its occurrence. Sexual violence is an integral part of armed conflicts that are taking place in some thirty areas throughout the world now. We must therefore work toward abolishing the culture, or cycle, of impunity, which has caused war crimes against women to be ignored. The International Criminal Court, where war crimes will be tried, has now been established. But the crime of the “comfort women” system cannot be tried there, because it was committed half a century ago. Because of this, we have and
continue to hope that the Tribunal will play an important role in the movement to stop wartime sexual violence today.

Sexual violence was a feature of the Bangladesh War of Independence, which broke out in 1971. And during the recent war in East Timor women suffered from sexual violence, including rape, at the hands of men in uniform, such as the Indonesian military, civilian soldiers, and the police. It is also said that women in Somaliland were raped by men in the Peace-Keeper Forces, sent to provide food and social stability to suffering people. And recently, wartime sexual violence against Afghan women is rampant.

Sexual violence in war cannot be considered separate from the cycle of impunity that allows it to continue. Recently, War Crimes Tribunals for the Former Yugoslavia and Rwanda have been the first to take sexual violence into account. The ICC Charter includes sexual violence as one category of war crimes. Thus, there is now a growing tendency to adjudicate sexual violence as a war crime. Passing judgment on the past crimes of the “comfort woman” system therefore has great significance in the movement to put an end to the culture of impunity for wartime sexual violence.

Problems In International Law Brought To Light By The “Comfort Women” Issue —International Law Is Neither Neutral Nor Objective.

It is also necessary to consider the question of why the “comfort woman” system has not been judged until now. The Tribunal paid particular attention to international law. I would now like to consider the meaning of a key phrase from the Final Judgment: that law is an instrument of civil society, and does not belong to states alone.

While appearing to be neutral and objective, international law is in reality a system that reproduces a biased political value system: male-centered, state-centered, and Western-oriented. Hiromi Abe, who was one of the prosecutors, has thoroughly analyzed this bias in international law. My focus today, however, will be on its underlying gender bias.

The International Criminal Tribunal for the Far East (IMTFE) classified and judged three categories of war crimes. The first was crimes against peace, the second murder, and the third was conventional war crimes and crimes against humanity. Although written documents on rape and the “comfort women” system were presented to the IMTFE, they were treated as merely one example of the types of crimes under the rubric of “war crimes,” and not deemed important enough to be adjudicated independently. Furthermore, sexual violence itself was not considered independently as a crime. In addition, people in colonized countries and territories at the time were excluded from consideration. In a sense, it was natural that the Tribunal lacked the point of view of colonized peoples, because the Allied Powers themselves were colonizing countries.
The Women’s Tribunal was significant in that one of its objectives was to reconsider and judge the “comfort women” system from the viewpoints of gender and colonialism, which were ignored by the IMTFE.

**Wartime Sexual Violence Cannot Be Judged From The Viewpoint Of “Family Honor”**

I will continue my discussion of gender in international law. Para 128 of the Oral Judgment of the Tribunal states that, “we have recognized that the ‘injury to honor and dignity’ was the way the law referred to rape at the time, and we understand the use of expression to be a veiled reference to rape, the use of such euphemisms is no longer unacceptable”. It is true that before World War II, there was a statement on the prohibition of rape in article 46 of the Regulations annexed to the 1907 Hague Convention, which has been used in War Crimes Tribunals in China, the Philippines and the Netherlands to point out that rape committed in war should be considered as a violation of international law. Article 46 states that the honor and rights of the family, individual life, private property, and religious faith and practice must be respected. Based on this idea, however, it prohibits rape as a crime because rape violates the honor of the family. That is, it prohibits rape in order to defend family honor. However, the Final Judgment of the Women’s Tribunal, handed down at The Hague, points out that the criminality of sexual violence against women cannot be explained in terms of family honor.

We have heard of women being raped during armed conflicts in Uganda or Algeria, and later killed by family members. In these cases, victims of rape were thought of as a blot on their family’s honor. These cases show how important it is to change the custom of regarding sexual violence against women as a problem of honor.

Until now, few official legal documents have dealt with the prohibition of sexual violence against women as a separate problem, considering it instead a matter of family honor. This is one of the reasons why sexual violence against women had not been considered independently as a war crime. It is crucial to recognize that sexual violence is not a matter of honor, but a crime of violence. The idea of honor has also acted to conceal the issue of responsibility for the “comfort woman” system.

Some women in Shanxi, China have brought the issue of sexual violence during war before the court. During the war Er Pu Nan was confined and raped by the Japanese army, and consequently gave birth to a child. Her relatives killed both her mother and younger brother, blaming her for having served the Japanese, and what’s more, for bearing the child of a Japanese man. Subsequently, at the time of the Great Cultural Revolution, she was harshly condemned as a collaborator with Japan, and finally committed suicide in 1967. Among women from Shanxi who suffered similar accusations, some were abused,
and regarded as failures as wives or daughters-in-law because they had been raped. It can be said that the custom of regarding the issue of the “comfort women” as a matter of honor caused a terrible injustice that resulted in attacks not on the perpetrators, but on the victims of the “comfort woman” system.

Article 142 of the Oral Judgment handed down in The Hague in 2001 states that, “we also find that the inherent gender bias underlying the Peace Treaties in that women either as individuals or as a group had no effective voice in the negotiations undermines their legitimacy and any argument that such discriminatory instruments should continue to be respected today.” In other words, it points out that even Peace Treaties contain gender bias, and that the biased value system on which international law was originally based, and still retains, needs to be reexamined.

Preliminary Findings issued at the Tribunal in Tokyo in December 2000 found that an inherent gender bias underlies the Peace Treaties. Furthermore, the Common Indictment submitted by Patricia V. Sellers and Ustiniia Dolgopol states that the inherent gender bias underlying international law is revealed in the fact that the Peace Treaties neglected the issues of the “comfort women” system and other rapes. Therefore, it is also our task to redress gender bias with a view toward the future.

**Drawing Distinctions Between “Good” Women And “Comfort Women”**

One of the significant points of the Judgment is that it also defines Japanese “comfort women” as victims of the system. Article 55 of the Oral Judgment states that “while the majority of Japanese ‘comfort women’ had previously been prostitutes, the evidence indicates a significant number of other Japanese women and girls were forced into sexual servitude as well”. Further, Article 61 states that “the Japanese military preyed on the most vulnerable members of society for its sexual slavery system those who because of age, poverty, class, family status, education, nationality, or ethnicity were most susceptible to being deceived and otherwise trapped into slavery”.

The Tribunal’s acknowledgement of Japanese “comfort women” is significant in two ways. One is that the Final Judgment recognizes Japanese “comfort women” as victims of the system. The other is that it recognizes women who had previously been prostitutes under the system of licensed prostitution as equally victimized. It has been often said that Japanese “comfort women” were prostitutes and should therefore not be considered along with victimized women in Korea. This means that the system of “comfort women” is criminal only in that it violated the human rights of innocent women or virgins, like the girls and women recruited in Korea. This way of thinking is certainly affected by the patriarchal view that considers women’s chastity as extremely important. The Tribunal included Japanese “comfort
women” among the victims with the idea that under this system, it is meaningless to distinguish virgins from prostitutes, or forced recruitment from voluntary participation.

On this issue, Japanese prosecutors presented two cases: that of women who were previously prostitutes and those victimized as “comfort women” in Okinawa and Taiwan. It is true that a significant number of women who worked in a licensed quarter in Okinawa known as the tsuji were recruited as “comfort women,” but many were opposed to the idea of working for the military, and submitted notices of resignation in an attempt to avoid being recruited. Thus, even professional prostitutes rejected the idea of becoming “comfort women.” The idea that prostitutes volunteered to work as “comfort women” is simply not true.

There were several conditions for recruiting “comfort women” at the time. One was that women working in licensed prostitution quarters should be the first candidates to be recruited as “comfort women.” Patriarchal Japanese society wanted to maintain the wives and daughters of the upper class as pure and chaste, the embodiment of feminine virtue. They therefore needed to draw a line between women and girls from good families, and those eligible to be recruited as “comfort women.” This same distinction applied after the war when women from the lower classes were forced to become “comfort women” for the Occupation forces in order to protect women from “good” families. The Final Judgment shatters these ideological distinctions, and makes it clear that the damage to any woman victimized as a “comfort woman” should be considered equally regardless of her background.

How Should We Make The Hague Judgment A Reality

We now have lots of “records” and “memories”. These include written documents, videotapes and memories engraved in people’s minds. Our main task now is to keep these records and memories alive, and make the Final Judgment a reality.

The Judgment has the potential to counter the forces of nationalism in various ways. For example, the Judgment makes a number of recommendations to the Japanese government. The fourth and fifth items of the Recommendations require the government to allow for public access to a historical record of the “comfort women” and establish a Truth and Reconciliation Commission, including a thorough investigation into the “comfort woman” system. The ninth recommends that the government repatriate survivors who wish to be repatriated, and the twelfth that it locate and return the remains of the deceased upon the request of family members or close associates. In addition to these recommendations to the Japanese government, the Judgment demands that the former Allied nations explain why they failed to prosecute the “comfort woman” system and the Emperor Hirohito before the IMTFE, pointing out their responsibility for these failures. The
Judgment also recommends that the United Nations and its member nations take all steps necessary to ensure that the government of Japan provides full reparations. Demanding that states take responsibility for past crimes, and demanding that these recommendations be carried out, will play an important role in the movement against current nationalistic trends.

On the other hand, there are other specific problems that can only be dealt with through sustained grassroots activism. One is that of history textbooks, and another is the Asian Women's Fund. Throughout Japan we faced serious problems concerning history textbooks last year. The passages about "comfort women" that had previously appeared in all textbooks were eliminated in all but one, with two others barely mentioning the issue in supplementary columns. Even these textbooks use the term "comfort station" without explaining what the "comfort women" system actually was. The publisher Nihon-shoeshi, whose latest textbook contains a more detailed description of the "comfort woman" issue than in previous editions, now only occupies about five percent of the total textbook market. The disappearance of "comfort women" from textbooks represents an impending crisis that we should all feel deeply. In addition, the terminology used in history textbooks is changing. The term "invasion," for example, has been replaced with "advancement," and descriptions of how Chinese and Koreans were massacred or kidnapped en masse and brought to Japan for slave labor are also being revised, both in content and terminology. It is also our responsibility to work against the trend toward eliminating or softening descriptions of crimes committed by the Japanese military in history textbooks used in Japan, which gives children fewer opportunities to learn about these historical facts in school.

Another problem concerns the Asian Women's Fund. The Fund, which began in 1996 and applied mainly to Korea, Taiwan, and the Philippines is now drawing to a close, but the Final Judgment clearly states that the Fund is a rejection of the Japanese government's legal responsibility, because it does not constitute a system of governmental compensation. That is why it was shocking to discover that a new brochure advertising the Fund says that it is supported by the UN Committee on Human Rights. It has been pointed out time and again in sessions of this UN Committee that the Asian Women's Fund clearly does not solve the issue of state responsibility. This defiant attitude of the Japanese government made me realize anew, that we will have to take even stronger action to force the government to acknowledge and fulfill its responsibility.

The Minister of Foreign Affairs provides the Asian Women's Fund with three hundred million yen a year, which is used for advertisement and personnel expenses. But rather than taking this as evidence of how hopeless the situation in Japan is, we
must use it as an impetus to further our efforts.

Make Public Opinion Awaken The Japanese Government
I would like to close by introducing the words of Gabrielle K. McDonald, Presiding Judge of the Tribunal, who said that this Judgment will be the final opportunity to lead the Japanese government to apologize and truly accept its responsibility. We are planning to deliver a Japanese translation of the Judgment and Recommendations to Prime Minister Koizumi, the Ministry of Foreign Affairs and the Imperial Household Agency. It is important to lead public opinion in order to force the government to face this issue. In other words, we must turn public opinion into a “weapon” for the movement against nationalism.

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