Legal extracts from the Judgement

of the Women's International War Crimes Tribunal

This document is a collection of legal extracts from the Judgement of the Women's International War Crimes Tribunal. It was collated by Professor Christine Chinkin, Professorial Research Fellow at the LSE Centre for Women, Peace and Security, supported by funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (Grant agreement No. 786494). The full judgement is available at the Women's International War Crime Tribunal Archive, here: https://archives.wam-peace.org/wt/en/judgement

December 2020

The Women's International War Crimes Tribunal For the Trial of Japan's Military Sexual Slavery

Case No. PT-2000-1-T
Original: English
Corrected: 31 January 2002

THE PROSECUTORS AND THE PEOPLES OF THE ASIA-PACIFIC REGION

v.

HIROHITO EMPEROR SHOWA
ANDO Rikichi,
HATA Shunroku,
ITAGAKI Seishiro,
KOBAYASHI Seizo,
MATSUI Iwane,
UMEZU Yoshijiro,
TERAUCHI Hisaichi,
TOJO Hideki,
YAMASHITA Tomoyuki
and
THE GOVERNMENT OF JAPAN

JUDGEMENT

Before: **Judge Gabrielle Kirk McDonald, Presiding**
Judge Carmen Argibay
Judge Christine Chinkin
Judge Willy Mutunga

Delivered: **4 December 2001**
The Hague, The Netherlands

THE WOMEN'S INTERNATI
WAR CRIMES TRIBUNA

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The Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery

The Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery was held in Tokyo, Japan in December 2000. The case was brought by the Prosecutors and the Peoples of the Asia-Pacific Region against a number of those convicted by the International Military Tribunal for the Far East (IMTFE) at the end of World War II, the Government of Japan and against a person who was never been brought before any court of law, the Emperor Hirohito.

Judgement on the Common Indictment and the Application for Restitution and Reparation was delivered in The Hague on 4 December 2001. The lengthy judgement details witness testimonies, documentary evidence, legal argument, analysis under international law as it was in 1945, findings of fact, the verdicts and recommendations for reparations. It makes clear that peace that fails to take account of gendered harms is flawed, that gender justice is inextricably entwined with peace and how international criminal law can be transformative of relations within and between states and communities.

The judgement comprises 1094 paragraphs and two substantive appendices: the Statute of the Tribunal and the Common Indictment. It has been difficult to obtain although it is now available on the website of the Women's Active Museum on War and Peace, Tokyo: https://archives.wam-peace.org/wt/en/judgement. The WAM website contains archives and footage of the Tribunal.

This booklet provides a summary of the judgement through reproduction of key paragraphs with some linking explanations. It seeks to capture the core of the judgement and the essence of this unique Tribunal, but it cannot convey the richness of the judgement. A companion booklet reproduces some of the testimony given by the "comfort women" who in their own words described the multiple harms committed against them.

Numbers in brackets refer to the paragraph numbers in the judgement and words within square brackets have been added to provide linkages. All the wording not in square brackets is that of the judgement. The extensive footnotes in the judgement have been excluded. Headings have been added to assist the reader and are not those of the judgement.

Introduction

In the early 1990s, women broke almost five decades of painful silence to demand apology and compensation for the atrocities they and others suffered under Japanese military sexual slavery during the war in the 1930s and 1940s in the Asia-Pacific region. The courageous revelations of the victimised survivors, euphemistically called "comfort women", inspired hundreds more survivors throughout the Asia-Pacific region to speak out. Together, they have awakened the world to the horror of the Japanese military's institutionalisation of rape, sexual slavery, trafficking, torture, and other forms of sexual violence inflicted upon girls and women … they were conscripted and trafficked through force, coercion, and deception and confined to "comfort stations" … sexual slavery facilities wherever Japanese troops were situated, including on the front lines.(1)

[The courage of the "comfort women" in breaking their silence and participating in the Tribunal] contributed substantially to the emergence of a larger global movement to recognise and respect women's human rights, to end impunity for crimes of sexual and gender violence, and to repudiate the notion that sexual abuse of women is an inevitable consequence of war and conquest. (2)

[Recognising that] a court, especially an internationally constituted court, [the IMTFE] would deliberately ignore a systematic atrocity of this dimension is unconscionable and profoundly discriminatory.(4) The Tribunal] was established to redress the historic tendency to trivialise, excuse, marginalise, and obfuscate crimes against women, particularly sex crimes, and even more so when they are committed against women of subordinated ethnicities. (6)

[It was a Peoples' Tribunal] conceived and established by the voices of global civil society. The authority … comes not from a state or intergovernmental organisation but from the peoples of the Asia-Pacific region, and indeed, the peoples of the world to whom Japan owes a duty under international law to render account. … The power of the Tribunal, … lies in its capacity to examine the evidence, develop an accurate historical record, and apply principles of international law to the facts as found. (8)

This Peoples' Tribunal acts out of the conviction that the cornerstone of the international and domestic rule of law is legal accountability – the calling to account of individuals and states for policies and activities that grossly violate established norms of international law. To ignore such conduct is to invite its repetition and sustain a culture of impunity. (9)

Organisation of the Tribunal

Through the Common Indictment, the Prosecutors call upon this Tribunal to determine the criminal responsibility of various high-ranking officials of the Japanese government and military, including Emperor HIROHITO, for sexual slavery and rape as crimes against humanity. (16)

The Charter also grants the Tribunal jurisdiction over breaches of state responsibility flowing from the commission of international wrongs attributable to the state of Japan. (17)

[T]his Tribunal adopts the position that, to find an accused guilty, it is necessary for the Prosecutors to prove "beyond reasonable doubt" that the accused committed the necessary actus reus and possessed the requisite mens rea of the crimes alleged. (26)

The Registry of this Tribunal served the Prime Minister of Japan with … an invitation to participate in the proceedings …. The Judges regret the lack of response by the Japanese government to this invitation. (40) [The] Tribunal will … endeavour to consider all defences the accused might conceivably raise on their own behalf had they agreed to participate. (41) … in the interests of justice and fairness, the Tribunal will consider the anticipated arguments of the individual accused and of the Japanese government. (42)

Sixty-four survivors were present at … the Tribunal, … still more gave testimony through videotape and affidavit … All … were sworn in by the Registrar and made an oath to testify truthfully and those present whose testimony was presented by video also affirmed the truth of their statements. … [The] Tribunal [also] heard and received in written form the testimonies of historians, of legal experts and psychologists, and of two former Japanese soldiers who testified about their participation in rape crimes and in the "comfort women" system … documentary evidence from memoirs of officials involved in the war and from the limited official documentation available to the public. (44)

Preliminary Issues

[The Women's Tribunal] represents a belief that states cannot, through their political agreements and settlements, ignore or forgive crimes against humanity committed against individuals. Three characteristics in particular distinguish this Tribunal from its predecessors. First, these proceedings

were held in Japan, the country which has perpetrated the wrongs charged in the Indictments and the Application for Restitution and Reparations. Second, it is a Women's Tribunal, a Tribunal specifically established by an international committee of women's groups to redress crimes of sexual violence against women. Third, the Tribunal was established by grassroots organisers from within the victimised countries rather than by distinguished persons from outside. It focuses upon crimes of sexual violence and slavery routinely discounted in peace settlements and effectively erased from or ignored in the official records. (71)

[T]his Tribunal sits as if it were a reopening or continuation of the IMTFE and the subsidiary trials held in the Asia-Pacific. This is justified because those tribunals did not charge or adjudicate the responsibility of the accused herein for war crimes or crimes against humanity with regard to the "comfort system" … As to those accused who were tried by the post-war Tribunals, this Tribunal will treat these proceedings as an extension of their trial. (81)

This Tribunal finds that there are no amnesties [applicable to the claims before it.] First, … a Peoples' Tribunal … is not bound by the agreements of states, certainly not by agreements resulting in impunity for international crimes. Furthermore, on signing the Treaty of Peace in San Francisco on 8 September 1951, the state of Japan "accepted the judgements of the [IMTFE] and of other allied war crimes courts both within and outside of Japan." On this basis, Japan consented to both the jurisdiction and Judgement of the IMTFE. Due to the fact that [the Tribunal's] jurisdiction to consider the Common Indictment … is likewise based on international law existing at the time the crimes were committed and involves charges that should have been prosecuted in 1946, … there is no amnesty which limits ,,, jurisdiction from considering these issues as a matter of international law. (84)

Thirty-five survivors, who were present and sworn, testified at the proceedings directly or through video interviews …. (85) Virtually all … testified publicly, using their own name and declining protective measures such as image or voice distortion devices. (87) … The Judges [found] each of the witnesses who testified in person or in video at the proceedings to be credible and … their testimony as reliable and trustworthy. (88)

The Prosecutors also presented evidence in documentary form from the archives of Japan and some of the Allied countries and from memoirs of former officers and others involved regarding the history of the system of the Japanese military sexual slavery. While the documents are valuable as evidence of official responsibility for the "comfort system" … the Japanese documents available … are but remnants of the full record in respect to state responsibility. (90)

[The judgement summarises the findings of the IMTFE with respect to the patterns of torture and cruel treatment, mass rapes and sexual slavery, carried out by the Japanese military during their aggression in the Asia-Pacific region. (116-119) It accepts the IMTFE's a chronology of that aggression (120- 140) and the latter's findings with respect to the atrocities committed as part of the Japanese government's goal to dominate the Asia-Pacific region. (141)]

Establishment of the "Comfort Stations"

The Japanese government and military established and expanded "comfort stations" into a vast institution for a variety of reasons. … "comfort stations" were set up firstly to prevent the Japanese troops from contracting sexually transmitted diseases, and secondly to counteract anti-Japanese sentiment produced by the multiple, mass, and indiscriminate rapes perpetrated by Japanese soldiers against civilian women as the armies advanced and asserted control over the territories. The evidence demonstrated another reason was to offer "comfort" to the soldiers by providing an avenue to release

for their pent-up emotions, tensions, and frustrations resulting from the bleak, harsh, and arbitrary discipline and conditions they had to endure. Another reason emerging from the evidence was to protect against and prevent the likelihood of spying and dissemination of army secrets that might occur if the soldiers visited local brothels. (157). [As more "comfort stations" were established their purpose expanded] to include the providing of comfort, relaxation, and avenues for releasing sexual tensions to the thousands of Japanese soldiers deployed to fight for and further Japan's imperial ambitions. (159).

During the war in the Asia-Pacific, the Japanese military continued to establish facilities designed to provide sexual services to its troops. [The testimony showed] these facilities were not brothels staffed with voluntary workers and that merely allowed Japanese soldiers a place to go so that they could obtain sexual release conveniently and safely. They were places – hotels, homes, tents, caves, and factories – of unspeakable horror, facilities where women were enslaved against their will and repeatedly raped and otherwise brutalised for months or years on end, exclusively for the benefit, and purportedly to satisfy the sexual demands, of members of the Japanese military. (167).

As the Japanese military expanded the sexual slavery system and sought to get enough women to satisfy their formula of one "comfort woman" for every one hundred soldiers, it regarded Japan's colony, Taiwan, as a useful source of girls and women. (177) As the Japanese army's demand for systematic sexual services increased, Korea was also seen as a prime source for procuring women for the facilities. Tens of thousands of Korean women and girls were forced into the sexual slavery system through such means as deception and force, after which they were subjected to rape and other forms of sexual violence and confined in "comfort" facilities under inhumane conditions. Japanese recruited Korean women disproportionately into the "comfort system (189).

Characteristics of the "Comfort Women System"

[The Tribunal heard detailed accounts from former "comfort women" from North and South Korea acting together, China, Taiwan, Malaysia, Indonesia, the Philippines, East Timor, Japan and the Netherlands. The women told how they were forced into the comfort stations, the conditions in the comfort stations and their lives there, These are set out in the accompanying booklet: *Japanese Military Sexual Slavery: Survivors Speak Out*.]

[From the testimony before it the Judges explained the characteristics of the "comfort women system" as:] a standard and integral part of Japan's aggressive war throughout the Asia-Pacific. Policies and procedures for the operation of this system were established at the highest levels of the Japanese government. … girls and women throughout the region were taken either by abduction, conscription, or coercion, or through deceptive means, and forcibly made part of the military sexual slavery system. Once enslaved, the girls and women were subjected to continuous and sometimes gang rape and other forms of sexual violence and torture, as well as inhumane conditions of detention. (250). … During their time in the facilities, the relentless violence and violations resulted, intentionally or incidentally, in a variety of reproductive harms, such as pregnancy, abortion, miscarriage, sterilization, sexually transmitted diseases, and sexual mutilation. The beatings, stabbings, burnings, and sexual tortures … caused enormous pain and suffering, as did the humiliating medical check-ups forced upon the women. These abusive conditions also caused severe emotional or psychological harm. The appalling conditions of detention often resulted in malnutrition, disease, illness, or death. (251).

[G]eneral characteristics common to all of the countries affected [include: that] military control of "comfort women" was organised at the highest levels (254); [t]he military also provided extensive

logistical and material support for the sexual slavery facilities (258); the Japanese military issued extensive regulations governing the "comfort system" (259); [t]he 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 (263); [a] very large number of the comfort women were, in fact, girls when they were taken away to be forced into sexual slavery (265); by definition, voluntary prostitutes are not part of the system of military sexual slavery … that once a part of the system, the former prostitutes suffered the same slave-like conditions as the other women (268); that the Japanese military, civilian police, and their civilian agents took "comfort women" into the system by any means available (269); numerous people from many segments of society were involved in procuring girls and women for sexual slavery.(285).

[In sum] the Japanese military, together with local and traditional officials and civilian agents, acquired girls and women for the "comfort" system against their will. Whether the girls and women were deceived … bought or exchanged, conscripted, or procured by force … they did not consent to becoming part of the "comfort" system. The girls and women who thought they were going to work in such jobs as waitresses, launderers, nurses, or maids did not knowingly agree to provide sexual service or to be subjected to rape and sexual slavery. When the will of the victim is subverted, … consent does not exist. This principle applies equally to those women who were prostitutes at the time of recruitment and were deceived as to the conditions of the sexual servitude. (288).

Conditions in the "Comfort Stations"

Witness after witness testified to the horror, pain, fear, violation, and helplessness they experienced when soldiers raped them. In the "comfort stations," women and girls had to endure rape during most of their waking hours, for periods ranging from a few months to many years. Witnesses said that as a result of this, their genitals were swollen and they experienced constant bleeding. Many witnesses told how they could not walk, sit, sleep, or urinate without pain. (312)

The women and girls were kept in a constant state of terror through frequent beatings, threats, and torture. Witnesses testified over and over again that the soldiers and managers beat and tortured women who resisted rape, who escaped or attempted to escape, who were exhausted or in pain, or with whom the soldiers were dissatisfied for any reason. (322)

Escape was punished with extreme forms of torture. [After a second escape one witness Wan Aihua] was taken out of the cave naked, rendered unconscious, and then hung naked. Afterwards, the soldiers threw her into freezing water. She continues to suffer the physical effects of her injuries. … Another witness, Chun-Ok-Soon, was tortured with an iron rod on her lips, tongue, and breasts for trying to escape. She could not speak for many years because of the damage. (324). The witnesses testified that they suffered other lasting injuries from beatings and torture, such as broken bones that never healed properly, deafness, scars, headaches, nightmares, and digestive problems. (325)

As is common in situations of slavery, the health of the girls and women deteriorated greatly in the "comfort stations." Scores of women and girls perished, mostly from murder, disease, malnutrition, exhaustion, brutal treatment, or by committing suicide (331).

The "comfort stations" were typically set up to appear and work as brothels, where the soldiers paid to use the women's services. The fee was set by military regulations. However, according to the testimony of witnesses at this Tribunal, most women did not receive any part of this money themselves. (343)

Once procured, the girls and women were deprived of their basic liberty of movement, including the liberty to leave the "comfort station" at will. Many witnesses testified that they were not permitted to leave their room or that they had to remain within the "comfort station." … (350) The rules forbidding women to leave were enforced by the prison-like setting of the "comfort stations." This included locked doors, soldiers and military police acting as armed guards, the presence of guard dogs, barbed wire surrounding the building, and barred windows. Some of the "comfort stations" were within military bases or garrisons. Another obstacle to the women's freedom of movement was the presence of soldiers in the area surrounding the "comfort station." These soldiers would return any women who managed to escape, (351). Escape … was also prevented by lack of resources, inability to speak the language, lack of familiarity with the foreign country, and the dangers of the war. (352)

The Japanese military treated "comfort women" as property and regarded their worth solely in terms of their use to the military. … the army regarded the women as military supplies and transported them along with weapons and soldiers. The dehumanization and objectification of the women allowed the soldiers to treat women's bodies as commodities to be used, abused, and disposed of at will. (357)

The women were deprived of complete control over their sexuality, as well as such rights as their basic freedom of movement, their existing family relationships, and their ability to give birth and raise their children. (359)

The "Comfort Women" following the End of the War

Some "comfort women" were summarily killed as the war neared an end, while others were simply ignored and left stranded far from home. …. the Japanese army abandoned the "comfort stations" when the war was over and left them to fend for themselves and attempt to make their way back home, despite overwhelming obstacles. (362) The women who attempted to return home often endured months to years of hardship and continued exile. … Tre Gop-Soon walked from Manchuria to Korea, a journey that took four years, during which she witnessed many deaths and suffered continuous adversity. (370).

During the immediate post-war period, most "comfort women" had no support system to which they could turn. In some cases, women's families helped them, cared for them, and gave them some initial assistance to enable them to survive. However, there was no community or national resources to support them or redress their physical wounds, illnesses, and emotional trauma (371) … [I]n addition to the context of hardship and trauma prevalent in post-war society, patriarchal notions of "chastity ideology" and an adherence to restricted roles for women in public and private life exacerbated the suffering of the surviving "comfort women" and rendered them invisible and the harm they suffered unnamed and unmentionable. (372)

[In sum] The suffering endured by the "comfort women" began with their illicit procurement, often by deception or abduction after seeing their family raped or killed, and continued daily through the time enslaved and repeatedly raped and otherwise tortured, abused, and mistreated over a period of months or years. That women and girls could not exercise control over their own lives was demonstrated by their being denied the ability to make even the most basic decisions about their bodies, their movement, their identities, and their future, with every facet of their life in the "comfort stations" controlled and manipulated by the Japanese or their agents. [373]

Rape Outside the "Comfort Stations"

Despite the availability of "comfort stations," the Japanese military commonly committed rape against local women in communities being conquered or occupied, both by design or as a result of ineffective control. Most of these crimes were not prosecuted before the IMTFE. The rape of women at Mapanique in the Philippines, which forms the basis of Count 3 of the Common Indictment, is but one example of rape crimes committed during the war. (375)

The "Comfort Women" as Survivors

The Judges are impressed by the extraordinary strength and courage of all of the survivors of sexual violence in the face of the suffering they have endured. The suffering did not end with the termination of the war or their release from sexual enslavement; they were constantly challenged in the process of rebuilding their cruelly shattered lives. (394). Overcoming enormous obstacles, the "comfort women" have given survival new meaning. Many of them raised children, even though the majority were subsequently unable to give birth themselves. They married widowers and raised stepchildren and some also adopted children. They worked hard to support their families and themselves, often at menial labour and at low paying jobs, despite their emotional pain and physical illnesses and disabilities. They endured hostility, ostracism, and invisibility. They struggled to find contentment in marriage or to reconstruct their lives as single women in patriarchal societies that valued women according to their family role.(395)

[However they have also suffered ongoing medical conditions including psychological harm.] Despondency led some survivors to contemplate suicide… Thoughts or attempts at suicide were common among the girls and women in the sexual slavery facilities. … (414). Survivors also experienced nervous breakdowns and addictions due to the trauma they suffered. … (415). Survivors testified that the past will not let them rest and that they desire peace. Belen Alonso Sagum stated, "I have not found peace and shall not find peace until the Japanese government recognises the wrong it has done and compensates the people whom they have done wrong." … Maria de le Paz Balagtas Culala stated, "I want some peace from the past." … (416)

[Surviving "comfort women"] suffered from community defamation and rejection. The combination of chastity ideology, moral condemnation of prostitution, and nationalistic rejection of anyone supposed to have been associated with the Japanese resulted in complete isolation for many of the women in many countries. (435)

In sum, for survivors of rape, sexual slavery and other forms of sexual violence, the social and economic consequences of their experiences, as well as the physical and emotional trauma they suffered, combined to make life a daily struggle. (450)

The Judges consider that it is important to listen to the requests of the survivors themselves. Witnesses made powerful demands for reparations to this Tribunal, including the demand for an apology and compensation by the state of Japan, the demand that the perpetrators be held accountable for the crimes, and that the truth of their experiences be told and incorporated as part of the history to prevent recurrence. (465)

Applicable Law

In order to avoid violating the principle of nullum crimen sine lege, the Judges will adjudicate the criminal responsibility of the accused in accordance with the law as it existed at the time the acts occurred. (478) … In determining criminal culpability of individual accused, particular weight will be given to the antecedents to and decisions of the post-World War II Tribunals. (479) [More recent legal developments are referred to only to confirm of explain earlier interpretations of the law but not as the basis for adjudication.]

In gauging state responsibility of the government of Japan, it is appropriate to apply evolving legal norms to continuing violations. Hence, where the failure to prosecute wrongdoers and to repair the injuries inflicted causes ongoing and progressive harm to the survivors and their families and to heirs of those who have not survived, the violation is a continuing one and the Tribunal can apply the most recent developments of international law to determine the scope of state responsibility and to ascertain the most appropriate remedy. (481)

[T]he Judges find that no due process rights of the accused have been violated by proceeding in their absence …. the state of Japan was offered a limited but… reasonable amount of time to … contest … the proceedings on its own behalf and on behalf of the individuals accused. Regrettably, Japan made no response. (486). Nonetheless… the Judges invited amicus curiae … to bring before this Tribunal the anticipated arguments of the defence. The Judges have also identified additional potential arguments from records available to us. We deem it important to consider the arguments of the accused and the state of Japan, not because due process compels it, but because it lends balance to our consideration of the issues and affects the force and accuracy of the Judgement. (487)

With regard to criminal culpability of the accused, a statute of limitations is a non-issue considering that this Tribunal functions as if it were sitting in l946.(492) The exceptional seriousness of crimes against humanity negates any argument that official status - whether head of state or otherwise - immunises a person from prosecution. (498).

Crimes against Humanity

Our initial task is to determine whether crimes against humanity represented a concept that was sufficiently established as a matter of international law from l937-1945 to satisfy the requirements of legality … (511)

Crimes against humanity committed during the war in the Asia-Pacific and during the Second World War were also closely tied to, and an outgrowth of, war crimes. This provides a further basis for adjudicating this crime as consistent with the principle of legality. First, most of the acts designated as crimes against humanity – and specifically those charged here – were either explicitly or implicitly included within the legal parameters of war crimes. The purpose of specifying these acts as “crimes against humanity” was not only, … to express outrage at the enormous scope of these crimes, but also, inter alia, to recognise criminal responsibility for acts which were comparable to war crimes, but which were committed against a civilian population of the perpetrator state or against stateless persons. (518). Moreover, the major international instruments regulating armed conflict and applicable during l937-1945 demonstrate that states had already accepted the principle that the codification of war crimes was not exhaustive but that other forms of inhumane treatment generally recognised as such or that emerge and shock the public conscience are likewise prohibited. Indeed, the Martens Clause of the 1907 Hague Convention makes this principle explicit… (519) The Martens Clause stands for the proposition that even though formal law fails to prohibit certain inhumane acts,

such acts can be legitimately treated as crimes if their character is accepted as criminal in nature but the offending conduct is not necessarily explicitly named. … The Martens Clause provides a solid foundation for the codification of crimes against humanity in the Nuremberg Charter and later in the Tokyo Charter and for their application by the Tribunals. (520)

Although the IMTFE Judgement did not explicitly address crimes against humanity as a separate crime, it utilised similar language stressing the scale and systematicity of the crimes committed by Japan. Accordingly, the contemporary threshold requirements that the crimes be "widespread" or "systematic" – reflect the jurisprudence of the major post-war crimes tribunals. Further, the Judges note that the IMTFE Charter did not require that the attack be committed against any civilian population, as was required by the IMT Charter. However, because there is some dispute as to whether this was a formal requirement in 1945, we will impose this requirement for the case in hand, even though it is not strictly necessary. (533).

In conclusion, the Judges find that the following threshold conditions are applicable to determining whether particular acts constituted "crimes against humanity" during l937- 1945: the prohibited acts must be committed (1) before or during war, (2) as part of a large-scale or systematic attack committed against a civilian population, and (3) in connection with war crimes or crimes against the peace.(534)

[Applying the threshold requirements to the evidence presented to them the Judges found that it] overwhelmingly establishes that the acts of rape and sexual slavery committed as part of the "comfort system" and the rapes at Mapanique were all committed before and during the war in China and the expanded war in the Asia-Pacific region. Thus, the first prerequisite condition that the crimes must be committed before or during a war has been satisfied. (535) The evidence also establishes that the crimes qualify as being committed against the civilian population on a large-scale and systematic basis, although either alternative would be sufficient to establish liability. The sexual slavery was the result of an organised plan and formal policy implemented by the Japanese military and government at the highest levels. … The "comfort women" system was systematic in much the same way as the brutal system of forced labour established by the Axis powers in Europe and Asia as well as part of a broader policy and practice, found by the IMTFE, of systematic and inhumane brutality toward civilians and prisoners alike.(536) … The system consciously and deliberately systematised rape and sexual slavery of women and girls forced into the system, all of whom were civilians and most of whom came from poor families or cultures unable to wage an effective protest, as well as those most susceptible to false promises and offers of money. It was not accidental that civilian women from marginalised societies (poor, non-white, indigenous, uneducated, or considered lower class) were the ones consistently targeted for attack. (537) … Stations were prevalent wherever Japanese soldiers were present throughout the Asia-Pacific region. The sheer number of victims – considered to be approximately 200,000 – would also demonstrate that the crimes were committed on a vast scale. (539).

The final threshold criteria, that the crimes be committed in connection with war crimes or crimes against the peace, is also satisfied. The evidence convincingly demonstrates that the system of "comfort stations" was … integrally related to Japan's war effort… [and] as crucial to Japan's success in waging aggressive war The "comfort women" and girls were treated as essential supplies, as the "booty" of war and were considered a necessary cog in the wheel of the Japanese war machine. (542)

Rape as a Crime against Humanity

Crimes of sexual and gender violence have historically been trivialised and mischaracterised under international humanitarian law. Rape has long been considered an inevitable part of war, and women regarded as the legitimate spoils of war, along with livestock and other chattel. Although wartime rape began to be forbidden in the 14th century and rape has subsequently been explicitly or implicitly recognised as a serious crime in war for several centuries, its commission was often ignored or tolerated by military commanders and the military justice system. … The women victimised were thus conveniently sacrificed on the basis of their gender and, usually, other factors such as nationality, ethnicity, race, or poverty also played a role in their being targeted for abuse…. That a pattern of tolerance set long ago has been continually repeated does not undermine the longstanding legal condemnation of rape and sexual violence in war or preclude its prosecution. (545)

Under [Hague Convention IV 1907] battlefield commanders, … as well as occupying authorities were required to teach and enforce the proscription of rape at all times in all contexts of war. … Articles 1, 4 and 46 apply directly to the treatment of "comfort women" in Mainland China, the Dutch East Indies (current day Indonesia), East Timor, the Philippines and Malaysia. Although these provisions do not regulate the treatment of a state's own inhabitants (i.e., Japanese "comfort women") or inhabitants of its former colonies (Korea and Taiwan), they nonetheless establish standards of minimum decency. (551)

The post-war Tribunals did treat rape and other forms of sexual violence as war crimes and crimes against humanity, even though these crimes were inadequately addressed in the proceedings. … Where not specifically listed … rape crimes formed part of the broad category of "other inhumane acts" and were thus implicitly encompassed as crimes against humanity. … Evidence was received of various forms of sexual violence in proceedings before the IMT, IMTFE and CCL10 trials. In some cases, particularly in the IMTFE, the Judgements based convictions explicitly on rape crimes; in other cases, rape and other forms of sexual violence were implicitly encompassed by general language in the residual clauses and the discussion of the types of atrocities committed.(557) … The jurisprudence of the IMTFE thus verifies that rape and other forms of sexual violence constituted crimes within the jurisdiction of the Tribunal. (569).

[B]oth the codified and customary laws of war developed prior to 1937, as well as the jurisprudence of the Tribunals, leave no doubt that rape and other forms of sexual violence were recognised as international crimes prior to 1945. (577)

Slavery and Enslavement

Freedom is the "birthright of every human being" and a basic human right. It is both central to and interdependent with other human rights. … Slavery is the antithesis of freedom. It is a basic tenet of the rule of law that freedom cannot be relinquished. That is why no one can consent to enslavement. To say that no one can consent to enslavement is not an exercise of paternalism. It is fundamental to the nature of freedom itself. (585) … Freedom requires protection of individual autonomy, respect for every person's potential and development and the presence of enabling economic, social and cultural conditions. Consent, to be valid, must be based on knowledge, and sustained by reason, and the ability to make and carry out free and informed choices. Consent is not valid when it is not knowing and free; when there is distorted or deceptive information, or no information at all; when there is violence, coercion, or the threat thereof; when the victim is subject to inhumane and debilitating conditions; when she is kept isolated from social support, denied the means of survival or without access to means

of communication, assistance, or redress; or when there is exploitation of the victim's vulnerability. (586)

The international norm against slavery, which encompasses sexual slavery, developed in at least five parallel contexts well before the institutionalisation of the "comfort system" by the government of Japan. (587)

By 1937, the Slavery Convention was understood as declaratory of customary international law and, therefore, binding upon Japan, regardless of whether it had ratified the 1926 Convention. (589). Article 1 of the 1926 Slavery Convention, … defined slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."(590)

A second source [of] the crime of sexual slavery during the Second World War is the 1907 Hague Convention IV and annexed Regulations, which codified the customary law prohibition on making slaves of prisoners of war or occupied civilian populations. (592)

The 1930 Convention Concerning Forced Labour (ILO No. 29), which Japan signed in l932, provides a third source of the prohibition on sexual slavery. (596). … The Tribunal ,,, emphasises that sexual servitude can never be a permissible form of compulsory labour. There is no "necessity" argument that can justify subjecting a person – female or male – to sexual violence. Nor can rape, sexual bondage, or other forms of sexual violence ever be rendered acceptable by payment, by providing amenities, health care or rewards, or by limiting the days of service. … forced sex ipso facto constitutes an exercise of ownership over a person. (600)

The international prohibition on trafficking in persons, in particular for sexual purposes, is the fourth source of the international prohibition of sexual slavery extant prior to l937. The Trafficking Conventions of 1904,1910, 1921 and 1933 provide further evidence that sexual slavery was considered an international criminal offence before and during the Second World War. (601)

The fifth source of the prohibition on sexual slavery at the time of the wars in the Asia-Pacific was the customary humanitarian law prohibition on forced prostitution. (601)

[E]nslavement is built upon two interrelated forms of subordination: chattel slavery and forced labour. Likewise, sexual slavery combines, in particularly egregious form, both concepts of slavery. {616) Chattel slavery exists when a person is treated as an object or property subject to use or disposal by another person, whether for economic, recreational, domestic or other purposes. … When a person's body is placed at the disposal of another to use sexually without their valid or genuine - that is knowing and voluntary - consent, that is a form of chattel slavery. Sexual slavery is particularly heinous because using a person as, or reducing a person to, sexual property violates the physical and mental integrity of the victim on the most profoundly personal plane. … (617).

Forced labour exists, … when a person is made to perform labour against her will. … Depriving a person of control over sexuality and denying her sexual integrity in order to satisfy the demands of another is a particularly atrocious form of forced labour, using and abusing the victim's body and spirit. (618} … the actus reus of the crime of sexual slavery is the exercise of any or all of the powers attaching to the right of ownership over a person by exercising sexual control over a person or depriving a person of sexual autonomy. … control over a person's sexuality or sexual autonomy may in and of itself constitute a power attaching to the right of ownership. The mens rea is the intentional exercise of such powers. … the Tribunal finds that the crime of "sexual slavery" is a form of enslavement and

forced labour and constituted a crime under international law between 1937 and 1945, even though the terminology "sexual slavery" was not then used.. (621)

Renaming Forced Prostitution as Sexual Slavery

The identification of sexual slavery as an international crime in our Charter and as a matter of international law today is, in our opinion, a long overdue renaming of the crime of (en)forced prostitution. As such, it responds to a very important concern expressed by the survivors of the "comfort system," which is that the term "forced prostitution" obscures the terrible gravity of the crime, suggests a level of voluntariness, and stigmatises its victims as immoral or "used goods."… the Judges conclude that the crime historically denominated as "(en)forced prostitution" is more appropriately named "sexual slavery." … the effect to obscure the offence of sexual slavery by calling it prostitution did not end with the end of the war. Japan's sympathizers who deny its responsibility for the systematic atrocities perpetrated against the "comfort women" and girls continue to characterise them as "prostitutes" and "camp followers" to assert both the voluntariness and immorality of the "comfort women," and thus Japan's own innocence. {634}

The Judges do not accept the negative connotations associated with the term "prostitute," but recognise that the epithet "prostitute" reflects profoundly discriminatory attitudes toward women. (635).

Notwithstanding that forced prostitution involves essentially the same conduct as sexual slavery, it does not communicate the same level of egregiousness. The term "forced prostitution" tends to reflect the male view: that of the organizers, procurers, and those who take advantage of the system by raping the women. (636)

In defence against the charges of rape and sexual slavery in the "comfort women" system, it has been asserted elsewhere that the women participated voluntarily as prostitutes. We find the persistence of this assertion mind-boggling in light of the enormous amount of testimonial, documentary, and circumstantial evidence to the contrary. The Tribunal categorically and forcefully rejects the proposition that the women subjected to sexual slavery were voluntary prostitutes. (637)

[T]hat some "comfort women" were given payments by the Japanese military in no way precludes a finding that they were enslaved. In some cases, the payments were a façade since the owners of the houses extorted all or most of it back from the women for so-called expenses. However, even if some women retained a portion of the money, it is the absence of free will to refuse to provide sex that is central to our conclusion that their condition was one of sexual slavery. Payment, even of prevailing wages, does not and cannot negate the crime of rape or slavery. (660)

Conclusions on Sexual Slavery

Slavery is typically a product of persecution and discrimination against a targeted group. The experiences of people under the chattel slavery system in the Western Hemisphere are instructive. Under that system, African people were slaves and, thereby, devalued and treated as property, subjected to reproductive and intergenerational bondage, usually denied the right to maintain family and community relationships, denied legal personality, and generally subjected to inhumane treatment and abusive conditions. It was a system that restricted virtually every aspect of liberty. It also involved both forced labour for enslaved women and men, and sexual and reproductive servitude for many of the women. Women were bought and sold through advertising as to their sexual and reproductive characteristics. As a parallel to the "comfort women" system under consideration here,

enslaved African women were used as objects of sexual pleasure and release for the "owners" and overseers and were regarded as sexual objects rather than individuals possessing human rights and inherent dignity. (661)

The horrendous circumstances to which the women were subjected reflected many indicia of slavery. The women were treated as objects and used as property, deprived of their free will and liberty, and forced to provide sexual services to the Japanese military. The survivor-witnesses before this Tribunal testified consistently to being enslaved by force, deception or other involuntary and coercive means, either directly by soldiers or government officials or with their connivance and participation. They all endured a series of rapes over months and years, were not free to leave or refuse to provide the services, and suffered abusive and inhumane conditions of detention. (662)

The evidence establishes conclusively that the Japanese government and military exercised the powers attaching to the right of ownership over the girls and women in the "comfort system." The Japanese military and their civilian agents asserted ownership over the women by procuring them, by confining them, by demanding their obedience and subservience, by subjecting them to repeated rapes and other forms of sexual violence, by otherwise torturing, mutilating and punishing them for disobeying them, by subjecting them to invasive and inhumane medical examinations, by exposing them to sexually transmitted diseases and subjecting them to harmful medical treatments, by subjecting them to unwanted pregnancies, by forcing them to have abortions or give up their children, and by killing them or abandoning them when their services were no longer of use. Each of these acts and all of these acts were violations of international legal standards. The crimes most assuredly amount to rape and sexual slavery. (664) … These crimes were widespread – occurring on a vast scale and over a huge geographic area – and systematic – being highly organised, heavily regulated, and sharing common characteristics. They were committed against women and girls who were civilians. (665). In sum, … the Japanese military and civilian authorities committed rape and sexual slavery as a crime against humanity against tens of thousands of women and girls forced into sexual servitude to the Japanese military as part of the "comfort system" during World War II. (666).

Criminal Responsibility

[C]onsistent with domestic and international application of the law, an accused can be found criminally liable for a crime, … even if he or she did not physically commit the crime. Indeed, in the present case, none of the accused is alleged to have physically perpetrated the crimes charged in the Common Indictment. Article 3(1) of the [Tribunal] Charter establishes individual criminal liability for one's own acts or omissions that contribute to or participant in the criminal conduct, whereas Article 3(2) establishes a superior's criminal liability for failing to prevent or punish crimes committed by subordinates. The principle of superior responsibility enshrined in Article 3(2) is also known in contemporary terms as "command responsibility" or "superior authority." While the doctrine of "superior responsibility" is a more recent articulation designed to cover both civil and military leaders, similar terms were used during the post-World War II Trials, including the IMTFE …. (674)

In keeping with the duty of this Tribunal to apply the law as it existed at the time the acts were committed, we have had to determine whether the elements of contemporary formulations of criminal responsibility were part of international law during the time the crimes were committed. … We ultimately conclude that the two strands of responsibility identified in Article 3(1) and (2) of the Charter reflect, albeit in somewhat different terminology, the bases of criminal responsibility recognised and applied by the IMTFE, and that these formed part of international law as it existed at the time of the commission of the offences. (675)

Superior (Command) Responsibility

Superior responsibility is based on recognising the utility of requiring commanders to enforce the rules of war and the reality that war crimes are often committed by soldiers acting under the authority or with the support or acquiescence, explicit or implicit, of their commanders. Not only would it be unjust in such circumstances for the commander to evade responsibility for actions he or she authorised or permitted, … it would also undermine the goal of deterrence to immunise commanders from criminal liability for the acts of persons subject to their authority and control. It further imposes greater incentive on superiors to properly train their troops and to educate them about the laws and customs of war. (677)

In the 1907 Hague Convention IV, Article 43 of the Regulations requires the appropriate military authority to "take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." The 1919 post-WWI War Crimes Commission Report further confirmed the principle of command or superior responsibility … (678). Hence, the laws and customs of war increasingly acknowledged that commanders and other superiors had a duty to exercise adequate control over their subordinates, and recognised that under certain circumstances, the superior should be held criminally responsible for failing to prevent or _ halt crimes committed by subordinates or failing to punish the perpetrators thereof. (679) … the IMTFE Judgement did demonstrate that two standards of responsibility were applied: one for crimes involving individual responsibility … akin to Article 3(1) of this Tribunal's Charter, and the other for crimes involving superior responsibility … akin to Article 3(2) of the present Charter. (681)

[T]he basic elements to be proved before it is possible to find a commander or other superior criminally responsible for crimes committed by a subordinate [are:]

a. A superior-subordinate relationship existed such that the superior had a duty, whether formal or informal, to exercise authority or control over his or her subordinates;

b. The superior knew or had reason to know that crimes were being, were about to be, or had been committed by subordinates; and

c. The superior failed to take appropriate measures within his or her power to prevent or suppress the crimes or to punish the offender(s) thereof. (684)

Pursuant to Article 3(2) of this Tribunal's Charter, even if it is not adequately established that the accused actually knew of the rape and the sexual slavery of the "comfort women" or, as to the Emperor HIROHITO and YAMASHITA, of the rapes in Mapanique, we must consider the alternative principle, established under international law, that a superior "had reason to know" of these crimes. (717)

In sum, a commander or superior with the requisite power of control over subordinates who knew or had reason to know of the commission of crimes is criminally responsible for crimes under the doctrine of superior responsibility if – in the language of this Tribunal's Charter – he or she then "failed to take the necessary and reasonable measures to prevent or repress their commission or submit the matter to the competent authorities for investigation and prosecution." Thus, to be found culpable, each accused here must have failed to take necessary and reasonable measures available to prevent or repress rape and sexual slavery, or punish perpetrators thereof. (728)

[C]ommanders and other superiors have a duty to administer a system that prevents and punishes the commission of crimes against civilians, including in detention camps and in occupied or annexed territories that are under their command. There is an indisputable duty on military and civilian leaders to take necessary and reasonable measures to prevent crimes, including slavery and rape, committed by subordinates. This duty is even greater in situations where the leaders have created the situation that poses extraordinary risks upon persons entrusted to their care, such as persons in the "comfort stations." This duty also requires that commanders and other superiors take all necessary measures to prevent the abduction or deceptive recruitment of girls and women into the "comfort stations" and their mistreatment, including rape and sexual slavery, while confined as prisoners therein. (735)

Individual Criminal Responsibility

The accused in the present case have also been charged with planning, instigating, ordering, or aiding and abetting the rapes and sexual slavery, pursuant to Article 3(1) of the Charter. These are all recognised as forms of "participation" in the crimes. In addition to physical perpetrators, individuals can be held responsible for crimes which they did not commit physically, but to which they contributed directly (such as by ordering) or indirectly (such as by abetting). (739)

in applying the law to the facts of this case, it is necessary to examine whether the accused had direct or inferable knowledge that the "comfort women" were forced, sold, or deceived into slavery, forced to have sex against their free will, and/or that they were held and maintained under conditions constituting enslavement. (766)

Tribunal Findings based on the Testimony

[T]he Common Indictment alleges that rape was committed by persons acting pursuant to an order, plan, or policy of the accused, or with their assistance, instigation, encouragement, or acquiescence. To find such participation would establish the accused's individual responsibility under Article 3(1) of this Tribunal's Charter.(770) In addition, under Article 3(2) of the Charter, a military commander or other superior may be held criminally responsible for the crimes of sexual slavery and rape committed by persons over whom they exercised de jure or de facto control by virtue of their position or authority. (771)

There is abundant evidence, most notably from victim-survivor testimony, that the Japanese government and military were involved in all aspects of the sexual slavery system. In addition, the evidence provided by experts confirms that Japanese officials at the highest levels participated knowingly in the system of sexual slavery. (781). … The totality of the evidence compels a conclusion that there was a consistent pattern of gross abuses committed against civilians by the Japanese military in the territories under Japanese control or attack. … incontrovertible evidence that the Japanese military cultivated a culture of oppression and violence, including sexual violence, against both women and men. 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. (782). The evidence is irrefutable that Japanese military and political leaders were, at the very least, aware of the propensity of soldiers to rape and otherwise sexually assault civilians. This predisposition was inveterate both before and after the establishment of the "comfort system."(783)

[The Judges summarised the testimony they had heard and their findings relating to the reasons for establishment of the "comfort women system", the criminal nature of the recruitment process, the approval of the top authorities, the conditions in the "comfort stations" belying any claim of

voluntariness on the part of the women and that destruction of documents relating to the system demonstrates high-level awareness of its illegality.] (781-793)

In sum, the Judges find that the "comfort system" was designed and maintained to facilitate the rape and sexual slavery of tens of thousands of young girls and women from occupied or conquered territories in the Asia-Pacific region. 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. Military and government leaders responsible for organising and supervising the movement and activities of troops had to have approved the establishment of "comfort stations" or other facilities for rape and sexual slavery and/or known of the criminal nature of the system. Indeed, from the lowest level soldier visiting the stations, to the top military and government officials who devised and oversaw the regulation of the system, to midlevel actors who procured women and girls for the stations and supplied the necessities, officials at all levels participated in facilitating and maintaining the system of rape and sexual slavery. In light of the fact that there were regulations distinguishing between visits to the "comfort stations" by officers and soldiers, it is the view of the Judges that many superiors also used the "comfort stations," which would also serve to condone and encourage the system. (794)

The "comfort system" was, in essence, state-sanctioned rape and enslavement.(798) [This assertion is supported by a detailed list of findings.] (800)

Criminal Responsibility of the Accused

[T]he Tribunal finds that persons holding a high position of authority in the Japanese government or military with connections to the war effort in general or the "comfort system" in particular would have had to have known of the criminal nature of this system unless unexpected contingencies or exceptional circumstances existed that would cast doubt as to whether the particular person knew or had reason to know that crimes were being committed. (801) Given the dimension, duration, and perceived significance of the "comfort system" to Japan's war effort, it is impossible to imagine any "unexpected contingencies" that could have prevented an accused from learning that crimes were committed in the "comfort stations." (803)

[The Judges detailed the positions of authority held by the accused during the period of operation of the "comfort women system". They noted that:] each of the accused held either the highest or one of the highest level positions concerned with the war effort within the Japanese government or military from at least 1937 to 1945, during which time the "comfort station" system was continually expanded and maintained under the authority and for the use of the Japanese military and this system was considered a critical component to the success of Japan's war effort. (810)

Criminal Responsibility of the Emperor Hirohito

[The Judges considered] the persistent claim that Emperor HIROHITO was merely a ceremonial figurehead who did not have power to effect the war effort and who was shielded from information as to criminal activity. (812) [They accepted that if this was indeed the case it would preclude him from guilt.] (816).

[The Judges] explicitly rejected the contention that the Emperor was merely a ceremonial figurehead who did not have the requisite knowledge or exercise sufficient decision-making authority.(817) As

Head of State and Supreme Commander of the army and navy, Emperor HIROHITO held a position of supreme authority over the state and the military…. he had authority over all military personnel and directed through close intermediaries the course of the Area Armies and Expeditionary Forces. He was also the direct superior of the Governors-General of Taiwan and Korea. (818). The evidence demonstrates that HIROHITO had enormous power, going even beyond the powers granted him by the Constitution. (819)

it would have been virtually impossible for him to have been ignorant of the fact that Japanese soldiers committed a range of atrocities, including rape and sexual violence, during events so notorious they were known as the "Rape of Nanking" and the "Rape of Manila." The massacres and rapes were widely reported both in Japan and internationally. … We accept Professor Yamada's testimony that HIROHITO was very concerned about what the foreign media reported about Japan and, therefore, that the core members of the Foreign Ministry must have given him informal reports. (823)

The expert testimony, as well as the documentary evidence assessed with regard to the other accused, all of whom were HIROHITO's subordinates, establishes that it was well known that Japanese troops committed rape with abandon even after the expansion of the "comfort system." (825)… HIROHITO was not isolated from war events and strategies or from the specific, ongoing problem of rape of local women. (827). … Ministers of the Japanese government had the constitutional duty, under Article 55, to give advice to the Emperor and to be responsible for it. … Emperor HIROHITO was kept informed of the military activities, and of crimes such as rape, which generated international outrage when complaints were made. (828). … Emperor HIROHITO was … kept abreast of matters of significance to the success of the war effort and the reputation of the army. … He had the duty to prevent, monitor, and punish rape crimes committed by his subordinates. … Instead of instituting and monitoring effective measures against rape, the military and civilian leadership sought to reduce the rape of local populations by channelling it into "comfort stations," not because it cared that women were raped, but because it wanted to protect the reputation of Japan, avoid negative international visibility, and curtail resistance of local populations. (829).

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. Indeed, we find that he gave his approval to the system, whether tacitly or explicitly. (830)

[A]s supreme head of state and military commander exercising both de jure and de facto power, we confirm our previous finding as to Emperor HIROHITO's guilt under Article 3(2) for his failure to exercise superior responsibility to prevent these atrocities. … he had reason to know of the propensity of his soldiers to commit widespread rape against local women and he had a duty to take necessary and reasonable measures to prevent, halt and punish such violations. He had a duty to institute measures and monitor efforts to prevent the crimes, including in the "comfort stations" set up to provide sexual services to the Japanese military. Emperor HIROHITO failed utterly to fulfill his responsibility. Accordingly, we find Emperor HIROHITO GUILTY of criminal negligence under Article 3(2) of the Charter for the crimes of rape and sexual slavery committed as part of the system of military sexual slavery. (831).

In addition, the Tribunal finds that Emperor HIROHITO had to have known that the "comfort system" was being rapidly expanded as a purported alternative to the more visible and problematic rape of local women and that rape and sexual slavery were being committed in the "comfort system." Further,

we find, based on his position and continuing participation in the war effort and the significance of the "comfort system" to the war effort, that, at the very least, he participated by tacitly or actively approving the existence and expansion of the "comfort system." Accordingly, we reaffirm our previous holding and find Emperor HIROHITO GUILTY of rape and sexual slavery as crimes against humanity under individual responsibility pursuant to Article 3(1) of our Charter. (832)

[The Judges made separate findings as to the guilt of MATSUI and of the Emperor Hirohito and Yamashita with respect to the rapes at Mapanique]. (833-863)

Based on the totality of evidence, it is clear that HIROHITO was on notice that crimes were likely to be committed by Japanese forces under his command and control, and yet he did nothing to prevent the crimes. Accordingly, pursuant to Article 3(2), we find Emperor HIROHITO criminally responsible as a superior for the rape crimes committed against women and girls in Mapanique on November 23, 1944 (861). … we consider that Emperor HIROHITO cannot be individually liable every time his some two million soldiers committed atrocities. For Article 3(1) individual responsibility to attach, he must have knowledge of the crime and participate in some way – through planning, ordering, instigating, committing, aiding, or abetting – in the crime. While this was readily established in the case of the former "comfort women" with the criminal activity committed throughout the Asia-Pacific over several years, here, where the crimes were committed over a couple of days in a small village in the Philippines, without more evidence to establish the Emperor's knowledge or participation, we find that there is an insufficient basis upon which to conclude beyond a reasonable doubt that HIROHITO had actual knowledge of the rapes or that he participated in any way in the crimes. As such, we decline to find that Emperor HIROHITO incurs individual responsibility under Article 3(1) under Count 3 of the Indictment. (862)

State Responsibility

[T]he Prosecutors have submitted an Application for Restitution and Reparations, asserting that the state of Japan has a duty to both prevent and repair these original crimes. The Application further asserts that Japan has failed to fulfil this duty and that this failure constitutes a continuing breach of its responsibility as a state, which has inflicted additional harm upon the victims, and for which it incurs additional liability.(877)

State responsibility arises from the following:

(a) Commission of crimes or acts as referred to in Article 2 by military forces, government officials and those individuals acting in their official capacity.

(b) Acts or omissions by States such as:

(i) concealment, denial or distortion of the facts or in any other manner its negligence or failure to meet its responsibility to find and disclose the truth concerning crimes referred to in Article 2;

(ii) failure to prosecute and punish those responsible for said crimes;

(iii) failure to provide reparations to those victimised;

(iv) failure to take measures to protect the integrity, well-being and dignity of the human person;

(v) discrimination based on such ground as gender, age, race, colour, national, ethnic or social origin or belief, health status, sexual orientation, political or other opinion, wealth, birth or any other status;

(vi) failure to take necessary measures to prevent recurrence. (878)

[T]he obligation to prevent and repair wrongdoing, particularly wrongdoing of this horrific dimension, is a continuing one. Therefore, Japan continues to breach this obligation and its responsibility must be examined not only in light of the law applicable in 1945 but also of the current international norms respecting the duties of the violator state to prevent and repair. [879]

[The Judges first considered some preliminary legal issues determining that (i) the applicants had standing (885); (ii) that the application was not time barred (891); and that the "numerous unsuccessful efforts of the applicants to seek redress in the courts of Japan" meant that "that access to domestic remedies has been unreasonably prolonged" and that accordingly the application was not preluded by the requirement of exhaustion of domestic remedies. (892-894)]

International Wrongful Acts Attributable to the Sate of Japan

Under general international law, a state is internationally responsible for any wrongful act that is attributable to the state and has damaged the legitimate interests of others. Such responsibility of a state is additional to and exists alongside the international criminal liability of the individuals who committed crimes in violation of international law. … A state bears responsibility for wrongful acts when a state, either through its own conduct or through the conduct of its agents or organs, acts in violation of an international duty and thereby commits an international wrong. It is a fundamental principle of international law that the breach of an international duty incurs an obligation to make reparation in an adequate form.632 The duty must generally have been incumbent upon the state at the time the act complained of was committed. (899) These fundamental tenets of international law have remained constant from at least 1930. (900) [They are reiterated in] the International Law Commission's 2001 Draft Articles on State Responsibility that provides the most up-to-date articulation of state responsibility in international law. Article 1 provides that "Every internationally wrongful act of a State entails the international responsibility of that State." This enunciation of the basic concept remained uncontroversial throughout the drafting process, demonstrating its acceptance in international law. (902)

These are principles, then, that must be applied to the conduct of the state of Japan with respect to its responsibility for the "comfort system" and for violations before the Tribunal continuing to this day. (903). A state commits an internationally wrongful act when it acts in violation of international law. (904). The Judges have found above that, in the instigation, operation and continuation of the "comfort women" system, high-ranking Japanese military and government officials, and thus the state of Japan, have acted in violation of both its treaty obligations and its obligations under customary international law. Indeed, as the Judges have found, these violations were integral to Japan's military strategy at the highest levels during the war in the Asia-Pacific region. (905)

[The Judges considered whether these principles applied with respect to the women raped and enslaved from Japanese colonies – Taiwan and Korea - and from Japan, or whether the principles apply only to ill-treatment of "foreigners" or "aliens" to Japan. They recognised that colonised peoples are deemed to have no separate nationality from that of the colonial state. (907)]

The Japanese state machine regarded colonised women as at its disposal and considered it more acceptable to make colonised women "comfort women" than Japanese women. (908)

[The Judges determined that] the concept of crimes against humanity extended … to harm caused to any population irrespective of whether the civilians are nationals or indeed colonised peoples. This principle of liability thus applies to crimes against humanity committed by a belligerent state against its own nationals. Japan is, therefore, not exempt from liability for such international wrongful acts whether committed against the peoples it colonised or against its own nationals. (912).

[The Judges found that through its officials and agents Japan violated multiple treaty obligations: numerous provisions of Hague IV and its Regulations, 1907 (914-921); the International Convention for the Suppression of the Traffic in Women and Children, 1921 (922-923); Geneva Convention, 1929 (924); International Labour Organization Convention Concerning Forced Labour, 1930 (925); customary international law relating to slavery and the slave trade (926-927).

[In addition] [t]he evidence demonstrates multiple violations of both the requirements for the protection of women as well as the prohibitions on race and sex discrimination. Most fundamentally the evidence shows that the Japanese military targeted women and girls primarily of subjugated populations viewed as inferior by Japanese Imperial culture, for the provision of forced sexual services because they were female and thus seen as disposable. As such, the "comfort system" denied women and girls their right to gender and racial equality and rights to respect for their physical, mental and sexual integrity and human dignity.649 The creation of the "comfort women" system reflects the intersection of discrimination based on both gender and race/ethnicity. (929)

[The internationally wrongful acts are attributable to the Japanese state]. [T]he Judges find that the state of Japan is responsible for the rape and enslavement of women and girls as "comfort women" pursuant to the military sexual slavery system whether such enslavement was carried out by government agents, army personnel, or civilians acting on its behalf. (930)

Japan is liable under the international principles of state responsibility for the acts and omissions of its officials involved in the military sexual slavery system at every level as well as that of the private recruiters and proprietors and others who assisted the implementation of that system and the sexual abuse and enslavement of women. It is important to note that the responsibility of Japan under international law applies not only to the institutionalisation of the system itself, but also to subsequent actions of its organs and private agents who have obstructed and failed to make full reparations for these horrific crimes and, in doing so, have perpetuated new and continuing violations against the victims and survivors. (938) Given the official positions of the accused as high-level officials of the Japanese government or military, the state of Japan is responsible for these violations and has the responsibility to make reparations. (940)

State Obligation of Truth Telling

A related continuing obligation of the state is to acknowledge and disclose the truth of crimes against humanity and war crimes. While trials and prosecutions may serve this goal in part, it must also be achieved in other ways. States have an obligation to declassify information concerning past wrongs and provide means for its preservation, analysis and accessibility to the public, both lay and scholarly. The right to know the truth is a derivative of the right to ensure human rights; it is a precondition to the effective use of remedies for violations and a deterrent against future wrongdoing. The Judges note the increasing use of national and international truth commissions and public inquiries to uncover past crimes. (942).

[T]he Judges find that the state of Japan has not only failed to fulfil this obligation, but that it has in fact repeatedly acted to obstruct the disclosure of the truth of the "comfort station" system, including up to the present day. … the actions of the state of Japan after World War II to destroy evidence of the "comfort station" system. In addition, Japan has failed to conduct and publicise a full investigation into the system. (943)

Based on the expert opinion, and the declarations against interest by government officials, the Tribunal finds that the government of Japan adopted and carried out a deliberate policy of incineration as well as concealment of documents relating to their crimes. These acts represent recognition by Japan itself of its wrongful acts. (946) … not only were measures taken to disguise the existence of the "comfort stations" but also documents concerning the establishment and operations of the "comfort women" system were systematically destroyed in the final days of the war. (948) … … As such, the program of destruction constituted a continuing violation of state responsibility to investigate and publish the truth and bring the perpetrators to justice. (949)

The scarcity of official documentation on the "comfort women" system has been exacerbated by the continuing resistance of the Japanese government to revealing even those documents that survived the pre-surrender destruction. (950) [and the Japanese Government has] rejected the principle that the state has a duty to disclose fully documents concerning human rights violations, war crimes and crimes against humanity. (951)

Japan's Denial of Involvement in the "Comfort System"

The Japanese government's statements related to the "comfort women" issue follow a pattern of revealing information only under domestic or international pressure and/or in response to the publication of new documents. Until l992, the Japanese government officially denied involvement of the military or the state in the "comfort system", as well as coercion of women and girls, claiming there were no documents revealing who was responsible. Only when the victims began to speak out and Japanese and other scholars came forward with government documents to prove that the Japanese military drafted and held women against their will for sexual slavery, did the Japanese government begin reluctantly and partially to admit government involvement.(954)

The Japanese government initially denied that the "comfort stations" were run by the military or state, and claimed that there was no documentation revealing who was responsible. It soon became apparent, however, that there was substantial documentation of official involvement. Evidence was found and disclosed by scholars, the South Korean government, and individuals who had come into contact with the system. (956)

The first significant admission of the government admitting military involvement in the "comfort system" came in response to Professor Yoshimi's public disclosure on 11 January 1992 of six incriminating documents in the Asahi Shimbun… . On 13 January 1992, Secretary Kato Koichi issued a public statement acknowledging the Japanese military's involvement in the "comfort system." Still, there was no acknowledgement of the sexual violence and slavery inflicted upon the "comfort women." (959). The most complete acknowledgement of state participation in the "comfort system" to date came with the publication of an official report on 4 August 1993, in connection with the consideration of the issue of Japan's military sexual slavery by the UN Sub Commission on Prevention of Discrimination and Protection of Minorities. … The [official] report states, in part, that the military was involved in recruiting "in some areas," that the women "lived in misery at the comfort stations under a coercive atmosphere," and that this "severely injured the honour and dignity of many

women." (960). In the eight years since 1993, it appears that the government has not offered any new information or conducted any further investigations or surveys of official documents to shed light on the nature of government involvement. (961)

The Judges find that, taken together, this report and the various official statements do not reflect either a thorough investigation or a full and unambiguous acknowledgement of the participation of the state of Japan in the "comfort system" or its legal responsibility for the rape and sexual slavery committed therein. Rather, the government substitutes understatement, ambiguity, and euphemism for full disclosure and acknowledgement of official responsibility for, and conditions suffered by, women and girls in the "comfort system." The inadequacy of these statements is exacerbated by the fact that they followed a series of denials of official responsibility, coercion, and sexual violence inflicted upon the women. These reports and statements were also unaccompanied by full disclosure of the pertinent documents, and further diluted by inadequate statements of "apology,"(962)

[W]e find that the [1993] statement obfuscates rather than reveals the full responsibility of Japan. … while acknowledging the participation of the military, the statement minimises its direct role, … By acknowledging only that the "comfort women" lived under a "coercive atmosphere," the statement conceals the direct and utter brutality to which the Japanese military knowingly and intentionally subjected the "comfort women" as an integral part of its war effort\\\ by stating that the women "lived in misery" and suffered "injury to their honour and dignity," the government avoided admitting that they were raped repeatedly and subjects of a system of sexual slavery. (964)

While we understand that the expression "injury to honour and dignity" may have been a veiled reference to rape in use at the time, such euphemisms are unacceptable. "Comfort women" and girls were raped until they bled and could not walk. … their treatment was not only harm to honour and dignity. The victims were subjected to physical and emotional torture. Such continued euphemistic references to rape and sexual slavery are particularly offensive in light of other official statements, discussed infra, labelling "comfort women" as prostitutes. (965)

When it was recognised that wartime sexual violence inflicted upon the "comfort women" and such other atrocities as the rapes at Mapanique had not been prosecuted in the IMTFE, Japan should have initiated domestic prosecutions of those responsible, at all levels, as well as those who took advantage of the system. Japan's failure to investigate and disclose the truth about past war crimes and crimes against humanity thus resulted in blanket impunity for the perpetrators. We find it significant that Japan has not pursued one prosecution for crimes committed during the war. (966)

State Obligation of Due Diligence

States, including successor governments, have an obligation to ensure that those who violate such norms are brought to justice. This concept of the due diligence of the state arises from the duty to prevent and prosecute the crimes constituting internationally wrongful acts and repair the harm. Preventive and remedial obligations are thus themselves obligations for the breach of which the Japanese state bears direct responsibility. (969)

The principle that the state has an obligation of due diligence to prosecute human rights violations is firmly established. For example, the more recent and widely cited Caso Velasquez-Rodriguez v. Honduras, the Inter-American Court of Human Rights reiterated the principle, demonstrating that the standard of due diligence has been accepted since at least 1925 to the present day. Further, Article 14(2) of Chapter III of the ILC's Draft Articles 2000 incorporates the long-standing customary rule that a breach of an international obligation having a continuing character "extends over the entire period

during which the act continues and remains not in conformity with the international obligation." There is no statute of limitations for crimes of this gravity and the obligation of due diligence is a continuing one. (972)

Japan's Failure to Make an Adequate Apology

A key issue relevant to Japan's state responsibility for the sexual slavery system is whether it has made a valid apology on behalf of the state to the victims. In their testimony at the hearings, the survivors emphasised the importance of receiving a full apology directly from the Japanese government and from perpetrators who remain alive. (974)

This Tribunal finds that the efforts at apology… are deficient in several key respects. First, a genuine apology must acknowledge full legal responsibility. … the statements of Japanese officials obscured the true extent of wrongdoing and harm and, most significantly, used words that express only regret and not legal responsibility. Second, the apology is deficient as a matter of process. (978) In terms of process, we note that statements of "apology" were not made directly and individually to the survivors and their families or close associates but rather to the public at large in a variety of political and diplomatic contexts. Statements made in domestic political arenas or in the international arena do not substitute for apologies made directly to the individuals whose lives have been profoundly affected. (983) ... Finally, it is contended that the "apologies" issued by Japanese officials have never been accompanied by a commitment to provide compensation from the state of Japan. Such a commitment would have lent more sincerity to the statements of apology. (984)

The Asian Women's Fund

In 1995, the Japanese government made public their plan to have the Asian Women's Fund ("the Fund") pay compensation to victims of Japanese military sexual slavery. [This was followed by the establishment of the "Asian Peace and Friendship Foundation for Women".] The activities of the Foundation were, inter alia, to "raise funds in the private sector as a means to enact the Japanese people's atonement [tsugunai] for former wartime comfort women" and "to support those conducting medical and welfare projects and other similar projects which are of service to former wartime comfort women, through the use of government funding and other funds." (985) Many survivors have rejected this monetary gesture from private donations and demand direct state compensation for the crimes of sexual slavery committed by the state military as they want "honour and dignity, not charity money." (986)

The Judges find that the Asian Women's Fund does not constitute an acceptable mechanism for compensating victims for the wrongs inflicted by the state. … While the initiative from a moral perspective is "a welcome beginning, [the Fund] does not vindicate the legal claims of 'comfort women' under public international law." Privately raised funds cannot be used in lieu of official compensation in satisfaction of the state's obligation, particularly where there has been for decades no financial barrier to the state's ability to provide the compensation from the public fisc. The inadequacy, indeed, discriminatory nature of this privatised "moral" approach to compensation is further underscored by contrasting it with the official diplomatic and legislative attempts Japan has made to respond to the compensation claims of some male victims of the Japanese conscription and forced labour program.(988)

The Positive Obligation on Japan Make Reparations

Opposition by the state of Japan to legal efforts by groups of survivors to obtain acknowledgement of legal wrongdoing and compensation is further evidence of its failure to discharge its legal responsibility to make reparations. Survivors have pressed their claims in numerous cases in Japanese courts and also before the International Labour Organisation. Responding to the pleas of victim-survivors and their advocates, two United Nations' Special Rapporteurs have investigated and condemned both the original crimes and the subsequent response of the government of Japan. In all these contexts, Japan has opposed responsibility on legal grounds which we reject herein. Beyond that, the duty to provide compensation and reparations does not depend, however, upon being enjoined to do so by an adjudicative body. It is a positive obligation. Nonetheless, Japan has consistently refused to utilize the occasion of these initiatives to officially acknowledge and settle the survivors' claims.(989)

As part of its responsibility to tell the truth, make reparations and prevent recurrence, the state of Japan has an obligation publicly to repudiate statements by government officials purporting to deny that the "comfort system" was one of sexual slavery. In our view, it should also publicly call upon the declarants to repudiate such lies and, if not, to leave office. … We emphasise further that … statements, which implicitly or explicitly label "comfort" women as prostitutes, heap new suffering upon the survivors through stigmatising them in the eyes of the Japanese society, and the societies in which they live, and through attempting to undermine the legitimacy of their demands for apology and compensation. (1002). The failure to fully disclose the truth and accept responsibility has the further effect of obstructing the physical and mental recovery and social re-integration of many of the survivors of the sexual slavery system. (1003)

Discrimination in the "Comfort System"

The "comfort system," and its aftermath to this day, has been riddled with discrimination: The original selection of women reflected intersections of ethnic/racial, wealth and gender discrimination. … there is some evidence in this record that those of non-Japanese or non-European origin were generally treated even worse …There is also some evidence that indigenous women were treated most brutally of all…. Even today, the Fund sets different amounts for medical and welfare expenses among the comfort women, depending on their national origins: 2 million yen for Chinese and Korean women and only 1 million for the "comfort women" of other national origins. (1004)

Militarism and Gender

In attributing state responsibility to Japan, the Prosecutors have drawn attention to the impact of militarism in general, and the military structure designed by the state of Japan in particular, upon women as a gender. (1007). By the time of the Second World War, militarism had pervaded the ethos of Japanese society (as well as of many other states) at every level. … The Japanese army demanded absolute obedience to the hierarchical chain of command. This enabled senior officers to tyrannise lower ranks ,,, which denied soldiers' human rights, oppressed their individuality and demanded absolute obedience, [and] can be directly linked with the brutal treatment and sexual violence inflicted upon women and girls … The effects of the dehumanising treatment of Japanese soldiers pervaded society, encouraging a culture of brutality. (1008)

The capacity of the Japanese military system, its leaders, soldiers and civilian agents, to subordinate and oppress women into sexual slavery flowed, at the same time, from a view of women as inferior, lacking in rights and existing for the purpose of serving others. … The written opinion of expert witness Minamoto Junko … reveals how the elements of Japanese imperial ideology and norms were heightened in the military context. This ideology underpinned the unimaginable inhuman and discriminatory treatment to which the "comfort women" were subjected. … Women were directly subjected to Imperial rule, at the same time as they were subjected to the rule of men in their family, where the male head of household was the "Emperor" of the household. Numerous political and social restrictions on women meant they had little choice about whether to obey men. Poor families sometimes sold their daughters into licensed prostitution, and it was considered "filial duty" to take customers. This ideology of female subordination thus combined with the claimed necessities of the Imperial war effort to produce one of the most brutally mysogynist chapters in history. (1009)

The Tribunal considers that this direct link between militarism and the abuse of women and gender must be further researched, explicitly acknowledged and addressed in educational and cultural programs. It must be understood as relevant to all concerts of war including internal armed conflicts and other forms of contemporary conflict. Only then can such abuse be realistically challenged and its recurrence in armed conflict in the future, limited. (1010) … In this case, the unprecedented scope, institutionalisation and brutality of the "comfort system" is the product of a culture of objectification of and discrimination against women, cruelly exacerbated as to women from cultures considered inferior by the aggressors, and taken to extremes as part of the culture of militarism. (1012) … This bizarre "privatisation" and systematisation of rape in the "comfort station" system demonstrates the discriminatory purpose of the Japanese military and, by extension, the responsibility of the state of Japan, for gross discrimination. This Tribunal considers that Japan has a continuing obligation to take strong measures to address the discriminatory roots of this atrocity, which persist in the culture of militarism and gender inequality, and that Japan has violated that obligation in failing to make a genuine apology, provide compensation, prosecute wrongdoers, reveal the truth, and take vigorous measures to prevent recurrence. (1013)

Teaching about and Memorialisation of the "Comfort System"

The state of Japan's failure to face the truth of its past crimes is reflected in the dearth of official memorials, research institutions, cultural explorations, and special medical and rehabilitative services and programs and institutes for the survivors and their families. It is also reflected, perhaps most pointedly in the inadequate treatment of the history of the "comfort women" in the school textbooks approved by the Japanese Ministry of Education and used in Japanese schools.(1014)

[T]he obligation to reveal and transmit the truth to future generations and prevent recurrence is a fundamental guarantor of human rights and thus, like other international human rights obligations, takes priority over domestic law. As such, Japan's international obligations of state responsibility compel the government to ensure the teaching and discussion of Japan's past crimes against the "comfort women" in the schools as well as communities. … Accordingly, the Tribunal finds that the deterioration in Japanese textbook content and Japan's failure to take affirmative steps to inform children of the state's responsibilities are violations of its positive duty to take necessary measures to prevent recurrence; the fact that the deterioration appears to have been encouraged by the state adds to its wrongfulness.(1017)

Claims of Circumstances Precluding Wrongfulness

State responsibility can be counteracted by circumstances precluding wrongfulness. … Japan contends that any individual claims that the "comfort women" may have had for compensation have been fully satisfied by peace treaties and international agreements between Japan and other states following the end of the Second World War (the "Peace Treaties") [that] ,,, . purport to waive Japan's liability for further claims arising out of the war. … The Japanese government has maintained in various contexts that it has legally settled all claims under the terms of the various treaties and diligently fulfilled the obligations and, accordingly, that there is no basis for further claims such as those before this Tribunal. (1020)

[The Judges cited the relevant provisions of the Peace Treaties. They determined that] no state can waive the liability of another state for crimes against humanity. … Japan is prevented from attempting to evade liability for violations of crimes against humanity by hiding behind the terms of the Peace Treaties. … neither the Allies nor those victimised states … had legal power or right to waive the liability of Japan for crimes against humanity, including the rape and sexual slavery committed against the former "comfort women" or other victims of crimes against humanity. (1036)

[As additional factors] [t]he Judges attach weight to the fact that the claims forming the subject matter of these proceedings (that is, the internationally wrongful acts committed against the "comfort women") were not explicitly discussed during the Peace Treaty negotiations. … As such, … the normal principles of treaty interpretation would preclude a finding that this waiver was intended, by either party, to include the claims relating to the current proceedings. (1038)

A State Cannot Waive Individual Claims for Crimes against Humanity

The Judges recognise that, as a general matter, the injured state may waive responsibility and, as a result, the claim is extinguished. However, as already noted, crimes against humanity by definition are committed against individuals and not against states. Moreover, as obligations owed erga omnes, they constitute an offense against the entire world community (1041) … it is legally impossible, in our view, for a state to waive the claims of the individuals injured because the injury is done to all. … it is legally impossible for bilateral or multilateral agreements, even agreements concluded by states of which the victims are nationals, to waive the interests of non-participating states in redressing a crime done to all. (1043)

Beyond this, the people of the world – and not only states – have a compelling interest in establishing accountability for crimes against humanity…. the Tribunal rejects the proposition that the international community is comprised only of states. (1044)

This Tribunal, deriving its authority from the peoples of the Asia-Pacific region victimised by the Japanese military aggression and its military sexual slavery system, and ultimately from the people of the world, sits and renders judgement to give voice to the unextinguished claims. Among its purposes is to encourage the states of the world – many of whom have, in various contexts, expressed their condemnation of Japan's military sexual slavery system and its resistance to making reparations to the survivors – to discharge their responsibilities as part of the community of nations and accelerate their efforts to achieve a just resolution and ensure the accountability of the Japanese state. (1045)

[The Judges emphasised the political nature of the lump sum settlements negotiated within the Peace Treaties and warned of] the danger to the principle of accountability of permitting a geopolitical negotiating process to extinguish the claims of the injured. (1048)

Gender Bias of the Peace Treaties

We also find persuasive the arguments of the co-Chief Prosecutors regarding the inherent gender bias underlying the Peace Treaties. We note that women, either as individuals or as a group, did not have an equal voice or equal status to men at the time of the conclusion of the Peace Treaties, with the direct consequence that the issues of military sexual slavery and rape were left unaddressed at that time and formed no part of the background to the negotiations and ultimate resolution of the Peace Treaties. The Tribunal considers that such gender blindness in international peace processes contributes to the continuing culture of impunity for crimes perpetrated against women in armed conflict. (1051)

Hague Convention 1907 Article 3

Article 3 of the 1907 Hague Convention provides an additional foundation for recognising compensation claims by individuals, and that … it is applicable to the state of Japan. … Japan takes the position that Article 3 does not confer a direct, individual right of compensation, but refers only to the responsibility between states. … this Tribunal is not in accord. Rather, based on the negotiating history and the text, this Tribunal accepts the expert … that Article 3 was intended to confer an independent individual right to compensation for victims of violations of the annexed Regulations. (1052).

[T[he Judges find that the application for state responsibility is valid and that the Japanese government is liable for the harm inflicted by the Japanese military sexual slavery system. (1053)

Reparations

In conformity with the longstanding principle of international law that the state must provide a remedy for its wrongs, the government of Japan is accordingly obliged to provide reparation to the former "comfort women" for the crimes committed against them by or with the complicity of the Japanese government and military.(1056)

[T]he government of Japan owes a duty to provide reparation in various forms. There should be a dialogue between the government, the survivors and their representatives, and experts to ensure that the general and specific voices and needs of all women are heard. An appropriate remedy for one may not be appropriate for another. Individual needs and wants of the victim-survivors should be taken into account. The magnitude and scope of the harm demand extraordinary efforts to reverse long denied redress. (1085)

The Tribunal holds that in order to fulfil its responsibility, the government of Japan must provide each of the following remedial measures:

1. Acknowledge fully its responsibility and liability for the establishment of the "comfort system," and that this system was in violation of international law.

2. Issue a full and frank apology, taking legal responsibility and giving guarantees of non-repetition.

3. Compensate the victims and survivors and those entitled to recover as a result of the violations declared herein through the government and in amounts adequate to redress the harm and deter its future occurrence.

4. Establish a mechanism for the thorough investigation into the system of military sexual slavery, and allow for public access and historical preservation of the materials.

5. Consider, in consultation with the survivors, the establishment of a Truth and Reconciliation Commission that will create an historical record of the gender-based crimes committed during the war, transition, occupation, and colonisation.

6. Recognize and honour the victims and survivors through the creation of memorials, museums, and libraries dedicated to their memory and the promise of "never again."

7. Sponsor both formal and informal educational initiatives, including meaningful inclusion in textbooks at all levels and support for scholars and writers. Efforts should be made to educate the population and, particularly, the youth and future generations concerning the violations committed and the harm suffered; research should endeavour to examine the causes of the crimes, societies ignoring of the crimes, and ways to prevent reoccurrence.

8. Support training in the relationship between the military and gender inequality and the prerequisites for realizing gender equality and respect for the equality of all the peoples of the region.

9. Repatriate survivors who wish to be repatriated.

10. Disclose all documents or other material in its possession with regard to the "comfort stations."

11. Identify and punish principal perpetrators involved in the establishment and recruitment of the "comfort stations."

12. Locate and return the remains of the deceased upon the request of family members or close associates.

The Tribunal further recommends that the former Allied nations:

1. Immediately declassify all military and governmental records concerning the establishment and operation of the "comfort system" and the reasons why it was not prosecuted before IMTFE.

2. Immediately declassify all military and governmental records concerning the failure to prosecute the Emperor HIROHITO before the IMTFE.

3. Acknowledge their own failures to investigate and prosecute the crimes committed against the former "comfort women" initially in the post-war trials and in the intervening 56 years,

and take measures to investigate, disclose and, in appropriate cases, prosecute surviving perpetrators.

The Tribunal further recommends that the United Nations and all the states thereof:

1. Take all steps necessary to ensure that the government of Japan provides full reparations to the survivors and other victims and those entitled to recover on account of the violations committed against them.

2. Seek an advisory opinion of the International Court of Justice as to the illegality and continuing liability of the government of Japan in regards to the former "comfort women."

Repeatedly in history, states have ignored crimes of sexual and gender violence committed against women in armed conflict. This failure is particularly reprehensible where justice is provided for other offenses. The failure of the of Allies to prosecute Japan's military sexual slavery system denied the victimised women equal access to the law and perpetuated the view that their suffering did not merit equal disapprobation or that they were willing participants. … (1089).

Concluding Comments

It is our hope that the moral force of this Women's International Tribunal and this Judgement will engage states as well as peoples of the world to bring Japan to recognise its responsibility to repair these atrocities, to right these wrongs, and to enable future generations to go forward on the basis of respect for women's equality and dignity. (1090).

The courage of the survivors, their yearning for justice, and their solidarity has inspired a worldwide movement for women's human rights and against gender violence to ensure that such crimes never again be overlooked nor allowed to occur. … (1091).

This Tribunal makes clear that if states fail to fulfil their duty to investigate, prosecute, condemn and punish the perpetrators of crimes against women and to provide the full range of reparations to victims in timely fashion, then the women and peoples of the world will step into the chasm and call both the wrongdoers and the world to account. Survivors, their families and loved ones, activists, researchers, lawyers, translators and scholars from many countries, including, importantly, Japan the victimiser country, have united to make this Tribunal possible. In doing so, they have shaped a new and powerful mechanism of justice. (1092).

The crimes committed against these survivors remain one of the greatest unacknowledged and unremedied injustices of the Second World War. … (1093). Accordingly, through this Judgement, this Tribunal intends to honour all the women victimized by Japan's military sexual slavery system. The Judges recognise the great fortitude and dignity of the survivors who have toiled to survive and reconstruct their shattered lives and who have faced down fear and shame to tell their stories to the world and testify before us. Many of the women who have come forward to fight for justice have died unsung heroes. While the names inscribed in history's page have been, at best, those of the men who commit the crimes or who prosecute them, rather than the women who suffer them, this Judgement bears the names of the survivors who took the stand to tell their stories, and thereby, for four days at least, put wrong on the scaffold and truth on the throne.