

〔研究ノート〕

Assessment of the 2000 Tokyo *Women's International War Crimes Tribunal on Japan's Military Sexual Slavery*

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I . INTRODUCTION

On June 12, 2008, the Japanese Supreme Court dismissed a formal complaint against NHK, filed in July 2001 by the *Violence Against Women in War-Network* (VAWW-NET Japan). At issue was the partial censorship by NHK of a documentary on Japan's wartime, aired on January 30, 2001. More precisely, the national broadcaster cut four crucial minutes presenting the verdict of a citizens' tribunal, held in Tokyo in December 2000, which found the Japanese state responsible for the creation of a 'sex slave' system (e.g. JT13June or NHKfile 2010). How could a few minutes of silence have led to almost seven years of legal pursuit?

In fact, the censored verdict had been handed down by the *Women's International War Crimes Tribunal on Japan's Military Sexual Slavery*, a citizen's body without legal power, which found the Japanese government guilty of allowing the 'comfort women' system to develop throughout Asia, from the Second Sino-Japanese War (1937-1945) until the end of the Pacific War (1945).

In this paper, in order to better understand the real weight of these four minutes, it is necessary to assess the *Women's Tribunal* itself. Firstly, motives behind this action need to be clarified. Secondly, we will show the legal, historical, and psychological reasons why it had to take the form of a popular tribunal. Thirdly, the meeting and its final recommendations will be succinctly described, and its impact on both Japan and the international community will be appraised, a decade after the judgment. In conclusion, we will see why there are reasons for hope for an improvement.

II . HISTORICAL BACKGROUND

The number of women forced into sexual service by the Japanese army is estimated to be from 20,000 to 400,000, with a conservative estimate between 50,000 and 100,000 (e.g. Margolin 2007: 354), and are predominantly Korean, but also Chinese, Filipinas, Indonesian, Dutch, Taiwanese, and Japanese. However, to emerge from oblivion and begin to be considered as war victims, these 'comfort women' (CW hereafter) had to wait over forty years (until 1989) for the fall of the Berlin Wall and the Soviet Union collapse, Emperor Hirohito's death, and the democratisation of South Korea.

At first, the Japanese government denied any involvement, but Yoshimi's findings in 1991 (Yoshimi 2000:

153–162) forced them to acknowledge the army's participation and to admit their moral responsibility through the Chief Cabinet Secretary Yohei Kono's statement, in 1993, conceding military involvement and the coercive nature of these acts (e.g. AC 2009).

At about the same time, mass rapes were becoming commonplace during the civil wars in former Yugoslavia (1992–1999), triggering global women's movement campaigns against wartime sexual violence (Soh 2008: 33).

Surrounded by these circumstances, the International Commission of Jurists (UN consultative) was the first international organisation to issue a report recommending to the Japanese government to pay compensation to surviving CW (November 1994). Two years later, the matter would be framed in terms of 'military sexual slavery' in the Coomaraswamy Report (UN special rapporteur on Violence against Women). Subsequently, in a report on "Contemporary Forms of Slavery" released in 1998, Gay J. McDougall (UN Human Rights Commissioner) would even refer to the CW stations as "rape centres" and "rape camps", insisting on the right for the victims to receive compensation, and the necessity to punish the perpetrators (Ōnuma 2007: 243–248; Wikipedia).

Conservatives and neo-nationalists did not seem much concerned at first, until the progressive PM Tomiichi Murayama's apology in 1995, and the mention of the issue in history textbooks in 1996. Faced with these major blows, they started giving justifications and reporting denials. For them, these women were not 'sexual slaves' but licensed prostitutes who willingly worked for the military for money. One of the most aggressive revisionist groups was the *Society for History Textbook Reform* (Atarashii Rekishi Kyōkasho wo Tsukuru Kai), founded in December 1996, and joined by the famous manga writer Kobayashi Yoshinori (Soh: 66, 68). Their claim was that these references to CW in textbooks were to be considered as a "pathological symptom of the masochistic view of the nation's history held by Japan's progressive intellectuals." This strong opposition progressively led textbook publishers and mainstream newspaper editors to avoid mentioning the issue (Soh 2008: 169–171).

In parallel, and sometimes in synergy with feminist humanitarian developments, former CW began to speak out. The first lawsuit against the Japanese government was filed in December 1991 in the Tokyo District Court by a group of Korean war victims including Kim Hak-sun, who was the first CW to come forward courageously to tell her ordeal. To date, nine class actions have followed, notably by Filipinas in 1993, Chinese in 1995 and 1996, and Taiwanese in 1999. However, all have been rejected on the grounds that compensation had been settled by post-war treaties, or that individuals did not have the right to seek reparations from the state, or their cases exceeded the 20 year statute of limitation (JD 2009).

In short, by the end of the 90's, CW were not yet formally acknowledged as war victims --or being compensated for their suffering-- by the Japanese state. Besides, right-wing revisionists had launched a campaign denying their status as forced sexual labourers. Their existence was even disappearing from school textbooks while aged CW were dying one by one.

For these reasons, immediate action was urgently needed. That is why the idea of organising a tribunal began to form in the mind of three women group organisers: late Matsui Yayori of the NGO VAWW-NET Japan, Yun Chōng-ok of the *Korean Council for Women Drafted for Military Sexual Slavery by Japan*, and Indai Sajov of Philippine *ASCENT* (Conveners 2009).

III. WHY A POPULAR TRIBUNAL?

Since civil tribunals could not pursue the state's responsibility, it was even less likely that a criminal one could be formed. Moreover, as the offences took place over 50 years earlier, an international crime tribunal (ICT) would also be most difficult to set up.

On the other hand, popular tribunals were seen, at that time, as adequate instruments to tackle global human rights issues (discussion with Dr. Beverley Yamamoto; see also CWGL 2010: 10–16). It was therefore decided that the public body to be created would follow the *Russel Tribunal* procedures, the model *per excellence* proposed by the British philosopher Bertrand Russel and the French writer Jean-Paul Sartre, and organised in 1967 to judge American criminal actions during the Vietnam conflict (Russel Tribunal 2010). However, the new Tribunal was to differ in that organisers would not be intellectuals but women from the aggressor country, backed up by grassroots NGOs from the victim nations, and by the international feminist movement (VAWW–NET Japan 2002: 10).

A popular tribunal has no enforcement power, but it can nevertheless make recommendations stronger than in the case of an ordinary international conference. Based on a charter, it is also a place where victims can testify, and where supporting documents can be presented. In that sense, the choice of staff was also critical, since the event's legitimacy and authority undeniably depends on the chief prosecutors and the judges' reputation in the ICT and CW fields.

Aside from these legal motives, there was an historical reason to decide on a tribunal: the legacy of the International Military Tribunal for the Far-East (IMTFE), convened in 1946 to try Imperial Japan leaders for their crimes during WWII. Indeed this court failed to discern the criminal nature of forced prostitution, even though some prosecutors drew judges' attention to it (Totani 2008: 13–14). More generally, for strategic purposes, the late Emperor Hirohito was shielded from liability, and in order to strengthen vanquished Japan against the threat of the spread of communism, the Allies released Japanese officials convicted for war crimes, so that they could resume their activities and consolidate Japan's governance (e.g. Lind 2008: 31–32; Futamura 2008: 144–151). The new tribunal was therefore aiming at setting the record straight about individual responsibility and the creation of an historical record.

Finally, the format of a tribunal was selected for a psychological reason: everyone needs to be recognised for what (s)he is, and thus necessitates a third party's presence. This is even truer for victims in general who are yearning for consideration and esteem. Material or financial compensations are necessary but insufficient atonement. The acknowledgement of their suffering also is imperative. The perpetrator(s) have to be identified and punished, yet the sufferers still stand in need of being identified as victims by people other than the criminal(s). Indeed, to be given the right to feel sorry (for oneself) tends to console the sufferers for their harsh experiences, and constitutes a first step toward emotional reconstruction and social reintegration (Audet and Katz 2006: 463–465).

An international 'tribunal', more than a conference, appeared therefore as a more fitting setting for the CW, who could feel a third party's presence, acknowledging their status as victims. At the same time, this was a means to soothe the 'second rape' trauma they received when their cases were rejected by Japanese

civil courts.

IV. THE WOMEN'S TRIBUNAL PROCEEDINGS

Two and a half years of preparation undertaken in nine different countries finally led to the realisation of Matsui Yayori and collaborators' initial idea: the *Women's International War Crimes Tribunal on Japan's Military Sexual Slavery* (Women Tribunal in short).

Held in Tokyo (the aggressor country's capital) from December 8th to December 10th 2000 (at the turn of the millennium), the event drew several thousand participants -- including representatives from more than 150 Asian NGOs and 300 media anchors -- and was attended by 64 survivors from both Koreas, China, Taiwan, Indonesia, the Philippines, the Netherlands, and East Timor (VAWW-NET Japan 2002: 28, 39, 66).

The two chosen chief prosecutors were Patricia Viseur-Sellers, an American legal adviser for gender-related crimes for the ICT for the Yugoslavia, and the Rwanda Tribunal; and Ustinia Dolgopol, an Australian senior lecturer in international law and expert in the Japanese CW issue. The four presiding judges were also of international reputation (VAWW-NET Japan 2002: 11; TribunalMembers 2010).

Emperor Hirohito – head of the state and supreme commander of the armed forces during the war – along with nine other accused were prosecuted on the charges of crimes against humanity. The state of Japan was also placed on trial (Transcript 2001: 2).

The judges found the 35 survivors' testimonial narratives credible as evidence, and took into account statements by two Japanese veterans, historians, legal advisers in international law, and psychologists which helped to replace these testimonies in their context. Findings from the 1946 IMTFE were used as evidence as well. It was established that

“the system of Japan's military sexual slavery was a standard and integral part of Japan's aggressive war throughout Asia-Pacific. The Judge also found that 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 the women were subjected to continuous and sometimes gang rape and other forms of sexual violence and torture. They lived in miserable conditions, with poor food, no privacy, and a lack of hygiene.” (Transcript 2001: 9)

Following the fact that a crime against humanity is defined by the three following conditions: (1) it occurs before or during war, (2) it is part of a large-scale or systematic attack against a civilian population, and (3) it is in connection with war crimes; and taking into consideration that rape occurring during armed conflict has been declared as war crime since 1998 (Timeline 2003), the verdict, stated on December 4th 2001 at the UNHRC in The Hague, declared that the ten accused were guilty of responsibility for the charges (Seraphim 2006: 307). The Japanese government, which incurred state responsibility, was also called on to meet the tribunal's recommendations in order to deter any recurrence. First, it was asked to carry out the legal redress: acknowledge its responsibility, issue a full apology, compensate the victimised survivors, and punish the perpetrators. Second, it was demanded to establish a framework of remembrance: create a record of gender-based war crimes, build memorials, found a museum, and a

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library dedicated to the CW memory. Thirdly, it should educate the younger generations and the population through mentions of the issue in textbooks, or other initiatives (Transcript 2001: 24–25).

V. IMPACT ON JAPAN AND THE INTERNATIONAL COMMUNITY

Today, ten years after the final verdict, we can evaluate how strong the impact of the Women Tribunal has been on Japanese society and the international community.

First of all, the event was a cathartic experience for the survivors. At the end of the closing ceremony, Matsui (2002: 5) recalls, “The big hall filled with cheers, as the aged survivors weeping in joy, climbed onto the stage one after another to express their gratitude to the judges and embraced each other.” The judgment restored their dignity as people in validating their suffering. Today feminist counselors advocate changes in Japanese juridical procedures to base them on the Women Tribunal's rules, namely the victims' right to participate in the judicial proceedings, along with gender justice, in contemporary cases of sexual violence (Yanagimoto 2004).

Secondly, the final document (over 200 pages) along with video recordings, official documents, and statements from specialists are not only material for the future generations to remember the CW history, but a weapon against the revisionists. In August 2005 the Women's Active Museum on War and Peace, a resource center conceived by Matsui Yayori, opened in Tokyo to preserve these records (WAM 2010).

Thirdly, the Women Tribunal was an original contribution to international law. With its historical findings of sexual slavery, pursuit of individual criminal responsibility, and recommendations, it can be considered as a precedent for reexamining war crimes from a gender perspective (Matsui 2002: 6). In addition it was unprecedented for adopting a feminist methodology which relies essentially on survivors' testimonies as historical evidence. This choice was not only due to the lack of historical facts based on print documents, it was a strategy to reveal paradigms at work – notably the patriarchal and prostitution ones (Nozaki 2005; see also Ueno 2000: 73–91; 123–126). In this sense, the event made overseas organisers and participants aware of related issues in their own nations. Amongst others, we can mention the case of Yun Chōng-ok, representative of the *Korean Council*, who underlined the need to apologise for the sex crimes of the South Korean Army during the Vietnam War (Hong Yun-shin 2007).

However, the Women Tribunal lacks legal authority, and could not enforce its recommendations. Despite the international pressure under the form of resolutions from parliaments or lower houses of various countries (US, The Netherlands, Canada, and EU in 2007; UK and Taiwan in 2008), the Japanese government has not yet acknowledge its historical and legal responsibility, not yet compensate these women, nor punish the perpetrators. Paradoxically, this outside pressure might even empower the neo-nationalists and deniers, particularly if the CW issue is polarised between the *prostitute paradigm* and the *sexual slave paradigm* (Soh 2008: 45–46).

No museum, no library, nor memorial to my knowledge has been built by the state in the survivors' memory. Worse yet, existing ones are sometimes attacked by rightists, as in the case of the Women's Active Museum on War and Peace in 2008 (WAMAttack 2010). Meanwhile, few editors comment on the CW issue in their school textbooks. Therefore, the remembrance duty and the children's education recommendations are not respected, either.

Finally, although there is no doubt that a message loud and clear was sent to the world through internet sites, mailing lists, and international media (e.g. Sakamoto 2001: 56), yet few Japanese people seem to know about the Women Tribunal. In order to roughly evaluate the media's impact, we counted the annual number of articles, in two mainstream newspapers, containing the word "ianfu" (comfort women) and "josei kokusai senpan hotel" (the *Women Tribunal's* name in Japanese), by using electronic databases: KIKUZŌ II Visual Asahi DNA for libraries (*Asahi Shimbun*, progressive paper), and YOMIDASU Bunshokan (*Yomiuri Shimbun*, conservative paper). Interestingly enough, in figure 1 (see appendix), the Asahi newspaper curve, between 1990 and 2008, shows no more than a tiny bump around the years the Tribunal took place, and the number of hits have not climbed back to previous highs. In figure 2 (see appendix), between 1998 and 2009, it is the complete lack of reaction around 2000 and 2001 which attracts attention. However, both observations can be partially understood if we recall that the Tribunal found Emperor Hirohito guilty for war crimes, a subject still taboo in the Japanese society. In other words, the recommendation of population education stated in the judgment was also scorned. Even NHK television's coverage of the Tribunal's verdict, aired in January 2001, showed signs of censorship as a result of pressure from conservative politicians, including Abe Shinzo, then Deputy Chief Cabinet Secretary of the Liberal Democratic Party (Morris-Suzuki 2005; VAWW-NET Japan 2005).

VI. CONCLUSIONS

In exposing invisible atrocities of wartime sexual violence, the Women Tribunal was a valuable achievement for feminists and human rights activists around the world. It contributed to humanitarian law through its specific proceedings, and brought about a therapeutic effect on the former 'comfort women' in acknowledging their victim's status. But the attempt to fight against 'historical amnesia' was much less effective in Japan, because of the sparse coverage of the event by local media. In editing out critical portions from a documentary about the tribunal's verdict, namely war crimes individual liabilities, particularly those of Emperor Hirohito, NHK is also partly responsible for that failure. The related legal dispute over the censored four minutes –and the ensuing 7-year legal trial between the national broadcaster and VAWW-NET Japan– underlined deep divisions in the Japanese society over how to represent the "comfort women" issue to the public. In fact, that opposition has highlighted the strong tension between two versions of the wartime past: a morally bankrupt disaster versus a righteous, but failed, enterprise. We have seen that these issues find their roots in the 1946 Tokyo Trial's gender-blindness, dooming the "comfort women" to sink into oblivion until the 90's, and in the American 'reverse course' politics which allowed the pre-war social and economic bureaucracy to carry on into the postwar political structure.

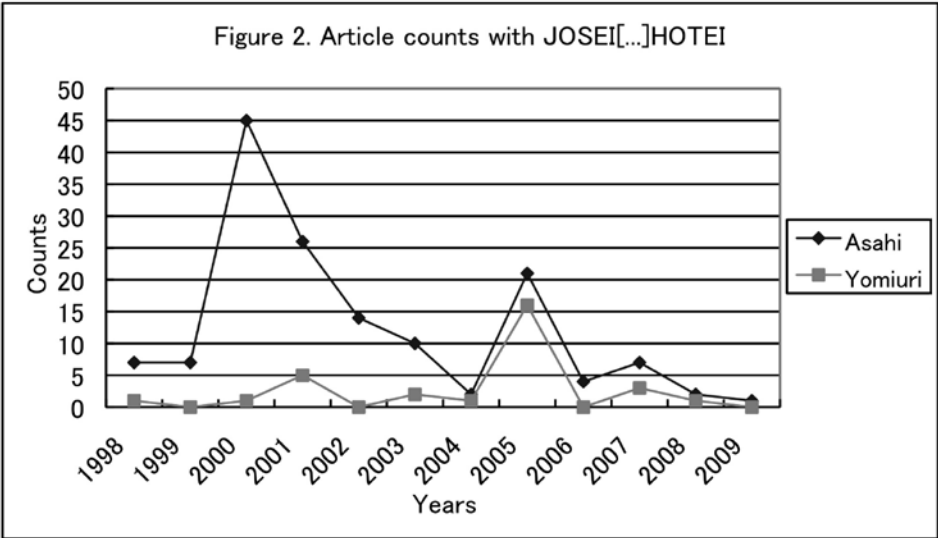
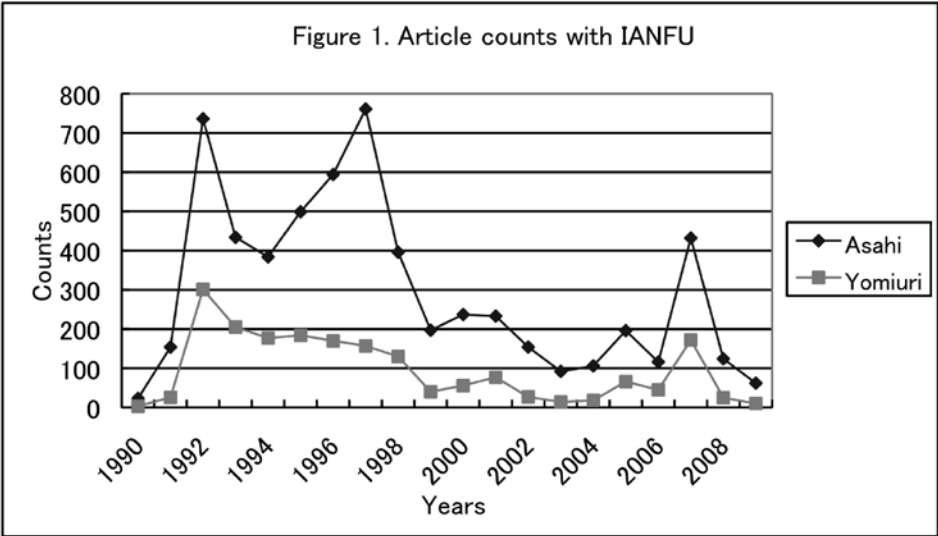
Changes have been often possible when the Liberal Democratic Party was politically unstable. For instance, in 1993, the non-LDP Prime Minister Morihiro Hosokawa made what is considered to be the most explicit apology to date. Another case in point is the fund for international research on the war passed under (Social Democratic Party) Prime Minister Tomiichi Murayama's tenure.

In the legislative elections of 2009, the LDP suffered the worst defeat in its history after 54 years of virtually uninterrupted conservative rule. The Democratic Party of Japan therefore, has an opportunity to

solve this war legacy.

It nevertheless remains to be seen whether the Japanese are ready to bring into question the war narrative portraying them more as victims than aggressors, a self-representation built on the Hiroshima and Nagasaki atomic bombings (Dower 1996: 123-124; Buruma 1994: 106-107).

Appendix



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