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“COMFORT WOMEN” OF WORLD WAR II

Janet L. Tongsuthi*

INTRODUCTION

If prostitution is the world's oldest profession, then perhaps forced prostitution is the world's oldest crime.¹ When Japan conscripted Korean² women into service for use as sexual slaves during World War II,³ rape became an oppressive weapon that was used against both the female victims and the Korean nation.⁴ Japan's crime was not made public until 1991,⁵ when a group of former victims broke their silence and filed suit in Japanese

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1. In the context of this Recent Development, forced prostitution is defined as the abduction of women through force, trickery, or other means for the principal purpose of sexual enslavement and repeated rape.

2. Although this Recent Development focuses on Korean women, Japan also “recruited” women from the Philippines, China, Taiwan, and Indonesia. Jake Doherty, *Conference to Focus on Plight of Wartime ‘Comfort Women’; Japan: Activists Say Victims Used as Sex Slaves in World War II Should Be Compensated by the Government that Forcibly Recruited Them*, L.A. TIMES, Feb. 20, 1993, at B3. However, the majority of “comfort women” were Korean. Clayton Jones, *Japan Looks into ‘Comfort Women’ Charges to Save Face*, CHRISTIAN SCI. MONITOR, Mar. 11, 1993, at 7.

3. Other historical examples include the abduction of Bengali women by Pakistani soldiers in 1971 for service in military brothels, and German soldiers' rape and enslavement of Russian and Jewish women in occupied territories. Susan Brownmiller, *Making Female Bodies the Battlefield*, NEWSWEEK, Jan. 4, 1993, at 37. The rape and forced impregnation of slave women, both black and white, is another example of sexual slavery. PAULA GIDDINGS, *WHEN AND WHERE I ENTER* 36-39 (1984). See also Lan Cao, *Illegal Traffic in Women: A Civil RICO Proposal*, 96 YALE L.J. 1297 (1987), for a modern overview of forced prostitution.

4. Brownmiller, *supra* note 3, at 37 (“[Rape against] the enemy's women is one of the satisfactions of conquests In one act of aggression, the collective spirit of women and of the nation is broken . . .”).

5. Thirty-five Korean women symbolically chose the 50th anniversary of Japan's bombing of Pearl Harbor to tell their own story of Japanese oppression and war crimes. Rae Corelli, *An Apology for Degrading Acts*, MACLEAN'S, Aug. 16, 1993, at 32.

court. Perhaps empathy and a recognition of commonality with the plight of Bosnian women played a part in ending over fifty years of silence by Korean women regarding Japan's participation in mass rape and sexual slavery.

This Recent Development first outlines the history of Japan's forced prostitution policy. It then examines the potential remedies victims may seek as well as possible barriers they face. Finally, it emphasizes the importance of treating Japan's actions against women as war crimes.

I. HISTORICAL BACKGROUND

Prior to 1945, Korea spent thirty-six years as a Japanese colony.⁶ Japanese colonial rule left Korea with a feeling of "hostility toward Japan [that] was deeply entwined with national identity."⁷ The position of women, already suffering under the traditional Korean societal patriarchy,⁸ worsened significantly under Japanese rule.⁹ Recent substantiation of the Japanese government's participation in establishing military brothels during World War II refueled the hostility between Japan and Korea, especially among Korean women.

When the accusations first surfaced in 1991, Japan denied involvement but was contradicted by military documents discovered by a historian later that year.¹⁰ After the document discov-

6. See CHONG-DO HAH, *THE DYNAMICS OF JAPANESE-KOREAN RELATIONS, 1945-1963: AN INTERPRETATION OF INTERNATIONAL CONFLICT* 25-50 (1967) for a historical overview of Japanese-Korean conflict.

7. SUNG-HWA CHEONG, *THE POLITICS OF ANTI-JAPANESE SENTIMENT IN KOREA* at xi (1991).

8. "Historically speaking, South Korea still has a strong ideology of sexual discrimination influenced by Confucian culture, and women are considered as the property of men." YAYORI MATSUI, *WOMEN'S ASIA* 148-51 (1989); see also YONG CHOON KIM, *CH'ONDOGYO CONCEPT OF MAN* 77-78 (1978) (stating Ch'ondogyo, an influential Korean religion, emphasizes that the "father is the master and wife is the servant . . . [and] women . . . obey men in three basic ways: Obeying father before marriage; obeying husband after marriage; and obeying son, if husband dies."). See generally ROBERT O. WHYTE & PAULINE WHYTE, *THE WOMEN OF RURAL ASIA* (1982) (describing women's social and economic status in Korea). Recognition that rape further devalued their already minimal social status in Korean society assured the women's silence in order to avoid additional abuse from their own community. Doherty, *supra* note 2, at B3. That women were eventually able to come forward is partially attributable to changes in Korea's political environment. *Id.*

9. MATSUI, *supra* note 8, at 150. Despite Japanese colonial domination, some Korean women nonetheless occupied a prominent place in nationalist movements seeking to free Korea from colonial rule. *Id.*

10. Jones, *supra* note 2, at 7. These documents, which were buried in Japan's Defense Agency's archives, linked the military to the brothels' establishment.

ery, Japan investigated the "comfort women's" claims and interviewed former victims.¹¹ In July 1992, the government admitted its role in recruiting women, yet stipulated there was no evidence of coercion.¹² It was not until August 1993 that the Japanese government issued a statement confirming its use of coercive methods.¹³ However, the statement did not define the acts as war crimes, release specific information, or adequately address the reparations issue.¹⁴

Due in part to Japan's concealment of information, facts are scarce. Even so, it is estimated that anywhere from 80,000 to 200,000 women were enslaved.¹⁵ Methods such as abduction, coercion, and advertising false jobs were used to obtain women for the soldiers.¹⁶ Personal accounts from the victims or "jungshindae," the Korean word used to refer to the "comfort women," supply some of the details. One woman reported being kept in a house with thirty other women and raped twenty to thirty times almost every night for seven years.¹⁷ There were also reports of suicide, murder, and abandonment of victims too weak to be of service.¹⁸ Further substantive details are scarce and are not likely to be provided because victims fear social stigma which inhibits them from coming forward.¹⁹

Yvonne Hsu, "Comfort Women" from Korea: Japan's World War II Sex Slaves and the Legitimacy of Their Claims for Reparations, 2 PAC. RIM L. & POL'Y J. 97, 99 (1993).

11. Corelli, *supra* note 5, at 32.

12. *Id.*

13. Teresa Watanabe, *Japan Admits that WWII Sex Slaves Were Coerced; Apology: Government Statement Overturns Decades of Denial; Yet the Question of Redress for Victims Remains*, L.A. TIMES, Aug. 5, 1993, at A1. In an official statement, Japan apologized for the "immeasurable pain and incurable physical and psychological wounds" caused by its actions. *Id.*

14. *Id.*

15. Doherty, *supra* note 2, at B3.

16. Hsu, *supra* note 10, at 99.

17. Doherty, *supra* note 2, at B3; *see also* John H. Lee, *Ex-'Comfort Girls' End Silence on War Horrors; Human Rights: Japan Has Admitted to the Conscripting of Asian Women for Sex During World War II, But Some of the Survivors Are Pressing for Reparations*, L.A. TIMES, Apr. 25, 1992, at B2 (describing how women were kept in "ramshackle huts," given weekly injections to guard against sexually transmitted diseases, and suffered permanent physical and mental damage as a result of the abuse).

18. Watanabe, *supra* note 13, at A1.

19. *Cf. supra* notes 7-8 and accompanying text.

II. REDRESS AND BARRIERS TO RELIEF

Although the Korean women's victimization gained international attention when a group of survivors filed suit in Japanese court, the legal and human rights issues will not resolve easily.²⁰ The women seek reparations in several forms.²¹ In addition to legal redress, the women request Japan's recognition of its moral culpability, a formal apology, full disclosure of all documentation and relevant data, and accurate revision of Japanese history textbooks to reflect Japan's conduct.²²

Gaining compensation may be difficult because Japan claims it settled all war claims with Korea in 1965.²³ However, the settlement's preamble states its primary purpose is to settle property concerns between the two countries and their nationals.²⁴ It is thus arguable that the settlement does not exclude individual claims.²⁵

Avenues of recourse may be found by broadly construing international human rights doctrines and laws to include rape as a war crime. The Hague Conventions of 1907,²⁶ to which Japan was a signatory, contain a clause stating that people during wartime should be treated according to "the laws of humanity and the dictates of public conscience."²⁷ Sexual enslavement absolutely contradicts these principles.²⁸

Although the International Convention for the Suppression of the Traffic in Women and Children excluded Japanese colonies

20. Jones, *supra* note 2, at 7.

21. A group of South Korean women forced to serve as prostitutes threatened to commit suicide if Japan failed to pay reparations. *South Korea's Comfort Women Threaten Suicide*, Reuter Lib. Rep., Dec. 12, 1993, available in LEXIS, Nexis Library, Wires File.

22. Hsu, *supra* note 10, at 124-26.

23. Under the 1965 agreement, Korea received \$800 million from Japan for economic development and in soft loans in exchange for giving up any additional damages claims sustained during the war. Lee, *supra* note 17, at B2.

24. Agreement on the Settlement of Problem Concerning Property and Claims and on the Economic Co-Operation Between Japan and the Republic of Korea, June 22, 1965, reprinted in 10 JAPANESE ANN. INT'L L. 284 (1966).

25. Hsu, *supra* note 10, at 101-02.

26. The Hague Conventions of 1907 revised the 1899 Conventions, which attempted to prescribe an international code regarding land warfare. *Id.* at 106 n.63.

27. DOCUMENTS ON THE LAWS OF WAR 43-45 (Adam Roberts & Richard Guelff eds., 1982).

28. See YOUNGINDRA KHUSHALANI, DIGNITY AND HONOUR OF WOMEN AS BASIC AND FUNDAMENTAL HUMAN RIGHTS 9-11 (1982) (arguing that protection of women falls within these provisions); see also Theodor Meron, *Rape as a Crime Under International Humanitarian Law*, 87 AM. J. INT'L L. 424 (1993).

including Korea, Japan was a signatory to this agreement.²⁹ Japan's accession to these agreements is important, despite Korea's exclusion from coverage, because Japan formally acknowledged forced prostitution as criminal and as a human rights violation.³⁰ Former victims can thus point out that Japan's use of women for sexual slavery violated human rights principles to which the government itself purported to subscribe.

Evidentiary problems also create barriers to obtaining a remedy. Many of the relevant documents are under Japanese control and have probably been destroyed.³¹ The existing documentation likely suffers from incomplete data and recordation of facts. The number of women who were murdered, who died during their enslavement, or who were forced to have abortions, are just a few examples of the type of information not likely to have been recorded. Also, many of the victims are now in their seventies and ill.³² Others have since died.

In a society that treats women who have been raped as social outcasts,³³ to speak up may mean familial and social ostracism. Shame and fear, which kept these women from coming forward for so long, may ensure further silence and impede redress and full disclosure of what occurred.³⁴

Finally, these claims come at an especially inopportune time for Japan and Korea because their governments are currently working towards normalizing economic relations. Korea's economic needs may be perceived by the government to outweigh the women's rights. Korea's reliance on Japanese technology and the need to compete in an international market heightens the likelihood that Korean women's rights might be sacrificed in or-

29. International Convention for Suppression of the Traffic in Women and Children, Mar. 31, 1922, 9 L.N.T.S. 415. This Convention was an extension of the International Agreement for the Suppression of the "White Slave Traffic," which criminalized "procuring of women or girls for immoral purposes abroad." International Agreement for the Suppression of the "White Slave Traffic," Mar. 18, 1904, art. I, 1 L.N.T.S. 83, 86; *see also* Hsu, *supra* note 10, at 106-09.

30. *See* Hsu, *supra* note 10, at 105-14 for further analysis of potential avenues of redress.

31. At the War's end, the Japanese Minister of War ordered all its army headquarters to destroy confidential documents, including those potentially unfavorable to Japan. *Id.* at 101.

32. Doherty, *supra* note 2, at B3.

33. *See supra* notes 8, 19, and accompanying text.

34. Women in the Korean patriarchal society occupy a "weak political and social status." Doherty, *supra* note 2, at B3.

der to maintain good economic relations.³⁵ While a strong economy may benefit all Koreans, including women and former victims, this objective should not be achieved by ignoring Japan's former crimes. To do so is to devalue Korean women's concerns and their basic human rights.

III. DEFINING THE CRIME AS A WAR CRIME

An important part of defining Japan's crime is recognizing the historical context in which it occurred. This particular circumstance makes the crime classifiable as a war crime and thus should be redressed as such. While most commentators would classify the mass rape and forced impregnation of women in Bosnia as war crimes, at least one legal expert declined comparing the Bosnian situation to Korean "comfort women" due to a perceived lack of "political motive" in the latter situation.³⁶

To state that Japan lacked a political motive for its crimes is to misstate the issue and to understate the women's victimization. Perhaps the issue is best stated by the feminist adage that the personal is the political.³⁷ The treatment of women by Japanese soldiers was politically regulated and condoned. Korean women were especially vulnerable and accessible victims because of their status as members of a colonized nation. Through the deliberate choice to prioritize recruiting Korean women, Japan substantiated its occupational rule and furthered its subjugation of the Korean people.³⁸ To say it was not political de-emphasizes the government's role and the negative results Japan achieved through the sexual enslavement of these women.

It is also important to emphasize that Japan chose to perpetrate rape and enslavement primarily against Korean women rather than Japanese women.³⁹ It is often forgotten or ignored

35. Emily Thornton, *Korea Reaches out to Japan*, FORTUNE, Nov. 1, 1993, at 126; see also Michelle Magee, *War Victims' Demands Delay Japan's U.N. Council Bid*, S.F. CHRON., Oct. 16, 1993, at A13 (suggesting Japan's decision to delay seeking a permanent seat on the United Nations Security Council is linked to the former "comfort women's" claims).

36. Helen Maserati, *War Crimes Trials*, ATLANTA J. & CONST., Mar. 28, 1993, at 8 (quoting Cherif Bassiouni, President of the International Association of Penal Law).

37. See generally BETTY FRIEDAN, *THE FEMININE MYSTIQUE* (1974) (arguing that the socio-political structure affects women's personal choices).

38. See *supra* note 6 and accompanying text.

39. See *supra* notes 4-7 and accompanying text.

that Asians are not all one "race."⁴⁰ The crime was perpetrated by Japanese against Koreans, two groups with distinct cultures. This makes the conflict interracial. Conflicts between Asian countries, such as Japan and Korea, are historically common and these conflicts fragment, rather than unite, Asian concerns.⁴¹ This is relevant because Japan's rape of Korean women occurred on two levels: gender and race. In other words, this crime occurred against these specific persons because they were Korean and because they were women.

CONCLUSION

International human rights doctrines should serve as a basis through which former "comfort women" may seek redress. Japan has purported to support human rights principles and should now substantiate its beliefs by offering reparations to the women it victimized. Human rights treaties must be specifically amended to acknowledge forced prostitution, and rape in all its forms, as violations of human rights. The ongoing use of rape as a weapon of war should be internationally condemned as a crime against women.

40. See Note, *Racial Violence Against Asian Americans*, 106 HARV. L. REV. 1926, 1932 (1993) ("perceived physiological similarity, invites people to presume a reductionist similarity among all people of Asian descent, within any given Asian ethnicity, and also across ethnicities . . . This tendency obscures not only the differences among Asian . . . individuals qua individuals but also the historic disputes that have separated Asian peoples.").

41. See *id.*

