

**Taipei Forum on Wartime Responsibilities Under International Laws
Documentation, Day 1**

SUMMARY OF ISSUES

Form

- Need for uniform titles and system of paragraphs;
- Issue of language – “survivor/victim”; “comfort stations/rape stations”;
- In precise form, every sentence in the general indictment should have a cross reference to the pertinent country presentations;
- Need to consolidate the forms of indictment of the chief and country prosecutors since it might look as if they are separate indictments;
- Should individual criminal indictments be combined in one document with the plea for state responsibility?

Jurisdiction

- How do we concretize the theory that the tribunal is an extension of the Far East Tribunal in terms of nature of crimes, evidence presented, relationship of indicting country with Japan; (e.g., In the Philippine case, can we suppose that the Philippines as an independent country now is indicting the emperor and other defendants who have not been tried before? If we include war crimes, will these charges be weakened by the lack of sovereign status of the country indicting?)

Nature of Crime/s

- Whether one, many or a combination of indictments, considering a fine balance between best evidence and practicality of getting the tribunal across to a non-legal public;
- What crimes should we prosecute? The general indictment evidence supports a charge of crime against humanity more than a war crime since the acts constitute widespread, systemic violations. Are we going to prosecute widespread rape, torture separately? If we drop the charges of war crimes, how much do we lose in terms of evidence particularly for state responsibility?
- How do we argue for state responsibility of the current Japanese government for past crimes?

Plaintiffs

- What is the legal status of each country during 1941-1946?

Defendants

- Who are the accused? Who will be named as accused and who will only be implicated in the text of the indictments? Who do we want the judges to find guilty for the crimes considering the interests of a mainstream public and the reactions from the right wing groups in Japan?
- Need for a defense panel for the accused to address the issue of due process and the legitimacy of the Tribunal. In the Manila meeting, it was resolved that summons will be served to the Japanese government. This issue is reopened to consider the appointment of one of the lawyers arguing the current comfort women cases in Japan to present the defense and the time when the summons will be served to the Japanese government; (Country delegations will discuss among themselves and the issue will be tabled at the plenary of Day 2, "General Comments, Discussions and Recommendations on the Indictments, 5:00 – 6:00 pm)
- Charges against Emperor Hirohito, Nakasone;
- What about the responsibility of other states, such as the Allied countries, which connived or knew of the atrocities but did not stop them;

Evidence

- Applying best evidence rule to the testimonies of the comfort women – who are alive and can testify, how long is each testimony, what are the exact points of each witness, each testimony must not be repetitive on legal points it aim to prove;
- Need for veracity and vigilance regarding every single evidence since tribunal will be scrutinized given the growing right-wing reactions in Japan. One untruthful testimony/document can erode the credibility of the tribunal so if uncertain, use the words "estimated/assumed" or do not present the evidence as it may be covered by other country indictments;
- Difficulty to find support for legal arguments since colonization atrocities not covered by international humanitarian and human rights conventions prior to World War II;

Reparations

- Must be extremely clear about the reparations asked for; need to draft the reparations scheme we want the judges to consider;
- Significant points of the five reparation bills proposed in Japan should be incorporated in the plea for reparations stated in the indictments;

COUNTRY INDICTMENTS (see copies of each indictments for contents)

- North and South Korea will prepare a joint indictment, South Korea will present individual criminal responsibility, North Korea will work on state responsibility;
- Indonesia and East Timor will also present a joint indictment. There are two comfort women and one witness in East Timor, they are old, one is blind, and it has been difficult to get their testimonies.

CHINA

- Japan destroyed records after World War II hence the difficulty in finding evidence;
- Who should be the plaintiff? Is it China, the comfort women, the Prosecutors? At least, the comfort women should be considered as witnesses.
- Who are the defendants? Should there be a list of defendants common to all indictments? Japanese delegation should note all the defendants in each indictment and try to place them in the Japanese military hierarchy leading up to the emperor;
- What are the common legal bases for the indictments?
- Regarding the nature of the crimes, it is interesting to note the manner in which the comfort women were incorporated into the comfort station system – captured, deceived, cheated, use of local women. The charge of enslavement includes slave trade (all mechanisms to bring someone into the trade, including by voluntary means, the person recruiting is the one guilty) and slavery (the status of the person enslaved);
- Testimonies and other evidence of each country indictment must be crossed checked by other country indictments to ensure that the evidence do not contradict;
- Should atrocities in Hong Kong be included in the China indictment considering that Hong Kong was a British colony during the war?
- Regarding legal status of the country, only China was the independent country during the war;
- Regarding state responsibility, how do you include public apology in the reparations demands? Should it be considered part of the penalty? How do we link individual criminal responsibility with state responsibility? Who should be the plaintiff? What should be their standing (e.g., what should be the legal status of the state suing Japan for state responsibility?)

INDONESIA

- Uses crimes against humanity and war crimes to accused the Japanese government and commanders of the Japanese military army, especially Nakasone; the commanders accused committed the crimes by “establishing and maintaining” comfort/rape stations in different locations in Indonesia, hence, systemic and widespread atrocities;
- Legal bases for individual criminal responsibility should be drawn from laws in effect in 1945-6; for state responsibility post 1946 laws and international conventions may be invoked;
- Evidence re Nakasone’s liability based on his admission in his memoirs: Is it sufficient to be considered a confession? Per research of the Japanese delegation, there were three comfort stations established in Balikpapan but it is not clear which one Nakasone established. At that time, he was 23 years old, a first lieutenant in charge of building airports, must have established a comfort station but not in charge of maintaining and operating it. Applying best evidence, it might be more credible to present the comfort women that relate to him or his comfort stations

and the statements in the memoirs as a written submission. Considering that Nakasone is still alive, must proceed cautiously on this matter in anticipation of his and right wing reactions. How do we deal with a scenario where he might insist to appear in the Tribunal despite our ruling regarding symbolic defense presentation? He was not a high ranking official at that time so should we adjust the Tribunal rule to limit defendants to high ranking officials?

- Affidavits included in the indictment must be sworn statements;
- Japanese delegation has documentation regarding the two survivors/comfort women presented as witnesses;
- Japanese delegation will also coordinate with East Timor delegation since they have documented accounts of Japanese veterans stationed in places now considered East Timor;
- A video presentation can be powerful but it should be tried out first, kept short, explain what the presentation is for, why, what the person/s will be speaking about. Should it be presented as part of testimonial evidence or separately?
- Unable to get proceedings of the Batavia court, even if already requested from Netherlands;
- There is an urgent need to coordinate evidence among the country indictments – which country will present what employing best evidence and best presentation rules;
- Should charges for individual criminal responsibility and state responsibility be pleaded in one document?
- In the Peace Agreement between Japan and Indonesia, Japan already paid for war damages. How will this affect the claim for reparations under state responsibility? The former Minister of Foreign Affairs who signed the treaty clarified in a statement 17 March 2000 that the reparations paid for in the treaty do not include violations related to forced labor, military enslavement, etc.
- Other international treaties and customary laws not only that related to sexual violence should also be cited as legal bases.

JAPAN

- This unique corroboration between perpetrator country and victimized countries should be used to maximum advantage. However, there is a need to resolve the division of labor between the Japanese delegation and other countries. Should Japan present on the command structure, then factual issues regarding Nanking and Mapaniqui be delegated to the pertinent country indictments and Japan to supplement such evidence through its case on command responsibility? The Japanese delegation is open to other country delegations using its extensive research to support their cases;
- Has a list of expert opinions; extensive documents to prove that the comfort station system was a policy of the Japanese military army during the war; What is the order of presentation of these evidence – what would the expert witnesses testify on, who among them will testify, which of the documentary evidence will be presented as exhibits?

- There is extensive evidence to prove the de jure and de facto involvement of the emperor in the sexual slavery system;
- There is a need to buttress legal and historical bases for state responsibility;
- There are two Korean survivors included in the Japanese indictment who are now residents of Japan and China. Testimonies of these survivors may be incorporated in the Korean indictment;
- Why are Nakasone, Cikada and the medical doctor who raped one of the Indonesian comfort women not included in the Japan indictment?
- What are the evidence needed for mass rape? Should it be argued as failure to exercise command responsibility outside of comfort station set up?
- Licensed or "official prostitution" and sexual slavery system are different and distinct concepts. While official prostitution has been practiced widely during the war, some of the victims in Korea were virgins, hardly prostitutes;
- Need an editor to integrate the indictment better and cross check with country indictments re accuracy of details, e.g, names of places;
- Need to work on a common map of the comfort stations, clarifying the exact location of the comfort stations and indicating the nationalities of the comfort women in each station.