

Date: Wed, 10 Feb 1999 12:50:34 +0930
From: Tina Dolgopol <tina.dolgopol@flinders.edu.au>
Subject: thoughts re Tribunal and Seoul meeting
Cc: yayori@jca.ax.apc.org

Dear Indai and Yayori,

These are my preliminary thoughts on the meeting and the Tribunal.

1. As I have indicated in previous emails, it remains my impression that different people and different groups have varying expectations of the Tribunal. There is not yet a firm decision on whether or not the Tribunal is to be international in the sense that it will cover crimes being committed against women in different parts of the world at present. It appears that most of those in Tokyo worked from the presumption that the Tribunal would only cover the Comfort Women issue. If this is the case, the the Tribunal would be international in the sense that it brought together judges and an audience from all parts of the world and that its findings could be applied to other similar cases. If this is to be its mode of operation then this must be made clear not only to those who meet together on a regular basis but all of those who will be invited to attend and to fund the Tribunal.

2. Another area where there is no consensus is the main purpose of the Tribunal. Is the focus of the Tribunal to make a finding of guilt, which means the evidence produced must be tied to individual named defendants. This would mean that the reason for any piece of evidence being introduced is its role in establishing the guilt of a defendant.

In contrast, if the main purpose of the Tribunal were to expose all of the crimes committed against women and to ensure that the events were understood as violations of international law, then the evidence would focus on the documents and oral testimonies which set out the experiences of women. If this were the purpose, then a few high ranking individuals could be named, because we already know they are guilty.

3. Given these uncertainties, the first thing that should occur in Seoul is an open discussion where each participant is asked to set out their expectations of the Tribunal with a view to reaching a firm decision about its purpose at the end of the meeting. This must be done in a spirit of cooperation and compromise. If it were possible to have someone act as a facilitator, this would be useful.

4. My personal view is that the second option is preferable because it will have a greater impact on the international community.

5. If the premise of the Tribunal is that the defendants are guilty (the statements of the government about its responsibility are enough to establish this) then the procedures from the new ICC re pleas of guilty should be used. These call on the prosecutor to put before the Tribunal

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the facts which would establish guilt.

6. The role of the international advisory panel must be decided. Do you want the panel to assist in working through the substantive issues, such as procedures, methods of work of the Tribunal or do you want the members to assist in locating judges, prosecutors and advertising the Tribunal?

The way things have proceeded thus far, it does not appear that the international advisory panel will have a role in discussing the substantive issues. To some extent this may be easier if the focus is on the comfort women alone; it makes sense that those from the victim countries have the greatest say on these matters.

7. I think you should begin now to arrange for the videoing of the Tribunal by a professional company. This should be part of any funding application you make. Professionals should be hired to undertake the translation at the Tribunal and to subtitle the video. I think there would be a market for the video. You could approach UNIFEM about this - they not only fund videos but they also distribute them.

8. Fairly soon, some clear decisions need to be made about the time to be allotted to the evidence pertaining to each of the victim countries. Will each country be given 1/2 day to put forward its evidence? People need to be made aware of the time constraints so they can highlight what is most important to them.

9. To attract international visitors including cultural activities will be important. People want to learn about other cultures and have some fun when they go to these events. A group should be formed to consider this and begin organising it now.

That's all I have to say for the moment. I will give my comments on the 20 points when they arrive.

Good luck to both of you; I hope the meeting is a success.

Kind Regards,
Tina

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Date: Tue, 16 Feb 1999 11:48:02 +0930

From: Tina Dolgopol <tina.dolgopol@flinders.edu.au>

Subject: Re:Tribunal 20points for discussion

Cc: indai@csi.com.ph

Proposals for Seoul
by Tina Dolgopol

Dear Yayori and Indai, Many thanks for sending me the 20 points. It will not surprise you to learn that I have a number of comments. I have set them out below. Good luck in Seoul, I hope the meeting goes well. Please pass on my regards to Prof Yun - I enjoyed our conversations over breakfast while in Tokyo.

1. After reading the list of points, I remain convinced that further discussion of priorities is necessary. For instance, do you want an international audience for the Tribunal? If so, then there has to be a time limit on the length of the Tribunal. I don't think you will be able to get significant attendance for a Tribunal that goes on for more than 5 days. Even that is pushing it. If you do want an audience, including the international press, then the time limit must control other aspects of the Tribunal's work, including the number of witnesses.

2. The basic format of the Tribunal could be - evidence relating to the comfort women system (documentary and oral evidence), evidence re those involved in organising the system (again documentary and oral) and finally evidence from victims re the reality of being held in a comfort station. When putting together evidence, it is possible to use affidavits of those who witnessed atrocities. Also the prosecution can summarise the evidence contained in the documents as long as there is a written summary which refers to the specific documents.

3. With respect to the justice and truth commissions, I agree that there is much to be learned from these procedures, but you must remember that these commissions operated over several months and sometimes years. You can not hope to accomplish the same goals in only a few days. One question which arises from this is whether you ought not to seek funding for a longer process or a series of factual books or videos so that the information uncovered for the Tribunal but which is not used directly will not be lost for future generations. Instead of viewing this project as one involving the Tribunal alone it could be conceived as a series of smaller projects, one of which is the Tribunal.

✓ 4. With respect to point 3, there is a basic philosophical point here. What is more important to you, naming those responsible and ensuring their guilt is established, or creating a record of women's experiences. I don't think you can accomplish both and do them well in 5 days. You can find a few people responsible, but you would have to make clear to the audience and press that you recognised this was only a representative group and that others not mentioned were also responsible. Introducing the evidence that will connect a specific individual with a specific crime will be time consuming. Going down this avenue will inevitably mean that a limited number of women will be able to tell their stories.

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It may be that establishing the guilt of particular individuals is an important goal - a face and a name then becomes associated with a particular crime and the lives of the criminals can be compared to the lives of the survivors. If you do choose this route, you need to think carefully about your reasons for doing this. Is it to influence internal politics in Japan, or to make the world aware of the crimes that could and should have been charged. Unfortunately there is a segment of the public in most countries that feels sorry for 75 year old men who are charged with crimes which occurred "so long ago." You must think through how you will overcome this sentiment as questions along this line might be raised by the media.

5. With respect to point 6, this is way too ambitious for the time you will have. It also presents another philosophical concern, are you more concerned with embarrassing Japan or with the situation of women. To focus on all war crimes means you will come across as wanting to put pressure on Japan to admit its wrongdoing - this is a legitimate concern, but one which attracts a different audience than a process which focuse on the crimes committed against women. The evidence and handling of the trial will be different. Who do you want as your audience? On a practical level, my guess would be that it will be easier to obtain funding for a process that focuses on the experience of women. That is, what would a trial look like if it concerned itself with war crimes against women?

6. Turning to point 8, it would be unusual to charge those who have died. However it would be all right to name them as part of a conspiracy that involved a living defendant.

7. I understand the concern about the Emperor, but the issues that surround this would involve you in long discussions about Head of State immunity and the development of international law as of 1945. The argument seems to be that the Treaty of Versailles began the process of questioning the immunity of Heads of State but that it was Nuremberg which seriously eroded the concept of immunity. However the Pinochet case makes it clear that this is still a difficult issue. It may be worthwhile postponing a decision until after the Pinochet case is decided. If it is decided against him then your task will be easier.

8. With respect to point 13, using evidence of mass rapes would show a consistent pattern toward women and help make clear the mental state of the officials and soldiers when it came to their treatment of women.

9. As to point 16, I would use the ICC procedures here.

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That's all I have to offer. As I said earlier, good luck. I look forward to finding out the results of the Seoul meeting.

Kind Regards,
Tina

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