

**Taipei Forum on Wartime Responsibilities Under International Laws
Documentation, Day 2**

COUNTRY INDICTMENTS, Continued

PHILIPPINES

- Establish a consensus of the body regarding the proposition that the Tribunal be considered as an extension of the Far East trial;
- Who do the country prosecutors represent? In the Nuremberg and Far East trials, the prosecutors represented the State. In Manila, the Philippine delegation represented the International Organising Committee (IOC) as representing this particular movement of peoples on comfort women and war crimes. In current indictment, the delegation is delegated as country prosecutors, representing the state. *The human rights movement has challenged the international law principle that only states can be subjects to include individuals. Recent developments have advanced that people have sovereignty in themselves so in the indictment, consider taking the progressive stance of representing this movements of peoples, claiming sovereignty in themselves hence legitimate subjects under international law.*
- Not much evidence will be lost in the Philippine case if the theory of the case is shifted to an indictment of crimes against humanity. The mass rape in Mapaniqui committee by the Japanese forces can be liberally formulated to be included in the charge of crimes against humanity;
- Argue that sexual slavery was committed in different forms by the Japanese military and the establishment of comfort stations is one distinct institutionalized form of such practice. There were other forms of sexual slavery (e.g., rape) committed outside the comfort stations;
- Advance the theory that the crimes were committed as a conspiracy: there was a policy and common design in the Japanese military to perpetuate sexual slavery as indicated by the synchronicity of the atrocities committed in the different colonies/occupied territories. This will facilitate the indictment against the emperor and imputing liability to high ranking officials for their own acts and that of their subordinates;
- To link criminal responsibility with state responsibility, the indictment will clearly point out that the atrocities committed by the Japanese officials were committed in their official capacity hence attributable to Japanese government;
- The reparations agreement between Japan and the Philippines (also Indonesia) does not constitute a waiver of responsibilities for war damages because of two acts of the Japanese government: (1) the Japanese government only recognized the existence of sexual slavery in 1998 after pressure from civil society. So prior to 1998, it cannot claim to waiver such matter which it was not cognizant of; (2) In San Francisco treaty, the payment of reparations was conditioned on the

capability of Japan to pay considering it did not have sufficient resources at that time to make full payments;

- Regarding indicting Yamasita, is there a danger of double jeopardy? *Yamasita was in the Philippines in October 1944. In the US Military Commission, they were not aware of the incidents in Mapaniqui so he could not have been tried on offenses committed in this area.*
- The indictment has to be revised to include legal bases for its arguments and what judgments should the judges render;

NORTH/SOUTH KOREA

South Korea on individual criminal responsibility:

- Have yet to discuss with North Korea who among the potential list of accused will be indicted;
- Need for a common memorandum of law on individual criminal responsibility to be drafted and circulated among the prosecutors and considered in the preparation of each country indictment;
- Need more concrete information to categorise the list of offenses as punishable crimes against humanity and war crimes;
- Need more research re establishing the legal status of Korea during the war: While initially referred to as a colony of Japan at that time, exploring the claim that Korea was occupied by Japan in a creeping manner as there was an increasing Japanese military presence and the break out of armed struggle between the two countries;
- Regarding the issue of the diaspora and its effects, consider including in the claim for state responsibility instead of including the charge of genocide. *It can be argued that crimes against humanity include the taking of children to serve as comfort women and this results in destruction of family units and leads to the destruction of civilian population.*
- Raised the issue of indicting allied countries for not indicting the emperor, concealment of vital documents, non-investigation of Japanese atrocities;
- Korean survivors residing in Japan and North Korea will be included in the Korean indictment;
- The occurrence of drug and opium use in comfort stations may open possibilities for charging pharmaceutical companies;

North Korea on state responsibility:

- Covers two categories of state responsibility: (1) of Japanese government; (2) of US government;
- The US government should be indicted because it has the responsibility to disclose the crimes committed by the Japanese and mete the corresponding punishment in the Far East trial. In particular, it is responsible for the non-indictment of the emperor in the Far East trial despite concrete legal and evidentiary bases to do so. It also has the obligation to disclose documents in its

possession which can serve as vital evidence in the prosecution of such crimes. But if US is to be indicted, what about the responsibilities of other allies e.g., United Kingdom? Australia for Papua New Guinea and East Timor; Netherlands for Indonesia? Does the tribunal charter provide jurisdiction for this indictment? Is the current evidence sufficient to make this indictment?

- Finding that the establishment of the women labor corps system eventually became a source of recruitment of comfort women after the women lost jobs when the factories and hospitals where they were working were bombed. In this context, the Korean women became vulnerable to sexual slavery;
- Need to tailor indictment into a legal brief, not a speech;

TAIWAN

- Need to decide which evidence will be presented orally and which will be submitted as exhibits;
- Need to charge the governor general of Taiwan; refer to the Japanese delegation documentation on this matter;
- Need to include more evidence to indict higher ranking Japanese officials;
- Liability of Japanese military officials as well as civilians involved in the recruitment of comfort women and management of comfort stations are attributable to the Japanese state. Such acts were committed by these individuals as agents of the state;
- Need to consider the inclusion of the case of the indigenous comfort woman to bring out the intersection of race and gender in this issue;

OTHER ISSUES

- Clarify impact of the Asian Women's Fund plan to hold a similar activity in November in Tokyo in collaboration with the International Commission of Jurists;
- Need a list of documents submitted to the judges;
- Need to furnish the judges a list of evidence (oral and documentary) to be presented;
- Need to cite sources of evidence in each indictment to be considered by the judges;
- Need to move towards consistency in the conceptualization of the crimes – in naming, describing the crimes and in capturing the evolutions in international law to include gender in the ascription of offenses;

SUMMARY OF RESOLUTIONS

- Chinese delegation was not able to participate in these deliberations since it had to attend to other official meetings;
- The East Timor delegation takes the positions of the Indonesian delegation.

Format

- The body agreed to pattern each country indictment after the format of the Yugoslav tribunal as used by Patty and the Taiwan delegation.
- However, North/South Korea maintains that the form of the indictment should not constrict the articulation of the victims' sufferings so the format must allow sufficient room to detail the nature of the crimes and its impact on the victims. It was suggested that North/South Korea consider the possibility of working within the agreed format to streamline its indictment and keep it within reasonable length to be actually read by the public then append a document/s to furnish more detailed information on social, psychological and other matters to further articulate the concerns of the victims;

Common Paragraphs on Historical Background

- The body agreed to have common paragraphs on the historical background of the Asia-Pacific War which have been repeatedly narrated in the country indictments. However, other historical information specific to each country will be retained/contained in each country indictment. The body has yet to decide where to place these common paragraphs. (North/South Korea was not able to discuss this issue.)

Use of Terms

- Comfort women - to be used in quotation marks; also in phrases such as "comfort women victimized by Japanese military sexual slavery" or "comfort women of Japanese army" to describe the circumstances of comfort women who were victims of Japanese sexual slavery and connote the atrocities of the Japanese military in the past;
- Comfort stations - to be also referred to as "facilities of sexual slavery" to reflect the actual experience of the comfort women; also referred to as "rape centers" as termed in MacDougall's report; also use in phrases such as "comfort stations of the Japanese military" or "military comfort stations";
- Victims/Survivors - use "victims" to refer to comfort women who have died; and survivors for those still living; use in phrases such as "victims of sexual slavery/rape";
- Sexual slavery - to refer to the crime against humanity as specified in the Charter of the tribunal;
- Names - each country has to correct the spelling of names of their nationals;
- Places – the country concerned has the prerogative to designate proper use of the names of places; in places with new names, the old names shall be used with the new names immediately preceding in brackets;
- ranks/designation of Japanese officials – use as specified in the chart prepared by the Japanese delegation;
- Asia-Pacific War – to refer to the historical period during which the crimes to be tried in the tribunal occurred;

Legal Status of Each Country during Asia-Pacific War

- Philippines: occupied territory;
- Indonesia/East Timor: occupied territory;
- North Korea: occupied territory;
- Taiwan: colony of Japan;
- South Korea: reserves position regarding research until finalisation of legal arguments;

Separate of Common Legal Arguments

- The body agreed to have common legal bases for arguing individual criminal responsibility, except for North/South Korea.
- Regarding common arguments for state responsibility, South/North Korea suggests the preparation of a draft memorandum of law which can be considered as a model pattern for legal arguments on state responsibility by each country prosecutors. But in terms of actual application in each country indictment, country prosecutors shall exercise their own discretion.
- The Japanese and Philippine delegations will prepare separate legal arguments on state responsibility;
- Indonesian/East Timor delegation supports common legal arguments on state responsibility;

Indictment of Allies

- Except for North/South Korea, the body agreed not to indict any of the allied forces but their responsibilities may be mentioned in the narration of facts and the judgment. To accommodate North/South Korea's position, their delegation shall be allowed to decide to prosecute the allied forces based on the Charter of the tribunal.