

일본측 헌장 수정초안(99.11.8)에 대한 재수정 제안

1999.12.1 조시현 작성

제1부에 양국안을 비교 수록하고 제2부에서 재수정 제안 전문을 실었습니다.

제1부: 일본측 초안과 한국 수정제안

1. 일본 전문 Preamble

The 20th century now coming to its close has been a century of war and violence. The Second World War brought to humankind an unprecedented scale of destruction and genocide in which vast numbers of women were made victims of sexual violence. But the lessons of this experience have not been learned sufficiently. We now witness inter-state wars and internal armed conflicts breaking out one after another in many places in the world, sacrificing innumerable people and hurting women physically and psychologically. Japan's military sexual slavery (the so-called "comfort women" system) introduced in the Asia-Pacific War period (1931-45) was one of the most horrendous forms of wartime sexual violence known in this century. Now in the 1990s, survivors of this slavery have broken their silence, demanding that justice be done and their long denied human rights be restored to them. But even now, half a century after the crimes were committed, the survivors do not receive a word of acknowledgement of the crimes by the perpetrators. Nor is there any truthful apology made or reparations paid by those responsible for the crimes committed against them while one survivor after another is passing away without any redress.

The military tribunals conducted by the Allied Powers throughout Asia following the end of the Second World War seldom prosecuted Japan's military sexual slavery and other cases of sexual violence against women as war crimes. In the subsequent decades, the existing national and international systems of justice have failed to bring the perpetrators to justice.

Even prior to the outbreak of the Asia-Pacific War, there existed the international humanitarian law and other international laws that prohibited wartime sexual violence including sexual slavery and provided for punishment of such acts as grave crimes. After the Second World War, more international instruments on human rights were adopted and enforced such as the Universal Declaration of Human Rights, the International Covenants on Human Rights and their protocols, and the Convention on the Elimination of All Forms of Discrimination against Women, all of which made it mandatory for the international community and the nation states to protect human rights. Violence against women was singled out as violation of women's human rights in the Vienna Declaration adopted at the World Conference on Human Rights in 1993, which led in the same year to the adoption by the UN General Assembly of the Declaration on Elimination of Violence Against Women.

Further, the Beijing Platform of Action adopted at the Fourth World Conference on

Women in 1995 explicitly stated that violence against women during armed conflict including rape and sexual slavery was a war crime, and that its truth should be identified and disclosed, its victims properly redressed and its perpetrators punished. The International War Crimes Tribunals for the Former Yugoslavia and Rwanda were established by the United Nations in the early 1990s and have prosecuted those who were responsible for violence against women. The International Criminal Court now being established will cover under its jurisdiction violence against women during war and armed conflicts though it will not handle crimes committed before its establishment.

In conformity with these international instruments of universal human rights and women's human rights adopted by the international community, it is a moral responsibility of every member of the global civil society and also a common task for international women's movement to restore justice for the women victims and survivors of wartime sexual violence including sexual slavery.

Acting in pursuant to this responsibility, organizations from the offending country (Japan), organizations from areas where people were victimized (South Korea, North Korea, China, Taiwan, the Philippines, Indonesia, Malaysia, and others), and an International Advisory Committee (comprising eminent scholars and human rights activists) hereby constitute the International Organizing Committee, and establish Women's International War Crimes Tribunal.

The task of the Tribunal is to disclose facts and truths about sexual violence perpetrated by the Japanese Imperial Army as integral to Japan's colonial domination and war of aggression of Asia, focusing on the sexual slavery it practiced through "comfort stations" which it organized throughout the region and where it abused a vast number of women as "comfort women." The Tribunal does not apply statute of limitation and clarifies the legal responsibility of the state and individuals for such crimes. Its objective is to restore justice, human rights, and dignity to all victimized women, to contribute to end the cycle of impunity for violence against women in wartime and armed conflict situations and thereby prevent repetition of such crimes.

The Tribunal is not a court under state sovereignty or any other public authority. It is the people's international tribunal established on women's initiative. It will give judgements based on the principles of women's human rights which have come to be accepted by the international community as international human rights as the result of brave struggles of many people including women survivors themselves. The Tribunal has no legal powers to enforce its judgements. Its judgements are based on international law and gender justice and thus carry the moral authority that demands their wide acceptance and enforcement by the international community and national governments.

We are convinced that the Tribunal, which will be held in the last month of the 20th century, will contribute toward creating a 21st century and a new millennium free of war and violence against women. The full records of the tribunal proceedings will be let known to the world as indelible records of the 20th century history.

한국제안 전문

The International Organizing Committee, composed of organizations from the offending country (Japan), organizations from areas where people were victimized (South Korea, North Korea, China, Taiwan, the Philippines, Indonesia, Malaysia, and others), and an International Advisory Committee (comprising eminent scholars and human rights activists), 2012.6.2. 21.

Witnessing the passage of the 20th century without any justice done to women victims of sexual slavery committed by the Japanese Military in various Asian countries under its colonial domination and military occupation before and during the Second World War, being one of the most horrendous forms of wartime sexual violence known in this century,

Witnessing also that violence against women, especially during armed conflicts, continues to be unabated in many parts of the world today,

Noting that violence against women has received further international attention through the Vienna Declaration adopted at the World Conference on Human Rights in 1993 and the Beijing Platform of Action adopted at the Fourth World Conference on Women in 1995, which explicitly stated that violence against women during armed conflict including rape and sexual slavery was a war crime, and that its truth should be identified and disclosed, its victims properly redressed and its perpetrators punished,

While the International War Crimes Tribunals for the Former Yugoslavia and Rwanda established by the United Nations in the early 1990s have prosecuted those who were responsible for violence against women and the International Criminal Court now being established will cover under its jurisdiction violence against women during war and armed conflicts committed after its establishment,

Whereas that the Japanese Military sexual slavery has been a particularly grave and egregious form of violence against women in violation of the then existing principles of international law and deeply shocking the conscience of humanity,

Noting that the military tribunals conducted by the Allied Powers throughout Asia following the end of the Second World War seldom prosecuted Japan's military sexual slavery and other cases of sexual violence against women as war crimes, and that, in the subsequent decades, the existing national and international systems of justice have failed to bring the perpetrators to justice,

Cognizant that women victims of the Japanese Military sexual slavery continue to suffer, both physically and psychologically, from these violations without justice including compensation and prosecution of the perpetrators of these crimes,

Aware that after the long and tortuous silence, survivors of this slavery have demanded in the 1990s that justice be done and their long denied human rights be restored to them,

Alarmed that even after half a century after the crimes were committed, the survivors do not receive a word of acknowledgement of the crimes by the perpetrators, nor is there any genuine apology made or reparations paid by those responsible for the crimes

committed against them while one survivor after another is passing away without any redress,

Mindful of a moral responsibility of every member of the global civil society and also a common task for international women's movement to restore justice for the women victims and survivors of wartime sexual violence including sexual slavery,

Determined to restore justice, human rights, and dignity to all victimized women, to contribute to end the cycle of impunity for violence against women in wartime and armed conflict situations and thereby prevent repetition of such crimes,

Convinced that this effort will also contribute toward creating a 21st century and a new millennium free of war and violence against women making the full documentation public to the world as indelible records of the 20th century history,

Desiring to hold a Women's International War Crimes Tribunal 2000 for the Trial of Japanese Military Sexual Slavery in the last month of the year 2000, the primary task of which will be to bringing out truths and to establish the legal responsibility of states and individuals involved in sexual violence and especially the sexual slavery of "comfort women" at "comfort stations" perpetrated by the Japanese Imperial Army in connection with Japan's colonial domination and war of aggression throughout the Asia-Pacific region, *Convinced* that the Tribunal is competent to render its judgements in the light of the principles of international law, human conscience, humanity and gender justice focusing on the principles of women' human rights which have come to be accepted by the international community as international human rights as the result of brave struggles of many people including women survivors themselves,

Mindful that while the Tribunal, as a people's and women's initiative, has no real power to enforce its judgements, it nonetheless carries the moral authority demanding their wide acceptance and enforcement by the international community and national governments,

Urging once again that States and intergovernmental organizations take necessary measures to bring to justice the persons responsible for the crimes and to provide reparation including apology, compensation and rehabilitation,

Concludes hereby the Charter of Women's International War Crimes Tribunal 2000 for the Trial of Japanese Military Sexual Slavery.

2. 일본 Article 1 Establishment of the Women's International War Crimes Tribunal .

The International Organizing Committee hereby undertakes to establish the Women's International War Crimes Tribunal ("the Tribunal") and will conduct a public trial in Tokyo, Japan, on the 8th through 10th December 2000 to prosecute those responsible for crimes of sexual violence against women, including sexual slavery, committed by Japanese Imperial Army before and during the Second World War.

Article 2 Scope of the Tribunal

The Tribunal shall try crimes of serious violations of women's human rights committed against international humanitarian law and other international laws such as rape, sexual

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slavery, enforced prostitution or any other form of sexual violence in and of themselves and as constituting war crimes, crimes against humanity and crimes of genocide.

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Article 1 Establishment of the Women's International War Crimes Tribunal

The Women's International War Crimes Tribunal ("the Tribunal") is hereby established. It shall conduct a public trial in Tokyo, Japan, from the 8th to the 10th of December, 2000 for *crimes of sexual violence against women, including sexual slavery, [crimes of serious violations of women's human rights such as rape, sexual slavery, enforced prostitution or any other form of sexual violence]* committed by Japanese Imperial Army before and during the Second World War [in various Asian countries under its colonial domination and military occupation before and during the Second World War] in violation of international humanitarian law and other international laws as constituting war crimes, crimes against humanity and crimes of genocide.

3. 일본 Article 3

Competence of the Tribunal

The Tribunal shall have jurisdiction over natural persons (including dead persons), legal persons and the states, pursuant to the provisions of the present Charter.

The official position of any accused person, whether as the Head of the State or Government or as a military commander or a responsible Government official, shall not relieve such a person of criminal responsibility, nor mitigate punishment.

한국 Article 2 Competence of the Tribunal

The Tribunal shall have jurisdiction over natural persons (including dead persons), legal persons and States, pursuant to the provisions of the present Charter.

4. 일본 Article 4

Criminal responsibility of the individual

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of any of the crimes referred to in Article 2 of the present Charter, shall be individually held responsible for the crime.

2. Those who have concealed evidence of the crimes in Article 2 shall be individually held responsible.

3. The Superior or Commander is criminally responsible for crimes committed by a subordinate if,

a. the Superior or Commander knew, or had reason to know, that the subordinate was about to commit such acts and the superior failed to take the necessary and reasonable measures to prevent such acts.

b. the Superior or Commander knew, or had reason to know, that the subordinate had committed such acts and the superior failed to take the necessary and reasonable

measures to punish the perpetrators thereof.

4. Persons holding official positions shall not be relieved of criminal responsibility nor mitigated punishment because of being in those positions.

5. An accused is criminally responsible even if the crimes are committed in pursuant to an order of a Superior or of a Government.

한국 Article 3 Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Article 1 of the present Charter, shall be individually held responsible for the crime.

2. Those who have concealed ~~evidence~~ of the crimes in Article 1 shall be individually held responsible.

3. The official position of any accused person, whether as the Head of the State or Government, a military commander or a responsible government official, shall not relieve such person of criminal responsibility, nor mitigate punishment.

4. The fact that such a crime referred to in Article 1 of the present Charter was committed by a subordinate does not relieve his superior or military commander of criminal responsibility if that superior or commander knew, or had reason to know, that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent or repress their commission or submit the matter to the competent authorities for investigation and prosecution.

5. The fact that the crimes are committed in pursuant to an order of a superior or of a government alone shall not relieve a person of criminal responsibility.

✓ 5. 일본의 국가책임관련 규정에 대하여는 좀더 연구가 필요한 것 같습니다.

Article 5 State Responsibility

When a state is in serious breach of an international obligation of essential importance for the fundamental interests of international (global?) community and commits an unlawful act which is recognized as a crime by international (global?) community as a whole, this act of the State constitutes an international crime under international law. Accordingly, the State shall be held responsible for such an international crime committed in the following cases when:

- its military force committed any of such crimes referred to in Article 2;
- the State itself has concealed or distorted the facts or in any other manner neglected or obstructed its responsibility to find truth and disclose it concerning the crimes referred to in Article 4;
- failed to prosecute and punish those responsible for the crimes;
- failed to pay reparations to the victims or;
- failed to take necessary measures to prevent recurrence.

2. The Tribunal shall hold responsible any State other than Japan if it is established that the particular State relieved of their responsibility any of those who were responsible for

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the crimes referred to in Article 2 and/or obstructed redress to be provided to the victims.

6. 일본 Article 6 Territorial and temporal scope of the Tribunal

1. The territorial scope of the Tribunal shall extend to all the countries and regions that were colonized, ruled or occupied by Japan and to all the countries and regions whose inhabitants were victimized.
2. The temporal scope of the Tribunal shall extend from the year 1931 to the present day as long as the effects of the crimes can be observed.

한국 Article 5 Territorial and temporal jurisdiction of the Tribunal

1. The territorial jurisdiction of the Tribunal shall extend to all the countries and regions that were colonized, ruled or occupied by Japan and to all the countries and regions whose inhabitants were victimized.
2. The temporal jurisdiction of the Tribunal shall extend to the present day.

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7. 일본 Article 7

Non-applicability of the statute of limitations

The crimes that the Tribunal shall try shall not be subject to any statute of limitations, for they are in breach of international humanitarian law and other international laws.

한국 Article 6 Non-applicability of the statute of limitations

The crimes that the Tribunal shall try shall not be subject to any statute of limitations.

8. 일본 Article 8 Organization of the Tribunal

1. The Tribunal shall consist of () internationally renowned scholars and activists in the field of human rights serving as Judges, Prosecutors, and other officials of the Tribunal.
2. The International Organizing Committee shall appoint officials of the Tribunal with due consideration of the following:
 - a. gender balance
 - b. regional balance
 - c. contribution in advocacy, protection and promotion of women's human rights
 - d. professional knowledge and experience of international humanitarian and human rights laws and international criminal laws
 - e. experience in dealing with crimes of gender and sexual violence

한국 Article 7 Organization of the Tribunal

The Tribunal shall consist of the following organs:

- (a) Judges;
- (b) Prosecutors, and
- (c) A Registry.

Article 8 Qualifications and election of judges and prosecutors

The judges and the prosecutors shall be appointed by the International Organizing Committee among internationally renowned scholars and activists in the field of human rights, taking due consideration of the following:

- (a) gender balance
- (b) regional balance
- (c) contribution in advocacy, protection and promotion of women's human rights
- (d) professional knowledge and experience in international humanitarian and human rights laws and international criminal laws
- (e) experience in dealing with crimes of gender and sexual violence.

9. 일본 Article 9 The Registry

The International Organizing Committee establishes a Registry to the Tribunal. The Registry shall be responsible for the administration and servicing of the Tribunal.

한국 내용에 대한 수정제안은 없고 조문의 위치만 변경

10. 일본 Article 10 Investigation and indictments

1. The Prosecutors shall initiate investigation prior to the public trial of the Tribunal on the basis of information received from individuals, survivors, NGOs or any other interested source.
2. The prosecutors shall submit indictments to the Tribunal when, based on their investigation, they decide they have reasonable evidence.

한국 Article 11 Prosecutors: Investigation and indictments

1. The Prosecutors shall be responsible for the investigation and prosecution of the crimes referred to in Article 1 of the present Charter.
2. The Prosecutors shall initiate investigation on the basis of information received from individuals, survivors, non-governmental organizations, or any source, and shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations in order to establish the truth.
3. The prosecutors shall submit indictments to the Tribunal if, upon investigation, there is a reasonable basis for a prosecution.

11. 일본 Article 11 The Proceedings (or the Hearing or Process or Public Trial?)

1. The Tribunal shall admit the indictments from the prosecutors and commence hearings accordingly.
2. The hearings shall be carried out based on the evidence that the prosecutors submit.
3. The process of examining evidence shall be sensitive to gender and cultural issues and to the trauma faced by the victims.
4. The hearings shall be public.

5. The working languages of the Tribunal shall be English. Translation and interpretation into other languages shall be provided as per needs.

한국 Article 12 Trial Proceedings

1. The Tribunal shall read the indictments from the prosecutors at the commencement of the trial, and shall ensure a fair and expeditious trial.

[2. The hearing shall be carried out based on the evidence that the prosecutors submit.]

[3. The process of examining evidence shall take into account to gender and cultural issues and the trauma faced by the victims.]

4. The hearings shall be held in public.

5. The working language of the Tribunal shall be English. Translation and interpretation into other languages shall be provided as per needs.

12. 일본 Article 12 Rules of evidence

The Tribunal shall admit as evidence the following:

(a) documentation: Written evidences such as official documents, affidavits / depositions, signed statements, diaries, letters/notes or other documents, experts' views, photos and other visual documents

(b) personal evidence: Written or oral testimonies of survivors and witnesses, statements of expert witnesses

(c) material evidence: Other relevant physical and material evidence.

한국 Article 9 Rules of procedure and evidence

The judges of the Tribunal shall decide matters concerning the rules of procedure and evidence for the conduct of the trial, the protection of victims and witnesses and other appropriate matters of the Tribunal as they deem necessary. The following shall be admitted as evidence:

(a) documentation: Written evidences such as official documents, affidavits/depositions, signed statements, diaries, letters/notes or other documents, experts' views, photos and other visual documents;

(b) personal evidence: Written or oral testimonies of survivors and witnesses, statements of expert witnesses; and

(c) material evidence: Other relevant physical and material evidence.

13. 일본 Article 13 Request to the accused to be present at the Tribunal

The Tribunal shall request the individuals who are responsible for the crimes referred to in Article 2 and/or their attorneys be present at the Tribunal to submit evidence and make oral statements.

한국 Article 13 Request to the accused to be present at the Tribunal

The Tribunal shall request the individuals who are alleged to have been responsible for

the crimes referred to in Article 1 and/or their attorneys to be present at the Tribunal to submit evidence and make oral statements.

14. 일본 Article 14 Participation and protection of victims and witnesses

1. The Tribunal shall provide the protection to victims and witnesses and any other person at risk on account of their testimony. Such protection measures shall include, but shall not be limited to, audio-visual proceedings and other protective measures to safeguard the victim's identity wherever necessary.

2. The Tribunal shall have regard to the nature of crimes being dealt with and shall take appropriate measures, including after the Tribunal, to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses of sexual violence and to take trauma into account.

한국 Article 14 Participation and protection of victims and witnesses

1. The Tribunal shall ensure the fullest possible participation of victims and victims-organizations in the preparation of indictments and the trial proceedings.

2. The Tribunal shall take appropriate measures, including after the holding of the Tribunal, to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses of sexual violence and any other person at risk on account of their testimony, having regard to the nature of crimes being dealt with and taking trauma into account. Such protection measures shall include, but shall not be limited to, audio-visual proceedings and other protective measures to safeguard the victim's identity wherever necessary.

15. 일본 Article 15 Judgements

1. The judges shall pronounce judgements as the result of the hearings, based on evidence and rendered by a majority.

2. The judgements shall state clearly whether the accused is guilty or innocent of the alleged crime, and the reasons for the particular judgement.

3. The judgement may include the order to the convicted persons or the states to offer redress to the victims. Redress includes apology, restitution, compensation and rehabilitation.

4. Copies of the judgements shall be made public. They shall be sent to the survivors, the accused or their attorneys, the government of Japan, the governments of the States concerned, and international agencies including the United Nations High Commissioner for Human Rights, and shall be widely distributed throughout the world as historical documents.

한국 Article 15 Judgements

1. The judgement shall be rendered by a majority of the judges of the Tribunal, and shall be delivered by the Tribunal in public.

2. The judgement shall state clearly whether the accused is guilty or innocent of the alleged crime based on evidence before the Tribunal, and the reasons for the particular judgement.

3. The judgement may make an order against a person or State held responsible to offer redress to the victims, including apology, restitution, compensation and rehabilitation.

4. Copies of the judgement shall be sent to the survivors, the accused or their attorneys, the government of Japan, the governments of the States concerned, and international agencies including the United Nations High Commissioner for Human Rights, and shall be widely distributed throughout the world as historical documents.

16. 한국 신설 제안 Article 16 Cooperation

1. Every individual, non-governmental organization, Government, intergovernmental organization, United Nations organs and other international bodies shall cooperate fully with the Tribunal in the investigation and prosecution of persons and states responsible for acts referred to in Article 1 of the present Charter.

2. Every individual, non-governmental organization, Government, intergovernmental organization, United Nations organ and any other international body shall respect any request for assistance or a judgment issued by the Tribunal, including, but not limited to:

- (a) The identification and whereabouts of persons or the location of items;
- (b) The taking of testimony and the production of evidence;
- (c) The voluntary appearance of persons as accused, victims, witnesses or experts before the Tribunal;
- (d) The examination of places or sites;
- (e) The provision of relevant information, records and documents, official or otherwise, and the full opening of wartime archives;
- (f) The protection of victims and witnesses and the preservation of evidence;
- (g) Facilitating or conducting the investigation and prosecution of the persons responsible for the crimes in compliance with its respective international obligations;
- (h) The provision of reparation including apology, compensation and rehabilitation in compliance with its respective international obligations, and
- (i) Any other type of assistance with a view to facilitating the objectives of the Tribunal.

다카리시 토리 高杉 隆光.

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수업 평가 : 매월 수업평가 실시함. 학생들 만족도 높음. 85% 이상.

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minimum legal standards

the 2nd

impact on world pub. opinion.
Kagalo court.

namely the names,
in the text

- back to the drawing board?
- dead persons. 2nd. - compromise solution.
- 'int'l crime'. then move open stand then leave the que. open.

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Alunder
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V. Montaban. - "
Mitterland. - "
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5-7.

$z_1, z_2, z_3 - z_1, z_2, z_3$ (as to territory, status of states).
 colonization. / colonizing process. which stops at the point of annexation.

- 1L does not know annex. treaties etc should be understood as a legal facade. Consummation of subjugation rather formal.

- UN 222,
아시아 2103. ~~북한~~ 등 전 세계로 퍼짐. 2011년 10월. - 222가 할 것 아닌가?
SR 222 222 222. MRD FR의 한계 222
Read again

61, 62, 63. 24 (copy to Jung)

구상과 관련된 통지 6월 8일 2022년 6월 9일 8:02 - 10:00

2014. 4. 28. 인제대학교. 50. 5. 3. 2/8 13, 43 2/8 2/8 4/8

남인.가주 (남인) 2월 1일

1. $0 \leq m$ 2. $m \leq 2$ 3. $m \leq 2$ 4. $m \leq 2$

$\frac{d}{dt} \ln y = \frac{1}{y} \frac{dy}{dt}$

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1. $\frac{1}{x^2} = x^{-2}$ 이므로 $\frac{d}{dx} x^{-2} = -2x^{-3} = -\frac{2}{x^3}$ 이다.