

Thank you for prof. Kim's generous and magnificent, but to some extent exaggerated introduction. In prior to p- I must confess that.

'Comfort Women', Justice and International Law

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I will take advantage of this rare occasion as an opportunity to exercise and develop of English

1. Introduction

Today's conference is very meaningful for Koreans, because a few days after from now on we are greeting so-called 3.1 (SAM IL) Commemoration day which celebrates the peaceful independence movement occurred the entire country on March, First in 1919. A countryside village called CHE AM RI, near from Seoul, was devastated by Japanese Army and police on the reason that the villagers participated in the movement. Hundreds of people, ranging from babies to their grand fathers were killed and church burnt down in the village. It is ^{only} one of typical cases which were committed by Japanese Army in Korea and Asia. However, with the passage of time, they were all forgotten. A reporter who witnessed the whole process of Tokyo International Military Tribunal, deplored as follows;

"I have puzzled over the fact that hardly anyone today remembers it or attaches much importance to it. The names of the war criminals are for the most part forgotten. So are their deeds. Some people dimly recall a handful of Japan's atrocities during World War II : the rape of Nanking, the Bataan Death March, the POWs and other slavery labourers building the Siam-Burma Death Railway including the bridge over the River Kwai."

However, we can still hear heart-breaking voices from every

part of Asia and the world as a result of the atrocities committed by Japanese during World War II. Comfort women drafted as a sex-slave for the Japanese Army symbolize the sufferings of all victims. I could witness the touching scene at the Public Hearing in Tokyo, last December, that the comfort women, from divided south and North Korea, China, Taiwan, Philippines and even Netherlands, were trying to keep back their tears when they recalled painful remembrances which was kept for nearly half century. ^{Almost all} They spent all the rest of their life without getting married, because of not only their physical and mental illness but also the Confucian concept that those women who lost the virginity were the same as those who lost their lives.

Who are responsible for this inhumane crimes? How can they be compensated? What should be done for restoring their wounded soul? *I will respond to each question specifically from now on. And I will focus on legal aspect, in terms of international law*

First of all, these crimes should be re-defined as a kind of genocide beyond the category of rape or individual wrong-doing.

Secondly, those who responsible for the atrocities should be brought to justice.

Thirdly, the full-investigation and disclosure of all truth must be conducted.

Fourth, compensation sufficient to manage their lives should be given to all individual victims.

Fifth, adequate measures to ensure these kinds of terrible atrocities not to recur should be taken, including the establishment of memorial, museum, archive, monument and education for next generation.

All of these demand has been despised and neglected by Japanese government. I would like to give you more detailed explanation.

2. Legal Interpretation of 'Comfort Women'

Many scholars and activists define 'comfort women' as the rape or systematic rape waged by Japanese Imperial Army. I think, however, it exceeds the traditional concept of rape which can be found within domestic jurisdiction. It can be fully explained only by the concept of genocide which ^{has} existed as a customary law and appeared as a conventional norm of international law since World War II. Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, says as follows;

"Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

The draft of comfort women falls undoubtedly upon the category of (b) ^C (d) of article 2 of Genocide Convention. It turned out

to be planned, directed, and performed by the head quarters of Japanese Army with the consent of ^{Cabinet members, military leaders} ~~super commander~~ and the emperor himself. When we review the historical context in which the Japanese Imperialism tried to change the name ^{of all Koreans} ~~into~~ Japanese style and to make Koreans worship Japanese god and emperor, comfort women were drafted as a means of destruction of Korean identity and ^{national} ethnic group. Comfort station

All process of draft of comfort women and managing the ~~brothel~~ was a series of all kinds of crimes. The victims were abducted or deceived by the military or civilian followed the order of military commander. Comfort women were forced to serve as sexual slaves by force. They were raped and beaten. They were in detention and under surveillance. Literally they were sex-slaves who had no choice but to obey. ^{or death} ~~to face~~.

3. Legal Responsibility of Japanese Government

(1) Three Categories of Japan's Responsibility

A. The Punishment of War Crimes and Crimes against Humanity

Entering 19th century, the civilized world could witness the emergence of the conventions, treaties or customs dealing with the war crimes and crimes against humanity. The international community felt that the war will not end without punishment of war crimes and crimes against humanity. After the horrible experiences of holocaust during World War II, this necessity to punish them became strengthened and urgent. It led the establishment of International Military Tribunal in Neuremberg

and in Tokyo, and the enactment of Genocide Convention of 1946, Geneva Conventions of 1949. The Charter of International Military Tribunal of Neuernberg defines war crimes and crimes against humanity as follows;

war crimes: Namely violations of the laws or customs of war.

Such as violations shall include, but not be limited to murder, ill-treatment, or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity;

crimes against humanity: Namely murder, extermination,

enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war, or persecution on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

With this category of crimes, one million of half of NAZI related persons were punished in the hands of the allies and German themselves as well. The prosecutions and trials are still going on in every part of the wolrd. In France, Paul Touvier who

was the Vichy Milice Chief is being tried. In Israel, Demjanjuk who was the NAZI death camp guard, was recently sentenced to death. United Kindom enacted War Crimes Act in 1991, Australia in 1990 to ensure the alleged NAZI war criminals to be punished.

To our surprise, no one was punished by the very Japanese government since the closure of Tokyo Tribunal and its subsequent military tribunal. I am very sorry for mentioning the late empeoror Hirohito who was extremely respected by the Japanese. But in fact he was the supreme commander of Japanese Imperial Army who are responsible for all these atrocities. Can you imagine Hitler could save his life and could maintain his power if he had not committed suicide after the war? However, it happened in Asia with the consent of general McCarthur and United States.

At the begining US planned to abolish emperor system but as cold war strenthend all across the world, the policy changed and

I am sure that Japanese war criminals and criminals against humanity can be punished until now, because the United Nations made a Convention on Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity in 1968. This principle of non-applicability of time limitations in the punishment of war crimes can be applied to Japan which declared to respect treaty and established international law in its constitution.

B.The Compensation for the Victims

Secondly, Japan must compensate for the suffering of the victims. However, Japanese government insists that it has no legal responsibility, because all the claims including comfort women issue was abandoned by the agreement between Korean and

Japanese government in 1965. The agreement, of course, has an article saying that Korean government give up all the claims 'completely' and 'finally'.

But, I think, the interpretation by Japanese government is wrong. The one reason lies in the fact that comfort women issue was not mentioned and discussed at that time. The denial of involvement of Japanese government proves that the agreement did not include the claims of comfort women. The other reason comes from principle of jus cogens which existed as a customary international law since the beginning of this century and appeared as a conventional norm in Vienna Convention on the Law of Treaties in 1969. Article 53 of the Vienna Convention reads as follows;

"A treaty is void if, at the time of its conclusion, it conflicts with peremptory norm of general international law. For the purpose of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole and a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

The prohibition of slavery, slave trade and forced labour has been established as one of elements of jus cogens from the beginning of the development of its concept. In the sense, victims of comfort women retain its right to compensation irrelevant to the existence of the agreement between the two

governments.

If we compare the German case in which the Israel and the individual as well has been compensated, we can feel the striking contrast. As of 1991, the total amount of the compensation under the German Compensation Act reached 86 billion Mark. Recently the German government decided to pay for the residents of East European countries who could not apply since the beginning of the cold war. It covers the damage occurred during their hiding.

C. Other Means of Reparation

However, the pains and sufferings can not be cured only with the monetary compensation. It should include the moral and social welfare of the victims and the causes of justice and peace. The Maastricht Conference on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedom in March 1992 concluded that following means should be provided for the victims and victimized society.

- (a) the verification of the facts and the full and public disclosure of the truth;
- (b) the public acknowledgement of responsibility for violations committed;
- (c) the bringing to justice of persons found to be responsible;
- (d) the protection of victims, their relatives and friends, and witnesses;

- (e) the holding of commemorations and paying tribute to the victims;
- (f) the establishment and the sponsoring of institutions for victim after-care and training of personnel for helping the victims;
- (e) the prevention of the recurrence of violations.

4.The Ways of Solution

I move to next stage of discussion concerning how we can seek the solution of this issue. I think there might be some ways imaginable to resolve.

First of all, the idealistic way of settlement can be achieved through the establishment of permanent or temporary international tribunal, such as the International Court of Justice, or International Criminal Court, or International Military Tribunal in Neuremberg or in Tokyo. As you know, however, ICJ has the limit in its mandate under which it deals with only the conflict between the member countries. The individual victims can not file their cases to ICJ. Furthermore, despite the continuous proposal and debate, the international community did not attain the international criminal court. On the other hand, it is also unexpectable for United Nations or International community to agree to reconstruct such military tribunal as seen in Neuremberg or Tokyo.

Secondly, we can imagine to set up an arbituary tribunal which has both civil and criminal mandate through the United Nations under the consent of Japanese government. We can see many

examples in history which reached settlement of political or diplomatic conflict between countries concerned. The United Nations Compensation Commission was recently established to make compensation for the victims originating from the illegal invasion of Iraq. The hostage crisis in Iran in 1981 was settled by the Iran-United States Claims Tribunal. There may be a number of complicated problems such as the right of investigation, the qualification of the complaints, the composition of the judging body and the expenses of the management.

Thirdly, the dispute can be removed through direct negotiation between the representative of victims and Japanese government.

All these three ideas can come true/only with the sincere attitude and progressive good-will of Japanese government. However, it is a great pity that we could not see any sign of change in the position of Japanese government. The only way of the settlement is to force it to come out to the table of negotiation and make concessions by the organized public opinion of peace-loving international community.

5. 'Comfort Women and International Community

I would like to mention briefly about the reason why we, international community should have concern and make our effort to put pressure on Japanese government. It is quite simple. The most conspicuous characteristics in the development of international law since the end of World War II, are the rise of right and duty of individual and the restriction of the sovereignty in a country. As a member of mankind, we have the right and duty to watch and criticize the human rights violations

^{certain}
happening in a corner of the earth.

It is well known fact that Japan is seeking for the permanent seat of the Security Council of United Nations. ^{Gali} Retrospecting the history of the process of the building the United Nations, it was designed to prevent the same scourge and misery which the mankind suffered during the war. Now, without any repent for their atrocities or consolation for the victims, do you think Japan has the qualifications for the seat? Can the seat be purchased by money?

6. Conclusion

Comfort women issue symbolizes the adversity of not only Koreans but also Asians. ^{and marking as a whole as well} Their pains did not end with the surrender of Japanese Imperialism. Without any concern from both domestic and abroad, these miserable women suffered for a nearly half century since the end of the war. ^{Many argues that we should forget the past, we should hear him and focus on future} Recurrence of wrongdoing can be prevented only by the deep feelings of repent. It is great pity to see the fact that Japan never showed such attitudes as sincere apology, effort of full investigation, compensation for the victims, punishment of the author of the atrocities, and education for the next generation. Hereby, my conclusion is that we can not tolerate this situation and urge you to do something to ^{bring} justice. ^{any longer}