

DRAFT JOINT WCC/ICJ PROJECT FOR
A RESEARCH ON SLAVERY AND SLAVERY-LIKE PRACTICES DURING WWII

INTRODUCTION

Following the adoption of the resolution of the UN Sub-Commission on Human Rights study on slavery and slavery-like practices during wartime including internal armed conflict, we believe that there is a pressing need to assist the United Nations by submitting information, in particular a report concerning slavery and slavery-like practices during WWII.

THE UN RESOLUTION ON SLAVERY DURING WARTIME

On 25 August 1993, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1993/24 (No. of the draft resolution: E/CN.4/Sub.2/1993/L.12/Rev.1), which decided to appoint a Special Rapporteur to undertake an in-depth study on the situation of systematic rape, sexual slavery and slave-like practices during war time, including internal armed conflict. Ms Linda Chavez, a distinguished expert of the Sub-Commission, who is a writer, a TV commentator and Director of The Center for the New American Community was appointed as the Special Rapporteur.

Many NGOs such as the World Council of Churches, the International Commission of Jurists, Liberation, the International Association of Democratic Lawyers, the International Educational Development and the International Fellowship of Reconciliation as well as the Korean Council for the Women Drafted for Sexual Slavery by Japan, the Filipino Task Force for Military Sexual Slavery by Japan and the Fact-finding Team on the Facts Concerning Korean Forced Labourers have worked hard to bring the issue of "comfort women" to the attention of the United Nations since February 1992.

TASKS OF THE SPECIAL RAPPORTEUR

One of the major tasks of the Special Rapporteur is to study relevant facts and provide legal analysis, conclusion and recommendations as regards sexual slavery by Japan, as well as other types of forced labour during World War II.

In August 1992, the Sub-Commission requested the Secretary General to transmit information on the situation of women forced to engage in prostitution during wartime, which was about the situation of Asian, mainly Korean, "comfort women" of the Japanese Imperial Forces to the Sub-Commission's Special Rapporteur on the right to restitution, compensation and rehabilitation for the victims of gross violations of human rights and fundamental freedoms (see para. 3 of the preamble of the resolution). In May 1993, the Working Group on Contemporary Forms of Slavery decided to submit the information concerning the sexual exploitation of women, as well as other forms of forced labour during wartime, namely the situation of "comfort women"

and other men and women forced labourers by Japan during World War II to the Sub-Commission and the Special Rapporteur on the right to compensation (see paras. 4 and 5 of the preamble; also see paras. 48 - 49, 80 - 87 and recommendations: miscellaneous on page 40 of the Report of the Working Group on Contemporary Forms of Slavery, E/CN.4/Sub.2/1993/30). The newly appointed Special Rapporteur on Slavery and Slavery-like Practices during wartime is invited to take into account documentation received by the Special Rapporteur on the right to compensation, which is mainly about the situation on "comfort women" and forced labourers by Japan (see the first part of para. 3 of the operative paragraphs of the resolution).

As a result, the study by the Special Rapporteur on Slavery and Slavery-like Practices may include not only the situation of Asian "comfort women" but also that of Asian forced labourers by Japan during World War II.

IMPORTANCE OF THE STUDY BY THE SPECIAL RAPPORTEUR

This is the first time for Japan to be openly scrutinized by the human rights body of the United Nations in its history.

It is to be noted that this resolution was adopted by the UN Sub-Commission despite the arguments made by the Japanese Government at the Working Group on Contemporary Forms of Slavery that the UN has no capacity concerning a situation at the time before the creation of the UN and all compensation issues were solved by treaties concluded by Japan with victimized Asian countries except the Democratic People's Republic of Korea.

We hope all of the relevant NGOs and governments will be able to cooperate with the newly appointed Special Rapporteur. Despite the admission of coercion onto the "comfort women" victims by the Japanese Government, which was openly said at the last session of the UN Sub-Commission, however, even the new 8 party coalition government has been denying the legal and moral responsibility for compensation to the victims, who are existing over many countries in Asia. Furthermore, the Japanese Government is refusing even to discuss about the legal responsibilities for compensation to the forced labour victims.

As a result, the tasks of the Special Rapporteur will be enormously heavy. As the UN lacks enough resources, the NGOs have an important role to assist the UN Special Rapporteur and staff by providing information and other suggestions including a report as regards the issue.

As for "comfort women" issue, the final report of the ICJ will come out near future. The UN Special Rapporteur on human rights situation in the territory of the former Yugoslavia may be able to provide much information as regards the issue of systematic rape there. There are, however, some needs for the Special Rapporteur to require more information as regards

produced on 27 August for the Sub-Commission, which is being attached to this paper. There is no good comprehensive researches available as regards other situations of slavery-like practice during WWII, in particular the situation of forced labourers. The number of the victims as such is estimated as 6 million in Korea alone. The UN urgently needs to be provided a well researched report and information concerned in these areas. We think that it is necessary to make a research as regards the facts, legal analysis, conclusions and recommendations.

THE TIME SCHEDULE OF THE UN ACTIVITIES

In addition to the results of the study, which will be submitted to the Working Group on Contemporary Forms of Slavery in April 1994, her reports will be also submitted to the Sub-Commission in 1994 and 1995 by the Special Rapporteur (see paras. 2 and 4 of the operative paragraphs).

THE PROPOSED PLAN OF THE PROJECT

Under the circumstances, we wish to propose the following plan for the project.

- 1) To recruit a fulltime researcher, who may be good at international law, Korean and English language and history for 6 months in order to assist Ma Chaves and the UN staff for the study on the Wartime slavery issue, starting from October 1993 - April 1994.
- 2) Purpose of the project: To make a joint WCC/ICJ research in order to assist the UN and its Special Rapporteur for the Wartime slavery issue, among all reparations including compensation to the victims of slavery during WWII by Japan, in particular the "comfort women" and the forced labourers.
- 3) Tasks: To research into documents needed by the UN and the SR and to write a report on the issue mentioned in 2), which is to submitted to the UN.
- 4) Works: To contact the UN responsible staff and the SR regularly and assist them as required; to provide information necessary to the UN and the SR; and to engage in the research to write a report.
- 5) Place of the work and visits: To be based in Geneva, where an office is to be prepared; and to pay visits to some relevant places where information is available, for example to some places in Asia at least for two weeks, Maastricht (Prof van Boven, who submitted the UN his final report on the right to compensation for the victims of gross violations of human rights) at least one time for one week, Washington (the SR) at least two times one week for each.
- 6) Budget: As shown in a separate paper.

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Preparatory Document submitted by Mrs. Linda Chavez on the question of systematic rape, sexual slavery and slavery-like practices during wartime

I. Background for the Study

Rape (that is, non-consensual intercourse through the use of physical force, threats or intimidation) is unfortunately a widespread phenomenon, which has particularly devastating consequences on the enjoyment of the basic right to dignity and the security of person of women, who comprise the greatest number of the victims of rape. Although rape occurs most frequently in a criminal context and is punishable by domestic criminal law, systematic rape can also be used as an instrument of torture or as an abhorrent instrument of warfare.¹ In these instances, rape violates fundamental principles and rules of international law, in particular humanitarian and human rights law.²

Rape committed by soldiers has been prohibited by law for centuries.³ Nevertheless, in many instances soldiers have been given license to rape as an instrument of policy; and forced prostitution during wartime has also been practiced on a large scale, notably during World War II. Most recently,⁴ rape has been widely and systematically used in former Yugoslavia, especially in Bosnia-Herzegovina, as a method of ethnic cleansing, as noted in reports of the United Nations, the European Community, the Conference on Security and Cooperation in Europe, and various non-governmental organizations.⁵ Rape victims in Bosnia-Herzegovina have been chosen with a view toward inflicting suffering not only on the individual victims but on their families and communities as well. Rapes have been committed in public, and victims have included elderly women, children, or family members of local Bosnian leaders.

While the immediate harm and anguish to victims caused by rape is readily apparent, we are only now coming to understand better the long-term emotional and/or physical consequences for victims. Recent publicity concerning the continued deleterious effects suffered by Chinese, Dutch, Filipino, Indonesian, and Korean women forced into sexual slavery during World War II confirms that systematic rape can have a devastating impact on its victims, which lasts years beyond the immediate horror of the act itself. Despite this, the practice concerning prosecution for rape during war, including armed conflict, and compensation of victims has been mixed. In view of the catastrophic effects of systematic rape and its widespread use both historically and in contemporary armed conflicts, it is recommended that an in-depth study of systematic rape, sexual slavery and slavery-like practices be undertaken.

I. Object of the Study

The purpose of the study will be to explore the following topics:

- A. The history of systematic rape as an instrument of policy, with special emphasis on the broadscale use of rape, sexual slavery and slavery-like practices during wars, including armed conflicts, in this century;
- B. Rape as a crime under international humanitarian law, including the evolving definition of rape as a war crime;
- C. Compensation for victims of systematic rape, sexual slavery and slavery-like practices during armed conflict.

III. Outline of the Study

A. The Study will examine the following relevant treaties and other international standards, with relevant interpretation, including, but not limited to, the following:

1. The Four Geneva Conventions for the Protection of the Victims of Armed Conflict of 1949;
2. The Two Additional Protocols of 1977 to the Geneva Conventions;
3. The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment;
4. The Convention on the Elimination of Discrimination Against Women;
5. The Slavery Convention;
6. The Protocol Amending the Slavery Convention;
7. The Supplementary Convention on the Abolition of Slavery;
8. The Freed Labor Convention;
9. The Abolition of Forced Labor Convention;
10. The Convention on the Prevention and Punishment of the Crime of Genocide;
11. The Statute and Judgment of the Nuremberg Tribunal;
12. The Control Council Law No. 10;

13. The Statute of the Tribunal on Violations of Humanitarian Law in the Former Yugoslavia;

14. The Compensation Commission on Iraqi Violations in Invading Kuwait;

15. The Convention on the Rights of the Child;

B. The Study will take into account the relevant studies and resolutions of the Commission, the Subcommission, and its working groups, including, but not limited to, the following:

1. The 1993 Subcommission Report of the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/1993/30);

2. The 1992 Subcommission Report of the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/1992/34);

3. The Final Report submitted by Mr. Theo Van Boven on the Study concerning the right to restitution, compensation, and rehabilitation for the victims of gross violations of human rights and fundamental freedoms. (E/CN.4/Sub.2/1993/8);

4. The report of Mr. Tadeusz Mazowiecki entitled The Report on the situation of human rights in the territory of the former Yugoslavia A/48//92s/25341;

5. Resolution 1993/8 of the Commission: Rape and abuse of women in the territory of the former Yugoslavia;

6. Resolution 1993/46 of the Commission: Integrating the rights of women into the human rights mechanisms of the United Nations;

7. The report completed of Mrs. Erica-Irene Daes examining "New Types of War Crimes and Crimes Against Humanity: Violations of International Humanitarian and Human Rights Law."

C. The Study may also incorporate information on systematic rape, sexual slavery and slavery-like practices gathered from other sources, including Governments and Non-governmental organizations.

D. The Study will examine what remedies -- civil, administrative, and penal -- exist at the national and international levels.

E. The Study will submit conclusions and recommendations based on the review of the relevant facts and legal analysis.

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- IV. The proposed Draft Timetable of the Study is as follows:
- A. Preliminary Report: Subcommittee's 46th Session (1994).
 - B. Final Report: Subcommittee's 47th Session (1995).

NOTES

1. The author has drawn heavily on the following sources for information contained in this paper: Erica-Irene Daes, "New Types of War Crimes and Crimes Against Humanity: Violations of International Humanitarian and Human Rights Law," International Geneva Yearbook, 1993; and Theodor Meron, "Rape As a Crime Under International Humanitarian Law," American Journal of International Law, Vol. 87, No. 3.

2. Custodial rape, or rape in circumstances in which the government is responsible under the law of state responsibility, is well recognized as a violation of the prohibition against torture or inhuman treatment in international human rights law.

3. Daes op cit.

4. Rape by soldiers was a capital offense under national military codes as far back as the 14th Century in England, for example.

5. Systematic rape was also recently practiced during Iraqi occupation of Kuwait. See Walter Kälin, "Report on the Situation of Human Rights in Kuwait Under Iraqi Occupation" E/CN.4/1992/26.

6. See especially Tadeusz Mazowiecki, "Report on the situation of human rights in the territory of the former Yugoslavia" A/48/92-S/25341 Annex.

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28 August 1993

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Dear Prof Shin,

I tried to reach you by telephone twice in this morning but it did not work, so I decided to write you. My telephone was cut off at 11:00 a.m.. I hope that you safely received my draft proposal and the Working Paper of Ms Chaves, which was circulated to the members of the Sub-Commission at the last moment of 27 August, but not for the other participants. I do not think that this is confidential, as Ms Chaves allowed me to have a copy in the morning, although I had little time to talk to her in the morning.

I think that you must be happy about the WP, as it focuses on the women issue. I am afraid that the forced labour issue should wait for some time, although her mandate clearly includes it. We need to amend the draft proposal for the project a bit.

I saw Mr Hamid Gaham, who was the Chief for this issue. The staff has not been decided yet. Mr Gaham's telephone is 917 3362. He told me that all the information which reaches him will be automatically sent to the SR. He also said that the direct contact with the SR is free for any NGOs and the UN would not interfere with this at all. The latter should be agreed with the SR. He said that he already said the same thing to the SR.

Then I sought an appointment with her. As she had been always busy and probably she had no idea when I asked her whether she needed to have any assistance from NGOs in the morning, she might have avoided to talk to me for some time. At around 3:00, I could see her and she gave me her personal telephone number at last and asked me to call her up at 6:30 p.m.. I was afraid that a man could not approach her easily. I had wished that you could have been here to talk to her. I thought that she had been cautious to be influenced by me, a mad (socialist?) lawyer and wanted to keep some distance from me until this time. Luckily, I was invited to her apartment, Residence de France, when she was packing. I was offered coffee and could talk to her for about a half an hour or so, while her son was reading a book with us.

The conclusion was not bad!! As she was not a lawyer,

2

however, she wanted to have help in legal analysis, in particular academic references for A. II of the WP. She wanted to start her research from this. She asked me to get any precedent of punishment of rape in international tribunals, raising examples of them in the IMTFE, which were cited by a paper by Theodor Meron in NOTES 1. She was interested in the Nuremberg and Tokyo judgments, International Red Cross works and US cases. She pointed out that she wrote it in her WP. She emphasized that she wanted to make clear that rape was a crime under international law, which you may like. She said that she might have a Ph D student from a University and an assistance from the Manhattan Institute. (In passing, I was told by her assistant, Mr Gregory Dean Gisvold, an Legal Intern from University of Minnesota for this Sub-Commission only, who was paid by a foundation not by her that the draft was prepared by several persons including him. They exchanged facsimile communication with Prof Weisbrot, who was an advisor to Mr Gisvold. Prof Weisbrot, I think, was included in the US Government delegates in the last Commission.) She also welcomed that any NGO might give her any help including from you and me.

I told her that the plan of the WCC/ICJ was under discussion among NGOs to have a fulltime researcher who was good in Korean/English, international law and history. She was very happy to hear this plan. Then she told me that she wanted to have any assistance from NGOs including drafting a report. She said that she wanted to re-write it, in her style as she was a writer. (I thought that my guess was right that she might use the draft report that would be prepared by our researcher!!)

I asked whether she wanted the assistant to be based in Geneva or the USA. She suggested that the place where the good reference materials, namely good libraries were available would be better. I agreed with her.

As for law, I pointed out that the ICJ final report might be helpful and Prof van Boven's final report might be the basis. She agreed with me. I also told her that we had interesting ideas about international law ^(at the time) before WWII, which she did not mention in her WP (III A & B), referring the Forced Labour Convention and three old treaties as regards White Slaves. I also went on to the James case, which you may be bored! She seemed that she had no information about these. She pointed out, however, that she did not limit the scope of the study by saying "but not limited to" in III A and B. I suspect that she did not read my papers for the WCCFS in this May. And she suggested me to provide any information for her. She might have thrown away all the documents that we gave the WCCFS except a few books as regards "comfort women", which she said "interesting".

Then, I moved to discuss about history (II B). She told me that she wanted to do this by herself by visiting relevant places in future and getting information. I suggested that the documents in the UN would help her in this too. About the timing

3

of her visits, she said "I had no idea." Then I told her that the staff of the Centre for Human Rights suggested that it should not be before the endorsement by the CHR even on the basis of the invitation from the governments. She told me that Mr Aizawa told her that Japan would cooperate with her. She also said "A South Korean who spoke good English told her that they would cooperate with her." She could not find out the name card of him. I told her that the Korean diplomat might have been Mr Park from the DPRK mission, who told me that he personally met her and appreciated her cooperation with this a resolution on the last day. But there is a possibility that the ROK diplomat did the same. (In any case, that Mr Chu told me that the ROK openly mentioned that they wanted a SR and promised their cooperation with the UN in their statement.)

As for compensation, I had not time to discuss in detail except the Janes case. Interestingly, she said to a Kyodo journalist "compensation and prosecution" when she referred to II C.

She closed the meeting by saying "You can contact me to the telephone during office hour and not later than 10:00 p.m. as my husband may come home by then." "Except Friday morning". She will be occupied by the TV." The telephone (301 299 2696; facsimile: 301 983 8006) on her name card is at home, although it looks like an office one.

I hope that you have got enough information about Ms Chaves. As I said to her "Prof. Heisoo Shin is sending her best wishes and asked me to ask you this idea." at the beginning of the meeting, I hope you will endorse my message by writing her a short letter. (about)

Finally, I would like to propose some amendment in my proposed plan as she suggested. I think that it may be good to ask the researcher to be in the USA for at least two months to start the research (at Harvard Law School or Univ. of Minnesota) so that Ms Chaves would be satisfied with legal analysis. His study may be focused on the women issue for the next two months for history and compensation and he may finish the draft ~~for~~ her scope of WP in Geneva, which could be used by her for her results of study for the WGCRS and the initial report for the Sub-Commission in 1993. Then, he may be able to use another two months for forced labour for future. (The last part may be used by the SR in future.) What do you think about this? I hope you will be able to think and amend as you like and send it to the WCC and ICJ. I do not think the budget would be much different.

Please take care of yourself.
With best wishes.

Sincerely Yours,


Etsuro Totsuka
Attorney at law (Japan)

cc, Mr. D. Iker Paratch

cc: Mr. Clement John