

# Solidarity and Justice for War Crimes Against Women: The 'Comfort Women' Case

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## 1. INTRODUCTION

This paper explores the role of solidarity<sup>1</sup> in achieving post-conflict justice in cases of international war crimes against women.<sup>2</sup> I argue that the quest for justice for the victims of some of the most serious violations of international humanitarian law (IHL), and the recent struggles to obtain reparations commensurate to the crimes committed, demonstrate the rising importance of solidarity among international civil society actors<sup>3</sup> and its potential to shape international law and relations. In particular, I show how international solidarity movements – including women's NGOs, feminist activists and lawyers, and other campaigning groups – have promoted the idea of an individual right to reparation as a means to deliver post-conflict justice for war crimes against women, which is already provided by many regimes of international human rights law but not yet for violations of IHL. The individual right to reparation for victims of violations of IHL is gradually gaining recognition in customary international law,<sup>4</sup> promoting an alignment of IHL with human rights law:<sup>5</sup> a development owed to many different actors, including courts, academics, and practitioners.

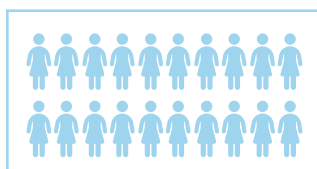
This paper focuses on one aspect of this effort: international feminist movements campaigning for justice for war crimes against women, where the struggle for the effective application of the right to reparation is especially visible and has been promoted by solidarity movements.

I demonstrate the importance of international solidarity to achieving post-conflict justice through the example of the 'comfort women' case, involving former sexual slaves exploited by Japanese troops

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during World War II. Two specific legal features of this case make it relevant for this analysis, in that they seem particularly motivated by the principle of solidarity. First, the work of the Women's International War Crimes Tribunal in 2000 – the 'peoples' tribunal' established in Tokyo to consider Japanese military activity in the Asia Pacific region in the 1930s and 1940s – represented a unique example of feminist solidary engagement with international law.<sup>6</sup> Second, the long-term solidarity of international civil society actors towards former 'comfort women' has influenced recent jurisprudential developments. The paper begins from two questions: is the solidarity-based approach producing a new legal understanding of conflict-related violence against women, and especially the emergence of an individual right to reparation? And what are the normative implications, if any, that scholars, international lawyers and politicians can derive from it? Ultimately, the case of the 'comfort women' demonstrates how the solidarity of international civil society actors towards a specific group of victims can be essential in order to, first, achieve post-conflict justice and, second, to progressively develop international law.

## 2. HISTORICAL BACKGROUND



# 200,000

### **WOMEN WERE TRICKED OR ABDUCTED INTO 'COMFORT STATIONS'**

**...and forced into slavery for sexual services for the Japanese Imperial Army before and during World War II.**

The precise number of 'comfort women'<sup>7</sup> remains unknown, but it is thought that around 200,000 women<sup>8</sup> were tricked or abducted into government-sanctioned military stations, called 'comfort stations', and forced into slavery<sup>9</sup> for sexual services for the Japanese Imperial Army before and during World War II.<sup>10</sup> These women and girls were taken from Japanese military-occupied areas – predominantly Korea,<sup>11</sup> but also the Philippines, Indonesia, China and Taiwan – and imprisoned in the comfort stations, where they were subjected to daily violence and sexual assault by soldiers.



these movements influenced the legal conceptualisation of the ‘comfort women’ case by promoting the idea of an individual right to reparation as a means to deliver justice for war crimes against women, and paved the way for their individual claims before national courts.

Despite some evidence of the forcible abduction of women by the Japanese Army being introduced at the International Military Tribunal for the Far East (the so-called Tokyo Tribunal, which ran from 29 April 1946 until 12 November 1948), the judgment in that case did not focus on these crimes.<sup>12</sup> Only in the 1990s–2000s – during the ‘second wave’ of societal interest in interpreting the outcomes and deficiencies of the Tokyo Tribunal, and despite the rise of the ‘neo-nationalist’ or ‘revisionist’ movement which sought to deny these crimes<sup>13</sup> – did the Japanese military’s system of sexual slavery come to light.

Increasingly, the victims demanded an apology and reparations from Japan. In August 1993, with a statement by the Chief Cabinet Secretary Yohei Kono (therein Kono Statement), the Japanese Government officially recognised its own extensive involvement in the system of ‘comfort stations’, and offered “sincere apologies and remorse” to the ‘comfort women’.<sup>14</sup> However, Japan has never recognised its legal responsibility, only a moral one, and reparations for the former ‘comfort women’ were not made.

As a result, former Korean ‘comfort women’ filed multiple lawsuits both before Japanese courts and other states,<sup>15</sup> such as *Hwang Geum Joo v. Japan*, the class action suit filed by 15 former ‘comfort women’ in September 2000 before the District Court for the District of Columbia and appealed to the D.C. Circuit Court of Appeals. As victims of human trafficking, rape and torture, the former ‘comfort women’ sought reparations and an official apology from Japan.<sup>16</sup> However, all lawsuits were rejected or dismissed.

The failure to address the issue before the Tokyo Tribunal and in the subsequent peace agreements that Japan signed with the Allies<sup>17</sup> and with its former colonies and occupied territories<sup>18</sup> resulted in 50 years of silence on the issue. This lack of justice led to an international wave of activism in search of justice for the atrocities suffered by former ‘comfort women’. The solidarity of international civil society actors in this case is more than just a sympathetic

attitude – a point I will explore throughout this paper. The nature and gravity of the crimes suffered by former ‘comfort women’, together with the international shock caused by the rediscovery of the tragic events in the 1990s thanks to the work of the Japanese historian Yoshiaki Yoshimi and the courageous testimony of the former comfort woman Kim Hak-soon,<sup>19</sup> prompted NGOs, scholars and activists across the world to take action.

### 3. FROM SOLIDARITY IN THE INTERNATIONAL PEOPLE’S TRIBUNAL TO SOLIDARITY IN NATIONAL COURTS

The development of international solidarity movements in support of the ‘comfort women’ contributed to the emergence of a new international (and legal) consciousness about the heinous acts of violence against ‘comfort women’. As I will argue, these movements influenced the legal conceptualisation of the ‘comfort women’ case by promoting the idea of an individual right to reparation as a means to deliver justice for war crimes against women, and paved the way for their individual claims before national courts.

Following the brave testimony of Kim Hak-soon during a press conference in August 1991,<sup>20</sup> other survivors were encouraged to step forward.<sup>21</sup> Despite the fear of social ostracism due to patriarchal taboos and the difficulty of speaking out about their traumatic experience, many survivors registered as ‘comfort women’ and spoke up about the treatment they suffered.<sup>22</sup> International actors, including scholars, feminist solidarity movements and NGOs, soon realised that this was not just a story of a single woman. This movement felt moved to further uncover and amplify the truth, giving back to the world a history which would finally be inclusive of conflict-related violence against women and women’s human rights. Global civil society actors have used a selection of instruments – such as the institution of a Remembrance Day, statues of peace, investigative reports, demonstrative commemorations and educational campaigns<sup>23</sup> – to advocate for redress for the few former ‘comfort women’ still alive and to promote a “living justice”<sup>24</sup> in honour of victims of sexual slavery by the Japanese military. In the next section, I focus on the legal instruments used, namely the Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery<sup>25</sup> (therein Tokyo Women’s Tribunal) in 2000 and the relevant national case law.

### 3.1. The Women's International War Crimes Tribunal 2000

The growing worldwide empathy for the injustice suffered by the former 'comfort women' converted into an international manifestation of solidarity expressed through the establishment of the Tokyo Women's Tribunal. The latter was a people's tribunal established in 2000 in response to "the cries of 'comfort women'", to "break the silence" over an issue covered up for 50 years,<sup>26</sup> the "result of the failure of States to discharge their responsibility to ensure justice".<sup>27</sup> The Violence Against Women in War Network, Japan (VAWW-NET)<sup>28</sup> proposed the establishment of the Tribunal during the 1998 Asian Women's Solidarity Conference held in Seoul. The idea was supported by delegates from North and South Korea – whose prosecutors presented a joint indictment at the Women's Tribunal despite difficult relations between the two governments<sup>29</sup> – and other countries from which 'comfort women' originated. The initiative soon became a women's movement that encouraged international specialists from all over the world to take action for the international recognition of the 'comfort women's' rights and the crimes committed by the state of Japan.<sup>30</sup> The International Organising Committee was made up of three groups representing the victims' organisations in Asian states;<sup>31</sup> the offending state, Japan, represented by three lawyers acting in the capacity of *amicus curiae*<sup>32</sup> as the Japanese government refused to appear; and an International Advisory Committee with members from North and South America, Australia, Africa, Europe and Asia. The composition of the bench also reflected this geographical balance, with judges<sup>33</sup> and lawyers with different expertise from a range of countries.

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The Tokyo Women's Tribunal was strongly influenced by the social movements of the 1990s for the empowerment of women, "in combining consciousness raising with the allocation of responsibility".<sup>34</sup> Indeed, the Tribunal "illustrates the value of devising strategies that combine traditional women's organising methodologies of networking, consciousness raising, and alliance building with procedural initiatives that have already acquired legitimacy within civil society".<sup>35</sup> The solidarity expressed here constituted a feeling of connection and mutual support for the suffering of the survivors, but also a profound sense of injustice at the silence imposed for decades. As such, the sense of solidarity

goes together with the fight for justice. This is well-evidenced in the transcript of the oral Judgment delivered on 4 December 2001 by the Judges of the Tokyo Women's Tribunal, which states:

The courage of the survivors, their yearning for *justice*, and their *solidarity* has inspired a worldwide movement to ensure that such crimes never again be overlooked nor allowed to occur. That crimes against women have begun to be prosecuted in the recently established international criminal tribunals is one of the fruits of their efforts and has laid the foundation for ending impunity for violence against women.<sup>36</sup>

This solidarity-based attitude informing the Tokyo Women's Tribunal was mainly the result of new feminist engagement with international law. Feminist approaches to international law<sup>37</sup> – involving a feminist commitment to gender equality and justice in international legal scholarship driven by the presupposition that international law is a gendered system – combined research and political legal strategy.<sup>38</sup> Feminist legal scholars sought to combine academic and political aims: on the one hand, the study of international law using feminist theories to unveil gendered and sexed assumptions; on the other hand, a dedication to political change, addressing injustices against women. This method led to a new understanding of the many forms of violence that women experienced during the conflict. The convergence of feminist academic research in international law and political legal strategy is particularly apparent in the Tokyo Women's Tribunal, in how well-recognised feminist international lawyers used a gendered perspective on international law to advocate for justice for 'comfort women'. Ultimately, the lawyers' solidarity-based attitude converged with a feminist analysis which informed the legal approach to the case. The contribution of the Tokyo Women's Tribunal to the 'comfort women' case may be summarised in two aspects, which I outline below: the legal aspect and the symbolic one.



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Contrary to other people's tribunals – which are usually composed of experts in different fields, who base their decisions not only on legal principles but also “on conscience”, and do not resolutely follow legal procedures<sup>39</sup> – the Tokyo Women's Tribunal assumed a strictly legal approach, despite not being formally recognised under international law. Not only did it take the form of a tribunal, but the case was argued in legal terms: the judges based their reasoning on international law, and its findings assumed the form of a judgment. The legal contribution of the Tokyo Women's Tribunal consists of two features: the categorisation of the violations committed as international crimes, and the legal reasoning according to which an individual right to reparation exists in the case at hand.

As for the first legal contribution, the Tribunal found Emperor Hirohito guilty of the crimes committed against ‘comfort women’, and the State of Japan was found responsible for crimes against humanity according to the rules of international law in force at the time of the commission of the facts. In particular, Japan had acted in violation of international obligations deriving from international treaties and principles of customary international law relating to slavery, human trafficking, forced labour and rape.<sup>40</sup> The ‘comfort women’ system was characterised as a crime of sexual slavery: “[t]he Tribunal categorically and forcefully reject[ed] the proposition that the women subjected to sexual slavery were voluntary prostitutes”.<sup>41</sup> Moreover, the term “forced prostitution”, which downplays the gravity of the crime, was replaced by “sexual slavery”.<sup>42</sup>

Regarding the second legal contribution, the Judgment stated: “[t]his Tribunal disagrees with the decisions of the Japanese courts dismissing the claims of former ‘comfort women’ on the grounds that individuals have no right to claim compensation under public international law”.<sup>43</sup> In this way, the Tribunal engaged with the heated contemporary discussion on the existence of an individual right to reparation. Traditionally, only the State of nationality of the victims is entitled to reparation in case of breach of an obligation owed to it by another State, according to the principle that the commission of an internationally wrongful act by a State entails an obligation to make reparations for the injuries inflicted.<sup>44</sup> However, in recent decades this state-centric approach has been contested. Numerous international human rights law regimes already provide an individual right to reparation: some oblige States to provide effective reparation under domestic law to any person whose rights have been violated,<sup>45</sup> while others recognise an individual right to reparation and grant an international legal procedure for individual complaints.<sup>46</sup> However, in IHL the classical legal view still applies, according to which war reparations are usually payments that the

defeated party must pay to the victor party. As such, the Japanese Government has always denied 'comfort women's' claims for legal compensation on the grounds that individual victims have no such right under international law.<sup>47</sup> This reasoning was also supported by the international legal rules on State immunity, according to which a State enjoys jurisdictional immunity before national courts of other States.<sup>48</sup> However, some international legal scholars maintain that evidence of the existence of an individual right to reparation exists and may be traced back before World War II.<sup>49</sup>

The Tokyo Women's Tribunal sided with the latter view. The Judgment provided different foundations for recognising compensation claims by former 'comfort women'. The judges found that the relevant norms were "intended to protect the right of the victimised persons and those who are permitted to claim on their behalf to seek compensation as individuals".<sup>50</sup> In this sense, the Tokyo Women's Tribunal has the major merit of contributing to the ongoing discussion over the existence of an individual right to reparation for victims of serious IHL violations. In the following years, NGOs, scholars and activists supporting the 'comfort women' called on states to ensure "that survivors are able to bring claims directly against the government of Japan in their national courts by enacting national legislation" that "prohibit[s] any state immunity for violations of international human rights law and international humanitarian law".<sup>51</sup>

The symbolic contribution of the Tribunal unified the survivors and their representatives' voices<sup>52</sup> and created a space where former 'comfort women' could speak and share their memories for the first time, which had two main effects. First, the former 'comfort women' could partially heal their suffering by verbalising their experience. Secondly, they could, for the first time, realise the international relevance of their experience: their suffering had to be considered not only as a personal injury, but as a crime against humanity and a collective injury upon women. In this sense, participation was a way for former 'comfort women' to affirm their existence, to understand themselves as subjects of the law, and become activists advocating for women's rights.



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The network of solidarity built for the Tokyo Women's Tribunal may be read as the starting point for a new agenda for action that prioritises claims and disputes about the international responsibility of Japan over a resolution of the issue through diplomatic forms of settlement.<sup>53</sup> Both the legal and the symbolic aspects helped to keep the issue under the spotlight internationally,<sup>54</sup> providing fertile ground for the ongoing fight for justice through subsequent individual claims brought by some groups of victims before national courts.<sup>55</sup> This international mobilisation took the form of judicial-like procedures, which required the 'comfort women's' lawyers and supportive NGOs to present their arguments using legal vocabulary and to suggest the development of international legal concepts in a way that strengthened their claims in the courtroom. This could be said to have also been true of the individual right to reparation, which also played a role in the 2021 Judgment of the Seoul Central District Court, which I discuss in the following section. Despite its non-legally binding nature, the Judgment of the Tokyo Women's Tribunal contributed substantially in bringing the 'comfort women' case to the diplomatic and legal foreground and has significant potential to assist in interpreting IHL norms.



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### 3.2. The 2021 Judgment of the Seoul Central District Court

After the 2001 Judgment of the Tokyo Women's Tribunal, international NGOs and activists carried on their fight for a resolution of the 'comfort women' issue and continued their efforts to obtain reparation. As noted above, the Tokyo Women's Tribunal, despite having the form of, and using the vocabulary of, a judicial proceeding, was not a formal court under international (or national) law. Thus, its outcome did not constitute a legally binding judgment. The political pressure exerted by the Tribunal was not sufficient to change Japan's stance.

Although the Japanese government contributed to setting up the Asian Women's Fund in 1995 with the official aim of redressing the pain and humiliation caused to 'comfort women', this did not resolve the issue. As a private structure financed by private donors,<sup>56</sup> the Fund could not provide a form of reparation that



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restored dignity to the 'comfort women'.<sup>57</sup> The official letters and statements of apology from the Japanese government were also unconvincing: the generality and ambiguity of their language often resulted in the lack of any reference to the concrete harms suffered by the victims. This attitude tended to minimise the gravity of the military acts committed against 'comfort women', reinforcing the impression that Japan was still not willing to acknowledge the seriousness of the violations committed.<sup>58</sup>

On 28 December 2015, an agreement between the Foreign Ministers of Japan and South Korea for the compensation of the few surviving women was concluded.<sup>59</sup> However, the failure of the two governments to involve the survivors in the process and to achieve a settlement recognised by the survivors was the main reason for the victims to file two lawsuits before Korean courts, considered the "last chance for justice for 'comfort women'".<sup>60</sup>

The ruling of the first claim was delivered on 8 January 2021 by Korea's Seoul Central District Court<sup>61</sup> in the case *Japanese Military Comfort Women*, upholding the claims of all plaintiffs and ordering Japan to pay compensation of 100,000,000 KRW (about 75,000 EUR) to each of the 12 former Korean 'comfort women'. For the first time, the Japanese government was brought before a Korean court and found responsible for IHL violations resulting in international crimes committed during World War II. The decision is considered an "historical ruling" and a potential "bill of rights" for war crimes victims throughout the world.<sup>62</sup>

The ruling is remarkable for a number of reasons. First, by summarising the evidence given by the 'comfort women', the ruling brought their narratives into the formal legal proceedings. Second, it offered a legal classification of the acts as violations of IHL committed by the Japanese Army against the 'comfort women'. Third, the Court ruled that there is an individual right to reparation even after an inter-State war settlement. Fourth, the Court did not recognise Japan's jurisdictional immunity, typically enjoyed in a national court by foreign States under international law, and in so doing, it could condemn Japan to compensate the claimants. Importantly, the ruling is the result of 30 years of effort by international feminist solidarity movements for the resolution of the 'comfort women' issue. This is particularly evident in three aspects.

First, the Judgment of the Central District Court of Seoul opened with a series of testimonies that, once again, gave voice to the former 'comfort women'. In this sense, the trial represented probably the last occasion for the survivors to have a legitimised space for testifying and relaying their past experiences. By detailing the testimonies of these women in the Judgment, the court gave dignity to each of the survivors, and in doing so assumed the solidarity-based approach already used as a feminist strategy in the Tokyo Women's Tribunal.

Second, in the examination of the facts, the Court underlined that the forms of violence to which 'comfort women' were subjected encompassed forced mobilisation, forced transport of women, detainment in 'comfort stations', systematic sexual violence, beating, surveillance, forced sterilisation and pregnancy, and post-war traumas such as severe psychological damages and social ostracism. This listing enables a better understanding of the forms of violence to which 'comfort women' were subjected. After finding the Japanese Army's conduct in violation of a number of international conventions at the time of the commission of the acts,<sup>63</sup> the Court qualified the illegal acts committed systematically and extensively by Japan as "crimes against humanity in violation of international *jus cogens* against the Plaintiffs".<sup>64</sup> The assessment of the case of 'comfort women' on the basis of *jus cogens*<sup>65</sup> gives to it a universal dimension that matches the feminist aspirations of the solidarity movement that has supported its claims. The solidarity movement around 'comfort women', particularly as expressed through the Tokyo Women's Tribunal, has argued that the harm caused to this group of persons violates principles that cannot be derogated from.<sup>66</sup> Feminist lawyers urged the world to recognise that the 'comfort station' system was not a mere accident of war, but a structured and institutionalised system of sexual slavery considered necessary for the war machine.<sup>67</sup> The Judgment of the Central District Court of Seoul seems to reflect this underlying thinking and it definitely reinforces it.



From a gender perspective, the Judgment clearly represents a victory for feminist approaches to international law, in that the prevailing human rights are actually women's rights – the rights of a group of women that have been empowered through their search for justice.

Third, the Judgment may be considered a bulwark against impunity for war crimes against women. Indeed, the court set a judicial precedent of exception to the principle of state immunity when serious human rights and IHL violations are involved and when the lawsuit represents the last resort for the victims. Undoubtedly, it is a historic ruling in that it recognises that the claim to reparations by former 'comfort women', arising from the crime of sexual slavery, may overcome the traditional procedural hurdle of state immunity. The decision has been welcomed as a human rights-centred ruling by international lawyers and activists supporting the 'comfort women' case,<sup>68</sup> because it prioritised the substantive human rights of the victims and the right to trial over the procedural principle of state immunity. From a gender perspective, the Judgment clearly represents a victory for feminist approaches to international law, in that the prevailing human rights are actually *women's* rights – the rights of a group of women that have been empowered through their search for justice.

## 4. CONCLUSION

The case of the Korean 'comfort women' demonstrates the importance of solidarity, as understood by feminist lawyers, in international law and its development. The principle of feminist solidarity, understood as the convergence of feminist theory and political legal activism, informed the concepts, paradigms, and language used to legally analyse the 'comfort women' case. The institution of the Tokyo Women's Tribunal was an act of feminist solidarity that not only offered an international space to give voice to survivors, but also a way to put conflict-related violence against women in the spotlight. In so doing, the Tribunal recognised the acts of violence against women during armed conflicts as constituting violations of international law, thus making internationally visible a phenomenon usually not considered in peace settlements. Following the recent international recognition that such acts, in particular sexual violence and sexual slavery, constitute not only morally wrong behaviours but also violations of IHL,<sup>69</sup> the Tokyo Women's Tribunal complemented this recognition in a case where formal justice was still elusive. The Tokyo Women's Tribunal also demonstrated that full reparation for serious crimes against women encompasses a series of acts and procedures that, in order to be effective, must directly involve the victims. Giving space for the voices of the former 'comfort women' to be heard was a way to restore the survivors' dignity and better understand what reparation actually meant for them.

Following the Tokyo Women's Tribunal, feminist solidarity continued to strengthen in the fight for justice for 'comfort women'. Twenty-one years later, the 2021 Judgment of the Seoul Central District Court demonstrated that the feminist heritage of the Tokyo Women's Tribunal was not lost. For the first time, not a women's tribunal, but a state-administrated national court, prioritised the search for effective legal protection for 'comfort women' and declared the State of Japan responsible for the crime of sexual slavery. In realising the victims' claims, the ruling made a step towards the advancement of international

legal standards of protection for individuals. However, just a few months later, on 23 April 2021, the 15th Civil Chamber of the Seoul Central District Court rejected the claim of 20 'comfort women' and their families, recognising Japan's jurisdictional immunity.<sup>70</sup> It has been suggested that the two opposite decisions on identical lawsuits are the result of two different understandings (and uses in the legal proceeding) of the survivors' experiences. The first decision introjected the survivors' experience in the legal proceeding in so following the Tokyo Women's Tribunal example, while the second ruling completely excluded 'comfort women's voices'.<sup>71</sup> The two opposite approaches demonstrate how the principle of feminist solidarity may influence the legal conceptualisation of the case, while also defining the survivors' rights. These two opposite decisions are not only the object of much legal discussion among South Korean lawyers, but also a source of uncertainty over the future of the 'comfort women's claims.

The feminist lawyers' and activists' engagement in solidarity with the 'comfort women' provided some important lessons for future efforts to ensure post-conflict justice for women. First, it showed the importance of supporting a new international consciousness about wartime violence against women using legal forms and institutions such as people's tribunals.<sup>72</sup> Second, feminist solidarity can take a practical expression by using an international movement to try to 'guide' national judicial proceedings toward gender-sensitive approaches in delivering post-conflict justice. Third, the 'comfort women' case has demonstrated that feminist solidarity may help in promoting the progressive development of some aspects of international law, with spill over effects beyond violence against women, in the development of the individual right to reparation. The principle of solidarity and the development of post-conflict justice thus have a mutually reinforcing relationship.



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## REFERENCES

- 1 The term 'solidarity' derives from the French word *solidarité*, which indicates a relationship of mutual support that connects individual members of a community through a sense of belonging to the same society and awareness of common interests and purposes.
- 2 This paper does not intervene in the controversy over the legal definition of 'solidarity', which is much debated in academic literature. See, among others, Rüdiger Wolfrum, "Solidarity Amongst States: An Emerging Structural Principle of International Law", in *Common Values in International Law: Essays in Honour of Christian Tomuschat*, eds. Pierre Marie Dupuy et al (N.P. Engel Verlag, 2006), 1087.
- 3 In this paper, 'international civil society' refers to the international civil society actors that contributed to delivering post-conflict justice for women survivors: In particular, women's NGOs, feminist activists, lawyers and campaigning groups.
- 4 In favour of the existence of an individual right to reparation for victims of violations of IHL, see for example: Carla Ferstmann, "The Right to Reparation for Victims of Armed Conflict", in *The Grey Zone: Civilian Protection Between Human Rights and the Laws of War*, eds. Mark Lattimer and Philippe Sands (Oxford: Hart Publishing, 2018): 207–230, 229. For the contrary perspective, see Christian Tomuschat, *Human Rights: Between Idealism and Realism* (Oxford: Oxford University Press, 2003), 294.
- 5 "It is difficult to maintain that individual victims of violations of human rights norms, applicable under the specific conditions of the relevant armed conflict, should have an individual claim for reparation, including monetary compensation, against the responsible state, whereas the individual victim of an international humanitarian law norm conferring rights on an individual should not have such a right to claim reparation, including monetary compensation". Rainer Hofmann, "Compensation for Personal Damages Suffered During World War II", in *Max Planck Encyclopedia of Public International Law. The Law of Armed Conflict and the Use of Force*, Vol 2, eds. Frauke Lachenmann and Rüdiger Wolfrum (Oxford: Oxford University Press, article last updated in 2013), 285, para 32.
- 6 For a history of the establishment, composition, characteristics and importance of the Women's International Tribunal on Japanese Military Sexual Slavery, see Christine Chinkin, "Women's International Tribunal on Japanese Military Sexual Slavery", *American Journal of International Law* 95 (2) (2001), 335.
- 7 The term 'comfort women' is the English translation of the Japanese 'iugun ianfu' and is considered a euphemistic expression which hides the real condition of sexual violence to which women were subjected at the hands of the Japanese Imperial Army. The Special Rapporteur for the UN Sub-Commission on the Promotion and Protection of Human Rights, Gay McDougall, named the women as "sex slaves" and the military comfort stations as "rape centers" or "rape camps" in her report *Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict*. This paper refers to the women victims as 'comfort women' following the terminology used internationally to promote the case, always in quotation marks to underline the euphemistic value of the expression.
- 8 The precise number of women remains uncertain because the most relevant documents were destroyed by the Japanese government after the defeat. On the method used to calculate the approximate number of 'comfort women', see: Chin-sung Chung, "An Overview of the Colonial and Socio-Economic Background of Japanese Military Sexual Slavery In Korea", *Muse: Journal of Transcultural Prosecution* 1 (3) (1995), 204, 212.
- 9 The judgment of the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery (2001) suggests that the most appropriate and accurate legal term to define the atrocities is 'sexual slavery'. The term 'forced prostitution' would hide the terrible gravity of the crime. See: [http://www.alpha-canada.org/wp-content/themes/bcalpha-theme/resources/Sexual-Slavery/judgement\\_e01\\_optz.pdf](http://www.alpha-canada.org/wp-content/themes/bcalpha-theme/resources/Sexual-Slavery/judgement_e01_optz.pdf), paras 634–639. See also *Report on the Mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the Issue of Military Sexual Slavery in Wartime*, UN ESCOR, 52nd Sess., Provisional Agenda Item 9(a), U.N. Doc. E/CN.4/1996/53/Add.1 (1996) paras 17–18, U.N. Doc. E/CN.4/1996/53/Add.1.
- 10 Violence – especially sexual violence – against women has occurred in almost every conflict in the history of humanity. On the specific elements which make violence perpetrated against 'comfort women' different and unparalleled in history, see David Boling, "Mass Rape, Enforced Prostitution, and the Japanese Imperial Army: Japan Eschews International Legal Responsibility?", *Columbia Journal of Transnational Law* 32 (3) (1994–1995): 533–590, 540.
- 11 The Japanese Imperial Army's preference for Korean women is interpreted as an exercise of colonial and gendered power: see Pyong Gap Min, "Korean 'Comfort Women': The Intersection of Colonial Power, Gender, and Class", *Gender and Society* 17 (6) (2003): 938–957, 944.

- 12 Ulstina Dolgopol, "Knowledge and Responsibility: The Ongoing Consequences of Failing to Give Sufficient Attention to the Crimes Against the Comfort Women in the Tokyo Trial", in *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited*, eds. Yuki Tanaka, Tim McCormack and Gerry Simpson (Leiden-Boston: Martinus Nijhoff Publisher, 2011): 243–261. A number of times the UN recommended that Japan address the problem of historical denialism in the 'comfort women' case. See, among others, UN Human Rights Committee (CCPR/C/116/2), paragraph 14; *Report of Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (A/HRC/35/22/Add.1)*.
- 13 Madoka Futamura, "Japanese Societal Attitude Towards the Tokyo Trial: From a Contemporary Perspective", in *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited*, eds. Yuki Tanaka, Tim McCormack and Gerry Simpson (Leiden-Boston: Martinus Nijhoff, 2011): 45–46.
- 14 Statement by Chief Cabinet Secretary Yohei Kono on the Result of the Study on the Issue of "Comfort Women", 4 August 1993, available at: <https://www.awf.or.jp/e6/statement-02.html>
- 15 In particular, Korean former 'comfort women' filed lawsuits before US courts. See Maki Arakawa, "A New Forum for Comfort Women: Fighting Japan in United States Federal Court", *Berkeley Journal of Gender, Law, & Justice* 16 (1) (2001): 174–200.
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- 17 Post-war negotiations between the Allies and Japan concluded with the so-called San Francisco Treaty of 1951. Treaty of Peace with Japan, 8 September 1951, Art. 2, 3 UST 3169, 136 UNTS 45. Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%20136/volume-136-I-1832-English.pdf>
- 18 In particular, the 1952 peace agreement with the Republic of China, the 1965 Agreement on the Settlement of Problems Concerning Property and Claims and the Economic Cooperation between Republic of Korea and Japan.
- 19 See Kim Woohee, "Breaking the Silence and Inspiring Activism on Japanese Military Sexual Slavery Legacy of Kim Hak-soon (1924–97)", in *Thanks for Typing Remembering Forgotten Women in History*, ed. Juliana Dresvina (London: Bloomsbury Academic, 2021), 102.
- 20 14 August 2021 marked the 30th anniversary of Kim Hak-soon's testimony, and an international conference was organised to commemorate this turning point in the 'comfort women' case and to reflect on the work of the international movement so far. For the booklet of the online conference, see <https://womenandwar.net/kr/8-13-international-conference-the-30th-anniversary-of-kim-hak-soons-public-testimony/?ckattempt=1>
- 21 "I was watching TV when they had a program on talking about, you know, the [compensation for the Japanese military comfort girls-women] and whether it was too small or not. I think it was around the time when this was a big issue. When such an uncomfortable topic came on, I said, 'While the real people who should receive that money are staying silent, feeling ashamed and unable to lift up their heads, people who do not know what they are talking about are going on like that.'" Gil Won-ok, "It Passed Along with the Blow of Wind and Waves of Water", in *Stories That Make History: The Experience and Memories of the Japanese Military 'Comfort Girls-Women'*, The Research Team of the War and Women's Human Rights Center, (Berlin and Boston: De Gruyter Oldenbourg, 2020), 267, 284.
- 22 In January 1992, the South Korean government established a special task force team led by a director of the Asian Affairs Bureau under the Ministry of Foreign Affairs which aimed to address the 'comfort women' issue. From 25 February to 25 June 1992, many survivors reported their experience as 'comfort women' before borough and township offices. Later on, the media started to report on the information collected.
- 23 For an extensive overview of the practices that one of the most active organisations in support of surviving 'comfort women' – the Korean Council for Justice and Remembrance for the Issues of Military Sexual Slavery by Japan – has developed for a just resolution of the 'comfort women' case, see [www.womenandwar.net](http://www.womenandwar.net)
- 24 Elisabeth Son, "Living Justice: The Power of Survivors' Voices", Booklet of the International Conference on the 30th Anniversary of Kim Hak-soon's Public Testimony, 262, available at: [https://womenandwar.net/kr/wp-content/uploads/2021/08/자료집\\_김학순공개증언30주년-국제학술대회\\_KimHaksoon30thAnniversary\\_금학순公開証言30周年환Eng20210813.pdf](https://womenandwar.net/kr/wp-content/uploads/2021/08/자료집_김학순공개증언30주년-국제학술대회_KimHaksoon30thAnniversary_금학순公開証言30周年환Eng20210813.pdf)
- 25 The Tokyo Women's Tribunal is here understood as a legal instrument for the form it has assumed and for its use of legal categories to pursue justice. The Tribunal is not intended to be legal in nature, since it did not have legitimacy under international law. See Dianne Otto, "Impunity in a Different Register: People's Tribunals and Questions of Judgment, Law, and Responsibility", in *Anti-Impunity and the Human Rights Agenda*, eds. Karen Engle, Zinaida Miller and D. M. Davis (Cambridge: Cambridge University Press, 2016): 291–328.

- 26 See Yayori Matsui, "Women's International War Crimes Tribunal on Japan's Military Sexual Slavery", *Global Action on Aging*, December 8–10, 2000, <http://globalag.igc.org/elderrights/world/women.htm>
- 27 *Prosecutor and Peoples of Asia Pacific Region v. Hiroshito*; Prosecutor and Peoples of Asia Pacific Region the Government of Japan, The Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery, Judgment on the common indictment and the application for restitution and reparation, Case PT-2000-1-T, 4 December 2001, para. 3. Available at: <http://www.internationalcrimesdatabase.org/Case/981/The-Prosecutors-and-the-Peoples-of-the-Asia-Pacific-Region/>
- 28 VAWW-NET is an organisation formed in 1998 as an outcome of the 1997 International Conference on Violence Against Women in War and Armed Conflict Situation in Tokyo.
- 29 In 1905 Korea became a Japanese protectorate and, five years later, was completely annexed to the Japanese empire as a colony. Thus, the whole Korean peninsula was under the Japanese colonial regime when the 'comfort women' system was in force. The division of the peninsula in two States, North Korea and South Korea, started at the end of World War II and was completely defined in 1953 after the Korean War.
- 30 See the Women's International War Crimes Tribunal Archives for a full list of the international organizations who supported the Tribunal: <https://archives.wam-peace.org/wt/en/people>
- 31 Ten countries were represented in the Tribunal: Japan, South Korea, North Korea, Philippines, Indonesia, East Timor, Malaysia, Taiwan, China and Holland.
- 32 A legal term that designates an individual or entity who is not a party to judicial proceedings but is allowed to provide information to the court that might shed light on issues of law or fact.
- 33 Gabrielle Kirk McDonald, Carmen Maria Argibay, Willy Mutunga and Christine Chinkin.
- 34 Christine Chinkin, "Women's International Tribunal on Japanese Military Sexual Slavery", 340.
- 35 *Ibid.*
- 36 Women's Caucus for Gender Justice, "Transcript of Oral Judgment Delivered in the Hague, The Netherlands, 4 December 2001", *Women's Initiatives for Gender Justice*, accessed 2 December 2021, <http://www.iccwomen.org/wigjdraft1/Archives/oldWCGJ/tokyo/summary.html>
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- 38 Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press, 2000), 21.
- 39 For a comprehensive overview of people's tribunals in history and their relevance for the development of international law, see Andrew Byrnes and Gabrielle Simm, *People's Tribunals and International Law*, (Cambridge: Cambridge University Press, 2018).
- 40 *Prosecutor and Peoples of Asia Pacific Region v. Hiroshito*; Prosecutor and Peoples of Asia Pacific Region the Government of Japan, The Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery, Judgment on the common indictment and the application for restitution and reparation, Case PT-2000-1-T, 4 December 2001. Available at: <https://archives.wam-peace.org/wt/wp-content/uploads/2020/03/Judgement.pdf>
- 41 *Ibid.* para 637.
- 42 *Ibid.* para 635–336.
- 43 *Ibid.* para 993.
- 44 Article 31, Draft Articles on Responsibility of State for Internationally Wrongful Acts, with Commentaries, 2001.
- 45 Article 6, International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966, UNTC, vol. 660, 195; Article 14, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, UNTC, vol. 1465, 85; Article 24(4), International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006, UNTC, vol. 2716, 3.
- 46 Article 41, European Convention on Human Rights (therein ECTR); Article 63(1), Inter-American Convention on Human Rights (therein IACHR); Article 27(1), Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. On the right to reparation under human rights treaties see also Roland Bank and Elke Schwager, "Is there a Substantive Right to Compensation for Individual Victims of Armed Conflict against a State under International Law?", *German Yearbook of International Law* 49 (2006), 367, at 398 ss. On the practice of granting reparation before the Inter-American Court of Human Rights (IACtHR) and European Court of Human Rights (ECtHR), see Clara Sandoval, "International Human Rights



- Adjudication, Subsidiarity, and *Reparation for Victims of Armed Conflict*”, in *Reparation for Victims of Armed Conflict*, Vol. 3, eds. Christià Corra, Shuichi Furuya and Clara Sandoval, (Cambridge: Cambridge University Press, 2020): 179–264.
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- 54 Three Reports by UN special rapporteurs and by the International Law Commission of Jurists had already contributed to the internationalisation of the case. See Radhika Coomaraswamy, *Report on the Mission to the Democratic People Republic of Korea, the Republic of Korea and Japan on the Issue of Military Sexual Slavery in Wartime*, UN ESCOR, 52nd Sess., Provisional Agenda Item 9(a), U.N. Doc. E/CN.4/1996/53/Add.1 (1996); Gay J. McDougall, UN Special Rapporteur on Contemporary Forms of Slavery, *Final Report on Systematic Rape, Sexual Slavery and Slave-like Practices During Armed Conflict*, E/CN.4/Sub.2/1998/13, 22 June 1998, Appendix, *An Analysis of the Legal Liability of the Government of Japan for “Comfort Women Stations” Established During the Second World War; Ustinia Dolgopol and Snehal Paranjape, Comfort Women: An Unfinished Ordeal: Report of a Mission* (Geneva: International Commission of Jurists, 1994).
- 55 ‘Comfort women’ claims before national courts had already commenced in the 1990s, before the Tokyo Women’s Tribunal. For an overview of some ‘comfort women’ cases before Japanese courts, see Shin Hae Bong, “Compensation for Victims of Wartime Atrocities. Recent Developments in Japan’s Case Law”, *Journal of International Criminal Justice* 3 (1) (2005): 187–206.
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- 61 Seoul Central District Court, Case no.: 2016 Ga-Hap 505092, Compensation for Damage (Others), delivered on 8 January 2021. The English version of the ruling, translated by the Woohee Kim for the Korean Council for Justice and Remembrance for the Issues of Military Sexual Slavery by Japan, is available at: [https://womenandwar.net/kr/wp-content/uploads/2021/02/ENG-2016\\_Ga\\_Hap\\_505092\\_23Feb2021.pdf](https://womenandwar.net/kr/wp-content/uploads/2021/02/ENG-2016_Ga_Hap_505092_23Feb2021.pdf).
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- 63 Article 3 of the 1907 Hague Convention and Article 46 of the annex to the Convention; the International Convention for the Suppression of the White Slave Traffic; the International Convention for the Suppression in the Traffic of Women and Children; the Convention to Suppress the Slave Trade and Slavery; the ILO Forced Labour Convention; and the 1946 Charter of the International Military Tribunal for the Far East.
- 64 Seoul Central District Court, Case no. 2016 Ga-Hap 505092, Compensation for Damage (Others), delivered on 8 January 2021, 26.
- 65 *Jus cogens* norms are peremptory norms of general international law, hierarchically superior to other norms and from which no derogation is permitted by way of particular agreements.
- 66 For a detailed overview of the position of the solidarity movement supporting 'comfort women', see Amnesty International, *Amnesty Submission to the Honorable Judges of the Seoul Central District Court*, available at: [https://amnesty.or.kr/wp-content/uploads/bcp-attach/Amnesty-Submission-to-the-Honorable-Judges-of-the-Seoul-Central-District-Court\\_12-11-2019\\_final-1.pdf](https://amnesty.or.kr/wp-content/uploads/bcp-attach/Amnesty-Submission-to-the-Honorable-Judges-of-the-Seoul-Central-District-Court_12-11-2019_final-1.pdf)
- 67 See the Judgment of the Tokyo Women's Tribunal, available at: <https://archives.wam-peace.org/wt/wp-content/uploads/2020/03/Judgement.pdf>
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- 69 The Vienna Programme of Action, adopted at the 1993 World conference on Human Rights, had already asserted that "violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response" (para. 38), available at: <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>. At that time, the ICTY and the ICTR had also begun to develop relevant jurisprudence on the matter.
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