

Cold Comfort

Ustinia Dolgopol

Japan's refusal to compensate the comfort women in a meaningful way.

For several years the 'comfort women', those women taken by the Japanese armed forces and forcibly placed into military brothels, have been seeking meaningful reparations¹ from the Japanese Government. They have consistently requested the following:

- a full and frank apology;
- a complete disclosure of all information available to the Government about the comfort women system;
- the provision of adequate compensation;
- the creation of a fund for the payment of medical services, including mental health services and the cost of all efforts at rehabilitation; and
- a memorial to all of the women in the Asia-Pacific region taken and put into comfort stations.

In addition, some of the women's groups in Korea and the Philippines have demanded that those responsible for the creation and operation of the comfort stations be tried for war crimes.

Thus far the Japanese Government has refused to meet any of the women's demands. This commentary will focus on the issue of compensation and explore the reasons why the Asian Peace National Fund for Women (hereinafter 'the Fund') created by the Japanese Government in 1995 is not a sufficient response to the women's right to compensation.² At the end of the commentary is a resolution adopted at 'The International Conference — Opposing the Asian Women's Fund' held in December 1995. The resolution has been included in order to better inform Australians about the position taken by the former comfort women and those organisations working with them, both in their home countries as well as in Japan.

Background

Having initially denied that the then government of Japan and its military were responsible for the forcible and deceitful taking of women for the purpose of using them as military sexual slaves during the period 1932 to 1945, the Government of Japan was forced to admit its responsibility for these acts in 1993. This change of position was brought about by the publication of documents found in the archives of the Ministry of Defence which clearly demonstrated that the taking, transport and housing of the comfort women was directed by and under the control of the Japanese military.³

Immediately after this admission the Government began to state that all claims for compensation had been dealt with in the various peace treaties concluded at the close of World War II (WW II). However, as has been noted on numerous occasions, at least two of the countries from which women were taken (the Democratic People's Republic of Korea and Taiwan) do not have treaties with Japan. Furthermore, the legal position as stated by Japan, that such treaties where they do exist covered all claims by individuals for specific harms done to them, is

Ustinia Dolgopol teaches law at The Flinders University of South Australia.

The author was a member of an investigative mission sent by the International Commission of Jurists to the Philippines, Japan, the Republic of Korea, and the Democratic People's Republic of Korea to interview government officials and victims of military sexual slavery.

not as clear as Japan would have us believe. There is at least an arguable case that all of the former comfort women have valid claims under international law.⁴

Since 1993 the position of the Japanese Government has been that it has a moral obligation to the women to make reparations, which would include compensation, but not a legal obligation. Although this argument would not prevent Japan from making a direct payment to the women, it has taken the view that its 'moral' obligation will best be fulfilled by the creation of a private fund to which all citizens may contribute. It states that this will allow all Japanese to make 'atonement' for the harms done. The reasons for the Government's course of action have never been obvious.

All Japanese over a certain age and income pay taxes; therefore any payment made by the Government is also being made by the people. Further it seems a nonsense to admit publicly that the former government was responsible for these events, but then refuse to undertake to pay a form of compensation which comes directly from the Government. It would appear that those in power are trying to avoid the ultimate acceptance of wrongdoing by the State. Some have argued that this course of action is an attempt by several government ministries to avoid undertaking any act which could be seen as admitting a wrongdoing by the Emperor. As the military was, in theory, under the control of the Emperor then he would have ultimate responsibility for their conduct. Those putting forward this position go further and state that such an admission would bring the 'emperor system' into disrepute and might force a fundamental shift in Japanese political thought.⁵

Another hindrance to the payment of adequate compensation is the continued presence of war veterans in the Japanese legislature, the Diet. Many of the more conservative members of the Diet stated their displeasure when former Prime Minister Murayama first apologised for the creation of the 'comfort woman system' in a speech before the parliament of South Korea. These parliamentarians continue to deny that the women were taken forcibly and are adamant in their refusal to authorise compensation to the women.

Before leaving office, former Prime Minister Murayama set out proposals for the creation of various funds which he argued would give concrete proof of Japan's remorse for the acts of brutality committed against the various peoples in the Asia-Pacific region following the invasion of China and then during WW II. Included in his proposals was the framework for the Fund. As envisaged, the administrative expenses of the fund as well as advertising costs would be paid by the Government. Donations would be sought from the general population and ultimately moneys would be paid to the women.

From the first, the women and the organisations representing them have opposed the Fund. They argue that any money collected is 'sympathy' money and is not truly compensation for the harms inflicted on them. Despite this opposition the Government went forward with its plan. For the women this is seen as a further attempt to victimise them and to deny the intensity of their suffering.

The importance of compensation

Before proceeding to set out the women's reasons for opposing the Fund, it is necessary to delve into the basis on which compensation is to be paid. By the Japanese Government's own admission it has inflicted 'unbearable pain and suffering'⁶ on the former comfort women. It is almost impossible

to describe the horrors endured by the women. They were repeatedly raped and brutalised, some for periods of up to nine years. Each day of their captivity they had to live with the knowledge that 30, 40 or 50 men would be allowed to rape them and to torture them if they chose. In addition they were aware of the potential consequences if they were to get pregnant: forced abortions or perhaps death. The women's humanity was denied by their tormentors. Those who survived had to live with physical and psychological scares in an environment where they were afraid to speak of what had happened to them, because they knew that they would be held up to ridicule and shame.

Compensation is to be paid because these acts of wanton brutality were allowed to occur with official sanction. The payment of compensation is only one of the steps toward reparations which should be taken by the Japanese Government but is a particularly symbolic step as it would demonstrate an acceptance by the Government of Japan that the conduct of its military was wrong and warranted condemnation. As noted by Jose Zalaquett, a member of the Chilean Commission for Truth and Reconciliation, 'dealing with past human rights violations is . . . a wrenching ethical and political problem'.⁷ In the process of examining past human rights violations a nation may have to confront some of the most horrific behaviour that one human being or a group can direct against another human being or group. It is not easy for any nation to undertake such a task. However, if '[t]he ghosts of the past, [are] not exorcised to the fullest extent possible, [they] will continue to haunt the nation [in the future]'.⁸

This exorcism must include adequate compensation. As noted by the Special Rapporteur on 'the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms':

. . . gross violations of human rights and fundamental freedoms, particularly when they have been committed on a massive scale, are by their nature irreparable. In such instances any remedy or redress stands in no proportional relationship to the grave injury inflicted upon the victim. It is nevertheless an imperative norm of justice that the responsibility of the perpetrators be clearly established and that the rights of the victims be sustained to the fullest possible extent.⁹

If a country's sincerity in pursuing reconciliation is to be judged by its willingness to face its past honestly and acknowledge the suffering of its victims, then Japan can not be adjudged sincere. Although it seems trite to state that the acts of violence perpetrated against the comfort women were violations of international law, in particular the international law of human rights and international humanitarian law, it is important that the legal basis of the women's claims be borne in mind. Japan has not denied, nor could it, that violations of international law have taken place. What it has denied is that it has any legal responsibility to make redress for those violations. But this denial of legal responsibility for redressing the harm done brings into question the honesty of its statements of remorse. Its refusal to pay compensation directly to the women must be seen as an attempt to avoid being held publicly accountable for the harms committed against the women and therefore an attempt to circumvent responsibility. In no way can the steps taken by the Japanese Government be viewed as an attempt to achieve justice for the women.

As I have argued elsewhere the Japanese Government's refusal to make adequate reparation for the harms caused to the women taken into military sexual slavery during its

occupation of Korea, China, Malaysia, Singapore, Indonesia, the Philippines and the Pacific Islands is evidence of the lack of political will to own up to Japan's colonial past and to admit to the racism and sexism inherent in the policies adopted by the previous government.¹⁰ Every aspect of the comfort women system is tarred with racism and sexism, including the Government's continued refusal to consult with the women and to find a form of compensation acceptable to them.

Why the Fund is an inadequate response

It has been said that the payment of reparations allows victims to feel vindicated and to regain a measure of dignity.¹¹ The Fund established by the Government will not foster a sense of dignity in the victims. Many of the women have expressed indignation at the idea that their harms could be compensated for by 'gifts' from private individuals or corporations. They have referred to the Fund as 'sympathy' money or charity.¹² Given the serious nature of the violations they suffered at the hands of a previous government, the women are opposed to any scheme which on its face allows the Government to ignore its responsibility to make adequate compensation. They argue that to channel money through the Fund is to deny that the Government has any responsibility, moral or legal, to undertake to compensate the victims. For the women, only a direct payment by the Government will be considered an adequate form of redress.

The following extracts from a poem read at the International Conference opposing the Asian Women's Fund captures the sentiments of the women and their supporters:

With innocent faces
They became the cold bones
Those young girls were thrown way
In far away lands and hillsides
Or in the cold deep waters
You were buried a half century ago
You contracted syphilis
Your figures could not be recognised
You suffered and died with the sickness
From a 'comfort station' in Pusan
You were taken to Singapore by a ship
And thrown out into the sea
With tied hands and legs
Because of being pregnant
...
Your beautiful buds were torn relentlessly
Japan caused their tragedy
Japan paid money to the war bereaved families
When Emperor Showa died
Ten-thousand guests were invited to his funeral
But, the inhumane treatment of non-Japanese women was ignored
Japan paid only lip-service apologies
By asking citizens to raise money for them
Such injustice should not be permitted
...
Close your eyes and see
All together they are nodding their heads
Those aged women with white hair
Wrinkled faces engrave the pains of the past

Let us all together nod our heads
And say 'NO!'¹³

The anger being expressed by the women should be enough to stop the Government. It can not be an adequate form of redress if significant numbers of women refuse to accept any payment from the fund. If the Government con-

tinues to act in ways which are insulting and which do not take into account the views of the victims, its motivation will be brought into question. At a minimum the continued intransigence of the Government in the face of the women's objections must be seen as a form of sexism. A male-dominated government wielding enormous economic and political power is refusing to negotiate with the victims of its past policies.

Extracts from Resolution adopted at the International Conference 'Opposing the Asian Women's Fund'

...

3. Japanese Government evasion of its responsibilities, simply by establishing an 'Asian Women's Fund,' should not be permitted.

4. Firstly, such a fund is an insult and an affront to the war survivors and victims. The courageous action on the part of the victims, after their prolonged suffering and agony caused by Japanese militarism, has brought to world attention and concern the cruel criminal violence perpetrated against them and humanity. The supporters of these war victims have strengthened their actions and are determined, along with the victims, that this violence shall never again be committed against women. The courageous actions of the victims have given the people of Japan an opportunity to become worthy members of the international solidarity community in order to pursue peacemaking and to enhance human rights. However, the Japanese Government is characteristically evading its responsibility and trying to resolve the issues by handing out some money for the 'Asian Women's Fund' which is to be collected from ordinary Japanese citizens. This is an insult to the war victims and a desecration!

...

6. Thirdly, this is an insult to conscientious citizens all over the world. Without investigating the facts involved and without seeking out those most centrally responsible for the problem, the Government is shifting state responsibility onto the people of Japan in general with the hopes of establishing individual self-satisfaction through contributions of money to an ignominious 'Asian Women's Fund.' This is an insult and a deceit.

7. Furthermore, the Japanese Government has taken measures which have antagonised the people who have been supporting the victims of war. This is becoming a source of distress for the victims. This is deceitful.

...

10. The Japanese Government should acknowledge the facts related to the 'comfort women' system, investigate the realities involved, pay reparations to the victims with appropriate apologies, penalize the perpetrators of these crimes, and establish an educational system which recognizes fully the history of Japanese aggression and war crimes. We will, in no manner, retreat from the above position until the Government meets these essential requirements.

Not only is the Government refusing to negotiate and to undertake adequate consultations with the women, but it has sent emissaries to some of the countries where the victims live in an attempt to influence individual women to accept money from the fund.¹⁴ The Government's tactics are heavy handed and appear to be designed to divide the women. Luckily any such division has been avoided.

There are also innumerable practical difficulties with the fund. It has not been able to raise any significant amount of money. It has been suggested that the money raised is less than that spent on administrative and advertising costs.¹⁵ Apparently the objections of women's groups and organisations working with the former comfort women convinced many members of the public that they should not contribute.

The Chairman of the Fund recently announced that a consolation payment will be paid in the near future. This announcement provoked outrage among the multitude of groups working on the issue.¹⁶ They have continued in their attempts to gain international support for their opposition to Japan's policies.

The extracts from the conference resolution (see boxed section) give a comprehensive overview of the position taken by the women and their support organisations, so I will not go into further detail at this point.

Conclusion

The final report of the mission undertaken by the International Commission of Jurists began as follows:

This is the story of people everyone tried to forget . . . Even now after extensive inquiries no significant actions [have been] taken to acknowledge the victims' pain or to provide relief to them. Perhaps the only reason for this silence and inaction is the fact that the violations were perpetrated against women.¹⁷

Despite the rhetoric of the Japanese Government it remains the situation that no significant action has been taken to acknowledge the victims' pain or to provide relief to them. There can be little doubt that the Government's continued refusal to consult with the women and to offer a form of redress acceptable to them is an outgrowth of its sexist attitudes. The behaviour of the Government raises serious questions about its commitment to the promotion and protection of human rights, particularly the right to equality.

References

1. I use the term reparations as it is used in the reports of the United Nations Special Rapporteur on 'The Right to Restitution, Compensation and Rehabilitation for the Victims of Gross Violations of Human Rights and Fundamental Freedoms'. He defines the term as encompassing restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. In addition he calls on all states and the international community to ensure that effective judicial, administrative and disciplinary procedures are put into place so that the rights of the victims can be upheld. See van Boven, T., Special Rapporteur, 'Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,' Doc. No. E/CN.4/Sub.2/1995/8 pp.57, 58.
2. The legal bases for the women's claims are set out in Dolgopol, U. and Paranjape, S., *Comfort Women — The Unfinished Ordeal (Final Report of a Mission)* (ICJ Geneva 1994). A lengthier discussion of the women's demands and the insufficiency of the Japanese Government's response is contained in the seminar papers delivered at the ICJ Seminar, Sexual Slavery and Slavery-Like Practices in World War II, Tokyo July 1995 (proceedings of the seminar will be published by the ICJ in August 1996).
3. These documents were located by Prof. Yoshimi of Chuo University, Japan; their contents are described in Chapter 3 of Dolgopol, U. and Paranjape, S., above, ref. 2.
4. See, for example, Coomaraswamy, R., 'Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: 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,' Doc. No E/CN.4/1996/53/Add.1; Dolgopol, U. and Paranjape, S., above, ref. 2, pp.155-82; and Report of the Committee of Experts on the Application of Conventions and Recommendations to the International Labour Conference 1996 (Report III (Part 4A)).
5. Suzuki, Y., 'The Social Milieu which Conceived the 'Comfort Women' System — Legalized Prostitution, Patriarchy and Emperor System' paper delivered at the ICJ Seminar, above, ref. 2. This position has been put forward by several commentators and academics during conversations with the author. Women's groups in Japan have also attributed responsibility for the comfort women system and the failure to make compensation to the 'emperor system.'
6. Statement of Prime Minister Miyazawa to the Parliament of the Republic of Korea, January 1992, reprinted in Inter-Ministerial Working Group on the Comfort Women Issue, Republic of Korea, 'Military Comfort Women under Japanese Colonial Rule', Interim Report, Seoul July 1992; an extract is reprinted in Dolgopol, U. and Paranjape, S., above, ref. 2.
7. Zalaquett, Jose, 'Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations,' [1992] 43 *Hastings LJ* 1425 at 1429.
8. Zalaquett, Jose, above, at 1430.
9. van Boven, T., Special Rapporteur, 'Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms,' above, ref. 1, p.53.
10. Dolgopol, U., 'The Immorality of 'Moral' Obligations — Japan's Refusal to make Restitution to Military Sexual Slaves', paper delivered at the ICJ Seminar, above, ref. 2.
11. Yamamoto, E.K, 'Friend or Foe or Something Else: Social Meanings of Redress and Reparations' (1992) 20 *Denver J. I. Law and Policy* 223.
12. Former comfort women and representatives of organisations working with them came together at a meeting in Tokyo in December 1995 and uniformly denounced the governments attempt to use the Fund as a means of avoiding its responsibility to pay compensation directly to the women. See 'Report of International Conference — Opposing the Asian Women's Fund,' prepared by the Coalition of Groups Opposing the Asian Women's Fund, Tokyo December 1995 (report in the personal possession of the author).
13. Ishikawa, I. (translated by Aiko Carter), 'Today We Have Come Together', contained in 'Report of International Conference — Opposing the Asian Women's Fund,' above.
14. Letter and Recommendations of International Fellowship of Reconciliation submitted to the Prime Minister of Japan in May 1996 contained in a 1996 document prepared by the International Alliance Supporting Radhika Coomaraswamy's Report on Military Sexual Slavery in War Time entitled 'Towards Restoring the Dignity of the Survivors of Japanese Military Sex-Slavery . . . Saying no to the 'Asian Women's Fund' (copy in personal possession of the author).
15. Totsuka, E., Paper contained in 'Report of International Conference — Opposing the Asian Women's Fund,' above, p.34.
16. Statements from the major organisations as well as press releases, newspaper articles, resolutions put before national parliaments are contained in a 1996 document prepared by the International Alliance Supporting Radhika Coomaraswamy's Report on Military Sexual Slavery in War Time above, ref. 14.
17. Dolgopol, U. and Paranjape, S., above, ref. 2, p.15.