

Korea

Focus

2023 | Working Paper No. 22

Re-Inquiring about Wartime Sexual Violence

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KOREAN
STUDIES
FREIE
UNIVERSITÄT
BERLIN



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**Published by: Institut für Koreastudien (IKS), Freie Universität Berlin,
Otto-v.-Simson-Straße 11, 14195 Berlin. Germany.**

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Re-Inquiring About Wartime Sexual Violence¹

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Introduction

For postcolonial feminist researchers, sharpening the feminist problematics of looking at the issue of comfort women, and building up a debating agenda and knowledgeable body of work to raise the issue of comfort women as an issue of women and peace is a crucial task that must be undertaken. In order to move beyond the long-standing lack of apologies and reparations for victims and the perpetuation of the perpetrator state's logic of denial, feminist researchers need to raise the issue theoretically, politically, and strategically. This would require transnational comparative research and case studies that expand existing perspectives.

It has been 30 years since Kim Hak-soon publicly testified in 1991 that she was a Japanese military "comfort woman. How long will it be possible for older 'comfort women' to come to the forefront of the movement to testify repeatedly about their experiences of forced recruitment by the colonizers and their enslavement in the comfort stations, and to demand apologies and reparations? Why does the 'comfort women' movement continue to ask 'comfort women' who were forcibly recruited and held in sexual slavery to recount their painful experiences in the colonies? Why are they not allowed to move to post-colonial societies? Why is the Japanese government not apologizing this issue? Is there a way for a peace coalition of Koreans and Japanese seeking to resolve the comfort women issue to work together without forcing the victims to return to their trauma?

Until now, the Korean 'comfort women' movement has excluded the Japanese 'comfort women,' who were subjected to the imperial nationality and public prostitution system, from the 'comfort women' discussion in Korea. Notably, the Korean Council for the Women Drafted for Military Sexual Slavery by Japan refuted the line in the Kono Discourse, which contains the first official apology for the comfort women issue, "We express our apologies and reflections to the comfort women of the Japanese military, regardless of where they came from," and made it clear that Korean and Japanese comfort women could not be categorized in the same way. I think this is the point where the Korean 'comfort women' discussion has had in trouble over time. The issue of 'comfort women' itself is complex and cannot be completely subsumed into a problem of colonized Korea.

In this context, Korean 'comfort women' were primarily discussed as the issues of colonized Korean women. The Japanese 'comfort women,' on the other hand, were considered to be women who were citizens of the ruling country, Japan, and who voluntarily participated in the comfort station as public prostitution, making them a group that does not need to be discussed in the category of 'comfort women' victims. This dichotomy of Korean 'comfort women' being victims because they were forced, and Japanese 'comfort women' being voluntary actors because they were prostitutes, leaves 'comfort women' under attack for not being victims whenever they deviate from the image of pure victim. This leads to a paranoid reading/judgment of Korean comfort women whenever they are found outside of the pure victim category, which serves to delegitimize their experience of being victims and deny the entire issue of comfort women. Whenever the victimization of the 'comfort women' is denied as voluntary,

¹ This is an exploring attempt to make an argument for comfort women. I believe that the Allies who omitted the issue of comfort women from the list of war crimes at the Tokyo Criminal Tribunal in 1946 should also be held responsible for denying their crimes. I hope that the next step will be to examine specific Allied documents and develop a full-scale study and discussion. A multidisciplinary team of experts should work together to examine publicly available Allied documents to determine why the Allies chose not to address the issue of 'comfort women' on the agenda of the war crimes tribunals, even though they were aware of the forced mobilization of 'comfort women' and that comfort stations were an outrageous military facility.

the category of coercion is also subsumed into the hermeneutic of suspicion. The hermeneutic of suspicion and paranoid reading of the 'comfort women' reduces the 'comfort women' issue to a matter of individual triviality within a given framework.

The 'comfort women' issue is a matter of sexual slavery-like confinement and sexual exploitation, and human rights violation that happened to Korean women and other women under imperial Japan during the colonial era. However, depending on whether one views the issue as a colonial/national problem or as a war crime against humanity in which an imperialist country mobilized women to provide sexual comfort to its soldiers, solidarity, discussion, and movement to resolve the issue are attempted in different directions. It is true that in the process of mobilizing women, more brutal and violent methods were implemented against colonial Korean women. However, it is necessary to approach the issue of war and women as a problem of imperialism that used and moved women's sexuality as a form of war supplies.

Tokyo War Crimes Tribunal fails to prosecute 'comfort women' as war crimes

The failure to see 'comfort women' as a problem began with the Tokyo War Crimes Tribunal, which dealt with the war crimes of the Japanese empire in 1946. Despite the existence of materials related to 'comfort women,' the issue of 'comfort women' was not addressed in the trial. This led to the 1965 Japan-South Korea Agreements, which sought a new relationship between Japan and South Korea by clearing the past, and in which the issue of 'comfort women' was exonerated from Japan's war of aggression. However, since August 1991, 'comfort women' have demanded unapologized and unredressed justice by testifying that they were sexually forced into slavery and exploited in the name of serving male soldiers on the battlefield. They have had to repeatedly testify that they were helpless victims to prove the authenticity of their testimonies, and have spent the rest of their lives fighting with the Japanese perpetrator to be recognized as victims.

In addition to the Japanese government, which covered up their existence after the defeat when the women began to testify publicly, I believe that the Allied military, which excluded 'comfort women' from the list of war crimes, should have been responsible for their suffering and post-colonial trauma. By questioning why 'comfort women' were excluded from the list of war crimes even though the Allies investigated data on them, this could be an essential frame of reference for breaking the stalemate between Japan and South Korea over comfort women. It could also be a framing of the issue that frees the women from the pain of having to testify to the harm they suffered on the battlefield repeatedly. I see 'comfort women' as both materiel and sex slaves mobilized for military morale. As Nicola Henry has shown, war crimes trials are in fact used as a means of affirming or denying collective memories of historical injustice.² In this sense, the Tokyo War Crimes Tribunal's silence and refusal to legally acknowledge the suffering of 'comfort women' not only perpetuated the injustice of the 'comfort women' issue, but also resulted in the official denial of the lives of many survivors.

In 1991, when the issue of 'comfort women' first came to international attention, the Socialist Federal Republic of Yugoslavia plunged into ethnic and racial warfare as the socialist system collapsed. At the time, feminists in the West were struggling with how to address the issue of women who had been subjected to mass sexual violence during the Yugoslav wars. Ustina Dolgopol, who had seen the public testimonies of comfort women transmitted around the world and the strong reactions in South Korea and Japan, traveled to South Korea and other countries on behalf of the International Commission of Jurists (ICJ) to investigate how the issue of 'comfort women' was addressed at the Tokyo War Crimes Tribunal and how the outcome of the trial was relevant to resolving the issue of 'comfort women.'³ She believed that the issue of 'comfort women' and wartime sexual violence had been adequately documented in the judicial process and built into a body of knowledge that feminists could utilize and discuss.

² Nicola Henry, "Memory of an Injustice: The "Comfort Women" and the Legacy of the Tokyo Trial," *Asian Studies Review*, Vol. 37, No. 3, 2013, p. 370.

³ In 1992, Dolgopol traveled to South Korea with Indian lawyer Snehal Paranjape. They later submitted a report of their findings. Ustina Dolgopol and Snehal Paranjape, *Comfort Women: An Unfinished Ordeal*, International Commission of Jurists Report, 1994.

However, Dolgopol was deeply disappointed to learn that the issue of 'comfort women' was not addressed at the Tokyo War Crimes Tribunal.

During the course of their investigation, Dolgopol and other investigator met with women from South Korea and the Philippines who had been recruited as 'comfort women.' The women were horrified that what had happened to them in the Yugoslav wars was being repeated, and they were outraged that no one was being held responsible for the crimes committed against them. The 'comfort women' wanted the international community to stop the violence perpetrated against women during wartime and bring the perpetrators to justice. Their testimonies and subsequent lives gave Dolgopol the insight that women's rights and the responsiveness of international humanitarian law needed to be integrated in the international criminal justice process, and her involvement in the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) was influential in putting mass sexual violence on the agenda for prosecution as a crime.

Dolgopol believes that the absence of the 'comfort women' issue at the Tokyo War Crimes Tribunal is not only problematic for the 'comfort women,' but also for women in other parts of the world who experience wartime sexual violence because it fails to serve as a reference case for addressing sexual violence against women in wartime. For Dolgopol, who found it difficult to address mass sexual violence in Yugoslavia because there was no precedent to refer to, the Tokyo War Crimes Tribunal was clearly problematic in terms of knowledge and responsibility for women and war crimes. Dolgopol's questions raise an interesting point regarding the history of Korean 'comfort women' research. By situating the Korean 'comfort women' issue in an international context and seeking resolution in multilateral relationships, it shows the possibility of organizing solidarity and responsibility for addressing these issues in new ways.

In South Korea, the issue of 'comfort women' has been framed more in terms of the forced mobilization of colonial women by empire than in terms of the mobilization of women as military supplies for the battlefield. Although the Korean discussion of comfort women has encompassed both aspects to some extent, the framing of the movement as the clearing of colonialism seems to be driving it more strongly. I think it's time for the 'comfort women' movement, which has been fighting the Japanese government for a long time, to raise its agenda in the fighting for the victims' reparation not only to the Japanese government, but also to the Allied military's fault for excluding the 'comfort women' issue from the list of Japanese war crimes.⁴

The 2000 International Women's Tribunal for the Former Sexual Slaves of the Japanese Military provided a space for activists, scholars, and organizations in South Korea and Japan to take this issue seriously, but there were many differences in how the South Korean and Japanese sides, as well as international women's organizations working on women's sexual victimization in conflict zones, understood the tribunal and what they aimed to achieve. South Korean activists emphasized that the 'comfort women' issue was a colonial crime, but were uncomfortable with what they were seen having a nationalist stance that emphasized the victimization of women derived with the identity of the colonized country. Japanese activists, on the other hand, experienced the dilemma of re-nationalization, which made it difficult for them to find new solidarity as nationals of the perpetrating country. In the end, the International Women's Tribunal failed to establish new relationships of solidarity, but only to reveal the differences among participating groups of women.⁵

⁴ On this point, see Kim, Eun-Shil, 'Foreword 2: Hoping to Open Up a New Space for Research on Japanese Military 'Comfort' Women', *The Japanese Military 'Comfort Women' Issue seen through the Korea-Japan Civic Solidarity in the 1990s: Possibilities and Predicaments of Postcolonial Feminist Practice*, Planned and Edited by Korean Women's Research Institute, Ewha Womans University, Published by the Institute for Research on Japanese Military 'Comfort Women' Issue, Korea Women's Human Rights Institute, 2023

⁵ Kang, Garam, "The Possibilities of Transnational Women's Solidarity through the 2000 Women's International Tribunal: Focusing on the Issue of Japanese Military 'Comfort Women' in Korean and Japanese Societies", Master's Thesis, Department of Women's Studies, Ewha Womans University, 2006; see also Kim, Eun-Shil, "Thinking about the Politics of Knowledge/Speech at the Transnational Boundary", *Dangdae Bipyeong*, No. 14, Tree of Thought, 2001, pp. 3-9.

What did the Tokyo War Crimes Tribunal miss?

Here I briefly introduce Dolgopol's discussion on "Knowledge and Responsibility" in the book *Beyond Victor's Justice*.⁶ Dolgopol's discussion of how sexual violence and sexual enslavement of 'comfort women' was omitted from the Tokyo War Crimes Tribunal's list of war crimes helps us to rethink the issue of 'comfort women'.

Dolgopol found that in the final report of the Tokyo War Crimes Tribunal, some evidence of the forced transportation of women was presented, and forced prostitution was mentioned, albeit briefly. She points out that the failure of the Tokyo War Crimes Tribunal to pay sufficient attention to the crimes against 'comfort women' has not helped the wartime women victims. Dolgopol says that war crimes trials through the ICC are a venue for partial justice rather than universal justice. Victims are somewhat satisfied that those who committed crimes have been brought to justice. The impact on victims is profound when they feel that justice is not being served. Such is the frustration and helplessness felt by 'comfort women' victims, who have been campaigning for more than 30 years.

Dolgopol believes that a major factor in the lack of attention given to the issue of 'comfort women' at the Tribunal was the problem of prosecutors or defense attorneys who were able to prosecute the issue as a crime. Feminists say the process of integrating mass sexual violence into the war crimes agenda of the International Criminal Tribunal for the former Yugoslavia has not been easy. Women's testimonies about sexual violence are always suspected of being inaccurate and exaggerated. Dolgopol points out that this is why the role of the ICTY and the prosecutors/lawyers who investigate and prosecute crimes there are so important.

It is often said that it is the discretion of the prosecutor/lawyer to decide how much attention to pay to the victim in court. Dolgopol believes that in order to properly exercise this 'discretion' in dealing with sexual violence, prosecutors/lawyers must have a sense of ethics or social responsibility.⁷ Only under such ethics and social responsibility can mass sexual violence against women be prosecutable. Thus, the discretion of prosecutors in their interactions with victims and the "sense of ethical obligation" of those investigating war crimes and crimes against humanity on behalf of the United Nations are crucial in determining whether mass sexual violence is a crime.

Dolgopol refers to Deborah Rhode's concept of ethics to explain this sense of obligation.⁸ Rhode's concept of ethics is broader than the rules of behavior in the legal profession. For her, ethics is a social responsibility that takes into account the "social context," especially the "real-world context of inequality of wealth, power, and information." Dolgopol believes that if judgment is not constrained by this social responsibility, the exercise of discretion can be tainted by prosecutors' bias.

Dolgopol argues that if the International Criminal Court in Tokyo had been sensitive to its ethical obligations and social responsibility in its decision-making process, and especially if it had been able to pay sufficient attention to the gender dimension of the issue, it could have made better decisions for victims and the international community. Unfortunately, the Tokyo War Crimes Tribunal did nothing to help victims of war-related sexual violence in the Asia-Pacific region, nor did it provide any lessons for the international community.

Dolgopol found that Allied documents submitted to the Tokyo War Crimes Tribunal and Allied interrogation reports of prisoners of war and returning soldiers found at the Australian War Memorial contained numerous references to rape and comfort stations.⁹ She believes that, given the depth of information available to Allied prosecutors, the establishment and operation of comfort stations and the treatment of women in them could have been prosecuted as crimes against humanity. Meanwhile, Australian War Memorial archives have been examined for a list of crimes committed by soldiers. The list contained thousands of charges, each with the name of the soldier,

⁶ Dolgopol, Ustinia, "Knowledge and Responsibility: The Ongoing Consequences of Failing to Give Sufficient Attention to the Crimes against the Comfort Women in the Tokyo Trial," in Yuki Tanaka, Tim McCormack and Gerry Simpson eds., *Beyond Victor's Justice?: The Tokyo War Crimes Trial Revisited*, Martinus Nijhoff, 2011.

⁷ In 2011, Dolgopol noted that the issue of prosecutorial "discretion" was applicable to international criminal justice, noting that in the United States, prosecutors had emerged as the most powerful figures in the administration of criminal justice and that there was growing public concern about their ability to act ethically.

⁸ Deborah L. Rhode, "Personal Integrity and Professional Ethics" (Keynote Address), Third International Legal Ethics Conference, 14 July 2008, p. 2. Dolgopol, *Op. Cit.*, p. 246.

⁹ For this material, see Dolgopol, *Op. Cit.* at pp. 249-255.

the victim, the date and place of the offense, and the name of any witnesses, if any remained. Sixteen of the men were accused of rape, according to the documents. While the Australian dossier mentioned rape, there was no information about forced prostitution.

Most reports after 1942 included references to military brothels. There were also questions about the existence of brothels and the nationality of women detained in them. Returning Allied soldiers were asked to fill out a questionnaire with information about crimes committed by Japanese soldiers, and the list of crimes included rape. However, not all Allied offices requested information about rape, and according to the questionnaires completed by Australian soldiers, the Australian government requested information about rape, while the U.S. government did not. Some of the information collected by the Allies was included in several documents under the heading "Amenities" of the Japanese Army. One of these military "amenities" was brothels, with information indicating that the Japanese military was involved in the establishment and regulation of brothels. Given that this information was collected, Dolgopol infers that those who collected it recognized that women were involved in the war effort.

While Dolgopol finds it difficult to understand why the Prosecution received this information and ignored it, she speculates the following reasons: (1) They lacked the intellectual imagination to consider the mobilization of women for military as a war crime or the social awareness to understand the impact on women who were mobilized for war: (2) A masculinist mindset that was unable to envision the implications of forced prostitution as an "amenity" in the military: (3) The "moral" attitudes of 1940s society toward women, especially prostitutes, served as stereotypes for those collecting evidence for the Tokyo War Crimes Tribunal, preventing them from exercising discretion in their judgment of comfort women's human rights: (4) Women in colonized countries were considered to be their own women within the empire and excluded from war crimes: (5) The evidence collected by the National Secretariat was limited, due to the limited evidence available, or due to the still prevalent colonial discrimination.¹⁰

Both Dolgopol and Henry¹¹ emphasize that if the Allies participating in the Tokyo War Crimes Tribunal had wanted to bring charges related to the 'comfort women' system, they could have done so.¹² As Article 5 of the Tokyo Charter defines crimes against humanity as "enslavement, deportation, and other inhumane acts against civilian populations," enslavement and deportation alone could make the experiences of 'comfort women' constitute crimes against humanity. The drafters of the indictment and legal memorandum would also have been aware that the Paris Reinforcement Conference of 1919 had argued that forced prostitution should be considered an "inhumane act." Evidence gathered by the Allies in Tokyo also proved how widespread the crimes were committed by the Japanese military. Based on historical documents found in Japan and elsewhere, prosecutors could have identified and prosecuted those responsible for the creation and maintenance of the 'comfort women' system, but they did not.¹³

The Tokyo War Crimes Tribunal had the potential to set a precedent for how the international community would respond to sexual violence, including the 'comfort women' system, but it ultimately left a legacy of ignorance about the scope and impact of sexual violence crimes. Because the Tokyo War Crimes Tribunal failed to set a precedent, the international community has demonstrated a lack of gender awareness in addressing sexual violence in the wars in Yugoslavia, despite initial efforts.

¹⁰ Both the Nuremberg International Military Tribunal and the Tokyo War Crimes Tribunal are considered failures when it comes to gendered crimes. The Nuremberg trials were focused on establishing the nature of the Nazi regime, while the Tokyo War Crimes Tribunal was more concerned with publicizing the atrocities committed by the Japanese military, but the gendered nature of the atrocities was rarely addressed. Dolgopol notes that the Tokyo War Crimes Tribunal would have been given more attention and discussion on both a popular and academic level if it had paid more attention to crimes against women. *Ibid.*, p. 250.

¹¹ Henry, *Op. Cit.*, pp. 362-380.

¹² Gong Jun-Whan points out that in the Allied war crimes tribunals, human rights were treated in a more nuanced way, and were in fact a peripheral issue. The overarching criminal offense was war of aggression, and crimes were addressed primarily in relation to the war of aggression. Gong Junwhan, "Allied War Crimes Trials and the 'Human Rights' Agenda", *Historical Criticism*, No. 143, *History of Historical Criticism*, 2023, pp. 22-48.

¹³ In order to see 'comfort women' as a part of war materials of inhumane practice, it needs to be seen through the lens of different ethics. It would have been difficult for judges without an awareness of gender and critical thinking about patriarchy to recognize the issue of comfort women as a crime.

When systematic sexual violence was reported in camps in Bosnia and Herzegovina, a delegation from the International Committee of the Red Cross that visited the camps said that the women's accounts could not corroborate allegations of systematic rape, and the International Federation of Journalists concluded that there was an enormous amount of disinformation. Dolgopol points out that while concerns about the accuracy of information are understandable, it is troubling that these concerns are repeatedly expressed about rape crimes compared to other crimes. And while many commentators cite women's fears about how their communities will react if their experiences are made public, Dolgopol doesn't believe this is necessarily true. Nevertheless, she points out that the perception that hundreds of women are silent because of the risk of their stories being made public makes no one want to listen to them.

The criminalization of wartime sexual violence and its plight

Although the Tokyo War Crimes Tribunal did not address wartime sexual violence or forced prostitution as war crimes, feminists around the world worked together in the early 1990s to ensure that wartime rape in the conflict in Bosnia and Herzegovina was registered as a war crime at the International Criminal Tribunal for the former Yugoslavia. Feminists were involved in the drafting of the statute establishing the Tribunal and made concerted efforts to influence the evidence and rules governing the prosecution of rape and other sexual violence crimes, the forms in which sexual violence crimes are prosecuted, and the strategies and legal arguments made at the trial and appellate levels.¹⁴

However, feminists were divided as rape became a fundamental norm of the general laws of war. Feminists along different lines have differed on the recognition, scope, significance, meaning, and even naming of rape in war. Karen Engle notes that the inclusion of rape as a war crime was not radical in itself, as it had long been considered a violation of international law. Rather, the work of the International Criminal Tribunal for the Former Yugoslavia was radical because it led to a systematic examination of rape as a violation of women under international law. The problem was that this "violation of women" could not be clearly defined, so debates raged over what constituted a violation of women, what women understood, or what their rights were. For feminists at the time, an important question was whether it was a violation of women or a violation of ethnicity/nation; when women were harmed as symbols or markers of their nationality/ethnicity, that was considered a harm to the community. Feminists also debated whether rape of Bosnian Muslim women or Croatian women during the war should be treated differently from rape of Serbian women, and whether rape in war should be treated differently from rape in everyday life.

A major issue was whether wartime rape should be viewed as 'genocidal rape'. Feminists who argued that rape should be understood as a tool of genocide drew a distinction between "everyday rape" and "everyday wartime rape," arguing that rape was a tool for the systematic annihilation of Bosnian Muslims.¹⁵ Other feminists argued that, unfortunately, rape of women in war, no matter how numerous, is nothing new, and that rape should not be approached in the context of genocide. Despite their disagreements, however, feminists worked together to create the rules governing the establishment and operation of the International Criminal Tribunal for the former Yugoslavia, and so the United Nations' establishment of the Tribunal acted in a variety of ways to mediate the tension between those who argued that rape should be considered genocide and those who argued that the international criminal justice system should respond equally to all rapes committed.

Engle points out that the most problematic aspect of the issue as a feminist issue is the assumptions on which both feminist camps are based. The biggest problem is the assumption that there are inherent racial/ethnic differences between Serbian, Croatian, and Bosnian Muslims, and that each woman belongs to her race/ethnicity and is a helpless victim of her race/ethnicity. The main difficulty with this premise is that, despite feminists' principled recognition and willingness to recognize rape as a grave breach of international law, a war crime, and a crime against humanity, it does not challenge the existing social relations in which women are embedded. This

¹⁴ Karen Engle, "Feminism and its (Dis)Contents: Criminalizing Wartime Rape in Bosnia and Herzegovina," *American Journal of International Law*, Vol. 99, No. 4, 2005, pp. 778-816.

¹⁵ *Ibid.*, p. 779, n. 8.

means that feminist spokespeople unconsciously (or even theoretically) approach the issue in ways that deny women's sexual and political agency to a large extent in order to defend their vulnerable position. This excludes women's choice to cross racial/ethnic boundaries or participate in war of their own volition. These problematic assumptions were also reflected in the approach taken by the International Criminal Tribunal for the former Yugoslavia to sexual violence.

Feminists' dilemma with mass sexual violence

Here, I explore Doris Buss's discussion of the feminist dilemma of the International Criminal Court's judgment of mass sexual violence in conflict along racial/ethnic lines.¹⁶ It is important as a comparative study to examine how international criminal law has addressed the issue of ethnic cleansing and mass sexual violence in the Yugoslav wars and how feminists have engaged with it.

Since the late 1980s, feminist scholars and activists have made visibility of women as actors in international policy a key strategic goal while advocating for women's human rights. At the time, arguments emerged that emphasized differences between women and described women as categories, while a group of feminists waged an international campaign to recognize the violence perpetrated against women as a matter of human rights and social policy. Today's international legal responses to women's wartime experiences are the result of feminist efforts since the 1980s. By doing so, feminists were successful in prosecuting rape and abuse of women in the wars in Yugoslavia and the civil war in Rwanda as crimes against humanity, genocide, and violations of the laws of war.

For feminists, the mass rape of women in conflict has been a huge challenge. Highlighting and making visible the horrific violence inflicted on women is in itself an urgent and important political act. Here, Buss points out that the work of making sexual violence more visible does not always lead to social and political recognition of the structural nature of violence against women.¹⁷ Furthermore, Cynthia Enloe points out that it can be "dangerously easy" to make rape visible as a political concern.¹⁸ Feminists like Buss and Enloe point out that tragic narratives of the horrors of wartime sexual violence make it easy for people to engage with the problem, but this is not connected to understanding the complexities involved in wartime sexual violence or engaging in the process of finding solutions. Narratives of wartime sexual violence are intertwined with numerous discourses and interests around the rape of women. Not only is rape often refracted through the prism of nationalism, but it is also mobilized into legitimizing discourses to reinforce militarism.¹⁹

Feminists wanted international law to deal with sexual violence against women. In this context, Buss sees the simplistic interpretation of the events in Bosnia and Herzegovina as a one-off crime unconnected to structural inequalities against women in everyday life as problematic, which is why she says it is important for feminists to focus on the interconnectedness of violence against women in peacetime as well as conflict. While there are limits to the extent to which international law can intervene by making connections between the everyday and the horrific, Buss's review of the judgments in Bosnia and Herzegovina suggests that without making these connections an important aspect of international criminal law, judicial understanding of sexual and gender-based crimes will remain very superficial.

Analyzing cases of mass sexual violence in Yugoslavia and Rwanda, Buss finds that the judiciary is inherently reluctant to explore the structural complexities of violence against women. She argues that feminists need to think more seriously about what prosecutions should and can actually achieve. Buss argues that we need to move beyond looking only at the formal consequences of whether sexual violence is prosecuted or not, and instead explore how sexual violence is understood and represented in the adjudication process. Next, it is important to recognize that international law views sexual violence in armed conflict as a monolithic phenomenon. Sexual violence against

¹⁶ Doris E. Buss, "The Curious Visibility of Wartime Rape: Gender and Ethnicity in International Criminal Law," *Windsor Yearbook of Access to Justice*, Vol. 25. No. 1, 2007, pp. 3-22.

¹⁷ Ibid.

¹⁸ Cynthia Enloe, *Maneuvers: The International Politics of Militarizing Women's Lives*, University of California Press, 2000, p. 109.

¹⁹ The mass rapes in the Yugoslav wars are often explained as occurring in a state of ethnic conflict. And the notion that all women can be victims of rape during war is frequently used in the political discourse of militarization in South Korea.

women takes many forms and has a variety of social, economic, and political contexts, depending on the gendered nature of the victimization and the intersection of other axes of oppression, such as ethnicity, race, and class. Yet the International Criminal Court does not explore the complex range of factors that constitute sexual violence, instead considering only rape as an extension of nationalism and a form of ethnic victimization, as well as dominant conflict narratives that are strictly framed around rape and gendered victimization. Buss argues that the challenge for feminist legal activists is to integrate the complexity of sexual violence into the international criminal justice system, even if it is difficult.

Buss asks what is and what is not covered when violence against women is visualized as a problem of international criminal law. While feminist efforts have led to the adoption of criminalization of sexual violence against women, the victims are not only women of the same race/ethnicity, but also men of a particular race who are slaughtered. When men with a racial identity are killed, their ability to reproduce is also destroyed. This puts sexual violence as ethnic discrimination in an ambiguous position, as it seems to be a clear-cut case of gender-based violence that only applies to women. Here, Buss questions whether sexual violence judgments that focus on the intersection of gender and ethnicity overemphasize ethnicity as a meta-narrative, which she sees as a means of concealing rather than revealing the complex dimensions of violence against women. Prosecuting mass violence against women based on ethnic boundaries was the best option for feminist politics in the mid-1990s, but it exposed the difficulties and strategic dilemmas feminists faced in making mass violence against women visible.

In summary, Buss challenges the dominant frame of reference of ethnicity when addressing violence against women in international criminal law. Ethnicity plays an important role in international law and international relations, and the work of the Tribunal is largely concerned with interethnic conflict. In other words, the perception of ethnic conflict pre-shapes the decision-making structure of the tribunal. Thus, Buss questions the dominant legal account of the nature and history of the wars in Yugoslavia and the civil war in Rwanda, which characterizes them as "ethnic conflicts."²⁰

To be sure, early reports of mass rape of women in Bosnia emphasized Bosnian Muslim and Croatian women being raped by Serb soldiers. Rape was generally understood and portrayed as a form of violence in which one group used women's bodies to attack another. At the time, mass sexual violence against women in Yugoslavia was a confluence of gender and nationalism. However, there were two dilemmas for feminists seeking to strengthen international legal responses to large-scale sexual violence against women while also recognizing the gendered dimensions of violent nationalism. First, emphasizing gendered nationalist ideology as a motivation for sexual violence risked framing violence against women as a crime against the community rather than a crime against the individual woman. Feminists were concerned that by understanding rape as a community victimization, there was a high risk that sexual violence would disappear from the international agenda as certain issues, such as post-war reparations, became more prominent. Second, and related to this, rape understood primarily as a crime against the ethnic/national state becomes an aberrant byproduct of violent, nationalistic conflict. As such, it becomes a problem unrelated to pre-conflict patterns and practices of inequality.

The rulings of the International Criminal Court were an initially promising step forward, recognizing that rape can and has been used as a tool of genocide. This seemed to create a tide against the historical erasure of violence against women in conflict situations. However, the rise of ethnicity as an issue has also been accompanied by the challenge that the complexities of mass sexual violence and the social context of gender inequality have become invisible or unattended to.

²⁰ Referring to the wars in Yugoslavia, Rada Iveković says that inter-ethnic conflict did not cause the civil war, but the political dynamics of the civil war addressed ethnicity and instrumentalized nationalism. [Rada Iveković-Young Kyung Baek Conversation] "Women's Solidarity in Our Time of Gendered Violence and War," webzine *결* (published by the Institute for the Study of the Japanese Military "Comfort Women" Issue, August 11, 2022.)

Concluding remarks

The issue of 'comfort women' goes beyond identifying the colonial 'comfort women' system and addressing the women's human rights and recovery. How do we continue to make the issue of 'comfort women' a political and women's human rights issue after the visible evidence of comfort women disappears? How will those who have heard the testimonies of the comfort women carry on critiquing the system that mobilized women into battlefields? I believe that by making the 'comfort women' system a crime against humanity, we should make the discourse on 'comfort women' a transformative knowledge that shifts the axis of civilization. However, we need to move away from the idea that all such exploration and resolution should take place only through the Korean experience within Korea. In this regard, I felt it necessary to accuse the Allied military of being a new actor in the Tokyo War Crimes Tribunal who ignored the existence of 'comfort women' and the sexual violence they suffered. I also felt the need to expand the Korean 'comfort women' discussion by briefly introducing the issues that feminists raised in the Yugoslav wars and the Rwandan civil war in the early 1990s.

In order to further develop the Korean 'comfort women' debate from a postcolonial feminist perspective, a comparative study of how feminists have addressed various cases of local, national, and international conflicts where women's sexuality has been subject to violence is needed. In order to find an outlet for the Korean 'comfort women' debate, which has been preoccupied for three decades with the authenticity of victims' personal experiences, and in order to make the 'comfort women' experience an example of Korean feminist peace studies, it is also necessary to examine how addressing mass sexual violence in conflict presents challenges for feminists, and how we can learn from other societies about the problems that have plagued and attempted to address feminists at specific historical points in time. I think this is also important work for exploring and sharpening postcolonial feminist perspectives on the issue of 'comfort women' as war crimes.