Walking the Long Road in Solidarity and Hope: A Case Study of the "Comfort Women" Movement's Deployment of Human Rights Discourse

Cheah Wui Ling*

Introduction

The first World Conference on Japanese Military Sexual Slavery kicked off on a clear and sunny Friday morning in October 2007. In the early morning sunlight, small groups of women, many of whom had just arrived that morning from across the Pacific Ocean, mingled and chatted while filing into the University of California Los Angeles Law School auditorium.[1] Among them were a few tiny old ladies, some dressed in brightly colored traditional Korean *hanbok*. These were the women whose courage and strength had made this conference possible. Fondly referred to as "grandmas" by their supporters, these women had been forced to serve in the Japanese army's 200,000-strong military prostitution system during World War II ("WWII"), and were euphemistically referred to as "comfort women."[2] Labeled as part of the military's inventory, categorized by race to

* LL.M., Harvard Law School, 2008; LL.B., National University of Singapore, 2003. Assistant Professor of Law, National University of Singapore. I am incredibly grateful to the many activists who took time from their busy schedules to talk to me about their work. I would like to thank my LL.M. supervisor, Professor Lucie White, for her insightful comments and patient guidance. I would also like to thank Professor Duncan Kennedy, Professor Mark Tushnet, Professor Rajagopal Balakrishnan and Lecturer Cheah Choo Kheng for their helpful feedback on this paper. Many thanks also to the Institute of Asian Cultural Studies (International Christian University), the Harvard Program on the Legal Profession, the Harvard East Asian Legal Studies Program, and the Harvard Human Rights Program for supporting research fieldwork undertaken in the U.S. and Japan in 2007 and 2008. An earlier version of this paper was presented at a 2008 Inter-graduate Conference hosted by Cornell University. Last but not least, thanks to the editors of the HRJ for all their patient and hard work on this article.

1. This was my first impression of the scene that greeted me upon my arrival at the conference. I do not mean to imply an absence of men at the conference. In fact, a number of men have been active and instrumental to the success and growth of the movement. *See generally* 2007 World Conference on Japanese Military Sexual Slavery (Oct. 4–7, 2007), http://www.jmss.info/ (University of California, Los Angeles, CA) (notes of conference on file with author) [hereinafter 2007 World Conference].

2. *See generally* David Andrew Schmidt, Ianfu—The Comfort Women of the Japanese Imperial Army of the Pacific War: Broken Silence (2000); Chizuko Ueno, Nationalism and Gender (Beverley Yamamoto trans., 2004); Yoshiaki Yoshimi, Comfort Women: Sexual Slavery in the Japanese Military During World War II (Suzanne O'Brien trans., 2000); Bonnie B.C. Oh, *The Japanese Imperial System and the Korean "Comfort Women" of World War II, in* Legacies of the Comfort

suit the military hierarchy, and held in slave-like conditions, these women were subjected to repeated sexual and physical abuse by Japanese soldiers over the course of their captivity. Those who survived the war faced rejection from their sexually conservative communities and thus often chose to suffer in silence. After nearly 50 years of such silence and with the support of a global social movement that has grown across borders, these women are beginning to break their silence to demand recognition and reparation for their suffering. The "comfort women" movement has boldly called upon the Japanese State to publicly apologize and provide reparation.[3] In response, however, the Japanese State resolutely maintains that it has conclusively met all of its WWII responsibilities as set out in post-WWII treaties, and posits that the movement's claims are unfounded in international law.[4]

Nevertheless, it remains an exciting time for these women and their supporters. The years 2007 and 2008 saw the mounting of successful legislative campaigns before various national and regional governmental bodies.[5] For the first time, a global conference was organized, bringing together survivors and activists from across the globe for a time of reconnecting, reflecting, and ruminating on the way forward. The "comfort woman," once unknown or spoken about only in hushed whispers, has become a symbol of the Japanese State's failure to adequately address its WWII past. This paper aims to provide a critical and comprehensive assessment of the human rights strategy deployed by the "comfort women" movement in advancing its claims, a strategy that included the creation of a counter-narrative defying the one put in place by the Japanese State. I focus in

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WOMEN OF WORLD WAR II 3, 25 (Margaret Stetz & Bonnie B.C. Oh eds., 2001); Pyong Gap Min, *Korean "Comfort Women": The Intersection of Colonial Power, Gender, and Class,* 17 GENDER & SOC'Y 938 (2003).

3. *See generally* U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Hum. Rts, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences,* ¶¶ 61 & 64, U.N. Doc. E/CN.4/1996/53/Add.1 (Jan. 4, 1996) (*prepared by* Radhika Coomaraswamy) [hereinafter 1996 Coomaraswamy Report], *available at* http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/b6ad5f3990967f3e802566d600575fcb?Opendocument; The Korean Council, *8th Asian Solidarity Conference for the Issue of Military Sexual Slavery by Japan* (May 21, 2007) (Seoul, S. Korea) *available at* http://www.womenandwar.net/bbs_eng/index.php?tbl=M081&cat=&mode=V&id=96&SN=30&SK=&SW= (demanding *inter alia* "an announcement of apology").

4. *See generally* Comm'n of Experts on the Application of Conventions and Recommendations [CEACR], Int'l Labour Org., Individual Observation Concerning Convention No. 29, ¶¶ 5–8 (1997), *available at* http://www.awf.or.jp/pdf/ILO_1997.pdf; 1996 Coomaraswamy Report, *supra* note 3, ¶¶ 105, 114; ECOSOC, Sub-Comm'n on Prevention of Discrimination and Protection of Minorities, *Report of the Special Rapporteur on Systematic Rape*, ¶ 6, U.N. Doc. E/CN.4/Sub.2/1998/13 (June 22, 1998) (*prepared by* Gay J. McDougall) [hereinafter 1998 McDougall Report], *available at* http://www.unhchr.ch/huridocda/huridoca.nsf/0/3d25270b5fa3ea998025665f0032f220?OpenDocument.

5. *See generally* H.R. Res. 121, 110th Cong. (2007), *available at* http://www.govtrack.us/congress/billtext.xpd?bill=hr110-121; Resolution on Justice for the "Comfort Women" (Sex Slaves in Asia Before and During World War II), EUR. PARL. DOC. B60525/2007 (Dec. 13, 2007), *available at* http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/JP/JANMSSI_JPN_UPR_S2_2008anx_EUResolutionJusticeforComfortWomen.pdf [hereinafter 2007 E.U. "Comfort Women" Resolution]; *Dutch Parliament Urges Japan to Compensate "Comfort Women,"* PEOPLE'S DAILY ONLINE, Nov. 21, 2007, http://english.peopledaily.com.cn/90001/90777/6306488.html.

particular on how the movement's experience may serve as a lesson for other similarly situated groups. In constructing my analysis and arguments, I draw upon field research and interviews conducted with activists, scholars and volunteers in Japan and the U.S. over the course of 2007 and 2008.

As my paper will demonstrate through its analysis of the dialectics of the movement and its opponents, the "comfort women" question has become the site of an ongoing struggle between two views or meta-narratives of international life: a state-centric paradigm which revolves around the nation-state and a people-based paradigm that sees individuals and groups as the ultimate constituents and beneficiaries of an international system.[6] The position and narrative maintained by the Japanese State reflects a state-centric paradigm, constructed upon principles of state sovereignty and non-intervention. On the other hand, the claims and counter-narrative presented by the "comfort women" movement are couched in human rights language, one of the important foundational discourses of a people-based paradigm.[7] While some academics have observed how clashes between the two paradigms have often been resolved in favor of the state-centric paradigm due to the basic state-centric structure of the international legal system,[8] academics from the critical legal tradition propose that the

6. In conceptualizing these two paradigms for this paper, I draw inspiration from and build on the work of a number of international law academics who have documented and recognized the existence of two competing ways of approaching and understanding the "international." Professor Antonio Cassese refers to this as "two patterns in law, one traditional, the other modern." The first he characterizes as "Grotian," based on a "'statist' vision of international relations . . . characterized by co-operation and regulated intercourse among sovereign States, each pursuing its own interest." The second he refers to as "Kantian," "based on a universalist or cosmopolitan outlook, 'which sees at work in international politics a potential community of mankind' and lays stress on the element of 'trans-national solidarity.'" Antonio Cassese, International Law 21 (2d ed. 2005). Professor Martti Koskenniemi observes how "[s]tandard discourse about world order" revolves around opposition between "individualistic approach" and "communitarian vision," and is "transformed into the metaphors of international law as a 'vertical' or a 'horizontal' system and in the distinctions between international/transnational; world law/inter-State law; and Charter system/Westphalia etc." Martti Koskenniemi, From Apology to Utopia: The Structure of International Legal Argument 482–83 (2005).

7. Professor Antonio Cassese identifies state sovereignty and non-intervention as the main underlying principles of a "Grotian" model of international relations and respect for human rights as one of the principles underlying a "Kantian" model, recognizing also that these principles are "in fact, competing—if not at loggerheads." *See* Cassese, *supra* note 6, at 46–68. The human rights movement developed from the ashes of WWII, as a response of the international community to the excesses of the war. It resulted in the adoption of multilateral human rights instruments, such as the 1948 Universal Declaration of Human Rights and the twin 1966 Covenants on Civil and Political Rights and Economic, Social, and Cultural Rights, which champion values of the international community over the sovereign freedoms of individual States. For a succinct and clear account of the historical developments leading up to the post-WWII human rights movement, see *id.* at 22–68. For an historical account of the development of the modern day human rights movement, see Henry Steiner, Philip Alston & Ryan Goodman, International Human Rights in Context 58–148 (3d ed. 2008). Professors Steiner, Alston, and Goodman observe how various pre-WWII treaties existed to protect human rights but note how the post-WWII Nuremburg trials, by being "concrete and applied," gave new impetus to the human rights movement. *See id.*

8. *See generally* Cassese, *supra* note 6, at 46–68. *See also* Christoph Schreuer, *The Waning of the Sovereign State: Towards a New Paradigm for International Law?* 4 Eur. J. Int'l L. 447, 448 (1993) ("International law has responded . . . with a rapidly growing body of substantive rules ranging from

international legal system's bias lies not in any doctrine or institutions but rather in its underlying power map.[9]

My study of the "comfort women" social movement addresses both these views[10] and aims to add nuance to the doubts raised in recent years about the continuing relevancy of human rights in obtaining justice for the politically disempowered.[11] I look at how the movement has reshaped our understanding of the statist foundations of the international legal system by expanding the boundaries of human rights doctrine and navigating its institutional pathways. I further examine how it has disrupted existing power structures at the international level by using a human rights discourse to mobilize support within semi-formal and informal spaces. In unpacking the human rights strategies of the "comfort women" movement, I conclude that despite much disillusionment about human rights in recent years, human rights strategies retain much utility if used by social movements in conjunction with a critical awareness of underlying power structures and a reflexive alertness to political opportunities.[12]

The first part of this paper focuses on the early development and human rights strategy of the "comfort women" social movement. I revisit early human rights litigation efforts launched by the movement against the Japanese State in U.S. courts pursuant to the Alien Tort Claims Act ("ATCA"), focusing particularly on the unsuccessful lawsuit by former "comfort wo-

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human rights issues to control over the use of military force. These prescriptions have limited the freedom of lawful action by States in detail but have left the basic structure of international law unchanged.").

9. *See* KOSKENNIEMI, *supra* note 6, at 606–07.

10. Professor Karen Engle classifies feminist human rights strategies as doctrinal, institutional, and external. Doctrinalists focus on arguing within and improving human rights positive doctrine, institutionalists see institutional biases as the main problem, and external strategists argue that existing positive law, both doctrinal and institutional, fails to take into account the reality of women's experiences. The "comfort women" movement's strategies may be seen as both doctrinal and institutional, as it has employed the doctrinal language of human rights in its struggle while tactically choosing to advance victims' claims before specific domestic and international institutions. *See generally* Karen Engle, *International Human Rights and Feminism: Where Discourses Meet,* 13 MICH. J. INT'L L. 517 (1992).

11. For criticism of the human rights movement, see generally UPENDRA BAXI, THE FUTURE OF HUMAN RIGHTS (2008); DAVID KENNEDY, THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM (2004); Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights,* 42 HARV. INT'L L. J. 201 (2001).

12. The perennial debate within the social movement community has centered on whether legal rights impede or facilitate the struggles of movements, with the majority viewing the law with disfavor. Some academic commentators, such as Professor Stuart Scheingold, argue that the value of rights talk lies in its potential to politicize. *See generally* STUART A. SCHEINGOLD, THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE (2d ed. 2004). Others, such as Professor Jennifer Gordon, see the value of law as lying in its organizing potential. *See* JENNIFER GORDON, SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS (2005). Yet others warn against abandoning legal strategies for extra-legal ones. *See* Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937 (2007). More recently, commentators have sought to embrace more balanced and reflexive approaches toward law, as reflected in Professor Scott Cummings' "constrained legality" and Professor Orly Lobel's models of "new governance." *See* Scott L. Cummings, *Critical Legal Consciousness in Action,* 120 HARV. L. REV. F. 62 (2007); Orly Lobel, *The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, 89 MINN. L. REV. 342 (2004).

man" Hwang Geum Joo against Japan in *Hwang v. Japan*.[13] Hwang's claims were denied first by the D.C. district court and then by the D.C. Court of Appeals. After remand from the Supreme Court, the Court of Appeals again denied Hwang relief. The *Hwang* decisions have been criticized by commentators on formal legal grounds and as instances of judicial subordination to executive will. In this paper, I offer a different reading of these cases. Drawing on critical legal theories of adjudication, I argue that these judicial decisions could have gone either way, and that ultimately they turned on the *Hwang* courts' *a priori* decision to situate themselves in a state-centric paradigm that represented the decision-making pathway of least resistance. I propose that a holistic reading of the *Hwang* suit demonstrates the development of a judicial anxiety with the *Hwang* Court of Appeals ultimately engaging in an exercise of blame-shifting vis-à-vis the executive. Such an understanding draws attention to the potential role that social movements may play in *constructing* and *mobilizing* legitimacy behind certain pathways of judicial decision-making while delegitimizing and closing off others.

In the second part of my paper, I examine more recent human rights strategies of the "comfort women" movement that go beyond litigation. Drawing on social movement theories, I analyze how the movement creatively used a human rights discourse to undertake exercises of re-imagination, organize within spaces of "soft" or semi-formal authority, and engage in a politics of rights. I assess the extent to which the movement was able to use limited participation rights within the international human rights system to spotlight its cause and to engage the Japanese State. I also examine *inter alia* the unexpected far-reaching constitutive and mobilizing impacts of the mock trial organized by the movement, more popularly known today as the 2000 Women's Tribunal.[14] Lastly, I explore the transnational legislative campaigns spearheaded by the movement throughout 2007 and 2008 before foreign legislative bodies, focusing particularly on Resolution 121 adopted by the U.S. House of Representatives.[15] I examine the extent to which Resolution 121 accurately translates the movement's claims and its potential, if any, to bring about the changes desired by the movement. I also pose the question of whether these legislative successes, if obtained prior to the aforementioned U.S. court litigation, would have resulted in different or favorable judicial decisions.

13. *See* Hwang v. Japan, 172 F. Supp. 2d 52 (D.D.C. 2001), *aff'd,* 332 F.3d 679 (D.C. Cir. 2003), *vacated*, 542 U.S. 901 (2004), *on remand,* 413 F.3d 45 (D.C. Cir. 2005).

14. *See* The Women's International War Crimes Tribunal on Japan's Military Sexual Slavery, The Hague Final Judgment (Jan. 31, 2002), *available at* http://www1.jca.apc.org/vaww-net-japan/english/womenstribunal2000/judgement.html [hereinafter 2000 Women's Tribunal Judgment].

15. H.R. Res. 121, 110th Cong. (2007).

I. An Historical Account of the WWII "Comfort Women" System

> "One day in June, at the age of 13, I had to prepare lunch for my parents who were working in the field and so I went to the village well to fetch water. A Japanese garrison soldier surprised me there and took me away, so that my parents never knew what had happened to their daughter. I was taken to the police station in a truck, where I was raped by several policemen. . . . After 10 days or so, I was taken to the Japanese army garrison barracks in Heysan City. There were around 400 other Korean young girls with me and we had to serve over 5,000 Japanese soldiers as sex slaves every day—up to 40 men per day."[16]

> "When I was 17 years old . . . the head of our village came to our house and promised me to help me find a job in a factory. Because my family was so poor, I gladly accepted this offer of a well-paid job . . . . We were put on the train, then onto a truck . . . . After two days of waiting, without knowing what was happening to me, a Japanese soldier in army uniform, wearing a sword, came to my room. He asked me 'Will you obey my words or not?', then pulled my hair, put me on the floor and asked me to open my legs. He raped me. When he left, I saw there were 20 or 30 more men waiting outside. They all raped me that day. From then on, every night I was assaulted by 15 to 20 men."[17]

These are some of the stories of "comfort women" who were channeled into the Japanese army's WWII military prostitution system. Before setting out the details of the "comfort women" system, it is important to note that similar stories continue to play out in conflict areas all over the world today, from the valleys of Bosnia to the jungles of the Congo and the deserts of Sudan.[18] Despite today's plethora of international legal norms condemning rape and sexual abuse in times of conflict, sexual violence continues to be used as a weapon and instrument of torture during conflict. The disturbing but unfortunately familiar intersection of war, rape, and sexual abuse may be traced far back into the annals of history. Historians have long recorded how prostitutes accompanied invading medieval armies and how rape has been used time and again by armies as an organized weapon against civilian women of conquered territories.[19] Feminists studying this concurrence of war, rape, and sexual abuse explain it as the result of military

16. 1996 Coomaraswamy Report, *supra* note 3, ¶¶ 54–55.

17. *Id.*

18. *See* Christine Chinkin, *Rape and Sexual Abuse of Women in International Law*, 5 Eur. J. Int'l L. 326, 326–41 (1994).

19. *See* Barton C. Hacker, *Women and Military Institutions in Early Modern Europe: A Reconnaissance*, 6 Signs: J. Women Culture & Soc'y 643, 643–71 (1981).

cultures of chauvinism that breed particularly degrading attitudes towards women.[20] Against the horrors of war, sex—whether consensual or forced—becomes a form of escapism and reaffirmation for the soldier.[21] It is significant that women are not the only targets of sexual violence during conflict; victims also include young boys and girls.[22]

A. The Objectives and Mechanics of the "Comfort Women" System

Throughout WWII, the Japanese army directed the establishment of "comfort stations" all over Asia to house the "comfort women" who were to provide sexual services to Japanese soldiers. Official archival research has established how the Japanese military was involved in the largely forced recruitment of these women, their subsequent confinement in squalid circumstances, and their sexual and physical abuse. While the majority of women serving in these "corps" were transported from Korea, Taiwan, and Japan, there were also women from Chinese territories conquered by the Japanese army.[23]

At the end of the war, many "comfort women" found themselves abandoned in strange countries, killed by the retreating Japanese army, or forced to commit suicide alongside Japanese soldiers. Those who survived often suffered from debilitating diseases resulting from their repeated sexual and physical abuse; others found that they were sterile, due to drugs forcibly administered to them by Japanese military doctors during their captivity. They retreated into the shadows, ashamed of their past and pressured into silence by their own families and communities.

This injustice suffered by the "comfort women" did not end with WWII. The crimes committed against them did not find a place for consideration before the International Military Tribunal for the Far East. Only one of the many individual military trials later held by the Allied Forces across Asia addressed harms committed against "comfort women." The Dutch authorities conducted this trial, known also as the Batavia trial, on behalf of Dutch nationals who were abducted and forced by the Japanese army to serve as "comfort women" in Batavia during WWII.[24]

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20. *Id.*

21. *See* Yoshimi, *supra* note 2.

22. *See* Special Rapporteur on Rights of Children, *Impact of Armed Conflict on Children, delivered to the General Assembly*, U.N. Doc. A/51/306 (Aug. 26, 1996), *available at* http://www.un.org/documents/ga/docs/51/plenary/a51-306.htm.

23. *See* Yoshimi, *supra* note 2, at 49–51.

24. *See* In re Awochi, 13 L. Rep. of Trials of War Crim. 122 (Neth. Temp. Court-Martial at Batavia 1949) (Exhibit No. I.2) (copy on file with author). For an account of the Batavia trial, see Yoshimi, *supra* note 2, at 171–76. On 24 March 1948, the Batavia military tribunal found thirteen Japanese soldiers guilty of rounding up women for forced prostitution, coerced prostitution and rape, and mistreatment of internment camp inmates. "Comfort women" activists have cited the Batavia trial as a demonstration of how post-conflict justice efforts carried out by the Allied Forces focused on crimes committed against white populations and were racially discriminatory. Only Dutch "comfort women" were worthy of the Allied Forces' attention, despite the fact that over 90 percent of the "comfort

B. Voices Rising: The Past Catches Up

In the late 1980s and early 1990s, emerging research by Korean and Japanese historians offered proof of both the existence of the "comfort women" system and the Japanese military's involvement in establishing and sustaining it. Public pressure substantially intensified within Japan in 1992 when Japanese historian Yoshiaki Yoshimi revealed the existence of Japanese official documents that conclusively demonstrated the involvement of the Japanese State in the "comfort women" system.[25] The Japanese government found itself facing queries and demands for clarification and reparation.[26]

Unable to refute the factual basis of these accusations, Prime Minister Kiichi Miyazawa personally issued an apology during his 1992 visit to South Korea for the Japanese State's involvement in the "comfort women" system.[27] In 1992 and 1993, the Japanese government issued two fact-finding reports in which it admitted the involvement of the Japanese military in the establishment, recruiting, and running of "comfort stations."[28] In 1993, Chief Cabinet Secretary Kono followed these reports with an official government statement on the matter.[29] This statement, known as the Kono Statement, continues to be proffered by today's Japanese leaders as the Japanese government's official position. The Kono Statement recog-

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women" were of Korean origin. *See Protecting the Human Rights of Comfort Women: Hearing Before the Subcomm. on Asia, the Pac. and the Global Env't of the H. Comm. on Foreign Aff.,* 110th Cong. 50–57 (Feb. 15, 2007) (statement of Ok Cha Soh, President, Washington Coalition for Comfort Women Issues), *available at* http://www.etan.org/legislation/0702cwomen.htm [hereinafter H.R. 121 Soh Statement].

25. For accounts of how the "comfort women" issue re-emerged as a controversial issue, see SCHMIDT, *supra* note 2, at 21–73; Chih-Chieh Chou, *An Emerging Transnational Movement in Women's Human Rights: Campaign of Nongovernmental Organizations on "Comfort Women" Issue in East Asia,* 4 J. ECON. & SOC. RES. 153 (2002), *available at* http://www.fatih.edu.tr/~jesr/AnEmergingTransnationalMovementinWomen%92sHumanRights.pdf; Katharine H.S. Moon, *South Korean Movements Against Militarized Sexual Labor*, 39 ASIAN SURV. 310 (1999); Nicola Piper, *Transnational Women's Activism in Japan and Korea: The Unresolved Issue of Military Sexual Slavery*, 1 GLOBAL NETWORKS 155 (2001); Chunghee Sarah Soh, *The Korean "Comfort Women": Movement for Redress*, 36 ASIAN SURV. 1226 (1996). For a detailed account of how the Japanese State has responded to these developments, see generally 2000 Women's Tribunal Judgment, *supra* note 14, ¶¶ 942–1017.

26. 2000 Women's Tribunal Judgment, *supra* note 14, ¶¶ 942–1017.

27. *Id.* ¶ 975.

28. The First Investigatory Report, released on July 6, 1992, acknowledged that the Japanese military had seen it necessary to establish "comfort stations" to prevent local rapes and consequent rising anti-Japanese sentiment. It also noted that the military authorities had given instructions to private recruiters regarding the selection of "comfort women" and had built and managed these stations. The Second Investigatory Report, released on August 4, 1996, went into further detail about how these stations were controlled and confirmed that they had been established in Japan, China, the Philippines, Indonesia, Malaysia, Thailand, Burma, New Guinea, Macao, and French Indo-China. However, it stated that there was no data by which one could venture an estimation of the number of "comfort women" involved. *See* Japan Action Network for the Mil. Sexual Slavery Issue, *What Judges Found and Ruled in Their Judgments of "Comfort Women" Cases* [hereinafter Japan Action Network Report] (distributed at the 2007 World Conference).

29. *See* Press Release, Yohei Kono, Chief Cabinet Secretary, The Government of Japan, Statement on the Result of the Study on the Issue of "Comfort Women" (Aug. 4, 1993), *available at* http://www.mofa.go.jp/policy/women/fund/state9308.html [hereinafter Kono Statement].

nizes expressly that the "Japanese military was, directly or indirectly, involved in the establishment and management of the comfort stations and the transfer of comfort women."[30] The present-day Japanese government often cites Prime Minister Miyazawa's apology and the Kono Statement when defending against allegations that Japan has failed to adequately apologize for or address its WWII past.[31]

Regardless of official apologies, many individual Japanese leaders and politicians have made statements refuting the existence of the "comfort women" system and the involvement of the Japanese military in it, and arguing that these women were actually voluntary prostitutes. The inconsistent nature of these various statements has cast serious doubt on the sincerity of individual apologies, even if the present-day Japanese government continues to stand by the Kono Statement.[32] Critics have observed that most apologies—apart from the Kono Statement—have been given in a personal capacity and are therefore not formally representative of the Japanese State's position.[33]

In the face of increasing criticism for its failure to respond to claims for reparation, the Japanese government announced in 1995 its plan to establish a fund for former "comfort women." This fund, officially named the Asian Peace and Friendship Foundation for Women, is more commonly known as the Asian Women's Fund ("AWF").[34] However, the Japanese government clearly emphasized that this fund was private in nature, consisting of donations from Japanese civil society and serving as an expression

30. The Kono Statement goes on to express the Japanese government's "sincere apologies and remorse to all those who suffered . . . as comfort women." It promises "to continue to consider seriously, while listening to the views of learned circles, how best [it] can express this sentiment," and to "face squarely the historical facts as described above instead of evading them, and take them to heart as lessons of history." *Id.*

31. A recent policy statement of the Japanese government on this issue insists that "[t]he Government of Japan has since expressed its sincere apologies and remorse to the former 'comfort women' on many occasions." *See* Press Release, The Government of Japan, Recent Policy of the Government of Japan on the Issue Known as "Comfort Women" (Apr. 2007), *available at* http://www.mofa.go.jp/policy/women/fund/policy.html [hereinafter Recent Policy of the Government of Japan on "Comfort Women"].

32. 2000 Women's Tribunal Judgment, *supra* note 14, ¶ 962. For the most recent denial of the Japanese government, see Bruce Wallace, *A Qualified Abe Apology,* L.A. Times, Mar. 27, 2007, at A3.

33. As contended by activists and legal counsel representing victims before the 2000 Women's Tribunal. *See* 2000 Women's Tribunal Judgment, *supra* note 14, ¶¶ 984.

34. The idea of a compensation program for "comfort women" was first bilaterally discussed between the Japanese and South Korean governments in 1993, whereby Japan would finance a foundation that would be operated by the South Korean government. On August 4, 1994, newly appointed Prime Minister Tomiichi Murayama announced implementation of a program by which the Japanese government would finance cultural and student exchange programs. This was harshly criticized due to the paltry sum involved and the fact that it did not foresee any direct compensation to the survivors. Thereafter, on June 14, 1995, the Japanese government announced that it would establish the Asian Women's Fund, which would distribute compensation payments along with a letter of apology from the Prime Minister to the survivors. It is notable that throughout all of this the Japanese government did not undertake any consultations or negotiations with the survivors or activist groups. For a detailed account, see Schmidt, *supra* note 2, at 64–70.

of moral rather than legal responsibility.[35] As a result, a majority of survivors have refused to accept any money from the AWF.

II. The Global "Comfort Women" Movement: In Solidarity With Our "Grandmas"[36]

Testament to the strength and influence that survivors, activists and non-governmental organizations ("NGO") working in concert have gained over the years, the AWF, in its final report pleaded despairingly with "victim support groups {who} criticized the Japanese Government and the Asian Women's Fund," calling upon those critics to set aside stereotypes and instead "*examine* without prejudice what type of organization the Asian Women's Fund has always been."[37] Indeed, the "comfort women" movement has grown from being an isolated group of lone survivors and concerned historians into a transnational movement skilled in both grassroots organizing and institutional-maneuvering.[38] In this section, I will explore how the "comfort women" movement has evolved over the years, focusing in particular on how its growth has been influenced by its use of the human rights discourse.

A. The Origins of the "Comfort Women" Movement

Due to its use of grassroots organizing strategies and its engagement in contentious politics, I refer to the "comfort women" movement as a social movement, distinguishing it from other forms of collective activity, such as transnational advocacy networks.[39] In recognition of the transnational and

35. *See* Statement by the Chief Cabinet Secretary, Government of Japan (June 14, 1995), *available at* http://www.mofa.go.jp/policy/women/fund/state9506.html. Even among members of the AWF, there was disagreement over the non-governmental nature of the compensation. *See* Press Release, Proponents for the Asian Women's Fund, An Appeal for Donations for the Asian Women's Fund (July 18, 1995), *available at* http://www.mofa.go.jp/policy/women/fund/appeal9507.html. ("Some, for example, believe Government compensation is absolutely necessary, while others believe such compensation will be difficult to realize in a prompt manner because of legal and practical impediments."). The decision of then Prime Minister Ryutaro Hashimoto to rescind his predecessor Prime Minister Miyazawa's promise to issue individual letters of apology led to the resignation of several AWF members. Prime Minister Hashimoto later retracted his refusal, and letters signed by Japan's Prime Minister have accompanied compensation. For a copy of this letter, see Letter from Prime Minister Junichiro Koizumi to the Former Comfort Women (2001), *available at* http://www.mofa.go.jp/policy/women/fund/pmletter.html.

36. Activists and supporters of the "comfort women" fondly refer to these old ladies as "grandmas." *See, e.g.*, V-day, Global V-Day Campaign for Justice to "Comfort Women": Survivors of Japan's Military Sexual Slavery 2–3, http://www.vday.org/static/download/amea/comfortwomen_report.pdf (last visited Nov. 18, 2008).

37. Asian Women's Fund, The "Comfort Women" Issue and the Asian Women's Fund (Mar. 2007), at 157.

38. *See generally* Chou, *supra* note 25.

39. The definition of a social movement has varied. For example, Jeff Goodwin and James Jasper define social movements as "conscious, concerted, and sustained efforts by ordinary people to change some aspect of their society by using extra-institutional means." Jeff Goodwin & James M. Jasper, *Introduction* to The Social Movements Reader: Cases and Concepts 3, 3 (Jeff Goodwin & James M.

domestic faces of the movement, I use the singular "movement" to refer generally to the transnational, global movement as a whole. When referring to specific local movements, I indicate the country concerned. As the beginnings of the "comfort women" movement have been more closely studied and set out in detail elsewhere, I attempt only a brief summary here.[40]

Dominant players in the movement include the Korean Council for Women Drafted for Japanese Military Sexual Slavery ("Korean Council") based in Korea, the Violence Against Women in War-Network Japan, based in Japan ("VAWW-Net"), and LILA-Pilipina, based in the Philippines.[41] Each of these NGOs directs its efforts not only at the Japanese government but also at its own national government to get the latter to exert pressure on the former. These NGOs also work locally to support and meet the needs of surviving "comfort women." Transnational networks linking these various local organizing bodies facilitate the cross-border cooperation and coordination that is necessary given the varied locations of survivors. For example, organizing and lobbying efforts directed at a particular national government are usually conducted by a locally-based NGO with significant additional support from overseas activists and other NGOs within the movement.[42]

It may appear strange that this movement emerged after 50 years of post-WWII silence. After all, the "comfort women" system was not unknown among the general public during or after WWII. Indeed, the "comfort women" system is referred to in post-WWII published memoirs of former Japanese soldiers.[43] However, patriarchal cultures and familial pressures forced most surviving "comfort women" to keep their experiences a secret. Moreover, these cultures failed to generate debate or feelings of injustice among the wider public for surviving "comfort women."[44]

Jasper eds., 2003). However, for my paper I do not close off the use of institutional mechanisms for movements, and I therefore adopt Sidney Tarrow's seminal definition of a social movement as "those sequences of contentious politics that are based on underlying social networks and resonant collective action frames, and which develop the capacity to maintain sustained challenges against powerful opponents." SIDNEY TARROW, POWER IN MOVEMENT: SOCIAL MOVEMENTS AND CONTENTIOUS POLITICS 188–89 (1998).

40. *See, e.g.*, Moon, *supra* note 25; H.R. 121 Soh Statement, *supra* note 24.

41. For more information about these NGOs, see Korean Council for the Women Drafted for Military Sexual Slavery by Japan, http://www.womenandwar.net/english/menu_014.php (last visited Nov. 18, 2008); Friends of LOLAS, http://labanforthelolas.blogspot.com/ (last visited Nov. 18, 2008); Violence Against Women in War-Network Japan, http://www1.jca.apc.org/vaww-net-japan/english/index.html (last visited Nov. 18, 2008).

42. *See* 2007 World Conference, *supra* note 1 (summarizing NGO activities). During the lobbying for H.R. 121, the Washington Coalition for Comfort Women Issues was assisted by the Korean Council in Korea, which organized the visit of former Korean comfort women to the U.S. to testify before Congress and assist in grassroots mobilization. For an account of this, see *Unanimous Pass on HR 121 and U.S. Campaigns to Adopt the Resolution,* KOREAN COUNCIL NEWSLETTER NO. 19 (Korean Council for the Women Drafted for Military Sexual Slavery by Japan, Seoul, S. Korea), 2007 [hereinafter *HR 121*, Korean Council Newsletter] (copy on file with author).

43. For excerpts from such memoirs, see 2000 Women's Tribunal Judgment, *supra* note 14, ¶¶ 142-44.

44. *See* YOSHIMI, *supra* note 2, at 196–97; *see also* Min, *supra* note 2, at 938–57.

It was only in the 1980s that the "comfort women" issue entered the public arena as a matter of injustice in South Korea, marking the beginnings of the "comfort women" movement.[45] The movement traces its very beginnings to the efforts of Korean academics who discovered and started discussing historical evidence of the "comfort women" system.[46] In 1988, a group of Christian feminists organized the International Seminar on Women and Tourism. During this conference, Professor Yun Chong Ok presented her research on the "comfort women" system, sparking debate among conference participants and among the wider Korean public.[47]

This debate spread to Japan in 1990 when a member of the Japanese Upper Legislative House introduced an official inquiry.[48] The purpose of this inquiry was to determine whether the "comfort women" system could be defined as forced labor and accordingly fall under Japan's 1938 National Mobilization Law. If it did, this categorization would enable surviving "comfort women" to claim compensation from the Japanese State.[49] In response, the Japanese government denied any involvement of the Japanese State in the "comfort women" system, alleging that private agents had carried out recruitment and regulation of these women.[50]

Angry over the Japanese government's denial, then 69-year-old Kim Hak Sun from South Korea became the first former "comfort woman" to publicly speak about her experiences, testifying to the Japanese military's involvement in the "comfort women" system.[51] Around this time, Korean activists, similarly angered by the Japanese government's response, established the Korean Council, which has become the leading NGO for "comfort women" in South Korea.[52] The Korean Council submitted an open letter to the Japanese government calling for an apology and the initiation of a formal inquiry into the extent of the Japanese State's involvement in the "comfort women" system.[53]

Publicity over the "comfort women" issue continued to increase as more former "comfort women" came forth in different Asian countries invaded by the Japanese army during WWII. In 1992, these different local move-

45. For more detailed accounts on the emergence of the "comfort women" movement in Korea, see SCHMIDT, *supra* note 2, at 20–26; Moon, *supra* note 25; H.R. 121 Soh Statement, *supra* note 24.

46. *See* Schmidt, *supra* note 2, at 20–26; Moon, *supra* note 25; H.R. 121 Soh Statement, *supra* note 24.

47. *See* Moon, *supra* note 25, at 311.

48. *See* SCHMIDT, *supra* note 2, at 22.

49. *See id.* The National Mobilization Law was enacted to draft both men and women into Japan's war effort. Many "comfort women" were drafted on the pretense that they would be undertaking factory work or other war-related efforts. *See* 1996 Coomaraswamy Report, *supra* note 3, ¶ 15.

50. In response to queries from the legislature, Japan's then Labor Minister, H. Shimizu, stated that private agents recruited "comfort women." Given the Japanese State's non-involvement, he argued, the Japanese Government was not under any responsibility to undertake a formal inquiry. *See id.*

51. 2000 Women's Tribunal Judgment, *supra* note 14, ¶ 955.

52. According to Chih-Chieh Chou, the Korean Council was formed on November 16, 1990. *See* Chou, *supra* note 25, at 160.

53. *See id.*

ments came together in Seoul and established the Asian Network in Solidarity with Women Drafted for Sexual Slavery ("Asian Network"). The Asian Network consists of women's groups from South Korea, Taiwan, Hong Kong, Japan, the Philippines, and Thailand, and continues to meet today.[54] In 2007, the Asian Network held its eighth meeting in Japan. In addition to its transnational network, the movement has undertaken an increasing number of coordinated cross-border campaigns. For example, in August 2007, the movement implemented a Global Action Campaign that involved public awareness events in South Korea, the Philippines, Indonesia, Taiwan, Malaysia, Hong Kong, Germany, Australia, Canada, and Japan.[55]

B. Challenges Faced by the Movement in Confronting Barriers of Race, Class and Gender

Former "comfort women" seeking to advance their claims find themselves standing at the crossroads of racial, gender, and class discrimination—a position which, commentators have observed, has resulted in their double victimization: first abused in "comfort stations," "comfort women" have subsequently suffered from life-long medical ailments, trauma and forced silence.[56]

Discriminatory Japanese colonization policies in Korea made Korean women easy prey for the Japanese military's "comfort women" system. Korea, at that time a colonial territory of Japan, was considered by the Japanese State during WWII to be a hinterland for wartime human labor in general. In addition, Japan had inserted reservations into relevant international treaties excluding colonial territories from treaty protection.[57] Commentators have also observed how Japan's military culture bred gender discriminatory attitudes among Japanese soldiers. This in part explains the latter's con-

54. *See* SCHMIDT, *supra* note 2, at 53–54. During the first meeting of the Asian Network, the Network issued the following demands to Japan: 1) a formal apology from Japan to survivors and their families; 2) adequate compensation from the Japanese government to survivors and the families; and 3) a formal investigation by the U.N. on the "comfort women" system and its official condemnation of the Japanese State's involvement. *See id.*

55. *See Justice for the Victims of the Japanese Military "Comfort Women"—the Echoes of Peace Spread in the World during Global Action Weeks,* KOREAN COUNCIL NEWSLETTER NO. 19 (Korean Council for the Women Drafted for Military Sexual Slavery by Japan, Seoul, S. Korea) 2007 (on file with author).

56. *See* YOSHIMI, *supra* note 2, at 178–197; Min, *supra* note 2; C. Sarah Soh, *Infertility Among Korea's "Comfort Women" Survivors: A Comparative Perspective*, 29 WOMEN'S STUD. INT'L F. 67, 67–80 (2006).

57. YOSHIMI, *supra* note 2, at 155–57. Yoshimi observes that Japan submitted reservations to its ratification of three international treaties that would have implicated the "comfort women" system; namely, the 1904 International Agreement for the Suppression of White Slave Traffic, the 1910 International Convention for the Suppression of White Slave Traffic, and the 1921 International Convention for the Suppression of Traffic in Women and Children. Japan avoided extending these treaty obligations to certain territories by use of Article 11 and Article 14 of the 1910 and 1921 treaties, respectively, which allowed states to stipulate that the treaties would not be applied to colonial territories. Yoshimi notes that Japan exploited these provisions in its recruitment of Korean and Taiwanese women to serve as "comfort women." *See id.*

temptuous treatment of women and the extremely abusive conditions to which the "comfort women" were subjected. The 2000 Women's Tribunal, considered in further detail below, devoted a section in its final judgment to examining how an "ideology of female subordination thus combined with the claimed necessities of the Imperial war effort to produce one of the most brutally misogynist chapters in history."[58] Lastly, researchers have noted how most "comfort women" came from poor backgrounds and were often sold by their own families or easily deceived into the "comfort women" system by promises of jobs.[59]

This three-dimensional discrimination matrix generated secondary effects that hindered the "comfort women" movement in its attempts to organize and obtain justice for the survivors. For example, post-conflict justice efforts carried out by the Allied Forces minimized or ignored crimes committed against non-white populations due to racial discrimination.[60] As mentioned above, the Dutch decided to prosecute Japanese military personnel for crimes of rape committed against Dutch "comfort women,"[61] but no trials were conducted for crimes committed against non-white "comfort women." In addition, patriarchal cultural attitudes resulted in most former "comfort women" choosing to remain silent about their ordeals.

Those women who were brave enough to speak out were met with gendered responses.[62] When the first former "comfort women" went public, the Japanese government's initial response was to insist that the women had not been coerced into providing sexual services to the Japanese military but had in fact done so voluntarily in exchange for monetary reward.[63] Even today, Japanese politicians make occasional statements likening the "comfort women" system to military prostitution.[64] Records show that while the Japanese military did initially focus on seeking the services of licensed prostitutes, recruitment of non-prostitutes by deception or coercion became widespread, particularly at the late stages of the war and in occu-

58. 2000 Women's Tribunal Judgment, *supra* note 14, ¶¶ 1007–13.

59. *See* Min, *supra* note 2, at 951–53.

60. *See* H.R. 121 Soh Statement, *supra* note 24.

61. *See* Yoshimi, *supra* note 2, at 163–76; H.R. 121 Soh Statement, *supra* note 24.

62. *See* Min, *supra* note 2, at 941 & 950.

63. For example, in 1994, then Minister of Justice Shigekado Nagana stated in an interview that the "comfort women" were "licensed prostitutes at the time, so one cannot apply today's standard whether it constituted discrimination against women." For a complete list of such statements by high-ranking Japanese politicians and government officials, see 2000 Women's Tribunal Judgment, *supra* note 14, at Exhibit 41, entitled "Chronological List of Remarks by Japanese Politicians and Others Regarding Post-War Issues: Select Edition."

64. In 2007, the New York Times reported:

> In a written statement endorsed by the cabinet, the government referred to a study from the early 1990s and said that "among the materials it discovered, it did not come across any that directly show that the military or authorities so-called forcibly led away" the women, known euphemistically as comfort women.

Norimitsu Onishi, *Japan Repeats Denial of Role in World War II Sex Slavery*, N.Y. Times, Mar. 17, 2007, *available at* http://www.nytimes.com/2007/03/17/world/asia/17japan.html?_r=1.

pied territories.[65] Furthermore, as Japanese academic Ueno points out, even if recruitment of "comfort women" had taken place on a voluntary basis, that does not detract from the fact that all of these women were held in coercive conditions at "comfort stations" and subject to abuse at the hands of the military.[66]

In addition to the obstacle of patriarchal cultures predisposed to disbelieve their stories, many women faced pressure from their communities and families to downplay the extent of the abuse they suffered or to retract their public testimonies.[67] Those who spoke up risked being ostracized in communities with sexual mores that emphasize women's sexual virtue.[68] For example, when former "comfort woman" Kim Hak-sun first decided to testify publicly about her experiences, Korean activists worried about possible negative and unsympathetic public reaction to her testimony.[69]

C. Jumping on the Human Rights Bandwagon

In examining the growth and spread of the "comfort women" movement, one might first wonder why some social movements are more successful than others. Resource mobilization theorists focus on how movements manage to locate and gain access to resources that enable their growth.[70] For example, the civil rights movement was able to sustain the long-lasting and legendary Montgomery bus boycott because it was effective in organizing sufficient car pools and enlisting the help of affluent white employers.[71] Network theorists focus on how movements develop and grow by building networks through which they are able to mobilize support and recruit new members to their causes.[72] For example, Professor Jo Freeman has attributed the emergence of the U.S. women's liberation movement in the 1960s to the movement's co-option and development of a communication network originally organized around the Commissions on the Status of Women.[73] Political opportunity theorists observe how movements are most likely to succeed when shifts in political structure make political institutions more accessible to the movement and its causes.[74] For example, Professor Kiyoteru Tsutsui and Professor Hwa-Ji Shin observe

65. *See* Yoshimi, *supra* note 2, at 99–128.

66. *See* Ueno, *supra* note 2, at 82–86.

67. *See* Schmidt, *supra* note 2, at 134 (statement by Lee).

68. *See* Min, *supra* note 2, at 949.

69. *See id.* at 950.

70. For an overview of resource mobilization theory, see John D. McCarthy & Mayer N. Zald, *Social Movements Organizations*, *in* The Social Movements Reader, *supra* note 39, at 169–86.

71. *See* Taylor Branch, Parting the Waters: America in the King Years 1954–63, 413–56 (1989).

72. For an application of network theory to the feminist movement, see Jo Freeman, *The Women's Movement*, *in* The Social Movements Reader, *supra* note 39, at 22–31.

73. *See id.*

74. *See* David S. Meyer & Debra C. Minkoff, *Conceptualizing Political Opportunity*, 82 Soc. Forces 1457, 1457–92 (2004).

how the emergence of global norms has increased the political ability of local activists to pressure States through international institutions.[75]

One of the "comfort women" movement's smartest strategies was its adoption of a human rights discourse. This discourse played an important role in what scholars have referred to as a movement's "member engagement" and "public influence" agenda.[76] I will later critically assess how the movement used human rights discourse to achieve public influence, implement its collaborative agenda, and build up a community's power.[77] This internal aspect was particularly necessary given the multiple layers of discrimination experienced by the survivors. To overcome the discrimination it faced, the movement used a human rights discourse to construct the claims, counter-narrative, and vision of justice that facilitated the movement's growth.

During the movement's early beginnings in Korea, movement leaders chose to articulate their claims and indignation in nationalistic terms, focusing on the racial classification employed in the "comfort women" system and the fact that 90 percent of "comfort women" were of Korean origin.[78] This frame resonated particularly among the Korean public due to Japan's historical colonial occupation of Korea.[79] Even today, the Korean "comfort women" movement often defends its right to articulate its claims in nationalistic terms, despite doubts raised by non-Korean movement counterparts about the utility of such a nationalist frame.[80]

Many of the movement's first activists were feminists. This not only led to the movement having a distinctly feminist bent but also may explain why the movement quickly moved towards adopting a women's rights discourse, or more generally, a human rights discourse. The "comfort women" movement used this discourse to construct a narrative of shared collective memory and sense of injustice, to inspire frustration against the Japanese State, to develop agency and solidarity among in its members, and to build coalitions.[81]

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75. Kiyoteru Tsutsui & Hwa-Ji Shin, *Global Norms, Local Activism, and Social Movement Outcomes: Global Human Rights and Resident Koreans in Japan*, Soc. Problems (forthcoming) (on file with author).

76. Kenneth T. Andrews et al., Leadership, Membership, and Voice: Civic Associations That Work 9, 11 (unpublished manuscript) http://ksghome.harvard.edu/~mganz/Current%20Publications/ASQSubmission_Revised.pdf (last visited Dec. 29, 2008).

77. *Id.*

78. *See* Ueno, *supra* note 2, at xiii; Moon, *supra* note 25, at 317–19.

79. *See* Moon, *supra* note 25, at 317–19.

80. *See* Ueno, *supra* note 2, at xiii.

81. Professor Fredrick Harris demonstrates how collective memory of the past influenced the development of black political activism in the 1960s. He recognizes, however, that such collective memory may also be formed through activism, resulting in a "reciprocal" relationship. Through its construction of a narrative of collective memory and injustice, the "comfort women" movement thus constituted a collective memory even as this memory simultaneously motivated and shaped its organizing strategies. *See* Fredrick Harris, *It Takes a Tragedy to Arouse Them: Collective Memory and Collective Action During the Civil Rights Movement,* 5 Soc. Movement Stud. 19, 19–43 (2006).

Marshall Ganz has emphasized the organizing potential that lies behind storytelling.[82] By constructing a logical and coherent narrative that motivates and inspires, a movement may be able to successfully build solidarity among its members and persuade outsiders to join its cause.[83] In the case at hand, a human rights discourse that ascribes responsibility to states for human rights violations committed by state organs or actors under the cloak of state authority,[84] was particularly well suited to constructing a narrative that clearly identified the Japanese State as a perpetrator. Given that the abuses were directly committed by the Japanese military and undertaken as part of the Japanese State's military strategy, the abuses suffered by the "comfort women" fell neatly within U.N. state responsibility provisions requiring that an agent be acting "on behalf of the State."[85] As observed by Professor William Gamson, in order to effectively communicate injustice, a chosen frame should clearly and actively identify the agent responsible for the harm.[86] Given the facts of the case, a human rights discourse was able to do just that, telling the "comfort women" story in a way that clearly identified the Japanese State as the "bad guy."

In addition, by naming the harms suffered by the "comfort women" as rights violations, the movement has used human rights language to engage in what Professor Michael McCann would refer to as "rights consciousness raising,"[87] a process by which individuals come to believe in their own agency and that they have the power to change injustice suffered. As explained earlier, "comfort women" have been discouraged and prevented from voicing their experiences by discriminatory attitudes at multiple levels, namely race, gender and class.[88] Indeed, most did not believe that they would be able to press the Japanese State into affording them reparations.[89] Rights-naming sought to overcome culturally ingrained mindblocks that had silenced these women for so long. For example, one survivor notes how she originally wanted to be left alone.[90] However, after her encounter with an activist who explained to her that she had the right to claim an apology and reparations from the Japanese State, she became determined to claim those rights.

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82. *See* Marshall Ganz, Address at the Annual Meeting of the American Sociological Association: The Power of Story in Social Movement (Aug. 2001), *available at* http://ksghome.harvard.edu/~MGanz/Current%20Publications/MG%20POWER%20OF%20STORY.pdf.

83. *See id.* at 9.

84. *See* Int'l Law Comm'n [ILC], *Draft Articles on Internationally Wrongful Acts, With Commentaries,* at 40, 45–46, U.N. Doc. A/56/10 (2001), *in* 2 Y.B. INT'L L. COMM'N. 31 (2001), *available at* http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (referring to articles 4 and 7).

85. *See id.* at 35. Harms committed by non-state organs, such as mercenaries or militia, may also be ascribed to the state, but only if a substantial degree of "control" is proven. *See id.*

86. *See* WILLIAM GAMSON, TALKING POLITICS 31–33 (1992).

87. *See* Michael McCann, *Causal Versus Constitutive Explanations (or, On the Difficulty of Being So Positive. . .),* 21 L. & SOC. INQUIRY 457, 457–82 (1996).

88. *See* Min, *supra* note 2, at 943–53.

89. *See id.* at 952.

90. *See* 2007 World Conference, *supra* note 1.

The "comfort women" movement has also used a human rights discourse to build solidarity among its members.[91] It has done so by packaging the movement's claims in various ways that would resonate with its members on different levels. For example, by framing the movement's claims in terms of the individual's right to reparation, the movement sought to vindicate each survivor and bind them individually to the movement. At the same time, by framing its claims as seeking to protect and promote the interests of groups such as women and civilians during times of armed conflict, it simultaneously bound various groups and their supporters to the movement.[92]

In addition, by focusing on the different collective rights encapsulated in the movement, "comfort women" activists have managed to establish cross-movement relationships.[93] For example, by promoting group rights to reparations for historical harms, the "comfort women" movement linked up with race reparations movements in the United States.[94] Using a sexual exploitation frame, the movement also linked up with activists combating modern-day sex trafficking. Through an anti-war and pro-peace frame, supporters sought to link their cause to that of modern-day war victims, including children. During the 2007 World Conference, the "comfort women" movement invited speakers representing these various movements to share their insights.[95] In forming these relationships, the "comfort women" movement emphasized the continuing relevancy of survivors' claims.

D. Behind the Dialectics of Argument and Narrative: A Clash of Paradigms

The Japanese government's initial response to the movement's demands was to deny State involvement in the "comfort women" system and to argue that these women were voluntary prostitutes who had participated voluntarily in the "comfort women" system. As these positions were increasingly challenged by former "comfort women," activists, and international organizations, the Japanese government settled on its existing official position, which has been couched in international legal terms. It argued that all WWII-related claims had been conclusively settled in post-WWII inter-state treaties and that international law does not recognize the right of individuals to claim reparations against a state in the absence of a treaty that expressly provides for this.[96]

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91. Gamson has noted how framing can facilitate mobilization by building the cohesiveness and identity of the movement at three levels: identity, solidarity, and consciousness. William Gamson, *Social Psychology of Collective Action, in* FRONTIERS IN SOCIAL MOVEMENT THEORY 53–76 (Aldon D. Morris & Carol McClug eds., 1992).

92. *See* 2007 World Conference, *supra* note 1. To see these various frames, view the 2007 World Conference schedule, available at www.jmss.info/.

93. *See id.*

94. *See id.*

95. *See id.*

96. 2000 Women's Tribunal Judgment, *supra* note 14, ¶ 59.

Using human rights discourse, the "comfort women" movement constructed its counter-claims within a human rights paradigm. First, the movement argued that the post-WWII treaties did not intend to and could not extinguish the claims of former "comfort women." Second, the movement claimed that such women have direct claims under international human rights law against the Japanese State for serious rights violations committed by its military.[97]

The respective positions taken by the Japanese government and the "comfort women" movement may be seen as presenting two counter-views or meta-narratives of international life: the former organized around the State, and the latter organized around individuals or groups behind the State—what I refer to as a people-based paradigm.[98] The state-centric paradigm of post-conflict justice envisions negotiations as occurring between states or political elites without regard to the needs and preferences of war victims, who are most affected during the negotiation and implementation process. In contrast, the "comfort women" movement's claims stem from a people-based paradigm of post-conflict justice where victims and those affected take center stage, are regularly consulted, and receive reparations. In what follows, I will assess how the "comfort women" movement used a human rights discourse to advance their claims in the face of the state-centric paradigm of the Japanese State. In doing so, I will also seek to address the larger question of how successful the language of human rights has been in facilitating the paradigm shift lying behind the movement's claims and narrative.

III. Early Attempts at Human Rights Litigation by the "Comfort Women" Movement

The "comfort women" movement's early strategies included the launching of what would become the first of many lawsuits before Japanese and U.S. courts. As of 2008, nine separate cases have been litigated before Japanese courts by Chinese, Taiwanese, Korean, and Filipino victim groups.[99]

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97. *See* Recent Policy of the Government of Japan on "Comfort Women," *supra* note 31.

98. The growth and construction of this paradigm may be attributed to many different streams of thought: human rights, indigenous peoples' rights, environmental rights, and developmental rights. These different streams, while remaining distinct in character, have come to be articulated and rationalized through the language of human rights today.

99. Some of the academic commentary that has been written on these cases include: Shin Hae Bong, *The Right Of War Crimes Victims To Compensation Before National Courts—Compensation For Victims Of Wartime Atrocities—Recent Developments In Japan's Case Law*, 3 Int'l Crim. J. 187 (2005); Jennifer Kwon, *The Comfort Women Litigation and the San Francisco Treaty: Adopting a Different Principle of Treaty Interpretation*, 73 Geo. Wash. L. Rev. 649 (2005); Sue R. Lee, *Comforting the Comfort Women: Who Can Make Japan Pay?,* 24 U. Pa. J. Int'l Econ. L. 509 (2003); L. David Nefouse, *Trials & Errors: The Rights of the Korean Comfort Women and the Wrongful Dismissal of the Joo Case by the District of Columbia Federal Courts,* 12 Cardozo J.L. & Gender 559 (2006); Byoungwook Park, *Comfort Women During WWII: Are U.S. Courts a Final Resort for Justice?*, 17 Am. U. Int'l L. Rev. 403 (2001–2002); Shellie K. Park, *Broken*

Movement lawyers have framed these suits in terms of the Japanese government's liability under international and domestic law, using human rights language to emphasize the gravity of that state's transgressions. Japanese judges presiding over these cases have generally held against the "comfort women" by claiming that plaintiffs did not file their cases within the required time limits of Japan's statute of limitations and that the survivors had no standing to bring claims based on international law, as international law does not recognize the right of individuals to bring claims directly against a state.[100]

Litigation undertaken by survivors in the United States has fared no better. In *Hwang v. Japan*,[101] discussed below, former "comfort women" unsuccessfully sued the Japanese State under the Alien Tort Claims Act ("ATCA"),[102] a vehicle increasingly employed by human rights lawyers to vindicate the rights of non-U.S. nationals for abuses committed anywhere in the world. By allowing the United States to bypass principles of state sovereignty and non-intervention in exercising "universal civil jurisdiction" over perpetrators of human rights violations, the ATCA in effect allows U.S. courts to undermine the state-centric paradigm of international life.

The initiation of lawsuits on U.S. soil was particularly poignant given the significant role played by the United States as a member of the Allied Forces in establishing and administering post-WWII justice processes conducted in the Asia-Pacific, processes that failed to deliver both criminal and civil justice to survivors of the "comfort women" system. This may explain why the court of appeals in *Hwang* ultimately refused to take substantive jurisdiction of the case on grounds of state immunity and the political question doctrine.[103] Consequently, U.S. courts have never substantively considered the claims of the "comfort women." The United States is thus no stranger or passive bystander but may be seen instead as complicit in the marginalization of the "comfort women's" demands. Those demands may in turn be seen to call upon U.S authorities to re-visit and re-assess their own WWII legacies in the Asia-Pacific.[104]

A number of scholars have criticized the U.S. judicial decisions as concessions to political pressure or reflections of the executive's position.[105] In contrast, I propose that these decisions in fact stemmed from the courts' *a priori* decision to root themselves in a state-centric, rather than people-based

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Silence: Redressing the Mass Rape and Sexual Enslavement of Asian Women by the Japanese Government in an Appropriate Forum, 3 ASIAN-PAC. L. & POL'Y J. 23 (2002) [hereinafter Park, *Broken Silence*].

100. Yasushi Higashizawa, *When Will Justice Be Realized?,* LAWASIA J. 83 (2005), at 96-100 & Table 2.

101. 172 F. Supp. 2d 52 (D.D.C. 2001), *aff'd,* 332 F.3d 679 (D.C. Cir. 2003), *vacated*, 542 U.S. 901 (2004), *on remand,* 413 F.3d 45 (D.C. Cir. 2005).

102. 28 U.S.C. § 1350 (2006).

103. Hwang v. Japan, 413 F.3d 45 (D.C. Cir. 2005).

104. *See* USHIMURA KEI, BEYOND THE "JUDGMENT OF CIVILIZATION": THE INTELLECTUAL LEGACY OF THE JAPANESE WAR CRIMES TRIALS (Steven J. Ericson trans., 2003).

105. *See, e.g.*, Lee, *supra* note 99; Nefouse, *supra* note 99.

paradigm. Noting that U.S. courts tend to take the path of least resistance when dealing with matters related to foreign affairs,[106] I argue that a holistic reading of the *Hwang* case in fact demonstrates an increasing judicial anxiety responsible for this trend of decision-making, especially when the court is confronted with the moral legitimacy underlying the survivors' claims. Indeed, it was this judicial anxiety that caused the D.C. Circuit Court of Appeals to rest its refusal to hear the case on the political question doctrine and to engage in a game of blame-shifting vis-à-vis the executive. The "comfort women" movement could have generated a different judicial outcome if it had taken advantage of this anxiety by mobilizing legitimacy behind its claims and closing off certain previously available pathways of decision-making.

A. Setting the Stage: The Legal Landscape and the Hwang *Decisions*

In 2000, fifteen surviving "comfort women" sued the Japanese government before the D.C. District Court in *Hwang v. Japan* for violations of international law pursuant to the Alien Tort Claims Act.[107] Their claims were ultimately dismissed at the district court and court of appeals levels on the grounds of state sovereign immunity and the political question doctrine.[108]

The Alien Tort Claims Act states that the "district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."[109] After its historical origins in the 1789 First Judiciary Act, the ATCA remained virtually unused for more than 200 years before human rights lawyers from the Center for Constitutional Rights used it in the 1980s to launch the seminal case of *Filártiga v. Peña-Irala*.[110] The *Filártiga* case found that violations of "universally accepted norms of the international

106. Professor Thomas Franck traces this U.S. judicial attitude toward foreign affairs to the "Faustian pact" made by judges with the political branches early in the beginnings of American government, where foreign affairs was a political give-back from judges to the political branches in order for the former to consolidate its dominance on domestic affairs. Professor Franck observes how this attitude has continued to the present: "Many judges, like 'it's a jungle out there' and the conduct of foreign relations therefore requires Americans to tolerate a degree of concentrated power that would be wholly unacceptable domestically." THOMAS M. FRANCK, POLITICAL QUESTIONS/JUDICIAL ANSWERS 12, 14 (1992).

107. *See* Hwang v. Japan, 172 F. Supp. 2d 52 (D.D.C. 2001).

108. *See Hwang*, 413 F.3d at 35; *Hwang*, 332 F.3d at 679; *Hwang*, 172 F. Supp. 2d 52.

109. 28 U.S.C. § 1350 (2006).

110. 630 F.2d 876 (2d Cir. 1980). In *Filártiga*, the Paraguayan father and sister of a 17-year old activist student sought to sue a former military leader who had tortured the student to death. The individuals involved were all Paraguayan citizens and the act itself took place in Paraguay; therefore none of the traditional bases for judicial exercise of jurisdiction existed. The U.S. Court of Appeals for the Second Circuit took jurisdiction over the case pursuant to the ATCA, holding that torture clearly "violates established norms of the international law of human rights, and hence the law of nations" and therefore fell within the jurisdiction of the ATCA. *Id.* at 880. With this, *Filártiga* paved the way for the launching of civil suits in the U.S. against perpetrators of human rights violations regardless of the nationality of those involved or where those crimes were committed.

law of human rights" could trigger ATCA jurisdiction,[111] thus swinging open the door to transnational human rights litigation.

However, claimants seeking to bring an ATCA suit against a foreign state face a number of juridical hurdles. First, foreign states as a general rule enjoy immunity before U.S. courts, meaning that claimants need to fit their claim into one of the recognized exceptions to state immunity codified in the Foreign Sovereign Immunities Act ("FSIA").[112] Apart from state immunity, claimants bringing ATCA suits against foreign states may find themselves confronting a number of common law doctrines that may be raised by the defendant state or the court itself to frustrate their claims, such as the political question doctrine, which eventually defeated the claimants' suit in *Hwang*.[113] In matters relating to foreign affairs, and in cases involving foreign states in particular, U.S. courts have continued to cite the political question doctrine to avoid having to substantively seize the issue.[114]

When the *Hwang* lawsuit was launched before the D.C. District Court, the claimants argued that their case fell within the exceptions to state immunity because (1) Japan had explicitly waived its immunity to suit by signing the Potsdam Declaration; (2) Japan had implicitly waived its immunity by committing crimes of a heinous and *jus cogens* nature against the "comfort women," and; (3) the facts of their case fell within the "commercial activity" exception to the FSIA.[115] Finding against the claimants on all three of their immunity arguments, the district court also held that, based on the political question doctrine, it would be inappropriate for the court to adjudicate the case given the span of seventy years since the alleged violations occurred, the complexities of the treaties negotiated, and the treaties' clear intent to conclusively resolve Japan's WWII obligations.[116]

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111. *Id.* at 878.

112. Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602–1611 (2006). The FSIA adopts a restricted approach to state immunity, recognizing that states are immune from suit before U.S. domestic courts unless the facts of the case fall within certain categories of exceptions. For a comprehensive treatment of litigation implicating this act, see KENNETH C. RANDALL, FEDERAL COURTS AND THE INTERNATIONAL HUMAN RIGHTS PARADIGM 90100 (1990). *See generally* BETH STEPHENS ET AL., INTERNATIONAL HUMAN RIGHTS LITIGATION IN U.S. COURTS (2008).

113. STEPHENS ET AL., *supra* note 112, at 337–61. The political question doctrine in essence states that there are some questions or issues that are by their political nature inappropriate for judicial resolution and are more properly allocated to the political branch. In *Baker v. Carr,* the U.S. Supreme Court set out a list of six factors against which the facts of a case should be assessed when determining if an issue is a political question. These factors include whether there is "a textually demonstrable constitutional commitment of the issue to a coordinate political department," "a lack of judicially discoverable and manageable standards for resolution," "the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion," "the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government," "an unusual need for unquestioning adherence to a political decision already made," and "the potentiality of embarrassment from multifarious pronouncements by various departments on one question." Baker v. Carr*,* 369 U.S. 186, 210–11 (1962).

114. STEPHENS et al., *supra* note 112, at 338–49.

115. Hwang v. Japan, 172 F. Supp. 2d 52, 57 (D.D.C. 2001).

116. *Id.* at 64.

The claimants appealed this decision to the D.C. Circuit Court of Appeals in 2003.[117] At the appellate level, lawyers for the claimants repeated their arguments that their claim fell within the FSIA's "commercial activity" exception to state immunity and that Japan had implicitly waived immunity through its commission of *jus cogens* crimes.[118] The court of appeals found that the FSIA would not retroactively apply to acts, including those alleged in *Hwang*, taking place prior to 1952. With respect to the claimants' second argument of implied immunity, the court found that it could not "create a new exception to the general rule of immunity under the guise of an 'implied waiver.'"[119] Accordingly, the court found that it had no grounds to assume jurisdiction over Japan.

In 2003, however, the U.S. Supreme Court held in *Republic of Austria v. Altmann,* a case that related to the confiscation of Jewish property by Nazis during WWII, that the FSIA does retroactively apply to pre-1952 acts.[120] Consequently, the Supreme Court sent the *Hwang* case back to the D.C. Circuit Court of Appeals ("*Hwang II*") for reconsideration in light of *Altmann*.[121] The Court of Appeals again declined to take jurisdiction of the case based on the political question doctrine, grounding its decision in the existence of post-WWII treaties concluded by Japan revealing what the court believed to be a clear intention "that all war-related claims against Japan be resolved through government-to-government negotiations rather than through private tort suits," and the executive's concern that judicial adjudication would disrupt "settled foreign policy of state-to-state negotiation with Japan and disrupt Japan's 'delicate' relations with China and Korea."[122]

True responsibility for the *Hwang* decision, however, belongs with the judiciary. U.S. courts were not in fact constrained by law to decide as they did in the *Hwang* case; rather, their decision stemmed from an *a priori* decision to root themselves in a state-centric paradigm. The *Hwang* decision could, in fact, have gone in a different direction if the *Hwang* courts had chosen to situate themselves in a people-based, rather than state-centric, paradigm.

B. Placing Responsibility Back Where It Belongs

The positioning of U.S. courts within a state-centric paradigm was most clearly demonstrated by the Court of Appeals in *Hwang II*. There, the court recognized that, when negotiating peace treaties, "governments have dealt with . . . private claims as their own, treating them as national assets, and as

117. Hwang v. Japan, 332 F.3d 679 (D.C. Cir. 2003).
118. *Id.* at 681.
119. *Id.* at 687.
120. Republic of Austria v. Altmann, 541 U.S. 677, 698 (2004).
121. Hwang v. Japan, 542 U.S. 901 (2004).
122. Hwang v. Japan, 413 F.3d 45, 52 (D.C. Cir. 2005).

counters, 'chips,' in international bargaining."[123] In other words, individuals do not directly hold rights requiring vindication for harms resulting from inter-state conflict. These rights lie with the states involved and may be used as bargaining "chips" in efforts to resolve the said conflict. The appeals court mirrored the earlier language of the district court, which stated that, "[j]ust as the agreements and treaties made with Japan after World War II were negotiated at the government-to-government level, so too should the current claims of the 'comfort women' be addressed directly between governments."[124] The *Hwang II* court took this state-centric view of international life even further, privileging the stability of inter-state relations over the rights of individuals, by emphasizing that "adjudication by a domestic court not only 'would undo' a settled foreign policy of state-to-state negotiation with Japan, but also could disrupt Japan's 'delicate' relations with China and Korea, thereby creating 'serious implications for stability in the region.'"[125]

The state-centric paradigm within which the *Hwang* courts situated themselves served as the backdrop against which judicial interpretation took place. In the *Hwang* case, this state-centric paradigm lent meaning to how U.S. courts deployed judicial interpretative techniques of context definition, situational assessment and actor constitution in order to arrive at their judicial conclusion. Within this paradigm, the "objective" elements of adjudication, in the form of interpretative tools and relevant legal texts, came together in a persuasive manner to depict and legitimize a specific narrative of the *Hwang* case.

Working within a paradigm that views international life as primarily centered on states, the *Hwang* courts assigned particular value to the historical and post-conflict resolution context of the case. Particularly sensitive to the presence of state and military elements in the case, the courts used judicial tools to highlight the existence of facts relating to those elements. One instance of this is reflected in how the district court defined "commercial" activities when it held that the facts underlying the "comfort women's" complaint did not fall within the FSIA exception for "commercial activity."[126] The claimants urged the court to consider the "comfort women" system as "commercial" in nature, given that private agents had been involved in its organization and that Japanese soldiers had made payments

123. *Hwang*, 413 F.3d at 51.

124. Hwang v. Japan, 172 F. Supp. 2d. 52, 67 (D.D.C. 2001).

125. *Hwang*, 413 F.3d at 52.

126. *Hwang*, 172 F. Supp. 2d at 67 ("The described conduct is unquestionably barbaric, but certainly is not commercial in nature."). The FSIA states that "the commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose." 28 U.S.C. § 1603(a)(3)(d) (2006). This phrase was additionally defined by the D.C. Circuit Court of Appeals in *Princz v. Federal Republic of Germany* as those acts that a "private person" would be able to undertake. *See Princz,* 26 F.3d 1166, 1172 (D.C. Cir. 1994).

to the army, agents, or brothels for the services of comfort women.[127] As observed by L. David Nefouse, the facts as presented by the plaintiffs "suggest that the nature of the activity described would qualify as commercial in nature because of the economic principles of supply and demand, the contractual principles employed by the Japanese, and the fact that the comfort women served under the category of military supplies."[128] The *Hwang* district court declined to view the "comfort women" system as such. By "telescoping" its vision outward, the court encompassed the military context against which the acts took place and concluded that "the challenged conduct 'boils down' to an abuse—albeit an extremely outrageous and inhumane one—of Japan's military power, an activity that is 'peculiarly sovereign in nature.'"[129] Ironically, the Japanese government has more than once publicly relied on the "private" nature of the "comfort women" system to avoid criticism.

Another judicial tool employed by the *Hwang* courts to highlight the State or military context of the case before them was that of framing or fact selection. The court of appeals in *Hwang II* framed the question before the court as one of deciding between conflicting treaty interpretations to determine whether post-WWII treaties intended to conclusively settle all claims relating to WWII. The court determined that it would be inappropriate for the U.S. to interpret Japan's treaties with Korea and China, which were concluded after the 1951 San Francisco treaty between Japan and the Allied Powers.[130] In brief, the issue was framed to emphasize the principles of state sovereignty and non-intervention underlying the state-centric paradigm of international life. As some commentators have observed, however, the *Hwang II* court did in fact engage in a cursory interpretation of these treaties, despite purporting to abstain from resolving conflicting treaty interpretations of third states, by finding that these treaties conclusively addressed all WWII-related private claims including those brought by the "comfort women."[131]

By framing the question in this manner, the *Hwang II* court side-stepped the fact the 1951 San Francisco Treaty—to which the United States was a party—does apply to countries, such as the Philippines, whose nationals were among those bringing the *Hwang* claim. The U.S. Supreme Court made it clear in *Japan Whaling Association v. American Cetacean Society* that the federal judiciary is authorized to interpret treaties and executive agree-

127. *Hwang*, 172 F. Supp. 2d at 5657 (describing the *Hwang* complaint as alleging that the Japanese government's "planning, establishment and operation of a network of 'comfort houses' is a commercial activity that is not subject to sovereign immunity pursuant to 28 U.S.C. § 1605(a)(2).")

128. Nefouse, *supra* note 99, at 564.

129. *Hwang*, 172 F. Supp. 2d at 64.

130. *Hwang*, 413 F.3d at 51 ("Is it the province of a court in the United States to decide whether Korea's or Japan's reading of the treaty between them is correct, when the Executive has determined that choosing between the interests of two foreign states in order to adjudicate a private claim against one of them would adversely affect the foreign relations of the United States? Decidedly not.").

131. *See* Nefouse, *supra* note 99, at 569.

ments despite the fact that these decisions may have foreign policy implications.[132] The 1951 San Francisco Treaty is therefore one that U.S. courts are well positioned to interpret. In addition, it should be noted that the reparation provisions in the 1951 San Francisco Treaty set out the requirements and parameters for later post-WWII reparation agreements concluded by Japan with China and Korea.[133] If the question were limited to whether post-WWII treaties precluded future claims of individuals, the *Hwang* court would be required to undertake an assessment and interpretation of the 1951 San Francisco Treaty, regardless of whether its interpretation would be contrary to that independently reached and offered by Japan, Korea or China.

The state-centric paradigm also influenced the way the *Hwang* courts constituted subjects in terms of their legal rights and obligations. For example, the concept of expectations played a big role in the *Hwang* decisions, both in findings on the FSIA and in use of the political question doctrine. The first time it decided *Hwang*, the court of appeals determined that the FSIA should not apply to events prior to 1952 because this would retroactively disturb the expectation of states who had relied on the U.S. government's then express policy of absolute immunity.[134] When the court of appeals reconsidered *Hwang* in light of the U.S. Supreme Court's *Altmann* decision—which held that the FSIA has retroactive application—it incorporated its concerns about the potential disturbance of state expectations into its application of the political question doctrine. Interestingly, while the concept of state expectations played such a strong role in the rulings of *Hwang,* the U.S. Supreme Court in *Altmann* strongly denied that recognizing sovereign immunity required protecting the expectations of states, stating that "the principal purpose of foreign sovereign immunity has never been to permit foreign states and their instrumentalities to shape their conduct in reliance on the promise of future immunity from suit in United States courts."[135] Why then did the *Hwang* court come out differently from the *Altmann* court?

132. *Hwang*, 413 F.3d at 52 (citing Japan Whaling Ass'n v. Am. Cetacean Soc'y, 478 U.S. 221, 230 (1986)).

133. Articles 1416, San Francisco Treaty of Peace with Japan, 1951, 3 U.S.T. 3169; 136 UNTS 45.

134. Prior to 1952, the U.S. government applied the principle of absolute immunity from suit for foreign nations in U.S. courts. In 1952, the U.S. Department of State changed its position in the Tate Letter, which established the principle of restrictive immunity and set out the commercial activity exception that would later be codified in the FSIA. Accordingly, the Court of Appeals in *Hwang* found that to apply the FSIA's "commercial activity" exception to Japan's pre-1952 activity would be retroactive in nature by creating jurisdiction where none had previously existed. Due to the absence of clear congressional intent that there should be such retroactive application, the court declined to apply the FSIA's "commercial activity" exception retroactively.

135. Republic of Austria v. Altmann, 541 U.S. 677, 696 (2004).

C. Taking Paths of Least Resistance: Judicial Anxiety and Blame-Shifting

For the *Hwang* courts, the state-centric paradigm—consistent with the U.S. executive's position as submitted to the *Hwang* courts—was the path of least resistance. This should not be seen as simple judicial subordination to executive will but should be understood in the context of the particular position occupied by U.S. courts on the U.S. constitutional landscape.[136] While the U.S. Constitution and its tradition of separation of powers would assign foreign policy matters to the executive branch,[137] the ATCA, in seeming contradiction to this judicial tradition, expressly authorizes U.S. courts to serve as forums for victims of human rights violations committed in foreign nations. Though the ATCA effectively authorizes U.S. courts to play a role on the international landscape, U.S. courts have been cautious if not unwilling to take on this role, particularly for historical claims.[138] This fact, however, does not make judicial intervention impossible, impractical, or useless.[139]

In observing the progress of *Hwang* through the U.S. court hierarchy, one may discern the development of judicial anxiety as the court is confronted with the alternative historical narrative presented by plaintiffs. At the first instance, the district court based its decision on mixed grounds, namely on the FSIA immunity exceptions and the political question doctrine. At the appellate level, the court adopted a strictly technical position based on non-retroactivity of the FSIA. After Supreme Court directions to reconsider the case, the court of appeals in *Hwang II* based its decision on the political question doctrine alone. Rather than taking responsibility for any substantive decision, it used the political question doctrine to shift decision-making responsibility to the executive.

So, how may this reading of the *Hwang* cases assist the "comfort women" movement in identifying potential entry-points for mobilization, including future human rights litigation? First, this judicial anxiety may be a result of empathy toward the "comfort women" movement. By spotlighting the

136. *See generally* RANDALL, *supra* note 112; FRANCK, *supra* note 106.

137. This tradition is best encapsulated in the landmark judgment of *Marbury v. Madison,* 5 U.S. 137 (1803), which drew a strict differentiation between matters that are political and those that are judicial in nature. It declared that "the decision of the executive is conclusive" with respect to the political. *Id.* at 166.

138. One commentator suggests that it may be better to seek resolution through a truth and reconciliation commission rather than through judicial avenues. *See* Kristl K. Ishikane, *Korean Sex Slaves' Unfinished Journey for Justice: Reparations from the Japanese Government for the Institutionalized Enslavement and Mass Military Rapes of Korean Women During World War II*, 29 U. HAW. L. REV. 123 (2006).

139. For example, in a suit brought by Holocaust victims and their heirs against Swiss banks for profiting from Nazi persecution of Jews, a U.S. court presided over a 1.25 billion dollar settlement agreement. *See* In re Holocaust Victims Asset Litigation, 105 F. Supp. 2d 139 (E.D.N.Y. 2000). For an account, see Robert A. Swift, *Holocaust Litigation and Human Rights Jurisprudence*, *in* HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY (Michael J. Bazyler & Roger P. Alford eds., 2006). In other Holocaust-related cases, settlements were negotiated at the state-to-state level in the interest of achieving legal peace. *See* In re Austrian and German Bank Holocaust Litigation, 80 F. Supp. 2d 164, 180 (S.D.N.Y. 2000).

U.S. executive's continued unwillingness to actually resolve the claims of "comfort women" and by emphasizing the United States' part in negotiating the unbalanced 1951 San Francisco Treaty, the "comfort women" movement could, in future litigation, persuade U.S. courts to take on the responsibility for resolving these claims themselves.[140] Second, because of the subjective and moral aspects of judicial decision-making, increased popular mobilization prior to and during the judicial process could influence the judiciary to rise above the path of least resistance. Third, the movement could work to delegitimize the state-centric paradigm that served as the primary determinative factor in the *Hwang* outcome.

IV. Human Rights Talk Beyond the Courtroom: Mobilizing Legitimacy, Re-imagination, and Politics

Courts are very often the first site of choice for cause lawyers and activists launching their first salvos, particularly in the U.S.[141] One reason for this is that in the liberal democratic tradition, courts purport to function independently and above the fray of popular politics.[142] As demonstrated in the *Hwang* case, however, courts do not function in a vacuum, apart from the external world,[143] and judicial interpretative processes involve both subjective and objective elements. History has shown, in fact, that the U.S. judiciary has time and again responded to demands of social movements against political and cultural opposition, and the social norms of the day.[144] Building support to legitimate their objectives, social movements have successfully mobilized their claims in such a way as to construct new narratives that persuade formal decision-makers to find in their favor. The "comfort women" social movement has sought to undertake such mobilization through its use of the human rights discourse.

By virtue of its particular position in our global legal and political culture, the human rights discourse remains relevant and useful when used

140. Activists within the movement have initiated discussions on how new litigation may be brought before U.S. courts. For example, during the 2007 World Conference, *supra* note 1, some activists suggested bringing suit against non-state entities and companies involved in the "comfort women" system—rather than the Japanese State—as a way of circumventing the FSIA and the political question doctrine.

141. Joel Handler attributes this to the spate of litigation successes in the 1950s obtained by civil rights groups such as the NAACP and aided by the judicial activism of the Warren Court. *See generally* Joel Handler, Social Movements and the Legal System: A Theory of Law Reform and Social Change (1985).

142. *See* Richard Abel, *Speaking Law to Power: Occasions for Cause Lawyering*, *in* Cause Lawyering: Political Commitments and Professional Responsibilities 87 (Austin Sarat & Stuart Scheingold eds., 1998).

143. This is particularly true in the context of the U.S. judiciary which has been observed by a number of academic commentators as being responsive to popular will, particularly over constitutional issues. *See* Reva Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the De Facto ERA,* 94 Cal. L. Rev. 1323 (2006).

144. *See generally* Jasper & Goodwin, *supra* note 39.

side-by-side with creative and reflexive collective organizing techniques.[145] At the domestic level, Professor Duncan Kennedy has observed how the concept of rights derives its power from the "universal" and "factoid" nature of rights that mediates between politics and facts.[146] By labeling something as a right, one denies that it may be subject to political compromise. This is similarly reflected in the power of human rights talk at the international level.

The concept of human rights purports to protect certain values, rendering them inviolate and immune to the winds of majoritarian political will. With its claims to universality, human rights language clothes new claims and narratives with legitimacy and renders itself transferable across borders, societies, and cultures. It thus serves as a medium for ideas that social movements seek to transfer and popularize across borders, and for building the cross-border networks necessary for transnational cooperation.[147]

Not only does the use of a human rights discourse assist in investing new claims with legitimacy and cross-border comprehensibility, but it also opens up new space within which movements can assert both a *mobilizing* and a *constitutive* function. The latter function has been particularly important for the "comfort women" movement, which seeks not only to advance new claims and counter-narratives but also to facilitate a larger systemic shift from a state-centric paradigm to a people-based paradigm of international life. In the following sections, I examine how the "comfort women" movement used the human rights discourse to access a variety of spaces—semi-formal, informal and political—to mobilize legitimacy behind its claims and counter-narrative and, in so doing, facilitate a transition from a state-centric paradigm to a people-based paradigm.

A. Striking Out on Pathways of Participation Within the International Legal System

In gaining access to various international human rights institutions, the "comfort women" movement has been particularly adept at navigating the dual—national and international—terrain opened up by the human rights discourse.[148] The movement has managed to maintain a particularly sustained presence in three human rights institutions: the International Labor Organization ("ILO"); the United Nations Special Rapporteur for Systematic Rape, Sexual Slavery and other Slavery-like Practices, which was appointed by the U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities; and the U.N. Special Rapporteur for Violence Against Women, appointed by the U.N. Human Rights Commission.

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145. *See, e.g.*, Lobel, *supra* note 12.

146. *See* Duncan Kennedy, *The Critique of Rights in Critical Legal Studies*, *in* LEFT LEGALISM/LEFT CRITIQUE 178 (Wendy Brown & Janet Halley eds., 2002).

147. *See generally* GOODWIN & JASPER, *supra* note 39.

148. *See* Tsutsui & Shin, *supra* note 75.

These institutional pathways enabled the movement to mobilize legitimacy behind its claims and counter-narrative.[149] First, the stories of survivors have been recorded into formal institutional reports. The Special Rapporteur for Violence Against Women explicitly mentioned in her 1996 report that her aim was to "make the voices heard of those women victims of violence whom the Special Rapporteur was able to meet, and who spoke on behalf of all other former 'comfort women' in the Philippines, Indonesia, China, Taiwan (province of China), Malaysia and the Netherlands."[150] The reports of the U.N. Rapporteur contained numerous excerpts from statements of former "comfort women." Activists often cite these reports when seeking to demonstrate the veracity and legitimacy of the movement's claims and stories.[151]

Second, the movement has used these spaces to engage the Japanese State, gain access to information which may assist it in further developing its counter-narrative, and call upon "international actors to bring about a suitable settlement of this question through international pressure."[152] These human rights institutions have actively called upon the Japanese State to respond to the movement's allegations. This not only resulted in Japan's having to issue on record its unsympathetic formal position, but also sometimes resulted in factual confirmations from the Japanese government that could be used by the movement to undermine the state's position.[153]

Acting within these spaces, the "comfort women" movement also managed to assert a constitutive effect.[154] Its participation resulted in the generation of reports, which in turn served as additional resources for the movement itself. For example, the "comfort women" social movement greatly benefitted from the 1992 report of Gay McDougall, then U.N. Special Rapporteur for Systematic Rape, Sexual Slavery and other Slavery-like Practices, as well as from the 1996 and 1998 reports of Radhika Coomaraswamy, then U.N. Special Rapporteur for Violence Against Women.[155] The 2000 Women's Tribunal used these documents in crucial parts of its hold-

149. Tsutsui notes how resort to such pathways within the U.N. system has become a source of contention for many movements adopting a human rights frame and discourse. *Id. See generally* BALAKRISHNAN RAJAGOPAL, INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS AND THIRD WORLD RESISTANCE (2003); Janet Halley, Prabha Kotiswaran, Hila Shamir & Chantal Thomas, *From the International to the Local in Feminist Legal Response to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335 (2006).

150. 1996 Coomaraswamy Report, *supra* note 3.

151. *See* H.R. 121 Soh Statement, *supra* note 24.

152. 1996 Coomaraswamy Report, *supra* note 3.

153. *See* CEACR, Individual Observation Concerning Convention No. 29, Forced Labor, 1930, Int'l Labor Conf., Japan 2003 [hereinafter 2003 CEACR Observation].

154. Scheingold and Sarat recognize how structure and agency are intertwined. *See* Austin Sarat & Stuart Scheingold, *Introduction: The Dynamics of Cause Lawyering-Constraints and Opportunities, in* THE WORLDS CAUSE LAWYERS MAKE: STRUCTURE AND AGENCY IN LEGAL PRACTICE (Austin Sarat & Stuart Scheingold eds., 2005).

155. *See* 1998 McDougall Report, *supra* note 4; 1996 Coomaraswamy Report, *supra* note 3.

ing on Japan's state responsibility to make reparations to the "comfort women."[156] Activists also used these documents in their lobbying efforts before various national and regional legislatures.[157]

Accessing and enlisting the aid of international organizations, however, has come with its own set of limitations. While the growth and spread of human rights discourses has indeed made significant disruptions in the state-centric paradigm of international life, these institutional pathways are built on historically entrenched power configurations that privilege state actors over non-state actors.[158] States retain a constitutive monopoly over international law through their capacity to enter into legally binding treaties.[159]

Human rights regulatory procedures established by states are limited to advisory functions and are seldom empowered to legally bind states. On top of this, many feminist scholars criticize the failure of mainstream human rights institutions to sufficiently respond to the needs of women, while specialized institutions created specifically to address women's issues are endowed with significantly fewer powers.[160] Take, for example, the findings and opinions of Special Rapporteur Gay McDougall. In her 1998 report, Special Rapporteur McDougall concluded that the Japanese government was under a legal obligation to prosecute perpetrators and provide compensation to survivors.[161] This report was then submitted to the Commission for Human Rights and the Sub-Commission on Prevention of Discrimination Against Minorities ("U.N. Sub-Commission"), responsible for appointing these positions or "special mechanisms" and defining their specific mandates.[162] Though the U.N. Sub-Commission strongly endorsed the Special Rapporteur's call for national and international responses, it did not recommend any specific steps apart from the report's widespread dissemination.[163] Even if it had called for specific action, states would not have been compelled to comply with the Sub-Commission's recommendations.[164]

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156. *See* 2000 Women's Tribunal Judgment, *supra* note 14.

157. *See* H.R. 121 Soh Statement, *supra* note 24.

158. For an account of the importance of background bargaining rules, see Duncan Kennedy, *The Stakes of Law, or Hale and Foucault*!, 15 LEGAL STUD. F. 327 (1991).

159. *See* Reparation for Injuries Suffered in the Service of the United Nations (advisory opinion) [1949] I.C.J. 174 (recognizing the distinction between state and non-state entities). For another account of how states continue to be primary subjects of the international community due to the historical origins and nature of the international system, see CASSESE, *supra* note 6, at 71–80.

160. For a summary of these different critiques, see Engle, *supra* note 10, at 555–75.

161. *See* 1998 McDougall Report, *supra* note 4.

162. For a detailed account of these special procedures, see STEINER, RATNER & GOODMAN, *supra* note 7. Functions undertaken are limited to investigation of thematic or geographic issues, the soliciting of responses from governments, and the preparation of reports and recommendations.

163. *See* ECOSOC, Sub-Comm'n on Prevention of Discrimination and Protection of Minorities, *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Fiftieth Session,* at 50, U.N. Doc E/CN.4/Sub.2/1998/45 (Sept. 30, 1998).

164. *See* STEINER, RATNER & GOODMAN, *supra* note 7, at 58–148.

The unequal bargaining power established by the background rules of international law affects not only the implementation stage of norms and claims but also the constitutive stage. For example, during the drafting process of the U.N. Basic Principles, U.N. independent experts and activists recognized these principles as reflective of existing international law. Special Rapporteur McDougall stated that the draft principles and their accompanying study reflect that "a State's responsibility for breaches of international obligations implies a similar and corresponding right on the part of individuals to compensation for such breaches."[165] However, when the U.N. Basic Principles arrived at the adoption stage before the Commission of Human Rights, a significant number of state representatives took pains to emphasize their non-legally binding nature.[166] For example, the representative from Chile emphasized that these principles were not "legally binding but rather identified mechanisms and procedures," that would "serve as a guide and useful tool for victims and their representatives, as well as for states in the design and implementation of their own public politics on reparations."[167] Ironically, Japan was one of the states that co-sponsored these principles.[168]

B. Organizing, Re-Imagining, and Transgressing Within Informal Spaces

Projects that seek to dislodge dominant paradigms are seldom successful if channeled solely through formal and semi-formal avenues due to deep power asymmetries stemming from entrenched bargaining inequalities.[169] Within these avenues, the claims of the disempowered are often suppressed, distorted or co-opted even when their vindication is professed. The "comfort women" movement has therefore endeavored not to limit its struggles to formal or semi-formal spaces of authority. Indeed, it has sought to experiment with creative techniques aimed at mobilizing legitimacy behind its claims and disrupting dominant paradigms of thought, such as the state-centric paradigm of international life.

In 2000, the "comfort women" movement organized a people's tribunal, more popularly known today as the 2000 Women's Tribunal.[170] The tribu-

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165. 1998 McDougall Report, *supra* note 4.

166. U.N. GA, Third Comm'n (Social, Cultural and Humanitarian), 60th sess., 39th mtg., U.N. Doc. A/C.3/60/SR.39 (Dec. 8, 2005).

167. *Id.*

168. *Id.*

169. *See* Boaventura de Sousa Santos & Cesar A. Rodriguez-Garavito, *Law, Politics, and the Subaltern in Counter-Hegemonic Globalization*, in LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY 1, 16 (Boaventura de Sousa Santos & Cesar A. Rodriguez-Garavito eds., 2005).

170. For academic commentaries on the 2000 Women's Tribunal, see Christine M. Chinkin, *Women's International Tribunal on Japanese Military Sexual Slavery*, 95 AM. J. INT'L L. 335 (2001); Alexis Dudden, "*We Came to Tell the Truth*": *Reflections on the Women's Tribunal,* 33 CRITICAL ASIAN STUD. 591 (2001); Shreyas Jayasimha, *Victor's Justice, Crime of Silence and the Burden of Listening: Judgment of the Tokyo Tribunal 1948,* L. SOC. JUST. & GLOBAL DEV. J. (2001); Kim Puja, *Global Civil Society Remakes History:* "*The Women's International War Crimes Tribunal 2000,*" 9 POSITIONS 611 (2001); Yayori Matsui, The

nal used human rights discourse to enact simultaneously an exercise of translation and transgression. It was bound to translate and work within the rules underlying the dominant state-centric paradigm. To deny or repudiate this would compromise the tribunal's claim to moral, if not formal, legitimacy. In doing so however, it subversively sought to construct a bridge of logic that would lead to the movement's claims for direct reparations to survivors. Organization of the tribunal was an act of defiance, conducted in the language of law and human rights, which sought to challenge and replace settled state-centric notions of individual agency and state sovereignty.[171] It demonstrated to formal courts and decision-makers that there was an alternative route that could be taken without abandoning the old order.

i. *Organizing the 2000 Women's Tribunal*

Throughout the history of civil society activism, NGOs and movements have established peoples' tribunals.[172] These tribunals are composed of distinguished legal figures convened to consider and deliver reasoned judgments about issues neglected by formal authorities. Peoples' tribunals have been a means by which NGOs and civil society have sought to draw attention to issues and highlight more just interpretations of the law. Most of these tribunals have been established by NGOs on an ad hoc basis to deal with specific issues. There have also been permanent tribunals, such as the Italy-based Permanent Peoples' Tribunal established in the 1970s, which considered a number of issues including the Soviet invasion of Afghanistan and Indonesia's annexation of Timor Leste, then known as East Timor.[173]

The idea of convening a peoples' tribunal to sit in consideration and judgment of the crimes committed against the "comfort women" was first conceived in 1998 during the Asian Solidarity Conference. Preparations for the mock trial took over two years, with preparatory conferences held in Tokyo and Seoul in 1998 and 1999, respectively.[174] In 2000, the mock

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Historical Significance of the Women's International War Crimes Tribunal 2000: Overcoming the Culture of Impunity for Wartime Sexual Violence (July 1, 2001), http://www1.jca.apc.org/vaww-net-japan/english/womenstribunal2000/histsig.pdf [hereinafter Matsui, Historical Significance]; Yayori Matsui, How to End Impunity for Wartime Sexual Violence? The Meaning of Women's International War Crimes Tribunal 2000 on Japan's Military Sexual Slavery (July 2002), http://www1.jca.apc.org/vaww-net-japan/english/womenstribunal2000/impunity.pdf [hereinafter Matsui, How to End Impunity].

171. Similarly, Francesca Poletta observes how Southern civil rights activists, by openly defying the law and claiming for themselves "unqualified" rights, "forged a political vision in contrast to that of mainstream civil rights organizations as well as white segregationists." The power of rights discourse lies in its ability to inspire and motivate imagination about what is possible. Francesca Poletta, *The Structural Context of Novel Rights Claims: Southern Civil Rights Organizing 1961–1966,* 34 Law & Soc'y Rev. 367, 402 (2000).

172. *See* Arthur W. Blaser, *How to Advance Human Rights Without Really Trying: An Analysis of Nongovernmental Tribunals*, 14 Hum. Rts. Q. 339 (1992).

173. *See id.*

174. Chinkin details the preparations:

trial finally took place in Tokyo.[175] A month before it was held, the Japanese government was invited to participate. However, as no answer was ever received from the Japanese government, the mock Tribunal appointed an *amicus curiae* for the Japanese government.[176] During the trial, ten national prosecution teams from North and South Korea, China, Taiwan, the Philippines, Indonesia, Malaysia, East Timor, the Netherlands, and Japan made presentations.[177] On the judicial bench sat Gabrielle McDonald, the former President of the International Criminal Tribunal for the former Yugoslavia; Carmen Mari Argibay, a judge from the International Criminal Tribunal for the former Yugoslavia; Professor Christine Chinkin, an international law professor at the University of London; and Professor Willie Mutunga, the Executive Director of the Kenya Human Rights Commission.[178] The proceedings ran for five days during which sixty-four survivors gave testimony before the Women's Tribunal.[179]

The judgment ran more than two hundred pages, half of which recorded in detail the personal experiences of former "comfort women" during and after WWII. The first part of the judgment was dedicated to examining individual criminal guilt. Notably, Emperor Hirohito was among those found guilty. The second part of the judgment focused on examining Japan's state responsibility. Responsibility was placed on Japan for making reparations to former "comfort women" in the form of an apology, compensation, rehabilitation and satisfaction.[180]

> The preparations for the tribunal then became an international process, while remaining based in Asia. Preparatory conferences were held in Tokyo in December 1998 and in Seoul in February 1999, where the International Organizing Committee for the tribunal was formed. The International Organizing Committee comprises three groups: the organizations of victimized countries/areas (China, Taiwan, the Philippines, Indonesia, and South and North Korea), represented by Yun Chung-Ok; the organization of the offending country (Japan), VAWW-NET Japan, represented by Yayori Matsui; and the International Advisory Committee, represented by Indai Lourdes Sajor, Asian Center for Women's Human Rights based in the Philippines. The International Advisory Council includes members from North and South America, Australia, Africa, Europe, and Asia.

Chinkin, *supra* note 170, at 336.

175. 2000 Women's Tribunal Judgment, *supra* note 14.

176. Chinkin, *supra* note 170, at 338.

177. 2000 Women's Tribunal Judgment, *supra* note 14.

178. Interview with Yasushi Higashizawa, Professor, Meijigakuin University Graduate Law School (July 23, 2007).

179. Puja, *supra* note 63, at 612.

180. 2000 Women's Tribunal Judgment, *supra* note 14, ¶ 1086. Under the International Law Commission's "Responsibility of States for Internationally Wrongful Acts," full reparation for harm caused consists of "restitution, compensation and satisfaction, either singly or in combination," where restitution is to "re-establish the situation which existed before the wrongful act was committed," compensation is "financially accessible damage," and satisfaction would refer to "an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality." International Law Commission, "Responsibility of States for Internationally Wrongful Acts," G.A. Res. 56/83, Annex, arts. 34–36 (Dec. 12, 2001), *available at* http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf. For a comprehensive treatment of the kinds of remedies that international law applies to human rights violations, see DINAH SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW (2005).

ii. *Re-Imagination and Paradigm Shifts by the 2000 Women's Tribunal*

The judgment of the 2000 Women's Tribunal sought to address the most successful defense launched by the Japanese State against the movement's claims before U.S. and Japanese courts. It challenged the argument that individuals do not have the right to make claims directly against the state and the argument that the post-WWII treaties concluded between states had conclusively resolved all questions related to the war, including questions on victim reparations.[181]

In addressing the first argument, the 2000 Women's Tribunal was faced with the need to address the problem of retroactivity in applying modern day principles of victim reparation to crimes committed in the past.[182] This problem is clearly demonstrated in the judgment. In seeking to establish existence of a violation, the judgment referred to decidedly pre-1949 sources of law.[183] However, when deciding on reparations due, the tribunal referred to relatively recent modern day norms such as the draft U.N. Principles.[184] The tribunal resolved this dilemma by resorting to the concept of "continuing violations," a popularized theme in human rights discourse.[185] It found that the Japanese State had breached and continued to breach its obligation to prosecute and punish those responsible for the sexual enslavement of "comfort women." The Japanese government was thus obligated to pay reparations for its continuous failure to issue an apology, pay compensation and cease to oppose the survivors' claims.[186]

With respect to the argument that post-WWII treaties were conclusive as to states' obligations, the 2000 Women's Tribunal cited a number of reasons why these treaties did not extinguish the right of survivors to claim reparations from the Japanese State. A number of these arguments kept well within the boundaries of the state-centric paradigm. For example, the tribunal noted that, based on classical principles of treaty interpretation, treaties do not bind States that are not party to them and that a fundamental change of circumstances may change the treaties' original intent.[187]

In addition to its more conventional findings, the 2000 Women's Tribunal used human rights language to construct other arguments aimed at destabilizing the state-centric paradigm. For example, the tribunal created an exception to the rule that a state, in concluding post-conflict treaties, may choose to waive the rights of its nationals. It stated that this rule did not apply to facts that amount to crimes against humanity in which the "the harm is to the individual members of the targeted civilian populations

181. *See* 2000 Women's Tribunal Judgment, *supra* note 14, ¶¶ 877-1085.
182. *See id.* ¶ 879.
183. *See id.* ¶¶ 509-672.
184. *See id.* ¶¶ 1054-1066.
185. *See id.*; *see also* SHELTON, *supra* note 174, at 460.
186. *See* 2000 Women's Tribunal, *supra* note 14, ¶¶ 972–98.
187. *See id.* ¶¶ 1039–1042, 1049–1050.

and the perpetrator may be the individual's state itself."[188] It based this position in human rights theory and human rights practice, "where the individual can bring a claim on her or his own behalf before an international body after exhausting local remedies for the violation incurred."[189] The tribunal also created exceptions through normative hierarchy shifts by appealing to the superiority of human rights norms. It argued that, where the wrongs amounts to violations of *erga omnes* obligations at international law—or obligations owed to the entire international community—individual states do not have the ability to waive such obligations.[190]

iii. *The Legacy of the 2000 Women's Tribunal: Penetrating Formal Spheres of Authority*

Professor Christine Chinkin has observed that by working within an informal space, the 2000 Women's Tribunal was able to devise reparatory measures that went beyond mere compensation, which are the only measures of redress provided by most domestic and international institutions, including the International Criminal Court ("ICC").[191] Furthermore, given the widespread destruction of evidence by the Japanese government, the tribunal's judgment played an important role in recording the stories of survivors. Being free from restrictive evidence rules also facilitated the tribunal's compilation of witness testimonies and a more flexible citation of sources.[192]

On Women's Day of 2001, the 2000 Women's Tribunal sent its judgment to the U.N., calling for it to consider establishing an international tribunal to sit in judgment over the crimes committed against the "comfort women."[193] In addition, tribunal organizers made the tactical decision to issue the judgment a year later at The Hague.[194] Presenting the judgment as if it had come from the International Court of Justice ("ICJ"), the organizers declared that their intention was to confuse the public in the hope that, with time, the mock trial's decision would attain the legitimacy of an ICJ judgment.[195] Patricia Sellers, the lead prosecutor for the mock trial, has pointed out how the 2000 Women's Tribunal's decision can in fact be used under formal law, despite its informal status. She cites Article 38(c) of

188. *Id.* ¶ 1035.
189. *Id.*
190. *See id.* ¶¶ 10411045.
191. *See* Chinkin, *supra* note 170, at 340.
192. *Id.* The tribunal's judgment also played an important role in the "collection and compilation of a historical record" from the personal accounts of witnesses, reports of NGOs and U.N. documents. *Id.*
193. *See* Dudden, *supra* note 164.
194. *See* 2007 World Conference, *supra* note 1 (author's notes describing the presentation of Patricia Sellers) (on file with author).
195. *See id.*

the ICJ's statute, which refers to the writings of eminent jurists as sources of international law.[196]

Despite its purely informal character, portions of the tribunal's judgment have found their ways into formal spaces of authority—particularly the international human rights institutions within which the movement had previously interacted. Repeated contact often results in a collaborative partnership between a social movement and international human rights institution since both exert mutually legitimizing effects on each other.[197] Participation of the said movement in the international organization's processes lends legitimacy to the organization's democratic nature. Such symbiosis and repeated interaction blur the line between formal and informal spheres of authority and participation. For example, a 2003 International Labour Organization report cited portions of the 2000 Women's Tribunal's judgment despite objections from the Japanese representative.[198]

Finally, the movement has, over the past year, launched a series of successful legislative campaigns before various national legislatures. In 2007, the movement secured the adoption of U.S. House Resolution 121, which specifically called upon the Japanese government to do the following: "formally acknowledge, apologize, and accept historical responsibility," "help to resolve recurring questions about the sincerity and status of prior statements," "clearly and publicly refute" any claims that the "comfort women" system never occurred, "educate current and future generations about this horrible crime," and "[follow] the recommendations of the international community."[199]

In November 2007, the lower house of the Dutch Parliament passed a similar resolution, calling upon Japan to fully recognize the fate of the "comfort women," take full responsibility for the war crimes of the Japanese military, and offer formal apologies and financial damages to survivors.[200] It also called on Japan to amend its history textbooks to accurately reflect the crimes committed against these women during WWII and to ensure that its representatives do not issue any statements that are inconsistent with or contradict the 1993 apology.[201] In the same month, the Canadian Parliament passed motion 291 calling upon the Japanese government to affirm its commitment to the 1993 apology, refute any denials of the "comfort women" system, acknowledge that the Japanese army was in-

196. *See id.*

197. *See* John W. Meyer, John Boli, George M. Thomas & Francisco O. Ramirez, *World Society and the Nation-State*, 103 Am. J. Soc. 144, 171 (1997).

198. CEACR, Int'l Labour Org., Individual Observation Concerning Convention No. 29, ¶¶ 810 (1997), *available at* http://www.awf.or.jp/pdf/ILO_1997.pdf.

199. H.R. Res. 121, 110th Cong. (Jan. 31, 2007).

200. *Dutch Parliament Urges Japan to Compensate "Comfort Women,"* People's Daily Online, Nov. 21, 2007, http://english.peopledaily.com.cn/90001/90777/6306488.html.

201. *Id.*

volved in this system and issue a formal and sincere apology in the Japanese legislature.[202]

In December 2007, the European Union Parliament passed a strongly worded resolution calling on the Japanese government to formally "acknowledge, apologize, and accept historical and legal responsibility, in a clear and unequivocal manner" for its army's involvement; "implement effective administrative mechanisms to provide reparations" to victims and the families of those deceased; "remove existing obstacles to obtaining reparations before Japanese courts;" and "refute publicly" any claims that this system never occurred.[203]

C. Engaging in a Politics of Rights and Transnational Legislative Lobbying: A Case Study of U.S. House Resolution 121

In many ways, Resolution 121 may be seen as a milestone after six years of failed litigation before U.S. courts. Its passage appears to herald a coming of age of the movement—for both the national U.S. movement as well as the broader transnational movement. The "comfort women" movement drew on years of experience to mobilize around adoption of U.S. House Resolution 121. In the next section, I undertake an examination of the role played by human rights discourse in the "comfort women" movement's legislative campaign in the United States.

i. *The Beginnings of U.S. House Resolution 121*

U.S. House Resolution 121 was not the first legislative lobbying effort launched in support of the "comfort women" before the House of Representatives. Representative William Lipinski made the first attempt at passing such a resolution in 1997.[204] Subsequent attempts at passing such a resolution were spearheaded in 2000, 2001, 2003, 2005, and 2006.[205] In September 2006, the House Committee on Foreign Affairs unanimously passed the resolution but the draft resolution was not introduced into the U.S. House of Representatives.[206] Given that it passed unanimously at the committee level, the draft resolution would have only needed to pass by voice vote if it had been introduced.[207]

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202. *See* H.C. Off'l Rep. (Hansard) No. 142 (Nov. 28, 2007) (Can.), *available at* http://www.alpha-canada.org/Motion291/CanadianParliamentCWMotion20071128.pdf.

203. 2007 E.U. "Comfort Women" Resolution, *supra* note 5.

204. *See HR 121*, Korean Council Newsletter, *supra* note 42.

205. On those occasions, the resolution was sponsored by Representative Lane Evans who formed a close working relationship with the Washington Coalition for Comfort Women Issues.

206. *See Interview with Ok Cha Soh, President, Washington Coalition for Comfort Women Issues,* Korean Council Newsletter No. 19 (Korean Council for the Women Drafted for Military Sexual Slavery by Japan, Seoul, S. Korea), 2007 (on file with author).

207. *See id.*

The following year, on January 31, 2007, U.S. Representative Michael Honda led seven representatives in proposing another draft resolution.[208] Honda and his family had been victims of the mass indiscriminate internment of Japanese-American citizens during WWII.[209] Congressman Honda drew on this personal history when presenting the resolution to his colleagues and to the public.[210]

When the text of U.S. House Resolution 121 was up for consideration before the House Committee, the Washington Coalition for Comfort Women managed to secure hearings so that committee members could hear firsthand the testimonies of former "comfort women." On February 15, 2007, in what the Coalition's leader described as an "historic hearing," three former "comfort women," Lee Yong-Soo, Kim Kun-Ja, and Jan Ruff O'Herne, were flown to the United States to give live testimony before the House Subcommittee on Asia, the Pacific, and the Global Environment.[211] While the resolution was being debated before the House, activists also generated a grassroots campaign at the community level throughout the United States, focusing in particular on Asian-American communities. Grassroots campaigns were led by locally situated groups, the Korean American Voters Council in New York, HR 121 California Solidarity in California, and the Washington Coalition in Washington.[212]

The movements at the transnational level focused their own lobbying efforts on providing support for U.S. House Resolution 121. From Korea, letters were written to U.S. Representatives and to newly elected House Speaker Nancy Pelosi. Coordination also took place to ensure the appropriate amount of political pressure. For example, the Washington Coalition requested Korean NGOs to avoid taking too condemnatory a stance.[213] In response to requests from the U.S. movement, the Korean movement arranged for a former "comfort woman" to visit the U.S. and assist in the campaign. As a result, Lee Yong-Soo went to the U.S. for a three-week campaign and stayed to watch the resolution being unanimously passed. During this time, Korean media and U.S. mainstream media interviewed Lee and covered her stay in the United States. She met with the San Francisco mayor and other representatives and she spoke at local meetings.[214]

208. The draft resolution's legislative sponsor, Lane Evans, retired for health reasons, but not before ensuring that sponsorship and lobbying was handed over to Honda, a representative from California. *See HR 121*, Korean Council Newsletter, *supra* note 42.

209. *See id.*

210. *See* Norimitsu Onishi, *A Congressman Faces Foes in Japan as He Seeks an Apology*, N.Y. TIMES, MAY 12, 2007, at 4.

211. *See HR 121*, Korean Council Newsletter, *supra* note 42.

212. *See id.*

213. *See id.*

214. *See id.* To mobilize grassroots support, a Supporters' Evening for Passing House Resolution 121 was held at the J.J. Grand Hotel in Los Angeles' Koreatown on July 13, 2007, as were meetings at Korean-American churches.

ii. *The Role of Strategy and Opportunity in the Campaign for U.S. House Resolution 121*

The movement adopted a number of different frames in launching its legislative campaign. Aside from a human rights frame, the movement also focused on the responsibility of the United States as one of the signatories to the 1951 San Francisco Treaty, which had become the focus of Japan's main arguments against claims for reparations. In addition, the movement made historical references to how the U.S. had made reparations to Japanese-Americans who had been indiscriminately interned during WWII.

While outside of formal congressional debate, activists, politicians, and the media employed a human rights frame, the resolution was largely argued within an historical frame when debated in Congress.[215] For example, U.S. Representative Mike Honda responded in a press interview to accusations that he was a traitor to his Japanese ancestry by arguing that race had nothing to do with his support of U.S. House Resolution 121. It was for him an issue of human rights.[216] However, he was less insistent in a speech he gave before the House Committee after the resolution was passed. There he recognized that the resolution's aim was to recognize the sufferings of the "comfort women" and to "encourage and provide for reconciliation."[217] In this same congressional speech, Representative Honda made reference to how the U.S. itself had undertaken steps by passing the Civil Liberties Act of 1988 to address its indiscriminate internment of Japanese-American citizens.[218] In defining and condemning the violation, human rights discourse was used. In focusing on what was to be done, however, the historical frame took over.

Activists leading the 2007 campaign would attribute their success not only to well-planned and strategic efforts, but also to backlash attracted by their use of a human rights discourse, because this backlash could be seized upon as a political opportunity. When quizzed by a U.S. reporter, former Prime Minister Shinzo Abe replied "[t]he 20th century was a century in which human rights were infringed upon in numerous parts of the world, and Japan also bears responsibility in that regard. I believe that we have to look at our own history with humility and think about our responsibility."[219] Abe's finger-pointing attitude with respect to a matter labeled as a human rights violation attracted outrage amongst the U.S. public and in

215. *See* 153 CONG. REC. H8870 (July 30, 2007).

216. *See* Onishi, *supra* note 210.

217. Press Release, Rep. Mike Honda, Rep. Honda Statement for the Congressional Record Regarding Comfort Women Resolution (Jan. 31, 2007), *available at* http://www.house.gov/list/press/ca15_honda/COMFORTWOMEN.html.

218. *See id.*

219. Lally Weymouth, *A Conversation with Shinzo Abe,* WASH. POST, Apr. 22, 2007, at B3.

turn put pressure on U.S. politicians to exercise their vote according to the views of the public.[220]

iii. *Re-Visiting and Taking Stock of the Movement's Transnational Legislative Campaign*

The move from adjudication to legislative lobbying may be due to a number of causes.[221] First, the claims of the "comfort women" movement do not easily fit into "legalese," particularly because the movement's specific claim for reparations is still relatively novel and arguably would be hard to make as a matter of positive law because of the length of time since the actual events occurred. Second, judicial rationalizing by precedent brings with it the threat of future cases and the common judicial concern about opening floodgates. Third, domestic judicial remedies have not developed with systemic mass human rights violations in mind; their strict categorization of remedies is cast as an "either/or" choice, with either massive compensation on the one hand or nothing at all on the other. Fourth, activists and social movement commentators have often observed how legislative procedures are more media-friendly and publicly accessible than judicial or administrative proceedings, due to the non-technical and non-specialist language used.[222] Legislative campaigns make good media stories; the dry procedure of judicial trials very often does not. Lastly, the legislature is one of the many entry points into the State. In the case of the United States, with the judiciary having proved unsympathetic, the movement subsequently targeted the legislative process.

What is the impact of U.S. House Resolution 121? Addressing threats by the Japanese ambassador about the detrimental effects that this resolution would have on Japan-American relationships, U.S. Representative Mike Honda replied, "It's not going to hurt our relationship diplomatically or trade-wise."[223] On a separate occasion, Honda further recognized that his "resolution [was] non-binding," and that "[w]e're not telling the Japanese government what it has to do."[224]

In addition, does U.S. Resolution 121 remain faithful to the claims of the movement, which called not only for apology but also for compensation and other forms of redress? Both the American and Canadian legislative resolutions avoided calling for direct reparation to the victims and instead focused mainly on the need for an official apology and acknowledgement of the facts. Nevertheless, the U.S. resolution does refer to the need for Japan

220. *See* Norimitsu Onishi, *Asked for Apology, Japan Plays For Time in Sex Slavery Standoff,* N.Y. TIMES, June 27, 2007, *available at* http://www.nytimes.com/2007/06/27/world/asia/27japan.html.

221. Abel, *supra* note 142, at 87.

222. *See, e.g.*, GORDON, *supra* note 12.

223. Blaine Harden, *Japan Warns U.S. House Against Resolution on WWII Sex Slaves,* WASH. POST, July 18, 2007, at A15.

224. Edward Epstein, *Rep. Honda Riles Japan Over Brothel Apology: Proposed House Measure May Have Driven Exchange Over WWII "Comfort Women,"* S.F. CHRON., Mar. 13, 2007, at A6.

to follow "the recommendations[225] which could be interpreted to include various U.N. reports calling for direct and full reparations to the survivors. In the case of the U.S. "comfort women" resolution, even while activists argued in the language of human rights before the House Committee, the majority of committee members referred to "reconciliation" and the need for Japan to come to terms with its past.[226]

Interestingly, the Dutch and European Union resolutions explicitly call for direct reparations, including compensation, to the victims. The European Union Parliament resolution adopts an explicit human rights frame: "the right of individuals to claim reparations from the government should be expressly recognized in national law."[227] The different frames adopted are significant because, while subtle, they are in fact different translations or narratives of the "comfort women" movement's claims. Researchers of social movements have pointed out how all too often, original claims are co-opted or compromised when translated into legal language—frustrating or subverting the objectives of the movement.[228] Frames that emphasize historical harm shift the focus away from the individual or group injury and back to the nation and state. Pursuant to this frame, remedial steps are required for the state to come to terms with its history, not to address the harms of its victims. Projects fashioned under this rationale are contingent on the needs of the state and seldom maintain a firm commitment to individual reparation. Such frames of historical harm are in fact consistent with the dominant state-centric paradigm that privileges the state rather than a humanistic paradigm of international life.[229]

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225. H.R. Res. 121, 110th Cong. (2007).

226. For criticism of reparations based on reconciliation rather than legal rights in another context, the Civil Liberties Act of 1988, see generally Natsu Taylor Saito, *Justice Held Hostage: U.S. Disregard for International Law in the World War II Internment of Japanese Peruvians—A Case Study*, 40 B.C. L. Rev. 275 (1998); Eric Yamamoto, *Beyond Redress: Japanese Americans' Unfinished Business*, 7 Asian L.J. 131 (2000).

227. 2007 E.U. "Comfort Women" Resolution, *supra* note 5.

228. Lobel points out that "cooptation analysis is not unique to legal reform but can be extended to any process of social action and engagement" including that in the civil society arena. *See* Lobel, *supra* note 12, at 987-88. Lobel also recognizes the positive role that law can play in facilitating social change by balancing out power inequalities as "[o]rder without law is often the privilege of the strong. Marginalized groups have used legal reform precisely because they lacked power." *Id.*

229. An example of the danger of using an historical frame can be gleaned from the Japanese-American internment redress experience itself. The U.S. Congress passed the Civil Liberties Act of 1988 in response to a grassroots domestic movement for redress. This Act assigned compensation to the individuals involved. The U.S. government also issued official apologies. Though it was widely hailed as a "successful" social movement, recent studies have been more critical of its claims to success. Eric Yamamoto has examined how the U.S government, in constructing its redress program, emphasized that Japanese-Americans were patriots and good citizens, and that it was seeking to amend an aberration of history. Adopting a backward-looking historical frame failed to address systemic issues that led to the harm, and which may still exist. Applying this to the "comfort women" issue, an historical frame fails to recognize the fact that systemic factors of gender, race, and class discrimination led to the establishment of the system. Human rights discourse, through group-based language of racial discrimination and gender discrimination is better equipped to address systemic issues. *See* Yamamoto, *supra* note 226; *see also* Saito, *supra* note 226.

Conclusion: Reflections and Post-Human Rights

Drawing on the work of the "comfort women" social movement, I have sought to present a more hopeful vision of how human rights may, when used hand-in-hand with creative organizing techniques, assist the struggles of the marginalized and oppressed. In order to realize the full potential offered by human rights discourse, movements should not confine themselves to spaces of formal decision-making. Rather, movements should also aim to use a human rights discourse to legitimate their claims by organizing within semi-formal and informal spaces.

Due to its globalized nature, the human rights discourse opens up new terrain at the local and international levels. However, given pre-existing power imbalances embedded in these spaces, movements will not be able to seize and re-appropriate power with equal ease. For example, while the "comfort women" movement has been favorably received in domestic legislative arenas, U.S. courts avoided giving the movement its day in court by deploying technical jurisdictional tools. It may be that, had these legislative victories been obtained before the launching of judicial proceedings, the courts might have come to more favorable judicial decisions. U.S. courts have historically been both sensitive and responsive to claims made by social movements, such as the civil rights movement.[230] Given this, it may have been more valuable for the movement to use a human rights discourse to mobilize within informal spaces before launching a frontal attack in U.S. courts.

What is particularly striking about the "comfort women" movement is its whole-hearted embrace of a human rights discourse. A number of commentators have criticized what they see as an over-reliance on human rights language by activists.[231] Professor David Kennedy has pointed out how a focus on human rights strategies blinds one to alternative strategies.[232] One may wonder whether a human rights discourse is in fact able to accurately capture and address, for example, how nationalism and militarism systematically result in a sexualization of the female body. Just how far can we stretch human rights language without distorting its logic and rationale?

It is noteworthy that the "comfort women" movement has expressly called for the need to move beyond a legalistic human rights approach.[233] During the 2007 World Conference on Japanese Military Sexual Slavery, attendees spent a significant amount of time exploring non-legal cultural or historical strategies. For activists or lawyers used to working within a

230. One significant difference between the "comfort women" movement and the civil rights movement is that while the former is organized around victims residing in other countries and appeals to international norms, the latter involved U.S. nationals and appealed to U.S. domestic constitutional norms.

231. *See, e.g.*, Kennedy, *supra* note 11; Baxi, *supra* note 11.

232. *See* Kennedy, *supra* note 11, at 3–35.

233. *See* 2007 World Conference, *supra* note 1.

human rights discourse, it takes imagination and determination to move out of one's comfort zone. Recent efforts by the "comfort women" movement reflect attempts to do just that. For example, the Japanese NGO VAWW-Net established the Women's Active Museum ("WAM"), which aims to educate the Japanese public about the "comfort women" issue.[234] A Canadian NGO, the Association for Learning and Preserving the History of WWII in Asia ("ALPHA"), has published a resource guide for high-school teachers on WWII issues in the Asia-Pacific region. Since 2003, ALPHA has also organized educational tours for Canadian history teachers to various war sites in China during which they are exposed to, among other things, the "comfort women" issue.[235] In addition, activist filmmakers like Dai Sil Kim-Gibson have made documentary films on "comfort women" which are accessible to and aimed at the general public.[236] The movement has also discussed the need to develop critical pedagogical methods to approaching history that encourage activism and empathy among students.[237] A number of activists holding academic positions have incorporated the "comfort women" issue into their courses and many of their former students have become active members of the movement.[238]

The "comfort women" movement has come a long way. From beginning as an isolated group of survivors and academic researchers, it has become a transnational movement skilled at navigating local, regional, and international spaces and crafting frames of persuasion and mobilization. In terms of advancing a counter-narrative, the movement appears to have successfully penetrated the political consciousness of various countries as demonstrated by its recent transnational legislative victories. In addition, the fact that the 2000 Women's Tribunal's judgment has been cited with approval by formal decision-making authorities shows how the movement has contributed to facilitating a paradigm shift in the minds of those authorities.

However, with respect to the movement's ultimate objective of getting the Japanese State to make reparations directly to the "comfort women," success seems relatively far off in the future. Parallels may be drawn at this point to movements such as that against the death penalty in America, a movement whose goals seem far removed from the present. Such movements appear to differentiate between long-term goals of effecting policy change and short-term goals of documenting violations for posterity.[239] Such a distinction between short-term and long-term goals may be seen in

234. WAM: Women's Active Museum on War and Peace, http://www.wam-peace.org/eng (last visited Nov. 21, 2008).

235. About Canada ALPHA, http://www.torontoalpha.org/aboutus.html (last visited Nov. 21, 2008).

236. *See, e.g.*, SILENCE BROKEN: KOREAN COMFORT WOMEN (Dai Sil Productions 1999).

237. *See* 2007 World Conference, *supra* note 1.

238. *See* Statement of Michiko Nakahara, 2007 World Conference (on file with author).

239. *See* Austin Sarat, *Between (the Presence of) Violence and (the Possibility of) Justice: Lawyers against Capital Punishment, in* CAUSE LAWYERING, *supra* note 138, at 317.

the work of the "comfort women" movement as it seeks to document the experiences of the "comfort women" while advancing claims for reparation against the Japanese State.

With these cumulative short-term successes, the "comfort women" movement has slowly negotiated power shifts vis-à-vis the Japanese State. However, in this period of power transition, there is also a need to step back and critically reflect on the very nature of this power transition. Whose narratives are being replaced and whose are being excluded? In comparison to other groups victimized by the Japanese military during WWII, the "comfort women" movement has been particularly successful in gaining access to the international arena and crossing borders. In its determination to present a united front, the movement may find itself suppressing the dissenting voices of survivors. For example, a number of NGOs sought to prevent survivors from voluntarily accepting compensation from the AWF.[240] In addition, even as the movement gains publicity, it risks eclipsing the voices of other groups rather than undertaking cross-movement ventures. For example, the Korean "comfort women" movement has been resistant to working with the sex work movement in Korea due to the former's desire to maintain a moral distinction between forced and voluntary sex work.[241] The desire to maintain such distinctions results in lost opportunities for cross-movement solidarity against larger systemic injustices of gender and class discrimination.

Regardless of the work still to be done, the "comfort women" movement has travelled an exciting road, one that has been punctuated with learning experiences as well as unexpected successes. The movement has developed creative and reflexive strategies, such as its multifaceted deployment of human rights discourse. While its long-term objective of obtaining reparations from the Japanese State seems far away, the movement is patient. In the words of a survivor at the 2007 World conference, "I will live to 200 years, until I see the Japanese government repent."[242]

240. *See* Wada Haruki, *The Comfort Women, the Asian Women's Fund and the Digital Museum,* Asia-Pac. J.: Japan Focus, Feb. 1, 2008, http://www.japanfocus.org/products/details/2653.

241. *See* H.R. 121 Soh Statement, *supra* note 24.

242. 2007 World Conference, *supra* note 1 (author's notes quoting undisclosed participant).