bers of psychiatrists and psychologists have devoted parts of their practices to preparation of crimes compensation reports and giving evidence before decision-making bodies on the subject. Appeals against first instance crimes compensation awards have proliferated. This has made easier the claim by politicians and bureaucrats intent on reducing expenditure that the domain of victim compensation has been 'taken over' by lawyers and mental health professionals.

In New South Wales and Queensland, changes to crimes compensation legislation in 1995 and 1993 respectively have pursued the objectives of reducing expenditure and securing greater consistency of decision making by the more benign means of imposing a cap on awards for different categories of injuries sustained as a result of criminal conduct through the use of 'Tables of Maims'. A NSW Joint Select Committee on Victims Compensation in May 1997 issued its 'First Interim Report' entitled 'Alternative Methods of Providing for the Needs of Victims of Crime'. As yet there is no indication of whether the Committee will recommend a scheme similar in any material way to that now existing in Victoria.

Significance of changes

What has distinguished the development in Victoria is that the prime motivator for making application for compensation (and so for making contact with mental health professionals to facilitate applications), the award of compensation for *pain and suffering,* is what has been removed. This is the most serious vice of the legislative change. While undoubtedly some unmeritorious awards have mistakenly been made to those who have managed to dupe Crimes Compensation Tribunals, the overwhelming number of applications have been brought by victims who have been able to prove, on the balance of probabilities, that they have been adversely affected, to varying degrees, by criminal behaviour. Certain categories deserve special mention. Victims of childhood abuse and of adult sexual and domestic physical assault have figured in increasing numbers as applicants. This has been a positive step from the point of view of public health. For many applicants the award by an organ of state, especially in those jurisdictions where a hearing in person has tended to take place, has been highly significant. It has marked a symbolic and real acknowledgment on behalf of the community that what victims have said has happened to them has been believed and is acknowledged as having had an adverse impact on their lives. It has provided, too, a modest but tangible token of the community's awareness of the pain and indirect financial penalty suffered by victims of many kinds of criminal conduct. Sometimes the money has been spent on security measures for a dwelling in which a crime has taken place; sometimes it has enabled a person to obtain alternative housing or even move into rented housing instead of living on the street; on other occasions it has enabled a small holiday or the purchase of some small 'luxury' possession that for the first time has allowed an indulgence in an otherwise victimised existence. It has usually been money well spent.

The Victorian Government has said nought in its statements in defence of its disembowelling of awards for pain and suffering in relation to other justifications traditionally advanced on behalf of the scheme which until then had received bipartisan parliamentary support since 1972. Such government schemes allow egalitarian receipt of compensation by victims of crime, rather than advantaging those either financially placed to be able to bring civil actions, or who have been victimised by a person in possession of assets and so able to pay damages ordered by a court for trespass to the person.

It is to be hoped that the allure of the savings undoubtedly already being reaped by the mean-spirited Kennett Government's overhaul of the crimes compensation system in Victoria will not attract ready emulation in other jurisdictions.

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INTERNATIONAL LAW

Confronting crimes against humanity

Former Filipino comfort women are bringing an action against the Japanese Government. MYINT ZAN considers international legal issues relevant to their case.

Ustinia Dolgopol's article 'Cold Comfort' ((1996) 21(4) *Alt.LJ* 156, is a superb analysis of the legal and non-legal dilemmas and difficulties the 'comfort women' from various Asian countries, who were sexually enslaved by segments of the Japanese military during the Second World War, have had to encounter in their search for acknowledgment, compensation and justice.

Recently this writer heard on a BBC news report that former Filipino 'comfort women' have finally lodged a law suit in a Japanese court to obtain monetary damages from the Japanese Government. The comfort women are seeking compensation from the Government for the actions of its soldiers which had used them as 'sex slaves' during the Japanese occupation of the Philippines. The sexual enslavement of the comfort women took place more than 50 years ago and they only recently made public their harrowing experiences.

Not being in any way involved with the case which apparently is now in Japanese courts, the writer is unaware of the details of the actual legal proceedings. However, from the standpoint of a student of international law, the comfort women's case raises interesting legal issues.

One of the substantive issues that could be considered is whether international laws were breached by Japanese soldiers during the Second World War in forcing the Filipino women to act as their sex slaves. Concomitant to this issue is what other contemporary developments in international human rights law should be taken into consideration.[1]

At the end of the Second World War the Tokyo tribunals which tried major Japanese war time leaders ruled that they had breached, among others, laws and customs of war regarding treatment of prisoners, non-combatants and the civilian population. The Tokyo tribunals ruled that the 1929

Geneva Conventions on humanitarian laws (which were, at the end of the Second World War and after the Tokyo trials, further elaborated by the 1949 Geneva Conventions to which currently more than 180 countries — virtually the whole world — are state parties) were customary international laws which bound war time Japan.

Was sexual enslavement of the women of the local population by the forces of the occupying power prohibited under the 1929 (pre-war) Geneva Conventions? Even if sexual enslavement as such was not specifically prohibited by the 'letter' of the conventional and customary international laws at that time, this writer submits that the actions of the Japanese soldiers in sexually enslaving Filipino comfort women violated the 'spirit' of those laws.

International human rights law has greatly expanded both substantively and procedurally since the end of the Second World War. For example, the Statute of the International Tribunal to try serious violations of humanitarian laws in the territory of the former Yugoslavia states that 'systematic rape' can constitute a 'crime against humanity'. A Japanese court considering the analogous situation of the Filipino comfort women is by no means bound by a Statute which was enacted to try more recent crimes committed in a different era and in another continent. But it should take judicial notice of recent international developments which affirm and consolidate the international legal principle that the sexual degradation of women in times of conflict and war is a grave breach of international humanitarian law.

Do the Filipino comfort women have 'standing' in international law against the current Government of Japan for the actions committed by its soldiers more than 50 years ago?

In the Nuremberg and Tokyo trials, individuals were found to be guilty of violations of international law. In attributing individual responsibility and punishment to individuals the Nuremberg Tribunal observed that 'crimes against international law are committed by men (sic) and not by abstract entities and it is by punishing individuals that the rules of international law are enforced'.

In the obverse case of individual 'rights' or 'standing' vis-a-vis states, international law has, albeit slowly and selectively, moved towards empowering the individual. In contemporary international human rights jurisprudence and practice 'standing' has been accorded to individuals not only against foreign states but also in certain limited circumstances (such as under the European Convention on Human Rights and the Optional Protocol to the International Covenant on Civil and Political Rights) even to nationals against their own state. Hence 'individual standing' of the Filipino comfort women to sue the state or Government of Japan is not an insurmountable legal hurdle in contemporary international practice.

In most domestic legal systems and especially in civil cases where compensation or reparations are sought there are laws or statutes stipulating limitation periods beyond which claims cannot be sustained. The sexual enslavement of the Filipino comfort women took place more than half a century ago. But this fact in itself is no bar for them to lodge their suit for compensation. In the 1960s the United Nations General Assembly passed resolutions determining that there would be no limitation period in attributing responsibility and in punishing those who had committed war crimes and crimes against humanity. If the enslavement of the Filipino comfort women is seen in the context of crimes against humanity, their civil claims for damages against Japan should not be 'time barred'.

Finally, should the current Japanese Government be responsible and pay damages for the actions of its soldiers who, under a different administration, had committed the wrongs against the Filipino women? Since at least some, if not almost all, of the Japanese soldiers who had sexually enslaved the Filipino women are, if not already dead, virtually impossible to trace, identify and individually sue, it remains for these aggrieved women to sue the current Japanese Government itself.

The international law concept of state responsibility entails that a state or government can be held internationally responsible for the internationally wrongful acts of its officials, including soldiers, even if (according to some cases decided by international tribunals in the pre-second World War era) they had acted 'outside the scope of their duties'. And the fact that the current Japanese Government did not 'employ' them is no defence for shunning responsibility or payment of compensation. The international law principle of government succession is that, generally, the rights and obligations of predecessor governments devolve on successor governments.

Overarching all these legal issues is a moral one: the necessity and indeed the duty of the Japanese Government and the Japanese courts to own up to Japan's war time actions. The current administration of Prime Minister Hashimoto appears to be retreating from the stand taken by its immediate past two Prime Minsters who had rightly apologised to their Southeast Asian neighbours for Japan's conduct during the Second World War. In contrast, the current administration seems more conservative and recalcitrant on this issue of acknowledging and apologising for Japan's past actions.

Recently, Saburo Ienaga, an elderly Japanese Professor won a partial victory in the Japanese Supreme Court. He had fought a long and brave legal battle against the Japanese Government's censorship of school text books dealing with Japan's war time atrocities overseas.[2]

It is hoped that in the case of the former Filipino comfort women's search for acknowledgment and justice, the Japanese court or courts concerned will reach a decision which not only conforms with international legal principles but is also morally appropriate and responsible.

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References

1. I am not aware of the status of international law in the Japanese domestic legal system. Hence, the issues considered here may not be directly applicable to the proceedings instituted in the Japanese courts.
2. *Age*, 1 November 1997, p.26.