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Monica E. Eppinger

Saint Louis University School of Law

Karen Knop

University of Toronto - Faculty of Law

Annelise Riles

Cornell University - Law School

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Diplomacy and Its Others: The Case of Korean Comfort Women

Monica Eppinger, Karen Knop & Annelise Riles

Abstract

How can critical legal feminists find a way to respond, truthfully and ethically, to the horrors of wartime sexual slavery institutionalized in the Japanese military's system of "Comfort Women," while recognizing, at the same time, that claims on behalf of victims of sexual violence are often appropriated by nationalist, imperialist, and capitalist agendas? A first step is to understand how the bewildering range of political, legal, and cultural interventions that constitute the Comfort Women incident collide with one another, refashion one another, and give one another energy. Part of a larger project on the place of multi-situational law in an equally multi-situational politics, this brief presentation, as a very first step, identifies what we term the diplomatic style and analyses its collision with the constitutional law style in a landmark 2011 judgment of the Constitutional Court of Korea.

The Court found the Korean government liable for violating the constitutional rights of former Comfort Women because it has not used the dispute settlement procedure available under a 1965 bilateral treaty to seek compensation from the government of Japan. This result is in marked contrast to a 2010 Philippine decision on the equivalent issue as regards Filipina Comfort Women. In keeping with the reluctance of courts in many countries to intervene in foreign affairs, the Supreme Court of the Philippines held that the "political question" doctrine in domestic law prevented it from considering the wisdom of the Philippine government's position that all postwar claims against Japan have been settled, and held, furthermore, that a state has no duty of diplomatic protection under international law.

We show that distinguishing diplomacy from other law/politics concerns that account for courts' hands-off approach to foreign affairs helps us to think about the implications of the Korean Constitutional Court's judgment. By injecting itself into diplomacy, and by taking on the responsibility for managing diplomatic tactics, the Court also makes itself relevant—and arguably vulnerable—to the constituencies to which diplomats have long been vulnerable. Whereas scholars often tend to treat law as a funnel for politics, the relationship of law to politics becomes (as with the relationship of diplomacy to politics) more of an eddy than a funnel. It is on this point, more than on the linkage of international rights to constitutional duties, that we perceive a glimmer of feminist hope in the decision.

Key words: *Comfort Women, Sexual Slavery, Feminism, International Law, Diplomatic Protection, Diplomacy, Constitutional Law, Human Rights, Foreign Affairs, Constitutional Court of Korea, Supreme Court of the Philippines*

I Introduction

The context

We begin with some recent episodes, legal, political, scholarly and diplomatic, that give a sense of the bewildering range of events, forums, languages and audiences that constitute the

“Comfort Women incident”:

- The Tokyo Women’s Tribunal stages a fictional continuation of the postwar Tokyo Tribunal trial of Japanese war crimes. Tensions emerge between feminist activists from different countries over the scope of the trial.
- A Comfort Women statue is erected outside the Japanese embassy in Seoul and weekly rallies are staged at the site.
- The efforts of South Korean feminist activists to meet with their North Korean counterparts to pursue the latter’s claims, which are not covered by the 1965 treaty between South Korea and Japan, lead to fines against them by the Korean government.
- A Women’s Action Museum is created by Japanese feminists to counter official Japanese views and educate the Japanese public.
- Memorials commemorating the suffering of Comfort Women are erected in various U.S. cities, and Japanese diplomats make efforts to pressure local officials to remove these memorials, resulting in political controversy in the United States.
- An art exhibition in New York City, coinciding with the visit to New York of Japanese Prime Minister Shinzo Abe, features authentic recruitment posters used by Japan to recruit Korean Comfort Women.
- A photographic exhibition in Tokyo featuring the faces of living Comfort Women results in political controversy; and when the Nikon corporation, which owns the gallery, attempts to shut it down for fear of damage to its corporate image and potential violence, a Japanese court orders Nikon to allow the exhibition to go forward.
- A 2007 non-binding resolution by the United States House of Representatives calls on Japan to compensate the victims of war-time sexual slavery, and a 2014 statement attached to a House spending bill calls on the U.S. Secretary of State to seek resolution of the issues raised in the 2007 resolution.
- A similar non-binding resolution is passed by the European Parliament.
- In 2012 the Korean foreign minister gives a high-profile speech to the UN General Assembly concerning the need for compensation for Comfort Women.
- A UN human rights report finds Japan liable for crimes against humanity under international law.
- A Tokyo district court orders the government to release additional documents related to

war-time sexual slavery.

- Japanese scholars collect these and other documents and make them available worldwide by posting them on the Internet.
- Japanese former soldiers, now in their final years, come forward to tell stories about their experience of the Comfort Women system to the Japanese press.
- Then U.S. Secretary of State Hilary Clinton's reported statement that the proper term for the victims should be "female sexual slaves" and not "Comfort Women" sets off a diplomatic firestorm between the United States and Japan, but apparently gets less attention in Korea.

So much is happening. And yet from another point of view, nothing is happening, nothing is resolved. Even activists at the center of this controversy admit exhaustion, a desire to change the subject. And yet just as the issue of the Comfort Women seems to fade from the stage, it pops up again, in another venue, in a different genre, with different protagonists and even different antagonists.

Our interest as critical legal feminists

As critical legal feminists, we approach this subject from the standpoint of our concern with finding a way to respond, truthfully and ethically, to the horrors of sexual slavery; and, at the same time, our concern with how claims on behalf of victims of sexual violence often get appropriated by nationalist, imperialist, and capitalist agendas. A first step, in our view, is to understand the politics of the present: How do these multiplying political, legal, and cultural interventions crash into one another, bleed into one another, refashion one another, and give one another energy? This presentation is part of a larger project in which we hope to describe the place of multi-situational law in an equally multi-situational politics of responses to war-time sexual slavery and to propose some feminist strategies in response.

Two styles

In our view, the "Comfort Women incident"—now at least several decades old—troubles the familiar view of law as a funnel for politics, in which all that activity "out there" ultimately pushes in the same direction, toward vindicating human rights. We see in this incident a far more chaotic interaction of law and politics. The goal for this presentation, as a very first step, is simply to put on the table what we term the diplomatic style and to examine its interaction with the constitutional law style in the Constitutional Court of Korea's landmark 2011 judgment concerning the rights of so-called Comfort Women.

In 2006, former Korean Comfort Women brought an action against the Korean Minister of Foreign Affairs and Trade Legal Representative for failure to take diplomatic action to pursue

compensation from Japan. The Constitutional Court in 2011 held the government liable for violating the constitutional rights of former Comfort Women because it had not done enough to seek compensation through diplomacy from the government of Japan. Specifically, Korea had not used the dispute settlement provisions in a bilateral treaty with Japan on post-war compensation. The innovativeness of the Constitutional Court's decision contrasts with the 2010 decision of the Supreme Court of the Philippines on the equivalent issue regarding the rights of Filipina Comfort Women. Consistent with the reluctance of judges in many countries to intervene in foreign affairs, the Philippine court held that it could not question the wisdom of the Philippine government's position that all postwar claims against Japan have been settled. In the aftermath of the Korean Constitutional Court's judgment, the Korean diplomatic corps has come under severe criticism from the Korean NGO community (on both the right and on the left); it is now fashionable to attack Korean diplomats as out of touch predominantly male elites, and as collaborators with a government that is itself a collaborator with Japan.

Legal scholars do not tend to focus on what is distinctive about diplomacy, as opposed to either law or politics, as one factor in courts' hands-off approach to foreign affairs. Our aim here is to draw attention to diplomatic style and, through the Korean Constitutional Court's judgment, to think about the consequences of subjecting it to the constitutional law style.

II Law, politics, diplomacy

Diplomatic protection

In international law, diplomatic protection is the procedure used by a state to secure protection for its nationals and to obtain reparation for an internationally wrongful act inflicted on them by a foreign state. The traditional premise is that the wrong is done to the state of nationality, not to the individual national. It follows that her state alone decides whether to exercise diplomatic protection. The state need not take into account the significance of the victim's injury, her views with regard to whether diplomatic protection should be sought or the reparations to be obtained, nor need it transfer any compensation it receives to her. The UN International Law Commission's Draft Articles on Diplomatic Protection confirm this *status quo*, but recommend that all of these factors be considered. In the *Vinuya* case, brought on behalf of Filipina Comfort Women in the Philippines and rejected by the country's Supreme Court, the Court took the traditional position on diplomatic protection. To similar effect, it cited the government's authority, when negotiating a peace treaty or settling international claims, to deal with private claims as its own, set them off against other concessions, and generally use them as bargaining chips.

Judicial views of diplomacy

Before courts in a number of countries, individuals have argued that the government has not only a right, but a duty, to exercise diplomatic protection when the wrong done to its national is a violation of fundamental human rights. Arguments have relied variously on international, constitutional, and administrative law. Even when some legal basis for requiring

the government to act has been found, however, courts have been reluctant to specify what the government must do.

More generally, courts rarely intervene in the government's conduct of foreign relations. Various types of legal doctrines insulate foreign affairs from judicial scrutiny. The Philippine Supreme Court in *Vinuya* applied the "political question" doctrine, originated in U.S. law, which is most often associated with concerns about the separation of powers and the absence of discoverable or manageable legal standards. The Philippine Supreme Court held that the question of whether the Philippine government should espouse its nationals' claims against a foreign government was a foreign relations matter, which the Constitution assigned to the political branches. Accordingly the Court could not question the wisdom of the executive's decision to waive all claims of its nationals for wartime reparations against Japan in the peace treaty.

Courts' reluctance to pronounce on foreign affairs also flows from their views of diplomacy. The concern is well captured in a passage from the Supreme Court of the United States, quoted by the Philippine Supreme Court in *Vinuya* and also by a U.S. district court that dismissed a claim against the Japanese government brought in the United States by Comfort Women: foreign relations are "delicate, complex, and involve large elements of prophesy ... They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility." The Supreme Court of Canada has similarly described the context as "complex and ever-changing circumstances," emphasizing in that particular case that the plaintiff was under the control of a foreign government, it was unclear whether a request for his repatriation would be effective, and the impact of such a request on Canadian foreign relations could not be properly assessed by the Court. While recognizing a constitutional right to request diplomatic protection, the Constitutional Court of South Africa invoked the notion of expertise to justify giving the government wide discretion in best determining how to deal with the complexity of such requests.

Diplomatic style

Diplomatic technique entails its own "set of communicative and conceptual routines." Drawing on interviews by one of us with several practicing U.S. diplomats, as well as on her own experience in the diplomatic corps, we offer here a preliminary sketch of the diplomatic style and associated diplomatic techniques in order to think about the opportunities created by its collision with law.

When diplomacy's techniques are surveyed as a body, we discern a style marked by at least three characteristics. The first is restraint. As a general rule, diplomatic technique aims to reassure, to cool, to make predictable. Inflammatory moves are deployed only rarely and purposefully, as isolated, calculated exceptions. The mark of restraint correlates with diplomacy's preoccupation with peaceful methods and outcomes. Restraint also comes from constraints in form that guide diplomacy's communicative and conceptual routines. Diplomacy utilizes a relatively limited universe of communicative tools, aimed at a limited set of intended interlocutors.

Thus, diplomacy is also constrained by the kind of actors that inhabit its communicative universe: primarily governments and intergovernmental organizations. This in turn limits the kinds of action or response that can pragmatically be requested. This limiting factor is significant, leading to a second hallmark of diplomatic style, its pragmatism. Diplomacy is results-oriented: it gets results by talking, and it is finely tuned to asking for only what the interlocutor might be able to deliver. Pragmatism -- a calculation of what can be gained within the relational context and taking into account situated knowledge -- pervades calibration and formulation.

In this respect, diplomacy focuses less on doctrinal foundations and more on the practical. The *what*, so central to law (in the sense of “what is the harm” or “what is the right”), is not obligatory. In that respect, moves familiar from law may not even occur in diplomacy. The diagnosis is adapted to the actors involved and may avoid assessing blame or fault if more can be accomplished by finding an account that saves face, for example. Eschewing the *what* for the context of *who* and *whom* is another part of diplomatic technique, and lends some of the flexibility that is part of diplomacy's pragmatic style.

The flexibility that pertains to diagnosis also extends to the remedy, or -- more aptly stated -- to the means of addressing a problem. Concentrating on the *who* rather than the *what* question leaves open another key factor in diplomatic flexibility. Assessing one's own capacities and opportunities and the relational context is an integral part of formulating a response.

Pragmatism shapes a third characteristic of the diplomatic style, what we might term its historicity or “presentism.” Diplomacy prioritizes the present over the past as a target of available action. “What's done is done,” one diplomat put it in an interview. “You shouldn't be too focused on history.” Going a step further, diplomacy's claims to traffic only in the present involves its own technique: de-selecting certain histories encoded in the present and labeling them “past,” and admitting others as features of the “present.” This implicit historiography -- de-selecting or relegating -- is an attempt to edit “the past” out of certain present instantiations and not others.

The judgment

The controversy between the Korean Comfort Women plaintiffs and their government was precisely and narrowly about the proper tactics of diplomacy. Korea and Japan disagree as to whether a 1965 bilateral agreement concerning post-war compensation (the “Agreement”) extinguished the complainants' rights to claim damages from Japan in their capacity as Comfort Women. The government of Korea maintains that these claims have not been settled. The issue in the case therefore was whether it was constitutional for the government to have failed to use the process provided for in the Agreement to resolve outstanding disputes to pursue the complainants' rights to claim damages from Japan.

Under the Agreement, Japan was to supply South Korea with Japanese products and services totaling US\$ 300 million (the equivalent of the annual GDP of South Korea at that time) and extend up to US\$ 200 million in loans to South Korea for the procurement of Japanese

products and services, and the two states confirmed that claims relating to property, rights, and interests of the two states and their nationals were “settled completely and finally.” Should any dispute concerning interpretation and implementation arise, the Agreement provided that it should be settled through diplomatic channels and, failing that, through arbitration. Japan’s position is that the Agreement extinguished all rights of individuals to seek wartime compensation, while Korea takes the position that the settlement does not extend to “unlawful acts against humanity.” In 2005, Korea officially asserted that the rights of the Comfort Women were among those not affected by the settlement of claims in the Agreement.

There was thus agreement between the government and the plaintiffs on the plaintiffs’ right to compensation from Japan. The issue was narrowly about one particular means, namely, the process available under the Agreement. Given the uncertainty associated with arbitration, the Korean government had decided not to claim damages from Japan. Instead, it provided the victims, on its own, with financial assistance and compensation, while focusing international attention continuously on

a more important and fundamental issue: calling on the Japanese government for thorough fact-finding, formal apology and reflection, and proper history education.

In its 2011 judgment, the Korean Constitutional Court rejected this strategy and found for the Comfort Women plaintiffs. The Court held that a dispute about interpretation under the Agreement existed, and that the Agreement required that it be pursued first through diplomatic channels and, failing that, through arbitration. Taken together with the Korean Constitution, the Agreement created a duty in the government to do so. The Court relied on the Preamble to the Constitution and Articles 2(2) and 10. Article 2(2) refers to the state’s duty to protect citizens abroad as prescribed by law; and Article 10 of the Constitution reads: “All citizens shall be assured of human worth and dignity and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals.” In the Court’s view, the Comfort Women plaintiffs’ claims not only implicated property claims, but involved the constitutional guarantee of human worth and dignity. Although it was the Japanese government that directly violated the fundamental rights of the Comfort Women, the Korean government was liable for disrupting the settlement of their claims for damages against Japan and the restoration of their human worth and dignity because it had not clarified the substance of the claims and had employed the broad term “all claims.”

In response to the decision, the Korean Ministry of Foreign Affairs “has made two formal proposals (oral statements) to the Japanese government to hold bilateral negotiations to determine whether the Agreement extinguished the ‘Comfort Women’s’ right to claim compensation toward the Japanese government. There has been no formal response from Japan.”

III Breaking through the boundary between law and diplomacy

By claiming diplomacy is not their forte, and by insisting repeatedly that courts should be hands off when it comes to diplomatic concerns, courts often make assumptions about the negative potential of diplomacy. Intervening legally in diplomatic disputes is akin to sticking a pin into a watch: the inner workings are so complex that anything could happen. Hence courts perceive themselves as powerless to legally mandate a result that would tip the hand of their own nation's diplomats and force them to take a particular course of action.

In contrast, and unlike the Philippine Supreme Court in *Vinuya*, the Korean Constitutional Court did not invoke the "political question" doctrine. Nor, more specifically, was it deterred by the high-stakes complexity of diplomacy. The Constitutional Court stated:

even if the nature of diplomatic actions that require strategic choices based on understanding of international affairs is taken into account, it is nevertheless hard to conclude that an extremely unclear and abstract reason such as the possibility of a "destructive dispute" or "strained diplomatic relations" qualify as pertinent reasons for disregarding legal remedies for the complainants facing serious risks of basic rights violation.

The Court applied a standard constitutional law style proportionality analysis to the government's duty to act, listing as the relevant factors (a) the significance of the infringed fundamental rights, (b) the urgency of a legal remedy for violation of rights, (c) the possibility of a legal remedy, and (d) consistency with critical national interests.

The Court rejected the government's argument that even if the infringed rights were fundamental and the victims' advancing age made the violation urgent, it would be difficult to impose a duty to act if there were no chance of a legal remedy. In the words of one commentator, the Constitutional Court ordered the government "to go for it" unless the chance of success was zero. The Court was thus involved in diplomatic assessments, holding that the possibility of obtaining compensation "should not be foreclosed" in light of the circumstances of the signing of the Agreement, and the appalled reactions within Korea and internationally to the unprecedented violation of women's rights by Japan.

The Constitutional Court's approach is in line with the International Law Commission's recommendations that the exercise of diplomatic protection take account of the injured person's perspective: the significance of her injury and her view as to whether diplomatic protection should be sought. According to the Court, "In this case, if the victims are willing to take the chance of finally having their claim for damages against the Japanese government denied, the respondent should fully consider the intent of the victims." At the same time, the concurring opinion of Justice Cho, Dae-Hyun put the chance of denial high, but went further:

Therefore, the Korean government not only has the duty to resolve the unconstitutionality of the Agreement by taking diplomatic or arbitration procedures against Japan pursuant to Article 3 of the Agreement, but also has to declare its responsibility to fully repay the damages caused by the Agreement by preventing the complainants from exercising their right to claim damages.

Moreover, it is barely possibly that the complainants' disrupted exercise of right to claim

damages against Japan will be resolved through diplomatic talks or arbitration measures, which are rather likely to result in vain hope and frustration, so it should be further emphasized that the Korean government is obligated to fully compensate for the complainants' claims against Japan.

In other words, because the issue in the case is Korea's wrong and not Japan's, Korea is ultimately responsible for compensation.

The Constitutional Court's decision that Korean diplomats must represent the interest of individual Korean citizens, in the way a lawyer represents the interests of her client, is at odds with the holistic weighing that underlies the restraint visible in diplomatic style. It is also at odds with the diplomat's pragmatic orientation, which carefully considers the likelihood of success against the possible costs of action. And whereas diplomacy achieves many of its effects by creatively tailoring the tactics to the *who* of the diplomatic incident, the Court's decision does not contemplate this flexibility.

The Korean court not only offered positive standards for how to conduct diplomacy, but weighed in with positive pronouncements about the benefits for Korean-Japanese relations. In contrast to the diplomat's value of reassuring the other party and cooling down heated relations between them, the Court concluded with its own diplomatic strategy:

it would be more constructive to the future of a sincere Korean-Japanese relationship and consistent with truly major national interest to call on the Japanese government to take on its legal responsibility toward the victims by making efforts to share recognition of historical facts, thereby deepening mutual understanding and trust between the two countries and their peoples ...

Thus the ultimate significance of this decision, in our view, is that it heralds a new era in which the diplomatic style is beholden to the (public) law style. Law and diplomacy are no longer silent alternatives, along with politics, in a singular field. Law now reigns supreme (at least insofar as diplomacy is concerned). Call it *Marbury v Madison* for a global era.

IV Limitations

In Korea, the Constitutional Court decision has been hailed by some activists, yet appears to be fairly irrelevant to others. The decision is just one point, one play in the game—no more or less interesting than the many others proliferating in Korean and international civil society with which we began.

Although the Korean Constitutional Court's judgment may be embraced as a great leap forward for human rights, it is also limited and limiting in many respects common to public law litigation. For some activists, at least, the terms of the legal debate are too narrow; they edit out the complexities and contradictions that make this issue alive for them in the first place. The Court's holding is very focused on monetary compensation, and monetary compensation from one principal party, the Japanese government. In contrast, there have been many diverse and creative attempts by Korean NGOs to pursue other kinds of remedies.

Indeed, feminist legal scholars have long debated the limits of financial compensation for gender-based harms of various kinds. They have argued that financial compensation may serve certain symbolic as well as economic functions, but that it ultimately is only a placeholder for a much larger kind of redress and in many respects narrows and depoliticizes gender-based harms.

Likewise, the Constitutional Court's decision does not provide guidance about how to distinguish (morally, logically, legally) between female sexual slavery and female sexual labor, particularly under conditions of great economic hardship—a problem now exploited by right-wing groups in Japan who insist on referring to Comfort Women as “prostitutes” rather than as “sexual slaves,” and an issue of concern to some feminists in Korea who dismiss the notion that redress must turn on a factual finding of physical coercion. The decision's focus on violations of fundamental rights seems to slice off the many controversies involving sexual labor, or coerced labor of any kind, that are part of our present politics. Moreover, the decision's simple recounting of the historical facts glosses over many legitimate historical controversies, controversies exploited in various ways by the many *who's* in the chaotic politics surrounding this case.

On the one hand, the constitutional law style is, in fact, capable of capturing some of this complexity because it contemplates interveners, NGOs, and other activists organizing around the litigation. However, because the Korean Constitutional Court's decision must focus on *Korea's* omission to act, it does not afford room for other kinds of questions about the *who* of this controversy. For instance, who is “the Japanese government”? And who else is responsible other than Japan? What responsibility do the United States and other allies bear for the foreclosure of certain issues in the 1965 treaty? What linkages might one see between this harm and other similar harms committed by other states, other *who's*, including the United States and Korea? How should one understand this incident in relationship to more structural forces such as colonialism, class, and rural inequality? These are questions that can be asked in the diplomatic style.

On the other hand, the *who's* in diplomacy are primarily governments and intergovernmental organizations, and thus the wide range of other voices included by the constitutional law style is not part of diplomacy's set of interlocutors. Nevertheless, the diplomatic style understands itself as linked to politics in much more complex, multi-dimensional, and precarious way than law does. Press reports, demonstrations, art movements—these are all things diplomats on the ground are encouraged to “report” back to headquarters as part of their briefings, to become local experts in. Indeed, one of the elements of the diagnosis of a diplomatic issue is whether the issue has appeared in the media or is getting popular attention. This does not mean that diplomats “represent” the public. Often these popular “pokes” are more “irritants,” to use Gunther Teubner's term, than justifications for action. And how diplomats respond to these irritants often has unintended consequences. (For instance, efforts by Japanese diplomats to remove a Comfort Women monument in a New Jersey community with a large Korean-American population before a visit to New Jersey by Japanese legislators - arguably to avoid

giving the legislators an opportunity to make inflammatory remarks – backfired terribly in the U.S. media as a story about arrogant Japanese intrusion in domestic U.S. affairs.)

The point, however, is that diplomacy and social movements are sensitive to one another, vulnerable to one another, uneasy with one another, in a way that law does not imagine itself to be so vulnerable to constant political destabilization from without. From this point of view, the situated, provisional stance of the diplomatic might ironically suggest a more minimal shutting down of alternative meanings and issues—and a deeper problematization of the question of *who* than would either traditional activist politics or traditional constitutional law.

V Conclusion

What the Constitutional Court may or may not recognize fully is that it is but one force among many in a highly volatile incident that keeps on going. The effects of its decision reach far beyond those intended by the Court, at least as set forth in its mandated remedies. The decision is part of a new turbulent chapter in diplomacy: one marked by the invocation of conflicts over Comfort Women as a basis for more aggressive stances on territorial disputes by elected officials in both Korea and Japan (and hence also by the usurpation of the diplomatic space by electoral politics).

If diplomacy entails acting on an existing and ever-changing field, punctuated by continual nudges from the public, or the media, or state-to-state exchanges of talking points, or diplomatic conferences, in which the *who* is far more significant than the *what*, then the duty to compensate mandated by this decision, with its firm grounding in linkages between legal *what's*, opens up future chapters and future registers of dispute over the *who*, *what* and *how* of compensation as much as it resolves these.

Having singled out diplomacy as a third term in analyses of interactions between law and politics, and having highlighted what is lost when constitutional law takes over diplomacy, might we still find in the collision of law and diplomacy a certain basis for hope? In self-consciously intruding into the world of diplomacy, the Korean Constitutional Court's decision seems to invite an inquiry into how the legal and political questions might look, when transposed into the diplomatic style. It might invite us to ask what other possible intrusions or combinations of law and diplomacy might be possible and what possible political outcomes they might engender. Now that constitutional law has crashed into diplomacy, a more complex feedback loop has been opened up between law and politics. By injecting itself into diplomacy and by taking on the responsibility for managing diplomatic strategy, the Court also makes itself relevant—and arguably vulnerable—to the constituencies to which diplomats have long been vulnerable. The relationship of law to politics becomes, as with the relationship of diplomacy to politics, more of an eddy than a funnel. It is on this point, more than on the linkage of international rights to constitutional duties, that we perceive a glimmer of feminist hope in the decision.

