

BM/JAG/65149,
General Headquarters,
South East Asia Land Forces.
6th March, 1947.

G.O.C.,
Singapore District.

Subject:- War Crimes Courts.

Reference the proceedings of the trial by Military
Court of:-

- (1) Lt/Gen. ISHIDA Eiguma.
- (2) Col. NAKAMURA Shigeo.
- (3) Col. ISHII Tamie.
- (4) Lt/Col. YANAGITA Shoichi.
- (5) Major. CHIDA Sotomatsu.

1. The accused were tried by Military Court at Singapore on charges as follows:-

Against all accused.

1st Charge : Between October 1942 and 1 August 1944 being concerned in the inhumane treatment of POW resulting in death and physical suffering to many of them;

2nd Charge : Between the same dates being concerned in the employment of POW in work having connection with the operation of War, viz the construction of the Burma-Siam railway;

3rd Charge : Between the same dates being concerned in using POW labour for work which was excessive in relation to their rank and capacity;

4th Charge : Between the same dates being concerned in the internment of POW in unhealthy and unhygienic conditions;

Against the Third accused only.

5th Charge : Between 1 August 1943 and 1 December 1943 at TARSAO being concerned in the killing of Pte Hilton, a POW;

Against the Fourth accused only.

6th Charge : About 27 March 1943 at CHUNGKAI being concerned in the killing of Sgt. Kelly, Sgt. Reay, Fus. Kencally-Timothy and Pte. Fitzgerald, all POW;

Against the Third accused only.

7th Charge : Between 1 August 1944 and 28 February 1945 at TAMAKAN, being concerned in the employment of POW in work having connection with the operation of War, viz the maintenance and working of the Burma-Siam railway, thereby causing death and injury to POW, from aerial bombardment;

Against the Fifth accused only.

8th Charge : Between 1 August 1944 and 4 December 1944 at NONG PLADUK, being concerned in the employment of POW in work having connection with the operation of War, viz the maintenance and working of the Burma-Siam railway, thereby causing death and injury to PW from aerial bombardment.

2. All the accused pleaded 'Not Guilty' to the charges and the findings of the Court were as follows:-

| | | |
|-------------------|-----------------|--|
| <u>1st Charge</u> | Accused 2,3,4,5 | Guilty. |
| | Accused 1 | Not Guilty. |
| <u>2nd Charge</u> | All accused - | Guilty. |
| <u>3rd Charge</u> | All accused - | Guilty. |
| <u>4th Charge</u> | Accused 2,3,4,5 | Guilty. |
| | Accused 1 | Not Guilty. |
| <u>5th Charge</u> | Accused 3 | Guilty. |
| <u>6th Charge</u> | Accused 4 | Guilty. |
| <u>7th Charge</u> | Accused 3 | Guilty, except that the dates in the charge should read 1 Dec 44 and 28 Feb 45 and the words relating to death and injury of POW are struck out. |
| <u>8th Charge</u> | Accused 5 | Guilty, except that the words relating to death and injury of POW are struck out. |

3. Sentences awarded by the Court were:-

| | | |
|-----------|---|-------------------------|
| Accused 1 | - | 10 years' Imprisonment. |
| Accused 2 | - | Death by Hanging. |
| Accused 3 | - | Death by Hanging. |
| Accused 4 | - | 20 years' Imprisonment. |
| Accused 5 | - | 10 years' Imprisonment. |

The Court made a recommendation to mercy in the case of accused 2.

4. The facts of the case in relation to the first four charges are as follows:-

Japanese Imperial Headquarters decided in early 1942 that a railway was to be built linking the existing railways from Bangkok to Singapore and Ye to Rangoon so that there would be a continuous line running through Burma, Siam and Malaya. The work was planned to begin in June 1942. Prior to the War a survey had been made for commercial purposes of the route the line was to follow and the plan for construction was then abandoned as impossible owing to the formidable natural hazards.

Japanese Engineer officers advised that the work would take five or six years but Japanese HQ at Tokyo ordered the line to be completed in eighteen months, that is by the end of 1943.

Owing to many difficulties, actual work on the railway was not begun until November 1942, when working parties began at both junctions of the proposed line in Burma and in Siam, working inwards. The total length of line was to be 415 Kilometres.

By reason of the deterioration in the military position in early 1943, the need for a supply line to the Japanese fighting forces in Burma became more urgent and in Feb an order came from Tokyo insisting that the railway be completed by August 1943. Between February and July (when the order was modified by the grant of an extension of two months) is the period known as 'Speedo'. Completion of rail-laying took place on 17 October 1943 when the working parties met at KONQUITA. The railway had been built in eleven months.

A large coolie force had been recruited for the task but was thought to be unsatisfactory and Field Marshal Terauchi commanding the Southern Army, under whose comm and the railway project was to be carried out, suggested to Imperial General HQ that POW be also employed. This was approved and the use of POW sanctioned by I.G.H.

The number of prisoners employed is estimated at 50,000, excluding F and H Forces which have no relation to the present charges. They were divided into six groups or branches, a section of line being allotted to each group.

Groups 3 and 5 worked on the Burma side and do not enter greatly into the present case.

Groups 1,2,4 and 6, made up of British, Dutch and Australians, worked on the Siam sector. Group 6 existed independently only from January to November 1943 when it merged with Group 1.

The labour forces were divided into three parties, one to clear the jungle, one to construct embankments and bridges, and the third to lay sleepers and rails. After the completion of the railway, large forces of POW were retained in camps along the line for maintenance.

Responsibility in relation to the railway was divided as follows:-

Planning and direction at high level were the province of I.G.H. and Southern Army. Responsible to Southern Army for construction was the Southern Army Railway Unit which commanded No. 2 Railway Brigade, actually responsible for construction. This Brigade comprised the 5th and 9th Railway Regiments, the 5th Regiment being responsible for construction in Burma and the 9th for that in Siam.

The Siam POW Administration controlled the administration of POW and was responsible for A and Q matters. Groups 1,2,4 and 6 and the camps controlled by those groups were under the command of this Administration which in its turn was under the command of the Railway Unit, which comm and was limited to direction of employment of POW. There was no power in the Railway Unit to administer the POW camps.

The 1st accused commanded the Railway Unit from 14 August 1943 until March 1944. At this date, he took another command but retained responsibility for a general direction of the railway.

The 2nd accused was Commander of the Siam POW Administration from 20 June 1943 until 24 July 1944.

The 3rd accused was commander of the following groups at the following dates:-

| | |
|------------|-------------------------|
| No.1 group | Oct 1942 - 20 Jan 1943. |
| No.4 group | Mar 1943 - Nov 1943. |
| No.3 group | Nov 1943 - Mar 1944. |
| No.2 group | Dec 1944 - Aug 1945. |

The 4th accused commanded No.2 group from August 1942 until Dec 44. - The fifth accused commanded the following groups at the following dates:-

| | |
|------------|----------------------|
| No.1 group | Aug 1942 - Oct 1942. |
| No.4 group | Oct 1942 - Mar 1943. |
| No.1 group | Mar 1943 - Aug 1945. |

The Prosecution examined seven witnesses as to the facts and produced over seventy affidavits, establishing that:-

- (a) Munitions, petrol and similar supplies were carried on the railway and POW were employed in loading them.
- (b) Accommodation in the camps was generally insufficient. Huts were not weather proof and were made of attap with continuous bamboo sleeping platforms. In monsoon periods, camps were seas of mud. In some camps only unserviceable tentage was available and even that in insufficient quantity.
- (c) Food was generally inadequate, more particularly in the interior. What food there was lacked necessary vitamins, was unbalanced and could not maintain health in Europeans.
- (d) Clothing was rarely issued. The majority of prisoners were forced to go about naked except for a loin cloth. Absence of adequate footwear and trousers caused scratches which, developing into tropical ulcers, often necessitated amputation and sometimes caused death.
- (e) POW were grossly overworked and in some camps officers were made to work like coolies. A weekly task was set which had to be completed irrespective of men falling sick or other circumstances. In some cases men were overworked into the night to finish the task.
- (f) Diseases, particularly deficiency diseases, were rife. Malaria was endemic in most camps and cholera outbreaks occurred. Coolie camps were placed in close proximity to POW camps so that often the water supply, common to both camps, was fouled before it reached the POW.
- (g) The sick were neglected and, in some cases, brutally treated. Normally only a certain percentage of Camp strength was excused work from sickness. If this number was exceeded on any one day, the surplus sick men nevertheless had to work, despite protests from POW Doctors. The issue of Medical supplies was short. Officially, the issue to POW was to be one third of the scale for Japanese forces, but issues were irregular and often fell short of the scale. Reasonable medical facilities would have avoided many deaths and amputations. It was sometimes possible to buy medical stores in nearby villages and this was occasionally permitted.

- (h) Latrines were filthy, normally consisting of a shallow open trench with cross slats of bamboo. In heavy rain they overflowed and filth was washed through the camp.
- (i) POW were frequently beaten by Japanese officers, N.C.Os, Private soldiers and Korean guards.

According to the Japanese Government Report on the Burma-Siam Railway, the number of POW who died, excluding F and H Forces, between Oct 42 and Aug 44, while engaged on the work, was 7,738. It appears from the evidence that the actual death rate between Oct 42 and Aug 44 was higher than the Japanese figure but since there was no unequivocal Prosecution evidence as to the number of deaths within the stated period, the Japanese Report was not refuted.

ISHIDA

The first accused did not take over his command until the end of the 'Speedo' period in August, when conditions of work and living were at their worst and the death rate was highest. The evidence, however, showed that there was no noticeable improvement in working conditions until after the completion of the railway in October 1943.

NAKAMURA

The evidence showed that the second accused, as Commander Siam POW Administration was fully responsible for the well-being of the POW and that it was within his power and that of his group commanders to refuse to allow POW to work for good reason. Normally the number of prisoners who worked each day was decided by arrangement between the Commander POW Group or Camp and the Railway Regimental Commander or his officers, but it is clearly established that the power to withhold POW for good reason was vested in the Siam POW Administration and the subordinate Camp Commanders.

ISHIDA YANAGIDA CHIDA

The third, fourth and fifth accused were Group Commanders and they appeared to have known of the conditions under which POW were forced to live. The third accused seems to have done nothing whatever. The fourth accused, known as the "smiling Colonel" held conferences with POW Commanders apparently for the purpose of improving conditions, and there is evidence that the fifth accused whilst very much under the influence of his officers made a real effort to help the POW.

Identification of all accused was satisfactorily established by witnesses and photographs.

5. The facts in relation to the remaining four charges are as follows:-

(a) On or about 15 November 1943 at Tarsao Camp, a POW Pte. Hilton while on a working party was involved in a fight with a guard. He was confined in the guard room, regularly beaten and so tied that he had to be led about like a dog. On 30 Nov, a form of trial was held, in Hilton's absence, at which a POW officer was asked a number of questions.

The matter was referred to the third accused, who ordered Hilton to be shot. The execution was duly carried out.

(b) In or about February 1943 four British POW escaped from Takalin Camp. They were recaptured in March and taken to Chungkai where, after a personal investigation, the fourth accused ordered them to be shot without trial. They were executed on 27 March 1943.

YANAGIDA

(c) The seventh charge, against the third accused only, deals with the period 1 Aug until 28 Feb 45. In fact the evidence showed that this accused did not take command of No.2 Group until 1 Dec. The HQ camp of this group at Tamakan was situated close to the railway, near two bridges and two AA batteries. The few slit trenches in existence were delapidated and inadequate. There was some evidence that POW were engaged in the improper work set out in the charge between 1 Dec and 28 Feb but insufficient to prove the deaths and injuries averred.

(d) In the eighth charge against the fifth accused only, the charge averred that the accused was in command of Nong Pladuk No.1 Camp from 1 August 1944 until 4 December 1944, that the camp was situated very close to the railway line and that POW were employed in the working of the line. Prosecution evidence was insufficient to establish beyond reasonable doubt that the accused took over this command before 1 September, at which date it was not possible for him to have taken steps to build adequate air raid protection before the Allied air raid on 6 September. Representations were made by this accused to his superior officer to remove the camp, but this was not permitted. The evidence was insufficient to prove that the deaths and injuries resulting from the raid were the responsibility of this accused.

6. The defence and submissions put forward on behalf of the accused collectively and individually in relation to the first four charges were as follows:-

Collectively.

It was first objected that, although the jurisdiction of the court was absolute, the facts in the present case were already before the International Tribunal, Tokyo, and this case should therefore be stayed pending a decision in the tribunal.

The defence then stated that Charges I, III and IV were bad for multiplicity.

The Prosecution, however, dealt adequately with these submissions.

The Defence insisted that the requirements of S 8 ss 43 of Army Order 81/45 had not been proved in that no 'concert' had been shown between the accused, whence it followed that the joint trial was illegal and evidence against one accused could not be admitted against the others. It was postulated that the course of conduct followed by the accused had not been shown by the Prosecution to have arisen out of an agreement, conspiracy or concert and in fact had arisen out of obedience to the orders of Southern Army. Obedience to orders would, it was advanced, necessarily vitiate 'concert' among the accused.

This submission was not directly answered by the Prosecution but it is obviously unacceptable since the 'concert' which has to be proved is not that of conspiracy, but is sufficiently evidenced by a course of conduct among the accused, lending themselves to the commission of a War Crime, when in view of their rank and appointment, they were necessarily concerned in acts and omissions, done and omitted in their names and with their authority.

A further submission by the Defence that the accused were not responsible for the shortcomings of their subordinates

in Camps under their command, because superior public servants have no responsibility for wrongful acts done by inferior public servants except where antecedently ordered or subsequently ratified is clearly untenable here, where Accused 2,3,4 and 5 were commanding a HQ and groups, respectively, and were themselves responsible for the proper control and administration thereof. In any event the doctrine applies only to tortious acts, here inapplicable.

The Prosecution submitted that the accused were culpable in respect of their:-

- a) personal participation; or
- b) express orders or sanction; or
- c) gross dereliction of duty.

The Defence denied the personal participation of any of the accused in any act for which they could be held answerable as war criminals. It was denied that any orders had been given other than to aid and assist the maintenance of the POW. In relation to gross dereliction of duty, it was submitted that no legal duty of care was owed by the accused to the POW and that there could be no culpable dereliction therefrom. Article 4 of the Hague Convention states that POW are in the power of the hostile governments, but not of the individuals or corps who captured them, and article 7 of the same Convention states that the hostile Government is charged with their maintenance.

The Defence submitted, on these authorities, that the Japanese Government owed the only legal duty to the POW. The accused, to whom the Government delegated its responsibility of care, were answerable for culpable neglect only vis a vis the Government and to no one else. It was suggested that the Prosecution would have to prove mens rea and a deliberate intention on the part of the accused, as opposed to mere negligence, for them to be rendered liable.

The Prosecution in answering this argued that breach of the moral duty to treat men humanely, while no crime in English Law, becomes a War Crime if the moral duty is owed to a POW in time of War.

Since, to prove the charges, it is only necessary to establish that the accused were concerned in the ill-treatment of POW, the Defence submission must fail and the validity of the Prosecution reply need not here be considered.

It was advanced for the Defence that the tragic conditions under which the POW lived, worked and died were the responsibility of the Japanese Government. The facts that there was inadequate preparation and survey, that the troops employed lacked experience, that tools and equipment were short, that the nature of the country was difficult, were all matters for which only the Japanese Government was responsible. The accused were ordered with inadequate and incompetent staffs to carry out an impossible task. It was urged that the accused could not be held responsible on the first four charges. It is clear, however, that such factors do not affect the issue, which is that the accused were in fact concerned in the inhumane treatment.

In relation to Charge 2, it was also advanced by the Defence that the Railway was conceived, planned and executed not as a military project but as a commercial undertaking designed to

exploit the new Japanese empire. It was asserted that even if the railway was a military plan, the accused, acting under an honest and reasonable mistake of fact, did not know of this and were therefore free of taint. This plea, however, seemed rather too disingenuous for the Court to accept.

Individually.

Accused 1.

The Commander of the Railway Unit said that at the time he took command, five sixths of the work of the railway was done. Although only responsible for construction, he toured the working camps as soon as he assumed command. On completion of the trip, he signalled Terauchi explaining the bad conditions, and in November he visited the C-in-C and again made clear the position. He held conferences with his Railway Commanders to whom he explained that "labourers and POW are Gods of Construction" and must be well treated.

Although the second accused was under his command, the second accused was responsible for the administration of the POW and if sick men worked, which he denied, then that was the responsibility of Nakamura. Legally he, the first accused, was not responsible for the welfare of the POW, but as a human being he tried to help.

Working hours for the POW were reasonable, as was their treatment by the Railway Staff, and all hardships that were suffered were directly attributable to Imperial General HQ and Terauchi, who had put plans for the railway into operation without adequate preparation.

On completion of the railway this accused ordered a Memorial to be built, dedicated to the men who had died on the railway.

Accused 2.

This Accused agreed that responsibility for administering POW lay with him and his Group Commanders. He did all in his power to improve the conditions of the POW and his Administration was the POW's best friend.

The large number of deaths was caused by the natural terrain difficulties, the arduous work, the lack of balanced diet, and medicines, all of which could have been avoided or mitigated had there been proper preparation by I.G.H. and the Commander Southern Railway, who must accept the responsibility for the death roll.

So great was this accused's concern for the POW in his care, that when one of his experienced Construction Officers shot a dying POW, he ordered this Officer's Court Martial. This was apparently regarded as an excess of zeal by other Japanese Officers and in July 1944 he was relieved of his command. He stated that it might be said that he was retired from the Army because he had been too kind to POW.

Accused 3 & 4.

These accused stated that they did all in their power to mitigate the hardships and improve the conditions of the POW under their command, but that shortages of essential supplies and the necessity of completing the railway quickly, both matters outside their control, made these efforts largely unsuccessful.

Accused 5.

This accused made similar statements to those made by Accused 3 and 4 and a Prosecution witness testified that he had in fact made the efforts he alleged. Moreover, Prosecution evidence suggested that he was largely under the influence of his younger and more aggressive Camp officers.

7. The defence and submissions advanced on behalf of respective accused in regard to the latter four charges were as follows:-

Charges 5 and 6.

International Law, it was proposed, is only binding on the subject of a State, in that it is part of the municipal laws of that State, and for no other reason. Moreover, ratification of a Convention by a State does not, ipso facto, bind its subjects to discharge obligations thereunder unless that State takes some public action designed to make the Convention part of the law of the land. The sovereign right of each State to legislate is absolute and it follows that a State, having accepted a Convention, may later derogate therefrom, vis a vis its subjects, who will then be bound by the new position. The fact that the State is reprehensible for having violated its international obligations is irrelevant in considering the liability of the subject. The Japanese Government had agreed to be bound mutatis mutandis by the provisions of the Geneva Convention 1929 and had ratified the Hague & The Wounded and Sick Conventions, but by the issue of Penal Laws either by the Japanese Government or by an authority suitably empowered thereunder, derogating from the provisions of the Conventions, the Defence submitted that Japanese subjects were now governed by the Penal Laws. The Laws promulgated in March 1943 authorised the execution of POW who escaped or offered violence to a guard. The Defence further argued that since the third and fourth accused had acted under these laws in ordering the executions, they were free of liability.

The contentions of the Defence, advanced as good law, are in fact theoretical propositions, which, if acceptable, would remove such sanctions as lie behind International Law and permit a reign of universal anarchy wherein each State could abrogate unilaterally all or any Conventions which it found inconvenient at any particular time.

Moreover, the accused individually did not rely on Penal Laws. The third accused relied on the verbal "order" of General Sasa in December 1942 at a Conference, when he decreed that if escaped POW were captured they might be shot, and on the "order" of the Chief of the POW Information Bureau who in June 1943 said that POW might be shot for acts of violence and resistance. Despite the permissive authority in the use of the word "might", this accused ordered the execution of Hilton without proper trial.

The fourth accused relied on the "order" of General Sasa but before ordering the execution of the four POW he went to see Sasa who confirmed that the men be shot, despite this accused's opinion that a Court Martial was a prior necessity. This accused admitted that he knew the order of Sasa for the execution of the men to be illegal.

The Defence finally argued that Sasa's order was legal since it was based on the Penal Laws mentioned. Other things apart, however, Sasa's order was given on 20 Dec 1942 and the Penal Laws were promulgated 9 March 1943.

Charges 7 & 8.

The offence here charged against the third and fifth accused, respectively, relate to the employment of POW in work having connection with the operation of the War.

The Defence submitted that since the work done by the POW was not illegal, the consequences which followed from the legal employment were not the responsibility of the accused.

Even though the work was illegal, and this was denied, then, since these accused as Camp Commandants were responsible only for A & Q matters, they could not be held liable for the employment.

Finally it was argued that the charges were a non sequitur since the injury and death caused to POW did not follow from their employment on a prohibited work, but from the proximity of the camps to the railway, which was a matter outside the effective purview of the accused.

The evidence clearly established that the work on the railway had connection with the operation of the War and further that the two accused were concerned in the employment of POW on the railway. The Court, by special finding, excluded from both charges the averments relating to death and injury.

On Charge 7 the accused was found responsible only between 1 Dec 1944 and 28 Feb 1945.

In regard to Charge 8 the accused made representations to have the Camp removed and, as stated earlier, the Prosecution did not discharge the onus of proving the effective command of the accused from 1 Aug 44. Since however, the special finding excluded deaths and injury to POW arising from the air raid on 6 Sept the question of dates does not prejudice the accused and the finding is valid.

8. The findings on all the charges are legal and with the exception of the fifth accused, the sentences are reasonable. The evidence showed that Major. Chida had sincerely done all in his power and, according to his lights, all that was possible. He was culpable in that he permitted himself to be deceived by his junior officers who ill-used the POW by virtue of their too great authority, but I suggest that five years of his sentence by remitted.

The Court sentenced the second accused to death but recommended him to mercy for taking disciplinary action against one of his officers who had shot a POW. A number of representations have been made by friends and dependants of this accused, eulogising his exemplary character. The evidence shows, however, that he paid little regard to the promptings of his exemplary self, if it exists, and there is no reason why, since the Court had power to award any suitable sentence, the death sentence should not stand.

A petition has been submitted jointly on behalf of all accused, which repeats the facts and submissions of the closing address.

I advise that this petition be dismissed and the findings and sentences confirmed.

9. (i) The first accused is described in the charge sheet and in the petition as Major General ISHIDA Hidekuma. Page 2 of the Schedule, the Record of Service and the proceedings refer to him as Lieut General ISHIDA Eiguma. The Court should have investigated this and made the necessary amendments under R.P. 33.
- (ii) Exhibit H in the proceedings is a number of copies of telegrams relating to treatment of U.S. Nationals. The charge sheet makes no reference to Americans, nor did the Prosecution relate the documents to the charges. These documents should not have been admitted as evidence, in view of the existing mass of relevant material.
- (iii) The submission by the Prosecution on p. 67 of the proceedings was improper. If evidence in the possession of the Prosecution was relevant and material, it should have been produced, otherwise the matter should have been raised at that stage. *not*
- (iv) The Prosecution suggested that the Defence, which was very capably conducted, would be well advised to cease investigating a certain line of evidence. (p.267) This suggestion was improper, but appeared not to affect the Defence which continued its examination along the same lines.

FGTD/RRH

Brigadier,
DJAG, South East Asia Land Forces. —