TOAEP | Torkel Opsahl Academic EPublisher

# Historical Origins of International Criminal Law: Volume 2

Morten Bergsmo, CHEAH Wui Ling and YI Ping (editors)

**E-Offprint:**

LING Yan, “The 1956 Japanese War Crimes Trials in China”, in Morten Bergsmo, CHEAH Wui Ling and YI Ping (editors), *Historical Origins of International Criminal Law: Volume 2*, FICHL Publication Series No. 21 (2014), Torkel Opsahl Academic EPublisher, Brussels, ISBN 978-82-93081-13-5. First published on 12 December 2014.

This publication and other TOAEP publications may be openly accessed and downloaded through the website www.fichl.org. This site uses Persistent URLs (PURL) for all publications it makes available. The URLs of these publications will not be changed. Printed copies may be ordered through online distributors such as www.amazon.co.uk.

# 27

# The 1956 Japanese War Crimes Trials in China

**LING Yan***

## 27.1. Introduction

It is well known that after the Second World War, Class A Japanese war criminals were prosecuted before the International Military Tribunal for the Far East ('IMTFE'). Parallel to the Tokyo Trials, Class B and C Japanese war crimes cases were also tried by national military courts set up by the Allies at different locations such as Manila, Singapore, Saigon, Khabarovsk, Rabaul, Hong Kong and Batavia.[1] More than 2,000 war crimes suspects were detained for that purpose in China. By the end of the trials in April 1949, the Chinese military courts at 10 locations – Nanjing, Shanghai, Peking, Hankou, Guangzhou, Shenyang, Xuzhou, Jinan, Taiyuan and Taipei[2] – had sentenced 145 convicts to death, more than 300 others to imprisonment and acquitted the rest before repatriating them to Japan.[3] Due to the breakout of civil war in China soon after the Second World War – that led to a change of government in 1949 – judicial documents such as case files, transcripts and judgments of some war crimes trials went missing or were nowhere to be found. It is also difficult for international lawyers to have access to the information about these trials and judgments because of language barriers. The only judgment that can be found in English is a translated version of the case of Takashi Sakai published by the United Nations War Crimes Commission

* **LING Yan** is Professor at the Faculty of International Law, China University of Political Science and Law since 2004, and she has been Director of its Research Centre for International Criminal Law and Humanitarian Law, and Deputy Director of its Institute of Air and Space Law. She has worked as a legal officer for the International Criminal Tribunal for Rwanda. She is Co-Director of the LI Haopei Lecture Series.

1 Suzannah Linton, "War Crimes", in Suzannah Linton (ed.), *Hong Kong's War Crimes Trials*, Oxford University Press, Oxford, 2013, p. 101.

2 Zhang Fakun, "No Reversal of the Verdicts on Convicted Japanese War Criminals", in *Journal of Jianghan University*, 1997, vol. 14, no. 2, p. 21.

3 *Ta Kung Pao* [大公报], 27 January 1949 (Shanghai edition) in Xu Jiajun, "Tilanqiao Prison and the Imprisonment, Trial and Enforcement of Japanese War Criminals", *Shanghai Local Records*, 2005, no. 4.

('UNWCC') in Law Reports of Trials of War Criminals.[4] After the founding of the new Chinese government, 45 Japanese war criminals were prosecuted before a Special Military Tribunal ('SMT') sitting in Taiyuan and Shenyang in 1956. The judicial record of the trial has been kept intact and gradually opened to public in the 1980s.[5] This chapter first provides information about the efforts of the new Chinese government to investigate and prosecute Japanese war criminals and the crimes those criminals had committed during the Japanese war of aggression against China. It then analyses the legal basis of the trial and the trial procedure. Finally, it makes an assessment of the trial and draws a conclusion.

## 27.2. Investigation of the Japanese War Crimes

At the time the new Chinese government took power on 1 October 1949, a total of 1,526 Japanese prisoners of war were being detained.[6] Most of them were extradited from the Soviet Union in accordance with an agreement between China and the Soviet Union in 1950; the rest were captured during the civil war and detained in Taiyuan after they joined the troops of the nationalist general, YAN Xishan, in Shanxi province for the purpose of preserving the force for Japanese reconstruction after Japan's surrender.[7]

On 16 November 1951 the Supreme People's Procuratorate, the General Political Department of the People's Revolutionary Military Commission and the Ministry of Public Security jointly announced that those who were in custody in Taiyuan had participated in China's civil war and committed serious crimes in Shanxi province by means of killing, burning and looting. The crimes had to be fully investigated for the

4 "Trial of Takashi Sakai", in United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, 1949, vol. 14, p. 1.

5 See, for example, Wang Zhanping (ed.), *Trial Justice: Prosecution of Japanese War Criminals Before the Special Military Tribunal of the Supreme Court*, People's Court Publisher, Beijing, 1990; Liu Meiling, *Written Confessions of Japanese War Criminals in the Invasion of China*, China Archives Press House, 2005. A list of the 45 convicted war criminals and a summary of their written confessions, in both Chinese and English, can be found on the website of the State Archives Administration of the PRC. This chapter follows the romanised spelling of Japanese names found on this website.

6 Long Xingang and Sun Jun, "On the 1956 Shenyang and Taiyuan Trials of the Special Military Tribunal", in *Literature of History of Communist Party*, 2009, no. 2, p. 9.

7 *Ibid.*

purpose of prosecution and punishment of the heinous war criminals.[8] A Shanxi Joint Office was set up to investigate Japanese war crimes in June 1952 in accordance with the announcement.[9] In the same year, investigation of war crimes committed in northeast China was also initiated but interrupted by the Korean War. In 1953 the Supreme People's Procuratorate set up a Northeast Working Group of Investigators, who travelled to 12 provinces and cities to collect evidence of war crimes committed during Japan's manipulation of the puppet state Manchukuo.[10]

The Northeast Working Group started the interrogation of war crimes detainees in March 1954, focusing on the crimes that high-ranking military commanders and former Manchukuo officials had committed. The crimes committed by Furuumi Tadayuki were revealed from the criminal investigation of the former Emperor Pu Yi and were further corroborated by the statements of Manchukuo ministers and officials. Furuumi then began to confess to his crimes in front of the detainees.[11] He also acknowledged that those who planned and commanded the war of aggression were Class A war criminals according to a new development in international law after the Second World War and those who committed various crimes during the war of aggression, whatever their ranks, could be classified as Class B or C war criminals by the victim states.[12] The other war crimes detainees followed his example and confessed to their crimes.

Through serious and painstaking investigations, the Shanxi Joint Office had collected 18,418 pieces of detailed evidence by 1956.[13] According to these materials, the Japanese war crimes suspects detained in Taiyuan had killed 14,251 Chinese, injured 1,969, captured and tortured 10,173, and enslaved 12,233,674. They had burned and destroyed

8 Shanxi People's Procuratorate, *Investigation of the Japanese War Criminals*, Xinhua, Beijing, 1995, p. 509.

9 *Ibid.*, p. 1; Kong Fanzhi and Zhang Ruiping, *Two Trials of Japanese War Criminal in Taiyuan (II)*, in Shanxi Provincial Archives, Xi'an, 2008, no. 1, p. 49.

10 Li Fushan, "My Involvement in the Investigation of Japanese War Crimes", in *General Review of the Communist Party of China*, 2008, no. 5, p. 32.

11 *Ibid*., p. 34.

12 Ji Min, "Custody and Reformation of Japanese War Criminals", in *Wenyuan Jinghua*, 2002, no. 3, p. 8.

13 Shanxi People's Procuratorate, 1995, p. 65, see *supra* note 8.

20,257 houses, 47 temples, over 1,336 tons of grain, looted 11,236 livestock, 200 million tons of grain, over 2.6 trillion tons of coal, more than 200 tons of cotton and also plundered gold, silver, copper, iron, tin and other strategic materials and properties.[14] The Northeast Working Group's investigation demonstrated that though being only a small part of those involved in the Japanese war of aggression against China, these particular war criminals investigated had committed crimes causing a huge disaster, loss and damage to the Chinese people. The broader figures for China were much greater, of course. According to incomplete available statistics, in a 14-year period between the Mukden Incident of 1931 and Japan's surrender in 1945, they had planned, commanded and directly participated in killing 949,800 unarmed Chinese civilians and prisoners of war ('POW'), burning and destroying 244,000 houses, looting over 36 million tons of grain and plundering 222 million tons of coal and 20 million tons of steel, and so on.[15]

However, the Chinese government adopted a policy of educational reform of Japanese war criminals rather than prosecuting all of them. After three to five years of educational reform, many war crimes detainees admitted their sins and confessed to their crimes. Therefore, in August 1954 the People's Revolutionary Military Commission announced the pardon and release of 417 Japanese war criminals who had confessed and pleaded guilty.[16] Finally, only 45 were screened from the remaining 1,109 detainees of war crimes (47 died in custody) for prosecution on the basis of the collected and analysed evidence. They were the most responsible for the very serious crimes they had committed. The Premier ZHOU Enlai pointed out that they must be investigated, prosecuted and punished in order to dispense justice "for the Chinese people".[17]

## 27.3. The Trial of the Japanese War Criminals

The Standing Committee of the National People's Congress ('NPC') decided on 25 April 1956 that the Supreme People's Court should

[14] *Ibid*., p. 67; Kong and Zhang, 2008, p. 49, see *supra* note 9.

[15] Wang Heli, Zhang Jia'an and Zhao Xingwen, "Trial of Japanese War Criminals Before the Special Military Tribunal in Taiyuan", in *Jianghuai Wenshi*, 2001, no. 1, p. 167.

[16] *People's Daily* [人民日报], 20 August 1954.

[17] Liu Wusheng and Du Hongqi (eds.), *The Military Activities of Zhou Enlai (II)*, Central Documentary Publisher, Beijing, 2000, p. 392

establish a SMT to prosecute the Japanese war criminals. Although most of the accused persons were detained in Fushun, the central government decided to move the venue of the trial to Shenyang, the location of the Mukden Incident as well as the starting point of Japan's massive armed invasion: that the trial of the Japanese war criminals took place in Shenyang was thus of more historical significance.[18]

For the purpose of the trial, the Supreme People's Court appointed the President, Vice-President and Judges of the SMT.[19] On 1 May 1956 the Supreme People's Court Attorney General, ZHANG Dingcheng, signed the indictments against the 45 Japanese accused. The SMT prosecuted them in four cases. The first was the case of Suzuki Keiku and seven others. Suzuki was the Lieutenant Commander of the 117th Division of the Imperial Japanese Army. The eight accused persons were charged with massacres, torture, abuse, slavery and other serious crimes in violation of international law and humanitarian principles. The second was the case of Tominaga Juntaro, the head of the former Japanese spy agency, charged with war crimes and the crime of espionage. The third was the case of Jōno Hiroshi and seven others, who were charged with war crimes committed not only during the Second World War but also during the Chinese civil war by joining YAN Xishan's armed force as senior military officers. The fourth was the case of Takebe Rokusashi and 27 others, who had manipulated the puppet Manchukuo regime and brutally ruled the Chinese people in the northeast provinces.[20]

Between 9 and 19 June 1956 Trial Chamber One of the SMT sitting in Shenyang held public hearings in the case of Suzuki and seven others. General YUAN Guang presided over the case and General WANG Zhiping was the Chief Prosecutor. It was the first time that the trial proceedings were recorded.[21] On the basis of the specific criminal circumstances of

---

18 Yuan Guang, "My Experience in Japanese War Criminal Trials".

19 JIA Qian, the member of the Supreme Court Judicial Committee and the head of the Criminal Division was appointed as the President of the SMT; Major General YUAN Guang, the Vice President of the PLA Court Martial, and ZHU Yaotang, the Deputy Head of the Criminal Civision of the Supreme Court, as the Vice Presidents of the SMT; Colonel WANG Xusheng, NIU Buyun and ZHANG Jian, Judges of the PLA Court Martial, and XU Yousheng, HAO Shaoan, YIN Jianzhong, ZHANG Xiangqian and YANG Xianzhi as Judges of the SMT. See Wang, 1990, p. 4, *supra* note 5.

20 *Ibid.*, pp. 15, 365, 515, 683, see *supra* note 5.

21 Tang Shanshan, "Tan Zhengwen and the Trial of the Japanese War Criminals", in *Fangyuan Magazine*, 2011, no. 308, p. 67.

each defendant, and in accordance with the relevant provisions of the NPC Standing Committee's decision, the Tribunal convicted the eight defendants and sentenced them to 13 to 20 years' imprisonment.[22] From 1 to 7 July 1956 Trial Chamber Two heard in public the case of Takebe and 27 others in Shenyang. Justice JIA Qian presided over the case and LI Fushan was the Chief Prosecutor. The 28 accused persons were convicted and given 12- to 20-year prison terms.[23]

On 10 and 12 June 1956 the SMT sitting in Taiyuan held public hearings to hear the case of Tominaga and the case of Jōno and seven others respectively. Judge ZHU Yaotang presided over the case and JING Zhuguo was the Chief Prosecutor. On 20 June the SMT convicted all defendants and sentenced Tominaga to 20 years' imprisonment,[24] while the eight others were given 8- to 18-year prison terms.[25] All convicts began to serve their sentences on the date of the Judgment. The time from the date of their arrest until the date of the Judgment was deducted from their term of imprisonment.

## 27.4. The Legal Basis for the Trial

### 27.4.1. International Legal Basis for the National Trial of the Japanese War Criminals

International and national laws established the legal basis for the national trial of the Japanese war criminals. At the international level, as early as 13 January 1942, nine Allied countries occupied by Germany signed the St James's Declaration in London, which placed

> among their principle war aims the punishment, through the channel of organized justice, of those guilty of or responsible for these crimes, whether they have ordered them, perpetrated them or participated in them, [and] resolve to see it in a spirit of international solidarity, that (a) those guilty or responsible, whatever their nationality, are sought out,

[22] Wang, p. 495, see *supra* note 5.
[23] *Ibid.*, p. 320.
[24] *Ibid.*, p. 732.
[25] *Ibid.*, p. 660.

> handed over to justice and judged, (b) that the sentences pronounced are carried out.[26]

The Chinese envoy in the Netherlands was invited to attend the meeting and issued a written statement saying that the same principle should be applied to the atrocities committed in China by Japanese war criminals.[27]

At the Moscow Conference in 1943, the leaders of Britain (Winston Churchill), the US (Franklin D. Roosevelt) and the Soviet Union (Joseph Stalin) signed a Statement on Atrocities, by which they reiterated and declared that in addition to those "who [would] be punished by joint decision of the government of the Allies", those who had been responsible for atrocities, massacres and cold-blooded mass executions would "be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the law of these liberated countries".[28] The Statement clearly indicated that the Allies were determined to prosecute war criminals by their domestic courts as well as by joint international tribunals. Furthermore, through the Proclamation Defining Terms for Japanese Surrender (the 'Potsdam Proclamation') of 1945, the leaders of the US, China and Britain announced in Article 10 that:

> We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners.[29]

Finally, in the Japanese Instrument of Surrender, the written agreement that formalised the surrender of Japan on 2 September 1946, the Japanese

---

[26] Inter-Allied Information Committee, "Punishment for War Crimes: The Inter-Allied Declaration Signed at St. James's Palace, London, on 13th January, 1942 and Relative Documents", His Majesty's Stationery Office, London, 1942.

[27] Iko Toshiya (translated into Chinese by Lu Peng), "Research on Disposal Policy to Japanese War Criminals of National Government of China", in *Research on the History of Nanjing Massacre*, 2012, vol. 4, p. 91; Suzannah Linton, "Hong Kong's War Crimes Trials", Hong Kong's War Crimes Trials Collection, Hong Kong University, 2013, fn. 5

[28] Declaration of the Four Nations on General Security (Moscow Declaration), 30 October 1943.

[29] "Postdam Declaration (Proclamation Defining Terms for Japanese Surrender, July 26, 1945)", in Neil Boister and Robert Cryer (eds.), *Documents on the Tokyo International Military Tribunal: Charter, Indictment and Judgment*, Oxford University Press, Oxford, 2008, p. 1.

government accepted the "provisions set forth in the Potsdam Declaration".[30]

As a result, the Supreme Commander of the Allied Powers, General Douglas MacArthur, issued on 19 January 1946 a special proclamation ordering the establishment of an IMTFE. He also emphasised in the proclamation that:

> Nothing in this order shall prejudice the jurisdiction of any international, national or occupation court, commission or other tribunals established or to be established in Japan or in any territory of a United Nation with which Japan has been at war, for the trial of war criminals.[31]

In other words, all victim states of Japanese atrocities had jurisdiction over Japanese war criminals and the crimes the latter had committed during the Second World War. Pursuant to these documents, Britain, the US, France, the Netherlands, Australia, New Zealand, Canada, the Philippines, China and others set up national military tribunals, which conducted trials of about 5,700 Class B and C Japanese war criminals and sentenced 4,405 of them to imprisonment.[32]

### 27.4.2. The Domestic Legal Basis for the National Trial of the Japanese War Criminals

At the national level, although the new Chinese government abolished all laws enacted by the former government before 1949, a Decision on the Handling of Japanese War Criminals under Detention who Committed Crimes during the Japanese Invasion War ('Decision on War Criminals') was adopted on 25 April 1956 by the Standing Committee of the First National People's Congress at its 34th meeting and was issued by Chairman MAO Zedong.[33] Article 2 of the Decision on War Criminals

[30] "Japanese Instrument of Surrender", in *ibid.*, p. 3.

[31] "Special Proclamation – Establishment of an International Military Tribunal for the Far East, 19 January 1946", in *ibid.*, p. 6.

[32] Arujunan Narayanan, "Japanese Atrocities and British Minor War Crimes Trials after World War II in the East", *Jebat*, 2006, vol. 33, p. 1.

[33] Standing Committee of the National People's Congress, Decision on the Handling of Japanese War Criminals Under Detention who Committed Crimes during the Japanese Invasion War, 25 April 1956 ('Decision on War Criminals').

provided that the Japanese war criminals should be prosecuted before a SMT to be established by the Supreme People's Court.[34]

The Decision on War Criminals set forth the scope of the SMT's jurisdiction. First, according to the title of the Decision on War Criminals, the SMT's temporal jurisdiction should begin from 19 September 1931 when the Imperial Japanese Army invaded Manchuria until Japan's surrender on 9 September 1945. However, Article 1 of the Decision on War Criminals stated that those who committed new crimes in China after Japan's surrender should be prosecuted on joint charges. As a matter of fact, as we have seen, a number of Japanese Army soldiers joined YAN's Army in Shanxi province and continued the commission of crimes during the civil war. They were arrested around 1950 and detained in Taiyuan detention facilities. Therefore, the temporal jurisdiction would be extended at least to 30 September 1949. Second, although the Decision on War Criminals did not restrict the SMT's territorial jurisdiction, it limited the Tribunal's personal jurisdiction to those who not only committed crimes but were also detained in China. This meant that China would not make a request for extradition of those Japanese who were not detained in China at the time even if they were most responsible for the war crimes committed during the war of aggression. Not prosecuting those who were not held in custody in China would result in the impunity of some Japanese war criminals.

The Decision on War Criminals formulated the principles for handling the Japanese suspects. In general, the war crimes detainees would be treated leniently. The magnanimous treatment of a specific detainee depended firstly on the gravity of the crimes he had committed, and secondly on whether he had showed good signs of repentance. In fact the Decision on War Criminals stated that those whose alleged crimes were serious would be dealt with, where possible, according to the gravity of their crimes, taking into account their behaviour during detention. For those of secondary importance and those who showed remorse through good behaviour, treatment could be as lenient as exemption from prosecution (Article 1).

[34] Wang, 1990, p. 2, see *supra* note 5.

### 27.4.3. Subject Matter of the Jurisdiction

The 1956 Decision on War Criminals merely established the basic principles for handling Japanese war criminals; it did not provide the substantive law applicable to the trial of war criminals, i.e. the legal basis for charges and convictions. Due to the fundamental change in government, all legislation of the former Nationalist government was abolished after the founding of the People's Republic of China. The new Penal Code had not yet been developed in 1956, except a criminal regulation on punishing counter-revolutionary crimes promulgated on 21 February 1951, which contained 21 articles and listed 11 major crimes such as engaging in hostile and spy activities.[35] Still, whether the regulation could be applied retroactively to war crimes trial was questionable.

Nevertheless, the trial of war criminals after the Second World War was something new. Even the Charter of the International Military Tribunal ('IMT') at Nuremberg for the trial of German war criminals and that of the IMTFE for Japanese war criminals contained very simple provisions with respect to the subject matter. The crime against peace, crimes against humanity and war crimes under the jurisdiction of the IMTs were construed by the SMT's Judgments. The United Nations Resolution 95 (I), adopted on 11 December 1946, had confirmed the legal principles drawn upon in the Judgment at the IMT in Nuremberg.[36] In China, in order to understand the relevant international law, an in-depth study was arranged for the staff involved in the investigation, prosecution and trial of the Japanese war criminals. WANG Guiwu, the then Deputy Secretary General of the Supreme People's Procuratorate, lectured the staff on public international law and war crimes, while MEI Ju-ao, the legal adviser to the Ministry of Foreign Affairs and a Judge at the IMTFE, briefed them about the trial of the Class A war criminals at the IMTFE. ZHOU Gengsheng, a famous international law expert, and other experts were specially invited to advise and guide the preparation of the indictments and other legal instruments after the conclusion of the investigation.[37]

---

35 People's Republic of China Regulation on Punishing Counter-Revolutionary Crimes [中华人民共和国惩治反革命条例], 20 February 1951, arts. 6–7.

36 UN General Assembly, Resolution 95 (I), 11 December 1946.

37 Jin Weihua, "Li Fang – Prosecuting Japanese War Criminals before the Court", in *Procuratoral View*, 2009, no. 19, p. 66.

In the four cases prosecuted before the SMT, all accused persons were generally charged with the violation of international law and humanitarian principles during the Japanese war of aggression against China.[38] In addition, they were charged and convicted of specific crimes such as murder, massacres, killing, arrest, imprisonment, maltreatment, torture of peaceful civilians, turning residential areas into depopulated zones, destruction of towns and villages, expulsion of civilians, robbery, destruction of people's properties, seizure of farmers' land and housing, forced recruitment of civilians to engage in military service, rape, torture and mutilation of captured personnel, gassing, manufacture of biological weapons, tests of biological weapons on humans, espionage and so on. Most of these crimes were characterised as both war crimes and crimes against humanity. They were also charged with the crime of aggression. For example, the indictment against Takebe and others accused them of active implementation of Japanese imperialist policies of aggression, support of the Japanese imperialist war of aggression, manipulation of or participation in the Manchukuo puppet government and the usurpation of China's sovereignty. The indictments against Suzuki and others and Jōno and others accused them of active participation in the war of Japanese imperialist aggression against China. Accordingly, the crimes under the jurisdiction of the SMT were the same as those under the jurisdiction of the IMT at Nuremberg: the crime against peace or the crime of aggression, crimes against humanity and war crimes.[39] The wording of the SMT's indictments and verdicts reflected the fact that China had adopted and applied the law developed by the IMT at Nuremberg and the IMTFE through the trial of war criminals after the Second World War.

It is worth noting that the indictment against Jōno and seven others involved not only the crimes committed during the Second World War but also crimes committed after Japan's surrender. They were accused of the commission of a variety of serious crimes against the Chinese people by participation in YAN's counter-revolutionary army to conceal their conspiracy of actively saving the Japanese force in an attempt to revive Japanese militarism and to invade China again.[40] The SMT further judged in the case of Jōno that he "participated in Yan Xishan's armed force

[38] Wang, 1990, pp. 15, 365, 515, 683, see *supra* note 5.

[39] Charter of the IMT, London, 8 August 1945, art. 6 ('IMT Charter'); Charter for the IMTFE, 19 January 1946, art. 5 ('IMTFE Charter').

[40] Wang, 1990, p. 515, see *supra* note 5.

leading and commanding the counter-revolutionary armed force in the war against Chinese people's liberation and plotting Japanese military reconstruction".[41] This meant that the defendants also committed war crimes while participating in the civil war. Accordingly, the SMT applied war crimes to both situations of international armed conflict and non-international armed conflict. This practice may be considered a contribution to the development of international criminal law, though it has long been ignored.

### 27.4.4. Individual Criminal Responsibility

Following the principles of the Nuremberg IMT and the IMTFE,[42] the SMT only held individuals accountable for the crimes committed against China during Japan's war of aggression. The 45 accused were not major war criminals that formulated the policy of aggression and waged the war. Nevertheless, they played significant roles in the war. According to the indictments, Takebe, Furuumi and Saito Mio actively implemented Japan's policy of aggression and supported the war of aggression. They and three other accused Nakai Kuji, Utsugi Manyu and Jōno Hiroshi were most responsible for chairing or participating in decisions on the suppression of the Chinese people or planning and implementing relevant policies and laws. Another five accused, who had no authority to chair or participate in the decision-making process, executed and implemented the decisions, policies and laws. The rest of the defendants, except one, were involved differently in the planning, organising, directing, commanding, manipulating and leading subordinates to commit specific crimes. These accused persons were military commanders or superior administrative officials. They not only committed crimes personally but also committed bloody crimes through their subordinates.

Unlike defence arguments denying individual criminal responsibility raised at the IMTFE, none of the defendants argued in court that they should be exempted from criminal responsibility for their crimes committed under superior orders even though they were not the most

41 *Ibid*., p. 663.

42 "International Military Tribunal for the Far East, Judgment of 12 November 1948", in John Pritchard and Sonia M. Zaide (eds.), *The Tokyo War Crimes Trial: The Complete Proceedings of the International Military Tribunal for the Far* East, Garland, New York, vol. 22, p. 48438.

senior Japanese military officials. However, some defence counsel brought the issue to the bench's attention that their clients' criminal responsibility should be distinguished from that of their superior commanders in order to get their sentences reduced.[43]

## 27.5. The Rules of Procedure and Evidence

### 27.5.1. Rules of Procedure

As far as the rules of procedure were concerned, the 1956 Decision on War Criminals contained very simple provisions. In addition to the two provisions relating to the rights of the accused, it only provided that the Judgment pronounced by the Tribunal shall be final (Article 5); therefore the Judgment could not be appealed, which was in conformity with the practice of the Nuremberg IMT and IMTFE. The Decision on War Criminals gave convicted persons the possibility of parole or early release while they were serving their terms of imprisonment (Article 6).[44]

However, the Organic Laws of the People's Courts[45] and People's Procuratorate[46] promulgated by the National People's Congress at its first meeting of the First Session in September 1954 and the Regulation on Arrest and Detention[47] promulgated the same year set forth some of the basic principles of criminal procedures in terms of trial in public, right to defence, right to the use of a citizen's native language to conduct proceedings, mechanism of the collegiate panel and so on.[48] The Central Government Legislative Committee drafted and circulated the first draft of the Criminal Procedure Ordinance in 1955. One year later, the Supreme People's Court promulgated a Summary of the Civil and Criminal Procedure based on the initial practice of civil and criminal

43 Wang, 1990, p. 287, see *supra* note 5.

44 *Ibid*., p. 2.

45 Organic Law of the People's Courts of the People's Republic of China [中华人民共和国人民法院组织法], 21 September 1954.

46 *Ibid*.

47 Regulation on Arrest and Detention of the People's Republic of China [中华人民共和国逮捕拘留条例], 20 December 1954.

48 Xu Henan, "Looking Back and Looking Forward to the Idea of Science of Criminal Procedure Law in Fifty Years (I)", in *Journal of National Procurators College*, 2000, vol. 1, p. 21.

proceedings at different levels.[49] By providing unified and consistent rules of civil and criminal procedure, this legal document had an important effect on the Shenyang and Taiyuan trials.

Traditionally, the rules of criminal procedure in China were similar to those in the civil law system. The trial procedure of the SMT can be summarised as follows. First, the prosecutor read the indictment, which was followed by the court's investigation. The presiding Judge interrogated the accused on each count and examined witnesses. With the permission of the presiding Judge, the public prosecutor and defence counsel could ask questions to accused persons and witnesses. The proceedings then went to the stage of a court debate. The public prosecutor and defence counsel spoke about their views on the case and evidence, and they could debate with each other. After the conclusion of the debate, the Court gave the defendant the opportunity to make a final statement before the Court adjourned for deliberation. Finally, the Judgment was pronounced in public.[50]

### 27.5.2. Rules of Evidence

LI Fushan, the prosecutor in the Shenyang trial, recalled that Chinese central government officials paid much attention to the trial of Japanese war criminals. They convened meetings to study the matter of evidence. Having fully examined and discussed the issue, the Supreme People's Procuratorate and judicial experts set five requirements for proof of crimes:

1) criminal facts of each offence must be clear;
2) evidence must be sufficient and conclusive, and there must be at least two or more pieces of evidence for each count;
3) evidence must be consistent with each other;
4) causal link to each offence must be clear; and
5) all legal documents and legal procedures relating to the investigative work must be complete with legal effect.[51]

[49] Fan Chongyi and Wu Hongyao, "Fifty Years and Future of Criminal Procedure Law", in *People's Procuratorial Semimonthly*, 1999, no. 12, p. 7.

[50] Wang, 1990, pp. 1–10, see *supra* note 5.

[51] Li, 2008, p. 35, see *supra* note 10.

The requirements were also considered as guidelines for the prosecution of offences. The prosecution repeatedly reviewed and verified materials relating to the indictments in accordance with these requirements to ensure that there was sufficient and conclusive evidence to proceed against the accused. It was reported that for each culpable fact there were five types of corroborated evidence: transcript of interrogation, accused's confessions and other materials, verified witness materials, documentary materials such as archives of the puppet regime of Manchukuo, and accusation and disclosure of the joint offenders.[52] The finalised investigation dossiers were given to the defendants to read, verify and sign.[53] Consequently, the evidence prepared for the trial was quite adequate. The SMT sitting in Shenyang, for example, had in hand 28,000 items of complaints, expertise reports and 8,000 copies of the puppet regime files related to the cases.[54]

The Courts examined piles of physical and documentary evidence and heard victims' complaints and witness testimonies in order to ensure that the evidence presented proved the charges beyond reasonable doubt. In the case of Suzuki and others the Court examined 338 criminal complaints made by 920 victims and their relatives, 19 items of criminal information submitted by their former subordinates and staff, 814 witness statements, the accused persons' verbal confessions, written statements and other evidentiary material, and heard 19 witness testimonies.[55] In the case of Takebe and others the court examined 642 criminal complaints made by 949 victims and their relatives, 360 statements made by 1,211 witnesses, 47 items of criminal information submitted by the accused persons' subordinates and staff, 315 items of documentary evidence and other material evidence, and heard 47 witness testimonies in Court.[56] In the case of Jōno and others the Court examined 316 criminal complaints submitted by 681 victims, 153 written statements given by 119 their former subordinates and staff, 143 witness statements, 349 items of files, documents and other evidentiary materials, and heard 12 victim

52 Jin, 2009, p. 66, see *supra* note 37.

53 Li Donglang, "Brief Discussion on the Trial of the Japanese War Criminals in New China", in *Theory Journal*, 2005, no. 8, p. 4.

54 Wang, Zhang and Zhao, 2001, p. 170, see *supra* note 15.

55 Wang, 1990, p. 496, see *supra* note 5.

56 *Ibid*., p. 322.

complaints and 23 witness testimonies.[57] In the case of Tominaga the Court examined 24 witness written statements, 102 Japanese statements and files, and heard 6 insiders' oral testimonies.[58] The evidence admitted by the SMT consisted of complaints lodged by citizens, witness statements, statements made by the defendants' former subordinates and colleagues, archive files, documents, transcripts of interrogation of the defendants, victims' complaints and witness testimonies in court.[59] As a result, all the defendants admitted the crimes they were charged with which were proved by a large amount of conclusive evidence.

### 27.5.3. Rights of the Defendant

#### 27.5.3.1. Right of Being Informed of the Charges

The SMT fully respected the defendants' rights in the criminal proceedings. An accused person had the right to be informed of the charges against him, which is a fundamental right of an accused under international human rights law. Taking into account the fact that the defendants were Japanese, the Decision on War Criminals provided that languages and documents to be used by the SMT were to be translated into a language understood by the accused (Article 3). In the week before the commencement of the trial, a copy of the indictment, together with the translated Japanese version, was served on each defendant.[60] Despite the traditional practice of giving the indictment only to Judges, the Chinese government served indictments on the defendants in advance in accordance with international practice.

#### 27.5.3.2. Right to Defence

That an accused has a right to defence is contained in the 1954 Constitution[61] and the Organic Law of People's Court,[62] and provided the legal basis for lawyers to participate in criminal proceedings. The law also

---

57 *Ibid*., p. 661.

58 *Ibid*., p. 729.

59 *Ibid*., pp. 322, 472, 661, 729.

60 For example, the trial of Jōno Hiroshi *et al.* commenced on 12 June 1956. Jōno Hiroshi received the Indictment on 6 June 1956. See *ibid.*, p. 540.

61 Constitution of the People's Republic of China (1954), 20 September 1954, art. 76.

62 Organic Law of People's Court, Article 7, see *supra* note 45.

safeguarded the legitimate rights and interests of the accused persons and provided legal protection for them. The SMT conducted trials with full respect for the rights of the accused as the Decision on War Criminals provided that an accused could defend himself in person or through an appointed lawyer who had registered with China's judiciary. In addition, the SMT was able to appoint defence counsel for an accused when necessary.[63] The SMT had selected and designated 32 defence counsel from law schools and judicial organs for the accused persons.[64] Defence counsel interviewed the defendants and discussed their cases with them several days before the hearing.[65] When the trial commenced, the Court informed the accused that he would have the right to defend himself either in person or by defence counsel, and have the right to make a final statement.[66]

The defence counsel conscientiously fulfilled their duties to ensure that the accused would receive a fair trial. Some of them spoke to the Court about the social and educational origin of the crimes;[67] one argued for the defendant that part of the alleged crimes was committed by his predecessor;[68] some brought the Court's attention to the defendants' personal circumstances, for example, a defendant had resigned from his job;[69] some pointed out that being low-ranking officials, the defendants were not involved in policy-making and therefore were not most responsible for the alleged crimes.[70] Some raised a further ground of defence that although the accused persons were senior Japanese commanders, the important operations must have been conducted under the command of the superior commanders. They suggested that the Court should distinguish criminal responsibility between the accused and their superiors or to mitigate their punishment.[71] Most defence counsel

63 Decision on War Criminals, art. 4, see *supra* note 33.

64 Nineteen defence counsel were assigned to the case of Takebe Rokusashi *et al.*, five to the case of Suzuki Keiku *et al.*, six to the case of Jōno Hiroshi *et al.*, and two to the case of Tominaga Juntaro. Wang, 1990, pp. 69, 385, 545, 695, see *supra* note 5.

65 Han Fenglu, "Defending Japanese War Criminals", 2007.

66 Wang, 1990, pp. 81, 388, 549, 696, see *supra* note 5.

67 *Ibid*., pp. 263, 267, 283, 482

68 *Ibid*., pp. 274, 285, 640.

69 *Ibid*., p. 280.

70 *Ibid*., pp. 264, 266, 270, 272, 275–76.

71 *Ibid*., pp. 268, 272, 277, 279–83, 286–89, 478, 482, 643–44.

emphasised the remorse that the defendants had shown and recommended lenient sentences for their clients to the Court.

However, in the court debate, the Prosecutor did not agree that the social origins of crimes could play a decisive role in the accused persons' commission of crimes because, in spite of the strength of opinion in favour of Japanese militarism, there was also a peace-loving progressive force in Japan. The Prosecutor believed that the defendants committed the serious offences on their own volition. They could not shirk criminal responsibility.[72] As for the defence that the defendants committed offences by execution of superior orders, the Prosecutor pointed out that high-ranking military officials understood international law and they knew that their acts constituted serious crimes. In addition, they had considerable authority to prevent the execution of orders that were of apparently criminal nature. Moreover, they could have made a moral choice, but did not do so. Consequently, they should bear serious responsibility for the crimes they had committed.[73]

Having agreed with the Prosecutor's view, though, the defence counsel stressed that those who executed superior orders should bear different responsibilities from those who planned and plotted the crimes. Besides, the low-ranking commanders had fewer moral choices than senior generals.[74] These defence arguments reflected the law developed by the IMTs that "[t]he fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires".[75] In its Judgment, the SMT did not mention that the responsibilities or punishments of the accused persons were mitigated for the reason that they had committed crimes under superior orders.

In addition to the performance of their duty to defend the accused before the Court, the defence counsel also raised some special issues to the Court to protect the rights and interests of the accused in special circumstances. For example, in the trial of Takebe, the accused was not able to be present in court due to his serious illness; the Court therefore granted the defence counsel's request to have the hearing held in the

72 *Ibid*., p. 484.

73 *Ibid*.

74 *Ibid*., pp. 484–85.

75 IMTFE Charter, arts. 6 and 8, see *supra* note 39

hospital where the accused was receiving medical treatment. Judge YANG Xianzhi, accompanied by the registry officer YU Weilou, was assigned to hear the case. The Prosecutor, CAO Zhenhui, and defence counsel GUAN Mengjue and ZHAO Jingzhi attended the hearing.[76] This protection of the accused's interests embodied the humane treatment of the defendant.

#### 27.5.3.3. Right to a Public Trial

That an accused has a right to a public trial is clearly provided by many international human rights treaties and conventions. All the Shenyang and Taiyuan trials of the Japanese war criminals were conducted in public. Hundreds of representatives of democratic parties, civil associations and mass organisations, factories, schools, local offices and the People's Liberation Army ('PLA') attended the trials in Shenyang and Taiyuan. Central and local news media reporters observed and reported on the trials.[77] This procedure placed the trials under the supervision of the people to ensure the trials were transparent and fair. The significance of having the trials in public was to allow the victims or their families to see that justice was being done. It also provided a useful means to educate people about what they could do and what they could not.

### 27.5.4. Sentencing

After the conclusion of investigations in 1955, the Supreme People's Procuratorate, together with relevant government departments, studied the sentencing issue of war criminal trials. The Northeast Working Group recommended that 70 Japanese war criminals among the detainees were most responsible for the heinous war crimes; they should therefore be sentenced to death. However, the Politburo Standing Committee adopted a clemency policy on the treatment of the Japanese war criminals in a

[76] Liu Xueqin, "Chairman Mao Appointed Jia Qian to Try the Japanese War Criminals", in *General View of History of Communist Party*, 2005, no. 5, p. 40.

[77] "Jōno Hiroshi and Other 7 Japanese War Crimes Accused Have Been Tried in Taiyuan by the Special Military Tribunal of Supreme Court", *People's Daily*, 22 June 1956; "The Japanese War Criminal and Spy Tominaga Juntaro Has Been Tried in Taiyuan by the Special Military Tribunal of Supreme Court", *People's Daily*, 22 June 1956; "Takebe Rokusashi and 27 Other Japanese War Criminals Have Been Tried in Shenyang by the Special Military Tribunal of Supreme Court", *People's Daily*, 21 July 1956; "Eight Japanese War Criminals Have Been Tried in Shenyang by the Special Military Tribunal of Supreme Court", *People's Daily*, 22 July 1956.

meeting in December 1955, namely, that there should be few imprisonment sentences and no death penalty or life imprisonment at all.[78] The democratic parties, federations of industry and independents challenged the policy, as they felt it would be difficult to placate the people.[79] There were two reasons to adopt a clement sentencing policy. First, the criminals had been detained for a decade, which was sufficient to substitute the sentence for the crimes that most of them had committed. Longer terms of imprisonment were needed only for a small number of accused for their serious crimes. Second, given that a decade had elapsed since the end of the Second World War and the positions of the two countries in international affairs had changed significantly, adopting a clement sentencing policy would be helpful to promote the normalisation of Sino–Japanese diplomatic relations as well as to ease and stabilise the international situation. The Decision on War Criminals clearly stated that the crimes committed by these Japanese detainees had caused extremely serious damage to the Chinese people. They were deemed to have flagrantly breached international law and the principles of humanity, and therefore deserved to be severely punished. However, given that the situation had changed a decade after Japan's surrender and the development of friendly relations between peoples of the two countries, and in view of the fact that the vast majority of these war criminals had come to some form of repentance during detention, it was decided that they would be subject to different treatment in accordance with the clemency policy.[80]

In January 1956 leaders in charge of Japanese war criminal trials, as well as legal experts such as SHI Liang, ZHANG Zhirang, PAN Zhenya, ZHOU Gengsheng and MEI Ju-ao, had meetings to consider the sentencing issue in accordance with the clemency policy,[81] which was reflected in the SMT's Judgments. The SMT handed down Judgments of the four cases,

78 Shu Gong, "China's Trial of Japanese War Criminals in 1956", in *Across Time and Space*, 2006, no. 6, p. 20.

79 *Ibid.*

80 Wang, 1990, p. 2, see *supra* note 5.

81 Sui Shuying, "On the Trial and Release of the Japanese War Criminals by the Chinese Government in the 1950s", in *Journal of Yantai University (Philosophy and Social Science)*, 2006, vol. 19, no. 9, p. 461, citing "Archives in the Ministry of Foreign Affairs, Opinion on Investigation and Treatment of Japanese War Criminals, file No. 105-00501-17(1)".

finding that during the Japan's invasion of China, the accused had implemented Japan's policy of aggression against China, assisted in Japan's war of aggression, violated international law and the principles of humanity. Based on the factual findings and according to the applicable international and national law, the accused persons were convicted of war crimes and anti-revolutionary crimes, including usurping the sovereignty of China, planning and furthering an aggressive policy, destroying towns and villages, expelling civilians, looting property, rape, persecution and inhumane treatment, abuse, massacre of POWs, engaging in spy activities, the manufacture of bacteriological weapons and using poison gas. But no one was sentenced to life imprisonment or received capital punishment, although the crimes they had committed were grave enough to warrant severe punishment. All sentences imposed on the convicts were no more than 20 years' imprisonment.

## 27.6. Assessment of the Trial

### 27.6.1. Different Roads Lead to the Same Destination

Facing a large amount of conclusive evidence presented before the Court, the accused persons admitted their crimes and pleaded guilty one after another. Some of them kneeled to the victims and Judges and asked for a capital punishment in order to redeem their mortal crimes. Some burst into tears in court due to remorse.[82] Suzuki said that initially he had attempted to conceal his atrocities; but the humane treatment given by the Chinese people inspired him to examine his own conscience and to realise the crimes he had committed. Though he believed he could not deny the crimes that in the face of conclusive evidence, the SMT still appointed a defence counsel for him and informed him about his right to defence. He thanked the Chinese people and made a sincere apology to them.[83] Sakakibara Hideo admitted that he had committed a crime by making bacteriological weapons ready for bacteriological warfare and flagrantly violated universal conventions and humanitarian principles. He expressed his willingness to accept severe penalties that the Court might impose on him.[84] Jōno said in his final statement that he hated himself and Japanese

[82] Kong and Zhang, 2008, p. 52, see *supra* note 9.

[83] Wang, 1990, p. 752, see *supra* note 5.

[84] *Ibid*., p. 750.

imperialism that had led him to commit crimes. He condemned to the world the crimes that Japanese imperialism had caused, which could be proven by the defendants' criminal facts.[85] Tominaga acknowledged that the trial proceedings were honest and fair. He could not but reflect on his own atrocities. He bowed and expressed a heartfelt apology to the Chinese people.[86]

Those detainees who had not been prosecuted also had a good understanding of their crimes and showed their remorse through the educational reform programme. First, they received humane treatment during detention. ZHOU Enlai instructed the Court to treat them in accordance with international customary rules relating to the treatment of POWs and to focus on their educational reform. There was a prohibition on beating, scolding and degrading the detainees held in the detention facilities. The national customs of the detainees should also be respected.[87] The Ministry of Public Security issued a regulation in accordance with ZHOU's instruction. The regulation also provided for health and medical treatment of the Japanese war crimes detainees. It allowed the detainees to meet with their relatives, read newspapers, listen to radio, watch films and carry out sports activities.[88]

Second, the detainees were educated and reformed through studies. Initially, there was some controversy about the detainees' status. They argued that they were POWs and not war criminals. By studying the Charter of the IMTFE, they learned about different classes of war criminals and the policy on their treatment. The managers of the detention facilities also organised for them to study and discuss issues about who led them onto the road of war crimes and how to end life in prison and start a new life outside. After continuous studies and discussions, the majority began to realise that only their sincere repentance could obtain the forgiveness of the Chinese people. So they began to reflect on their sins and confess to the crimes committed during the war.[89]

Third, they were educated by visiting Chinese communities. At the end of 1955 MAO and ZHOU issued instructions to organise community

[85] *Ibid*., p. 650.
[86] *Ibid*., p. 727.
[87] Ji, 2002, p. 4, see *supra* note 12.
[88] *Ibid*., p. 6.
[89] *Ibid*., p. 7.

visits for all war crimes detainees.[90] Arrangements were made for the detainees in Fushun and Taiyuan to visit Nanjing Massacre Memorial Hall and massacre sites in Fushun and Wuhan between February and August 1956. They listened to the complaints of tragedy survivors. By visiting Chinese communities, they obtained a better understanding of the crimes they had committed in China and came to repentance. Many of them expressed their apologies to the people they visited. They were determined to be reformed and would never re-engage in a war of aggression.[91]

Those 1,017 war crimes detainees who were exempted from prosecution were released and repatriated to Japan in three batches in 1956. Many of them were moved to tears when they heard the release announcement. One year later, they organised Chugoku Kikansha Remrakukai (China Returnee's Association).[92] The 45 who were convicted and sentenced were wholly released by 6 March 1964. They worked tirelessly for decades to relate their experiences and atrocities committed in China after returning to Japan through various lectures and publications. Not a single one revoked his confession and admission of guilt. They told the Japanese people that they must never repeat the same mistake. They returned some remains of Chinese soldiers to China in May 1957 and launched mass signature campaign in 1963 to promote the establishment of Sino–Japanese diplomatic relations.[93] The educational reform and clemency policy for these Japanese war criminals detained in China turned out to be really successful.

### 27.6.2. Rethinking the Trial

The Shenyang and Taiyuan trials were successful in the sense that they brought to account those responsible for crimes against peace, crimes of aggression, war crimes and crimes against humanity committed during the Japanese invasion of China. The trials also provided detailed information about Japan's wartime policies in China and uncovered the extremely brutal means that the Japanese war criminals employed to commit crimes

90 *Ibid*., p. 9.

91 Zheng Yi, "Declassified Diplomatic Documents Revealed Inside Information of China's Exemption of Japanese War Criminals", in *Xiandai Shenji Yu Jingji*, 2006, no. 5, p. 44.

92 Ji, 2002, p. 14, see *supra* note 12.

93 Zheng, 2006, p. 44, see *supra* note 91.

against the Chinese people. The trials provided an official record of the nature and the truth of the war and the crimes. The trials were also successful in comparison with the Tokyo Trial, in that all Japanese war criminals prosecuted before the SMT admitted guilt of crimes whereas none of the Class A war criminals prosecuted before the IMTFE did so. Tōjō Hideki denied his guilt even when he was about to be executed. As far as the Tokyo Trial was concerned, although 28 Class A Japanese war criminals and the crimes they perpetrated were prosecuted, many individuals, notably the Emperor, evaded responsibility and 19 Class A criminals were released without trial.[94]

The Shenyang and Taiyuan trials, by contrast, did not complement the IMTFE because the SMT's jurisdiction was limited to war criminals detained in China. Those Class A, B and C criminals who were outside China could not be extradited from abroad and be prosecuted. A top war criminal such as Kishi Nobusuke even became Prime Minister in 1957 and continued going down the road to war that Tanaka Giichi and Tōjō Hideki had taken Japan, as Furuumi criticised.[95]

The Tokyo Trial omitted certain war crimes and crimes against humanity. For example, no charges were brought against the commission of crimes of forced labour, sexual slavery, biological experimentation and use of chemical weapons. This was due to incomplete criminal investigations in order to speedily wind up the Tokyo Trial or the desire of the US to acquire the information about chemical weapons and keep it secret.[96]

The Shenyang and Taiyuan trials in 1956 did prosecute the crime of forced labour that took place in China.[97] However, the fact that approximately 40,000 Chinese were taken forcibly to Japan in the period between 1943 and 1945 to work in 135 construction and mining

---

94 He Tianyi, "Reflections on the Tokyo Trial", in *Journal of Studies of China's Resistance War Against Japan*, 1997, no. 3, p. 164.

95 Guo Xingwen, "From War Criminal to Peace Keeper", in *Rule by the Law and Society*, 2001, no. 2, p. 38.

96 Caroline Rose, *Sino-Japanese Relations: Facing the Past, Looking to the Future?*, Routledge, London, 2005, p. 35; Benjamin Garrett and John Hart, *Historical Dictionary of Nuclear, Biological and Chemical Warfare (Historical Dictionairies of War, Revolution, and Civil Unrest)*, Scarecrow Press, Lanham, 2007, p. 117.

97 Suzuki and other five accused were charged with forced labour, see the indictments in Wang, 1990, pp. 26–27, 34–35, 368, 524, and record of trial proceedings in pp. 115–16, 132–34, 219–20, 224–25, 417, 632, see *supra* note 5.

companies, and an estimated 7,000 lost their lives due to brutal treatment,[98] was not included in the indictments. The SMT could have prosecuted those who helped to send the forced labourers to Japan. The omission has become the focus of the victims' attention since 1980s.

The crime of the manufacture of biological weapons and biological experimentation was prosecuted in two cases involving three accused.[99] The use of chemical weapons was also charged in one case involving two accused.[100] The indictment identified the use of tear gas or poison gas causing injury and death of hundreds of civilians. This accusation did not fully reflect the gravity of the crime as it has been reported that "during the Sino-Japanese War (1937–1945), Japanese forces employed riot control agents, phosgene, hydrogen cyanide, lewisite and mustard agents extensively against Chinese targets".[101] It is estimated that 2,000 chemical attacks took place during the war leading to over tens of thousands of deaths and many more casualties.[102] The abandoned chemical weapons have been accidentally discovered in China, causing many injuries, illnesses and death since the end of the war.

The world was probably not aware of the crime of forced sexual slavery (so-called comfort women) during the Second World War until the 1970s when the issue of Korean comfort women was the subject of a book.[103] It seems understandable that the crime relating to Chinese comfort women was not prosecuted before the SMT in the 1950s. But the fact that thousands of "comfort stations" were established in 21 Chinese cities and a total of over 200,000 Chinese women were forced into prostitution by the Japanese army,[104] which involved so many individuals and families, could not be easily forgotten and neglected. The trials of 1956 could have helped in the identification of the crime and contributed

98 Rose, 2005, p. 78, see *supra* note 96.

99 See indictments in Wang, 1990, pp. 45, 47, 372–73, and trial proceedings in pp. 183–84, 179–80, 467–74, *supra* note 5.

100 See the indictment in *ibid.*, pp. 366, 372, and record of trial proceedings in pp. 409, 419, 456.

101 Robert Curley (ed.), *Weapons of Mass Destruction*, Britannica Educational Publishing, New York, 2012, p. 113.

102 Rose, 2005, p. 91, see *supra* note 96.

103 *Ibid*., p. 38.

104 *Ibid*., p. 88.

more to the development of international and national criminal justice if the crime had been investigated and prosecuted at that time.

Reparation is another issue that was not dealt with by the SMT. According to the Potsdam Declaration, Japan should pay reparations in kind to victim countries.[105] That victims of serious violations of international humanitarian law have the right to a remedy and reparation has been adopted as a principle by the United Nations.[106] China's government expressed her position to reserve the right to claim compensation in the early 1950s as China suffered the most, namely, 10 million killed, and US$50 billion in economic damages at the hands of the Japanese military.[107] However, the government had changed its stance by 1956. YUAN Guang, the Vice-President of the SMT, and LIAO Chengzhi suggested to ZHOU Enlai that the SMT had the authority to decide on reparations that Japan should pay to the victims because Germany had paid a large amount of compensation to victims and the Soviet Union had confiscated Japanese assets and properties in eastern China. ZHOU responded that it was better for China to waive the claim of Japan's reparations. In his view, the cost of compensation would eventually be inflicted on the Japanese people rather than the Japanese government.[108] Like the sentencing policy, the waiver of reparations was a part of China's magnanimous policy towards Japan. For the sake of friendship between the two countries, China's government adopted the policy of "return good for evil". Regretfully, the government ignored the victims' right to reparations, which cannot be measured merely by monetary value. Reparations are a crucial part of restorative justice and serve an important role in progress towards reconciliation.

[105] Potsdam Declaration, art. 11, see *supra* note 29.

[106] Basic Principles and Guidelines on the Right to a Remedy and Reparation for the Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN General Assembly, Resolution 60/147, 16 December 2005.

[107] Rose, 2005, p. 41, see *supra* note 96.

[108] Gao Fanfu, "The Friendly Element of the China's Waiver of the Compensation Claim to Japan", in *Journal of Studies of China's Resistance War Against Japan*, 2008, no. 2, p. 204.

## 27.7. Conclusion

The Japanese war criminals had a fair trial before the SMT in China in 1956. The trials were not only in conformity with modern international law but also made certain contributions to international criminal justice. On the one hand, an accessible historical record of the atrocities and heinous war crimes committed by Japanese war criminals was created by the trials. One can never deny them. On the other hand, those who were detained in China and responsible for the serious crimes had been individually held criminally responsible, actions that should not be passed on to future generations. For the remaining problems that were left unsolved due to historical reasons, each side should make unstinting efforts for a peaceful settlement. War crimes trials teach all people a lesson that waging wars of aggression will never lead to a good conclusion. The purpose of international and national criminal justice is to break the cycle of violence and to stop repeated hatred and revenge between perpetrators and victims, whether individuals or ethnic groups or nations. All peoples should remember the suffering that the war brought to the people and take actions to avoid or stop wars of aggression and war crimes that are happening or could happen anywhere in the world.

FICHL Publication Series No. 21 (2014):

## Historical Origins of International Criminal Law: Volume 2

Morten Bergsmo, CHEAH Wui Ling and YI Ping (editors)

The historical origins of international criminal law go beyond the key trials of Nuremberg and Tokyo but remain a topic that has not received comprehensive and systematic treatment. This anthology aims to address this lacuna by examining trials, proceedings, legal instruments and publications that may be said to be the building blocks of contemporary international criminal law. It aspires to generate new knowledge, broaden the common hinterland to international criminal law, and further develop this relatively young discipline of international law.

The anthology and research project also seek to question our fundamental assumptions of international criminal law by going beyond the geographical, cultural, and temporal limits set by the traditional narratives of its history, and by questioning the roots of its substance, process, and institutions. Ultimately, the editors hope to raise awareness and generate further discussion about the historical and intellectual origins of international criminal law and its social function.

The contributions to the three volumes of this study bring together experts with different professional and disciplinary expertise, from diverse continents and legal traditions. Volume 2 comprises contributions by prominent international lawyers and researchers including Professor LING Yan, Professor Neil Boister, Professor Nina H.B. Jørgensen, Professor Ditlev Tamm and Professor Mark Drumbl.

ISBN 978-82-93081-13-5

TOAEP | Torkel Opsahl Academic EPublisher

**Torkel Opsahl Academic EPublisher**
E-mail: info@toaep.org
URL: www.toaep.org

CILRAP: Centre for International Law Research and Policy