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8 Japanese War Crimes and War Crimes Trials in China

Introduction

After World War II, the Allied Powers held trials in various locations for the prosecution of Japanese war criminals. In Tokyo, the International Military Tribunal for the Far East, also known as the Tokyo Trials, was held from 1946 to try Class A war criminals, and 28 people were indicted for crimes such as “crimes against peace.” The Tokyo Trials adjourned in November 1948, handing down guilty verdicts including seven death sentences among 25 Class A war criminals. In addition, countries such as the United States, Britain and China held Class B and C war crimes trials in over 50 locations in the Asia-Pacific region including Japan, indicting 5,700 people, mainly for “conventional war crimes,” and handing down guilty verdicts including about 1,000 death sentences among 4,500 people (excluding trials held by the Soviet Union and the People’s Republic of China).¹ As reflected in the phrase “victors’ justice,” there was a perception in Japanese society at the time that the war crimes trials by the Allied powers were one-sided and unfair. The way in which Class B and C war crimes trials were held was also seen as improper and the book *Gyakutai no kiroku*, which was published not long after the end of the trials, highlighted the following issues:

Among the many who were disgraced as “war criminals” and given heavy sentences, there were those falsely accused of something they were completely innocent of . . . who were held responsible for following senior officers’ orders . . . and countless others who were condemned for very vague reasons. Moreover, the trials were held only as a formality and lasted for a day or half a day, with some finishing in one hour or just over 10 minutes. . .²

1 The basic data on Class B and C war crimes trials mentioned hereinafter is from Hayashi Hirofumi, *BCKyū senpan saiban* (Tokyo: Iwanami shoten, 2005).

2 Satō Ryōichi, *Gyakutai no kiroku* (Tokyo: Ushio shobō, 1953), 17.

Note: This paper is a revised version of the chapter “Chūgoku wa naniwo donoyōni sabakōto shitanoka – chūgoku kokumin seifu no senpan saiban seisaku no tenkai” from my book *Sensō wa dō kioku sarerunoka – nitchū ryō koku no kyōmei to sōkoku* (Kashiwa shobō, 2014).

Furthermore, as for Class B and C war crimes trials held in China by the Nationalist government, a navy law officer sentenced to imprisonment for a definite term of six years recalled the following:

After I was transferred to Sugamo, I asked the people there about the way Class B and C trials were held in each country, and I felt that the trials by China and the Netherlands had been the most nonsensical. The Chinese trials did not consider evidence. They carried out executions based on victims' accusations.³

The author does not believe that the problems indicated by the Japanese side did not exist. By observing cases such as the one for the Pingdingshan massacre in which civilians were questioned on the stand about the responsibilities that should have been shouldered by the military, it may have been inevitable for the people on trial and those associated with them to insist that the trials were invalid.

However, were the trials that were “nonsensical” and “did not consider evidence” a product of the Nationalist government’s policy for war crimes trials? Moreover, although it is worth pointing out the various problems with the war crimes trials, it seems biased to emphasize only their invalidity while ignoring the premise of why the war crimes trials were held in the first place. This chapter presents an overview of Japan’s major war crimes, then examines the actual way in which the Chinese Nationalist government implemented its policy for war crimes trials.⁴

³ Iwakawa Takashi, *Kotō no tsuchi to narutomo – BCKyū senpan saiban* (Tokyo: Kōdansha, 1995), 585.

⁴ Leading research on the Chinese Nationalist government’s handling of war crimes trials includes Hu Ju-rong, *Zhongwai Junshi Fating Shenpan Riben Zhanfan* (Nankai: Nankai Daxue Chubanshe, 1988); Sō Shiyū, “Shūsen zengo ni okeru Chūgoku no tainichi seisaku – sensō hanzai saiban wo chūshin ni,” *Shien* 54, no. 1 (1993); idem, “Sengo Chūgoku ni okeru Nihonjin senpan saiban,” *Kikan sensō sekinin kenkyū* 30 (2000); Ishi’i Akira, “Chūgoku no tainichi senryō seisaku,” *Kokusai seiji* 85 (1987); In Engun, *Nitchū sensō baishō mondai* (Tokyo: Ochanomizu shobō, 1996); In Engun, *Nitchū kōwa no kenkyū* (Tokyo: Kashiwa shobō, 2007); Kokukin En, *America to nikka kōwa* (Tokyo: Kashiwa shobō, 2001); Hayashi, *BCKyū senpan saiban*; Wada Hideho, “Hishinryakukoku niyoru tainichi sensō saiban,” *Chūgoku kenkyū geppō* 645 (2001); and idem, “Chūgoku kokumin seifu niyoru tainichi senpan saiban no mondaiten,” *Gendai chūgoku* 76 (2002). Furthermore, Shanghai Jiaotong Daxue Dongjing Shenpan Yanjiu Zhongxin, *Dongjing Shenpan Wenji* (Shanghai: Shanghai Jiaotong Daxue Chubanshe, 2011) was recently published on the Chinese side and includes representative essays on research into the Tokyo Trials, etc. On the other hand, research focusing on war criminals on the Japanese side who were tried includes Chaen Yoshio, *Nihon BCKyū senpan shiryō* (Tokyo: Fuji shuppan, 1983); idem, *BCKyū senpan gunji hōtei siryō – kanton hen* (Tokyo: Fuji shuppan, 1984); idem, *BCKyū senpan Chūgoku – futsukoku saiban shiryō* (Tokyo: Fuji shuppan, 1992);

Japan's Invasion of China and War Crimes

Before going into the main subject of this chapter, the premise must be explained. In other words, the reason why the Nationalist government decided to hold war crimes trials in the first place was because Japan began to invade China and, in the process, inflicted massive damage to the Chinese side.

First, it is necessary to explore the unfolding of Japan's war in relation to international law. On 18 September 1931, Japan's Kwantung Army began military aggression with the aim of making Northeast China ("Manchuria") a territory of Japan. It was the start of the Manchurian Incident. The act was a clear invasion of territory and violated both the Covenant of the League of Nations that established the territorial integrity of its member countries and the Nine-Power Treaty that established the territorial integrity of China. Furthermore, while the Japanese government (the second Wakatsuki cabinet) proclaimed a "non-expansion" policy, it adopted a policy to resolve pending problems between Japan and China through an armed invasion and decided to rule Manchuria by establishing a puppet government. The Japanese government also proceeded with actions that effectively made it a policy to invade territory in China. Military aggression into China became national policy, which violated not only the Covenant of the League of Nations and the Nine-Power Treaty, but also effectively violated the Kellogg-Briand Pact, which established the renunciation of war as national policy.⁵

The Chinese side appealed to the League of Nations immediately after the start of the Manchurian Incident and asserted that Japan was violating the League's Covenant and the Kellogg-Briand Pact by invading China. However, Britain and France, which were major nations in the League, were reluctant to declare Japan as an aggressor, and the United States and the Soviet Union, which were not members of the League but had deep interests in Chinese affairs, also did not attempt to proactively restrain Japan. The biggest reason was that there was concern that sanctions against Japan would turn into a military conflict. Taking advantage of this lack of action by world powers, Japan moved to make the occupation of Manchuria a fact. By signing the Japan-Manchukuo

and Iwakawa, *Kotō no tsuchi to narutomo*, who cites the problems of war crimes trials based on what actually took place. In addition, an overview of Class B and C war crimes trials by the American side can be found in *BCKyū sensō hanzai saiban* (translated by Nobuko Kosuge and Hitoshi Nagai) (Tokyo: Nihon Tosho Center, 1996).

⁵ Hereinafter, for details on Japan's invasion of China and the declaration of Japan as an aggressor, please refer to Ikō Toshiya, *Kindai nihon to sensō ihōka taisei – Daiichiji sekaitaisen kara nitchū sensō he* (Tokyo: Yoshikawa kōbunkan, 2002).

Protocol in September 1932, Japan recognized Manchukuo as a state. Immediately following this, the Lytton Report⁶ issued by the research team was released by the League of Nations. The report pointed out that Japan was responsible for expanding military conflict, but suggested not recognizing Japan's military behavior as an invasion, but rather as a privileged position in Manchuria and advised to settle the conflict. In February 1933, Japan withdrew from the League of Nations, which had advised Japan to resolve the dispute in accordance with the main points of the Lytton Report.⁷ In May, the Tanggu Truce was signed between the local militaries of Japan and China, temporarily ending the conflict between the Japanese and Chinese forces (National Revolutionary Army) near the line of the Great Wall.

At the time of the Manchurian Incident, the international community did not declare Japan as an aggressor despite its invasion of China. However, the occasion when the League of Nations effectively declared Japan as an aggressor came during the Second Sino-Japanese War which began on 7 July 1937. When the war turned into a full-scale war in August, China notified the matter to the League of Nations again and demanded that the League declare Japan as an aggressor and impose sanctions. Britain, the central power in the League of Nations, positioned itself to avoid damaging its relations with Japan at a time when military threats from Nazi Germany and Fascist Italy were rising in Europe, and desperately rejected China's demands. However, after China appealed under Article 17 of the Covenant of the League of Nations in September 1938, the League of Nations Council compiled a resolution effectively declaring Japan as an aggressor on September 30 and presented it in the form of a Council Chairman's report. The report allowed the League's member states to individually impose sanctions against Japan. Even if there was no such state, the League's Council expressed its view that Japan was a country deserving of sanctions. Japan was not declared an "aggressor" because it lost the war. Rather, the international community declared Japan an "aggressor" while it was still trying to force China to surrender.

Next, this chapter addresses the harm inflicted and the damage suffered in the war, which were the realities of the conflict. First, it must be confirmed that acts of hostility, violence against residents and the occupation policy imposed by Japan on Asia-Pacific nations including China during the "15-Year War" from the Mukden Incident to defeat were based on an illegal war initiated by

⁶ The League of Nations Association of Japan, *Lytton Report: Report of the Commission of Enquiry into the Sino-Japanese Dispute* (Tokyo: Kadokawa Shoten, 2006).

⁷ *Ibid.*

Japan. Even if the acts of hostility appear equal in degree, the morality of Japan and the opposite side were not equal. Japanese forces may say that they fought the battle to stamp out attacks from the enemy, but there would not have been a battle if Japanese forces had not invaded the opposite side's territory.

The white paper *Progress of Human Rights in China*, released by the Chinese government in 1995, states that the number of Chinese military and civilians killed or wounded over the eight years of the War of Resistance Against Japan (The Second Sino-Japanese War) was 35 million, while damages and losses were estimated at \$600 billion. A detailed breakdown of the massive number published by China is unclear, but it is estimated that about 3.8 million soldiers were killed or wounded and that over 20 million civilians were killed and about 11.2 million were wounded, meaning over 31.2 million civilians were killed or wounded.⁸

As for the number of casualties during the 15-Year War on the Japanese side, 2.3 million soldiers were said to have been killed and 800,000 civilians to have died. For the period of Japanese rule after the Manchurian Incident (1931–1937), the number of war dead enshrined at Yasukuni Shrine was 17,174. For the Second Sino-Japanese War (1937–1941) and the Asia-Pacific War (1941–1945), the number of soldiers and civilian war workers who were killed is 2.121 million, and among them, the number of soldiers and civilian war workers who died on the Chinese battlefield (including Northeast China) was 502,400.⁹ This means that the number of war dead for soldiers and civilian war workers during the 15-Year War on the Chinese battlefield was about 520,000.

Comparing the number of soldiers and civilians who were killed on the Chinese battlefield throughout the 15-Year War, it is clear that the damage to the Chinese side was much greater than that to the Japanese side. Furthermore, from the Chinese perspective, the damage was inflicted unjustly under Japan's war of aggression.

The damage to the Chinese side under the circumstances was mainly due to the massacre of prisoners and residents, such as the Nanjing Massacre and due to the "Three Alls" (kill all, loot all, and burn all) policy, indiscriminate bombing such as the bombing of Chongqing, attacks using poisonous gases and bacteriological weapons, sexual violence, forcibly moving people for forced labor and the looting of goods.

⁸ Kexueyuan Junshi, Yanjiubu Junshi Lishi et al., *Zhongguo Kangri Zhanzhengshi*, rev. ed. (Beijing: Jiefang Chubanshe, 2005).

⁹ Hara Takeshi and Yasuoka Akio, eds., *Nihon rikukaigun jiten* (Tokyo: Shin Jinbutsu ōraisha, 1997), 494–495.

Indiscriminate bombing, poisonous gas and biological warfare were war crimes carried out by a military operation order, but because the Japanese army recognized that it was a violation of international law, orders were carried out so as not to leave any evidence of poison warfare. The poison gas operation was carried out by ordinary units, but the biological warfare was carried out in secret by special forces for biological warfare represented by Unit 731. POW massacres were fundamentally implemented based on the Japanese military policy not to capture Chinese soldiers. In addition, the Japanese army conducted training in which recruits stabbed prisoners in order for the recruits to gain experience of killing. The compulsory entrainment of POWs and residents to Japan for forced labor was implemented as a national policy, but in the occupied places of North China, the work of making large blocking bunkers was imposed on residents. The plundering of various resources was implemented politically, but otherwise the Japanese army often obtained food by plundering during the operation period. These war crimes were organizational crimes carried out based on national policies and Japanese military policies, not on the individual judgments of soldiers. It can be said that rape was done at the discretion of individual soldiers, but superiors often tolerated rape committed by their subordinates. In addition, the Japanese military implemented policies to use women in the colonies of Korea and Taiwan and other occupied areas as “comfort women” for the purpose of preventing the rape of the general population. The Japanese military institutionally tolerated sexual violence against “comfort women” in order to suppress the violence of soldiers.

The Nanjing Massacre involved the slaughtering of prisoners and residents over a period of about six weeks, starting with the fall of Nanjing in December 1937, but many other crimes were also committed, including rape, arson and looting. As for the number of deaths, the Chinese side has stated it was over 300,000 people, but empirical research by the Japanese side has presented a widely accepted number of 100,000–200,000. It has become clear from documents that over 14,000 prisoners of war were captured in just one location, Bakufusan in Nanjing, and that they were all slaughtered. The massacre took place on an unimaginable scale. The Nanjing Massacre was the result of Japanese forces deciding not to comply with the Hague Conventions of 1899 and 1907, which established that soldiers who have surrendered should be treated humanely as prisoners. Moreover, it is said that there were several thousand victims of rape.¹⁰

10 For literature that explains the state of research on the Nanjing Massacre, it is worth mentioning Kasahara Tokushi, *Nankin jiken ronsōshi: Nihonjin wa shijitsu wo dō ninshiki site kitaka* (Tokyo: Heibonsha, 2007). On the massacre in Bakufusan, see Ono Kenji, Fujiwara Akira and Honda Katsuichi, eds., *Nankin daigyakusatsu wo kiroku shita kōgun heishitachi: dai 13 shidan yamada shitai heishi no jinchū nikki* (Tokyo: Ōtsuki shoten, 1996).

Another example of the slaughtering of residents by Japanese forces is the military operation that took place after August 1940 in North China. In August, the Chinese 8th Route Army began large-scale attacks on railways, communication facilities and coal mines controlled by Japan (Hundred Regiments Offensive). In response, Japanese forces began the “Three Alls” policy that aimed to completely destroy the enemy, and proceeded to annihilate the 8th Route Army and the residents who cooperated with them, to loot goods and to burn villages. According to Chinese statistics not long after the end of World War II, the population in the five anti-Japan base areas of North China (Jin-Sui, Jin-Cha-Ji, Ji-Re-Liao, Jin-Ji-Lu-Yu and Shandong) was originally 93,630,306, but during the eight years of the Second Sino-Japanese War, 2,877,306 people were killed directly or indirectly by the enemy and 3,194,766 people were wounded, just among civilians.¹¹

Indiscriminate bombings by Japanese forces spread throughout China after the start of the Second Sino-Japanese War in July 1937. The bombing of the capital Nanjing in September was a strategic bombardment that aimed to make China surrender by intimidating ordinary citizens. China appealed to the international community, stating that such tactics were an inhumane act and typical of Japan’s aggression, and the League of Nations and the United States expressed criticism of the indiscriminate bombings by Japan. However, Japan continued to argue that the bombings were based on the principle of military objectives that are permitted under international law, even as it continued deliberate, indiscriminate bombings of cities. One key area that was affected by the bombing was the wartime capital of Chongqing. Japan’s army and navy bombed Chongqing for over 100 days from spring to summer every year during the three years from 1939 to 1941. About 11,000 people were killed and more than 10,000 people were wounded in the city.¹²

Not long after the start of the Second Sino-Japanese War in late July 1937, Prince Kan’in Kotohito, Chief of the General Staff, approved the use of tear gas (Japanese forces called it “green”) for some military units dispatched in China. In April the following year, the Chief of General Staff approved the use of sneezing (vomiting) gas (diphenylcyanoarsine; the Japanese forces called it “red”) in Shanxi Province for the Japanese Northern China Area Army. The poisonous

¹¹ On the abovementioned damages from the “Three Alls” policy, see Zhongyang Dang’anguan, Dang’anguan Zhongguo Lishi and Kexueyuan Hebeisheng Shehui, eds., *Riben Qinliu Huabei Zuixing Dang’an 2 Zhanfan Gongshu* (China, Huabei Renmin Chubanshe, 2005), 1–30.

¹² Sensō to Kūbaku Mondai Kenkyūkai, *Jūkei bakugeki towa nan datta no ka – mō hitotsu no Nitchū sensō* (Tokyo: Kōbunken, 2009).

gases were used in Shanxi Province to counter the guerrilla warfare tactics of the National Revolutionary Army's 8th Route Army (Chinese Communist troops). In the Battle of Wuhan, which took place in the summer of the same year, a large amount of "red" was used against the National Revolutionary Army. The following year, it was also used in the Central China region. Furthermore, after the end of 1939, Japanese forces began using blister gas (yperrite and lewisite; Japanese forces called it "yellow"), which is classified as lethal.¹³

Japanese forces had begun developing bacteriological weapons in 1932, establishing an institution in Tokyo and Manchuria. In 1936, the institution in Manchuria received formal certification as the Epidemic Prevention Department of Japan's Kwantung Army. From 1938 to 1940, a massive laboratory was built in Pingfang on the outskirts of Harbin. Japanese forces produced plague bacillus, cholera bacillus, typhoid bacillus *Salmonella typhi*, etc., and according to written documents from Japan, Japanese forces launched attacks using those bacteria from 1940 in China's Ningbo, Changde and along the Zhejiang-Jiangxi railway line. The overall picture of the harm caused in China is unclear, but it has been shown that attacks by Japanese forces in Changde resulted in the spread of the plague and several thousand people were affected, including secondary infections.¹⁴

Massive numbers of rapes were also committed by Japanese soldiers. It is estimated that in the four anti-Japan base areas of North China alone, over 620,000 people were raped and many thus contracted sexual diseases.¹⁵ Furthermore, Japanese forces set up military brothels in army posts. Women were brought over from Korea and Taiwan and were made to work there as "comfort women." Women were also kidnapped from occupied areas across China and village mayors were forced to gather women who would become "comfort women."¹⁶

Japanese forces inflicted large-scale severe damage in China with its military operations that included many war crimes. China's Nationalist government was forced to bring charges against an immeasurable number of war crimes committed by Japanese forces.

13 Yoshimi Yoshiaki, *Dokugasusen to Nihongun* (Tokyo: Iwanami shoten, 2004).

14 Yoshimi Yoshiaki and Ikō Toshiya, *731 butai to tennō – rikugun chūō* (Tokyo: Iwanami shoten, 1995). For the number of victims in Changde, please refer to Nie Riri, *Chūgoku minsyū no sensō kioku* (Tokyo: Akashi syoten, 2006).

15 Dang'anguan et al., *Riben Qinlie Huabei Zuixing Dang'an 2 Zhanfan Gongshu*.

16 Yoshimi Yoshiaki, *Comfort Women* (Tokyo: Iwanami shoten, 1995).

The War Crimes Investigation in Wartime

On 13 January 1942, nine European governments in exile issued the Saint James' Declaration, which stated that all of the atrocities conducted by Germany would be regarded as war crimes and the main reason to continue the war was to punish these war crimes. China acted in concert with this declaration and announced on the same day in London her position in investigating the war crimes committed by the Japanese.

Soon after the Saint James' Declaration, the Chinese Ministry of Foreign Affairs made a plan to collect evidence on the war crimes committed by Japan.¹⁷ By November 1942, the Ministry of Foreign Affairs had mobilized all government-affiliated institutions to gather materials related to Japanese war crimes in China. According to the instructions of the Ministry of Foreign Affairs, provincial governments were asked to submit reports on, for instance, those military operations in Northern China as well as Zhejiang and Jiang Xi Provinces (Battle of Zhe-Gan) where most of the damages had been done by the so called "Three Alls" strategies. It was required to include the names of alleged perpetrators, ranks, dates of crimes, and location of the crimes, as well as the victims' names, sex, age, family registers, occupation, and eyewitness testimonies of the incident.¹⁸ For example, the Ministry of Foreign Affairs requested the military general staff to look into a case that involved only one victim in December 1943.¹⁹ Thus, even the smallest incident would be investigated.

Nevertheless, the collection of the information proved to be quite difficult. In order to overcome these difficulties, in March 1943, the Ministry of Foreign Affairs made a list of war crimes subject to investigation and ordered the military commanders and provincial governments to report on the crimes based on this list. In order to punish war crimes such as murder, assault, and rape, it was necessary to use the government prescribed form or list to search for and collect details and certain materials along with the evidence.²⁰

17 Ouzhousi Disanke, "Guanyu Liexi Ouzhou Jiu Zhanlingguo Chengzhi Deguoren Baoxing Xuanyan Qianzi Huiyi Zhi Baogao Yu Jianyi," *Chengchu Zhanshifan'an*, Doc. No. 020000001183A (Taiwan: Guoshiguan).

18 "Qiecha Guanyu Diaocha Diwo Zhanzhengzuixing," February 2, 1943; "Hanqing Diaocha Zhegan Zhanyi Baoxingren Ji Beihairen You," November 6, 1942; Waijiaobu, "Hanqing Diaocha Dikou Zai Zaoqiang Jixian Baoxing You," January 9, 1943, *Diren Zuixing Diaocha An*. 020000001173A.

19 Waijiaobu, "Hanfu Diaocha Dikou Baoxing Budui Zhangguan Xingming Ji Guanzhi Deng You," March 1944, *Diren Zuixing Diaocha An*. 020000001174A.

20 "Guanyu Chengzhi Zhanshifan," *Chen chu Zhanshifan An*. 020000001183A. "Xingzhengyuan Xunling," October 9, 1944, *Diren Zuixing Diaocha An*. 020000001176A.

Also, on 23 February 1944, a war crimes investigation committee, consisting of multiple ministries, namely, the Ministry of Justice and Executive, the Ministry of National Defense, and the Ministry of Foreign Affairs, was formed. This committee was established and placed in the Executive Yuan in Chungking. Furthermore, in July 1944, they implemented the “Method of Investigating the Enemy War Crimes,” the “List of Enemy War Crimes,” and the “List of Classification of Enemy War Crimes” to facilitate a thoroughgoing investigation on Japanese war crimes in China.²¹ The investigations were conducted mainly by the provincial and municipal governments, and the Executive Yuan would select the Military Commander in each war zone, while all layers of the Nationalist Party and all levels of the Court cooperated with each other to conduct the investigation.²²

Although the war crimes investigation was carried out according to a specific methodology, it turned out to be very difficult to collect evidence. A report made by the Ministry of Foreign Affairs in May 1945 stated that despite the more than 2,300 reports collected and sent to the “Enemy War Crimes Investigation Committee,” the majority of the reports had insufficient information to be registered; moreover, they were unusable because of the lack of necessary evidence.²³

Regarding the Nanjing Incident, one of the war crimes committed during the Second Sino-Japanese War, it was not easy to determine the offenders in charge of the massacre, nor was it easy to collect evidence related to the massacre. For this reason, in March 1944, the Ministry of Foreign Affairs made a decision to contact Dr. Miner S. Bates (1897–1978), Mr. Lewis S. C. Smythe (1901–1978), Mr. Charles H. Riggs, and Mr. George A. Fitch (1883–1979), who had been members of the International Committee for the Nanjing Safety Zone during the Nanjing Incident in 1937, to collect information on the incident.²⁴ These men later submitted an affidavit and appeared as witnesses in court

21 “Xingzhengyuan Xunling,” July 29, 1944, *Diren Zuixing Diaocha An*. 020000001176A.

22 Hōmushō daijinkanbō sihō hōsei chōsabu, “Sensō hanzai saiban shiryō daigō sensō hanzai saiban kankei hōrei” (1967), 308–311.

23 Song-nian Lu, “Hanfu Guanyu Riben Zhanzuifan Mingdan Zhi Zhunbei Jinxing Chengdushi,” *Diren Zuixing Diaocha An*. 020000001175A.

24 “Xunling Lingzhuan Qing Beideshi (Miner S. Bates) Boshi Zhengming Nanjing Baoxing Anjian You,” March 13, 1944; “Xunling Ling Wangfang Jinda Shimaishi (Lewis S.C. Smythe) Boshi Qingqi Chuju Nanjing Baoxing Zhengjian Deng You,” March 15, 1944; “Xunling Ling Wangfang Jinda Leike (Charles H. Riggs) Xiansheng Qingqi Chuju Nanjing Baoxing Zhengjian Deng You,” March 21, 1944, *Diren Zuixing Diaocha An*. 020000001175A; “Fangwen Mr. George Fitch Zhi Baogao,” September 9, 1944, *Diren Zuixing Diaocha An*. 020000001176A

during the Tokyo Trials and the Trials of the BC Class War Criminals (Nanjing War Crimes Tribunal).

One should also consider the wartime responsibility of the Emperor of Japan, the Japanese military and political leader at the time. Right before Japan was defeated, the Department of East Asian and Pacific Affairs, under the Ministry of Foreign Affairs, prepared a document that stated that all the war leaders, including the Emperor of Japan, should face severe punishment.²⁵ It was well recognized among the Chinese leaders that the Emperor of Japan should be treated as a war criminal. He Ying Qin, Supreme Commander of the Chinese Army, stated in a press conference in June 1945 that: “It is a matter of course to regard the Emperor of Japan as a War Criminal.” At the same time, the Emperor of Japan was at the top of the list of army war criminals made by the second office of the Military Commander.²⁶

However, on 11 August 1945, right before the surrender of Japan, Generalissimo Chiang Kai-shek expressed to President Truman that he would support the decision made by the United States in terms of how to treat the Emperor of Japan and that the fundamental makeup of the state of Japan should be decided by the Japanese themselves.²⁷ Somewhere between August and September of 1945, among the Chinese leaders, it was decided that the Emperor would not be listed as a war criminal.

During the Second Sino-Japanese War, China sent appeals to the international community about the heavy and indiscriminate bombing by Japanese forces—perhaps even more so than about the Nanjing Massacre. China issued a notice on “Japan’s invasion of China” to the League of Nations on 12 September 1937. This notice criticized Japan’s indiscriminate bombing on both combatant and civilian areas. Afterward, China repeatedly appealed to the League of Nations about the indiscriminate bombing by the Japanese military. It was a matter of course that Nationalist China would eventually consider the indiscriminate bombings as a war crime. On 27 June 1945, the Ministry of Foreign Affairs requested the Ministry of Justice and Executive to conduct an investigation into the Japanese bombings of the defenseless areas and to submit their findings to the Far Eastern and Pacific Sub-commission of the United Nations War Crimes Commission (UNWCC).²⁸

²⁵ Sheng-he Gao, “Chengzhi Rikou Zuixing Fang’an,” *Chenchu Zhanshifan An*. 020000001183A.

²⁶ Junlingbu Diering Diyichu, “Qinzhān Yilai Diguō Zhuyao Zuifan Diaochabiao,” *Riben Junshifan* 020000001171A; So, “Shūsen zengo ni okeru chūgoku no tainichi seisaku”, 75.

²⁷ Ishii, “Chūgoku no tainichi senryō seisaku,” 27–28.

²⁸ Waijiaobu, “Hansong Rijun Zuixing Zhengmingshu Yijian Xicha Liyou,” June 27, 1945, *Diren Zuixing Diaocha An*. 020000001176A.

At the 35th conference on 10 December 1946, the Sub-commission for the Far East asked the United Nations War Crimes Commission in London how it would examine the responsibility for indiscriminate bombings.²⁹ The United Nations War Crimes Commission in London wrote a reply dated 10 March 1947, immediately after the Sub-commission for the Far East effectively ended its activities on 4 March. The reply confirmed that the “deliberate bombardment of undefended places” fell under the scope of war crimes and that it was applicable to the Second Sino-Japanese War, but it also stated that in Europe, bombings were used as a means of war both by the Allied and Axis powers and that indiscriminate bombings by the German air force were not investigated at the Nuremberg trials, and that this would also apply to Japan.³⁰ It suggested that the Commission in London was reluctant to investigate the issue of indiscriminate bombings. Realistically, it was also very difficult for China to determine the perpetrator in the bombings, and the issue was hardly investigated. The Nationalist government also considered investigating the use of poisonous gases and bacteriological weapons by Japanese forces, but it appears that these war crimes were hardly prosecuted.

The War Crimes Investigation After the War and the Creation of the War Criminals List

Even after the war, the Nationalist government continuously investigated the Japanese war crimes. In Hubei Province, for instance, government officials tried to collect various materials, including official Japanese documents, notes written by Japanese soldiers, books, newspapers, photographs, and the tools used for torture. With the investigation, they were trying to mobilize the military, the police, youth organizations, newspaper publishers, local governments, and the hospitals. Just as during the war, the government continuously used the collection of evidence as a way to mobilize more organizations and civil society.³¹

²⁹ Hirofumi Hayashi, *Rengōkoku tainichi sensō hanzai seisaku shiryō*, vol. 12 (Tokyo: Gendai shiryō syuppan, 2008), 86.

³⁰ United Nations War Crimes Commission, “Deliberate Bombardment of Undefended Places,” Records Relating to U.S. Participation in the U.N. War Crimes Commission, 1943–1949 [Box 7 of 11]. RG59 – General Records of the Department of State. Ownership by the United States National Archives (NARA). Additionally, please refer to Totani Yuma, *Tōkyō saiban* (Tokyo: Misuzu syobō, 2008), 361–362.

³¹ Da-lun Zheng, “Hubei Souji Zhanzui Zhengju Jihua An,” *Rijing Sheli Zhanzui Diaochasuo An*. 020000001172A.

In Hebei Province, the Ministry of Justice and Executive Branch conducted an investigation from 1946 through 1947. In this province the investigation was only conducted in the areas ruled by the Nationalist Party, not in those controlled by the Communist Party. There were 762 cases reported and made public—this was only a fraction of the number of known cases.³² On the list, various damages or torment caused by the Japanese military were recorded, such as the killing of civilians, bombing, looting, torture, abuse or ill-treatment, and forced labor. However, among the 762 cases, there were only 190 cases in which the full names of the criminals were recorded. In other words, it was extremely difficult for the victims to identify or name the responsible assailants from these incidents.

The “War Crimes Investigation Report”³³ made by the Ministry of Foreign Affairs in June 1946 revealed that, in spite of very serious damages and much suffering, as well as the tremendous number of charges for war crimes, they were facing a very difficult task in arresting the war criminals. The report mentioned many problems:

Arrest: delays in reporting war criminals, and occasionally mistaking innocent people for criminals. There were many different people with the same names as those on the war criminals list, and many war criminals charged could not be identified by their names. There were only 2,000 war criminals arrested and this number seems low. One of the reasons for this could be that a large number of war criminals escaped with fake names and the military system lacked the authority to arrest them.

Investigation: not enough prosecutors, the vast expenses for the investigation, the lack of bilingual staff, and insufficient documentation on the war crimes in the report.

Collection of evidence: evidence of war crimes was destroyed by the Japanese Military.³⁴

The lack of experienced persons and insufficient organizational capability made the process of sorting out the reports of the investigation, arresting individuals, and taking into custody and questioning or examining alleged war criminals more difficult.

When Japan surrendered in 1945, there were approximately 1.12 million Japanese soldiers in China and 670,000 Japanese soldiers abandoned in Northeast China (Manchuria). Yet, by the beginning of April of 1946, about

³² Beijinshi Dang’anguan, ed., *Riben Qinghua Zuixing Shizheng—Huabei, Pingjin Diqu Diren Zuixing Diaocha Dang’an Xuanj* (Beijing: Renmin chubanshe, 1995).

³³ Jue-yong Yang, “Zhanzheng Zuifan Diaocha Gongzuo Baogao,” June 13, 1946, *Rijing Sheli Zhanzui Diaochasuo An*. 020000001172A.

³⁴ *Ibid.*

420,000 Japanese soldiers had been sent back to Japan. This kind of prompt deportation of soldiers back to Japan took away any opportunity to capture a number of possible war criminals.

Concerning Manchukuo, a puppet country created by the Emperor of Japan in Northeast China, the Nationalist government commenced an investigation into Japanese war crimes in this area from August through October 1946. As a result, according to their investigation, many massacres and incidents, such as the “Wanbaoshan Incident,” the “Pingdingshan Incident,” and the “December 30 Incident” occurred before the Manchurian Incident. These episodes resulted from the oppression of resistance movements against the Japanese invasion or massacres of Chinese civilians, or of those opposed to Japan’s opium policy.³⁵ However, in Northeast China, immediately after the war, the Soviet Union, followed by Communist China, started occupying this area and initiated arrests and/or trials of war criminals, as well as the deportation of Japanese soldiers back to Japan. As a result, the Nationalist government could not fully control the circumstances of those soldiers or retain the commanders who had been directly involved in these crimes.

Although the Nationalist government encountered difficulties in the investigation of war crimes, the government was able to make concrete progress after June 1945 by formulating a list of “Major Japanese War Criminals.” On 27 July at the Seventh Far Eastern and Pacific Sub-commission of the United Nations War Crimes Committee, China submitted a report that indicated that, among the 108 cases of war crime incidents, 84 war criminals had been identified.³⁶ On the first list submitted to the Far Eastern Sub-commission, there had been 127 war criminals listed, and of them 49 had no detailed information beyond their names.³⁷ The difficulty in determining the personal names of the war criminals still continued.

In June through August 1945, the London Charter of the International Military Tribunal and later the Nuremberg Tribunal defined “Crimes against Peace” as a concept to prosecute Nazi war criminals and their crimes. As a result, the Nationalist government began to look for Class A war criminals, and later submitted a list to Supreme Commander Douglas MacArthur.

At the Far Eastern and Pacific Sub-commission of the United Nations War Crimes Committee, the selection of war criminals in China as well as Southeast

35 Zhanzheng Fanzui Chuli Weiyuanhui Dongbei Dudaozu, “Baogao” “Dudao Dongbei Chuli Zhanfan Gongzuo Baogao,” October 24, 1946, *Rijing Sheli Zhanzui Diaochasuo An*. 020000001172A.

36 Hayashi, *Rengōkoku tainichi sensō hanzai seisaku shiryō*, 30–37.

37 NARA, RG153/Entry 180. Box 5. Photographed by Hirofumi Hayashi.

Asia was based on the lists submitted by China, Great Britain, and the United States. Finally, on 4 March 1947, at the 38th meeting of the UNWCC, after much discussion and 26 rounds of edits, a list of 3,000 recognized war criminals was finalized. Among the names were approximately 2,400 war criminals who had made it onto the list as a result of the submission from China.³⁸ The inability to specify the perpetrator's full name was commonly seen in all of the lists approved by the committee.

The Enforcement and Ending of the Trials

The Nationalist government held a meeting concerning the policy on the treatment of war criminals on 25 October 1946.³⁹ The Chairman of this meeting, the then Secretary of Defense Bai Chon-xi, reemphasized the necessity of adopting a generous and non-punitive policy toward the war criminals—a policy advocated by Chiang Kai-shek. Furthermore, the Department of National Defense also suggested that, from a general point of view, a prompt finalization of the task on the treatment of war criminals was necessary. The reasons for this suggestion were:

1. Severe punishments had been imposed on important domestic and international war criminals; on the other hand, a “Generous Policy” should be applied to ordinary war criminals.
2. Since this was their first experience of treating war criminals, there may have been some inappropriate or unfair conduct.
3. Imposing a punishment based on incomplete evidence may have occurred, but was never pursued only for the sake of punishing the war criminals.

The Nationalist government did put an early end to the trial of the war criminals and thus carried out the goal of the “Generous Policy.” However, the trials of Class B and C war criminals continued until January 1949.

How did China prosecute criminal acts through the war crimes trials? Looking at the number of indictments in the Chinese trials, the number of cases of “noncombatant murders, abuse, death by abuse and imprisonment by unjust arrest” was exceptionally high at 1,003; the next highest number was 261 for

³⁸ “Zhanzheng Zuifan Chuli Weiyuanhui Di61ci Changhui Huiyilu,” March 13, 1947, *Zhanzheng Zuifan Chuli Weiyuanhui Huiyi Jilu An.* 020000001187A.

³⁹ “Zhanzheng Zuifan Chuli Weiyuanhui duri zhanfan chuli zhengce huiyi jilu,” October 25, 1946, *Chuli Zhanfan Zhengci An.* 020000001182A.

looting and the destruction of goods. This number was followed by 55 cases of the slaughter and abuse of prisoners and 49 cases of rape. There was only one case each for the use of poisonous gas and indiscriminate bombings, which was very small, but this was not because the Chinese side did not want to investigate these crimes, but because it was particularly difficult to identify and prosecute the perpetrator(s) of such acts.⁴⁰ The Nationalist government's Class B and C war crimes trials ended in January 1949, resulting in 883 indictments, 149 death sentences, 355 sentences of definite-term or life imprisonment, and 350 people found not guilty.

The fact that the detentions, deliberations and rulings in the actual trials were considered improper by the Japanese defendants was mentioned at the beginning of this paper. However, it is interesting that Takeo Imai, who was the Vice-Chief of the General Staff of the China Expeditionary Army, described "China's show of generous treatment" in the way it dealt with war criminals as follows.⁴¹

Regarding the treatment of war criminals, at first the trials were extremely one-sided and resulted in severe sentences due to unfavorable feelings towards Japan along with an overall retaliatory sentiment among the public. However, as a result of the General Liaison Section [China Battle District Japanese Soldiers General Liaison Section] negotiating incessantly with the Ministry of National Defense to improve the situation, the central government became relatively open to accepting the proposals. Often it would order retrials at various military tribunals and continued to improve the situation for rest, facilities

40 On poisonous gases, on 30 November 1945, the Sub-commission for the Far East acknowledged the fact, and the evidence subcommittee's view was that because tear gas and sneezing gas were used by police in peacetime, the use of these gases should not be considered war crimes (see Hayashi, *Rengōkoku tainichi sensō hanzai seisaku shiryō*, 54). "Red", which was the poisonous gas that Japanese forces used in massive amounts on the Chinese battlefield, was classified as "sneezing" gas. On the indictments at the Tokyo Trials, the U.S. military, at the end of May 1946, proposed a policy of not indicting the Japanese forces' use of poisonous gases to Chief Prosecutor Joseph Keenan through Supreme Commander Douglas MacArthur, and the policy of no indictment was finalized. In the Nationalist government's Class B and C war crimes trials, the use of vomiting gas and tear gas was pursued by the Hankou Court and resulted in a sentence of life imprisonment (Yoshimi Yoshiaki, *Dokugasusen to nihongun*, 261–272). It is not clear what influence the decision by the Far Eastern and Pacific Sub-commission had on the pursuit of responsibility for poisonous gas use, but it is worth noting that the policy of relaxing the pursuit of poisonous gas warfare emerged on the Far Eastern and Pacific Sub-commission's side earlier than in the Tokyo Trials.

41 December 1954, "Shina hakengun fukuin zengo no gaikyō" by Imai Takeo, the former Vice-Chief of the General Staff of the China Expeditionary Army (*Fukuin kankei shiryō shūsei daikan Shina hakengun ni kansuru heidanchō – bakuryō no syūki tsuzuri* (Tokyo: Yumani shobō, 2009), 39).

and treatment. In Hankou and Guangdong [Guangzhou], it allowed autonomy inside the prison and the way of life became almost like a concentration camp.

After the surrender to the Chinese army, the China Expeditionary Army General Headquarters became the China Battle District Japanese Soldiers General Liaison Department on 10 September 1945 and, afterwards, the department was changed to a section. The section negotiated with the Chinese side on the repatriation of the Japanese military and civilians, and the treatment of war criminals.⁴² From the memoirs of Imai, who took part in this process, it can be inferred that the Nationalist government accepted the Japanese side's demands and held retrials and improved the treatment of the war criminals.

Looking at the rulings for Class B and C war crimes trials in various countries, the number of people indicted was 1,453 in the United States, 1,038 in the Netherlands, 978 in Britain, 948 in Australia, followed by 883 in China. The number of final judgments for death sentences was 226 in the Netherlands, 223 in Britain, 153 in Australia, followed by 149 in China. Considering the scale of the damage of the Chinese people, the number of people indicted and the number of death sentences were extremely small. In this regard, the “Generous Policy” advocated by Chiang Kai-shek was achieved. The Nationalist government's Class B and C war crimes trials ended in January 1949, resulting in 883 indictments, 149 death sentences, 355 sentences of definite-term or life imprisonment, and 350 people found not guilty.

Conclusion

China launched a policy on war criminals in 1941. It was characterized, from the beginning, as punishment commensurate with the evidence. However, the collection of evidence was difficult during the Sino-Japanese War when the Japanese military was still active, and even after the war, it was still difficult to obtain satisfactory evidence. Moreover, the early deportation of Japanese soldiers was another obstacle to arresting those war criminals.

The method of investigating war criminals by using the “Enemy Criminal Investigation List,” using reports made by civilians, has drawn considerable attention. Using this method led to a direct accusation of the responsible party (the assailant) – in other words, “Judgment by the victims.” But information

⁴² On the China Battle District Japanese Soldiers General Liaison Department, please refer to Hikiage engo chō, ed., *Hikiage engo no kiroku* (Tokyo: Hikiage engo chō, 1950), 21.

based on the investigation list was not enough to identify possible war criminals.

Because the Nationalist government (Kuomintang) pursued the “Generous Policy” in dealing with the Class B and Class C war crimes trials, it did not result in cases of excessive revenge. Also, in the Tokyo Trials, only 25 of the accused were given a guilty verdict, and there was no continuous trial to follow. As a result, there were factions within the Ministry of Foreign Affairs complaining that the verdicts did not match the severe suffering of the Chinese people.

In the “War Crimes Investigation Report” which was mentioned earlier, it was stated that this kind of treatment toward war criminals would expose the ugly internal details of the Japanese aggressors to Japanese people and stamp out the thought of Japan’s aggression.⁴³ This meant that there was an expectation that the trials of the war criminals would enlighten Japanese society.

Unfortunately, in Japanese society, even today, these trials are considered as a “verdict for the victors” and the judgments are considered to be biased. The trials thus did not have the informative effect the Chinese had hoped for.

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