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HONG KONG'S WAR CRIMES TRIALS

EDITED BY SUZANNAH LINTON

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Foreword

Hon Justice Liu Daqun
Judge of the Appeals Chamber of the International Criminal
Tribunals for the Former Yugoslavia and Rwanda

When we contemplate the war crimes trials that took place after the Second World War, no doubt Nuremberg stands out. Digging only a bit deeper, we might recall the International Military Tribunal for the Far East (known widely as the Tokyo Trial) and the trials in the domestic courts of the Western nations. But only the most knowledgeable and committed of scholars and historians would mention the trials in the Allies' Occupied Area in Asia after the surrender of the Japanese Imperialist Army. Because archival materials have been buried and researchers have remained focused on more prominent post-war developments, the facts of those trials—in China, Singapore, Malaysia, the Philippines, Indonesia, Taiwan (China), and Hong Kong—have remained hidden.

Until now, that is. Thanks to the brilliant research and tireless efforts of Professor Suzannah Linton, as well as the learned interventions of this volume's contributors, Oxford University Press presents 'Hong Kong's War Crimes Trial'. The compilation fills an important gap in the conversation about the war crimes trials that occurred in the years following World War II.

The Japanese invasion of Hong Kong began on 8 December 1941, less than eight hours after the air attack on Pearl Harbor. It ended just 17 days later, on 25 December 1941, with the surrender of the British army, and three years and eight months of occupation ensued. In the time that the Imperial Japanese administration ruled Hong Kong, the Japanese army committed hideous crimes against Prisoners of War ('POWs'), medical personnel, and civilians. It murdered and tortured, raped, and plundered. It subjected the citizens of occupied Hong Kong to inhumane treatment and arbitrary detention, and it forcibly displaced thousands.

The Japanese army's crimes were numerous and indiscriminate. The most notorious crimes, committed against medical personnel and the wounded and sick, came just before the British surrendered: Japanese soldiers entered St Stephen's College, which was being used as a hospital, and they shot two volunteer doctors when entry was refused. They then burst into the wards and slaughtered 170 recuperating soldiers and several members of the staff. The hospital's nurses were brutally raped and slaughtered. No less egregious were the atrocities committed at Hong Kong Red Cross Hospital, which housed hundreds of injured British soldiers. There, the Japanese army cut the eyes, ears, noses, tongues, and limbs off dozens of victims, and 70 soldiers were killed while they were convalescing in bed. These actions were subsequently found to violate the 1864 Geneva Red Cross Agreement (the seeds of what would become the International Red Cross Convention) regarding the treatment of POWs.

All of this we know. But as Professor Yuma Totani reports in these pages, the crimes committed in occupied Hong Kong were not confined to this sort of isolated incident. The Japanese administration held 7,000 British soldiers as POWs in camps in Hong Kong, such as at Sham Shui Po, and in Taiwan, China. What is more, thousands of civilians were incarcerated, among them Hong Kong Governor Mark Young. Sickness, malnourishment, famine, inhumane treatment, and even torture were pervasive. Professor Totani provides a unique and important analysis of the legal cases that arose out of those horrifying events.

But the Japanese soldiers did not simply detain POWs and local citizens. Professor Linton's chapter shows how they also terrorized the local population by murdering, raping, and looting, among other crimes. The *Kempeitai* treated the native population as something less than human; they routinely performed executions at King's Park in Kowloon without any pretence, using local citizens for shooting and bayonet practice and even beheading some. Moreover, as many as ten thousand women were raped in the first few days of the occupation. Perhaps twice that number, including women and children, were killed, and thousands more starved to death. Many parts of Hong Kong were ransacked and burned, food became scarce, and disease flourished. Conditions deteriorated to the point that the administration had to pursue a policy of repatriation, through which it deported the unemployed and the sick to Mainland China, discussed in detail in Professor Linton's chapter. Many of the residents who were not deported actually chose to leave, such was the quality of life on the island, only to find that famine and disease were no less common on the mainland. This combination of voluntary and forced emigration caused the population of Hong Kong to dwindle from 1.6 million in 1941 to just 600,000 in 1945.

After the unconditional surrender of Japan, control of Hong Kong fell to the Allied Land Forces of South-East Asia (ALFSEA). For thousands of years, it had been common and accepted practice in Asia for victors in war to retaliate against their opponents, often by summarily executing war criminals upon their capture. In contrast, it has long been a tenet of International Law that nations have 'territorial jurisdiction'—that is, every state has the authority to set up special courts to try war criminals for crimes committed on its own territory. After Japan's surrender, only one of those principles could prevail.

What happened next changed the course of history. Beginning in January 1946, the British military courts put the Japanese war crimes suspects on trial. The mere existence of the Hong Kong trials was an important triumph for international justice and represented a critical development for East Asian relations. But the principles espoused by those courts were no less crucial; for starters, only those whose criminal conduct was proved beyond a reasonable doubt were punished.

That important principle in place, all that remained was to determine the law that the courts would apply. That question was answered on 18 June 1945 with the promulgation of the Royal Warrant and its annexed Regulations. Significantly, the law that the Hong Kong tribunals would apply was not an arbitrary exercise of power on the part of the victorious nations, but rather an expression of the principles of International Law prevailing when the courts were created. This

adherence to the concept of legality is itself an important contribution to International Law.

Several sources of law were available to the Hong Kong tribunals: Japan had ratified the 1907 Convention (IV) Respecting the Laws and Customs of War on Land, and, where treaty law was inadequate, customary international law could serve as a source of substantive criminal law. In other words, it was established that pre-existing international law bound the defendants at the time they committed the acts charged. Moreover, because the crimes in question took place in Hong Kong, a British colony, domestic British substantive criminal law was also applicable. As for procedure, the Royal Warrant defined the rules as those applicable to British Field General Courts Martial, and the rules of evidence were set forth in separate regulations. From all of these sources, the tribunals would draw their rules.

Those rules were numerous and detailed. As Professor Alexander Zahar points out in his comprehensive research on the subject in these pages, the accused had a number of due process rights before the Hong Kong courts. For example, during the proceedings, the accused was always provided with an interpreter free of charge and had the right to obtain the counsel of his choice. Most of the accused had Japanese lawyers with British officers acting as advisors. In addition, although Defence Counsel often had to operate with limited resources, they were provided with a charge sheet, an abstract of the evidence to be presented, and copies of any exhibits. The accused had the right to present their own witnesses and documents, to examine all documents submitted by the prosecution, and to address motions applications and other requests to the Court. Although the convicted had no right of appeal, they did have the right to invoke review proceedings before the Commander of Land Forces of Hong Kong. On review, the Commander could reverse and acquit, uphold a conviction, or adjust verdicts and sentences. In sum, the accused's rights to a fair trial and due process of law were guaranteed.

At the same time, Professor Bing Bing Jia suggests that the Allies would not allow the crimes of the Japanese occupation to go unpunished. Jia points out, for example, that the most common plea during Hong Kong Trial, the defence of 'superior orders' was rarely credited. In other words, the accused were not permitted to argue that they 'did what they were told'. Professor Jia observes that under the then applicable customary law, superior orders may constitute a defence if the recipient did not believe it to be unlawful, either after his own assessment or without making such assessment due to the urgency of the situation in which the order was issued to him, provided that the order was not obviously/manifestly illegal, or should not have been so in his view as a reasonable person. In considering whether to allow a claim, the courts upheld the illegality prerequisite, as well as the knowledge on the part of the recipient of superior orders. Moreover, new modes of liability were invoked to punish war criminals who otherwise may have evaded liability. According to Professor Nina Jørgensen's research, for example, joint criminal enterprise, 'the chili pepper of modes of liability' today, can be traced back to the Hong Kong trials, albeit in the form of a mode long recognized in English common law.

In the end, Professor Zahar notes, the British military courts in Hong Kong tried 123 Japanese and Taiwanese suspects, of whom 86 were sentenced to a term of imprisonment, 14 were acquitted, and 21 were put to death. In light of the comprehensive due process rights accorded the accused, as well as the ultimate outcomes of the Hong Kong trials, the signal to the world was clear: on the one hand, mass atrocities would no longer go unpunished, but on the other hand, law and order would prevail—a simple fact that took on enormous importance in light of millennia of practice in East Asia. In short, the Allies had shown the world that the international order should be based on reason and justice instead of military might and political power.

Nearly 70 years have now passed since the Japanese war criminals were put on trial in Hong Kong. Most of the participants in those trials have passed away, and no doubt there is a risk that the memory of the Japanese Imperial Army's atrocities, as well as of the Hong Kong trials, will be lost to obscurity. If the lack of awareness today is any guide, future generations will likely be entirely unaware that the trials—not to mention the underlying events—occurred at all.

That risk is heightened by the attitude of the modern Japanese government. Unfortunately, instead of learning from history to avoid repeating the mistakes of the past, the Japanese authorities have denied that those crimes occurred. Leaders publicly proclaim that the events described here in this book were fabricated—despite so many eyewitness accounts described in this volume and elsewhere—and allies of the ruling class have rewritten history in the country's history textbooks. Perhaps worse, senior government leaders regularly pay homage to the war criminals: since 1985, Japanese Prime Ministers have made an annual, official visit to the Yasukuni shrine, a religious location honouring the more than two million people who died in the service of the Empire. The enshrined include 12 convicted Class A war criminals and two defendants who died during the Tokyo Trial, as well as two Governors of Hong Kong who served during the Japanese occupation and were convicted by the Chinese Nanking War Crimes Military Tribunal. Those visits have prompted many to allege that the country's official stance is one of defiance, rather than conciliation, and that has a predictable and lasting impact on diplomatic relations between Japan and many of its East Asian neighbours.

It is crucial that we understand the past if we are to address today's challenges. We have a complete record of the war crimes proceedings that took place in Europe following World War II, and historians and international lawyers alike have examined and re-examined the evidence used to convict Nazi leaders for the genocide of the Jews. This evidence is comprehensive, and it is detailed. For instance, we have records of meetings, conversations, orders, and killings, including a full account of the atrocities committed at the extermination camps. That evidence was recounted by eye witnesses during court proceedings, tested by the prosecution and defence, and admitted into evidence by judges following a standardized and well-thought-out process. As a result their conclusions are defensible and, in most cases, undeniable.

In Asia, by contrast—and especially in China—as a result of the nature of the crimes committed and the post-conflict instability that reigned, similar crimes are

not well documented. Most of the documents from Asia's post-World War II war crimes trials still sit in piles in the deepest of archives, untouched and unutilized. In his chapter, Professor Roger S Clark comments on this disparity in order to place the Hong Kong trials in perspective alongside the contemporary trials about which we know so much more. As Professor Clark notes, the events that took place in the occupied parts of Asia during and after World War II can provide some insight into the roles and best practices of modern tribunals, such as the International Criminal Court.

Viewed more broadly, Professor Linton's entire volume is a remarkable contribution to our understanding of the military and legal atmosphere in Asia at the end of the War. Perhaps the most precious piece of history Professor Linton presents, though, is her interview with Major Murray Incell Ormsby, who was a panel member (that is, a Judge) and then a Prosecutor at War Crimes Court No 7 in Hong Kong. Major Ormsby was involved in 27 of the 46 trials that were held in Hong Kong, and he provides a compelling firsthand account. Like the rest of the research presented here, the precision and consistency of Major Ormsby's recollections are a precious asset as we begin—some would say six decades too late—to study the prosecution of the Japanese atrocities committed in Hong Kong during World War II.

In a characteristic moment of clarity, Major Ormsby declared, 'I feel that we pioneers of the War Crimes trials, we started it and we finished it and we should have got some kind of recognition.' Let this volume serve as the first step towards recognizing those contributions to the development of international justice and International Criminal Law, but let it not be the last.

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Foreword

Mr Kevin Zervos, SC
Director of Public Prosecutions, Hong Kong, China

Hong Kong's War Crimes Trials provides a rare and important insight into the evolution and development of international criminal justice.

In the aftermath of the cruelty and horror of war, comes a time for reckoning. In the past, that reckoning would be dispensed by the victor, which invariably would be one-sided and arbitrary. As to whether justice was served, if at all, depended on the magnanimity, or otherwise, of the victor.

The war crimes trials of the Second World War were a major turning point in bringing to account the perpetrators of atrocities, committed in the course of the hostilities and ensuring that this was done through the proper process of the law. Whilst we have come a long way since then, the seeds were sown for the development of international humanitarian and criminal law for which we and future generations will benefit. The underlying principle that emerged and continues to gain force is that bringing someone to account requires justice to be dispensed in a just and fair manner. The distinguished English jurist Tom Bingham observed that in the aftermath of war '... scrupulous observance of the rule of law may be seen to serve the common interest of mankind'. So it was with the war crimes trials of Hong Kong.

On 8 December 1941, the Japanese attacked Hong Kong, a day after they had attacked Pearl Harbor. The British forces surrendered on Christmas Day and the Japanese commenced a brutal occupation that lasted nearly four years. The atrocities inflicted on the Allied forces and the people of Hong Kong were horrific and long lasting. It had been variously declared throughout the Second World War that the perpetrators would be brought to justice and in its aftermath, war crimes trials were convened at Nuremberg, Tokyo, and various other places, including Hong Kong.

The war crimes trials of Hong Kong were conducted by the British military authorities over a period of three years. In all, there were 46 trials with 123 defendants. At the end of the trial process, 108 were convicted and 14 were acquitted. The sentences imposed on the guilty varied but 24 were sentenced to death with three reduced after review. As in the trials in the British areas of occupied Europe, the courts in Hong Kong operated under the authority of a Royal Warrant. It was thus by royal fiat of the Crown that their jurisdiction, powers, and procedures were based on traditional courts-martial.

Despite the inhumanity of war, there has been a growing realization that international conflicts were to be conducted subject to basic humanitarian principles. Over time, international treaties were adopted that provided formal statements of the laws of war and war crimes. This was seen with the Hague

Conventions of 1899 and 1907, the four Geneva Conventions which were adopted and expanded from 1864 to 1949 with two Additional Protocols in 1977, and the Genocide Convention of 1948.

The London Charter of the International Military Tribunal of 8 August 1945 provided the principles on which war crimes trials were to be conducted. This in turn, through the momentous developments of the 1990s, was to inform the principles leading in part to the Rome Statute of the International Criminal Court on 1 July 2002.

Professor Suzannah Linton has, through her comprehensive research and fine scholarship, put together an excellent compendium of articles that take us back to the war crimes trials of Hong Kong. In Professor Linton's interview of Major Murray Incell Ormsby, we are given a first hand account of what confronted the people with the responsibility of conducting the trials. It reveals an instinctive focus on fairness and due process and a deep appreciation of the importance of the task at hand.

This book provides a rich tapestry of information about the conduct of war crimes trials both generally and specifically in relation to those conducted in Hong Kong. Professor Linton and Professor Alexander Zahar, in their well-researched and detailed expositions of the British Military Courts, both explain the trial practice and procedure. The process was carefully crafted to ensure a full and proper presentation of the case against an accused which followed a procedure that aimed to be fair and consistent. The convictions and sentences after trial were reviewed by Judge Advocates who would decide whether or not to endorse them. Professor Zahar highlights certain disadvantages faced by the accused, such as, single legal representation for multiple accused, a Japanese legal representative who was generally unfamiliar with English laws, and the adducing of testimony without oral examination. He questions the notion of justice, by stressing that victor's justice can be selective and biased.

Professor Yuma Totani provides case studies of the trials in relation to the treatment of Prisoners of War, who suffered horrifically, and issues as to individual and collective responsibility for the crimes alleged. This issue is further explored by Professor Nina Jørgensen, who considers in the context of the Hong Kong trials and beyond whether 'concerned in a crime' is to be equated with 'joint criminal enterprise': this notion is subjected to critical analysis.

It comes as no surprise that a key issue that arose in the trials was the plea of superior orders; either as a defence, or as a mitigating factor, or both. The tracing of the plea of superior orders by Professor Bing Bing Jia provides an invaluable insight and analysis that brings into sharp focus the issue in the current context. The plea as a defence was resisted by the British Military Courts, but the controversy surrounding it remains to this day, notwithstanding the recognition of it under Article 33 of the Rome Statute.

Professor Roger Clark completes this amazing journey in time by noting the importance of learning from the past and putting it in the context of the evolutionary development of international criminal justice.

Professor Linton should be congratulated, not only for preserving a significant moment in the development of international criminal justice, but also for providing a comprehensive exposition of the principles and issues that are likely to arise in war crimes trials.

As we get closer and closer to forging a truly global order with the development of a universal set of standards and obligations, our paramount consideration must be our commitment to justice and fairness at all times, no matter who the accused may be and no matter what the nature of the crime.

In order 'to serve the common interest of mankind' it is imperative that we call upon persons to account for crimes committed in the course of war but that we do so with strict adherence to a just law and fair process. We must never drop our standards and engage in the conduct we seek to condemn. The war crimes trials of Hong Kong allow us to understand the difficulties that confronted those charged with the responsibility for ensuring that justice was done and how they displayed a sensitivity and understanding that provided a solid foundation for the future. It will undoubtedly be viewed that they planted the seeds for the development of modern international criminal justice.

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I am deeply grateful to all the contributors to this volume for their painstaking work, which has led to wonderful and important contributions. I am touched by the warm and generous support of Hon Justice Liu Daqun and Kevin Zervos, Senior Counsel in their forewords. Hon Justice Liu has been an enormous support to me from the moment he learned of the work that I was doing. My friends from the ICRC in Beijing have been very supportive too. The late Antonio Cassese, who inspired so many of us in so many ways *inter alia* through his trailblazing work on the Tokyo trials, was very encouraging of my efforts. At Oxford University Press, Anthony Hinton has been very supportive throughout, and I thank the editorial team. Thanks to Sinan Ali, Guo Cai, Damian Etone, Mairwen Owen, and Marie Parker, who have helped me with the preparation of the manuscript, and with some research. Thomas Arwel Bullock was a great assistance with the transcription of my interviews with Major Murray Ormsby. I thank Lord Anglesey and the National Trust for allowing me to access original copies of early editions of the *British Manual of Military Law* from his personal collection at Plas Newydd, Anglesey.

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Suzannah Linton
1 August 2013

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JUDGMENTS FROM WORLD WAR I TRIALS

Llandoverly Castle, Annual Digest of Public International Law Cases (1923-1924) Vol 2 436 107 n. 4, 173 n. 18

JUDGMENTS FROM WORLD WAR II TRIALS

Judgment of the International Military Tribunal (Nuremberg)

Judgment of the Nuremberg International Military Tribunal 1946 (1947) 41 AJIL 172. 30, 101 n. 27, 103 n. 37, 170 n. 7, 177 n. 43, 177 n. 45, 178 nn. 52–4, 179 n. 55, 186 n. 107, 195, 196, 197

Judgment of the International Military Tribunal (Tokyo)

Hirota and Others (Judgment 12 November 1948) (1948) 15 Annual Digest of Public International Law Cases 1948 (Butterworth and Co 1953) 179 n. 56

- International Military Tribunal (Tokyo), Judgment, in Röling B V A and Rüter C F (eds),
The Tokyo Judgment: The International Military Tribunal for the Far
East (IMTFE), 29 April 1946–2 November 1948 (APA–University
Press, 1977) 10 n. 20, 95 n. 1, 103 nn. 36–7, 104 nn. 44–5, 105 n. 48,
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Judgments of the Military Tribunal, Nanking

- The Judgment of the Chinese Military Tribunal at Nanking, dated ‘22 July in the 36th
year of the Chinese Republic (1947)’, in File WO325/135, UK National Archives
(Trial of Lt Gen Rensuke Isogai) 6, 114, 115 nn. 105–8, 118, 119 n. 127, 134
- Judgment of the Military Tribunal, Nanking, regarding Takashi Sakai, 27 August 1946,
in File WO311/563, UK National Archives 99 n. 24, 108 n. 70, 114 n. 104,
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- Judgment of War Criminal Takashi Sakai, 27 August 1946, original (reserved) judgment,
National Archives Administration, Taiwan, China 99 n. 24, 108 n. 70, 114 n. 104,
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Judgements reported by the United Nations War Crimes Commission (Law Reports of Trials of War Criminals)

- Trial of Josef Alstötter and others (Justice trial), United Nations War Crimes Commission,
Law Reports of Trials of War Criminals, Vol VI (His Majesty’s Stationery
Office 1949) 1 160 n. 112, 130 n. 200, 160 n. 112
- Trial of Kapitenleutnant Heinz Eck and four others (The Pelcus trial), United Nations
War Crimes Commission, Law Reports of Trials of War Criminals Vol I
(His Majesty’s Stationery Office 1947) 19 106 n. 53, 172 n. 14, 173 n. 17, 202 n. 23
- Trial of Karl Adam Golkel and thirteen others, United Nations War Crimes Commission,
Law Reports of Trials of War Criminals, Vol V (His Majesty’s Stationery
Office 1948) 45 157 nn. 101–2, 158 n. 103
- Trial of Eric Heyer and six others (Essen Lynching case), United Nations War Crimes
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(His Majesty’s Stationery Office 1949) 88 2 n. 7, 140 n. 40, 159 nn. 109–10,
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- Trial of Erich Killinger and four others, United Nations War Crimes Commission, Law
Reports of Trials of War Criminals, Vol III (His Majesty’s Stationery Office
1948) 67 160 nn. 113–15, 161 nn. 116–17, 163
- Trial of Werner Rohde and eight others, United Nations War Crimes Commission, Law
Reports of the Trials of War Criminals, Vol. I (His Majesty’s Stationery
Office 1948) 54 130 n. 200, 159 n. 108, 163
- Trial of Otto Sandrock and three others (Almelo case), United Nations War Crimes
Commission, Law Reports of the Trials of War Criminals, Vol I (His Majesty’s
Stationery Office 1947) 35 130 n. 200, 139 n. 12
- Trial of Franz Schonfeld and nine others, United Nations War Crimes Commission,
Law Reports of Trials of War Criminals, Vol XI (His Majesty’s Stationery
Office 1949) 64 139 n. 12, 140, 158 nn. 104–6, 162 nn. 121–3
- Trial of Martin Gottfried Weiss and others (Dachau Concentration Camp case),
United Nations War Crimes Commission, Law Reports of Trials of
War Criminals, Vol XI (His Majesty’s Stationery Office 1949) 5 140 n. 13
- Trial of Max Wielen et al. (the Stalag Luft III trial), United Nations War Crimes
Commission, Law Reports of Trials of War Criminals Vol XI (His Majesty’s Stationery
Office 1949) 31 156 n. 99, 158, 159 n. 107, 163, 177 n. 42

Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No 10

US v Karl Brandt et al (Medical case) (1947) *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No 10* (United States Government Printing Office 1947) vol II 227 180 n. 66, 227

US v Alfred Felix Alwyn Krupp von Bohlen und Halbach (The Krupp case), *Trials of War Criminals Before the Nuremberg Military Tribunal under Control Council Law No. 10, Vol IX* (United States Government Printing Office 1950) 1327. . . . 114 n. 100, 114 n. 102, 118 n. 123

US v von Leeb (High Command case), *Trials of War Criminals Before the Nuremberg Military Tribunal under Control Council Law No. 10, Vol IX* (United States Government Printing Office 1950) 462. 114 n. 101, 114 n. 103

In re List (Hostages trial) 15 *Annual Digest of Public International Law Cases* 1948 (Butterworth and Co 1953) 632 170 n. 5

US v Otto Ohlendorf et al. (Einsatzgruppen case), *Trials of War Criminals Before the Nuremberg Military Tribunals under Control Council Law No. 10, Vol IV* (United States Government Printing Office 1951) 480. 140 n. 12, 179 n. 60, 187 n. 108, 191 nn. 140–1

Misc. post World War II judgments

Trial of Feurstein and others (Ponzano case), 24 August 1948, (2007) 5 JICJ 238 140 n. 12, 157 n. 100, 162, 165 n. 137

Trial of Gustav Alfred Jepsen and others, Judgment of 24 August 1946, (2007) 5 JICJ 228. 139 n. 12

Trial of Hoelzer and others, Vol. I, 341, 347, 349 (RCAF Binder 181.009 (D2474) 139 n. 12

Trial of V Adm Hara Teizo and eight others (Andaman Islands case) (UK National Archives, File No WO235/839) 115 nn. 109–13, 116 nn. 114–19, 117 nn. 120–1

PPI v Shigenori Kuroda – Rationale, 6-7, in ‘Shigenori Kuroda – Public Trial, Vol 14’ (Box 1702), Records of the General Headquarters Supreme Commander for the Allied Powers (SCAP), Records of the SCAP Legal Section, Prosecution Division—‘Entry 1323: Philippines v Various Japanese War Criminals Case Files 1947-1949.’ This record is part of RG 331 (Records of the Allied Operational and Occupation Headquarters, World War II), National Archives and Records Administration (NARA), College Park, MD, USA. The entire record of the Kuroda Trial is contained in Boxes 1699-1702/ Entry 1323/ RG 331 71

In re Yamashita, 327 US 1 66 S.Ct. 340, 90 L.Ed 499 (1946) 3 n. 11, 4, 153, 207 n. 46

LEGAL COMMENTARIES (LAW REPORTS)

United Nations War Crimes Commission, *Law Reports of Trials of War Criminals, Vol IV* (His Majesty’s Stationery Office 1948). 191 n. 40

United Nations War Crimes Commission, *Law Reports of Trials of War Criminals, Vol. XV* (His Majesty’s Stationery Office 1949) 1 n. 6, 169 n. 1, 172 n. 13, 173 n. 15, 179 n. 57, 180 n. 63, 180 n. 65, 182 n. 71, 191 n. 141

TRIALS BEFORE CONTEMPORARY INTERNATIONAL COURTS AND TRIBUNALS

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Rwamakuba v The Prosecutor, Case No. ICTR-98-44-AR72.4, Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide, 22 October 2004	140 n. 16, 141
---	----------------

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Special Tribunal for Lebanon

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--	--------------------------

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Allied Land Forces South East Asia (4 May 1946), War Crimes Instruction No. 1, 2nd Edition. Allied Land Forces South East Asia, in File WO32/12197, UK National Archives, as amended by Amendment No 1 of 12 June 1946, Amendment No 2 of 27 June 1946, Amendment No 3 of 16 July 1946, Amendment No 4 of 21 November 1946, Amendment No 5 of 4 December 1946, Amendment No 6 of 22 January 1947, Amendment No 7 of 14 March 1947 and Amendment No 8 of 26 March 1947	3 nn. 9-10, 15 n. 14, 16, 20 n. 39, 21 nn. 48-9, 22 n. 54, 23 n. 63, 25 n. 79, 25 n. 81, 26 nn. 91-2, 28 nn. 93-4, 30 nn. 116-17, 32 nn. 130-1, 33 n. 140, 34 nn. 148-51, 34 nn. 153-4, 35 n. 156, 35 nn. 158-9, 35 nn. 161-2, 35 nn. 164-5, 36 n. 170, 40 nn. 199-200, 40 n. 203, 41 nn. 205-7, 44n. 240, 46 nn. 250-3, 48 n. 269, 51 nn. 278-9, 53 n. 285, 53 n. 289, 54 nn. 294-6, 54 nn. 298-9, 60 nn. 347-9, 96 n. 4, 101 nn. 31, 102 n. 32, 124 n. 161, 135 n. 219, 145 n. 49, 201 nn. 15-16, 202, 204 n. 30, 244
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- Great Britain War Office (1945), Regulations for the Trial of War Criminals Attached to Royal Warrant 0160/2498, 18 June 1945, Promulgated by the War Office, Army Order 81 of 1945 AO 81/1945. 14 n. 9, 14 n. 11, 15, 16, 22 n. 61, 23 n. 68, 24 nn. 72–3, 25 n. 76, 25 n. 78, 26 nn. 84–5, 30 n. 115, 35 n. 161, 35 n. 163, 38 n. 181, 41 n. 213, 42 nn. 214–18, 42 n. 221, 46 n. 249, 46 n. 252, 48 n. 268, 57 n. 316, 58, 59 n. 330–1, 60 n. 346, 60 nn. 348–9, 62 n. 364, 100 n. 25, 145 n. 49, 172 n. 9, 172 n. 11, 200 n. 3
- UK Misuse of Drugs Act 1971 144 n. 40

INTERNATIONAL LEGAL MATERIALS

- Charter of the International Military Tribunal (Nuremberg)
 Charter of the International Military Tribunal, attached to the Agreement by the US, France, UK and USSR for the Prosecution and Punishment of the Major War Criminals of the European Axis, 8 August 1945 in Friedman L (ed), *The Law of War: A Documentary History*, Vol 1 (Random House 1972) 177 nn. 46–7, 178
- Charter of the International Military Tribunal (Nuremberg Charter/IMT Nuremberg Charter), annexed to Agreement by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics for the Prosecution and Punishment of the Major War Criminals of the European Axis; Judgment of the International Military Tribunal for the Trial of German Major War Criminals, (1946) Cmd 6964 xii, 22 n. 55, 103 n. 37, 112, 113, 145 n. 51, 170 n. 7, 177 n. 43, 177 nn. 45–6, 178 n. 49, 179, 195, 197, 200 n. 4, 200 n. 6, 201 n. 10, 205, 206 n. 36, 210, 212
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- Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, opened for signature 22 Aug 1864, 129 Consol TS 361 (entered into force 21 June 1865) v, xii, 97 n. 9
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- Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, opened for signature 27 Jul 1929, 118 UNTS 303 (entered into force 19 Jun 1931) 97 n. 9, 103 nn. 39–40, 106 n. 56
- Geneva Convention relative to the Treatment of Prisoners of War with Annex, opened for signature 27 July 1929, 118 LNTS 343 (entered into force 19 June 1931). v, 96 n. 5, 98 n. 15, 103 n. 38, 104, 105, 106 n. 56
- Hague Convention (IV) respecting the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land, opened for signature 18 October 1907, (1910) UKTS 9 (entered into force 26 January 1910) 97 n. 8, 97 n. 11, 98 n. 14, 103 nn. 34–7, 103 n. 3, 115, 117, 118 n. 124, 129, 177 n. 14, 199 n. 2, 200 n. 2
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, opened for signature 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978) . . . 129 n. 190, 207 n. 45

Rome Statute of the International Criminal Court, UN Doc A/CONF.183/9 (as corrected by the procès-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001, and 16 January 2002), (1998) 2187
 UNTS 3 xii, 7, 169 n. 2, 195, 196 n. 171, 197 nn. 177–84, 198, 199 n. 1, 201 nn. 13–14, 202 n. 18, 203, 204 n. 29, 206, 207 n. 47, 208 nn. 49–50, 209 n. 52, 209 n. 54, 210 n. 55, 211, 212

Rules of Procedure and Evidence, adopted by the Assembly of State Parties, First Session, New York, 3-10 September 2002, Official Records ICC-ASP/1/3 183, 209 n. 53

Statute of the International Criminal Tribunal for Rwanda, adopted by Security Council Res 955 (1994) 201 n. 12

Statute of the International Criminal Tribunal for Former Yugoslavia, adopted by Security Council Res 827 (1993). 201 n. 11

Treaty of Nanking, Nanking, 29 August 1842, Peace Treaty between the Queen of Great Britain and the Emperor of China, Ratifications Exchanged at Hong Kong, 26 June 1843 107 n. 65

UNITED NATIONS AND CONFERENCE MATERIALS

CDDH/405/Rev1, Report of Committee I, 21 May 1977, Official Records of The Diplomatic Conference On The Reaffirmation And Development of International Humanitarian Law Applicable In Armed Conflicts Geneva (1974-1977) Vol. X (Federal Political Department Bern, 1978) 181 195 n. 171

CDDH/SR.45, 30 May 1977, Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, Geneva (1974-1977) Vol VI (Federal Political Department Bern, 1978) 307. 195 n. 171

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985, United Nations General Assembly Resolution 40/34 (1985) 208 n. 48

Formulation of the Nürnberg Principles, UN Doc A/RES/488 (V), 12 December 1950. 178 n. 51

Office of the Prosecutor, International Criminal Court, Report on Prosecutorial Strategy, September 2006 <<http://www.icc-cpi.int/>>. 211 n. 62

Report of the International Law Commission, covering the work of its Second Session, Yearbook of the International Law Commission 1950, Vol II, UN Doc A/1316, 363 178 n. 49

UN Doc A/CONF.183/C.1/WGPP/L.2, 16 June 1998 196 n. 173

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