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In the Shadow of Nuremberg: The Creation of the Yokohama Trials of Class B and C War Criminals

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Recommendations for Future Work

My one hope for this work is that it will turn people to Christ. Nothing else. I pray that GOD will bring us to our knees before Him as He graciously reveals to us the emptiness with which we have filled our lives. However, we cannot simply sit idly and expect such a revolution. I desire that, having read this, we will discuss the matter with each other, whether we are in or outside the body of Christ. As Christians, we should not only converse over this, but more steadfastly seek the good and perfect will of GOD for us, His children.

Looking forward to possible additions, this labor feels far from complete. Drawing from the format of Simon Wiesenthal's *Sunflower* and Bellah's *Habits of the Heart*, I hope to add a segment of responses from a wide audience – from Christians of all backgrounds, those of different faiths, and those who claim no religious beliefs at all. Lord willing, He will bring me to delve deeper into this matter both in a historical-cultural and spiritual sense. Without a doubt, I could see this being the springboard for later graduate work.

Dr. Scheb 4-7037

Appendix E - UNIVERSITY HONORS PROGRAM
SENIOR PROJECT - APPROVAL

Name: Christy Stoffell

College: A+S Department: Political Science

Faculty Mentor: John Scheb

PROJECT TITLE: In the Shadow of Nuremberg:
The Creation of the Yokohama Trials
of Class B and C War Criminals

I have reviewed this completed senior honors thesis with this student and certify that it is a project commensurate with honors level undergraduate research in this field.

Signed: John Scheb, Faculty Mentor

Date: 5/7/03

General Assessment - please provide a short paragraph that highlights the most significant features of the project.

Comments (Optional):

Excellent work on a very original topic. Through this project Christy learned a lot about doing historical and archival research. She is an excellent student who has performed very well in her tenure at U.T. I would give her project an A.

To: brightma@utk.edu

Hi MaryAnnn,
I had to have surgery on Monday and I am just now able to get up a little. the graduation office called and told my parents that if my grade was not changed soon I would not be considered graduating in may and would have to reapply. I have enclosed an attachment of my final paper because I will not be able to bring another copy down.
THanks,
Christy Stoffell

 thesis outline final.doc

Need to get form done.

In the Shadow of Nuremberg: The Creation of the Yokohama Trials of Class B and C War Criminals At the Conclusion of World War II

Christy Stoffell
Spring 2003

Preface

The genesis of this project was a story on the weekly-televised newsprogram, *Dateline.* This particular program aired sometime in 1995 and recounted the stories of three American prisoners of war from World War II who had suffered tremendous abuse at the hands of their captors. The twist in the story was uncovered when it was revealed that one of the worse abusers was then living a comfortable life as a multi-millionaire in Japan. The prisoners of wars' tormentor was known in 1945 only as "the Raven", which was the nickname given to him by the prisoners because of his gaunt bird-like features.

The investigators for *Dateline* tracked the man known as the Raven to an exclusive neighborhood in Japan. Having been informed by legal experts that any statute of limitations had passed, the man admitted to being the camp commander known as the Raven. I wondered how this could have happened, how this person could have escaped punishment. Upon researching these questions for a freshman English Composition class, I discovered that the Hoskins Special Collection at the University of Tennessee held original manuscripts of prosecutor and defense notes that dealt with this case.

Colonel Henry Lyons was a native of Greenville, Tennessee who served as the Judge Advocate General of the Eighth Army at the close of World War II. When Colonel Lyons died in the late 1970's his family donated the papers regarding the Yokohama Trials to the University of Tennessee. The Colonel Henry Lyons Papers at the University of Tennessee Hoskins Special Collections, Manuscript 953, consist of eight bankers type

boxes containing legal sized manila folders. The folders are divided into different cases and further divided into prosecution and defense exhibits and notes. Among the papers are photographs, and copies of depositions. The papers contain handwritten notes made during the trial that include possible objections to certain items being introduced, as well as notes on depositions regarding items that may be inadmissible. The papers are a rich source of information as to legal strategy that was to be employed during the hearings.

Upon completion of my freshman paper, I realized there were many questions unanswered. When the opportunity arose to write a senior thesis, I knew my topic. The original design was changed with knowledge I gained in an international law class. With a new design in hand that proposed to trace under what elements the United States claimed jurisdiction and finally a case analysis, I began my research. Due to problems in obtaining case material, the design of the project changed very late in my last semester. As a whole vision, this project is far from finished. The new design will attempt to trace through the sources of international law what the law regarding war crimes was in 1945 and how this presented unique challenges to the creation of the trials.

Chapter I: Introduction

The Visigoths of ancient times first introduced the Western World to the concept of "total war" in which a battle would be fought with no other object than absolute victory with the complete annihilation of the enemy. The Visigoths did not take prisoners, nor did they show mercy to those wounded on the battlefield. Western customs did not accept this version of war and has been reflected on throughout the Western Tradition.

Grotius, who is considered the father of international law, wrote:

> Now for my part, being fully assured...that there is some Right common to all Nations, which takes place both in the Preparation and in the Course of War, I observed throughout the Christian World a licentiousness in regard to war, which even barbarous nations ought to be ashamed of: a running to arms upon very frivolous or rather no occasions; which once being taken up, there remained no longer any reverence for right, either divine or human, just as if from that time men were authorized and firmly resolved to commit all manners of crimes without restraint...but far must we be from admitting the conceit of some, that the obligation of all right ceases in war; nor when undertaken ought it be carried on beyond the Bounds of justice and fidelity.[i]

Grotius' observations reflect the lack of international treaties and conventions to govern actions during times of armed conflict. This changed late in the Nineteenth century with the first convention regarding the laws of war. With the implementation of conventions, there still remained issues that remained to be addressed such as how the laws of war would be regulated and enforced in a time of chaos.

Prior the end of World War II, news and of atrocities committed by Japanese soldiers against American prisoners of war were made public in the United States. The Japanese mistreated prisoners of war in several infamous incidents such as the Bataan Death March and later in the Palawan Massacre, which occurred when the Japanese lines of communication were severed towards the end of the war.[ii] When the Japanese began to realize the war was not going to end in their favor, it was alleged that there was a standing

order that in the event all communication was lost, commanders of prisoners of war camps should assume the worst was upon them, and immediately execute prisoner so that they would not be a factor in a fight to the last man. Prior to the surrender the Japanese destroyed any such documentation that this was a standing order.[iii]

One example of the news of Japanese atrocities was the Palawan Massacre of United States prisoners of war. Palawan is a small island in the Philippines. Palawan is located in a tropical area, capable of providing adequate shelter, food, water, and sanitation facilities. When communication was lost with the central Japanese Command at Camp 10A and American reconnaissance planes were spotted near the island, the camp commander ordered all the prisoners of war be placed in bomb shelters and set on fire.[iv] Anyone seen trying to escape the flames was shot. A few American prisoners escaped the flames and gunfire by jumping over cliffs to report first hand accounts.[v] A few days later American forces landed at Palawan and secured the island.[vi] At this time, preliminary reports were taken from prisoners of war who survived the flames and gunfire and a Graves Registration team was called in to commence collection of remains. Charred remains of United States Service members, dog tags, and personal gear were found in a shallow unmarked mass grave.[vii] Americans quickly rallied around the legendary heroes of Bataan and Corregidor and demanded retribution.

In response to the demand for retribution, The International Military Tribunal for the Far East (IMTFE) was established as the Pacific Theatre's equivalent of the Nuremberg Trials. Although numerous accounts, explanations, and volumes have been written about the Nuremberg Trials and the International Military Tribunal for the Far

East, very little scholarly investigation has been made into the lesser Class B and Class C trials that were conducted by a military commission under the direction of the Eighth Army Judge Advocate General Corps. There was little doubt that Japanese forces were in violation of conventions that dictated the standard of treatment of prisoners of war, but questions emerged as to the way in which persons would be held accountable, and what, if any, punishment would be meted out to individuals who acted outside the command responsibility.

The importance of the Yokohama Trials in establishing a doctrine for tribunals designed to punish acts perpetrated by individuals during times of hostilities cannot be under estimated. In the aftermath of World War I, many problems emerged in trying prisoners of war and as a result very few convictions were handed down, all of which related to the actual conduct of the war and not with atrocities committed by individuals. At Yokohama the world first witnessed the large-scale implementation of international law and interpretations as to the way in which it related to individuals.

Public opinion often drives governmental policies, and this was the case in the 1940's. Americans were sharply divided on how war criminals should be apprehended, tried, and punished. Many Americans remembered the outcome of the war crimes trials that took place after World War I that were at best a farce. The final outcome of the war crimes trials from World War I resulted in six convictions and the carrying out of very few, if any, real penalties.[viii] In the 1940's, International Law was less defined than it is in the dawn of the twenty-first century. The Treaty of Versailles that ended World War I demanded that William II, the former emperor of Germany be publicly arraigned and

charged with violating the laws and customs of war.[ix] William was never tried and instead lived the remainder of his natural life in exile at an estate in Holland.[x] William was not charged with a crime that was defined or punishable under any code of international law.[xi]

Articles 228-229 of the Versailles Treaty allowed the allied powers to bring Germans accused of war crimes to trial before an international military tribunal in cases where individuals were accused of violating the laws and customs of war.[xii] These persons were later tried at the German Supreme Court, but received sentences that were not carried out or enforced.[xiii] This ambivalence led many Americans to believe that Allied forces should not undertake the expense of trying persons accused of war crimes, especially in light of the staggering amount of monetary outlay that would come in the rebuilding process after the war. Part of the decision to undertake war crimes trials was partly driven by political promises that were made by both the British Prime Minister and President Roosevelt.

In a speech seeking the creation of a War Crimes Investigation Commission, Prime Minister Winston Churchill declared to the House of Lords in October 1942 that:

> The Commission would investigate crimes against the nationals of the United Nations, recording the testimony available, and the commission would report from time to time to the governments of those nations in which such crimes appear to have been committed, naming and identifying whenever possible, the names and identities of the persons responsible. The aim would be to collect material, supported whenever possible by depositions or other documents to establish such crimes, especially when they were systematically perpetrated, and to name and identify those responsible for their perpetration.[xiv]

The same day, President Roosevelt released a announced that:

> It is not the intention of this government or the intentions of governments associated with us that we should resort to mass reprisals. The number of persons eventually found guilty will undoubtedly be extremely small compared to the total enemy population, but it is our intention that just and sure punishment will be meted out to those responsible for the commission of atrocities that have violated every tenet of the Christian faith.[xv]

Despite the Prime Minister's and the President's declarations that war crimes would be dealt with, there was no discussion as to the way in which these persons would be apprehended or how jurisdiction and procedural questions would be overcome.

Although several stern warnings were given through speeches, State Department Bulletins, and official communications warning of retribution for war crimes, the official intention of the allied powers in the Pacific Theatre to prosecute persons for war crimes arrived in the Potsdam Declaration. The Potsdam Declaration, signed by Great Britain, The United States and China stated that, "We do not intend that the Japanese should be enslaved as a race or destroyed as a nation, but stern justice should be meted out to all war criminals including those who have visited cruelties upon our prisoners."[xvi] The Potsdam Declaration would later become one of the primary instruments upon which the United States proposed to claim jurisdiction to try war criminals.

On August 14, 1945, official word was transmitted through the Swiss Government that Japan unconditionally surrendered and would abide by the provisions set forth in the Potsdam Declaration.[xvii] Upon receipt of this notification, the Joint Chiefs of Staff directed

that General Douglas MacArthur be appointed the Supreme Allied Commander to receive the Japanese surrender, accompanied by high-ranking officers of Allied Forces.[xviii] Clearly, the United States had played the dominant role in the Pacific Theatre and would hold a dominant role in the surrender, occupation, and rebuilding of Japan.

The Commission to try suspected war criminals was appointed by General Douglas MacArthur. This commission would face many issues and challenges that were presented by the fluid nature of international law. The focus of this work is not a sweeping overview of Allied Trials, but an examination of applicable International Law in 1945 with a specific focus on the creation of the Yokohama Trials.

Chapter II- The Problem of International Law in Establishing War Crimes Trials in 1945

Introduction

Following the close of World War Two, opinions regarding the disposition of war crimes was sharply divided. Legal experts such as Harvard Law School's Sheldon Glueck were coming to accept that "All is not fair in war and the mere wearing of a uniform is neither justification nor excuse for criminalistic and gratuitously cruel practice, most of which are wholly unconnected with military necessity."[xix] Conventions governing the Laws of War had been ignored by Axis powers, creating a clear violation of international

law; however there was no mechanism to impose or enforce sanctions. The question then arose if individual malefactors were liable for their actions, as well as the states. This issue was further exasperated due to sharply divided sentiments among the American people.

As Allied victory became more likely in late 1944, legal scholars began to conjecture on how war criminals would be treated under existing international law. These suppositions were tempered with public opinion and attitudes toward the Axis powers. Some Americans were skeptical that the atrocities that were reported to have been perpetrated by the Germans and Japanese actually took place; the reports were simply too horrific to be true.[xx] The skeptics held that even in the chance the atrocities had been committed, ultimate responsibility rested with the state and therefore could not be held accountable in any court. The Treaty of Versailles that had ended World War I was the first attempt in any peace between belligerent nations to establish some sort of punishment for actions that were taken during times of conflict.[xxi]

In opposition to the skeptics were the people who wanted vengeance on all Germans and Japanese, regardless of their participation in the war. These people felt that the Germans and Japanese as a state and as a people should have been debilitated to the extent that they would not longer be able to participate in aggressive behavior, and that the collective group should be punished for the military actions of the state. In addition to the renewed feelings of anger and hate, there were many people who believed war criminals would go unpunished, as they had in World War I, allowing for future violations of international law without fear of sanctions.

After World War I, there was an inability on the part of Allied Powers to overcome the question of international law and how it was to be applied to war crimes. Following the Treaty of Versailles, Allied Powers publicly arraigned the former German Emperor William II and charged him with "supreme offenses against international morality and the sanctity of treaties," which was followed by the creation of a tribunal to proceed with trial.[xxii] This trial never occurred, and as previously stated, William II lived out the remainder of his life. With this in mind, legal scholars began readdressing the issues of international law that had been raised after World War I, which was primarily included asking where was the law to be found, who would conduct the trials, and was it possible to hold individuals accountable for actions taken during the conflict.

The Sources of International Law

In the International Military Tribunal for the Far East, eleven nations participated with the primary responsibility for investigating, apprehending suspects, and trials falling on the United States, Great Britain, Australia, the Netherlands, China, the Philippines, France, Russia, and Canada.[xxiii] India would later become involved, desiring to send a justice to serve as am impaneled judge well after the deadline to submit a nominee. The Justice that was to be administered was a combination and a reflection of each state's domestic law, foreign policy and political objectives. This created a unique question: were the Japanese given a fair trial and subsequent sentence, or as Richard Minear has suggested, was this a case of "victor's justice"?[xxiv] To examine this question, it is necessary to look at the law that governed the definition of criminality, the sources of

governing law, and basis of jurisdiction, and finally at specific proceedings not conducted in the international sphere of Tokyo, but in the smaller trials at Yokohama, which were the exclusive domain of the United States.

The Yokohama Trials were not international in scope as the International Military Tribunal for the Far East had been. The sole responsibility for the investigation of suspected war crimes, apprehension of suspected individuals and their trial and punishment fell on the United States, and particularly the Eighth Army under the command of General Douglas MacArthur. Unique problems were then presented to the persons responsible for overseeing the conduct of the trials.

One of the major questions facing the victorious nations following World War II was whether or not there was actually any crimes committed, and if so, how to charge, try, and punish the malefactors. The "laws of war" (*jus in bello)* were codified only in a sketched outline hailing from The Hague Conventions of 1899 with subsequent revisions and additions in 1907 as well as the Red Cross Convention on the Treatment of Prisoners of 1929.[xxv] With no international body creating legislation, there was the question of whether or not any actual crime had been committed.[xxvi] Some legal scholars argue that States are considered sovereign, and therefore their actions are not subject to scrutiny from other states. While this is continually debated, there is a general consensus that there is a dynamic body of practices that govern the behavior of sovereign states.

Much of international law is created through ancient and customary usage, as well as treaties. In trying to determine the way in which international law is to be applied, it is necessary to examine the sources of international law. The standard sources of

international law were not codified until the International Court of Justice (ICJ) came into existence in the twentieth century. The ICJ recognized that in addition to codified international law in the form of treaties and conventions that there is an element of customary international law. In keeping with the positivist nature of law, states began to turn away from "natural law" and began to rely more on what was the actual practice of the state and the reflection of the political will. Article 38(1)(b) of the Statute for the International Court of Justice states that international custom is accepted as law in the event there is no binding treaty or convention governing states' behavior.[xxvii] Louis Henkin describes this in the following excerpt:

> One of the norms of international law created by custom authorizes the states to regulate their mutual relations by treaty. The reason for this validity of the legal norms of international law created by treaty is this custom created norm. The presupposed basic norm of international law, which institutes custom constituted by the State as a law creating fact, expresses a principle that is the basic presupposition of all customary international law: the individual ought to behave in such a manner as the others usually behave, applied to the mutual behavior of states, that is, the behavior of the individuals qualified by the national legal orders as government organs.[xxviii]

Although ascertaining customary law governing the treatment of prisoners of war held in the Pacific theatre in 1940 is difficult due to cultural differences, the series of treaties and conventions governing the detention and treatment of prisoners of war are readily available.

The Hague Convention of 1899 was one of the earliest codified agreements as to the way in which prisoners of war would be apprehended and maintained during times of conflict. Participants in the convention included Germany, Prussia, Austria, Belgium, Denmark, Spain, Great Britain, The United States of America, Mexico, France, India, Greece, Italy, Japan, Luxemburg, Netherlands, Persia, Russia, Romania, Serbia, Siam, Norway, and Bulgaria. Although the Hague Convention of 1899 was created to further define the customs and laws of war that had originally been codified for modern times at the Brussels Conference of 1874, the convention suffered from vagueness due to the inability of the plenipotentiaries to reach agreements on several aspects. [xxix]

In the preamble of the Hague Convention of 1899, the plenipotentiaries declare that "until a more complete code of the laws of war are issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience." The plenipotentiaries recognized that all possible aspects of international law could not be addressed in the absence of a central legislative body that was charged with promulgating the rules and laws of war.

Chapter II of the Hague Convention of 1899 deals with prisoners of war and outlines the treatment that combatants as well as non-combatants were to receive. Article I ambiguously states that all individuals captures must be "humanely treated," which is further explained in the subsequent articles.[xxx] The Convention allows for the use of

prisoners of war to provide labor so long as "the tasks are not excessive"[xxxi] This would exclude prisoners of war from performing many tasks that were demanded from them by the Japanese, including working for 12-15 hours straight in the heat and humidity of the Philippines where the largest majority of American prisoners of war were interned.[xxxii]

The most significant passage of the Hague Convention of 1899 is Article 8, which states:

> Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in the power they are. Any act of insubordination warrants the adoption towards them of such measures of severity as are necessary. Escaped prisoners who are retaken before being able to rejoin their own army, or before leaving the territory occupied by the army that captured them, are liable to disciplinary punishment.[xxxiii]

Many cases tried at Yokohama dealt with abuse of prisoners that the Japanese felt was justified under the regulations of the Imperial Army. Some examples are disembowelment for attempting to escape, which was punished under a desertion clause in the Japanese Military Field Manual.[xxxiv] There were no reservations in the Hague Convention of 1899 that would have disavowed this practice.

The Hague Convention of 1907 modified the provisions of the 1899 Convention. It had become clear to the international community that the provisions of the 1899 Convention were inadequate to prescribe treatment for prisoners of war and that changes had to be made to further define the expectations of the detaining country.

The most significant changes to international law in relation to prisoners of war arose with the Geneva Prisoners of War Convention of 1929, which is also known as the Red Cross Convention of 1929. 47 governments signed the Geneva Convention Relative to the Treatment of Prisoners of War. Japan and the USSR did not sign the convention.[xxxv] On August 31, 1942 Japan agreed to abide by the Geneva Prisoners of War Convention of 1929.[xxxvi] The 1929 Convention greatly improved protections offered to prisoners of war.

With the wide spread invention of electronic photographic media, one of the first provisions included in the Geneva Prisoners of War Convention of 1929 was that "Prisoners of war are in the power of the hostile Government, but not of the individuals or formation which captured them. They shall at all times be humanely treated and protected, particularly against acts of violence, from insults and from public curiosity. Measures of reprisal against them are forbidden."[xxxvii] This passage criminalized photographing prisoners of war and attempting to insure that prisoners were not the subject to public spectacles. This passage was also designed to alleviate the general maltreatment of prisoners in regard to everyday abuses such as slapping and hitting.[xxxviii]

The Geneva Prisoners of War Convention of 1929 also dictated the amount of time that prisoners of war could be marched on a single day either in changing places of internment or reaching a primary facility. Part II Section I article 7 of the Convention states that "the evacuation of prisoners on foot shall in normal circumstances be effected by stages of not more than 20 kilometers per day, unless the necessity for reaching water and food depots requires longer stages.[xxxix] The previous conventions on the treatment of

prisoners of war had not addressed the movement of POW's to or between facilities, and this became an important aspect of international law regarding the treatment of prisoners.

The 1929 Convention also went much further in dictating the living conditions of the prisoners of war. Part II Section III Article 10 states " prisoners of war shall be lodged in buildings or huts which afford all possible safeguards as regards hygiene and salubrity. The premises must be entirely free from damp, and adequately heated and lighted. All precautions shall be taken against the danger of fire. As regards dormitories, their total area, minimum cubic air space, fittings and bedding material, the conditions shall be the same as for the depot troops of the detaining Power." [xl]

An important aspect that the Geneva Prisoners of War Convention of 1929 expanded on was the amount of food that prisoners were to receive.[xli] Chapter II article 11 of the Convention states that "the food ration of prisoners of war shall be equivalent in quantity and quality to that of the depot troops. Prisoners shall also be afforded the means of preparing for themselves such additional articles of food as they may possess. Sufficient drinking water shall be supplied to them. All collective disciplinary measures affecting food are prohibited." The Hague Convention of 1907 had stated that prisoners were to receive adequate food and water, but the 1929 Convention placed the expectation that prisoners would receive food amounts of the quality provided to the detaining nation's regular troops.

Another important aspect of the Geneva Prisoners of War Convention of 1929 was the dictation of what type of work could be performed by prisoners of war. The 1929 Convention stated that "work done by prisoners of war shall have no direct connection

with the operations of the war. In particular, it is forbidden to employ prisoners in the manufacture or transport of arms or munitions of any kind, or on the transport of material destined for combatant units."[xlii] The plenopetionaries of the Hague Convention of 1907 had not been able to reach this agreement and had instead stated that prisoners of war could be utilized for labor that supported the war effort.[xliii]

The most important difference between the Hague Convention of 1907 and the Geneva Prisoners of War Convention of 1929 was the punishment of prisoners of war by the detaining state. The 1907 Convention had called for the punishment of prisoners of war to be equal to the punishment that would be given for a violation by a member of that state's armed forces. The Geneva Convention of 1929 removed the use of corporal punishment stating that:

> Prisoners of war shall not be subjected by the military authorities or the tribunals of the detaining Power to penalties other than those which are prescribed for similar acts by members of the national forces. Officers, non-commissioned officers or private soldiers, prisoners of war, undergoing disciplinary punishment shall not be subjected to treatment less favourable than that prescribed, as regards the same punishment, for similar ranks in the armed forces of the detaining Power. All forms of corporal punishment, confinement in premises not lighted by daylight and, in general, all forms of cruelty whatsoever are prohibited. Collective penalties for individual acts are also prohibited.[xliv]

The article from the 1929 Convention also prohibits the use of collective punishment for acts committed by an individual. Often prisoners of war were punished as a group if one member of the group attempted an escape, hid food, or fell behind on work duties.[xlv]

The Geneva Prisoners of War Convention of 1929 was the strongest basis for international law to prescribe expected behavior. Although the government of Japan was not an original signer of the document, by agreeing to the provisions in 1942 the Japanese government became a full party to the treaty. With this agreement, the Japanese government became responsible for disseminating the information regarding the provisions to the officers and individuals in command of prisoners of war camps. Although the Geneva Prisoners of War Convention of 1929 was the most authoritative source for international law in this area, there were other sources of international law to consider.

Treaties and Conventions are usually the most reliable, accurate, and specific means of ascertaining international law, but they are not the only sources. International law also includes an element of customary law that is derived not by what states *say* their behavior is and will be, but by what the behavior actually is. This is described as ancient and customary usage in which the members of that state adhere to a behavior or a belief about behavior because they deem it to be as binding as law.

Customary usage in international law was articulated in the *Paquette Habana* Case that was heard before the United States Supreme Court in 1900. In this case, a fishing smack was seized by the Unites States as a spoil of the Spanish American War. The owners of the fishing vessel claimed that the commercial nature of the fishermen in furthering an economic interest were exempt from seizure due to ancient and customary usage. The Supreme Court agreed, citing a long succession of States that recognized fishing vessels as exempt from seizure. The Court went on to state that:

> International law is part of our law, and must be ascertained and administered by the by the courts of justice of appropriate jurisdiction as often questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations, and as evidence of these, to the works of jurists and commentators, who by years of labor, research, and experience have made themselves particularly well acquainted with the subjects of which they treat.[xlvi]

Customary usage raises many question in determining exactly what constitutes customary international law, including formative factors such as: 1. How long does a country have to follow a practice before it is considered international law? 2. How many countries must be in recognition of a practice for it to be considered international law? 3.How are conflicting practices dealt with? 4. Are states that do not practice a certain custom bound by practices that are considered part of customary international law? In looking at the development of Japanese Military aggression, it is possible to dismiss ancient usage as any basis for the mistreatment of prisoners of war.

Japanese military aggression in the Pacific Rim began when Japan emerged from centuries of isolation in the period from 1868-1937. This time period of Japanese history is known as the Tokugawa Era. Although armed conflict in the Pacific Rim during World War II is usually considered to have commenced when Japan attacked Chinese Manchuria in 1937, the stage for Japanese aggression was set decades earlier. Japan had been militarized most of its history, but became more prepared to be a regional power during the Tokugawa Era lasting from 1603 until 1868[xlvii]. During this time the Japanese

government created a centralized state and became highly bureaucratic due to the influence of the Samurai class, which became the body primarily responsible for state administration.[xlviii] In 1863 Admiral William Perry of the United States' Navy demanded that Japan open her harbors to US merchant ships for trade, ending Japan's isolationism that had lasted for 250 years.[xlix]

The end of the Tokugawa Era issued in the Meiji Restoration. With ports open to foreign vessels, Japanese administrators began to fear the modernized naval forces firmly anchored in the harbors.[l] Modernization became top priority for the state officials, and soon Japan was able to deploy a modern army and engaged in two wars.[li] The Sino-Japanese War and the Russo-Japanese War both ended with the Japanese being victorious over seemingly superior forces. The Code of Bashito, which in many cases could have allowed for what many Westerners would have considered mistreatment, was not widely practiced in the Pacific Rim, and did not spread to any other parts of the world.

With the relatively short amount of time that Japan had been engaged in relations with other states and with the limited spread of Japanese customs, customary law is simply not applicable in this case. Japanese customs do not hold up to scrutiny under the tests established to determine if customary international law applies:

> Japanese military customs are relatively short lived.
> Japanese military customs are not widespread.
> There were conventions in effect that would have trumped customary law claims.

Having dismissed the possibility of Japanese claims that prisoners were treated with accordance with Japanese military custom, and having determined that there was a

violation of international treaty, it becomes necessary to examine if individuals could be held accountable.

The Question of Individual Accountability

In 1884 the Institute of International Law held that an individual soldier who violates the laws and customs of war is to be accountable for his actions.[lii] Article 84 of *the Manual of the Laws of War on Land* states that " the offending parties should be punished, after a judicial hearing, by the belligerent whose hands they are in."[liii] The Institute of International Law held that there was a distinction between the acts of a soldier committed in the line of duty under the rules of warfare and acts that took place outside of that duty. This raised a sharp distinction between what behavior was acceptable. This difference was articulated by Professor C. Renault, a leading lecturer of international law at the Sorbonne, and distinguished lecturer for the Grotius Society.

Professor Renault states that most acts, even when the element of intent is eliminated, contain all the necessary elements of a crime that is forbidden by international law and the rules of civilized warfare.[liv] Renault adds that "soldiers may commit crimes during war, and it would be extraordinary to hold that they are protected by their uniform for trial and punishment."[lv] This is a further articulation of the notion that the wearing of a uniform does not protect every action of an individual soldier. After determining what applicable international law was and that individuals could be held accountable, it was necessary to determine under what basis the United States claimed primary jurisdiction to try suspected war criminals.[lvi]

The Question of Jurisdiction

Once it was determined that there was applicable international law that had been violated, the question arose as to who would be the trial authority. There were obvious problems in allowing Countries that were invaded to try persons on what was effectively their jurisdiction. One of the possible methods of dealing with jurisdictional issues was to allow states that had been invaded to try persons accused of war crimes in their local courts. This view received some support, however the United States affirmed that this principle went against what the Supreme Court of the United States had declared in a number of cases arising after the Civil War. In these cases the United States asserted the principle that local courts have no jurisdiction to try acts committed by the members of an invading army or by occupational forces that were later installed.[lvii] Of course, the problems of World War I dismissed any possibility of any real justice if Japan were allowed to try their own soldiers and officers for violations of the Geneva Convention of 1929.

The Military Commission officially asserted its jurisdiction under the following documents: The Potsdam Declaration of July 26, 1945; the Charter of the International Military Tribunal for the Far East; the Far Eastern Commission Policy Decision of April 3, 1946; and the Regulations Concerning the Trial of Accused War Criminals of December 5, 1945.[lviii]

Although the Potsdam Declaration clearly states that the Allied Powers intended to try suspected war criminals, the commission also relied on the Charter of the International

Military Tribunal for the Far East to establish jurisdiction. The Charter of the International Military Tribunal is a short document, consisting of only two typed pages. The Charter refers to the Potsdam Declaration stating that "the government of the Allied Powers at war with Japan on the 26th of July, 1945, declared as one of the terms of surrender that stern justice would be meted out to all war criminals who have visited cruelties upon our prisoners."[lix] The Charter then states that the Japanese surrender in Tokyo Bay on September 2, 1945 accepted the Potsdam Declaration.[lx] The Charter concludes by stating that with these provisions, General Douglas MacArthur will establish and conduct trials of war criminals.[lxi]

Chapter III: The Creation of the Military Commission at Yokohama and the Convening Authority

The U.S. Joint Chiefs of Staff designated General Douglas MacArthur, the Supreme Commander of Allied Powers, as the convening authority for creating an implementing a program to try war criminals in the Pacific Theatre. The Joint Chiefs directed that MacArthur create a program that would investigate, apprehend, try and punish persons who were suspected of war crimes. To this end, the Tokyo War Crimes Trials were initiated to try the major Class A defendants by an international military tribunal and what was deemed to be Class B and Class C crimes were tried largely by military commissions. Class A war criminals were charged with perpetrating and waging war in the Pacific in a trial that closely mimicked the Nuremberg Trials in scope and

composition. Although the trials of the Class B and Class C War criminals are largely ignored, it was these trials that opened the way to the prosecution of individual members of a belligerent force in violating the laws and customs of war.

Trial authorities, appointed by General Douglas MacArthur, classified each suspected war criminal into one of three classes. Class A were considered the major cases and consisted of those charged with planning, initiating, and waging an aggressive war.[lxii] Class B and C suspects were charged with violations of the customs of war, which was further defined to include atrocities committed against civilians, races, groups, and prisoners of war.[lxiii] The Class A trials were held in the fall of 1948 and tried 28 individuals.[lxiv]

On December 5, 1945, the Commanding General of the Eighth Army began to appoint the military commission that would try the Class B and C suspects.[lxv] The total number of cases to be tried grew to 996.[lxvi] Of the 996 only 319 were actually tried, of which 142 were acquitted, 124 were sentenced to death, 63 were sentenced to life imprisonment, and the remainder received various prison terms.[lxvii] Although the actual charter creating the commission stated that defendants were not entitled to review of the proceedings or sentences, each case was reviews by the Office of the Judge Advocate General to determine if there were legal errors that disadvantaged the accused.[lxviii] Cases that resulted in persons receiving a death sentence were subjected to a second review and then were confirmed by General MacArthur.[lxix] MacArthur overturned all but 51 of the death sentences, commuting them to life imprisonment.[lxx]

The policy that the United States would use in conducting the commission for the Class B and C accused was articulated in the "Apprehension, Trial, and Punishment of War Criminals in the Far East" Policy decision of April 3, 1946. The policy defines "war crimes" in part as:

(a) The Preparation, planning, initiation or waging of a war of aggression or a war in violation of international treaties. Agreements, or participation in a common plan or conspiracy for the accomplishment of the foregoing.

(b) Violations of the laws or customs of war that shall include, but not be limited to, murder, ill treatment or deportation of slave labor, murder or ill treatment of prisoners of war, improper treatment of hostages,....[lxxi]

The policy decision also defined the period of conflict to have commenced on July 7, 1931, at the Mukden Incident, the first act of Japanese aggression in the Pacific, sending a clear signal to China and Generalissimo Chiang Kia-Shek that incidents that occurred prior to the United States' involvement in the conflict would also be subject to trial.[lxxii] The policy decision did not set an end date for the conflict to be considered over.

After the primary decisions regarding the way in which the commission was to be created was made, MacArthur relied heavily on the Office of the Judge Advocate General, and particularly the Eighth Army's Office of the Judge Advocate General. The Eighth Army Office of the Judge Advocate General drafted a preliminary Rules of Procedure and Rules of Evidence that were submitted to the Chief Judge Advocate General who gave his approval.[lxxiii] The Trials were then prepared to hear the first cases.

Chapter IV: Summary and Conclusions

The administration of justice is the one of the most essential functions of the State. When the need to administer justice crosses State boundaries, many new and perplexing questions must be asked. In a global environment, there must be certain rules that all nations must follow, whether in times of peace or in war, especially in a time of weapons of mass destruction, capable of decimating the human race. In modern times, States and individuals are held accountable in formal courts established by the United Nations, however, military tribunals still play a role in the administration of justice during and after times of conflict.

Individuals and States no longer take actions without the very real threat of reprisal from the world community. This does not come without considerable controversy that is very similar to the controversies that occurred at the end of World War I. The lack of actions against the leaders and individuals that perpetrated war crimes in World War I undoubtedly led to the new and greater atrocities that the world witnessed in World War II.

Prior to the Yokohama Trials, individuals had not been held accountable for violations of the laws and customs of war. Sanctions had only been imposed on a few states prior to the Yokohama Trials. It was proven during the aftermath of World War I that the only way to curb violations of the laws and customs of war was to hold individual persons accountable for their actions.

The modern concept of international law includes aspects of written international law as well as customary international law. The modern concept of international law also includes aspects where states judge the actions of other states and their nationals. Heads of

state are held accountable for atrocities that take place at their direction as well as actions that take place through their negligence. The Yokohama Trials also went one step further asserting that countries would not be allowed to try their own criminals under their own laws as they had been at the close of World War I.

The Yokohama Trials also signaled the necessity for an international court of criminal justice. Overcoming problems of jurisdiction to try war criminals for violations of the laws and customs of war was difficult in 1945. With the addition of several more state states to the "family of civilized nations" it became clear that in future situations, one country may not have a dominant place in asserting jurisdiction as the United States did in the Pacific Theatre at the close of World War II.

In addition to solidifying the need for an international criminal court, the Yokohama trials proved that there was adequate international law to prosecute war crimes and that the creation of a tribunal to try such crimes was a viable mechanism for the punishment of persons who commit war crimes. Allied powers were able to apprehend persons accused of war crimes and insure that they were punished. Allied powers had insured that this would be possible by incorporating the demand for Japan to turn over persons suspected of war crimes in the surrender articles. The right to try persons suspected of war crimes by the opposing state was first introduced in the treaty that ended World War I, but no large scale trials came form that agreement.

Although the Emperor of Japan was exempt from prosecution and maintained a ceremonial position in the government as head of state, the major members of his cabinet and war ministry were tried at the Tokyo Trials.[lxxiv] This was a deviation from the

defenses used in the past that claimed "acts of state" could not be tried, and that individuals could not be tried for obeying the orders which fell under an act of a state. This chain of rational then led to the defeat of the defense of "following a superior order" which was not allowed to be used in the Yokohama Trials.

Disallowing following a superior order as a defense sent a clear message that the individual alone was responsible for knowing the laws and customs of war and adhering to them, even when receiving a superior order. The notion of disobeying a direct order partially led to the articulation of a what constitutes a lawful and unlawful order in military terminology and what is expected in obeying or disobeying such an order. This greatly raised expectations of the common soldier, and undoubtedly led to the increased training and educational demands of the modern military; soldiers now had to determine if an order was lawful.

The punishment of individuals for war crimes was unprecedented in 1945 and led to many complex problems that had to be overcome for the trials to be considered successful. While only a complete dissection of the individual cases can determine if the Yokohama Trials were truly a case of "Victor's Justice", the path leading to the trials was determinately grounded in the principles of international law as it was conceived in 1945 and provided a basis for the further articulation of international law in the late twentieth century.

[i] Grotius, *De Jure Belli ac Pacis* Second Edition, 1631. I, XXIX, xxvi

[ii] Many of the American prisoners of war who survived the Bataan Death March would face atrocities at Palawan. For more information see: Colonel Henry Lyons Papers, MS-953 Box 2: Folder Two: Palawan ; Prosecution notes

[iii] Several translation of affidavits in the Colonel Henry Lyon's Papers describe how the camp commanders received encoded radio transmissions that in the event there was a loss of radio contact that all documents be destroyed and all prisoners be killed. For more information see: Colonel Henry Lyons Papers, MS-953 Box 2: Folder Two: Palawan ; Prosecution notes

[iv] *ibid*

[v] *ibid*

[vi] *ibid*

[vii] The charred remains in the mass grave were left after any gear containing names and dog tags were collected. In the late 1990's the remains were disinterred at Palawan and moved to the National Cemetery in St. Louis, Mo, where the last remaining survivor if the massacre, Glen McDole gave a rare public appearance and spoke of the incident.

[viii] Finch, George. *After the War: Disposition of Suspect War Criminals. American Journal of International Law.* Volume 37 Issue 1 Jan 1943 p.250

[ix] Treaty of Versailles article 227, available: http://www.icrc.org/ihl.nsf/38519432b509e76c41256739003e636d/eb1571b00daec90ec125641e00402aa6?OpenDoc

[x] Finch, George. *After the War: Disposition of Suspect War Criminals. American Journal of International Law.* Volume 37 Issue 1 Jan 1943 p.250

[xi] The Hague Convention of 1907 had many stipulations, but none of them dictated how the leader of a country could be held accountable for atrocities or for "waging war aggressively."

[xii] Treaty of Versailles article 228-229, available: http://www.icrc.org/ihl.nsf/38519432b509e76c41256739003e636d/eb1571b00daec90ec125641e00402aa6?OpenDoc

[xiii] Finch, George. *After the War: Disposition of Suspect War Criminals. American Journal of International Law.* Volume 37 Issue 1 Jan 1943 p.250

[xiv] The London Times, October 8, 1942—Reprinted The Department of State Bulletin, October 10, 1942, Vol. VII, P.798

[xv] Department of State Bulletin, October 10, 1942, Vol. VII, P. 797

[xvi] Potsdam Declaration, August 1, 1945. Available: http://www.yale.edu/lawweb/avalon/decade/decade17.htm

[xvii] Department of State Bulletin, August 19, 1945. Vol. X, p.462.

[xviii] Introduction, *Reviews of the Yokohama War Crimes Trials.* Reel 1 page2

[xix] Sheldon Glueck, *War Criminals: Their Prosecution and Punishment.* New York: Alfred a. Knopf, 1944. ,p. 4.

[xx] Sheldon Glueck, *War Criminals: Their Prosecution and Punishment.* New York: Alfred a. Knopf, 1944. p. 4.

[xxi] Garner, James. "Punishment of Offenders of the Laws of War." *American Journal of International Law.* Vol. 14 Issue 1. January 1920, p.76.

[xxii] Finch, George. *After the War: Disposition of Suspect War Criminals. American Journal of International Law.* Volume 37 Issue 1 Jan 1943 p.250

[xxiii] Phillip, Piccigallo, *The Japanese On Trial* (Austin: The University of Texas Press, 1979), xii.

[xxiv] Richard Minear, *Victor's Justice: The Tokyo War Crimes Trials* (Princeton: Princeton University Press, 1971).

[xxv] Finch, George. *After the War: Disposition of Suspect War Criminals. American Journal of International Law*. Volume 37 Issue 1 Jan 1943 p.250

[xxvi] Finch, George. *After the War: Disposition of Suspect War Criminals. American Journal of International Law*. Volume 37 Issue 1 Jan 1943 p.250

[xxvii] Henkin, Louis. *The Sources of International Law.* Compiled by the West Group.St. Paul, The West Group. P. 59

[xxviii] Henkin, Louis. *How Nations Behave.* Compiled by the West Group.St. Paul, The West Group. P.21

[xxix] The Hague Convention of 1899, Article I. The Avalon Project at Yale University. Available: http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/eb1571b00daec90ec125641e00402aa6?OpenDoc

[xxx] The Hague Convention of 1899, Article I. The Avalon Project at Yale University. Available: http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/eb1571b00daec90ec125641e00402aa6?OpenDoc

[xxxi] The Hague Convention of 1899, Article I. The Avalon Project at Yale University. Available: http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/eb1571b00daec90ec125641e00402aa6?OpenDoc

[xxxii] Colonel Henry Lyons Papers, MS-953 Box 2: Folder One: Palawan ; Prosecution notes

[xxxiii] The Hague Convention of 1899, Chapter 2 article 4. The Avalon Project at Yale University. Available: http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/eb1571b00daec90ec125641e00402aa6?OpenDoc

[xxxiv] One of the cases tries at Yokohama was the trial of Sotaro Murato, case number 312. In this case Murato was accused of causing the death of many prisoners of war at the Kobe Prisoner of War Camp in mainland Japan. Specifically, Murata was accused of causing the death of Frank Spears, an American, by bayoneting him. Spears was mentally unstable and allowed to wander the camp. On several occasions Spears fled the camp and was recaptured. In the depositions of many American, British and Australian prisoners of war held at the Kobe Camp, it was revealed that Spears was usually recaptured by the next morning when he would wander back to the camp. The day of his final escape, an unspecified high-ranking Japanese Officer was inspecting the camp and Murato was left with no recourse but to carry out the appropriate sentence. In front of the other prisoners Spears was read the portion of the Japanese military field manual that called for the death of deserters. Spears was then executed and his body used for bayonet practice. After a few hours Spears was cremated and his remains buried. For more information on the case of *USA v. Murato* see the Colonel Henry Lyons Papers, MS 963, Hoskins Special Collections, The University of Tennessee Library system Box 1 folder 5.

[xxxv] The USSR did state in 1943 that their government would abide by the Hague Convention of 1907 which did not contained, among other provisions, the provisions of camp inspection, correspondence with prisoners.

[xxxvi] Department of State bulletin Sept 5 1942 vol vii no 167, publication 1799

[xxxvii] The Geneva Prisoners of War Convention of 1929, Article II. The Avalon Project at Yale University. Available:http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/eb1571b00daec90ec125641e00402aa6?OpenDoc

[xxxviii] One of the cases tried at Yokohama involved Testataro Kato, a Japanese prisoner of war camp lieutenant who was charged with several counts of "violations of the laws and customs of war" for slapping American and British Prisoners of War. Kato initially received a sentence of 30 years confinement and hard labor, but this was reduced to 5 years upon review of the case by the Office of the Judge Advocate General. For more information see: Case 296, *Reviews of the Yokohama War Crimes Trials.* Reel 4 page 39

[xxxix] One of the most vicious atrocities visited upon American prisoners of war took place on what became known in history as the Bataan Death March. It was after the surrender of the Philippines by General Wainwright that American forces were marched to prisoners of war camps. Many of the 319 cases tries at Yokohama included atrocities that took place on the Bataan Death March. Many of these atrocities included prisoners not receiving adequate health care, food, and water. In addition when prisoners fell behind on the march, they were made examples of. One incident reported in the affidavit of Glen McDole, an American soldier fell behind on the dirt road they were being marched on. Exhausted, tired, and hungry, the soldier could not get to his feet, and the other soldiers were not allowed to help him. The Japanese used a tank to run over the lower part of the fallen soldiers body. The injured soldier was left on the side of the road to die and serve as an example to those who would see him. For more information see: Colonel Henry Lyons Papers, MS-953 Box 2: Folder One: Palawan ; Prosecution notes and the affidavit of Glen McDole

[xl] The lodging of prisoners of war had not been adequately addresses in the Hague Convention of 1899 and was not compensated for in the revision of 1907. In the Yokohama Trials as well as the Tokyo Trials, the living conditions were viewed as a violation of the laws and customs of war. Exhibit 15 of the prosecution in case 317 describes the living conditions of Camp 10A on Palawan. The affidavits of Glen McDole describe the living conditions as huts with no electricity, dirt floors with straw mats.

[xli] At Palawan Camp 10A Prisoners survived on very little if any dirty rice in which to eat. The island of Palawan was described as being capable of supplying adequate food through native fruits and adequate fresh water, but prisoners were punished for picking up coconuts and eating them without the approval of the guards.

[xlii] The Geneva Prisoners of War Convention of 1929, Chapter III Article 31. The Avalon Project at Yale University.Available:http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/eb1571b00daec90ec125641e00402aa6?OpenDoc.

[xliii] At Palawan Camp 10-A the Camp was utilized to build a forward airstrip. Prisoners of war used hand axes and shovels to clear the strip from the dense jungle for over three years and were subjected to American bombardment of the partially completed airfield. The Geneva Prisoners of War Convention of 1929 also stated that prisoners of war would be pay the standard military wage for any work that they performed less the cost of their food and supplies required by the convention. American prisoners of war were never paid for the work that they performed For more information see: Colonel Henry Lyons Papers, MS-953 Box 2: Folder One: Palawan ; Prosecution notes and the affidavit of Glen McDole.

[xliv] The Geneva Prisoners of War Convention of 1929, Chapter III Article 46. The Avalon Project at Yale University.Available:http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/eb1571b00daec90ec125641e00402aa6?OpenDoc.

[xlv] At Camp 10 A on Palawan Island many prisoners were killed or punished for similar offenses. The affidavit of Glen McDole describes how prisoners were divided into groups of ten and they received group punishment for offenses committed by one individual. One of the incidents he describes was how on prisoner accepted food from a local farmer and the entire group of ten was denied food for one week. As a result of the deprivation of food, two men died and the groups had to be reassigned. For more information see: Colonel Henry Lyons Papers, MS-953 Box 2: Folder One: Palawan ; Prosecution notes and the affidavit of Glen McDole

[xlvi] *Paquette Habana V. United States,* 175 US 677 (1900).

[xlvii] Yang Zhong, "Japanese Political History" lecture presented at the University of Tennessee, Knoxville on October 22, 2002.

[xlviii] *ibid*

[xlix] *ibid*

[l] Yang Zhong, "Japanese Political History" lecture presented at the University of Tennessee, Knoxville on October 22, 2002.

[li] *ibid*

[lii] Garner, James. "Punishment of Offenders of the Laws of War." *American Journal of International Law.* Vol. 14 Issue 1. January 1920, p.76.

[liii] Garner, James. "Punishment of Offenders of the Laws of War." *American Journal of International Law.* Vol. 14 Issue 1. January 1920, p.76.

[liv] Renault, C.. "Speech to the Grotius Society." *Supplement to the American Journal of International Law.* Vol. 14 Issue 1. January 1920, p.129.
[lv] Renault, C.. "Speech to the Grotius Society." *Supplement to the American Journal of International Law.* Vol. 14 Issue 1. January 1920, p.129.
[lvi] There were 47 signing states to the Geneva Convention of 1929, any of which could have claimed jurisdiction to try suspected Japanese war criminals.
[lvii] Garner, James. American Journal of International Law. Vol, 32 Issue 1 March 1942 p.150 See *Ford v. Surget,* (1878), 97 U.S. 605
[lviii] Introduction, *Reviews of the Yokohama War Crimes Trials.* Reel 1 page9
[lix] Charter for the International Military Tribunal for the Far Easr., *Reviews of the Yokohama War Crimes Trials.* Reel 1 page 10
[lx] Charter for the International Military Tribunal for the Far Easr., *Reviews of the Yokohama War Crimes Trials.* Reel 1 page 10
[lxi] Charter for the International Military Tribunal for the Far Easr., *Reviews of the Yokohama War Crimes Trials.* Reel 1 page 10
[lxii] Introduction, *Reviews of the Yokohama War Crimes Trials.* Reel 1 page2
[lxiii] Introduction, *Reviews of the Yokohama War Crimes Trials.* Reel 1 page3
[lxiv] *ibid*
[lxv] Introduction, *Reviews of the Yokohama War Crimes Trials.* Reel 1 page5
[lxvi] *ibid*
[lxvii] *ibid*
[lxviii] Introduction, *Reviews of the Yokohama War Crimes Trials.* Reel 1 page7
[lxix] Introduction, *Reviews of the Yokohama War Crimes Trials.* Reel 1 page2
[lxx] *ibid*
[lxxi] Policy Decision for the Apprehension, Trial, and Punishment of War Criminals in the Far East., *Reviews of the Yokohama War Crimes Trials.* Reel 1 page2
[lxxii] This never materialized. China did try a few Japanese for atrocities committed against the Chinese people, but internal political conflict in China kept this from fully materializing.
[lxxiii] Rules of Process, *Reviews of the Yokohama War Crimes Trials.* Reel 1 page29

[lxxiv] General MacArthus had decided that is was wiser in the reconstruction scheme that the Emperor not be charged for fear the prosecution of the Emperor, who was considered divine, would be too overwhelming to the Japanese people and instigate a mass suicidal final wave of resistance.