

of medicines and food, scurvy broke out in the camp in the Fall of 1942. Since the prisoners had been at the camp for some months before this disease became prevalent the responsibility for it rests upon the detaining authorities.

"It is reported that in the autumn of 1943 fifty percent of the American prisoners of war at Davao had a poor chance to live and that the detaining authorities had again cut the prisoners' food ration and had withdrawn all medical attention.

"Though the medical care provided for civilian internees by the Japanese camp authorities appears to have been better than that provided for prisoners of war, it still does not meet the obligations placed on the holding authorities by their Government's own free undertaking and by the laws of humanity. At the civilian internment camp, Camp John Hay, childbirth took place on the floor of a small storeroom. At the same camp a female internee who was insane and whose presence was a danger to the other internees was not removed from the camp. A dentist who was interned at the camp was not permitted to bring in his own equipment. The Los Baneos Camp was established at a recognized endemic center of Malaria, yet quinine was not provided, and the internees were not allowed to go outside of the fence to take antimalaria measures.

"The Japanese authorities have not provided sufficient medical care for the American civilians held in camps in and near Shanghai and the internees have themselves had to pay for hospitalization and medical treatment. Deaths directly traceable to inadequate care have occurred.

"Even in metropolitan Japan, the Japanese authorities have failed to provide medical treatment for civilian internees, and it has been necessary for Americans held at Myeshi, Yamakita, and Sumiro to pay for their own medical and dental care.

"Charge XIV. For example the internees at Camp John Hay were not allowed to hold religious services during the first several months of the camp's operation, and priests have not been allowed to minister to prisoners held by the Japanese in French Indo-China.

"Charge XV. No copy of an English translation of the text of the Geneva Prisoners of War Convention has been available to civilian internees or prisoners of war nor have the Japanese authorities taken other steps to inform the persons held of their rights under the terms of the Convention. Reports have been received of the Japanese authorities informing prisoners of war that they were captives, having no rights under international law or treaty.

a crude standard. Actually,
there may emerge various elements
side by side, counteracting
one another, and it will
therefore be necessary to analyse
and pass a judgment for
each individual case.

(Note)

(1) February 6, 1904, i.e.
prior to the declaration of war

Evidentiary Document No. 5193.

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Q. What happened after you were bombed?

A. Those of us who survived were transferred to a small inter-island steamer and moved to Japan. The death rate was high but I am unable to estimate it. We arrived at Moji on the island of Kyushu approximately January 28th or 29th. Many of the men were beaten by guards when they attempted to scrape snow off the canvas to get needed liquids. Conditions again were poor. Approximately 225 of the original 1687 disembarked at Moji and 105 of that group were sick and wounded and were taken to a hospital. At this time Lt. Murata and Mr. Wada left the group.

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A. This hospital was a bare shed. There were no doctors and we had to lay on the floor. We did not have any medical aid for several days and we received only a small quantity of food. We were fed twice a day but that was mainly thin rice gruel. We remained here until February 20th. The death rate at this time was very high and we had about 10 to 17 dead a day and on February 20th, all that remained of the 105 were 27 men.

(Signed) Harold J. Whitcomb
1st. Lt., M.F.

The Imperial Navy's War ship

"SAIEN" captured the "ECATERI-

NOSRAV" / phonetic / a

merchant ship operated by

the Volunteer Fleet Company

under the Russian Forces.

/Page 10/

The foregoing was a hostile

action which could lead to an

initiation of hostilities; and,

indeed, the Russo-Japanese

War can be said to have

"Charge XII. The condition of health of prisoners of war in the Philippine Islands is deplorable. At San Fernando in April 1942, American and Filipino prisoners were held in a barbed-wire enclosure so overcrowded that sleep and rest were impossible. So many of them were sick and so little care was given to the sick that human excrement covered the whole area. The enclosure at San Fernando was more than 100 kilometers from Bataan and the abominable treatment given to the prisoners there cannot be explained by battle conditions. The prisoners were forced to walk this distance in seven days under merciless driving. Many who were unable to keep up with the march were shot or bayoneted by the guards. During this journey, as well as at other times when prisoners of war were moved in the Philippine Islands, they were assembled in the open sun even when the detaining authorities could have allowed them to assemble in the shade. American and Filipino prisoners are known to have been buried alive along the roadside and persistent reports have been received of men who tried to rise from their graves but were beaten down with shovels and buried alive.

"At Camp O'Donnell conditions were so bad that 2,200 Americans and more than 20,000 Filipinos are reliably reported to have died in the first few months of their detention. There is no doubt that a large number of these deaths could have been prevented had the Japanese authorities provided minimum medical care for the prisoners. The so-called hospital there was absolutely inadequate to meet the situation. Prisoners of war lay sick and naked on the floor, receiving no attention and too sick to move from their own excrement. The hospital was so overcrowded that Americans were laid on the ground outside in the heat of the blazing sun. The American doctors in the camp were given no medicine, and even had no water to wash the human waste from the bodies of the patients. Eventually, when quinine was issued, there was only enough properly to take care of ten cases of malaria, while thousands of prisoners were suffering from the disease. Over two hundred out of the three hundred prisoners from Camp O'Donnell died while they were on a work detail at Batangas.

"At Cabanatuan there was no medicine for the treatment of malaria until after the prisoners had been in the camp for five months. The first shipment of medicines from the Philippine Red Cross was held up by the camp authorities on the pretext that they must make an inventory of the shipment. This they were so dilatory in doing that many deaths occurred before the medicine was released. Because of lack

found its inception in
the capture of the above
merchant ship.

(2) The attack on the
"Kōshō", bringing her down the
water, which took place at
the time of the Sino-Japanese
War of 1894-5, was a hostile
action to the enemy troops
(a vessel, though a merchant
ship of neutral nationality,

- Q Give us the names, approximate ages, and citizenship of all persons whom you saw on that vacant lot on that day.
- A I can identify exactly only those people with whom we were living. They were Mr. Jose Lazaro, 27 years of age, wearing eye-glasses, a very close friend of mine, a Filipino; my sister, Felisa V. Lagmay, age 20, Filipino; my mother, Consejo Villagracia, about 55 years old, Filipino; Mrs. Carmen Lazaro, wife of Mr. Jose Lazaro, about 24 years old, Filipino; Mrs. Anastacia Lazaro, mother of Mr. Jose Lazaro, about 55 years old, Filipino; Mr. Pedro Ramirez, half-brother of Mr. Jose Lazaro, about 12 years old, Filipino; and the rest I may know by face, but I can't identify them by name.
- Q Approximately how many persons were there altogether on the vacant lot?
- A Between fifty to seventy people that I could see. There might have been some others who were hiding behind the walls.
- Q What was the nationality of some of the others you saw there?
- A They were Chinese, Filipinos, and Spaniards. I didn't see any Russians there. I vaguely remember that there might have been some Russians at Mrs. Jimenez place who took refuge there. In the vacant lot, I didn't see them anymore.
- Q Did you have occasion to leave the vacant lot on February 10, 1945?
- A Yes, When the Japanese called us to leave that place because according to the people talking around, they were going to dynamite the place towards the east of us.
- Q Who told you to leave the place?
- A The Japanese, relayed to us through the people nearer the Japanese.
- Q What time of the day was it that they told you to leave?
- A Between a quarter to eight and 8:00 o'clock in the evening. It was almost dark.
- Q What happened when the Japanese told you to leave?
- A The people started to go along the path indicated by the Japanese towards the corner of Padre Faura and Taft Avenue.
- Q Do you know whether all the people in the vacant lot proceeded to that same corner?
- A When I left the vacant lot, I remembered having seen people being left behind, presumably those people who had been wounded who could not very well be carried without giving them undue pain.
- Q Do you know the names of any of those whom you saw left behind?
- A I do not know them.
- Q Is it possible that they might have been brought to the corner later?
- A It is possible.

was looked as one play-
ing a role to benefit the enemy),
and it equally formed an
action which could lead to
an opening of hostilities.

(There was, however, a naval
battle fought off HŌTŌ (phonetic)
in the morning hours of 25
JUL 1894, i.e. the day just
before the date when the above
vessel had been attacked and sunk.

Evidentiary Document No. 5193.

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Q. What happened after you were bombed?

A. Those of us who survived were transferred to a small inter-island steamer and moved to Japan. The death rate was high but I am unable to estimate it. We arrived at Moji on the island of Kyushu approximately January 28th or 29th. Many of the men were beaten by guards when they attempted to scrape snow off the canvas to get needed liquids. Conditions again were poor. Approximately 225 of the original 1687 disembarked at Moji and 105 of that group were sick and wounded and were taken to a hospital. At this time Lt. Murata and Mr. Wada left the group.

Q. What happened then?

A. This hospital was a bare shed. There were no doctors and we had to lay on the floor. We did not have any medical aid for several days and we received only a small quantity of food. We were fed twice a day but that was mainly thin rice gruel. We remained here until February 20th. The death rate at this time was very high and we had about 10 to 17 dead a day and on February 20th, all that remained of the 105 were 27 men.

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1st. Lt., A.F.

Thus, in reality, the
hour of the opening of
hostilities fell before the
above incident.)

(b) Consequences of the
opening of hostilities.

The States concerned will
enter into a state of war
with the opening of hostilities,
and the third Powers will
then become to assume a
neutral position.

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The consequences of which
can be summarized as
follows:

(1) Discontinuance of diplomatic
relations between belligerent
nations.

(2) Enforcement of Wartime
agreements.

(3) Invalidation or Suspension
of treaties excepting those
concerning Wartime.

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- Q. Didn't you have enough interest in the 20,000 men under Iwabuchi to make inquiry to see that they would be properly used by Yamashita?
- A. Yes, I thought quite a bit about my troops. I told Rear Admiral Iwabuchi to do his best under General Yamashita; but I did not tell him how to perform his duties under him.
- Q. Admiral, what I am trying to get at is that it was not a question of your interfering with the chain of command but a question of your satisfying yourselves that your troops were going to be used properly in an operation you had nothing to do with.
- A. Iwabuchi came to see me from time to time and there were informal talks and I would ask him how things were running and how the troops were and he would unofficially tell me of these things, but I would not say how the troops should act under Yamashita.
- Q. Did Iwabuchi come to Baguio?
- A. The situation did not permit such a thing.
- Q. When you said Iwabuchi would come from time to time, what did you mean?
- A. That was when I was still in Manila.
- Q. While you were still in Manila, Iwabuchi was still under your command, he had not been transferred to Yamashita. Isn't that correct?
- A. Yes.
- Q. Well now, what we have been discussing was that when Iwabuchi was supposed to have gone over under the command of Yamashita you stated that after that time Iwabuchi would come to see you from time to time. Do you wish to now qualify your answer to show that Iwabuchi would come to see you from time to time before he came under Yamashita's command?
- A. Yes, that is the way I wish to have it. All I have been saying is about things that have occurred before Iwabuchi was placed under the command of Yamashita.
- Q. Wouldn't it have been better for you, as commander of the Navy forces in Manila, to confer with the commander of the Army forces with regard to the defense of Manila rather than entrust that job to one of your subordinates?
- A. I believe that I as a Navy man should not interfere with the Army in the plans of land warfare. Since it was understood that Rear Admiral Iwabuchi was to be under the command of General Yamashita, it was natural that he conferred with General Yamashita about the defense, and I was a firm believer that the Navy should not interfere with the Army's plan and would not express my opinion on how land warfare should be waged. Looking back at the records of Army warfare, it seems that the Navy had interfered from time to time with Army operations and the results were not too good. Therefore, I thought it better that the Army's warfare should be left to the Army and not be interfered with by the Navy.
- Q. How often did you confer with General Yamashita prior to January 5, 1945?
- A. I believe I have met him over ten times.
- Q. How far were your headquarters from General Yamashita's headquarters?
- A. My headquarters were at the Navy club and his were at Fort McKinley. I don't know how far apart they are. It would be about fifteen or twenty miles ride I believe.

(a) Any treaty having for its object the establishment of a permanent status (for instance, one relative to the a cession of territory) shall remain unaffected with respect to its force.

(b) Any treaty signed between Powers other than the belligerent nations will cease to retain its force in so far

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as the relations between
the belligerent nations are
concerned.

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(C) Any treaty of political
nature between belligerent nations
shall cease to retain its force.

(d) Any treaty stipulating
economic relations between the
belligerent nations shall cease
to retain its force.

No. 4501

UNITED STATES OF AMERICA
DEPARTMENT OF STATE

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I CERTIFY THAT the document hereunto annexed is
under the Seal of the District of Columbia, and that such
Seal is entitled to full faith and credit.

SEAL

IN TESTIMONY WHEREOF, I, DEAN ACHESON,
Acting Secretary of State, have hereunto
caused the seal of the Department of State to
be affixed and my name subscribed by the
Authentication Officer of the said Department,
at the city of Washington, in the District of
Columbia, this first
day of July, 1946.

/s/ Dean Acheson
Acting Secretary of State

By /s/ M. T. Pompei
Authentication Officer
Department of State

VIII Observance of the International Law.

a) International law has been established after many years of experience and trial; being based upon justice and humanity; and aims at smoothing the relationship of nations; promoting their interests and enabling each nation to justly improve her lot. Recently, there has appeared a trend which would even challenge the value of international law; especially the laws and regulations pertaining to war, and in extreme cases, deem the disregarding of them as not open to censure. Indeed it must be admitted that sufficient reason exists for this trend to have been brought forth. (Note) However, that unlawful actions in the long run do not preserve the safety and honor of a nation nor promote the happiness of its people, has been amply proven by history. (Note). The reason for the appearance of the general trend to reject fair, rational and lawful actions and to control matters through force, shall not be stated here.

There is no doubt that the trend of ignoring laws and regulations pertaining to war has also been caused by the above general trend, but the biggest and direct cause seems to lie in the measures adopted by Britain, Germany, etc., in World War I. Moreover, people have come to bear in mind the impression of the infringements of international law more than in actual reality, because the belligerents exaggeratedly propagandized the actions of their enemies; being driven by the thought of defending their own actions.

Indeed, it is a fact that there were many infringements of international laws, regulations and customs because of the extreme measures adopted by the belligerent countries during World War I, but it is not adequate to conclude directly by this fact that international law has vanished or it is valueless and will remain so in future wars. In fact, during World War I, when the belligerent countries took measures which seemed to infringe international laws, regulations and customs,

they never failed to defend themselves by adequate explanations that they could not adopt lawful measures and that they never ignored international laws, regulations and customs.

We cannot believe that international laws which have continued gradual development these past several centuries will be suddenly cancelled. Also in view of the existence of many examples in which wars were conducted in strict conformity with international laws and regulations, it is not right foresight to here say that international law will be cancelled in the future, or if not cancelled, it will only exist as an unauthoritative law. As the causes for the non-observance of international laws, regulations and customs during World War I, the following points may be given.

- (1) All great powers of the world participated in war.
- (2) Many modern weapons of war which were not anticipated under the customary laws, regulations and customs, have been adopted.
- (3) The conditions of war are remarkably different from that of the past.
- (4) There are points in the customary laws, regulations and customs which are inconsistent with each other.

As for future measures, the further clarification of international laws and regulations and the enactment of laws well fitted to reality is of most importance.

(b) Our Empire gained incomparable results in several wars since the Japan-China War, and whenever she engaged in war she always trod the path of righteousness respecting international laws, regulations and customs, and never infringed them. His Majesty instructed in the Imperial Rescript for the Declaration of War against China on August , 1894 as follows:

"In so far as not inconsistent with the international law, everyone should expect that nothing is left to be desired in exhausting every means possible in his power." His Majesty instructed in the Imperial Rescript for the Declaration of war against Russia on February 10th, 1904 as follows:

"Within the limit of international law, everyone should expect that nothing is left to be desired in exhausting every means possible." In the Imperial Rescript for the Declaration of War against Germany on August 23rd 1914, His Majesty was graciously pleased to instruct as follows:

"Within the limit of international law everyone should expect that nothing is left to be desired in exhausting every means possible."

Also Article 1 of the Naval Action Law of our country prescribes as follows: "In wartime, Japanese warships may capture enemy ships at sea, engage in action with the enemy as well as take any measure necessary to gain the cessation of war, in accordance with the regulations of this law and other laws and treaties. As to matters that are not regulated, the principles of international law must be followed."

(c) Of course the existing international law is not perfect. Also it is true that the sphere of application has widened because of the change in conditions of war and the adoption of modern weapons of war, but we should take deep caution against ourselves not to take measures which would destroy the fundamentals of international law or would result in the ignoring of it.

(Note). In "comments on the Application of International Law During the Japan-China War", published by the Army General Staff College and written by ARIGA, Nagao who was legal adviser of the 2nd Army Headquarters during the said war, there is the following passage: (pp 22-23). The fair and lenient attitude and the upright and brave character of Japan, in spite of her staking her all on the issue of war at that time, are vividly described.

"We think as follows: ' War is an unhappy and inevitable occurrence that results when one nation's will collides with that of another, and yet no means of reconciliation can be found and it has become impossible as an independent nation for the one to bend its will for the sake of the other. On such an occasion it is the unavoidable duty for the sake of freedom of will of a country; that is, independence; to endeavor to overpower the other nation's will by pitting the organized power of

the one nation to fight against the other. However, it is not necessary for the sake of destroying the enemy's fighting organs to render damage to the people who have no concern with this organized power; that that is the army; and to those who were once soldiers but who have lost their fighting ability owing to diseases and wounds. Between these people and ourselves only the common relationship exists of being equally mankind. This relation is subject to the principle of cosmopolitanism." The above is the principle upon which the Japanese Government decided its bearing at the time of the commencement of hostilities against China. Thereupon, our nation's will was set to the observance of laws pertaining to war regardless of whether or not the enemy observed to them, and perfectly free from reciprocity. The only limitations were made upon the point that laws pertaining to war should not be adhered to in so far as to become a hindrance to the interest of war; that is, to overpower the enemy's will, and gain victory as soon as possible."

XI. Violation of Laws of War and Punishment Thereof.

a. Violation of laws of war on the part of enemy can be prevented or remedied, as stated before, by such means as retaliation. In case of violations of laws of war by individuals, there is another measure of punishing offenders directly, besides the means of retaliation.

However, the violation of laws of war is not the sole cause for the punishment of individuals; a belligerent can punish individuals for conduct harmful to her as a war crime.

b. Major war crimes are as follows:

1. Violation of laws of war on the part of belligerent.

(Note): During the Great War, Britain punished crews of German submarines for war crimes and placed them under more disadvantageous conditions than general prisoners of war. Thereupon, Germans would punish British crews of armed merchant ships for war crimes. (Captain "FURAITO /T.N. Phonetic/ was executed). However, neither of these measures are fair or just. These cases are not considered acceptable as a precedent.

2. Hostile acts on the part of non-belligerents.

3. Harmful acts committed by military personnel in disguise, or by non-belligerent parties in battle fields and other places.

4. Espionage.

5. War treason.

(Note:)

1. The war treason means that nationals of hostile or neutral countries, in territories of the belligerent Power or territories under her occupation, act against their obligation of obedience towards the same belligerent Power.

2. Some are of opinion that inhabitants in an occupied zone are not obligated to obey the Occupation Power; but this is not generally accepted.

The Manual of the Articles of War of Britain provides as follows:

"If inhabitants of an occupied zone furnish the enemy with information, they shall be punished for war treason. Other crimes such as undermentioned committed by private persons shall be regarded as war treason; to destroy railroads and telephone facilities; to help prisoners of war escape; to lay a plot against occupation forces; to incite troops with malice; to aid voluntarily enemy troops; to infest water sources; to demolish or to alter military markers on behalf of enemy; to secrete animals, vehicles and munitions."

3. The outline of the Japanese Army's Regulations for punishment of conduct harmful to the Army during the Russo-Japanese War, is roughly as follows: (ARIGA, Hisao: "Treatise on International Law with Regard to Russo-Japanese Land Warfare." pp 636-638).

a. To act against military forces, military offices or military personnel.

b. To join the enemy forces and fight against us without wearing the regular military uniform.

c. To serve as a spy or to shelter a spy.

d. To notify the enemy of movements of the Japanese Army.

e. To mislead on purpose Japanese military forces or personnel.

f. To spread false rumors.

g. To disturb quietude of Japanese forces and warships by raising turmoil and vociferation.

h. To put up notices disadvantageous to the Japanese forces in carrying out the war.

i. To disturb public peace through meetings and associations or newspapers, magazines, advertisements, etc.

- j. To guide enemy forces.
- k. To shelter enemy military men.
- l. To relieve by force, or cause to escape, prisoners of war.
- m. To destroy or loot arms or ammunition left behind on battle-fields.
- n. To burn or steal away military facilities, buildings or munitions.
- o. To damage military transport facilities or to disturb field mail service.
- p. To damage, displace or steal military markers and notices.
- q. To infest drinking water or to secrete vehicles; animals, cereals, fuel or fodder in order to hinder the Japanese Army from procuring them.
- r. To give damage and hindrance to water supply and electric light facilities.
- s. To counterfeit Japanese coins, bank-notes and war notes.
- t. To interfere with requisition and levy.
- u. To prevent people from entering into service for the Japanese Army by fraud or intimidation.
- v. To enter off-limits areas.
- w. To delve and level, without permission, grounds and hills.
- x. To survey, photograph, sketch and record geographical features without permission.
- y. To strip the injured and dead of their belongings.
- z. To desecrate and maltreat corpses.
 - (a) To kill and wound military men and civilian employees.
 - (b) To commit murder in the first and second degree, burglary.
 - (c) To furnish military men, civilian employees, and other attached personnel with paraphernalia or places for opium-smoking.

- (d) To inflict other injury on the Japanese military forces.
- (e) To violate Army orders.
- (f) For any conducts harmful to the Japanese Army besides the ones enumerated above, the men shall be dealt with in accordance with the Japanese Army and Naval Penal Code or the ordinary Penal Statute.

c. Punishment.

1. War criminals are punished as a rule with death penalty, etc.

War Crimes are tried by institutions which each Power designates individually. Punishment without any trial is generally prohibited.

2. There is a problem as to whether or not a war crime committed in obedience to an order of the superior officer is punishable. The view of the majority is that any acts committed in obedience to orders are unpunishable.

(Note) During the World War an English lady, "EDITH CAVEL" by name, who had long been the Directress of the BRUSSEL Nurses' Training School, was executed as a war criminal on the charge of sheltering British and French soldiers in her house, supplying them with money and commodities, and assisting them to escape. A movement to spare her life arose in various quarters, and the American Minister also used his good offices. But the German occupation authorities, holding that her acts were harmful to the Army's security, had her executed after all in defiance of the clemency movement. This gave rise to an opinion that inflicting capital punishment on a woman was rarely precedented and too brutal, and caused much aggravation of the world's opinion upon Germany. (From the logical point of view, sexual discrimination in meting out penalty is groundless).

2. Outline of formation of a military discipline court /T.N. GUNRITSU HŌTEI/ and its procedure which the Japanese Army adopted in the Russo-Japanese War is roughly as follows: (ARIGA, Hisao - "Treatise on International Law with regard to Russo-Japanese Land Warfare" pp 639-640).

(a) There was a sharp distinction between the court-martial /T.N. GUMPŌ KAIGI/ and the military discipline court. Different from the court-martial, minute procedures requiring a long time were not necessary in the application of military discipline. Special committees were formed of commissioned officers, and officers ranking with commissioned officers, or civil officials, and they dealt with crimes under a more speedy proceedings.

(b) The military discipline court, although its formalities were simplified, strictly maintained the institution of collegiate judgement, and the decision of guilty or not guilty was made by a majority of the committee formed at least of three members.

(c) The accused were given chances to refute the prosecution. Unlike ordinary criminal proceedings, however, judges were not obligated to prove the accused guilty, but the accused were forced to establish their innocence by presenting disproof, and the accused who failed to present disproof were deemed guilty.

(d) Death penalty was to be meted out to almost all offenders against military discipline, while judges were given full liberty to decrease penalties or to relinquish entirely the execution. Because, punishment of offenders was not always considered necessary for attainment of the objective of the military discipline which was to intimidate people into refraining from conduct harmful to the Japanese Army rather than to prohibit them from acting against morals and public welfare.

(e) Disposal of persons aboard ships captured. (Excluding ships interned) (Ref Chap 20 of the Maritime Warfare Regulations)

(1) Enemy ships

(a) Ship personnel

(1)¹ Neutral nationals.

Crews shall not be taken prisoners of war (Ref Article 112 of the Maritime Warfare Regulations)

Captain and ship-employees shall not be taken prisoners of war subject to their promising (Form No 10, Maritime Warfare Regulations) not to serve on enemy ships as long as the war continues. (Ref Article 114 of the Maritime Warfare Regulations).

(2)⁽¹⁾ Enemy nationals.

Captain, crew and ship-employees (ship personnel on board enemy ships are regarded as enemy nationals when they can present disproof. Ref Article 117 of the Maritime Warfare Regulations) shall not be taken prisoners of war on the condition that they swear (Form No 10 Maritime Warfare Regulations) not to enter services that have something to do with operational activities so long as the war continues. (Ref Article 114, Maritime Warfare Regulations)

In cases of (1)¹ and (2)¹ those who promised or swore shall be set at liberty. In such cases, the commanding officer shall immediately send a list of names of the liberated to the Navy Ministers and at the same time shall endeavor to the utmost to notify the enemy of the names. (Ref Article 115 Maritime Warfare Regulations)

If an enemy ship participated in belligerent action (1)¹ and (2)¹ are not applicable to her personnel, and the ship-employees shall be disposed of for violation of laws of war, and the others shall be taken prisoners of war. (Article 116, Maritime Warfare Regulations)

(b¹) Passengers shall disembark at a convenient port except those who are enrolled in enemy military forces (Ref Article 119, Maritime Warfare Regulations)

Should a passenger be needed as a witness, he can be detained. (Ref Article 119, clause 2, Maritime warfare regulations)

(c¹) Enemy nationals in religions, medical and nursing lines are not taken prisoners of war. (Article 120 Maritime Warfare Regulations)

Those who are under suspicion can be detained temporarily (Article 120, Conditional Clause, Maritime Warfare Regulations)

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(g) Release from capture and internment (Article 155, Maritime Warfare Regulations)

(1) When it is proved that a captured and interned ship should not have been interned, she will be set free at once.

(2) Said step should not be taken until as the result of judgment based on various materials no doubt remains.

(14 B)

No. XIX Resistance to Boarding (Chapter 16, Maritime Warfare Regulations)

(1) Measures to be taken against ships which resist boarding by force.

(a) Any ships that resist by force against lawful exercise of rights of stopping, visiting, searching, and capturing ships, shall be captured irrespective of their nationality. (Article 95, Maritime Warfare Regulations)

Accordingly, a ship can be captured because of her forcible resistance alone, if it is the case without any other cause for capture. For instance to resist by force against an order, to lie to, or to refuse by force boarding of visiting officers, or to hinder searching actively by force, will fall under this item.

(b) It is manifest that escaping cannot be called resistance. It is not cause for measures stated under this heading.

(c) Whether a ship is armed or not makes no difference in measures for disposing of her.

II Disposal of the above mentioned ships (Ref Article 96, Maritime Warfare Regulations)

(a) Any ships that resist by force shall be confiscated.

(b) All the goods aboard the above said ships shall be disposed of as enemy cargo. The goods belonging to the captain or the ship owner shall be regarded as enemy property.

A certain party holds that all cargo of a ship which resists shall be confiscated excepting the case where the owner proves himself ignorant of the true situation (Opinion of the British School). But the Japanese Maritime Warfare Regulations to not accept this opinion.

(c) There are some instances that ship-employees who resisted were punished for violation of laws of war. The Japanese Maritime Warfare

do not adopt this opinion.

(c) There are some instances that ship employees who resisted were punished for violation of laws of war. The Japanese Maritime Warfare Regulations do not follow these precedents; only, neutral ship personnel who resist can be taken prisoners of war according to necessity (Ref Article 118, Maritime Warfare Regulations)

(Note) 1.

(1) Article 99 of the German Regulation of Maritime Capture of 1914.

In case a ship was captured in accordance with the Article 16, Clause 2 (Resistance) or the Article 55, Clause 1 (Belligerency) those personnel who, though not enrolled in the enemy military forces, should participate in hostile acts or resist by force, shall be disposed of in conformity with wartime conventions, and the other personnel shall be taken prisoners of war.

(2) Case of Captain "FURAIATO (TN Phonetical/ executed. In march 1915, Captain "Furiato" of the "Brussel" HMS, disobeying the order of a German submarine in the English Channel, tried to destroy the submarine with her box, but the Captain was captured later by the Germans. The Germans tried him by court martial and concluded that he acted the same way several times so that he should be convicted of the war crime, and executed him. If the said Captain took the action from the beginning not by way of self-defense but purposely with the intention of attacking the submarine, the measure the Germans took is lawful. But if he resisted simply for the purpose of self-defense (no matter how many times he did, the measures by the Germans is against the conventional custom. (In case of actions for self-defense, one cannot necessarily condemn it to be beyond the limits of self-defense even if the attacked party used force first) A warship naturally is not held responsible for accidental damages on a ship or to ship personnel caused during her flight or resistance as a result of measures taken by the warship by way of checking her escape or resistance.

MEMO:

TO: Major Ashton - Language Division
FROM: J.M. Woods, Administration, W.C.T.
SUBJECT: Complete translation of Documents.

Request the attached document be translated as requested (in full) and delivered to this section as soon as possible.

Date: 14 Dec.
Lawyer (Lincoln P.B) Lipscomb.

Major Ashton. Mr. Lipscomb desires that titles which are indicated thus ... (✓) be translated in full.

jmw.

Would appreciate this as soon as it is possible.

Jan -

Please have all titles translated
that are indicated by check mark ✓

PLEASE ONE COPY OF THESE NOTES PLEASE

J.P.B.

I.B.B.F.

L.P.B.L.

Just one copy of these notes have
been typed for easier reading.

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9 Dec
A.P.

Date: 19 Nov
Lawyer (L.P.B. Lipscomb)

LIPSCOMB

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

CHECK SHEET DBG/SME/bmf

(Do not remove from attached sheets)

File No.: (22A) WC 3548

Subject: TRIAL OF FORMER "A" CLASS WAR CRIMES SUSPECTS

Note No.:

From: Australian Div

To: Exec Offr. L. S.

Date: 8 Nov 48

1. Herewith one copy of Japanese "Wartime International Laws".
2. It is requested that the book be passed to the Prosecution Division for information and possible use in the trials of former "A" Class war crimes suspects.
3. The Japanese from whom the book was received has requested that his name be withheld from the Japanese authorities.
4. It is further requested that the book be returned to this Division when no longer required.

D. Beresford Goslett
Lt Col
 (D. Beresford GOSLETT)
 O.C. 2 Aust War Crimes Sec SCAP

OUTLINE OF INTERNATIONAL LAWS AND REGULATIONS
IN TIME OF WAR.

MAY 1938

NOMAGUCHI
COLLECTIONS

SECRETARIAT OF THE MINISTER OF NAVY

PREFATORY REMARKS

BY THE EDITOR

In this book we have compiled matters mainly concerning naval battles. However, matters deemed to be essential by the Navy, such as those concerning land warfare, etc. have also been included.

We have endeavored to be very impartial in the manner in which we have interpreted any ambiguities contained in the International Law and Customs, taking into consideration, at the same time, the situation of our Empire.

As to matters not defined in the International Law and Customs arbitrary decisions have been avoided and only the results obtained through discussions at the international conferences concerned were considered.

Treaties concerned, laws and ordinances and tables are appended at the end of the book.

In this book there may be parts which may be found to be lacking in uniformity and although this may be said to be mainly due to the nature of the matters concerned, there are still many points which have to be retouched as the production of this book was hastily done. I ask the readers to ignore the defects.

The following is a list of the chief works used as references in preparing this book.

- (1) ARIGA Nagao: Discourses on International Law governing the Sino Japanese Wars.
- (2) Discourses on International Law governing Land Warfare in the Russo Japanese War.
- (3) ENDO Benroku: Discourses on International Law governing the Russo Japanese War.
- (4) (a) Conference Records and Reports
The 1st and 2nd The Hague Peace Conference at the Hague 1899, 1907

- (b) London Conference on Naval Warfare (1909)
- (c) Naval Arms Limitation Conference at Washington (1921)
- (d) Committee Meeting at the Havue for the Revision of
Wartime Regulations (1922)
- (e) Naval Armaments Limitation Conference at London (1930)
- (d) Geneva General Limitation and Disarmament Conference (1932)

- 5 The Secretariate of the Minister of Navy: The Law of Naval Warfare
- 6 TATSU Sakutaro: Discourse on International Law in Time of War
- 7. N.Dentwich: Declaration of London
- 8. J.W.Gabner -International Law and the World War
- 9. J.A.Hall International Law
- 10. J.A.Hall The Law of Naval Warfare
- ✓ 11. A.P.Higgins The Hague Peace Conference ✓
- 12 C.C.Hyde International Law, chiefly as interpreted and applied
by the United States
- (p 3) 13 J.B.Moore - International Law Digest
- 14 Naval College (U.S.A.) International Law, Topics and Discussions
- 15 L.Oppenheim International Law
- 16 G.M.Spaight; Air Power and War Rihts
- 17 Wheaton's International Law
- 18 Instructions on Naval Warfare of the United States of America,
Great Britain, Germany, France and Italy.

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Mr. Tagawa

For full translation.

(八) 國際法(遵守)

(pp. 45-49)

Observances of Int'l

L.

(a)

5

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部
令

VIII. Observance of International Law.

(a) International law has been established

after many years of experience and

trial; being based ~~on~~ ^{upon} justice and

humanity; and aims at smoothing

the relationships of nations; promoting

their interests and ~~letting~~ ^{enabling} each

nation to ^{justly} improve ~~her~~ ^{her} lot ~~and~~ ^{justly}

Recently, there has appeared ~~was~~

^{even} a trend which would challenge

the value of international law;

especially ~~the~~ ^{the} laws and regulations

Q. Do you have any way of identifying the unit which they were attached or the names of the marines.

A. I could not.

Q. Was there any mistreatment or torture of any of the persons present on February 11, those whose deaths you have spoken about?

A. Physical torture none, except the fact that they put up under the house with the deliberate intention of burning us alive.

Q. Do you know what caused the Japanese to let you go out of the house at the time it was set fire to?

-S-E-C-R-E-T-

3

R E S T R I C T E D

A. It cannot be explained. The only reason is that there were many children there.

Q. Did any of the persons present do anything to provoke the Japanese?

A. Definitely not.

Q. Do you know of any reason why the Japanese should have killed the individuals?

A. No reason whatsoever.

Q. Who shot Mr. De la Vara?

A. A Japanese soldier, definitely.

Q. Do you happen to know of the Filipino servant's name?

A. His name is Ceferino Alaysa.

Q. Do you know what the maid's name is?

A. They call her Dolores.

Q. Did you see any officers among them?

A. It is hard to tell whether they are officers or not. I feel convinced that there was at least one officer.

Q. Did any of the Japs wear swords?

A. I could not say.

Q. Did you hear any of the Japs call by name?

A. No.

Q. From this observation, were you able to make a positive identification?

A. Yes.

Q. What type of wounds did they have?

A. Bullet wounds.

Q. Were there any mutilation on the bodies?

A. No.

Q. Where were the bodies buried?

A. Four of them in the Daland property and two in my property.

Q. Which two?

A. Mr. Mendez and Ceferino Alaysa.

Q. Are they still there?

A. Yes.

pertaining to war, and ~~would~~

in extreme cases, deem the dis-

regarding of them as not open

to censure. Indeed it must be

admitted that sufficient reason

exists for this trend to a brought ^{have been}

forth!

(note), ~~but that~~ ^{However, that} unlawful actions

in the long run do not preserve

the safety and honor of a nation;

nor promote the happiness of its

people, has amply been proved

by history.

LS Doc. No. 320-25

Q. Do you have any way of identifying the unit which they were attached or the names of the marines.

A. I could not.

Q. Was there any mistreatment or torture of any of the persons present on February 11, those whose deaths you have spoken about?

A. Physical torture none, except the fact that they put up under the house with the deliberate intention of burning us alive.

Q. Do you know what caused the Japanese to let you go out of the house at the time it was set fire to?

-S-E-C-R-E-T-

3

R E S T R I C T E D

A. It cannot be explained. The only reason is that there were no children there.

Q. Did any of the persons present do anything to provoke the Japanese?

A. Definitely not.

Q. Do you know of any reason why the Japanese should have killed the individuals?

A. No reason whatsoever.

Q. Who shot Mr. De la Vara?

A. A Japanese soldier, definitely.

Q. Do you happen to know of the Filipino servant's name?

A. His name is Ceferino Alaysa.

Q. Do you know what the maid's name is?

A. They call her Dolores.

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A. It is hard to tell whether they are officers or not. I feel convinced that there was at least one officer.

Q. Did any of the Japs wear swords?

A. I could not say.

Q. Did you hear any of the Japs call by name?

A. No.

Q. From this observation, were you able to make a positive identification?

A. Yes.

Q. What type of wounds did they have?

A. Bullet wounds.

Q. Were there any mutilation on the bodies?

A. No.

Q. Where were the bodies buried?

A. Four of them in the Daland property and two in my property.

Q. Which two?

A. Mr. Mendez and Ceferino Alaysa.

Q. Are they still there?

A. Yes.

(note) The reason ~~for~~ the appearance of

the general trend to reject fair,

rational and lawful actions and to

control matters ~~with~~ ^{through} force; shall

not be stated here.

~~There~~ ^{There} is no doubt that the trend ~~of~~ of

ignoring laws and regulations per-

taining to war has also been

caused by the above general trend,

but the biggest and direct cause

seems to lie in the measures

adopted by Britain, Germany, etc. in

Q Were you injured?

A No.

Q About your wife and children?

A My one child was killed.

Q Where?

A There in the fox-hole of Marasigan's house.

Q Underneath Marasigan's house?

A Yes.

Q Which one was killed?

A Nenita Giocado.

Q How old was she?

A 8 years old.

Q How was she killed?

A By the pressure of the dead people there inside the fox-hole.

Q By fox-hole, you mean air-raid shelter?

A Yes, sir.

Q She was not hit by machine-gun or shot?

A No, sir. She was pressed by the people who died there.

Q What is your wife's name?

A Manuela Giocado.

Q How old is she?

A 28 years old.

Q What is her nationality?

A Filipina.

Q Where does she live?

A Here at 426 Herren Street, Malate, Manila.

Q She was not hurt?

A No.

Q What is your son's name?

A Jose Giocado, 7 years old, Filipino.

Q What are your other daughters' names?

A Teresita Giocado, 2 years old and Maria Luisa Giocado, 4 years old, Filipinos.

Q Have you anything further to say regarding this?

A Yes, sir. I want to add this. On that same day the Japanese also collected together the beautiful women and raped them.

Q You mean to say that the Japanese mistreated these women and killed other people at the same time?

A Yes, sir.

Q You saw this yourself?

A Yes, sir.

Q Do you know these women raped?

DG (Initialled)

~~the~~ World War I. Moreover, ~~these~~
people have come to bear in mind the
~~the points which have come to~~
impression of the ^{dearly} infringements of inter-
~~national law more than in actual reality,~~
~~of infringement of international~~

~~law more than the facts were~~

~~because the belligerents propagandized~~
~~the actions of their enemies; exaggerated~~

~~by~~ being driven by the thought ~~of~~
defending their ^{own} actions.

Indeed, it is a fact that there

were many infringement of ~~the~~

international laws, regulations and

- Q Were you injured?
A No.
- Q About your wife and children?
A My one child was killed.
- Q Where?
A There in the fox-hole of Marasigan's house.
- Q Underneath Marasigan's house?
A Yes.
- Q Which one was killed?
A Nenita Giocado.
- Q How old was she?
A 8 years old.
- Q How was she killed?
A By the pressure of the dead people there inside the fox-hole.
- Q By fox-hole, you mean air-raid shelter?
A Yes, sir.
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A No, sir. She was pressed by the people who died there.
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- Q You mean to say that the Japanese mistreated these women and killed other people at the same time?
A Yes, sir.
- Q You saw this yourself?
A Yes, sir.
- Q Do you know these women raped?
DG (Initialled)

~~the~~ extreme measures
customs because of ~~passing to extremes~~

~~of the measures~~ adopted by the belligerent

countries during ^{World War I} ~~the Great War~~, but

it is not adequate to conclude

directly by this ^{fact} that international

law ^{has} ~~vanished~~ or it is valueless

and will ~~not~~ remain so in future

wars. ~~that~~. In fact, during ~~the~~

World War I, when ~~the~~

~~the~~, ~~the~~ belligerent countries, ~~who~~

~~they~~ took measures which seemed

to infringe international laws,

regulations and customs, ^{they} never failed

Q Were you injured?

A No.

Q About your wife and children?

A My one child was killed.

Q Where?

A There in the fox-hole of Marasigan's house.

Q Underneath Marasigan's house?

A Yes.

Q Which one was killed?

A Nenita Giocado.

Q How old was she?

A 8 years old.

Q How was she killed?

A By the pressure of the dead people there inside the fox-hole.

Q By fox-hole, you mean air-raid shelter?

A Yes, sir.

Q She was not hit by machine-gun or shot?

A No, sir. She was pressed by the people who died there.

Q What is your wife's name?

A Manuela Giocado.

Q How old is she?

A 28 years old.

Q What is her nationality?

A Filipina.

Q Where does she live?

A Here at 426 Herran Street, Malate, Manila.

Q She was not hurt?

A No.

Q What is your son's name?

A Jose Giocado, 7 years old, Filipino.

Q What are your other daughters' names?

A Teresita Giocado, 2 years old and Maria Luisa Giocado, 4 years old, Filipinos.

Q Have you anything further to say regarding this?

A Yes, sir. I want to add this. On that same day the Japanese also collected together the beautiful women and raped them.

Q You mean to say that the Japanese mistreated these women and killed other people at the same time?

A Yes, sir.

Q You saw this yourself?

A Yes, sir.

Q Do you know these women raped?

DG (Initialled)

to defend themselves by adequate

^{explanations}
~~reasons~~ that they could, ^{not} adopt

lawful measures ^{what they} and never

ignored international laws, re-
gulations and customs.

We cannot ~~think~~ ^{believe} that international

laws) which ~~have~~ ^{have} continued gradual
development

these past several centuries ~~will~~ ^{will}

be cancelled suddenly. Also in

view of the ~~existence~~ ^{existence} of many ~~of~~ ^{of} many

few examples in which wars
were ~~conducted~~ ^{conducted} strictly in

Q Were you injured?

A No.

Q About your wife and children?

A My one child was killed.

Q Where?

A There in the fox-hole of Macalagan's house.

Q Underneath Macalagan's house?

A Yes.

Q Which one was killed?

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Q How old was she?

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Q By fox-hole, you mean air-raid shelter?

A Yes, sir.

Q She was not hit by machine-gun or bomb?

A No, sir. She was pressed by the people who died there.

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Q What are your other daughters' names?

A Teresita Giocado, 2 years old and Maria Maria Giocado, 4 years old, Filipinos.

Q Have you anything further to say regarding this?

A Yes, sir. I want to add this. On that same day the Japanese also collected together the beautiful women and raped them.

Q You mean to say that the Japanese mistreated these women and killed other people at the same time?

A Yes, sir.

Q You saw this yourself?

A Yes, sir.

Q Do you know these women raped?

DG (Initialled)

^{strict}
in conformity with international

laws and regulations, it is

not ~~the~~ right ^{you might} ~~to say~~ to ~~say~~ ^{the say}

that international law will be

cancelled in ^{the} future, or if not

cancelled, it ~~will~~ ^{will} only exist

as ^{an} unauthoritative law.

As the causes ^{of the} ~~of the~~ non-observance

of international laws, regulations

and customs during ^{World War I,} ~~the Great War,~~

the following points may be

indicated given.

Q Were you injured?

A No.

Q About your wife and children?

A My one child was killed.

Q Where?

A There in the fox-hole of Marasigan's house.

Q Underneath Marasigan's house?

A Yes.

Q Which one was killed?

A Nenita Giocado.

Q How old was she?

A 8 years old.

Q How was she killed?

A By the pressure of the dead people there inside the fox-hole.

Q By fox-hole, you mean air-raid shelter?

A Yes, sir.

Q She was not hit by machine-gun or shot?

A No, sir. She was pressed by the people who died there.

Q What is your wife's name?

A Manuela Giocado.

Q How old is she?

A 28 years old.

Q What is her nationality?

A Filipina.

Q Where does she live?

A Here at 426 Herran Street, Malate, Manila.

Q She was not hurt?

A No.

Q What is your son's name?

A Jose Giocado, 7 years old, Filipino.

Q What are your other daughters' names?

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A Yes, sir.

Q You saw this yourself?

A Yes, sir.

Q Do you know these women raped?

DG (Initialled)

(1) All ~~the~~ ^{great} powers of the world participated in ~~the~~ War.

(2) Many modern ^{weapons} ~~methods~~ of war which ~~had~~ ^{were} not ~~been~~ anticipated under the customary ~~in the~~ ^{new} laws, regulations and customs, ^{have been} ~~were~~ adopted.

(3) The conditions of war ~~now~~ are remarkably different from ^{that of} the past.

(4) There ~~are~~ ^{are} ~~some~~ ^{are} points ~~in the~~ ^{in the} customary ~~laws, regulations and customs~~ which ~~are~~ ^{are} inconsistent ^{with} ~~the~~ each other.

Q Were you injured?

A No.

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A My one child was killed.

Q Where?

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A Yes, sir.

Q You saw this yourself?

A Yes, sir.

Q Do you know these women raped?

DG (Initialled)

As for future measures, the
further clarification of inter-
national laws and regulations
and the ^{enactment of laws} ~~establishment of laws~~
well
fitted to reality ^{is of most} ~~would be most~~
^{importance}
~~important.~~

(b) Our Empire gained ~~an~~ incomparable
results in several wars since the
Japan-China War, and whenever
she engaged in war she always
tread the path of righteousness,
~~kept to the right~~, respecting inter-
national laws, regulations and customs,

Q Were you injured?

A No.

Q About your wife and children?

A My one child was killed.

Q Where?

A There in the fox-hole of Marasi-an's house.

Q Underneath Marasi-an's house?

A Yes.

Q Which one was killed?

A Nenita Giocado.

Q How old was she?

A 8 years old.

Q How was she killed?

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Q You mean to say that the Japanese mistreated these women and killed other people at the same time?

A Yes, sir.

Q You saw this yourself?

A Yes, sir.

Q Do you know these women raped?

DG (Initialled)

and never infringed them.

His Majesty was graciously pleased to

instructed in the Imperial Rescript

^{to the} ~~of~~ Declaration of War against China

on August 1st 1894 as follows:

"In so far as not inconsistent with

the international law, everyone

should expect that nothing is

left to be desired in exhausting

every means ^{possible in his} ~~according to~~ his power."

His Majesty was graciously pleased to

instructed in the Imperial Rescript ^{to the} ~~of~~ Declaration

"X. Contrary to the specific undertaking of the Japanese Government, the detaining authorities have compelled civilians to perform labor other than that connected with the administration, maintenance and management of internment camps. Officer prisoners of war have been forced to labor and noncommissioned officers to do other than supervisory labor (Article 27).

"XI. Prisoners of war have been required to perform labor that has a direct relation with war operations (Article 31).

"XII. Medical care has in many instances been denied to prisoners of war and civilian internees and when given has been generally so poor as to cause unnecessary suffering and unnecessary deaths (Article 14).

"XIII. The Japanese Government has reported the names of only a part of the American prisoners of war and civilian internees in its hands (Article 77) and of American combatants found dead by Japanese forces (Article 4 of the Convention for the Amelioration of the Condition of the Sick and Wounded of Armies in the Field, to which Japan is a contracting party).

"XIV. The Japanese Government has not permitted internees and prisoners of war freely to exercise their religion (Article 16).

"XV. The Japanese Government has not posted the Convention in camps in English translation, thus depriving American prisoners of war and civilian internees of knowledge of their rights thereunder (Article 84).

"XVI. The Japanese Government has failed to provide adequate equipment and accommodations in prisoner of war and civilian internment camps and transports, but on the contrary forced them to subsist in inhumane conditions (Article 10).

"XVII. The Japanese Government has completely failed to apply the provisions of the Geneva Prisoners of War Convention (Title III, Section V, Chapter 3) with regard to trial and punishment of prisoners of war despite the fact that violations of its undertaking in this respect have repeatedly been called to its attention, but on the contrary has imposed cruel and inhuman punishments without trial.

"XVIII. The Japanese authorities have inflicted corporal punishment and torture upon American nationals (Article 46)."

of War against Russia on February 10th

1904 as follows:

"Within the limit of international

law, everyone should expect that

nothing is left to be desired in

exhausting every means possible".

In the Imperial Rescript ~~of~~ ^{for the} Declaration of

War against Germany on August 23rd

1914 His Majesty was graciously pleased

to instruct as follows:

"Within the limit of international law

everyone should expect that nothing is

"X. Contrary to the specific undertaking of the Japanese Government, the detaining authorities have compelled civilians to perform labor other than that connected with the administration, maintenance and management of internment camps. Officer prisoners of war have been forced to labor and noncommissioned officers to do other than supervisory labor (Article 27).

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"XVIII. The Japanese authorities have inflicted corporal punishment and torture upon American nationals (Article 46)."

left to be desired in exhausting

every means possible."

Also Article 1 of the Naval Action Law

of our country prescribes as follows:

In wartime,

"A Japanese warships ~~may~~ ^{may} ~~engage~~

(enemy ships)

engage in action with the

capture at sea, ~~other~~ hostilities and

enemy as well as take

any measure necessary to gain

the ^{regulation} ~~form~~ of war, ~~according to~~ ^{in accordance with the}

regulations of this law ^{and} other laws

and treaties. As to matters ~~not~~

that are not regulated,

regulated by these "the principles

of international law must be

Q Were you injured?

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Q About your wife and children?

A My one child was killed.

Q Where?

A There in the fox-hole of Marasian's house.

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Q She was not hurt?

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Q You mean to say that the Japanese mistreated these women and killed other people at the same time?

A Yes, sir.

Q You saw this yourself?

A Yes, sir.

Q Do you know these women raped?

DG (Initialled)

followed."

(c) Of course the existing international law is not perfect. Also it is true that the sphere of ~~choice~~ for its application has widened because of the ~~alteration~~^{change in} conditions of war and the adoption of modern ~~weapons~~^{weapons} exercises of war, but we should take ~~deep~~^{deep} ~~caution~~^{caution} ourselves not to take measures which would destroy the ~~foundations~~^{fundamentals} of international law or would result in ~~the~~^{the} ~~ignoring~~^{ignoring} of it.

Q Were you injured?

A No.

Q About your wife and children?

A My one child was killed.

Q Where?

A There in the fox-hole of Marasigan's house.

Q Underneath Marasigan's house?

A Yes.

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A Yes, sir.

Q You saw this yourself?

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Q Do you know these women raped?

DG (Initialled)

(note). In "Comments on the ^{Application of} International

Law ^{During} Pertaining to the Japan-China

War"; published by the Army General

Staff College and written by ARIGA,

Nagao who was a legal adviser of

the 2nd Army Headquarters during the

said war, there is the following passage:

(pp 22-23). The Japanese fair, ^{and} lenient

attitude and the upright and brave

character of Japan, in spite of

her staking ^{her} all on the issue of ~~the~~

war at that time, are vividly described.

"We think as follows:

War is an unhappy and

that results

occurrence inevitable when one

nation's will ^{collides} ~~collides~~ with that

of another nation; and yet no

reconciliation ^{can be found} ~~means~~ ~~is found~~

and it has become impossible for the one to

lend its will for the sake of the

other. On such an occasion it

is ^{the} ~~an~~ unavoidable duty for the

sake of freedom of will of ^a ~~the~~ country;

that is, independence; to ^{endeavour} ~~try~~

to overpower ^{the other nation's} ~~another's~~ will by

LS Doc. No. 320-25

Q. Are there any markers on the graves?
A. Yes.

Q. What nationality is Mr. Daland?
A. American.

Q. And Tony?
A. Tony also.

Q. And Mr. Mendez?
A. Spanish.

Q. And Mr. De la Vara?
A. Spanish.

Q. The two servants?
A. Filipino.

4

~~S-E-C-R-E-T~~

R E S T R I C T E D

Q. During your observation of the incident, did you observe any provocation on the part of the refugees which would invoke the acts of cruelty and murder?
A. None whatsoever.

/s/ Manuel Elizalde
MANUEL ELIZALDE

COMMONWEALTH OF THE PHILIPPINES)
City of Manila)SS
* - - - - - *

I, MANUEL ELIZALDE, of lawful age, being duly sworn on oath, state that I have read the foregoing transcription of my interrogation and all answers contained therein are true and correct to the best of my knowledge and belief.

/s/ Manuel Elizalde
MANUEL ELIZALDE

Subscribed and sworn to before me this 24 day of May, 1945.

/s/ John S. McConaghy
JOHN S. McCONAGHY
Captain, J.A.G.D.

C E R T I F I C A T E

I, JOHN S. McCONAGHY, Captain, J.A.G.D., certify that on 19 May 1945, personally appeared before me Manuel Elizalde and gave the foregoing answers to the several questions set forth; that after his testimony had been transcribed, the said Manuel Elizalde read the same and affixed his signature thereto in my presence on 24 May 1945,

Manila, Philippine Islands
24 May 1945,

/s/ John S. McConaghy
JOHN S. McCONAGHY
Captain, J.A.G.D.

A CERTIFIED TRUE COPY

Steve S. Yamamoto
C-000910
Captain, Inf.

~~S-E-C-R-E-T~~

R E S T R I C T E D

~~pitiful~~ ~~letters~~ he organized ~~national~~

power of ~~the~~ ^{the} nation ~~to~~ ^{to} fight ~~with~~ ^{against}

the other. However, it is not

necessary ~~to~~ ^{for the sake of destroying} ~~destroying~~ the enemy's

fighting ~~organs~~ ^{organs} to ~~cause~~ ^{render} damage to

the people who have no concern with

this organized power; ~~and that is the~~ ^{and that is the}

~~an~~ army; and to those who were once

soldiers ^{who have their} but ^{lost} ^{fighting ability}

owing to diseases and wounds. Between

these people and ~~the~~ ^{ourselves} only the ^{common} relationship

exists of being equally mankind. ~~exists~~

LS Doc. No. 320-25

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A. Yes.

Q. What nationality is Mr. Daland?

A. American.

Q. And Tony?

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A. Filipino.

4

~~S-E-C-R-E-T~~

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Q. During your observation of the incident, did you observe any provocation on the part of the refugees which would invoke the acts of cruelty and murder?

A. None whatsoever.

/s/ Manuel Elizalde
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Captain, J.A.G.D.

A CERTIFIED TRUE COPY

Steve S. Yamamoto
C-000910
Captain, Inf,

~~S-E-C-R-E-T~~

R E S T R I C T E D

This relation is subject to the
principle of cosmopolitanism.

The above is the ^{principle} ~~thought~~ upon
which ^{the} Japanese Government

decided its bearing at that

time of the commencement of

hostilities against CHINA.

Thereupon, our nation's will

was set to the observance of

laws pertaining to war ^{regardless of} whether

or not the enemy observed ^{to} them,

and perfectly getting free from the

LS Doc. No. 320-25

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A. Yes.

Q. What nationality is Mr. Daland?
A. American.

Q. And Tony?
A. Tony also.

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24 May 1945.

/s/ John S. McConaghy
JOHN S. McCONAGHY
Captain, J.A.G.D.

A CERTIFIED TRUE COPY

Steve S. Yamamoto
0-000710
Captain, Inf.

~~S-E-C-R-E-T~~

R E S T R I C T E D

reciprocity, ~~and~~ ^{the} only limitations

~~were~~ ^{were} made ^{upon the} ~~the~~ point that laws

pertaining to war should not be

adhered to ^{in so} ~~so~~ far as to become a

hindrance to the interest of war;

that is, to overpower the enemy's

will, ^{and} ~~gaining~~ victory as soon as

possible."

The prosecutor also misunderstood that the creation of the Chinese four eastern provinces by adding Jehol Province to the theretofore three eastern provinces was due to the widening by ARUKI of the scope of the occupation plan of the region.

However, the fact that since 1928 Jehol had been included in the sphere of influence of CHENG SUH-LING as the Commander-in-Chief of the North-Eastern Frontier Army was clearly set forth in the Lytton Report.¹ It is extremely regrettable that such an obvious fact should rouse an extraordinary suspicion on the part of the learned prosecutor.

(71) During the cross examinations of witness TAKIDA, Hisashi on 4th April, 1947,² and of witness KIYABE, Torashiro on 4th April, 1947,³ the prosecutor questioned them concerning the plan of occupation. Both witnesses definitely answered they neither laid eyes on, nor heard about such a decision. In view of the total absence of the alleged fact and the consequent lack of proof, it is but natural that no matter how hard the prosecutor should try he should be unable to uncover a justifiable basis for this accusation.

¹ Tr. 18,719

² Tr. 19,380

³ Exh. 2408, Tr. 19,444

⑥

Translated by John

PP 49-54

1,

(IX) Violation of Laws of War and

Punishment thereof.

(a) Violation of laws of war on the part of

enemy can be prevented or remedied,

as stated before, by such means as

retaliation. In case of violations of laws of war

by individuals, there is another

measure of punishing offenders directly,

besides the means of retaliation.

However, the violation of laws of

war is not the sole cause for the punishment

→ 11
→ K

- 170 Doc No. 11-13
- Q. Did you at any time return to Manila after you had moved your headquarters to Baguio?
- A. No.
- Q. Did Yamashita move his headquarters to Baguio?
- A. Yes.
- Q. Approximately when was that?
- A. General Yamashita moved his headquarters two or three days before I did so I would say around the 1st or 2nd of January 1945. General Yamashita moved into the hills east of Manila in late December and he returned to Manila and then went to Baguio. That is the way I remember it.
- Q. How far were your quarters from Yamashita's in Baguio?
- A. My quarters were very close, less than one kilometer.
- Q. How far was your headquarters from Yamashita's in Baguio?
- A. About the same distance.
- Q. In meters how far was it?
- A. Less than one kilometer.
- Q. Would you say that it was less than one-half a kilometer or more than one-half a kilometer?
- A. I believe that it was more than one-half kilometer.
- Q. Was the purpose of having your headquarters and Yamashita's headquarters in Baguio so that you two might confer with regard to your individual commands in so far as the handling of your commands was concerned with the over-all purpose of utilizing both commands to achieve the maximum in benefiting the Japanese?
- A. That is one of the reasons. I had a big command in commanding the Southwest Pacific Area and since it was known to be more or less a fact that General Yamashita's headquarters or area was a safe place, I went there for safety.
- Q. Did Yamashita go to Manila at any time during the battle of Manila, from Baguio?
- A. No I believe he never left one foot from Baguio. At that time communication between Baguio and Manila was almost impossible.
- Q. Did you discuss the Battle of Manila with Yamashita while at Baguio?
- A. I used to talk to General Yamashita often, therefore I can say I have spoken to him about the Battle of Manila for we usually talked about battle situations in various places.
- Q. How often did you report to Admiral Toyoda?
- A. I have often made reports so I do not know how many times.
- Q. Did you report daily?
- A. I do not remember too clearly but I do not think that reports were made daily. However, the staff takes care of these orders so I cannot say. I am sure there was a weekly report and also if something special came up, a special report would be made.
- Q. Did the weekly report summarize the activities of the week?
- A. Yes.
- Q. Did the weekly report also anticipate action in the future?
- A. Yes, if such a thing could be anticipated it would be done, but I cannot say for sure if any such report was made.

of individuals; a belligerent can
punish individuals for ~~the~~
conduct harmful to her as a war crime.

(b.) Major war crimes are as follows:

(1.) Violation of laws of war on
the part of belligerent.

(Note) During the Great War,

Britain punished crews of

German submarines for

war crimes ~~or~~ ^{and} ~~would~~ place of

them under ~~a~~ more disadvantageous

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- A. That is one of the reasons. I had a big command in commanding the Southwest Pacific Area and since it was known to be more or less a fact that General Yamashita's headquarters or area was a safe place, I went there for safety.
- Q. Did Yamashita go to Manila at any time during the battle of Manila, from Baguio?
- A. No I believe he never left one foot from Baguio. At that time communication between Baguio and Manila was almost impossible.
- Q. Did you discuss the Battle of Manila with Yamashita while at Baguio?
- A. I used to talk to General Yamashita often, therefore I can say I have spoken to him about the battle of Manila for we usually talked about battle situations in various places.
- Q. How often did you report to Admiral Toyoda?
- A. I have often made reports so I do not know how many times.
- Q. Did you report daily?
- A. I do not remember too clearly but I do not think that reports were made daily. However, the staff takes care of these orders so I cannot say. I am sure there was a weekly report and also if something special came up, a special report would be made.
- Q. Did the weekly report summarize the activities of the week?
- A. Yes.
- Q. Did the weekly report also anticipate action in the future?
- A. Yes, if such a thing could be anticipated it would be done, but I cannot say for sure if any such report was made.

conditions than general prisoners of war. Thereupon, Germans would punish British crews of armed merchant ships for war crimes.

(Captain "FURAIATO/TIN Phonetic" was executed.) However,

neither of these measures are fair or just. These cases are not considered acceptable as a precedent.

(2.) Hostile acts on the part of

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- A. I believe that there was no such high ranking officer that would issue such an order and I cannot believe that such a thing would be carried out.
- Q. Let us suppose that the facts as I have stated them are ~~true~~. Let us suppose that at approximately the same time civilians were herded together in many different parts of the Philippines many hundreds of miles apart and later were killed, now would an order to carry out such a thing necessarily have to come from a man who had command over such a large territory?
- A. I would think that it would be possible if these various areas had faced similar situations almost at the same time. I do not believe that such an order would be put out by the commanding officer of such a great area.
- Q. Was it Iwabuchi's duty to inspect the installations and to see the troops under him as much as possible during the course of the battle of Manila?
- A. Yes, it was. However, with the various areas reporting in their situation to the headquarters, the headquarters might be too busy making plans for battle at all times. I do not know if Iwabuchi had any time to inspect his men.
- Q. If at approximately the same time hundreds of civilians were being gathered together in various places in Manila and then killed, would you say that Iwabuchi planned this or if he did not plan it he should have known about it?
- A. I cannot make a definite answer because I do not know the situation at that time, but if such a thing happened all at once, it would be thought that he might have known, However, I cannot say definitely about this point.
- Q. Could Iwabuchi have done anything to prevent the happening of such incidents?
- A. That depends upon the situation. He probably could have and yet he might not have been able to.
- Q. Depending upon whether he knew about it, is that it?
- A. I am sorry that I am always expressing my opinion, but if it was within my case I believe that it would be natural to stop such a thing.
- Q. If Iwabuchi knew about it, he would have had the power to order it stopped; is that it?
- A. Yes, he would have.
- Q. Now, if the order came from higher headquarters, would Iwabuchi have the power to stop it?
- A. If it was from higher headquarters, he would not have had the power to stop it.
- Q. If Iwabuchi knew that the order was contrary to the rules of land warfare or contrary to humane treatment and he ordered it stopped, would he have been subject to court-martial for countermanding the order of a superior officer?
- A. You could say that he would be court-martialled but I cannot even think that such an order would be issued by the higher-ups.
- Q. Did you say that you lived at the Army and Navy Club and Yamashita lived at the Manila Hotel in Manila?
- A. No, he was living in a hotel along the beach called the Pssay.

non-belligerents

(3.) Harmful acts committed by

military personnel in disguise, or by non-

belligerent parties, in battle fields

and other places.

(4.) Espionage.

(5.) War treason.

(Note)

(1.) The war treason means that

nationals of hostile or neutral

countries, in territories of the

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belligerent Power or

territories under her occupation,

act against their obligation

of obedience towards the same

belligerent Power.

(2) Some are of opinion that in-

habitants in an occupied

zone are not obligated to

obey the occupation Power;

but this is not generally

accepted.