

Exhibit No. 3039

(9)

INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST  
No. 1

THE UNITED STATES OF AMERICA,	)	
et al	)	
vs	)	AFFIDAVIT OF
	)	MATSUMOTO SHUN-ICHI
ARAKI, Sadao, et al,	)	
Defendants	)	

Having first duly sworn on oath as on the attached sheet, in accordance with the procedure prevailing in my country, I hereby depose as follows:

1. I entered the Foreign Ministry in the year 1921, and was in the office of the Director of the Bureau of Treaties from September, 1940, to October, 1942.

After the outbreak of the Pacific War, matters concerning prisoners of war as well as civilians held in the theater of operations were under the charge and control of the Army or the Navy, while civilians of the enemy countries interned in Japan Proper were under that of the Home Ministry and those in the overseas territories, such as Formosa, Korea and Saghalien, under that of the Ministry of Overseas Affairs. In this connection, the liaison business with foreign countries, so far as it was transacted through the Foreign Ministry, was carried out chiefly by the Bureau of Treaties until 1 November 1942.

2. When the war broke out, Foreign Minister TOGO frequently expressed to the officials of the Foreign Ministry concerned his hope that civilian internees and prisoners of war might be treated with humanity and lenience. Pointing out that the fate of Japanese residents, amounting to several hundred thousands, in the enemy countries would be affected by the treatment by Japan of those prisoners of war and civilian internees, he urged us to take whatever steps might be possible for the realization of his hopes. We transacted business in conformity with the Foreign Minister's wishes in our daily contact with the competent officials of the other Government offices concerned.

3. On 27 December 1941 the United States Government addressed an inquiry through the Minister of Switzerland to the Japanese Government concerning the Treaty of 1929 for treatment of prisoners of war (The Geneva Convention). The United States being a signatory of the Convention, it inquired whether the Japanese Government intended to abide by the Convention during the present war despite Japan's not having ratified it (Exhibit 1468). With respect to the treatment of prisoners of war, Japan had been a signatory to the Hague Convention concerning the Laws and Customs of War on Land, concluded in 1907. That Convention has in its appendix seventeen stipulations regarding prisoners of war, and the principles of humanity are, moreover, stressed in its preamble. In accordance with Foreign Minister TOGO's opinion that our country should, out of humanitarianism, abide by the Geneva Convention (which expressed in full detail the stipulations of the Hague Convention) to the maximum extent that circumstances permitted, I discussed the matter with Uemura, Director of the Prisoners-of-War Information Bureau, and other Army and Navy officers concerned. As a result, the reply

was made to the United States Government on 29 January 1942 (Exhibit 1469), in accordance with the answer of the War Ministry, which was in charge of the matter (Exhibit 1495), to the effect that although Japan had not ratified the Geneva Convention, and therefore was not bound by it, Japan would apply the Convention mutatis mutandis with respect to American prisoners of war under Japanese control. In response to the same inquiry made by Great Britain through Argentine Charge d'Affaires on 3 January of the same year (Exhibit 1494) a similar reply was made on 29 January (Exhibit 1496). As Great Britain proposed on 5 January 1942 through the Argentine Charge d'affaires that national and racial customs be taken into consideration, on a reciprocal basis, with respect to the supplying of food and clothing to prisoners of war (Exhibit 1495), the Japanese Government expressed agreement to that proposal also, in the same reply dated 29 January (Exhibit 1496). As the United States Government subsequently made inquiry on this matter point (Exhibit 1492), a reply similar to that to Great Britain was sent (Exhibit 1493).

Japan had not ratified the Geneva Convention, by reason primarily of the relations between the provisions of domestic law with those of the Convention; and the problems growing from this inter-relation would still have given rise to much difficulty in the event of an undertaking to apply the Convention completely and unconditionally. Moreover, it was anticipated that great difficulties in practice would result, as large-scale warfare spread over East Asia, if we were to apply strictly all the stipulations of the Geneva Convention, which Japan had not ratified. It was for these reasons that it was replied that the stipulations of the Convention were to be applied mutatis mutandis. It was the intention of Japan with respect to the treatment of prisoners of war that the stipulations of the Geneva Convention be applied so far as circumstances permitted; in other words, unless there were hindrances or obstacles which made its application impracticable.

It has to be noted that Japan did not at that time formally ratify or join the Convention in accordance with the provisions of Article 91 or Articles 94 and 95 thereof. What the Japanese Government did was only to communicate its intention in response to the inquiries made by the Governments of the United States and Great Britain, through the countries representing their interests in Japan respectively; it did not take any of the domestic steps necessary for ratifying or entering the Convention, nor did it submit to the Government of Switzerland its ratification or notification of entrance, in accordance with the aforesaid provisions. For this reason the Swiss Government never notified the member-nations of the Convention of Japan's ratification of or entrance into the Convention.

The Japanese Government, moreover, had never taken the view that the Geneva Convention become part or evidence of the laws and customs of war by reason of its signature by 47 nations, including Japan, and its ratification by more than 40 nations, but adopted the view that the fact that the Soviet Union, who is not a party to the Geneva Convention, refused to apply it during the present war showed that the Convention did not automatically bind nations as an established international custom.

OATH

In accordance with my conscience I swear to tell the whole truth, withholding nothing and adding nothing.

Matsumoto Shun-Ichi (seal)

On this 17th day of February  
1947 At Tokyo.

DEPONENT Matsumoto Shun-Ichi (seal)

I, Nishi Haruhiko, hereby certify that the above statement was sworn to by the deponent, who affixed his signature and seal thereto in the presence of this witness.

On the same date

At Tokyo

Witness: Nishi Haruhiko (seal)

Translation Certificate

I, Nishi Haruhiko, of the Defense, hereby certify that I am conversant with the English and Japanese languages, and that the foregoing translation is, to the best of my knowledge and belief, a correct translation of the original document.

Nishi Haruhiko

Tokyo  
17 February 1947.