

## Treatment of Sexual Violence in the Tokyo Trial : With a Focus on the Chinese Case

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# Treatment of Sexual Violence in the Tokyo Trial: With a Focus on the Chinese Case

Xiaoyang Hao

The Tokyo War Crimes Trial, also known as the International Military Tribunal for the Far East, was a military court established by the Allied powers in the wake of World War II (WWII) to prosecute the top leaders of the Japanese wartime state. The period of indictment extended from 1928, during which the Kwantung Army plotted the murder of the Chinese warlord Zhang Zuolin 張作霖 (Jpn. Chō Sakurin) and the Japanese military ascended to the center of power, to September 1945, when Japanese officials signed the Instrument of Surrender that ended the war. The Trial opened its court session on March 3, 1946 and closed on November 12, 1948. The Tokyo Charter issued by General Douglas MacArthur on January 1946 stipulated that three general categories of war crimes be prosecuted at the tribunal: Class A—crimes against peace, Class B—conventional war crimes, and Class C—crimes against humanity, and all the defendants to be indicted should be “charged with offences which include Crimes against Peace.”<sup>1</sup> As institutional genocide like the Jewish Holocaust, for which the Class C crimes were reserved, did not take place in the Asia-Pacific Theater, the Indictment integrated Class B and Class C crimes into one category of “conventional war crimes and crimes against humanity.” The court thus finally adjudicated the criminals according to crimes against peace, murder, and conventional war crimes and crimes against humanity. Twenty-eight Class A suspects stood trial and twenty-five of them received the death sentence or prison terms.<sup>2</sup>

Some scholars have investigated the Tokyo Trial with regards to its treatment of sexual violence. Utsumi Aiko argues that the Tokyo Trial recognized as facts some rape cases taken up by the prosecution team, but the court failed to examine the issue carefully or to set a legal precedent to prevent future recurrence of sexual violence.<sup>3</sup> Yuma Totani claims that the

court did indeed bring up cases regarding forced prostitution, but the evidence failed to meet the burden of demonstrating the top-level officials’ involvement, an issue to which I will return later.<sup>4</sup> Based on Utsumi and Totani’s research, this paper reexamines the handling of sexual violence in the Tokyo Trial, focusing on the Chinese case. Through an examination of court transcripts and evidential material, I argue that both the Chinese prosecution and the court decision treated cases regarding sexual violence in a highly selective and arbitrary manner.

## Japan’s Cover-Up and the Allied Powers’ Prosecutorial Strategy

In the short time period after Japan surrendered and before the occupation forces arrived, the Japanese government orchestrated a plan to destroy incriminating documents throughout the empire, in fear of the coming war crimes trial to be initiated by the Allied powers, as stipulated in Article 11 of the Potsdam Declaration. This plan was supposed to be carried out as a clandestine operation, since not only the inconvenient official documents but also the directives regarding the disposal of them were ordered to be burnt. Japanese obstruction presented difficulties for the Allied prosecutorial effort. As the main purpose of initiating the Tokyo Trial was to indict top-level officials, the loss of official records obstructed the Allied prosecutors from making direct connections between the widespread atrocities and the defendants.<sup>5</sup> However, due to the relatively short notice, the imperial forces failed to conceal their plot as thoroughly as planned, and there were still some inconvenient documents that survived. If Joseph B. Keenan, chief of the International Prosecution Section (IPS), had focused more on the collection of surviving accounts,

including what Yoshimi Yoshiaki discovered in the Defense Agency Library in the 1990s,<sup>6</sup> rather than giving an absolute priority to the interrogation of the detained Class A suspects, the prosecution proceedings might have been easier.<sup>7</sup>

The conundrum of incriminating high-ranking officials in the absence of official records was soon solved by Allied prosecutors who advanced the argument that if the atrocities were so extensively perpetrated and followed so consistent a pattern, the top officials must have permitted or at least acquiesced to them.<sup>8</sup> Their task was then to attest to the recurrence and resemblance of certain war crimes throughout the Asia-Pacific region.<sup>9</sup> It goes without saying that such a major task would have demanded a tremendous effort on the part of the prosecutors, as they had to gather evidential material and document war crimes as thoroughly and extensively as possible. The prosecutorial strategy for cases involving sexual violence would have followed the same rule.

### Treatment of Sexual Violence in the Tokyo Trial and the Chinese Team's Prosecutorial Efforts

With regard to sexual violence, the Allied prosecution team submitted a total of 87 pieces of evidentiary material to the court. The breakdown is as follows: 39 pieces on China, 35 pieces on the Philippines (including 6 pieces treating rape as an independent crime), and 13 pieces on other countries in Southeast Asia. Among all the evidence submitted, there are 8 pieces related to forced prostitution.<sup>10</sup>

The Chinese prosecutors presented to the court 150 pieces of documents concerning Japanese atrocities against non-belligerents, among them 39 on sexual violence. Among the 39 pieces, 19 pieces were related to the so-called Nanjing Massacre, 15 in regions nearby Nanjing, and the other 5 concerning China as a whole.<sup>11</sup>

The 19 cases regarding the Nanjing Massacre accounted for half of all the 39 cases related to sexual violence that were presented by the Chinese prosecution team in the Tokyo Trial. What the statistics make clear here is that the sexual crimes committed in the Nanjing Massacre to some degree overshadowed those perpetrated in other regions of

China. The Nanjing Massacre lasted for around six weeks starting from December 13, 1937, the day Nanjing fell to Japanese forces.<sup>12</sup> Together with wanton killing, looting and arson, rape took place extensively in Nanjing on a daily basis during this period of time. Throughout the war against China, the Japanese military visited cruelties upon Chinese women on a vast scale, but Nanjing stood out for its intensity. Also, as a capital city, it carried special political and historical importance; the loss of the Chinese capital and the untold suffering inflicted upon the women thus signified the inability of the Nationalist government to protect its citizens. It is therefore understandable that the Chinese government highlighted the sexual violence (as well as other crimes) committed during the Nanjing Massacre. Also, evidence such as diaries kept by foreigners who then lived in Nanjing was gradually accumulated from the day the Japanese Army entered Nanjing and began to commit these atrocities. In terms of the prosecutorial strategy, Totani points out that the Chinese prosecution team seems to have "focus[ed] on eliciting the recurrence of Japanese war crimes while avoiding redundancy."<sup>13</sup> It treated the Nanjing Massacre as the emblematic case and documented the corresponding atrocities in graphic detail; for other regions of China, however, the documentation was surprisingly sparse and brief.<sup>14</sup> For example, compared to the 44 cases presented to the court on crimes (including sexual violence) against non-combatants in the Nanjing Massacre, only 2 cases were submitted for Hunan province.<sup>15</sup> Quantity aside, the quality of evidence was also inferior. When the Chinese prosecutors substantiated the crimes committed in Jiangsu province by reading an affidavit, William Webb, the president of the Tokyo Trial, expressed his discontent with the evidence presented, saying that "[t]hat is hardly evidence. There are no details. What court would act on evidence like that?"<sup>16</sup> The Chinese government seems to have misunderstood the nature of the Tokyo Trial and encountered difficulties gathering evidence to support its prosecutorial effort.

According to Ni Zhengyu a Chinese prosecutor who joined the Tokyo Trial in the defense phase, from the very outset, the Chinese took for granted that the Tokyo Trial was merely to be a show trial, a trial in which the victors would mete out punishment to the

losers, and were thus ill-prepared for the prosecution.<sup>17</sup> In other words, China regarded the trial as a matter of formality, rather than a trial that rigorously applied the rules of evidence.<sup>18</sup> For example, Qin Dechun (Chin Te-chun), the vice-director of the Nationalist government's political military ministry, was almost jeered off the stage for giving no evidence when stating that "the Japanese military engaged in killing and arson, committing all manners of crimes" when testifying to the Japanese troops' barbaric behavior at the witness stand.<sup>19</sup>

Apart from the misevaluation of the nature of the trial, the Chinese prosecutors were also unprepared for the practice of international law adopted in the Tokyo Trial, that is, the Anglo-American legal system, in which lawyers and prosecutors played a major role in influencing the court's decision to accept or reject the evidence submitted. This system assumed defendants' innocence and required the prosecutors' efforts to substantiate their charges. However, rather than accentuating technical analysis of the evidence, the Chinese legal system emphasized free evaluation of the evidence.<sup>20</sup> While passing down judgments, judges could rely on not only the evidential material formally accepted by the court, but also the evidence they saw fit, as well as their own understanding and judgment of the cases. In short, judges had strong discretionary powers in the Chinese system.<sup>21</sup> The fact that Nationalist government officials lagged behind in the understanding of international law served as an obstacle to its prosecutorial effort as a whole.

On the other hand, the Japanese defense team was better prepared. Upon realizing its unfamiliarity with this Anglo-American legal system, on March 15, 1946, the Ministry of Foreign Affairs appealed to the court for employing American and English lawyers who were more familiar with this legal system to assist the Japanese defense effort.<sup>22</sup> For the sake of fairness, the court and the Supreme Commander of the Allied Powers (SCAP) approved of their request.<sup>23</sup> As a result, every defendant was assigned an American and a Japanese lawyer each, and several other staff to aid the lawyers' work. These American lawyers played a major role in cross-examining and rejecting the evidence submitted. When talking to Ni Zhengyu about his experience of being cross-examined as a witness in

the Tokyo Trial, Qin Dechun complained that "far from trying the war crimes suspects, I felt as if we were the ones brought to trial."<sup>24</sup> This complaint corroborates his actual performance on the witness stand. For example, after answering a question raised by Frank Warren, Doihara Kenji's 土肥原賢二 American lawyer, he said to Warren that "[n]ow I think it is my turn to put you a question," which was overruled, as witnesses were not eligible to "cross-examine" lawyers.<sup>25</sup> Qin also told Ni that during wartime no Chinese commander thought about collecting evidence for future use of adjudicating Japanese war criminals.<sup>26</sup>

In the aftermath of the war, the Chinese government also encountered considerable difficulties in gathering evidence from the Chinese people in preparation for the Tokyo Trial, evidence on sexual violence in particular. It is estimated that at least twenty thousand women were raped during the Nanjing Massacre and because of this, the outrage is also known to the world as the Rape of Nanjing. The Nationalist government of China, however, confronted difficulties in appealing to the Chinese people to attest to sexual violence perpetrated by Japanese armies in the Nanjing Massacre in support of its prosecutorial effort. Many rape victims were killed after being raped. Those who survived, in fear of being stigmatized and further marginalized by their patriarchal society, were reluctant to come forward. This is evident in a Nationalist government survey conducted in October 1946, in which only 36 rape and rape-murder cases were recorded compared to more than 2,700 other crimes committed in the Nanjing Massacre.<sup>27</sup>

Rape is often accompanied with murder and other crimes, and this probably (in part) explains the Chinese team's decision to submit all cases of sexual violence together with other war crimes. In other words, the Chinese prosecutors did not take up any cases relating to sexual violence as independent crimes against women. It appears that sexual violence was not considered worth mentioning without the accompaniment of other atrocities. A wartime episode further illustrates the Chinese Nationalist government's attitude towards sexual violence. Inspired by Franklin Roosevelt and Winston Churchill's joint statement in 1941 that they viewed the atrocities perpetrated by the Axis powers as crimes and one of the main purposes of

the war as punishing war criminals, the nine occupied countries in Europe issued a similar statement in London the next year.<sup>28</sup> China was also invited to participate in this event, but for unexplained reasons, the Chinese minister dispatched by the government did not join in making the same declaration together with the other nine countries.<sup>29</sup> Instead, China issued a similar declaration in a British newspaper, announcing that it would also pursue the responsibility of Japanese war criminals, stating that the massacre committed against Chinese civilians, the destruction of cultural and educational institutions, and the destructive influence brought by narcotics were beyond description.<sup>30</sup> Here, we see a clear absence of reference to sexual violence of any sort regardless of its extensiveness and gravity. For the Chinese government, sexual violence did matter, but perhaps it paled in comparison with other crimes committed by the Japanese military.

The affidavit regarding forced prostitution that took place in Guilin, Guangxi province, further illustrates how sexual violence was overshadowed by other brutalities. The testimony was taken from nine Guilin civilians, both men and women.

During the period of Japanese occupation of Kweilin [Guilin] which lasted about a year, they freely indulged in all kinds of atrocities such as rape and plunder, and so forth. Captain CHONAWO [*sic*], a native of Fukuoka Prefecture, Japan, was the head of a certain Rehabilitation Section. He was a very cruel and treacherous man and he controlled all newspapers and cultural organizations in Kweilin working for the purpose of [placating and; Jpn. *kaijū* 懐柔] enslaving the people through his publications and propagandistic efforts. He sent puppet officials to propagate the establishment of factories and recruit woman labor [from all four directions; Jpn. *shihō yori* 四方より]. When the women came, he sent them to the suburbs outside Li Shi Gate [located in Lequn Road; Jpn. Rakugun *ro* 楽群路] and forced them into prostitution with the [beast-like; Jpn. *jū gotoki* 獣如き] Japanese troops.<sup>31</sup> CHONAWA's secretary was a Japanese woman named SAZUKI [Jpn. Suzuki XXX 鈴木華□] who assisted in the perpetration and aggravation of his atrocities. Moreover [What is more horrible; Jpn. *sarani hanahadashiki* 更に甚だし

き], a Japanese Military Police unit was established at Li Tse Yuan with ITOH as chief. War prisoners from all places were sent to this unit for forced labor; they were compelled to grind rice, carry mud, and so forth. Those who committed any slight mistake were killed. Prisoners thus killed amounted to more than one hundred in number including two Allied soldiers whose names could not be remembered now. The Japanese exposed the bodies on the Wang Cheng (Imperial Wall) or threw them in the Lee River, a very tragic scene.<sup>32</sup>

As opposed to the evidence that only gave an overall description without any details, this court exhibit provided the name of the Japanese official, the place where women were rounded up, and the way they were deceived into forced prostitution. However, it remains unclear when the incident took place, where exactly the women were coerced to provide sexual service, the circumstances of the comfort stations, whether or not those women survived the sexual abuse, and so forth. As mentioned above, all the evidential material concerning sexual violence was accompanied by other crimes, in this case, the destruction of a news agency and cultural institutions, and forced labor. What is intriguing in this affidavit is the use of the phrase “what is more horrible.” It seems that for the Guilin civilians, forcing men into hard labor, killing those who made trivial mistakes, and throwing their bodies into the rivers were “more horrible” than forcing women into prostitution. In other words, crimes committed against men, that is, forced labor, were more dreadful than crimes committed against women, that is, forced prostitution. In this way, those civilians imagined a hierarchy of crimes. One may argue that by using the phrase “what is more horrible,” the witnesses were not comparing forced prostitution to forced labor, but forced prostitution to killing that was involved in forced labor. Nevertheless, as mentioned before, the civilians failed to give any account of the condition of the female victims. It is hard to ascertain whether they were unable to acquire more detailed information about it or whether they simply did not pay close attention. Nevertheless, we know from the testimony offered by former “comfort women”<sup>33</sup> that they were repeatedly raped in those military comfort stations and being

sexually tortured to death was not rare. Compared to the “comfort women” procured from Japan and its colonies, those recruited from China suffered a higher mortality rate due to the dual discrimination against women and against Chinese. For the Guilin witnesses, forced labor and killing inflicted upon men took place in front of their eyes, in contrast to forced prostitution and other sexual torture or murder that happened behind the scenes. Both the civilians and the officials of the Nationalist government who were in charge of recording this affidavit lacked the imagination and sympathy for the suffering the female victims were enforced to undergo.

The above example is the only valid evidential material regarding forced prostitution submitted by the Chinese government. George Goette, a correspondent of the I.N.S. News Agency, when testifying before the court to Japanese atrocities in Shanxi province, also mentioned that “[t]he formal demand by the Japanese Army on local Chinese officials to provide women for the use of the Japanese Army was a commonplace thing,” which he heard from the American and British missionaries when he stayed in Shanxi province from 1938 to 1940.<sup>34</sup> As this is an oral testimony, it is not included in the evidential material mentioned above. This testimony, however, throws light on other problems concerning the Chinese government’s investigation of crimes including sexual violence. In short, the Chinese prosecution stood for the interest of the Nationalist government, not the Communist government. It thus gave priority to crimes committed in the territories that were under control of the Nationalist government. Coupled with the fact that postwar China was engulfed in the atmosphere of the impending civil war, followed by actual warfare when the pretrial preparations were in progress, the Nationalist government thus might have been impotent to effectively collect evidence from all over China. As a result, for instance, crimes such as forced prostitution and scorched-earth policy committed in Shanxi province,<sup>35</sup> a major battleground between Japanese troops and Communist guerilla forces, escaped investigation. By extension, Guilin was controlled by the Nationalists, and that is why it was cited.

However, even in the Nationalists’ focal point of the women forced into prostitution in Nanjing we find

serious gaps in knowledge. The Chinese government documented the sexual violence committed during the Nanjing Massacre; however, it gave no attention to the comfort stations established in Nanjing in the wake of this carnage. Documents unearthed so far indicate that the first comfort station was established in Shanghai in the wake of the First Shanghai Incident in 1932.<sup>36</sup> Nonetheless, it was only in the aftermath of the Nanjing Massacre that the Japanese military began a real effort to construct military comfort stations on a large scale to address the problem of mass rape, to boost military morale, and to check the spread of venereal disease. The *Medical Service Report (Eisei gyōmu yōpō 衛生業務要報)* issued by the Military Medical Service Department of the Fifteenth Division shows that Chinese “comfort women” accounted for nearly half of all the “comfort women” working for the same division in Nanjing in December 1942.<sup>37</sup> At the time of the Tokyo Trial, the Nationalist government’s obviously did not have access to these Japanese records, which were discovered by Yoshimi Yoshiaki in the 1990s, as mentioned above. Combined with the Nationalist government’s unwillingness to further investigate the issue, the suffering of these Chinese women, therefore, did not make its way to the Tokyo Trial.

One factor that might be associated with the Nationalist government’s inattention to the “comfort women” system is the issue of collaboration. After being rounded up, “comfort women” were usually placed into Japanese military comfort stations. What these women were forced to do there, as mentioned by the Guilin civilian in their affidavit, was to “provide prostitution and pleasure (*inraku* 淫楽)” to the Japanese military. The women working there thus might have been associated with the role of gratifying the Japanese military to some extent; in other words they were seen as contributing to the Japanese war effort, however negative their experience was.

In sum, the Chinese prosecution team did take up cases related to sexual violence before the Tokyo Trial. It documented the sexual atrocities committed in the Nanjing Massacre to a large extent, but overlooked the importance of substantiating the sexual violence perpetrated in many other areas of China. Instead of treating sexual violence as an independent crime, the

Chinese prosecutors brought it up in conjunction with other crimes. The Chinese team also submitted only one case in regards to forced prostitution to the court.

## Judgment

The court recognized rape as a war crime in the final verdict of the Tokyo Trial. However, it did not specify rape as an independent war crime against women, but listed it together with other war crimes. Since the Asia-Pacific Theater of WWII did not experience systematic genocide such as the Holocaust in Europe, crimes against humanity were not treated as a separate category of war crimes in the Tokyo Trial, but were merged with conventional war crimes in the Indictment, as mentioned above. As a result, the court stopped short of establishing rape as well as other atrocious behavior as crimes against humanity.

The Trial recognized many cases related to sexual violence submitted by the Allied prosecution team as historical facts. In terms of rape cases brought up by the Chinese prosecutors, the verdict made reference to sexual brutalities that took place in Nanjing, Hebei province, Changsha province, and Guilin. For instance, with regard to Hebei province, the court confirmed that “[s]oldiers [...] committed murder, rape and arson, killing 24 of the inhabitants and burning about two-thirds of the homes.”<sup>38</sup> As for Guilin, it acknowledged that “[d]uring the period of Japanese occupation of Kweilin [Guilin], they committed all kinds of atrocities such as rape and plunder. They recruited women labor on the pretext of establishing factories. They forced the women thus recruited into prostitution with Japanese troops.”<sup>39</sup>

Needless to say, in the verdict much ink was spilled in confirming the havoc wrought upon Nanjing, due to the prosecutorial effort. However, the following acknowledgment of the sexual violence that took place in the Nanjing Massacre is somewhat problematic:

There were many cases of rape. Death was a frequent penalty for the slightest resistance on the part of a victim or the members of her family who sought to protect her. Even girls of tender years and old women were raped in large numbers throughout the city, and many cases of abnormal and sadistic

behavior in connection with these rapings occurred. Many women were killed after the act and their bodies mutilated. [...] *The barbarous behavior of the Japanese Army cannot be excused as the acts of a soldiery which had temporarily gotten out of hand when at least a stubbornly defended position had capitulated. Rape, arson and murder continued to be committed on a large scale for at least six weeks after the city had been taken and for at least four weeks after MATSUI and MUTO had entered the city.*<sup>40</sup>

The court obviously upheld the Chinese prosecution team’s contention with regards to the Nanjing Massacre, recognizing the mass rape and other forms of sexual violence as facts and indicting Matsui Iwane 松井石根 and Hirota Kōki 広田弘毅 for being derelict in their responsibility to put a halt to the ongoing crimes.<sup>41</sup> Regardless, this section of the verdict is not without problems. As Nicola Henry has pointed out, the verdict indicates that there is a sort of rape that is unavoidable and pardonable, that is, rape committed immediately after securing an enemy position that was tenaciously safeguarded.<sup>42</sup> The reason why sexual violence perpetrated by the Japanese military was inexcusable is that it lasted for as long as six weeks after the fall of Nanjing, thus falling out of the purview of the unavoidable. In other words, rape perpetrated by the Japanese was therefore different in nature from the rape perpetrated by the Allied powers.<sup>43</sup> The Allied soldiers’ sexual violence against women, for example, American and Soviet troops’ savagery against Japanese women were thus exonerated. Henry further claims that this verdict to some extent “sets up a hierarchy of victims based on the timing and nature of rapes.”<sup>44</sup>

In terms of sexual slavery, the Allied prosecution tendered eight cases in total, as mentioned above, and all the eight cases were admitted as evidence by the court; however, the Chinese case was the only one that was recognized in the verdict. A certain section of the verdict indeed reads that “[a]fter carefully considering and examining all the evidence we find it impracticable in a judgment such as this to state fully the mass of oral and documentary evidence presented” with regards to Japanese atrocities.<sup>45</sup> The crimes committed by the Japanese may indeed have been too numerous to be listed. However, findings in the court verdict held

special significance as they recognized certain events as historical facts and acknowledged right and wrong. Only mentioning Chinese women in terms of forced prostitution spells out the arbitrariness in the fact-finding process of the court.

Furthermore, none of the twenty-eight Class A war criminal suspects were declared guilty for perpetrating the “comfort women” system. Totani’s research shows that the four cases regarding forced prostitution submitted by the Dutch prosecutors on behalf of the Dutch East Indies were of great quality as evidence and covered various regions and female victims from different ethnic backgrounds.<sup>46</sup> The purpose was apparently to implement the prosecutorial strategy of documenting the recurrence and consistence of the Japanese crimes.<sup>47</sup> Totani further contends that as the cases presented were not many in amount and apart from the four submitted by the Dutch, did not refer to the circumstances under which the crimes occurred, the Allied prosecutors failed to incur the responsibility of the high-profile Japanese officials.<sup>48</sup> However, she falls short of elaborating the court’s negligence to the four cases submitted by the Dutch. If four cases were not sufficient to adjudicate guilt, then how many would have been needed? Therefore, building upon Totani’s argument, I further argue that the reason lies *not only* in numbers, but also in perceptions. It seems likely that the judges did not really regard forced prostitution as a separate crime to rape, since they were both sexual violence, and forced prostitution is a form of rape. However, sexual slavery was more heinous, as women forced into being “comfort women” were incarcerated for repeated rapes. Failing to comprehend the gravity of the sexual slavery system on grounds of the gross violation against women’s human rights was a shortcoming of the court, on the part of both the prosecutors and judges.

## Conclusion

While the Chinese Nationalist government did indeed bring up rape cases before the Tokyo Trial, probably to a large degree rape cases were only taken up to serve practical purposes, that is, to facilitate prosecution, rather than to uphold justice for women. The reason for this may have been that China was still

highly patriarchal, and women’s chastity was deemed to be part of their moral integrity.<sup>49</sup> The Nationalist government’s neglect of sexual violence committed in other areas, of sexual violence in Nanjing in the aftermath of the Nanjing Massacre, and of the sexual slavery system rendered the victims of these atrocities lesser victims. With respect to court decision, the case involving forced prostitution in Guilin was the only one that received official recognition. The verdict failed to recognize as facts other cases related to forced prostitution. Therefore, the Chinese government’s treatment of sexual violence together with the court decision treated cases involving sexual violence selectively and arbitrarily, “set[ting] up a hierarchy of the victims based on the timing” —to borrow Henry’s words again—and a problematic categorization of that violence.

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<sup>1</sup> “Charter of the International Military Tribunal for the Far East,” compiled in R. John Pritchard, Donald Cameron Watt, and Donald Cameron Watt, ed., *The Tokyo War Crimes Trial, Vol. 1: Pre-Trial Documents, Transcript of the Proceedings in Open Session* (New York & London: Garland Publishing Inc., 1981), 2.

<sup>2</sup> Matsuoka Yōsuke 松岡洋右 and Nagano Osami 永野修身 passed away when the tribunal was still in progress and Ōkawa Shūmei 大川周明 was taken away from the court due to mental illness. See Totani Yuma, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (Cambridge, Massachusetts & London, England: Harvard University Press, 2008), 64. For the crimes prosecuted in the indictment for all the twenty-eight suspects, see Tokyo Saiban Handobukku Henshū Inkai, ed., *Tokyo saiban handobukku* (Tokyo: Aoki Shoten, 1989), 214-15.

<sup>3</sup> Utsumi Aiko, “Senji sei bōryoku to Tokyo saiban,” in *Senpan saiban to sei bōryoku*, ed. VAWW-NET Japan (Tokyo: Ryokufū Shuppan, 2000), 95.

<sup>4</sup> Totani, *The Tokyo War Crimes Trial*, 185; Yuma Totani, “Legal Responses to World War II, Sexual Violence: The Japanese Experience,” in *Sexual Violence in Conflict Zones: From Ancient World to the Era of Human Rights*, ed. Elizabeth D. Heineman (Philadelphia: University of Pennsylvania Press,



- 2011), 222.
- <sup>5</sup> Totani, *The Tokyo War Crimes Trial*, 106; Totani Yuma, “Tokyo saiban ni okeru sensō hanzai sotsui to hanketsu: Nankin jiken to sei doreisei ni taisuru kokka shidōsha sekinin o chūshin ni,” in *Gendai rekishi gaku to Nankin jiken*, ed. Kasahara Tokushi and Yoshida Yutaka (Tokyo: Kashiwa Shobō, 2006), 129-30.
- <sup>6</sup> These documents unearthed by Yoshimi Yoshikai unequivocally demonstrate Japanese state’s participation in the establishment of the “comfort women” system.
- <sup>7</sup> Totani, *The Tokyo War Crimes Trial*, 106-7.
- <sup>8</sup> Ibid., 107-8.
- <sup>9</sup> Ibid., 107-8, 151.
- <sup>10</sup> Hayashi Hirofumi, *Nihongun ‘ianfu’ mondai no kakushin* (Tokyo: Kadensha, 2015), 89; Hayashi Hirofumi, “Tokyo Saiban, BC-kyū senpan saiban to Nihon seifu no sekinin,” in *‘Iianfu’ no basshingu o koete: ‘Kōno danwa’ to Nihon no sekinin*, ed. Nishino Rumiko, Kim Puja, and Onozawa Akane (Tokyo: Ōtsuki Shoten, 2013), 125-28.
- <sup>11</sup> Utsumi Aiko et al., “Tokyo saiban to sei bōryoku: Kaisetsu ni kaete,” in *Tokyo saiban: Sei bōryoku kankei shiryō*, ed. Yoshimi Yoshiaki et al. (Tokyo: Gendai Shiryō Shuppan, 2011), 15.
- <sup>12</sup> Atrocities on the part of the imperial Japanese force also took place even before they arrived in Nanjing.
- <sup>13</sup> Totani, *The Tokyo War Crimes Trial*, 152.
- <sup>14</sup> Ibid., 152-55.
- <sup>15</sup> Utsumi et al., “Tokyo saiban to sei bōryoku: Kaisetsu ni kaete,” 15.
- <sup>16</sup> R. John Pritchard, Sonia Magbanua Zaide, and Donald Cameron Watt, ed., *The Tokyo War Crimes Trial, Vol. 2: Transcript of the Proceedings in Open Session* (New York & London: Garland Publishing Inc., 1981), 4609; *Kyokutō kokusai gunji saiban sokkiroku, Vol.1*, August 30, 1946, 765; also, see Totani, *The Tokyo War Crimes Trial*, 152-55. Despite Webb’s discontent, however, this affidavit was still admitted as evidence by the court.
- <sup>17</sup> Ni Zhengyu, “Dongjing shenpan de huiyi,” in *Dongjing shenpan wenji*, ed. Shanghai Jiaotong Daxue Dongjing Shenpan Yanjiu Zhongxin (Shanghai: Shanghai Jiaotong Daxue Chubanshe, 2011), 8.
- <sup>18</sup> Ibid., 8.
- <sup>19</sup> Ibid.
- <sup>20</sup> Song Zhiyong, “Lun Dongjing shenpan de jige wenti,” in *Dongjing shenpan wenji*, 125; Ni Zhengyu, “Dongjing shenpan de huiyi,” 7.
- <sup>21</sup> Song, “Lun Dongjing shenpan de jige wenti,” 125.
- <sup>22</sup> Toyoda Kumao, *Senpan saiban yoroku* (Tokyo: Taiseisha, 1986), 100-101. Also, see Song Zhiyong, “Dongjing shenpan yu riben de duice,” in *Dongjing shenpan wenji*, 113.
- <sup>23</sup> Ibid.
- <sup>24</sup> Ni, “Dongjing shenpan de huiyi,” 9.
- <sup>25</sup> Pritchard, Zaide, and Watt, ed., *The Tokyo War Crimes Trial, Vol. 2*, 2431. President Webb’s response reads that “[w]e do not want any questions from the witness. The witness may turn his question into a statement.” Qin was on the witness stand from July 22, 1946 to July 25, 1946 and he attempted to “cross-examine” lawyers on several occasions.
- <sup>26</sup> Ni, “Dongjing shenpan de huiyi,” 9.
- <sup>27</sup> The survey refers to Zhongguo dier lishi dang’ anguan et al., *Qin-Hua Rijun Nanjing datusha dang’an*, cited in Daqing Yang, “The Challenge of the Nanjing Massacre: Reflections on Historical Inquiry,” in *The Nanjing Massacre in History and Historiography*, ed. Joshua A Fogel (Berkeley & Los Angeles & London: University of California Press, 2000), 139-40.
- <sup>28</sup> Ikō Toshiya, “Chūgoku kokumin seifu no nihon senpan shobatsu hōshin no tenkai,” in *Gendai rekishi gaku to Nankin jiken*, 95-96.
- <sup>29</sup> Ibid.
- <sup>30</sup> Ibid.
- <sup>31</sup> The Japanese version reads “強迫して妓女として獣如き軍隊の淫樂に供した,” and a better translation would be “forced them to serve as prostitutes and provide prostitution and pleasure to the beast-like Japanese troops.” See the next note.
- <sup>32</sup> Court exhibit 353 or prosecution document 2220 submitted on August 30, 1946, in Pritchard, Zaide, and Watt, ed., *The Tokyo War Crimes Trial, Vol. 2*, 4652-54. Emphasis added by the author. This affidavit was originally produced in Chinese and later translated into Japanese and English. As the Chinese version was not available, I examined both the Japanese and English versions and noticed that in terms of content, the former is more specific than

the latter. The Japanese translation not only contains details such as “Lequn Lu,” the name of a road, which is apparently absent in the English translation, but also comprises more modifiers, which look like they were adopting directly from the Chinese version, such as “*jū gotoki*” and “*sarani hanahadashiki*,” equivalent to “ru qinshou yiban 如禽兽一般” and “*geng you shenzhe* 更有甚者,” respectively. One can thus easily deduce that the Japanese version is closer to the original Chinese version. At least, the Japanese version was not translated from the English one, like in some other cases, but rendered directly from the original Chinese version. As this section of the present paper is about the Chinese Nationalist government’s treatment of sexual violence, the Japanese version then was of great importance. I have supplemented the parts that are absent in the English translation and put them into brackets. For a Japanese version of this court exhibit, see Yoshimi Yoshiaki et al., ed., *Tokyo saiban*, 105-6.

<sup>33</sup> “Comfort women” is a euphemism meaning women forced—in most cases—into sexual service for the Japanese military during wartime. For a general introduction of the so-called “comfort women” issue in the English language, see Yoshimi Yoshikai, *Comfort Women: Sexual Slavery in the Japanese Military During World War II*, trans. Suzanne O’Brien (New York: Columbia University Press, 2000); Yuki Tanaka, *Japan’s Comfort Women: Sexual Slavery and Prostitution During World War II and the US Occupation* (London & New York: Routledge, 2002).

<sup>34</sup> Pritchard, Zaide, and Watt, ed., *The Tokyo War Crimes Trial, Vol. 2*, 3775.

<sup>35</sup> For a detailed description of the Chinese comfort women,” see Peipei Qiu, with Su Zhiliang and “Chen Lifei, *Chinese Comfort Women: Testimonies from Imperial Japan’s Sex Slaves* (Vancouver: UBC Press, 2013).

<sup>36</sup> To shift away the attention of the Western powers from the inauguration of the puppet state of Manchukuo, the Japanese military launched a battle in Shanghai, which is generally referred to as the First Shanghai Incident. See, for example, Yoshimi, *Comfort Women*, 43.

<sup>37</sup> Yoshimi Yoshiaki, ed., *Jūgun ianfu shiryōshū* (Tokyo:

Ōtsuki Shoten, 1992), 273-77.

<sup>38</sup> R. John Pritchard, Sonia Magbanua Zaide, and Donald Cameron Watt, ed., *The Tokyo War Crimes Trial, Vol. 20: Judgment and Annexes* (New York & London: Garland Publishing Inc., 1981), 49613.

<sup>39</sup> Ibid., 49617.

<sup>40</sup> Ibid., 49605-12. Emphasis added by the author.

<sup>41</sup> Mutō Akira 武藤章 was also adjudicated by the Chinese team, but was exempted from punishment for the atrocities that took place in the Nanjing Massacre. He was a subordinate to Matsui and was considered by the court as unable to stop the atrocities when his superior Matsui did not adopt measures to restrain his troops. However, Mutō was found guilty for neglecting his duty to end atrocities committed by his troops in the Southeast Asian Theater and was sentenced to death by the court.

<sup>42</sup> Nicola Henry, “Silence as Collective Memory: Sexual Violence and the Tokyo Trial,” in *Beyond Victor’s Justice?*, 275; Nicola Henry, *War and Rape: Law, Memory and Justice* (London & New York: Routledge, 2011), 49-50.

<sup>43</sup> Nicola, “Silence as Collective Memory,” 275.

<sup>44</sup> Ibid.

<sup>45</sup> *The Tokyo Judgment*, 489 (49592).

<sup>46</sup> Totani, *The Tokyo War Crimes Trial*, 176-77.

<sup>47</sup> Ibid., 176-77.

<sup>48</sup> Ibid., 185.

<sup>49</sup> The author is inspired by Henry’s argument, see Henry, “Silence as Collective Memory,” 275.

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# 東京裁判における性暴力の扱い —中国のケースを中心に—

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## 要旨

東京裁判は第二次世界大戦後、連合国により開催された戦犯裁判である。近年、歴史資料の公開、歴史認識問題の浮上に伴い、東京裁判に関する研究は増加しつつある。このような中、性暴力の取扱いに焦点をあてた研究もあるが、そのほとんどは裁判全体に重点を置いている。そこで、本研究では、中国のケースを中心に、東京裁判における性暴力の取扱いについて議論することが目的である。東京裁判の速記録、判決、証拠書類、関連人物の回想録等にもとづき、性暴力について中国検事はいかに起訴したのか、法廷はいかに裁いたのかなどについて解明した。その結果、中国の検事側は、性暴力に関連するケースをいくつか取り上げ、法廷ではいくつか事実認定をして裁いた。しかしながら、中国検事と法廷のいずれも、性犯罪のタイミングと種類によって、選択的かつ恣意的に性暴力に関するケースを扱っており、被害者女性のための正義追求とは言えないことが明らかとなった。