

**UNIT 731 & THE AMERICAN
COVER UP**

By

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ABSTRACT

Prior to the Second World War, the Japanese Imperial Army quickly became one of the world leaders in the development of both chemical and biological warfare research. This thesis focuses on one operation of that military machine, Unit 731, and their research in to biological warfare which was encouraged to flourish under Emperor Hirohito's rule.

The founder of Unit 731, Shiro Ishii, would guide his researchers in their exploitation and mass murder of the innocent civilians of occupied Manchuria. The Unit committed state-sponsored, wide-scale field experiments and research on human beings without their consent, akin to the atrocities committed in concentration camps across Europe by Nazi-Germany. While one would expect such criminals to face the hangman's noose, the key players of Unit 731 would avoid prosecution for their barbaric acts. Instead, many would be rewarded with financial gain by the United States, who offered immunity in return for research data collected from human experimentation. Others would prosper in post-war Japan, obtaining high-ranking jobs. Because of the nature of the immunity deal, little is known in the Western world about the prosecution of Japanese war criminals at Tokyo.

This thesis will argue that the Allied powers, in particular the United States, negligently failed to administer justice against all Japanese war criminals. Worse than that, they deliberately prevented the victims of Unit 731 from seeing justice, as well as stifling academic insight for nearly four decades after the Trial of Japanese war criminals had concluded.

However, this thesis will not take the same path of previous literature, which has tended to focus on distinctly separate topics: modern Japan, Unit 731, Japanese war

crimes, immunity deals and their implications, and the Tokyo Trials. While this thesis is not intended to be as comprehensive as the respective work academics such as *Bix* on Hirohito; *Gold, Harris* or *Barenblatt* on Unit 731; or *Boister & Cryer* on the Tokyo Trial, this thesis will bridge the gaps by collating the evidence on all issues to give the reader a well-rounded and comprehensive understanding of how Unit 731 came to fruition and flourished in modern Japan, under the control of Shiro Ishii and Emperor Hirohito.

This thesis, in the final chapter, will expand upon the current academic understanding of Unit 731 by providing critical analysis of the atrocities committed by members of that deadly Unit and then apply the legal framework created by the Allies following the end of the Second World War. This thesis will then advance arguments that both Emperor Hirohito and Shiro Ishii ought to properly have been prosecuted at the end of the Second World War specifically for their involvement in Unit 731.

This thesis provides fresh insight on the variety of topics covered, in particular in addressing the lack of accountability by those individuals who committed such atrocities, the failure of the Allies to instil adequate justice and the reasons why Japan are perceived to have shown a lack of accountability for the atrocities committed by them both before and during the Second World War. This thesis will highlight how many key members of Unit 731 would go on to thrive in the post-war years, without fear of retribution or penalty.

TABLE OF CONTENT

Introduction	9
State of the Art	18
Structure	21
Methodology	24
Part One: A Historical Overview of Modern Japan	27
The Meiji Restoration	29
Japanese Expansionism	36
Japan's Initial Biological Research	41
A Changing International Landscape	44
Internal Scandal and International Aggression	51
Japan Enters the Second World War	62
Part Two: The Making of Unit 731	77
Shiro Ishii: The Japanese Mengele?	79
Emperor Hirohito: War Criminal?	89
Building Unit 731	98
Forced Relocation	104
Hirohito and the Unit	111

Areas of Research	114
Biological Research Elsewhere	121
Grounds for an Immunity Deal	130
Part Three: Suspicions, Surrender and the U.S. Immunity Deal	133
Allied Knowledge	134
Hirohito's Final Act	143
American Investigations	152
The Immunity Deal	168
Hirohito on Trial?	176
Implications of the Immunity Deal	186
Justifications for Japanese War Crimes?	196
Part Four: The Tokyo Trial	204
In the Footsteps of Nuremberg	212
The Tokyo Charter	216
The Justices	226
The Indictment	231
The Defendants	235
The Trial	240

Part Five: Judgment & Critique	254
The Majority Judgment	257
Sentencing	264
Application to Hirohito & Ishii	273
Legacy of Tokyo	285
Accountability in the Post-War Years	289
Conclusion	299
Appendix I – Articles of the Tokyo Trial	310
Appendix II – The Charges	317
Appendix III – Defendants, Charges & Sentences	329
Bibliography	339

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INTRODUCTION

Wide-scale atrocities do not happen by chance; they require a combination of meticulous planning - both intentional and otherwise - the right circumstance, and disregard for the requirements of moral standards, human life, and the rule of law. The Japanese committed various atrocities amounting to war crimes across the Pacific theatre in the lead up to the Second World War, including the Rape of Nanking (1937), the Bataan Death March (1942), and the deadly construction of the Burma Railway by POWs (1942 onwards). This thesis does not attempt to analyse the full range of such atrocities. Instead, it focuses solely upon the illegal conduct of one specific element of the Japanese war machine: Unit 731. Forming part of the Japanese Imperial Army, this unit was a top-secret biological warfare unit based in occupied Manchuria, an exonym spread across North-Eastern Asia.

In the early-1930s, well before the Second World War, the Japanese Imperial Army had quickly become one of the world leaders in the development of chemical and biological warfare research. This thesis focuses on one particular Unit of her biological warfare research: Unit 731. The founder of Unit 731, Shiro Ishii, would guide his researchers in their exploitation and mass murder of the people of occupied Manchuria, who were predominantly Chinese citizens. Ishii was now tasked by the Japanese military and political hierarchy with providing Japan with a fresh range of weaponry, including deadly bacteria, for its arsenal in the war effort against the Allied nations and China. He set about this task with vigour, enthusiasm, and a complete disregard for moral, ethical, and legal standards relating to the sanctity of life.

Ishii had a clear vision: Unit 731 would despatch their laboratory-grown deadly bacteria using fleas, dropped from the skies by Japanese planes, on an unsuspecting

population below. This tactic was predicated on a history of deadly efficiency over the preceding six centuries, albeit unintentionally. This thesis will document that Ishii saw an opportunity to harness nature and intentionally deploy deadly bacteria as a weapon. During Japan's occupation of Manchuria, a once-thriving, metropolitan geographic region between China and Russia, Unit 731 and Ishii would - within the space of fifteen years - effectively transform it into the most extensive field test of biological weapons in history.¹ To this day, the very landscape and people that still inhabit this region bear the scars of Ishii and his men.

This thesis focuses on a sole unit of Japan's biological warfare programme based in Manchuria. However, there were a number of other key units within this criminal enterprise which were also located in China. Unit 100, for example, was based in Manchuria and specialised in veterinary disease research.² A separate enterprise, Unit 1644, was established in Nanking in 1939 and was intended to be the manufacturing epicentre for biological research, churning out biological weapons on a large scale.³ The research and manufacturing of weapons was also not confined to biological means. The Japanese had also been researching and developing chemical warfare weapons following the barbaric introduction of these weapons during the First World War. Unit 516, based in Heilongjiang Province, China focused on chemical weapon research.

The deployment of bacteria as weapons was not a particularly novel offensive tactic in military conflict, and its origin can be traced back just shy of six hundred years before the commencement of the Second World War. Ishii would not look to reinvent the wheel. Instead, he would look to build on existing research and bring it into the 20th

¹ Harris '*Factories of Death: Japanese Biological Warfare, 1932-45, and the American Cover Up*' (Routledge: 1995) at page 5.

² Barenblatt '*A Plague upon Humanity*' (Harper Collins: 2005) at page 40.

³ *Ibid* at page 124.

Century battlefield with, he hoped, devastating effect. The first use of fleas in warfare can have its roots traced back to as early as 1343, when the last Mongol Khan, Janibeg, had unwittingly spread disease through insects, which, in turn, allowed him to take the city of Kaffa.⁴ Even the great Napoleon Bonaparte was to be affected by infected fleas when the spread of plague defeated his campaign against the Ottoman Empire in 1799; and later in 1802, his army was beaten by the spreading of yellow fever by mosquitoes in Haiti. In 1812, Napoleon famously lost more than 80,000 men in a single month, rising to 130,000 due to the spread of infection.⁵ However, until Ishii, the involvement of fleas in the theatre of war had been unintentional.

In the summer of 1945, and the final days of the Second World War, Japanese troops were being forced back by the onslaught of approaching Allied troops who had their crosshairs set on mainland Japan. Scared that Ishii's secrets would be revealed, he attempted a cover-up similar to that of Nazi-Germany. Their efforts would thankfully prove to be in vain. So widespread were the atrocities of Unit 731 and other Japanese research facilities, that it would prove impossible to prevent the outside world from finding out about their war crimes.

Unit 731, at the order of Ishii, destroyed buildings, and any documents that they considered may be incriminating evidence used against them by the Soviets and other Allied nations. Unfortunately, this destruction was not limited to simple bricks, mortar, and paper.⁶ As the Soviets pushed on through China in the final days of the war, they would discover numerous mass-graves, where the Japanese Imperial forces had hastily

⁴ Croddy *'Chemical and Biological Warfare: A Comprehensive Survey for the Concerned Citizen'* (Springer Science: 2002) at page 220.

⁵ Pommerville & Alcamo *'Alcamo's Fundamentals of Microbiology: Body Systems Edition'* (Jones & Bartlett: 2012) at page 800

⁶ Yan-Jun & Yum-Him *'Unit 731: Laboratory of the Devil, Auschwitz of the East: Japanese Biological Warfare in China 1933-45'* (Fonthill: 2018) at page 137.

slaughtered innocent men, women, and children as they retreated. One of the most horrific of these sites found was on the outskirts of Hailar, where the bodies of approximately 10,000 Chinese and Mongolian people were found massacred.⁷

On 15th August 1945, the Japanese Emperor, Hirohito, made a radio broadcast with his announcement to the Japanese people that he had agreed to their surrender. The Second World War was finally over. So far as the Allied nations were concerned, the conflict had raged on for almost six years, having begun in 1939 with the Nazi-German invasion of Poland. However, for the Chinese, the war had begun in 1937 when Japanese troops invaded their territory.⁸ In truth, Japan had already been at war for the best part of a decade before the German advances in Europe.

The world had witnessed death on an unimaginable scale. As this thesis shall evidence, the unseen murders and ongoing illness caused by Ishii's work and his men would prove to be just as deadly as any battle. It has been said that more deaths could be attributed to the deployment of biological weapons by Unit 731 in Manchuria than to the two atomic bombs dropped on Japan by the United States. Conservative estimates place the death toll between approximately 140,000 and 226,000 people, not accounting for the hundreds of thousands of other casualties affected physically and mentally.⁹ The dropping of the atomic bomb would become, and remains, a key and divisive talking point in the aftermath of the brutal and bloody conflict in the Pacific. However, the work of Unit 731 has not been discussed so widely. In the subsequent war crime trials that would follow, both from the Allies at Tokyo and the Soviets at Khabarovsk, political agendas and propaganda would usurp justice for the victims. The Soviet Trial would last just 5 days,

⁷ Sheldon Harris *Factories of Death: Japanese Biological Warfare, 1932-45, and the American Cover Up* (Routledge: 1995) at page 4.

⁸ See: Mitter 'China's War With Japan 1937 – 1945: The Struggle for Survival' (Penguin: 2013)

⁹ Jeffrey Lockwood *Six-Legged Soldiers: Using Insects as Weapons* (Oxford University Press: 2010) at pages 1-2.

with no intention of offering the Defendants a fair trial. The Allies would fare no better; at Tokyo there would be no mention of the dropping of the atomic bomb or Unit 731 by the Allied prosecution or Justices. The atrocities committed by Unit 731 would not be aired at Trial as a consequence of a cover up by the Allies and Japan, whereas the dropping of the atomic bomb would be omitted for fear that such action amounted to a war crime. The outcome for both would remain the same: there would be no prosecution or punishment of members of Unit 731. This raises the question: why? The following thesis strives to contribute an answer to this question.

At the end of the war, while other Japanese war criminals would face prosecution, nearly all of those involved with Unit 731 would escape justice, trading their biological secrets with the Americans in return for immunity from the upcoming prosecutions, just as had been the case with the Nazi-German war criminals at Nuremberg. In particular, Unit 731 had carried out studies of a similar nature to that of their infamous Nazi physicians, who would rightly be punished at the end of the conflict.¹⁰ The Holocaust and the Nazi physicians' medical research had been inextricably linked by the Allies, who had obtained a wealth of damning evidence. The work being carried out by Ishii and Unit 731, under the guise of the Japanese Imperial Army, was qualitatively similar in character to those of Josef Mengele, a German Schutzstaffel (SS) officer. In contrast, Mengele would be nicknamed the "Angel of Death," known for the brutality of his experiments on concentration camp inmates. Ishii would receive no such publicity. This thesis will attempt to answer the fundamental question as to why this publicity did not occur.

Thousands of Nazi and Japanese perpetrators of other "*traditional*" or "*conventional*" war crimes would pay for their atrocities, typically in the form of killing

¹⁰ The United States prosecuted those Nazi physicians in a military tribunal widely referred to as the "Doctors' Trial," which gave rise to the Nuremberg Code for medical ethics being established.

civilians or prisoners of war, torture, rape and destruction of property. These “traditional” war criminals would often pay with their lives, or life imprisonment following conviction in international or domestic war crimes trials.¹¹ One of the central purposes of the war crimes trials after the Second World War was to restore the rule of law following a period of fascistic lawlessness, including atrocities. It would, therefore, be expected that Unit 731 and those involved would receive a similar fate. However, this requirement of justice would be discarded by both the Americans and Soviets. Unit 731 would escape the pages of history books for several decades after the end of the war and, its founder, Shiro Ishii, would remain a mostly mysterious figure, and does so even to this very day. The Allies attempted to balance the merits of an immunity deal, if any, against the need for the people of the world to see that justice had been administered. However, there would be, as this thesis will show, clear evidence that Ishii and his colleagues had committed grave breaches of the Geneva Convention 1929, violations of the laws or customs of war, genocide and crimes against humanity.

Unlike the research conducted by their Nazi counterparts, the full extent of Japan’s atrocities did not become common knowledge by design. At the end of the war against Nazi-Germany, the United States' Intelligence community engaged in recruitment to aid their military and economic ambitions.¹² The Soviets also began recruiting potential war criminals, thus circumnavigating any proposed proceedings with Operation Osoaviakhim.¹³

¹¹ The use of the word “traditional” is somewhat ironic, given the concept of “war crimes” in international law was in its infancy at the end of the Second World War.

¹² Operation Paperclip was a wide-scale recruitment program of Nazi-German scientists and engineers by the United States at the end of the war in Europe.

¹³ In a single day, the Soviets forcibly relocated 3,000 people from Germany into Soviet territory to boost their research (see: Jackson & Siegel *Intelligence and Statecraft: The Use and Limits of Intelligence in International Society* (Praeger: 2005) at page 186).

An immunity deal, the precise terms of which still remain unknown, was entered into by the researchers of Unit 731 and the United States. This "deal" was sanctioned directly from Washington under the watchful eye of General MacArthur, the Allied Supreme Commander in the Far East, who had assumed the responsibility of prosecuting Japanese war criminals under the terms of Japan's surrender.¹⁴ MacArthur would enjoy near absolute control of both the Allied occupation and prosecution of war criminals. He would set about prosecuting those war criminals of little value to him, grant immunity for those who did and would reshape Japan's very constitution in the post-war years.

The immunity deal would prove to be highly effective. However, Ishii and the key players of Unit 731 were allowed to evade justice in every sense and definition of the word, both legally and morally. Such was, and remains, the level of secrecy surrounding this immunity deal. At the time of writing this thesis, all relevant documents relating to a purported immunity deal between the United States and Japan's biological warfare program, Unit 731, remain sealed. The limited documents that have been released are heavily redacted, with the presumably most incriminating parts blanked out. This is the enduring legacy of an immunity deal and is, on the face of it, an assault on the requirements of the rule of law and the most basic grasp of justice for the millions of victims of WW2-related atrocities.

Had the weapons Unit 731 developed been deployed directly against the civilians or armed forces of the Western Allies, as distinct from Chinese and Mongolian civilians, there may not have been any appetite for an immunity deal. That is not to say that war crimes were committed exclusively non-Caucasian individuals. There were instances of biological experimentation being conducted on white Allied prisoners of war, however

¹⁴ Harris *'Factories of Death: Japanese Biological Warfare, 1932-45, and the American Cover-Up'* (Revised Edition: 2002) at xv.

these were conducted on a relatively small-scale. It may be that, in violation of the international law implications of the rule of law that stresses equality before the law, racial factors related to the ethnicity of the Unit 731 victims played an implicit role, at the least. The significance of an atrocity includes the relative “rank” and “priority” afforded to its victims, with massacres against some more favoured groups attracting more attention and interest in terms of prosecution than other less favoured racial, ethnic, and national groups. Here, it is worth speculating as to the possibility of a *de facto* immunity deal had the victims of Japanese biological warfare included white-skinned American citizens, for example.

The Second World War had resulted in the death of approximately 3% of the world’s population and the further displacement of around 1%.¹⁵ These figures do not account for the countless other "casualties" of the conflict. Had the weapons being developed by Unit 731 been used against the Allied troops, the death count, casualties, and displacement of the conflict would have undoubtedly been greater.

Between October 1945 and September 1946, the major Allied powers had already prosecuted the prominent Nazi war criminals at Nuremberg, before the Tokyo Trial of Japanese war criminals had even started. Using a detailed case study, this thesis will strive to explain why War Crime Trials are, arguably, far from perfect realisations of the rule of law. In the instance of the Tokyo Trials, it will explain the legal and moral issues raised as a consequence of such imperfections, and explore the impact of the secret immunity deal in stifling even an "imperfect" form of international justice against Ishii and those others responsible for Unit 731 and its atrocities.

¹⁵https://web.archive.org/web/20130306081718/https://www.census.gov/population/international/data/worldpop/table_history.php last accessed 6th September 2020

War crimes had been committed by almost all nations who participated in the Second World War; the Japanese were not alone. Notwithstanding the death count of the atomic bombs, the Allied bombing campaigns had been equally as devastating. Between 9th and 10th March 1945, the Americans had dropped incendiary bombs on Tokyo, with the resulting firestorm and the death of approximately 100,000 civilians. The city was only just in the process of being rebuilt when the atomic bomb was dropped five months later.

The Americans were not alone. As a revenge attack against civilians, the British were equally culpable, having extensively bombed Dresden on 13th February 1945 for little or no strategic importance. The chaos that ensued on the ground resulted in the burning alive of nearly 25,000 civilians when the war was all but over in Europe. The Soviets were also guilty of the mass-murder of civilians, evidenced by countless mass-graves across many Baltic nations, mass-rapes in Berlin, for example, and the false-imprisonment of hundreds of thousands of people and the displacement of millions.^{16 17}

The main difference between the Axis and Allied nations at the end of the conflict was that the Allies had, ultimately, been victorious. This gave them a position of power over the defeated nations, and, importantly, gave rise to the question of how they should exercise that power in terms of war crimes prosecutions. Whereas victorious nations at war had previously enjoyed the tangible spoils of war, the Allied nations had decided, in 1943 - at the Moscow Declaration before the end of the War - that they favoured the intangible spoils of justice by legal means. The Allies felt that the appropriate response to such heinous war crimes would be to hold those responsible to account via hundreds

¹⁶ Clodfelter *Warfare and Armed Conflicts: A Statistical Reference to Casualty and Other Figures* (McFarland & Co: 1992) at page 515

¹⁷ Schissler *The Miracle Years: A Cultural History of West Germany, 1949-1968* (Princeton University Press: 2001) at page 28.

of subsequent trials, with “show trials” to effectively initiate proceedings and lay down the template for future prosecutions. Such steps were entirely without precedent and would cause the Allies considerable challenges.

Not only content with establishing international precedent, the Allied nations also hoped that the proceedings would allow all sides to draw a figurative line in the sand. The post-war aim, which was shaped by the emerging Cold War with the Soviet Empire, included allowing both Germany and Japan to transition from foe to friend over the years that followed. Neither the British nor the Americans had any reason to effectively colonise or annex Germany or Japan, or even to bear the expense of long-term military governance. This ambition to transform Japan into a US ally supportive of US naval and related military bases was, perhaps, a more comprehensive geopolitical strategic factor; one that formed the broader context of the immunity deal that this thesis analyses in depth. For example, this thesis will later argue that such factors help to explain why the Japanese Emperor, widely revered as a god, escaped prosecution at the Tokyo Trial, despite both direct and indirect complicities in atrocities such as the Nanking Massacre.¹⁸

The decision not to administer harsh punishment against Japan highlights the difficulty of fair legal recourse in the face of strong political and ideological desire for Japan to be an ally of the Allied nations than an enemy.

State of the Art

From a distant glance, this chapter of unsavoury history appeared to have been hidden away from the public gaze because it was confined to various inaccessible storage

¹⁸ Hirohito had ratified the removal of the Imperial Army's obligation to treat Chinese prisoners of war per international law on 5th August 1937 (see: Wynn ‘*The Rise and Fall of Imperial Japan*’ (Pen & Sword: 2020) at page 143).

facilities, predominantly under the United States' control. Thankfully, this would all change in the 1990s when an exhibition entitled, “*the Citizen’s Committee for the Exhibit of Unit 731 Crimes*” travelled across Japan.¹⁹ This finally and unapologetically brought the issue of Japan's prior war-time atrocities to the Japanese people's conscience. Before this, there had been a near blackout within Japanese media. Arguably, the Japanese people had come to understand that their war-time conduct had not been a source of shame; this is a legacy of the failed justice in Tokyo.

The hard-hitting exhibition displayed the sinister tools used by troops and scientists of Unit 731, and allowed former members of the Unit to publicly confess to their wilful participation in such a murderous unit without any apparent fear of retribution. This first-hand testimony of the individuals who had committed or commissioned such atrocities was no longer deniable. The heinous work of Unit 731 had rightly been exhibited in the same way in which they had conducted their research: graphically and with unshakeable, undeniable brutality. Many of the atrocities committed by Unit 731 had previously remained disputed and often denied by many within Japan, both on an individual and an organisational level. More recently, however, the tide has been turning, albeit with a lack of any genuine remorse from those who had collectively formed the deadly Unit.

It has only been since academic interest and research, coupled with the testimony of victims emerging in the 1980s and 1990s, and the touring exhibition, that the horrific work of Unit 731 has slowly begun to come to the fore. Now, over the last three decades, the true extent of their blood-thirsty research and experiments has truly been appreciated by academics, the media, and hopefully the populace. Given the relative infancy of

¹⁹<https://www.nytimes.com/1995/03/17/world/unmasking-horror-a-special-report-japan-confronting-gruesome-war-atrocity.html> last accessed 6th September 2020.

literature on the topic of Unit 731, issues related to the atrocities of Unit 731, as well as questions of *de facto* legal immunity from prosecutions, have been dealt with in isolation. There has also been a tendency to avoid mention of Unit 731 within other vital topics that arose from Japan's war-time conduct; namely, the role Hirohito played in Unit 731 and the subsequent Tokyo Trial that convened to prosecute Japanese war criminals.

The immunity deal, unilaterally entered into at the end of the conflict between the Americans and Ishii, directly resulted in the release of thousands of potential war criminals of different classes back into the population, unscathed and without remorse. It also contributed to a climate of denial within Japan of its role in war crimes, which has only recently been corrected in officially sanctioned history books studied by Japanese school students.^{20 21} This post-war denial culture contrasts markedly with the reaction of modern post-war Germany to its complicity in Mengele's related research and atrocities against Jewish, and other, civilians.

The existing literature has focused on distinctly separate topics: modern Japan, Unit 731, Japanese war crimes, immunity deals and their implications, and the Tokyo Trials. While this thesis is not intended to be as comprehensive as the respective work academics such as *Bix* on Hirohito; *Gold, Harris* or *Barenblatt* on Unit 731; or *Boister & Cryer* on the Tokyo Trial, this thesis will provide originality by bridging the gaps on these previously distinct topics to give the reader a well-rounded and comprehensive understanding of how Unit 731 came to fruition and flourished in modern Japan, under the control of Shiro Ishii and Emperor Hirohito and, importantly, how they avoided prosecution for their crimes. In respect of Hirohito, previous literature has tended to shy away from the implicit role that he would have played in the development of Japan's

²⁰ <https://www.bbc.co.uk/news/magazine-21226068> last accessed 6th September 2020

²¹ See: Sneider '*History Textbooks and the Wars in Asia: Divided Memories*' (Routledge: 2011)

extensive biological warfare program. This thesis will provide further originality but applying the framework of Tokyo to those Defendants who ought to have rightly been prosecuted by the Allies.

Structure

This thesis has been separated into five distinct vital elements. In the first part of this thesis, a historical overview of modern Japan will be provided. This section will address the societal, political, and economic changes that occurred from 1853 - when Japan was forcibly opened to outside trade - until the final days of the Second World War.

The second part of this thesis introduces Unit 731 and its founder, Shiro Ishii; it discusses the involvement of Japanese Emperor Hirohito and the role that he played in supporting Unit 731's rapid expansion. In turn, this will lay the groundwork for future discussion as to the culpability, under the prevailing international criminal law, of Ishii and Hirohito. Furthermore, it allows for a comparison of convicted defendants at Tokyo and the earlier Nuremberg Trial.

The third section of this thesis addresses Japan's surrender on 15th August 1945 and the Allied response; principally, the investigations carried out by them at the end of the War to ascertain Japan's biological warfare program's true extent. As this thesis will discuss, those investigations were flawed from the outset. The likely real purpose of these was not the fulfilment of the rule of law, nor providing general justice. Instead, American authorities were more concerned with their "due diligence" to the extent and future military value of Ishii's research data before any immunity deal was granted.

The fourth part of this thesis will detail the legal response to Japan's crimes, both before and during the Second World War. It will also address the inception of the

International Military Tribunal for the Far East (also interchangeably referred to hereafter as the ‘Tokyo Trial’ and ‘IMTFE’), together with a comparison with Nuremberg, the selection of Defendants, and the charges brought. Unlike Nuremberg, there was no unanimous Judgment at Tokyo, nor even a judicial agreement as to the validity of the legal basis of the trial itself. Part Four of this thesis will discuss the Justices of the Tokyo Trials, providing a brief description of their respective backgrounds and qualifications, and the difficulties they faced in presiding over the evidence presented.

The fifth part of this thesis will detail the Judgment of the Tokyo Trial pertinent only to the provisions that would have applied to those involved in Unit 731. From this, the thesis will then apply the same legal framework for a theoretical discussion as to likely sentences, if any, handed down against the key players of Unit 731 had they faced any proceedings. Finally, this thesis will consider how the immunity deal and lack of justice impacted or contributed towards the perceived conception that Japan had, and continues to show a lack of remorse or accountability for her wartime atrocities.

The Tokyo Trial remains mostly forgotten, whereas the Nuremberg Trial is still a keenly debated topic for academics and laypersons.²² The greatest legacy of the Tokyo Trial was to cement, into international law, the legal framework established controversially at Nuremberg; thereby creating a precedent for future international tribunals on which to prosecute war criminals at an alarming frequency during the decades that followed.²³ The importance of the Tokyo Trial is often and easily forgotten; though it consolidated the Nuremberg experience, and comprised the foundation of any future prosecution of war criminals. The issue of whether or not the creation and implementation

²² Williams ‘Chapter 3: *The Tokyo War Crimes Trial Before the International Military Tribunal for the Far East*’ (International Humanitarian Law - Transnational Publishers:2003) at page 107.

²³ Fichtelberg ‘*Fair Trials and International Courts: A Critical Evaluation of the Nuremberg Legacy*’ Criminal Justice Ethics: Vol. 28, No. 1, May 2009) at page 5.

of such international law was “fair” will be touched upon in this thesis, albeit confined to the issues relevant to Unit 731 and the dissenting judgments handed down in the Tokyo Trial.

The wounds inflicted upon China by Unit 731, approximately eight decades ago, remain open to this very day. As with many war crimes committed during the Second World War, many of the victims of such atrocities are now no longer with us due to the considerable passage of time. Justice for the victims of Unit 731 was, and remains, non-existent. America continued to hijack the discussion on war crimes at the end of the Second World War, with a clear bias towards atrocities committed against the Allied nations, as opposed to those committed by them; this is a point relevant to the US’ controversial refusal to sign up to the ICC. There continues to be resistance by prominent members within Japanese society to accept moral responsibility for the atrocities committed during the war years, unlike their German counterparts.²⁴

In short, the overwhelming and overriding ambition of this thesis is to bring to the fore the atrocities committed by Unit 731, the failings of the Allied nations to prosecute Japanese war criminals effectively, the immorality of the American immunity deal, and its enduring legacy.

²⁴ Penney ‘*The Abe Cabinet – An Ideological Breakdown*’ *The Asia-Pacific Journal*, Vol. 10, Issue 54, 31st December 2012 (<https://apjif.org/-Matthew-Penney/4747/article.html>)

Methodology

In order to achieve these varied aims, it is appropriate for the thesis to adopt a number of methods in order to do the research topics justice and provide a balanced commentary given the varied subjects being addressed.²⁵

A key method adopted by this thesis is the doctrinal / black letter approach, employed to establish the factual background to modern Japan, the atrocities committed by Unit 731, the investigations undertaken by the Allies at the end of the conflict, the creation of the Tokyo Trial and the Judgment delivered and finally the legacy of Tokyo and the immunity deal. The doctrinal approach can be defined as “*a detailed and highly technical commentary upon, and systematic exposition of, the context of legal doctrine.*”²⁶

The doctrinal approach will underpin this thesis, providing a factual foundation by identifying legal principles and frameworks or patterns established at Nuremberg, allowing this thesis to then proceed with a theoretical application and interpretation of that legal framework to individuals who should have faced indictment at Tokyo.²⁷

The use of the doctrinal method also sets out the legal framework and enables critical analysis and interpretation of the definitions and principles adopted by the Allies at Tokyo and the Justices when delivering their judgments. The doctrinal / black letter approach is often considered a rigid, simplistic and factually based approach,²⁸ however it has been argued that the approach encompasses other issues, such as history and

²⁵ Salter & Mason ‘*Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research*’ (Pearson: 200&) at page 31.

²⁶ Salter & Mason ‘*Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research*’ (Pearson: 200&) at page 49.

²⁷ Vick ‘*Interdisciplinary and the Discipline of Law*’ *Journal of Law and Society*, Volume 31, issue 2, June 2004 at page 165.

²⁸ Salter & Mason ‘*Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research*’ (Pearson: 200&) at page 99.

politics,²⁹ which are relevant when considering the policies and motives behind the indictment and sentencing at Tokyo. It is for this reason that the

The thesis will also employ a comparative method, in order to give the reader a balanced understanding of the research topics. The comparative approach will be adopted when considering social, economic and legal topics. This approach will also be of particular importance when considering separate legal jurisdictions and their differing approaches to legal principles and their application. Whereas the doctrinal method sets out the foundation, the comparative approach allows for critical analysis of legal principles and how they are applied. It also allows the reader to appreciate the prevalent views of society, politicians and the medical profession in the early to mid-20th Century.

A criticism of the comparative method can be that on occasion it is used to compare ‘apples and oranges’, nor are rules and principles easily transplantable from one jurisdiction to another.³⁰

This thesis will apply the comparative method to a number of issues. Firstly, comparison will be made in Part One of this thesis to the development of Japan with other nations in a social, political, military and economic perspective over the same period of time. Secondly, comparison will be made with the research conducted by Unit 731 as against the research conducted by other nations, such as Nazi-Germany, Great Britain and the United States. Thirdly, comparison will be made between the inception, charter, judgment and sentencing at Nuremberg as against those at Tokyo. This thesis will

²⁹ Vick *‘Interdisciplinary and the Discipline of Law’* Journal of Law and Society, Volume 31, issue 2, June 2004 at pages 163 – 164.

³⁰ Kahn-Freund *‘On uses and Misuses of Comparative Law’* Modern Law Review, Volume 21, No.1 January 1974 at page 27.

document the struggle between the Allied nations in producing an agreed Charter and the difficulties of the Justices in agreeing to a Majority Judgment.

A benefit of using this method in this thesis is that all of the materials required, such as the Charter, Majority and Dissenting Judgments and Sentences for Nuremberg and Tokyo are readily available and highlights the contrasting approaches adopted by the Justices.

The comparative method is of vital importance and gives the thesis 'bite', particularly when there is a theoretical discussion on the probable outcome had Hirohito and Ishii faced indictment.

PART ONE

A HISTORICAL OVERVIEW OF MODERN JAPAN

Atrocities of the nature, scale, and murderous impact committed by Unit 731 typically do not happen in times of peace. Several pieces of a metaphorical jigsaw need to fit together at the same time, in the same place, for them to be committed. Without the vital key players at the helm, they are not planned or commissioned. Ordinarily, a small number of leaders order many subordinates to carry out atrocities on their behalf. While atrocities can be committed in times of peace, they rarely happen on an industrial scale with wanton disregard for human life. It is essential to understand how Ishii and his staff were able to flourish.

The first part of this thesis will explain the historical context of Japan's atrocities, providing a historical overview of modern Japan and relevant events until the conclusion of the Second World War. It will also provide commentary upon these atrocities before moving on to the role played by those critical figures in advancing Japan's biological capabilities. In effect, the first part of this thesis will reconstruct the road to Unit 731 by providing a historical, societal, and political overview of events in order to track the incremental steps towards murder and genocide. This contrasts with previous texts that have tended focus solely on Unit 731, without any clear explanation or understanding as

to how or why these atrocities were committed. The second part of this thesis will then discuss the creation of Unit 731 in conjunction with the key players involved.

In less than a century, societal beliefs and traditions that had prevailed in Japan for millennia changed: seismically, forcibly and irreversibly. This is explicable by reference to the forced opening of isolationist Japan in 1853 by the Americans, and the subsequent Meiji Restoration of 1868, which effectively “*Westernised*” aspects of Japan.³¹ Such rapid change impacted upon this nation's unique traditional beliefs and the longstanding hierarchy between the people of Japan and the Emperor alike. All of these factors played their part, albeit in the form of a series of seemingly small steps, in allowing and encouraging the atrocities that were later committed by Unit 731.

This ‘Westernisation’ set into play a chain of events that would change Japan's military from a feudal, divided force into a well-drilled, well-armed force; one that engaged and provoked various conflicts following the Restoration, not confined solely to the Second World War, but also including the 1937 invasions of China. Did the Western world set into motion the events that followed by forcing Japan to become an open country? Did the resentment and division caused by this process result in the seeds being sown for subsequent events? Part One will attempt to explore and answer these questions, or at the very least, go some way to explain the potentially damaging impact that these rapid societal and economic changes had on Japan's medical ethics and, in particular, the activities of Unit 731. Those changes were to begin nearly a century before the Second World War concluded.

³¹ That being to adopt the cultural, economic, or political systems of North American and European nations.

The Meiji Restoration

If we are to truly understand the profound changes that Japan underwent in the run-up to the creation of Unit 731, we need to address the starting point of what many academics consider to be the beginnings of "modern Japan": the Meiji Restoration. It is easy to forget that Japan, by modern standards around the mid-part of the 19th Century was, for want of a better term, lagging considerably "behind" the development of traditional Western nations; it had yet to develop technology, societal views, and democratic structures of the type evident, for example, in the United States, Great Britain, and continental Europe.

The changes that Japan underwent in the space of less than a hundred years cannot be ignored, nor can the profound changes that were adopted by the nation and its people. At least in part, these both accommodated and encouraged the atrocities that were committed before and during the Second World War by Japanese soldiers and researchers. A "world-leading" biological warfare program, such as Unit 731, could not have happened had not the Meiji Restoration previously taken place.

Japan began its modern-day military expansionism after the Meiji Restoration in 1868, a pivotal moment in Japan's national history and a crucial step towards the modernisation of Japan, as we know it today.³² The Meiji Restoration, in simplistic and inevitably rather crude terms, consolidated the existing framework in Japan led by an elected Prime Minister and Cabinet, who would fall under the control of one Emperor of Japan. This was, essentially, the process that had already been adopted as the Western "brand" of democracy, as opposed to a sole monarchy personified by an Emperor, who exerted supreme control over the nation with only superficial similarities to the constitutional-style of monarchy in Great Britain and other nations.³³

³² Jansen *'The Making of Modern Japan'* (Harvard University Press: 2000) at page 335.

³³ Beasley *'The Meiji Restoration'* (Stanford University Press: 1972) at page 325.

From an autocratic imperial system, revolving around an almost superhuman Emperor, Japan would now have a more complex hierarchy; one that allowed a greater degree of individual involvement and influence on the development of the nation, both domestically and internationally. In principle, this modernisation of political and constitutional structures had the capacity to unify and align Japan with other key global players, specifically the United States and Great Britain.

The Restoration takes its name from Emperor Meiji, who was successfully restored to the Throne, predominantly due to the Western Powers' increasing, yet largely unwelcome, involvements within Eastern Asia. The Meiji Restoration was, therefore, not a change that the Japanese nation necessarily desired. Instead, it was a burden that was forcibly imposed on Japan to effect change. The demand for trade with Japan, and their resistance to engage with foreign nations, guaranteed that the United States would take affirmative action to ensure their financial interests in the region continued to prosper.³⁴

Some fifteen years earlier, in 1853, the American Commodore Perry had very publicly forced Japan to open its trade to the "outside world", particularly the United States. Having led a fleet of ships into Tokyo Bay, Commodore Perry had demanded that Japan agree on terms favourable to the United States for any future trade. The irony should not be lost in that the USA, as an alleged "democratic" and unprovoked nation, undemocratically forced a trade agreement upon a weaker nation and, in turn, subsequently pressurised it to adopt a similar brand of "democracy" under threat of destruction.

Naturally, this act led to strong disagreements within Japan. Until this point, Japan had primarily been an isolated island nation with little, if any, intention or desire to open

³⁴ Horie 'Foreign Trade Policy in the Early Meiji Era' (Kyoto University Economic Review, Vol. 22, No.2, October 1952) at pages 1 - 21.

its ports to foreign vessels. Likewise, they had barely any intention of burdening any foreign ports with their vessels.³⁵ Internal conflict arose in Japan between those who maintained their traditional, isolationistic views and those who wanted Japan to be at the forefront of the modern world. Such divisions are comparable with those seen today in the Western world, particularly in both the United States and Great Britain. A strong argument from those of a more modern persuasion was in favour of creating "diplomatic" ties with the Americans, who were seen to have impressive military superiority. The docking of their warships in Tokyo Bay was an unavoidable reminder of this. In truth, the Japanese had no real means of defending itself against the vastly superior American Navy, and Commodore Perry had inevitably and deliberately struck fear into the Japanese with his show of force in their Harbour. Had they resisted the request of the United States, they could have been annihilated.³⁶ Japan's complete lack of any real means to defend itself from a foreign aggressor had been made abundantly clear.

Those of a more traditional persuasion were of the view that such an agreement would be likely to damage the nation's heritage. These traditionalists maintained that resistance should be offered against the Americans to ensure that Japan's culture and identity remained intact. The traditionalists were right to be cautious about entering into such an agreement; their concerns would be proven correct over the coming decades, albeit that changes to Japan's societal and political structure would emanate from the establishment of a new constitution by the Meiji Restoration. Whatever their beliefs, the overwhelming issue that united most in Japan was the bitter taste left by the approach of the United States. The latter came to know that Japan had no real means of defending itself against a Western Power. Thus, the question arose regarding what was more

³⁵ Beasley ' *The Meiji Restoration* ' (Stanford University Press: 1972) at page 88.

³⁶ Schroeder ' *Matthew Calbraith Perry: Antebellum Sailor and Diplomat* ' (Naval Institute Press: 2001) at page 286.

important to Japan: to protect Japan's traditions or to protect its future? This was one of the first international dilemmas of its kind. For the once secluded Japan, they had now been forcibly thrust onto the world stage.

Unsurprisingly, the Japanese begrudgingly agreed to sit down with Commodore Perry to discuss potential future trade. Perry landed on 8th July 1853 with 500 marines, sailors, and musicians, armed and in full military uniform, to further reinforce their strength to the Japanese onlookers.³⁷ What transpired would also not prove to be a surprise; that being the Treaties created after, which were unequally weighted in favour of the Western nations, predominantly the Americans.

Japan would ultimately end up resenting the Western Powers for the unequal bargaining powers in place. It would, however, be unfair to provide an unbalanced commentary that suggests the treaty was of no benefit to Japan. Indeed, they had forcibly opened Japan to the West for trade, although Japan did come to enjoy considerable financial and military benefits from it. Japan had, at the time of Commodore Perry landing in Tokyo Bay, been appreciative of the Western Powers for having comprehensively defeated China in the Opium Wars. The reality, however, was that if Japan did not agree to Perry's terms in full, a similar devastating fate would likely await them.

The Meiji Restoration, just over a decade later, occurred for various reasons. Such a significant event cannot be readily attributed to a single cause: the 'forced' opening. Although not causative or foreseeable, the forced opening up of Japan to the West by Commodore Perry led to an aggressive foreign policy being adopted by Japan in the years that followed. A driving factor behind the Restoration was Japan's realisation that, by creating a modern, single state with a clear hierarchy, as opposed to their traditional and mainly divided feudal society, Japan would derive significant benefits. In particular,

³⁷ Wittner 'Commodore Matthew Perry and the Perry Expedition to Japan' (Rosen: 2005) at page 87

Japan would be giving her nation the best chance of becoming a united and powerful nation in her own right. By doing so, no other nation could further limit her sovereignty.³⁸ In short, while the ‘forced opening’ left a bitter taste, it did allow Japan to reap the benefits of a modernised state.

Soon after the Restoration, Japan, as the traditionalists had feared, began to change beyond recognition in relation to its constitution, economy, and society. The Meiji Constitution of 1889 enshrined Imperial divinity, allowing the Emperor to remain at the top of the hierarchy.³⁹ This appeased the traditionalists. The Emperor then governed Japan, but with the assistance of a Privy Council and Diet (akin to the British Parliament or American Congress), combining non-elected and elected members from the House of Representatives.⁴⁰

The Emperor still had ultimate control if necessary, and, importantly, he was allowed to initiate both war and peace. In the process of this constitutional carving up of powers, the Imperial Japanese Army and Navy were given a significant increase in powers to veto the Cabinet regarding changing or abolishing government policy.⁴¹ These changes gave the newly-formed democratic nation some militaristic bite to allow both self-preservation of Japan's military and, if so desired, its rapid territorial expansion. It would also unintentionally provide a strong nationalist feeling within the Cabinet, and the constant threat of a military coup. Whatever the difficulties Japan's Cabinet may have faced, the nation acquired the ability to have her own well-organised military, with

³⁸ Jansen *‘The Making of Modern Japan’* (Harvard University Press: 2000) at page 335.

³⁹ Cullen *‘A History of Japan, 1582 – 1941: Internal and External Worlds’* (Cambridge University Press: 2003) at page 16

⁴⁰ Leslie C. Green *‘Law and Administration in Present-Day Japan’* (1 Current Legal Problems: 1948) at pages 118-189.

⁴¹ Jansen *‘The Making of Modern Japan’* (Harvard University Press: 2000) at page 421.

Western hardware courtesy of the United States to rival, and often surpass, that of her neighbours.⁴²

The Restoration encouraged both Japan's modernisation after a long period of international self-seclusion, and expansion through their newly formed Imperial forces. The newly adopted Constitution had taken power from one man, the Emperor. It allowed various individuals and bodies to influence Japanese policies, both internal and foreign, for their own gain with the establishment of the legislative, executive, and judicial limbs of state. Whether such decisions were in the nation's best interest was less material than the structural changes themselves.

The Restoration had not only modernised and "democratised" the upper echelons of power in Japan. Her society had also started to adopt more liberal 'Westernised' views and, in the process, began to discard their traditional conservative views. For example, by 1870, only two years after the Restoration had taken place, the long-held tradition of sword-carrying had been outlawed, an indirect attack on *Bushido*. Western dress had also begun to replace more traditional Japanese garments on the streets of major cities.

Her military would also undergo significant changes. While swords would still form a symbolic part of the Japanese Imperial Army, they would no longer be the primary weapon in combat. The long-held tradition of *Bushido* would be one of the first victims of the Restoration, along with the role of the Samurai in Japanese society. It had been the duty of Samurai to maintain order in a feudal society. This feudal system had now effectively been abolished. Therefore, there was no clear role for the Samurai who - along with *Bushido*'s concept - had been replaced almost overnight with an Imperial army and

⁴² Simon & Alaa Abdel-Moneim 'A Handbook of Military Conscription and Composition the World Over' (Lexington: 2011) at page 191

a less stringent military penal code.^{43 44} Both the Samurai and Bushido were now deemed surplus to requirement.

While increasing her military strength, these changes resulted in a degradation of Japan's long-held traditions and military ethics. It proved to be of greater importance to the Cabinet that Japan should have a united armed force to protect itself if another foreign aggressor emerged,⁴⁵ so that the embarrassment of Commodore Perry's 1853 landing would not happen again. The checks and balances that had been in place for centuries were now being eradicated piece by piece, all in the name of modernisation.

Within two short years of the Restoration, a government had been formed to assist the Emperor in ruling Japan, and her people and military were adapting, irreversibly abandoning traditions in favour of modern convenience and efficiency.⁴⁶ While Japan became culturally poorer, her capital gain was significant. Japan gleefully adopted Western technologies and inventions, bolstering her economy.

In the coming years, Japan keenly adopted a variety of cutting-edge technologies and processes in the form of railways, cameras, telegrams, newspapers, compulsory education, a postal system, and steamships. For the first time in 270 years, Japanese citizens were now travelling outside of Japan and could return of their own volition. Before this, during the Tokugawa Shogunate, isolation had been the chosen way of life. It had been illegal to return to the Japanese mainland to taint the Japanese people with outside views, after a period of absence. Such was the strength of this conviction that,

⁴³ Behr *'Hirohito: Behind the Myth'* (Penguin Books: 1990) at page 21.

⁴⁴ Zapotoczny Jr *'Beyond Duty: The Reasons Some Soldiers Commit Atrocities'* (Fonthill: 1988) at 'Indoctrination and Training of the Japanese Military'

⁴⁵ The Japanese Imperial Army had adopted conscription to bolster their fighting force from 1873 onwards, which saw an increase from a fighting force of 17,900 in 1873 to 33,000 in 1875 (see Drea *'Japan's Imperial Army: Its Rise and Fall, 1853 – 1945'* (University Press of Kansas: 2009) at page 29.

⁴⁶ For example, by 1872, all lands that had been granted under the Tokugawa government from the 17th century onwards had been returned to the state in favour of political sway in the newly established government (see: Bannon *'Redefining Traditional Feudal Ethics in Japan during the Meiji Restoration'* Asian Pacific Quarterly, Vol. 26, No. 1 (1994) at pages 27-35.

even if a person was shipwrecked, he was forbidden to return. This extremist belief has glaring similarities to the isolated dictatorship of North Korea today, in contrast with the modernised and open democracy of South Korea.

The forced opening of Japan by Commodore Perry and the Restoration that followed had, in simple terms, degraded the unique identity of Japan and her people. In return, she had increased her ability to defend herself and increase revenue by trading with the outside world.

Japanese Expansionism

The Restoration and the newly created Constitution had brought a boom due to external investment and the introduction of new technologies. Japan, as a relatively small island nation, soon set about an aggressive foreign policy to secure interest and commodities abroad. Her continued growth would not be confined to her own shores.

The newly-formed national army would prove not only to provide defence from foreign aggressors but, in turn, allowed Japan to become that foreign aggressor she had once feared. In a few years, Japan had gone from a nation in isolation to an aggressive international war-monger.

The transition did not take long; conscription had been implemented in 1873 and, by 1874, Japan had invaded Taiwan. This was a landmark moment for Japan and her military as the first aggression on foreign soil.⁴⁷ Japan's expansion was only just beginning. By 1875, the Japanese military annexed the Kuril Islands, which consisted of over 50 islands located in Russia's Sakhalin Oblast region.⁴⁸ Today, these islands are under the jurisdiction of Russia. Japan was now starting to flex her new-found muscles,

⁴⁷ Harries & Harries 'Soldiers of the Sun: The Rise and Fall of the Imperial Japanese Army' (New York: 1994) at page 28.

⁴⁸ The Treaty of Saint Petersburg divided the island territories between Japan and Russia in 1875.

albeit against relatively weak opposition. The need for research in to new weaponry, whether biological or traditional, would prove to be vital in order to ensure that Japan stayed at the forefront of international military capabilities over the half-century.

A year later, in 1876, Okinawa followed the fate of Taiwan and the Kuril Islands. Okinawa would go down in infamy less than seven decades later for Japan's bloody defence in the final months of the Second World War. The battle would, in turn, contribute to the United States' decision to drop two atomic bombs on Japan. While these three military victories were a watershed moment for Japan, given the size and structure of Japan's military, they were comparatively easy pickings. Ultimately, these military operations would prove to be nothing more than training exercises in preparation for their primary focus: China. The two nations had been at loggerheads over an ongoing dispute of the ownership of Korea.

Fast forward to the tail end of the 19th Century and Japan had also been victorious in the Sino-Japanese War of 1894-95.⁴⁹ The dispute with China had now been ended; Korea's sovereignty was transferred to Japan following the Treaty of Shimonoseki.⁵⁰ Just as America had forced its will upon Japan by way of treaty, Japan was now similarly exercising her authority by force on other weaker nations.

While Japan had secured Korea, these victories provided an opportunity for Russia to take advantage of Japan's busy expansion policy by occupying the north-eastern Chinese provinces, namely Manchuria, which would prove to be a fertile area of conflict in later years and would become home to Unit 731, central to this thesis.

However, Japan had not been alone in adopting an aggressive foreign policy as the 20th Century loomed. In 1898, the United States annexed Hawaii, which would be the

⁴⁹ Drea 'Japan's Imperial Army: Its Rise and Fall, 1853 – 1945' (University Press of Kansas: 2009) at page 83.

⁵⁰ Calvocoressi, Guy Wint and John Pritchard '*Total War: The Causes and Courses of the Second World War*' 2nd Edition (Pantheon: 1989) at page 614.

stage for the surprise Japanese attack on Pearl Harbor some 43 years later. They had also taken possession of the Philippines,⁵¹ which would similarly suffer a devastating and embarrassing surprise invasion on the very same day as the attack on Pearl Harbor. The world's boundaries were in constant change, with nations pouncing on smaller countries to fall under their rule; this amounted to nothing more than shameless land grabbing. It provided the easiest way for any nation to gain international attention and respect, in addition to the additional wealth of securing resources for trade.

In 1902, Great Britain, arguably the greatest colonial nation globally at that time, signed the Anglo-Japanese Alliance of 1902. This was a pivotal moment for Japan; if she was to be considered a world power, she had to be seen to sit at the same table as Great Britain and the United States.⁵² Japan's growing reputation and international stock would increase further when her Imperial army assisted Great Britain by intervening in Siberia against the Bolsheviks. Not only had this been mutually beneficial for Japan, it had also been an occasion where she had been an equal of Great Britain.

There had been a seismic change for Japan in the space of five decades: they were now on the side of the perceived "oppressor" and not the "oppressed". Japan's stock continued to rise, and she was now beginning to cement strong bonds with powerful nations around the globe, far away from her own shores. Japan was the first Asian country to be admitted into the "family of nations" recognised as international law subjects. The Anglo-Japanese Alliance was the first time that East and West had an agreement on equal terms; a profound shift since the treaty forced on Japan five decades prior. The nations that were neighbours to Japan's territorial borders did not receive such "kindness".

⁵¹ Calvocoressi, Guy Wint and John Pritchard *Total War: The Causes and Courses of the Second World War* 2nd Edition (Pantheon: 1989) at page 614.

⁵² Hargreaves 'The Anglo-Japanese Alliance' *History Today* (1952) at pages 252-258.

It is clear at this juncture that Japan was already well on the way to what we know of Japan as a nation today, with Emperor Meiji responsible for laying the foundation. Tensions continued to rise between Japan and Russia, with Japan unhappy that Russia had seized the opportunity to “land-grab” while Japan’s military had been preoccupied elsewhere. The joint occupation of the north-eastern provinces of China by Japan and Russia would soon see them both coming to blows, and Japan would have to see off a far more threatening and capable opponent than her Imperial forces had previously fought against. Japan’s military forces did not have long to wait.

The two nations crossed swords during the Russo-Japanese war of 1904-05, where Japan was victorious. Her military had now beaten a nation of equal reputation and strength without assistance. Any doubt other nations may have had over the military strength of Japan had now dissolved. In the aftermath, Japan sat down with Russia as the victor, and another treaty was forced upon the latter as the losing nation: The Treaty of Portsmouth. The Treaty was signed in September 1905, and from this Treaty, unsurprisingly as the victor, Japan secured formal confirmation of her claimed rights over Korea.⁵³ Consequently, the Japanese had also demanded a transfer of the contentious South Manchurian Railway, which would now fall under her control. As the losing nation, there was little that Russia could do to resist these demands other than adopt a policy of appeasement.

The Treaty also provided for the two nations to provide military protection to their respective railways, deemed vital national interests. This provision would, inadvertently, lay the groundwork for future hostilities three decades later. The provision was also subsequently agreed to by China in the Manchurian Rehabilitation Pact to allow for

⁵³ Lee ‘*A New History of Korea*’ Translated by Edward Wagner (Ilchokak: 1984) at page 309.

mutual self-defence of their respective interests in the region.⁵⁴ This will be revisited later, concerning the Manchurian crisis.

Another powerful ally of the blossoming Japan, the United States, had backed Japan during the Russo-Japanese war. This was no charitable act; the United States had correctly believed that Manchuria's annexation would logically lead to an increase in opportunities to import and export goods to and from the region with a nation that they had previously traded with. The United States had surmised that these opportunities would not have existed had Russia been the victorious nation.

Unfortunately for the United States, their hopes were somewhat misplaced. The opposite inextricably occurred, with trade between the two nations grinding to a halt. The United States was outraged that their "generosity" had not been repaid in full, with interest, by Japan. Scorned by the reduction in trade, and in ignorance of critical clauses of the Treaty of Portsmouth, the United States set about plans to create an adjoining train network to rival the South Manchurian Railway.⁵⁵ This was an attempt to challenge Japan's economic profits from the region. Not for the first time, the United States had adopted a mercenary and confrontational approach in protecting their best interests in the region. This was a stance that would only serve to fuel international mistrust between the historically reclusive Japan and other Western Powers, as well as stoking a desire for revenge.

It was abundantly clear to Japan that they walked a fine line between ally and enemy. While the Russo-Japanese war of 1904-05 had turned the United States from friend to foe, the conflict was also the first display of Japanese attitudes to biological research, their physicians' attitude to its application, and war-time conduct and treatment

⁵⁴ See Articles I, VI, IX, and sub-article to Article III of the Treaty of Portsmouth, signed at Portsmouth New Hampshire on 05th September 1905.

⁵⁵ Elleman & Kotkin *Manchurian Railways and the Opening of China: An International History* (Routledge: 2010) at page 11.

of prisoners of war. This was the very foundation of what would become her world-leading biological research program.

Japan's Initial Biological Research

The Russo-Japanese conflict had shown that Japan could not only match, but better, the military of a worthy adversary, namely Russia. Japan had triumphed and had, as was her “right”, taken the spoils of war.

It would be naïve to think that wars are won and lost solely due to battles that occur. While there had been considerable developments to Japan's society, constitution, and economy, there had also been significant strides made within the related fields of science and medicine within Japan. In turn, her increased understanding of these disciplines would not only benefit her society and economy, but also her military. By applying this newly-found knowledge and expertise to the battlefield, Japan hoped to further strengthen and solidify their expanding territory. This desire would, in turn, lead to the formation of Unit 731.

The Japanese scientific and medical communities knew that for the endeavours of the Imperial army to be fruitful, their research and application of treatment in the field of biology had to be better than that of the opposing nation. If Japan were to be the victorious nation in a war, she would likely be the one who had successfully controlled the outbreak of disease amongst her troops. In order to have the edge on the battlefield, then the silent killer - disease - had to be controlled or, if possible, prevented entirely.

This realisation did not occur by chance; the leadership of Japan and her military implicitly realised that all too often, warfare is a battle of not only tactics, but also of a sheer numerical advantage. If Japan were able to maintain a healthy army, and her enemies were unable to do so, she would likely succeed on both the tactical and the

numerical front.⁵⁶ In turn, this would lead to Japan enjoying further “spoils” of war, which would benefit her military, society, and economy.

A unique insight into this desire by Japan to harness biology comes from U.S. Army doctor Louis Livingston Seaman, the military attaché to Japanese troops during the Russo-Japanese War of 1904-05. Following this, Stevenson published his findings in his book, *The Real Triumph of Japan: The Conquest of the Silent Foe*. In that text, Seaman correctly stated that:

*“the history of warfare for centuries has proven that in prolonged campaigns the first, or open enemy, kills twenty per cent of the total mortality in the conflict, whilst the second, or silent enemy, kills eighty ... This dreadful and unnecessary sacrifice of life, especially among the Anglo-Saxon races, is the most ghastly proposition of modern war, and the Japanese have gone a long way toward conquering or eliminating it... I unhesitatingly assert that the greatest conquest of Japan have been in the humanities of war, in the stopping of the needless sacrifice of life through preventable disease... Japan put into use the most elaborate and effective system of sanitation that has ever been practiced in war”.*⁵⁷

Whereas Japan's enemies were preoccupied with primarily increasing their traditional weapons arsenal, Japan knew that she could inflict more damage to her opponents if she could ensure that her troops remained on the battlefield. Unhealthy or diseased soldiers would not be able to wage war to the best of their ability. On the face of it, Japan's initial venture into biological research was entirely innocent.⁵⁸ It could even be argued that the origin of Japan's biological research program was based on a benevolent

⁵⁶ Kim ‘*Doctors of Empire: Medical and Cultural Encounters between Imperial Germany and Meiji Japan*’ (Toronto: 2014) at pages 138 – 147.

⁵⁷ Gold ‘*Unit 731: Testimony*’ (Tuttle Publishing: 1994) at pages 17-18.

⁵⁸ See: Takagi ‘*Military Hygiene of the Japanese Army*’ (Elliot Publishing: 1906).

act: an attempt to increase humanity's understanding of the disease and to research and develop preventative medicine to combat it. Hal Gold, author of *'Unit 731: Testimony'*, remarked that in the Russo-Japanese War:

*"After the battle of Mukden... sixty thousand Russian prisoners, many of them sick and wounded, taken by Japan. Another seventeen thousand sick and wounded were captured at Port Arthur... the Japanese cared for captured prisoners, taking careful case notes of their injuries and dressing their wounds, while the fleeing Russians left their dead and wounded so as to be able to retreat with maximum speed... for it was under Japanese care that such a large percentage of them recovered."*⁵⁹

By the turn of the 20th Century, Japan had a clear desire to combine science, medicine, and her armed forces to achieve her militaristic ambitions. It is also abundantly clear that the Japanese doctors also felt that they had a strong and overriding duty to "do no harm", despite the Japanese medical community not formally prescribing to the Hippocratic Oath.⁶⁰ It could be argued that this Oath was a universally accepted moral principle that did not require expressly stating: to aid those in need without discrimination.

Not only had Japan used the new skills and knowledge of her scientific community to provide medical assistance to her troops, she had also extended this same care and attention to the enemy that had just been defeated; an obligation that formed part of the laws and customs of war.

⁵⁹ Gold *'Unit 731: Testimony'* (Tuttle Publishing: 1994) at pages 17-18.

⁶⁰ Powell *'Cultural Context in Medical Ethics: Lessons From Japan'* (Philos Ethics Humanit Med: 2006) Vol 1: 4)

The shift in Japan's medical ethics in the space of the four decades that followed would be profound. Any respect for morality or the laws and customs of war would not only quickly evaporate, but would go into reverse.

Japan's medical and scientific community would shift from preventing harm to causing harm as an intentional act of national policy. The creation of Unit 731 and the involvement and influence of Ishii would be a catalyst in reversing the focus on research from prevention and inoculation against the spread of disease, into the development of a deadly biological arsenal of weapons, designed solely to inflict maximum casualties to Japan's enemies by spreading through their troops like wildfire. This development should have caused a conflict of interest between the medical community of Japan and her military. Sadly, that did not prove to be the case and a great number of researchers would be complicit in committing war crimes. This thesis will expand upon this point in Part Five.

With this slow shift in Japan's biological research taking place over several decades, the world's boundaries continued to change. The First World War had drawn to a bloody conclusion, and, having been left unscathed by the conflict, Japan was now seeking to maintain her impressive expansion across the Pacific while Europe and the United States were left reeling.

A Changing International Landscape

Having impressively defeated both China and Russia, Japan finally annexed Korea in 1910. In the years that followed, Japan had to "put down" with an iron fist several independence demonstrations in 1919 opposing her rule of Korea. In doing this, Marius Jansen, author of *'The Making of Modern Japan'*, notes that:

“Japan achieved success in joining the Great Powers and reached imperial status just as the territorial grabs that distinguished nineteenth-century imperialism came to an end, and its image changed with dramatic swiftness from that of a newly founded empire to stubborn advocate of imperial privilege. Its military and naval might approached world standards just as those standards were about to change, and not long before the disaster of World War I produced revulsion from armament and substituted enthusiasm for arms limitation.”⁶¹

Before the First World War, Japan had forged key alliances with other Imperial powers - such as Russia, France, and Great Britain - either in the latter by force or former by mutual agreement. These agreements were nothing more than Japan's attempt for self-preservation against the new world power, the United States, whom they had already angered by failing to increase trade between the two countries. As a result, at this point, the relationship between Japan and the United States lay in tatters. Hence, it had become vital for Japan's preservation to align herself with other allies of America. The problem for Japan would be that the United States were on friendly terms with all of the other world powers capable of posing a threat to Japan.

The First World War did not just have an impact on those nations directly involved in the conflict, but it also put a proverbial spanner in the works for Japan. The conflict had continued for four bloody years, and most of Japan's new allies lay in ruins, both socially and financially: the First World War had resulted in Great Britain becoming indebted to the United States;⁶² the Russian empire had collapsed following internal strife; France, having borne the brunt of the conflict, was now structurally in ruins.

⁶¹ Jansen *'The Making of Modern Japan'* (Harvard University Press: 2000) at page 495.

⁶² Great Britain only repaid the debt to the United States in 2006, 98 years after the end of the First World War: <http://news.bbc.co.uk/1/hi/uk/6215847.stm> (last accessed 04/07/2020)

In the space of four long and bloody years, having spent decades developing her relationship with the world powers, Japan suddenly no longer had any allies of any real influence or military bite, save by title only. Following its decisive intervention in 1917, the United States had cemented itself as the unrivalled world power, able to exert pressure on Japan's allies.

At this stage, Japan realistically saw that the only real alternative to continue increasing her international reputation, stature, and protection was by forging further diplomatic ties with other nations. This explains why Japan adopted the strategy of "safety in numbers" by the early 1920s, a wise move that began with a widespread charm offensive being undertaken.

In July 1921, the United States called the world powers to attend the Washington Conference, with disarmament high on the agenda for them. It was in their interests that the United States should ensure the rest of the world limit their arms. International relations were still reeling from the devastation of the First World War, and they sought to take advantage of the fact that most nations, particularly those on the European continent, were keen to ensure that such a conflict should never happen again.

In addition to limiting the military arsenals of other countries, the United States also wished to cement their newly-annexed territories from across the globe. In turn, this would put an end to the wide-scale "land-grab" that occurred both before and during the First World War, through the limiting of armed forces available to any one nation.⁶³ While the approach of securing the "status quo" should have been mutually beneficial to Japan, who had made extensive "grabs" during the same period as the United States, it would

⁶³ Asada 'Between the Old Diplomacy and the New, 1918 – 1922: The Washington System and the Origins of Japanese-American Rapprochement' *Diplomatic History* (2006) at pages 211 – 230.

prove to be anything but that. Manchuria would once again prove to be a divisive issue between the two nations.

Japan sought to protect her hard-fought interests in Manchuria, also cautious that since May 1920 the United States had sought to reduce Japan's influence in the region and return control of Manchuria to China. Scorned by the reduction in trade, the United States now sought to ensure its financial investment in the region would pay dividends. This strategy would mean that the United States, Great Britain, and France, who had all been providing loans to the Chinese government, would prosper as a result. Japan would be the collateral damage, losing out on the control it currently exerted over the region. The strategy adopted by the United States had now also put Japan at direct odds against their new allies, Great Britain and France. As a consequence, Great Britain did not renew the Alliance of 1902 with Japan.⁶⁴ This was a very public slap in the face for Japan.

The United States, in particular, wished to indirectly seize control of the region to ensure its loan was repaid in full by China, currently led by a fragile government. China, unsurprisingly, had little or no say in the deal. If the government of China were to collapse, their chance of recovering their investment would evaporate. In essence, the United States traded China's rightful ownership of Manchuria in return for its financial security. A tangled web of competing interests in Manchuria had come to the fore again. It would not be the last time.

A compromise was finally reached at the Conference. Japan continued to have a "special interest" in Manchuria, in particular with the railway network. Japan would also acquire a seat on the Council of the League of Nations, and - on 13th December 1921 -

⁶⁴ Hotta-Lister 'The Anglo-Japanese Alliance of 1911' Discussion Paper (April 2002) at page 31. http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjEiODRq7nqAhUQ66QKHeu6B_IQFjAKegQIAhAB&url=http%3A%2F%2Fprints.lse.ac.uk%2F6884%2F1%2FAnglo-Japanese_Alliance.pdf&usg=AOvVaw1Vb_e0moixEoTkMBGZhA0v – accessed 05/07/2020.

Japan, Britain, France, and the United States agreed to respect the "status quo" of the Pacific and to consult one another should any threats arise to their sovereignty.^{65 66}

Japan had cemented her place at the table of the world powers. This agreement was, for once, beneficial to all parties at that time, and a fair compromise. Britain, France, and the United States cemented their financial and territorial interests in the Pacific, and Japan had fended off potential conflict with the United States. In turn, if the conflict had arisen, the United States would have undoubtedly been supported by Great Britain and France if push had come to shove. Japan also gained a boost to her stock and input on the international arena going forwards, by acquiring a seat on the Council, with a say in future international matters. They were now, for the time at least, no longer being dictated to by other nations, in particular the United States.

A year later, Japan signed the Treaty for the Limitation of Naval Armaments and restricted the tonnage of ships to a ratio. While the Treaty was mainly in favour of the United States, Japan had a Navy on similar terms to that of Great Britain. Both island nations, the Navy would play a vital role for both countries in future conflicts. The thought of Japan having a navy on a scale of Great Britain's seven decades earlier, when Commodore Perry had embarrassed the Japanese, would have been unimaginable to even the most optimistic.

The Treaty also covered the building of new naval bases. The bases of the United States in the Philippines and Guam would be limited,⁶⁷ which, on face value, limited the United States' abilities in the Pacific and reduced any threat they could pose to Japan.

⁶⁵ Calvocoressi, Wint, and Pritchard *Total War: The Causes and Courses of the Second World War* 2nd Edition (Pantheon: 1989) at page 640.

⁶⁶ Northedge *The League of Nations: Its Life and Times, 1920 – 1946* (Leicester University Press: 1986) at pages 42-48.

⁶⁷ Treaty for the Limitation of Naval Armaments signed on 06th February 1922 by the United States, Great Britain, and Japan.

It all appeared to be going well for Japan. Although early signs were promising, these various agreements would mark the end of cooperation between Japan and the United States. In 1924, Japan responded angrily to the passing of the U.S. Immigration Act. An unprovoked, unjustified, and highly racist Act, the U.S. Immigration Act barred Japanese citizens from obtaining immigration status in the United States.^{68 69} Japan were rightly aggrieved that the same nation that had forced an isolated country to open her door to the United States was now firmly shutting their own door to Japan. The Act would do nothing other than further alienate the people of Japan and outrage her hierarchy. The United States was once again the catalyst for disharmony between the two nations, whether this was intentional or otherwise. So far, Japan had not provoked the United States, other than scorning them by reducing trade, which was their democratic right.

While this disharmony between Japan and the United States simmered away in the background, China formed a strong alliance with Russia in the same year. The longstanding animosity felt by China towards Japan, particularly anti-Imperial sentiment in the newly formed Republic of China, would fuel future hostility. This disdain for Imperial Japan, and Imperialism as a concept, coincided with a sharp rise in Nationalist beliefs within China,⁷⁰ along with the rise to power of the Chinese Communist Party in the early-1920s. Russia also harboured anti-Japanese sentiments ever since their defeat in the Russo-Japanese conflict of 1904-05.

In response to these developments, Great Britain and the United States did nothing to ensure that the new Nationalist Chinese Government complied with the existing treaties and financial obligations to repay outstanding debts. Instead, they felt it was more

⁶⁸ Brawley *'The White Peril: Foreign Relations and Asian Immigration to Australasia and North America 1919-79'* (University of New South Wales: 1995) at pages 84 - 89

⁶⁹ Makela *'Japanese Attitudes Towards the United States Immigration Act of 1924'* (Stanford University: 1972)

⁷⁰ Prasenjit Duara *'Rescuing History from the Nation'* (University of Chicago Press: 1995) at page 144.

valuable for them to curry favour with the new government, given that their Nationalist views tended to be anti-Imperial and, therefore, anti-Japanese. It is no wonder then that Japan would feel threatened in the decades that followed and would reasonably increase her military capabilities.

The United States and Great Britain were also fully aware that this newly emerging Nationalistic identity had the potential to make China enemies instead of allies. They had to tread a fine line. The colonial powers knew they had to be seen to be on the Nationalists' side if they wished to have any chance that the debt would ever be repaid to them in future years, whether directly or via trade in the region. To foster a favourable relationship with the Communist government, the Secretary of State for the United States - Frank Billings Kellogg - granted tariff autonomy, which allowed China to set import duties on American goods.⁷¹

Japan rightly had concerns over Manchuria as the United States and Great Britain were once again supporting China. To Japan, this was further evidence that the United States were not respecting the "status quo" that had been agreed two years earlier. On the contrary, the United States were instead enabling China to become a healthier nation within the region, fuelling the fire behind the scenes. Japan's influence over the Pacific was under threat. The goodwill of the Washington Conference was now in tatters, and any previous relations were in disarray.

The fears of Great Britain and the United States towards a Nationalistic China did, however, prove to be justified. Tensions continued to rise within China against anyone considered an "outsider". This, in turn, manifested itself into a dispute between the Soviet Union and China over the Eastern Chinese Railway, resulting in the Sino-Soviet conflict

⁷¹ Herring *'From Colony to Superpower: U.S. Foreign Relations since 1776'* (Oxford University Press: 2008) at pages 467 – 470.

of 1929. The Soviet Union responded to Chinese aggression robustly, displaying its military strength by amassing a force that would not be beaten for numbers until the Soviet Union entered the Second World War.⁷² The conflict of 1929 marked the beginning of a lengthy power struggle in China between China, Japan, and the Soviet Union ignoring the indirect influence of the United States in the region.

Although the Soviet's aggression was directed at China, Japan was concerned that she could well fall victim to similar aggression from the Soviet Union soon. In spite of Japan's previous victory over Russia twenty-five years earlier, the Soviet Union that faced them now would be a far more formidable opponent. Japan had also seen the ease by which the Soviets had defeated China. Manchuria was slowly changing, not only from an economic asset, but also a critical foreign military foothold. The Japanese and the Soviet Union seemed to believe that they had to show off their military might to deter the other. To achieve this, the Soviets stationed troops across the north of Manchuria and Siberia, thereby further escalating tensions between them.

Internal Scandal and International Aggression

Flying in the face of the current international disharmony and the atrocities that would follow, Japan chose to become one of the original signatories and ratifiers of the Kellogg-Briand Pact of 1928. The provision was, or at least should have been, a game-changer as it prohibited the use of force as an instrument of national policy.⁷³ Now that Japan had ratified this Pact, she would be bound by it along with all other signatories. In turn, at least in principle, the signatories would be prevented from annexing other nations by force, while also gaining some protection from regional aggressions directed against

⁷² Walker *'The 1929 Sino-Soviet War: The War Nobody Knew'* (University Press of Kansas: 2017) at page 1.

⁷³ https://avalon.law.yale.edu/20th_century/kbpact.asp last accessed 15 August 2020.

them. Japan, by virtue of supporting the Pact, appeared to be not only in favour of, but also facilitating, global peace. The Pact, and Japan's commitment to it, was undoubtedly a laudable act. The reality, however, was somewhat different. Despite having publicly indicated to the world that she intended to pursue a peaceful foreign policy, Japan took further steps, at a national level, to increase her influence and make further territorial inroads into neighbouring China. As this thesis shall detail, Japan would attempt to depart from the Pact by a mixture of stealth and outright deceit.

In the same year that Japan ratified the Kellogg-Briand Pact, members of the Japanese Imperial Kwantung Army assassinated a Chinese warlord in Manchuria called Marshall Chang; Soldiers of the Imperial Army placed a bomb under the train on which he was travelling. The approach was brutal but, unsurprisingly, effective. This was a state-sanctioned attack on foreign soil in clear breach of the Kellogg-Briand Pact, for which Prime Minister Tanaka would lose his job.⁷⁴ This displayed the contradictory signals being made by Japan, who - it seems - had no intention of abiding by the new Pact.

Unfortunately for Japan, while the assassination was immediately successful in that the warlord was eliminated, it did not alter the overall geostrategic position in the long term. Indeed, it proved to be, by-and-large, a waste of both time and resources. It could be argued that the approach of Japan had been naïve. Following the assassination of Marshall Chang, his son continued to exert absolute control over the region, leaving Japan red-faced.⁷⁵ The public outcry that ensued became a national scandal, worsened when an attempted Japanese cover-up failed. Prime Minister Tanaka was Japan's scapegoat, duly resigning having taken responsibility for the assassination.

⁷⁴ Koizumi *Tokyo: The Imperial Capital* (Florida International University: 2003) at page 86

⁷⁵ <http://news.bbc.co.uk/1/hi/world/asia-pacific/1602017.stm> last accessed 15 August 2020

Following this scandal, Emperor Hirohito decided that he would personally have to approve future Cabinet decisions to avoid future embarrassment.⁷⁶ This decision was momentous and, following the end of the Second World War, should have been damning on an Emperor who was granted immunity from prosecution. This thesis will address these issues in due course.

This development does, however, raise important questions about Japan's governmental hierarchy and, particularly, the role that Emperor Hirohito was playing in governing the nation and developing national and international policy. On the one hand, Hirohito should arguably have been considering and approving state-policy before 1928, or, alternatively, been seen as incompetent by not doing so effectively. The Constitution had made it clear that the Emperor could wage war or make peace, and, in essence, that was what had happened in China. The alternative view is that he was fully aware of the state-backed assassination and simply used Prime Minister Tanaka as a scapegoat to avoid scrutiny or accountability. That being the case, it would not be remiss to suggest that he could later use the same tactic to deny any involvement in Japan's biological warfare program.

By late December 1928, the enthronement activities had ended, and the Emperor had cemented public favour, albeit by force and manipulation. During this period, the "thought police" continued to persecute those with differing or unfavourable opinions on the monarchy, increasing racial awareness and escalating the strictness to which the Emperor presided over the nation.⁷⁷ ⁷⁸ The same tactics used by the United States to penalise and alienate Japanese citizens would now be deployed by Japan.

⁷⁶ Jansen *'The Making of Modern Japan'* (Harvard University Press: 2000) at pages 526-527

⁷⁷ The "thought police," Tokubetsu Kōtō Keisatsu, was established in 1911 to suppress any purported threat the public order against the Emperor (see: Beasley *'The Rise of Modern Japan'* at page 184).

⁷⁸ Thomas *'Modern Japan: A Social History Since 1868'* (Routledge: 1996) at page 157

The mainstream traditional belief remained that the Emperor was a divine being who had to be pleased at all cost. To keep up the public misconception that the Emperor was a deity, Hirohito's political intervention into Tanaka's cabinet was kept secret. This tactic was to ensure his name could not be tarnished, nor that his hands had been “dirtied” by the scandal. In these respects, the year of enthronement had been hijacked by the Emperor and, importantly, his "thought police".

As this thesis shall detail, Hirohito, unlike the monarchy of Great Britain, would become much more than a symbolic figurehead. Instead, he was a *politicised* Emperor; one who exerted control over his Cabinet in ways that could potentially trigger notions of legal, constitutional, and political forms of accountability. The people within his Cabinet would change, as would the changing of prime ministers on an almost yearly basis. Hirohito remained the one constant from 1928 until the conclusion of the Second World War in August 1945.

Hirohito and the “thought police” had seized upon the opportunity to bring the nation together in shared values and in persecuting those who had differing views. People are, unfortunately, often united by appeals to a common enemy represented as an existential threat to their way of life, and the Japanese were no different. While Japan's views and morals were “Westernised” in a variety of different ways, the simple truth is that they still viewed the Emperor as being divine; that had not been changed by the Meiji Restoration. The Japanese continued to see Hirohito in the same vein as Meiji.⁷⁹ The propaganda that had been spread during the enthronement had supported one of the Emperor's fundamental beliefs: modern medical and related sciences had a place in the traditional Imperial ways of life.

⁷⁹ Herbert Bix *Hirohito and the Making of Modern Japan* 1st Edition (HarperCollins: 2001) at page 205.

However, this strategy and policy was a risk for Hirohito, who was making a massive departure from the traditional, conservative views expressed from any Emperor that had gone before. Hirohito was slowly getting the Japanese public on the Imperial family's side, but there were still remnants of dissatisfaction that needed to be quashed by him.⁸⁰ While Hirohito was softly spoken, he would rule with an iron fist.

Towards the end of the 1920s, the Great Depression that had originated in the United States was also now hitting the rest of the world. Japan were no different, suffering both domestically and internationally. Distrust between the United States and Japan further increased tensions. In order to preserve what was left of its own economy, the United States applied nationalistic, protectionist tariffs on trade in an attempt to encourage the recovery of their own economy, which ultimately proved counterproductive with a reduction in trade.

The Depression, in general terms, had led to nationalistic reactions in countries across the world. In Japan, the Imperial Army's 'Cherry Blossom Society' was formed in 1930.⁸¹ This newly-formed society's intention was clear: to take over control of the government and assume authority in Japan by force, if necessary.⁸² The plan had all of the early hallmarks of a military-coup; one that Hirohito had to deal with head-on.

In response to this challenge to his authority, Hirohito had to be seen to act both swiftly and firmly. There was also increasing pressure on the Japanese Cabinet to do something drastic in China, although this was perceived as necessary to fend off unrest at home and distract the population from the economic woes they were facing.

⁸⁰ For example, the "15 March Incident" was an extensive operation by the "thought police" against socialists and communists following strong increased support of left-leaning organisations in the 1928 General Elections. In total, 1,652 people were arrested (see: John Bowman *'Columbian Chronologies of Asian History & Culture'* (Columbia University Press: 2000) at page 152.)

⁸¹ Huffman *'Japan in World History'* (Oxford University Press: 2010) at page 101.

⁸² Akira Iriye *'The Origins of the Second World War in Asia and the Pacific'* (Longman: 1987) at pages 5-7.

It is at this juncture that Japan violated the Kellogg-Briand Pact; she deployed force, not only as an instrument of national policy, but more particularly for political and imperial preservation. It is essential to remember that, by the Emperor's own admission, such steps post-dating the assassination of Marshall Chang would have to be approved by him. Japan desperately wanted to secure the future of Manchuria, for pride, profit, and internal calm.

On 18th September 1931, the Japanese Kwantung Army destroyed three feet of the South Manchurian railway line. They subsequently claimed that the Chinese had carried out this vandalism during an attack on their railway network in the region.⁸³ The railway line's damage was so superficial that trains could still pass over the allegedly damaged section without concern.⁸⁴ The Japanese attack would become known as the Manchurian Incident (also known as the 'Mukden Incident').

As a result of this staged "attack on Japanese property", the Imperial Army quickly asserted their control over the region under the pretext of the Treaty of Portsmouth. Japan argued that she was entitled to protect her interests in the railway and prevent any further attacks. This attack took place despite the Japanese Cabinet at home demanding that the Imperial Army desist in imposing further military action in China. Thus, who exactly had ordered this staged attack to take place in order to justify a military intervention in Manchuria? Was the Emperor calling the shots, or was he innocent?

The Army, in particular General Honjo, patently had not listened to the demands of the Cabinet. General Minami, Minister of War, reassured the Cabinet that this intervention would once and for all resolve the 'Chinese problem'.⁸⁵ The powers available

⁸³ Calvocoressi, Wint, and Pritchard *Total War: The Causes and Courses of the Second World War* 2nd Edition (Pantheon: 1989) at page 670.

⁸⁴ Sutton *The Trial of Tojo: The Most Important Trial in all History?* (1950) 36 American Bar Association Journal 93, at pages 160-161.

⁸⁵ Young *Imperial Japan: 1926 – 1938* (George Allen and Unwin: 1938) at page 100.

to the military from the Meiji Restoration had outranked the democratic Cabinet on this occasion. The latter begs the question of the true extent of Hirohito's executive power over his military forces. Were they acting without authority from the Emperor? Alternatively, was Hirohito happy to leave the Army to escalate tensions within Manchuria with a defence of "plausible deniability" should criticisms of this military intervention be raised after the event?

Whatever the real motive behind the attack, it is also clear to see that the Japanese Cabinet and military were not singing as one from the very beginning, and it could be argued that subsequent actions conducted by the Army could not impose responsibility on the Cabinet for their future war crimes, but for their failure to curb future atrocities.

On 21st September 1931, China asked the United States for emergency assistance, stating that Japan had breached the Kellogg-Briand Pact, to which Japan had been signatories only three years prior. The United States immediately sent a message to the Japanese Ambassador, reiterating the terms of the Kellogg-Briand Pact and highlighted that the Japanese had signed the agreement of their own volition. While the United States was correct in their interpretation of the Pact, this was nothing more than a passive approach adopted by them. On the one hand, they wanted to prevent further Japanese influence and preserve their financial interests in Manchuria, but on the other hand, would struggle to support a now highly nationalistic China if push came to shove.⁸⁶

The United States refused to recognise Japan's control over Manchuria on 7th January 1932,⁸⁷ a move followed by the League of Nations on 11th March of the same year.⁸⁸ Unfortunately, and quite telling about the difficulty the United States found itself

⁸⁶ Brownlie *'International Law and the Use of Force by States'* (Oxford University Press: 1963) at page 77.

⁸⁷ Wright *'The Stimson Note of 07 January 1932'* (1932) 26 *American Journal of International Law* at page 342.

⁸⁸ League of Nations Official Journal, Special Supplement, No. 101 at pages 87-88.

in, there was a complete failure by either the United States or the League of Nations to apply economic sanctions. The latter, which could have been legally authorised as a sanction, (to which the United States was not a participating party), may have proven a more effective deterrent and curbed Japanese military action in the region.

The diplomatic steps being taken had no real bite, and Japan could continue as she pleased without fear of reproach.⁸⁹ By refusing to initiate sanctions, the United States had traded the moral ground and respect for the rule of law between nations, as embodied in the League of Nations structure, for their self-serving interests in the region. This was not the first time, and it certainly would not be the last that either the United States would favour their financial interest, or that the League could be accused of being toothless.

What the international community did do, however, was to direct British Diplomat Sir Charles Lytton to fly to Manchuria to compile a report regarding the invasion of China by Japanese forces. Lytton started his report on 1st March 1932 and completed over several months, reporting back to the League of Nations in late-1932 with his findings.⁹⁰ It was hoped that by fully understanding the situation in Manchuria, the League of Nations could assess how best to resolve the situation as amicably as possible, or if this was not possible, what sanctions could be applied. A fundamental failure of the League of Nations was that it was often slow to act, slow to investigate, and slow to use any real deterrent.

Upon hearing the findings of Lytton's report, the Japanese delegate for the League of Nations, headed by Minister Matsouka, rejected all of the findings and abruptly walked out of the League Assembly. Japan's formal withdrawal from the League of Nations followed shortly after that in 1933.⁹¹ Japan now once again found itself increasingly isolated within the international community. This time, at least, it was entirely of Japan's

⁸⁹ Wilson 'The Manchurian Crisis and Japanese Society, 1931-33' (Routledge: 2002) at page 97

⁹⁰ Beasley 'Japanese Imperialism 1894 – 1938' (Clarendon: 1987) at page 193.

⁹¹ Jansen 'The Making of Modern Japan' (Harvard University Press: 2000) at page 585.

own doing. After their withdrawal from the League of Nations, Emperor Hirohito confirmed - in March 1933 - that the Japanese Empire:

*"has now parted company with the League of Nations, and will follow its policy, but this, of course, does not mean we should confine our attention only to the Far East, breaking friendly ties with other countries. I pray each night that we shall gain the greater confidence of international society and enhance the cause of justice throughout the world."*⁹²

Emperor Hirohito made it clear that he did not wish to return to Japan's reclusive ideals of before the Meiji Restoration. The Emperor once again preached Japan's intention for a peaceful existence; not only in the Far East, but across the world. Hirohito made it clear that Japan wished to continue to involve herself in the international community, but without the League's restraints, or, it appears, to be bound by the agreements Japan had previously entered into. The progress made by Japan and the West following the First World War in signing various pacifist Treaties to encourage peace and co-operation were on hold and were, in fact, going backwards. Relations continued to sour when Japan tried excluding Western involvement in the Asian nations, particularly China.

Once the Japanese had completed their invasion of Manchuria, Emperor Pu Yi was installed by Japan to maintain control of the area and be a puppet to Japan and exert her will on the population of Manchuria.⁹³ Military involvement in the region continued to rise, along with its involvement in the Japanese Cabinet, although unrest with Japanese politics and conflicts continued.

⁹² Kitaoka 'Diplomacy and the Military in Showa Japan' – *Showa: The Japan of Hirohito* (1992) at page 163.

⁹³ Gold 'Unit 731: Testimony' (Tuttle Publishing: 1994) at page 30.

In May 1932, Prime Minister Tsuyoshi was assassinated, along with several other politicians. The majority of these attacks came from young military officers from the Japanese Imperial Army, predominantly members of the Imperial Way faction led by General Sadao.⁹⁴

The Army was exerting its considerable power over the Cabinet, with scant regard for the underlying principles of democracy. Emperor Hirohito was all but allowing these atrocities to continue with little, if any, retribution. In mitigation, Hirohito may have been in a difficult position. On the one hand, he could not allow the Army to do as they pleased, but on the other he appreciated that he needed their support for future military campaigns to satisfy his plans for aggressive expansion. At the end of the day, the Cabinet were not the ones holding the guns.

Following the Manchurian Incident, there was a lull in Japanese acts of war. The rest of the world was rightly preoccupied with the rise of Adolf Hitler and his Nazi government in Germany. At that time, Japan seemed inconsequential. Japan realised that they would need a further excuse to cement their ownership of Manchuria to mitigate any further international outcry. That excuse would present itself after the uproar from the Manchurian Incident had abated.

What became known as the “Marco Polo Bridge Incident” occurred, predictably, near the Marco Polo Bridge in Peking, Beijing, on 7th July 1937, when a Japanese soldier could not be located following night manoeuvres near a local Chinese garrison.⁹⁵ The missing soldier miraculously reappeared, but the skirmish to find him had already enraged the local Chinese garrison, who had been told by Japanese troops to open their doors for the garrison to be searched, and had refused that request. The Chinese ordered troops to

⁹⁴ Jansen *The Making of Modern Japan* (Harvard University Press: 2000) at pages 594-595.

⁹⁵ Calvocoressi, Wint, and Pritchard *Total War: The Causes and Courses of the Second World War* 2nd Edition (Pantheon: 1989) at page 796.

be sent outside of the garrison to protect it from the Japanese aggressors. Japan, seeing this as an act of self-defence, whether in good faith or otherwise, embarked on a full-scale attack on the Chinese troops at the garrison. The Second-Sino Conflict was underway.

China once more called upon the League of Nations for assistance, which rejected Japan's age-old and tired argument that it had acted in self-defence.⁹⁶ The League reiterated that Japan had once again breached the Kellogg-Briand Pact. Unlike the first breach, China now received financial aid from the United States and Britain, helping prevent Japan from delivering a fatal knockout blow to China, as an independent state.⁹⁷ Although wary of the threat Japan posed, the United States and Great Britain were hesitant to go so far as to place their own troops in the region.

The war that ensued proved to be bloody and brutal. The conflict served only to increase Japan's hatred of the Chinese, and vice-versa; vitriolic animosity that remains present to this very day. Just as hatred would fuel inhumane experiments from the Nazi-German scientists at concentration camps across Europe, the same emotive feelings of resentment and of racial superiority would fuel Japan's disregard for human life, predominantly Chinese, when implementing her own biological warfare program in Manchuria from the early-1930s. The wide-scale loss of life that was to take place would amount to genocide.

Japan's conduct in invading China, particularly its taking of Shanghai and Nanking - referred to as the "Rape of Nanking" - resulted in atrocities that involved the systematic mass rape and massacre of over 200,000 Chinese civilians by Japanese troops. While rightly garnering international condemnation, this would prove to be a warning of what was to come from the Imperial Army in the years that followed.

⁹⁶ League of Nations Official Journal, Special Supplement No. 177 at 42 – Resolution of 06 October 1937.

⁹⁷ Calvocoressi, Wint and Pritchard *Total War: The Causes and Courses of the Second World War* 2nd Edition (Pantheon: 1989) at page 811.

The condemnation of Japan's conduct in China continues even to this day. Emperor Hirohito was never prosecuted for either his ordering of such atrocities, nor for his failure to prevent them from taking place. The United States was now able to take a strong moral stand against Japan in what would become a protracted war of words, on an ideological level, between the two nations.

The failure by the international community to successfully punish and deter Japan for her atrocities in China would go a long way to bolstering her confidence. It would not be long before the war in Europe broke out from its confines, becoming a worldwide conflict.

Japan Enters the Second World War

By the 1940s, Japan had become a battle-hardened nation, with almost continuous conflict since the turn of the 20th Century. She had thus far only taken offensive action against her neighbours. With tensions peaking, Japan infamously, and unexpectedly, entered the Second World War on 7th December 1941, with a variety of offensives across the globe. The most noteworthy and dramatic of these offensives was the launching of an aircraft carrier-based attack upon the critically strategic United States naval base at Pearl Harbor, Hawaii. Japan had now, it seemed, struck a devastating and embarrassing blow to her enemy.

The United States proclaimed, at the time of the attack, that formal notice was only served upon them after the event, although evidence has now emerged to suggest that they were made aware of Japan's intentions in advance of hostilities commencing.⁹⁸ As a nation, this had been the most audacious and ambitious attack in Japan's history. In

⁹⁸ <https://www.telegraph.co.uk/news/worldnews/northamerica/usa/8932197/Pearl-Harbour-memo-shows-US-warned-of-Japanese-attack.html> last accessed 08 September 2020

the space of less than ninety years since the forced opening of isolationist Japan by the United States, they had now levelled the playing field.

Orders for such an attack would almost certainly have been signed off by Hirohito, having himself made it clear that from 1928 he was to approve any such orders. The culpability of the Emperor for violations of the 1928 Pact and the non-aggression provisions of the League of Nations structure was growing daily, and his culpability as a war criminal increased. Whereas Japan had previously committed atrocities against weaker nations, they were now committing them against the status quo. Just as Japan had angered China, her failure to serve what the United States considered as reasonable notice of her intentions would only serve to increase the United States' feeling of animosity towards the Japanese during the conflict.

The air attack on Pearl Harbor appeared to have been highly successful and, on paper at least, had crippled the U.S. Navy. By the end of the attack, Japan had left eight battleships in ruins,⁹⁹ with a total of 2,403 people losing their lives and a further 1,143 being wounded. In stark contrast, the Japanese would lose only fifty-five men. The defence of Pearl Harbor had been completely ineffective.

While Japan had managed to cripple eight American battleships, the attack had, importantly, failed to destroy any of the American aircraft carriers. In a stroke of luck for the United States, the entire carrier fleet were all at sea at the time of Japan's attack.¹⁰⁰ It is such small margins and slices of luck that often swing battles in the favour of one party, and this proved to be the case for Japan. Their failure would prove pivotal in her later

⁹⁹ Evans & Peattie *'Kaigun: strategy, tactics, and technology in the Imperial Japanese Navy, 1887 – 1941'* (Annapolis, Maryland: Naval Institute Press: 1997) at page 488.

¹⁰⁰ Ibid at page 488.

offensives, and although initially in a congratulatory mood, in a matter of a few short months the tide would turn sharply against the Japanese forces in the Pacific.¹⁰¹

Simultaneous to the attack on Pearl Harbor, Japanese forces also attacked the American bases on Guam and Wake Island, which were lost due to the surprise attack.¹⁰² The United States had been completely unprepared to mount any material defence of their military bases.

While the attacks had been a success, Japan had now, foolishly, acted directly against the United States. The lack of defence of these bases was undoubtedly due to the nature of the surprise attacks, but also the overwhelming sentiment in the United States at the time that Japan could not pose any significant threat to the might of the United States' military.

As this thesis has already mentioned, following the impact of the Great Depression on the United States, a policy of self-preservation and isolationism was adopted. This extended not only to their economy, but also their armed forces. The United States had previously been resistant to direct military involvement in what they had seen to date as a mostly European conflict, with little or no benefit for them in participating. Despite pressure from the likes of Winston Churchill - the British Prime Minister - for the United States to help her allies with military intervention and involvement, no such support had arrived. Now, their hand had been forced by Japan.

The decision by Japan to attack the United States appears, with the benefit of hindsight, to have been a rapid and largely illogical escalation by Japan when contrasted to her previous, successful policy of consolidating weaker territories close to her shores.

¹⁰¹ The Japanese failure to destroy the United States' carrier fleet at Pearl Harbor resulted in the United States being able to co-ordinate aerial attacks at sea, showing complete dominance by late-1944.

¹⁰² <https://dutcheastindies.webs.com/december2.html> last accessed 15 August 2020.

The failure of Japan to cripple the United States' Navy carrier fleet would allow the United States to strike-back almost immediately.¹⁰³

The United States were not alone in feeling the brunt of Japan's force at the start of December 1941. Thailand had also been invaded by the Japanese and buckled under the immense force in less than one day, capitulating on 8th December 1941. A couple of weeks later, on 22nd December 1941, Thailand officially aligned itself with the Japanese Empire. While an act of nothing more than the hope of self-preservation, this decision would deter the Allies from extending help to the Thai people in the years that followed.

Japan's policy of aggressive expansionism in the Pacific was now well underway. The British colony of Hong Kong had also been attacked, falling to Japan on 25th December 1941. Japan had struck, whether deliberately or otherwise, at an opportune time in Hong Kong. The British military had already been significantly drained of military resources and fresh troops, following two years of a brutal war with the Axis Powers in Europe. The British troops were vastly overstretched, having already committed the bulk of the troops to Europe, the Middle East, and North Africa, where they had seen the most action against Nazi-Germany and Italy. Japan was on course to do in the Pacific what Nazi-Germany had achieved in Europe: a devastatingly successful and effective *Blitzkrieg*.¹⁰⁴

The Japanese campaign for Malaya also resulted in significant naval losses for the British, in addition to the ground troops that had already been lost. The British lost their warships HMS Repulse and HMS Prince of Wales, which were sunk by a Japanese air

¹⁰³ At the time of the attack, the entire U.S. Pacific Fleet's carriers were at sea (Enterprise, Lexington, and Saratoga).

¹⁰⁴ *Blitzkrieg* is a warfare method where the attacker breaks through the opponent's defensive lines with the use of short, powerful attacks with heavy reliance on superior air and motorised vehicles to achieve this.

attack off Malaya on 10th December 1941, while attempting to prevent Japanese sea-landings.¹⁰⁵

The Second Sino-Japanese War had well and truly entered into the global theatre of war. In short:

*“For fifty-three long months, beginning in July 1937, China stood alone, single-handedly fighting an undeclared war against Japan. On 09 December 1941, after Japan’s surprise attack on Pearl Harbor, China finally declared war against Japan. What had been for so long a war between two countries now became part of a much wider Pacific conflict.”*¹⁰⁶

Japan had seen been successful in each of their engagements in December 1941, and January 1942 would see her continued expansion. Her version of the *Blitzkrieg* would see nation after nation tumble. In the space of one month, Japan successfully invaded Burma, the Dutch East Indies, New Guinea, and the Solomon Islands, and captured both Manila and Kuala Lumpur. These campaigns had been Japan’s bread and butter: offensives against weaker neighbours. However, unlike those earlier campaigns, this time the Allies would respond. Singapore would be defended by the British, who mustered a resistance to the attack of Singapore.

On 15th February 1942 came the British surrender in Singapore, with over 100,000 mixed troops becoming Prisoners of War to the Japanese Empire. The decision to surrender remains debated to this day, but the result is unchanged: the Allies had been obliterated, unable to cope with the air onslaught by the Japanese. Japan reigned supreme over the Pacific for now.¹⁰⁷

¹⁰⁵ Peattie *‘Sunburst: The Rise of Japanese Naval Air Power, 1909 – 1941’* (Annapolis, Maryland: Naval Institute Press: 2007) at pages 168 – 169.

¹⁰⁶ Hsiung & Levine *‘China’s Bitter Victory: The War with Japan 1937 – 1945’* (Sharpe: 1992) at page 157.

¹⁰⁷ Peattie *‘Sunburst: The Rise of Japanese Naval Air Power, 1909 – 1941’* (Annapolis, Maryland: Naval Institute Press: 2007) at pages 170 – 172.

The Allied Powers, in particular the British, had been left red-faced by Japan; their Empire was in tatters, whilst Japan's continued to grow. Unfortunately for the Allied nations, this would not be the last time that Japan would very publicly embarrass them on the battlefield, sea, or skies. The Allies had been complacent in the Pacific.

Over a two-month period between March and April 1942, the Japanese Navy dispatched aircraft carriers to expand into the Indian Ocean. The British Naval bases at Ceylon fell victim to these attacks, and significantly the British Navy's aircraft carrier, HMS Hermes, was sunk. The British Navy retreated from the west of the Indian Ocean, increasing pressure on the British troops stationed in Burma. The British were left with only one other alternative against a superior force: retreat. The consequence of this decision would also strike a near knock-out blow to China, effectively cutting the last Allied supply line to China.¹⁰⁸ China had been cut adrift.

In April 1942, one month earlier, to form some cohesive response to the Japanese threat, the Pacific War Council was formed and based in Washington. The Council consisted of the United States, Britain, China, Australia, the Netherlands, New Zealand, Canada, and later, India and the Philippines. Unfortunately, this could not prevent the Philippines falling to Japan in May 1942, when nearly 80,000 troops surrendered to the Japanese.¹⁰⁹ General Douglas MacArthur, Supreme Allied Commander South-West Pacific, fled to Australia, and Admiral Chester Nimitz retained control of command for the Pacific Ocean.

As with the earlier *Blitzkrieg* tactics deployed by Nazi-Germany, Japan's rapid expansion had come at a cost: she found her troops and limited resources vastly

¹⁰⁸ Peattie *'Sunburst: The Rise of Japanese Naval Air Power, 1909 – 1941'* (Annapolis, Maryland: Naval Institute Press: 2007) at pages

¹⁰⁹ Morton *'The War in the Pacific: the Fall of the Philippines'* (Office of the Chief of Military History Department of the Army, Washington: 1953) at pages 455 – 461.

overstretched. This meant she was unable to sustain the new territories she had recently occupied. Despite this ever-increasing issue, Japan continued to go on the offensive rather than consolidate the land and population that she had already taken over the previous six months. The problem for Japan going forwards was that the element of surprise had been removed, and Japan had placed herself firmly in the crosshairs of the Allied nations. Fortunately for the Allies, Japan failed to appreciate that the conflict had changed considerably since their surprise attacks in December 1941.

To this end, Japan plotted an offensive on Port Moresby. This would have allowed Japan to control the seas around north and west Australia, giving them dominance over Australia and stifling any future involvement in the war by Australia. Unfortunately for Japan, the Allies had now been able to break the Japanese codes of communication. The attack on Port Moresby was doomed to fail before it had even begun as the Allies were fully aware of the planned mode of attack.

The Allies dispatched the USS Lexington, an aircraft carrier, to meet USS Yorktown; this led to the Battle of the Coral Sea. The action that ensued would be a first in naval history; the ships of the United States and Japan exchanged no gunfire. Instead, they favoured an aerial battle by utilising the aircraft carriers in operation. The Allies had to win at all costs, and although the USS Lexington was sunk and the USS Yorktown damaged, the Japanese Navy had lost its own aircraft carrier, Shoho, along with severe damage being inflicted on Shokaku. The Japanese fleet retreated and with that, the Allied defence of Port Moresby had proven to be effective. While the Allies had sustained higher losses than those of the Japanese, they had importantly stopped the Japanese advance.¹¹⁰

¹¹⁰ Evans & Peattie *'Kaigun: strategy, tactics, and technology in the Imperial Japanese Navy, 1887 – 1941'* (Annapolis, Maryland: Naval Institute Press: 1997) at page 489.

The defeat would mark the beginning of an increasing number of desperate tactics being used by Japan.

Japan had the opportunity to consolidate their achievements, but failed to recognise or take the opportunity. After the Battle of the Coral Sea, the Japanese Admiral Yamamoto only had four aircraft carriers available to him. Japan's ability to wage war over the vast expanses of the Pacific had now been severely handicapped. Japanese reconnaissance indicated that Nimitz only had two operational carriers. Based on this information, Admiral Yamamoto sought to formulate a decisive offensive, with the aim of destroying what remained of the United States' carrier fleet.

The Battle of Midway ensued. Yamamoto intended on luring in the remaining Allied aircraft carriers in an attempt to finally destroy the Allied ability to fight an aerial war in the Pacific.¹¹¹ Yamamoto had seen first-hand the devastating effect of Allied aerial capabilities at the Battle of the Coral Sea. As Yamamoto saw it, a bonus of the Battle of Midway was that the victors would be able to turn the Midway Atoll into an airbase from which they could exert further control over the Pacific.¹¹²

Yamamoto initiated the Battle of Midway by attacking the Aleutian Islands in anticipation of capturing Midway. From here, Japan would be able to launch a continuous aerial bombardment on the remainder of Nimitz's aircraft carriers. Unfortunately, the accuracy of Japan's reconnaissance fell woefully short. As with the Battle of the Coral Sea, the battle was already pre-determined before it had begun. The Japanese had 272 planes available from Yamamoto's four aircraft carriers; the Allies had 348.

¹¹¹ Parshall & Tully *'Shattered Sword: The Untold Story of the Battle of Midway'* (Potomac Books: 2005) at pages 19 – 38.

¹¹² The battle has been described as “one of the most consequential naval engagements in world history...” (see: Craig Symonds *'World War Two at Sea: A Global History'* (Oxford University Press: 2018) at page 293.

On 4th June 1942, Japanese troops landed on the island of Midway. After various aerial skirmishes and attacks, the Americans landed three fatal blows on Japanese carriers laden with aircraft and munitions. The Japanese ships Soryu, Kaga, and Akagi were all sunk by Nimitz' fleet. Hiryu survived and launched a counterattack, but was later destroyed by an Allied air attack. The offensive was an unmitigated disaster for Japan, who were forced to flee. Japan had now lost all four of her aircraft carriers, and now the strategically important island of Midway was left in Allied hands. Midway would be the last sizeable naval battle for two years. The crippling effect on Japan's naval capability should not be underestimated. During this time, the manufacturing might of the United States went into overdrive, ramping up production focused on replacing the ships and planes that they had lost. It also gave the Allies opportunity to replace the troops that they had lost.¹¹³ Japan did not enjoy the same benefits.

Despite having taken significant losses both at sea and in the air, the Japanese Army continued to make substantial advances on land. However, in order to achieve and maintain progress on land, she had to begin considering drastic measures to maintain a strong fighting force against the Allies. As we shall see in the next chapter of this thesis, Japan simultaneously developed a world-leading arsenal of biological weapons while these offensives were taking place thousands of miles away. In turn, Japan would plan on deploying bacteriological weapons against the Allied nations as the conflict waged on.¹¹⁴ If weapons could be deployed, it would allow Japan the upper hand in a war that they were quickly starting to lose.

In July 1942, the Japanese forces progressed into New Guinea, edging ever closer towards Port Moresby. Simultaneous to the attacks in New Guinea, the Japanese were

¹¹³ Evans & Peattie *'Kaigun: strategy, tactics, and technology in the Imperial Japanese Navy, 1887 – 1941'* (Annapolis, Maryland: Naval Institute Press: 1997) at page 491.

¹¹⁴ Gold *'Unit 731: Testimony'* (Tuttle Publishing: 1994) at page 86.

building an airbase at Guadalcanal. The Allies could not allow the air field to be completed. During construction, the Allies mounted a large-scale attack in August 1942 on the airbase. Knowing its importance, the Japanese diverted all available troops in the Pacific to Guadalcanal. Within touching distance of Port Moresby, the Japanese command ordered troops to withdraw from the area and head straight to Guadalcanal to support their defence of the island. The Battle became a war of attrition, and once again, the Japanese were unable to replace their losses. A recurring theme would rear its head again: the Allies had the manufacturing infrastructure to continue replacing lost troops, ships, planes, and resources.

In early-September 1942, Japanese marines attacked an Allied Australian airbase at Milne Bay on the eastern tip of New Guinea. The attack was unsuccessful and the Japanese had faced their first defeat during a land battle since 1939. With the battle at Guadalcanal still raging on, Japan could not continue to sustain their losses. Japanese troops were sourced from the confines of Japan and the home islands. In stark contrast, another island nation, Great Britain, could draw on troops from the extensive Commonwealth. By February 1943, the Japanese had fled the island.¹¹⁵ The Japanese had never successfully recovered their impetus since the defeats at Coral Sea and Midway. The rot had set in.

In June 1943, the Allies launched Operation Cartwheel, cutting off supply lines to major Japanese bases and, in effect, isolating them. The Allies began their island-hopping policy towards Japan, either by invading or bypassing insignificant Japanese held islands if they did not hold strategic importance.¹¹⁶ It would be this same logical process of risk

¹¹⁵ Evans & Peattie *'Kaigun: strategy, tactics, and technology in the Imperial Japanese Navy, 1887 – 1941'* (Annapolis, Maryland: Naval Institute Press: 1997) at page 490.

¹¹⁶ Roehrs & Renzi *'World War II in the Pacific'* (M.E. Sharp:2004) at page 122.

versus reward that would result in the dropping of the atomic bomb when faced with the alternative of a land invasion on mainland Japan.

Biding their time, on 15th June 1944, a large armada consisting of 535 Allied ships deployed 128,000 troops on to Saipan. The intention was simple: invade the island and build an airbase from which B-29 Bombers could be launched, to carry out bombing raids on the heart of Japan - Tokyo. At this point, Japan launched the vast majority of her naval and aerial troops to Saipan's defence. Despite this, Japan were still outnumbered by a ratio of 2:1. Japan could no longer rival the U.S. Fleet. Unsurprisingly, the Japanese troops tasked with the defence of the island were almost entirely wiped out in the war's largest naval battle at that point.¹¹⁷ Japan had failed to defend Saipan, and the Allies now had the perfect location to stage a large-scale bombing campaign against vital Japanese cities. By mid-1944 the war was effectively over for Japan.

By October 1944, the Allies had Japan in the firing line. Before they could pull the trigger, the Allies needed to cement sea routes direct to Japan before any potential final assault on Japan could occur. Having already secured the Leyte Gulf and disabled most of the Japanese Navy, U.S. Army troops landed on the Philippines mainland.¹¹⁸ It would take until the end of February 1945 before Japanese resistance - in the form of a quarter of a million land troops - to the Allied assault was finally crushed. As a result of such stiff resistance, the Japanese suffered a mortality rate of 80%.¹¹⁹ The Japanese often fought to the death in their defence of land gained in earlier military aggression, and the mortality rates suffered in the recapture of the Philippines would continue with each

¹¹⁷ Peattie *'Sunburst: The Rise of Japanese Naval Air Power, 1909 – 1941'* (Annapolis, Maryland: Naval Institute Press: 2007) at pages 188 – 189.

¹¹⁸ Evans & Peattie *'Kaigun: strategy, tactics, and technology in the Imperial Japanese Navy, 1887 – 1941'* (Annapolis, Maryland: Naval Institute Press: 1997) at pages 492.

¹¹⁹ Stanley *'Creating Military Power: the Sources of Military Effectiveness'* (Stanford University Press: 2007) at page 41.

additional island recaptured by the Allies. The Japanese psyche of refusing to surrender, which had been engrained into Japanese troops, would later prove to be the justification for the dropping of the atomic bombs on Japan.

On 3rd February 1945, the Soviet Union agreed to enter the Pacific arena within ninety days of the war in Europe, ending at the Yalta Conference. Japan now had another front to fight on, and it would be Russia's advance across China that would result in Japan's biological warfare program being discovered. Following the demise of the other Axis nations, Japan was now once again, by force, an isolated nation. The United States had ironically forcibly ended Japan's period of isolation in 1853. Now, less than a century later, they were leading the charge to close the net on Japan. As the end came closer, the battles became bloodier.

The Battle of Iwo Jima began on 19th February 1945 with the deployment of 30,000 marines, for land that was only eight square miles. The land in question was important because of what was on it: three airfields, located directly between the Philippine islands and Tokyo.¹²⁰ With the tide of war turning as 1944 came to a close, the Japanese occupiers had transformed the island into a vast network of underground networks and defensive bunkers in anticipation of an Allied invasion. The man responsible for Japan's bloody but ultimately doomed defence of the island, Lieutenant General Kuribayashi, ordered his troops to hold off opening fire until all of the U.S. Marines had landed on the beaches, in order to maximise the death toll. Japan opened up with artillery and machine-gun fire, and the results were devastating. By the end of the first day, the U.S. had lost more than 2,400 men to death or wounding. The battle would ultimately be a return to the deadly trench warfare seen in the First World War.¹²¹

¹²⁰ Mooney *'Dictionary of American Naval Fighting Ships'* Volume 7 (Naval Historical Center Department of the Navy, Washington: 1981) at page 98.

¹²¹ Ward *'Picking up the Pieces: The Battle of Iwo Jima'* (Xlibris: 2006) at page 47.

It took the U.S. Marines until 26th March 1945 before they had finally captured all of the islands, with a total loss of 6,800 troops and the wounding of over 20,000. The Japanese lost over 20,000 men in the Battle. Only 1,083 troops were taken as prisoners of war by the Americans. In hindsight, it has been argued that there was no real justification for such losses by the Americans, as they had already obtained airfields in the Pacific that allowed their bombers sight of Tokyo, and the island could have been bypassed.¹²² The island had little strategic importance to them, just as Stalingrad had little strategic importance to Nazi-Germany. The profound loss of life on Iwo Jima was arguably for little practical purpose.

Starting with Burma, the Allies intended to recapture the country before the monsoon season began in May 1945. If they failed to do this, it was anticipated that the battle would descend into trench warfare akin to that seen in the First World War. The British Army was able to take advantage of retreating Japanese troops by cutting off key supply lines, and headed towards Rangoon: the capital city of Burma, and the main port for supplies in and out of the country. The British were concerned that the Japanese would defend Rangoon to the death, meaning they would have to fight from house to house to reclaim the territory. Anticipating this problem, the British ordered an amphibian landing, which had previously not been considered necessary.¹²³ The amphibian landing was launched on 1st May 1945, but Rangoon had unexpectedly already been abandoned by the Japanese, who lost some 150,000 troops in their unsuccessful defence of Burma.¹²⁴ Australian troops subsequently liberated Borneo in July 1945.

¹²² Burrell 'Breaking the Cycle of Iwo Jima Mythology: A Strategic Study of Operational Detachment' (*Journal of Military History*: Volume 68, No. 4) at pages 1143 – 1186.

¹²³ Slim 'Defeat into Victory' (Cassell: 1956) at pages 468 – 469.

¹²⁴ Towle, Kosuge & Kibata 'Japanese Prisoners of War' (Continuum International Publishing Group: 2000) at pages 47 – 48.

The Allies were now knocking on the door of the Japanese home islands. The Battle of Okinawa began in April 1945, with the United States planning on taking the islands to provide an intense aerial bombardment of mainland Japan, in order to weaken defences before a full-scale land invasion. The hope was that by blockading ships from bringing in supplies to Japan, and with a constant bombing of major cities, Japan would be forced to surrender without further significant further loss of life to Allied troops.

A bloodbath was inevitable, and Japan was acutely aware that it was one she could not afford. Japan no longer had the manpower to fend off the Allied advances. It was now that Japan sought to utilise her biological research program in Okinawa's defence. Thankfully for the Allied nations, time was not on Japan's side. The plans to deploy plague on Okinawa would not materialise, though there had even been consideration given to sacrificing Okinawa and its people to deploy biological weaponry if Allied troops could also have been infected.¹²⁵

With the Japanese favouring using kamikaze pilots to defend Okinawa, it is estimated that of the 117,000 troops that defended Okinawa, some 94% were killed or committed suicide.¹²⁶ The island fell, and the United States began their strategic bombing campaign, focusing on industrial areas to halt production, and dropping mines on inland waterways to prevent any movement of goods.

The war that Hirohito had entered was now drawing to a close. The conclusion was unlikely to be favourable to himself, nor to Japan more generally. The only saving grace was that despite Japan had waged an aggressive 'traditional' war against the Allies and her neighbours, she had failed to successfully deploy biological weapons. The next part of this thesis will document how Japan became world-leaders in the field of

¹²⁵ Gold *'Unit 731: Testimony'* (Tuttle Publishing: 1994) at page 88.

¹²⁶ Stanley *'Creating Military Power: the Sources of Military Effectiveness'* (Stanford University Press: 2007) at page 41.

biological research within three decades, the atrocities that she committed in the process and, crucially, show just how close the Allies came to unleashing an arsenal of biological weapons against her enemies.

PART TWO

THE MAKING OF UNIT 731

As with their Nazi counterparts, Japan's scientific and medical communities had found themselves laying the foundations decades before any atrocities were committed. There was to be no smoking gun. A neutral observer would be unable to pinpoint a precise moment in time where the true origins of Japan's biological warfare program commenced, or alternatively, where the degradation of humanity, morals or principles had been eroded to such a stage to facilitate the creation of Unit 731.

Instead, there had been a gradual degradation of ethics and principles within Japan's society and, importantly, to her Imperial Army and the penal code in which that military now operated. Japan, her people and her medical profession had, by the 1930s, accepted the stark shifts in social and professional conduct. Disaster was always a probable outcome. The changes since the first Russo-Japanese war of 1904-05, with Japan actively assisting her enemies during conflict, could not have been any more different less than three decades later. It was a consequence of these gradual changes that Unit 731 came to be, created in the image of its founder, Shiro Ishii.

To this end, this thesis intends to chart the origins of these war crimes that Ishii and his men committed; not as a sole event, but rather a series of baby-steps that created an atmosphere and acceptance that the sanctity of human life was a disposable commodity. The first part of this thesis has addressed the historical background, the societal changes, and military offensives that laid the foundation for Unit 731 to commit

a wide array of extensive atrocities in the name of biological research. The second part of this thesis will seek to detail the driving force behind the creation and expansion of Unit 731 - Shiro Ishii. What Ishii would consider to be "successes" would amount to crimes against humanity. However, Ishii was not alone. While he acted as a key cog, there were thousands of other individuals, to include Hirohito, who were complicit in the commission and conducting of war crimes. Akin to their Nazi counterparts, Unit 731 are nothing more than a stain on human history and, unfortunately, their activities and subsequent immunity often raise more questions than answers about how and why they were allowed to operate with impunity.

This second part will now take the focus away from Japan's society and military offensives, per se, and focus on the specific involvement of Ishii and his men in creating Unit 731, to include: the basis of Unit 731; how it began; on what premise it began; for what reason it began; what research was conducted; the persons and institutes involved; how the Japanese medical profession accepted and actively engaged in the research conducted by Unit 731; and finally, Unit 731's research and "ethics", or lack thereof, compared with its counterparts across the globe.

As with the historical overview of Japan's involvement in the Second World War - documented in the first part of this thesis - in dealing with Unit 731, this second part will chart events in chronological order from the birth of the Unit's founder, Shiro Ishii, in 1892, until the conclusion of the Second World War in 1945, with the inevitable attempts by the members of Unit 731 to destroy any evidence or trace of their atrocities. The third part of this thesis will then document Japan's surrender, the Allied occupation and investigations, their legal response, and the immunity deals granted that allowed members of Unit 731 and Hirohito to avoid any justice being meted out against them.

To discuss the Emperor's culpability, this thesis will also document his involvement in the creation of Unit 731 and its funding and expansion during his reign, as well as detail Hirohito's interest in the field of biological research. Finally, to put the research of Unit 731 into context, this part will discuss whether or not other nations had conducted similar unethical research during the same period.

Firstly, we start with the man responsible for the creation of Japan's deadly bacterial warfare program: Shiro Ishii.

Shiro Ishii: The Japanese Mengele?

Josef Mengele, also known as the Angel of Death, was a German SS officer and medical physician who carried out highly unethical, murderous experiments in the Auschwitz concentration camp. His barbaric acts are known worldwide and, following the Second World War, he appeared to have escaped punishment by fleeing to South America. When the Nuremberg Trials took place, Mengele was presumed dead.¹²⁷ Despite the tireless work of so-called "Nazi-Hunters" such as Simon Wiesenthal, along with the Israeli Special Forces - Mossad - Mengele would die a free man.¹²⁸

The story of the Japanese Mengele, Shiro Ishii, is not widely-known. His acts were no less barbaric than those carried out by Mengele, and he also appears to have died a free man. While Mengele was on the run in South America, the United States appeared to have actively assisted the Japanese "Angel of Death" in escaping prosecution. The immunity that Ishii appears to have been granted has stifled the research into his life and

¹²⁷ <https://www.nytimes.com/2017/09/06/sunday-review/israel-mengele-auschwitz-holocaust.html> last accessed 8th September 2020.

¹²⁸ It was later revealed in 2008 that the Israeli Special Forces, Mossad, had chosen not to capture Mengele at the same time as Adolph Eichmann in 1960 (see: <http://www.wiesenthal.com/about/news/wiesenthal-center-regarding.html> last accessed 8th September 2020).

work, preventing justice from prevailing. The work of several academics, including Harris, Gold, Williams & Wallace, and Barenblatt, has helped to shine considerable light on not only Unit 731, but also Ishii himself. This thesis simply would not be possible without their extensive research documenting the research and atrocities committed by Ishii and his men.

The second part of this thesis begins on 25th June 1892, with the birth of Shiro Ishii into a wealthy land-owning family in the village of Chiyoda Mura, within the Kamo district of Tokyo.¹²⁹ From an early age, the concept of the Yamato Race, and that of hierarchy, had been instilled in Shiro Ishii. To this end, Ishii witnessed, from a young age, the dominance that his family exercised over the local villagers, whom he and his family considered to be beneath them. The villagers were, by-and-large, peasants who were primarily only concerned with providing enough food for their families. These villagers were no different to the ones Ishii would encounter in Manchuria in later years when carrying out field-experiments with Unit 731. He would treat them with the same regard for their lives as he had done in his formative years.

In these early years of his life, Ishii was described as being highly intelligent but with an abrasive and arrogant character, and someone who had already set his sights on serving his country and Emperor by becoming a member of the Japanese military.¹³⁰ The latter would not necessarily be bad qualities in a man who wanted to achieve his ambitions at all costs. Just like Hirohito, Ishii would also take a keen interest in his nation's military at a young and impressionable age.

¹²⁹ Yan-Jun & Yue-Him 'Unit 731: Laboratory of the Devil, Auschwitz of the East: Japanese Biological Warfare in China 1933-45' (Fonthill: 2018) at page 82.

¹³⁰ Morimura & Seiichi 'The Devil's Gluttony' (Tokyo: 1983) at page 249.

Having decided to study medicine, Ishii was to enter into the profession at a transitional time. Ethics and boundaries were being pushed further aside by researchers from all nations, including the United States and Great Britain. The balance had shifted from the primary ambition of preserving life, in favour of advancing human understanding at any cost, whether human or otherwise. It would be unfair to assert that it was only Japan who had degraded their medical ethics at the beginning of the early-mid 20th Century; they were simply one of many nations attempting to get an edge in the field of biological research, whether for the benefit of warfare or other purposes, benevolent or malevolent.¹³¹

Ishii would later become known for his horrendous experiments on humans, including crude live vivisections, intentional inoculation of lethal bacteria, weapons testing, irradiation, and exposure to fatal temperatures. Unfortunately for Ishii's victims, he was educated when Japan had not developed its medical ethics approach. Doctors in Japan were not required to take the Hippocratic Oath, which is common in Western nations, to practice as a doctor, and there was no alternative administered in its absence.¹³² Ishii had no professional obligation to his patients or research subjects; the issue of moral obligation is, and always will be, somewhat of a murky topic. It could be argued that it would have been unfair to judge him and fellow members of Unit 731 by standards not applied by their nation, or retrospectively by standards prevalent today.

The decision to study medicine was to crystallise at the age of twenty-four. In April 1916, Ishii had enrolled himself into the Medicine Department of Kyoto University,

¹³¹ For example, Great Britain passed the Mental Deficiency Act in 1913, which encouraged the mass segregation of the "feeble-minded" and the United States engaged in mass-sterilisation and restriction of immigration in favour of eugenics (see: Kühl 'The Nazi connection: Eugenics, American racism, and German National Socialism' (OUP: 1994).

¹³² Harris 'Factories of Death: Biological Warfare, 1932-45, and the American Cover-Up' 2nd Edition (Routledge: 2002) at pages 15-16.

a prestigious institute to this day. Ishii excelled in his studies shortly after joining, to the point that his professors found that he would be submitting to them special assignments and projects well beyond the capabilities of a typical first-year student. Once he graduated from Kyoto, Ishii fulfilled his other ambition of serving Japan by enlisting into the Kwantung Army, in 1920, as a doctor. By April 1921, he had been commissioned as a Surgeon-First Lieutenant, assigned to the Imperial Guards Division.

Just as he had done at university, Ishii enjoyed an early but impressive start to his military career; by 1922, he had risen further through the ranks and become a Lieutenant, attached to the 1st Army Hospital. This was, in essence, nothing more than a field hospital based in Tokyo.¹³³ Ishii was largely unfulfilled by this role, and knew that his interests lay more in research than actually practising medicine. He did not find the role challenging and petitioned those above him for a move.

Fortunately for Ishii, his superiors agreed, having seen that his potential had not yet been fulfilled. With the approval of those above him, Ishii duly left active service with the Imperial Army just four years after joining. He returned to study and, in 1924, enrolled himself to begin a postgraduate degree back at Kyoto University.¹³⁴ During his second spell at the university, Ishii was deployed to Shikoku Island in his first year to help combat a new and unknown infectious disease that had broken out. Impressively, Ishii was able to locate the virus quickly and invented the first water filtration system in the world able to eliminate the disease from the source.¹³⁵ Following this far-reaching achievement, Ishii was promoted to Army Surgeon in 1925. Very early on in his career, Ishii had used his understanding of biology and the spread of disease for the greater good. In less than a

¹³³ Gold *'Unit 731: Testimony'* (Tuttle Publishing: 1994) at page 24.

¹³⁴ Yan-Jun & Yue-Him *'Unit 731: Laboratory of the Devil, Auschwitz of the East: Japanese Biological Warfare in China 1933-45'* (Fonthill: 2018) at page 84.

¹³⁵ Williams & Wallace *'Unit 731'* (Hodder & Stoughton: 1989) at pages 5-6.

decade, Ishii would fundamentally change his focus from preventing the spread of disease to the deliberate harnessing, weaponisation, and deployment of bacteria to cause harm and, often, death.

At the time of his promotion in 1925, Ishii had already shone in an array of academic fields, including: bacteriology, serology, pathology, and preventative medicine. Interestingly, Ishii did the latter of these subjects as a postgraduate degree, further cementing his understanding of preventing, rather than causing, the spread of disease. Quite easily, Ishii could have continued to use his expertise in this field for human betterment, as he had done when dealing with the infectious outbreak on Shikoku Island. This would not prove to be the case. During his postgraduate years, Ishii began to aggressively build up connections and allies within the University, including the University President, Araki Torasaburo. He built up such a strong relationship with the President, that he would often be seen visiting him at his family home.¹³⁶ This strong bond would later prove useful to Ishii when seeking fresh-faced researchers to recruit for his Unit. However, his recruitment drive would not be limited to one academic institute; as with the intrinsic links between the Nazi researchers and academic and industrial institutes, Ishii would recruit his staff directly from various universities and educational institutes across Japan.

By 1928, he graduated from Kyoto University with a Doctorate in Microbiology. As if his bond with the University President was not cemented already, Ishii went one step further by later marrying the University President's daughter.¹³⁷ Now a married and a mostly well-respected man, Ishii had "*acquired a reputation for being a womanizer, a*

¹³⁶ Harris 'Factories of Death: Biological Warfare, 1932-45, and the American Cover-Up' 2nd Edition (Routledge: 2002) at page 16.

¹³⁷ Tsuneishi 'The Bacterial Warfare Unit and the Suicide of Two Physicians' (Tokyo: 1982) at page 132.

night owl, and a heavy drinker. He was known for his ability to carouse most of the night away in bars and geisha houses after a hard day at the hospital”.¹³⁸

This would not prove to be the end of his relationship with Kyoto. Ishii continued to regularly frequent geisha houses and spent large sums of money on both them and alcohol, after which he would loudly berate the Japanese medical system, which limited him to only ever to progress to the rank of General.¹³⁹ Despite his unhappiness with the hierarchy he sought to climb, Ishii continued to impress his superiors and built up a strong rapport with them. His continued success in the research of preventative medicine was of increasing interest to the Imperial army; thus, he was now becoming a valued asset.¹⁴⁰

Ishii's interest in preventative medicine would not last, with deadly consequences. Shortly after he had graduated in 1928, and by total chance, Ishii fatefully discovered a research paper on the effects of the 1925 Geneva Disarmament Convention and its effects on biological warfare, written by a physician called Harada. The paper outlined the devastation caused during the First World War. Ishii had taken great interest in Harada's opinions, despite the rest of the Japanese medical and scientific communities having paid little, if any, attention to the research paper at its time of publication. The Harada publication now had Ishii considering an alternate career path, where he would use his biological research for purposes other than preventative reasons.¹⁴¹ If the use of biological and chemical warfare had been outlawed following the First World War, surely that must have meant that their deployment was devastatingly effective?

¹³⁸ Morimura & Seiichi *'Devil's Gluttony'* (Tokyo: 1983) at pages 250-254.

¹³⁹ Ibid at page 254.

¹⁴⁰ Williams & Wallace *'Unit 731'* (Hodder & Stoughton: 1989) at pages 5-6.

¹⁴¹ Harris *'Factories of Death: Biological Warfare, 1932-45, and the American Cover-Up'* 2nd Edition (Routledge: 2002) at page 18.

Ishii was an intelligent man with scant regard for human life. By 1928, he had achieved far more in the field of preventative medicine than many others with decades more experience. Ishii knew that the use of biological weapons could put Japan at the forefront of the world powers in military terms. In order for him to make this career switch, Ishii knew that he would need his superiors' support, whom fortunately for him, he had already impressed in the very early days of his military career.

Ishii was not a shy man. In broadcasting his desire to carry out new research into biological warfare, he was publicly making it clear that his interests no longer lay in the field of preventative medicine. Instead, he wanted to research ways to exploit preventative medicine, finding gaps to exploit.

While initially the Imperial Army was not supportive of his ideas on biological warfare, preferring the traditional tried and tested weapons, this would soon change. Once Ishii had impressed upon his superiors the real-world cost saving of developing and deploying biological weaponry, he started to win his superiors over; his research could be far more cost-effective than maintaining a conventional fighting force of troops and weaponry, and deadlier.

Ishii wanted to harness the power of the silent enemy that Japan had successfully controlled in the Russo-Japanese conflict of 1904-05; and successfully deploy it against future opponents, to Japan's benefit. It was at this juncture that Ishii was to take make another fateful decision. In a last-ditch attempt to persuade the Japanese military to allow him to research biological warfare, he decided that the best way to convince his superiors

would be for him to provide intelligence to them of how other nations had successfully carried out biological research.¹⁴²

Once more, Ishii was in the right place at the right time, and his persistence would pay dividends. Conveniently for him, at that time, the Japanese Army had a policy of sending officers abroad to continue their studies. It was agreed that both Ishii and the Army would fund his continued studies. He travelled extensively around Europe, the United States, and Canada¹⁴³ Ishii investigated the research into, use of, and deployment of biological weapons by other nations, or the lack thereof.¹⁴⁴ He had a particular interest in the Allied and German deployment of various gases during the First World War, and the potential to kill hundreds in a single attack.

Upon returning to Japan in 1930, Ishii lobbied senior Japanese government officials to provide him with time and resources to develop Japan's own biological warfare program. He conveniently excludes the various issues and ethics involved with deploying chemical weapons during the First World War. On numerous occasions, the deployment of chemical agents had inadvertently resulted in their own troops' death with something as simple as the wind suddenly changing direction.¹⁴⁵ That did not fit Ishii's agenda.

Being economical with the truth, Ishii petitioned the War Ministry, supported by Army Minister Sadao Araki and Dean of the Tokyo Army Medical College Koizumi Chikahkiko. Ishii held the rationale that *"biological warfare must possess distinct*

¹⁴² Harris *'Factories of Death: Biological Warfare, 1932-45, and the American Cover-Up'* 2nd Edition (Routledge: 2002) at page 19.

¹⁴³ In total, he visited the United States, Canada, Hawaii, Prussia, Latvia, Estonia, the Soviet Union, Poland, Finland, Norway, Sweden, Denmark, Holland, Belgium, Czechoslovakia, Hungary, Austria, Germany, Switzerland, France, Italy, Turkey, Greece, Egypt, Ceylon, and Singapore.

¹⁴⁴ Gold *'Unit 731: Testimony'* (Tuttle Publishing: 1994) at page 25.

¹⁴⁵ Tucker *'The European Powers in the First World War: An Encyclopaedia'* (Routledge: 2013) at page 185.

possibilities; otherwise, it would not have been outlawed by the League of Nations."¹⁴⁶

Ishii's steadfast faith in the Harada publication he had read two years earlier had stood the test of time and, in his mind, been affirmed by his travels across Europe and America.

Barenblatt explains Ishii's rationale for favouring this new method of warfare as being that "*germ warfare was cheap in terms of budget expenditure and the raw materials needed, frightening, and, under the right conditions, extremely effective at killing large numbers of people and causing social disruption. Germ warfare was also, more importantly, deniable.*"¹⁴⁷

It is difficult to disagree with Barenblatt's assessment of Ishii's view of bacteriological warfare, or with the benefits gained by the armed forces deploying them. Ishii had failed to consider, or had little appreciation of the fact, that these weapons had been outlawed due to their inhumane effects on the human body. Most likely of all, as the Imperial Army had already shown on numerous occasions, they had little intention of abiding by international agreements or the traditional rules or conventions of war. Ishii was just another participant in the Japanese military willing to disregard the accepted rules, norms, or traditions of war.

This is not to say that Ishii had been the only person in Japan to consider biological warfare's potential. At the end of the First World War, Koizumi Chikahiko was a well-respected researcher and scientist at the Tokyo Army Medical College. He had led research in May 1918 looking into chemical warfare, following on from earlier Japanese research in 1915 regarding the use of gas masks.¹⁴⁸

¹⁴⁶ Felton *The Devil's Doctors: Japanese Human Experiments on Allied Prisoners of War* (Pen & Sword: 2012) at Chapter One.

¹⁴⁷ <https://needoc.net/b-altheide> last accessed 29/03/2020.

¹⁴⁸ Barenblatt *A Plague Upon Humanity* (Harper Collins: 2005) at page 14.

Ironically, it was to be the lack of a gas mask that nearly killed Koizumi Chikahkiko when, in his laboratory, he was inadvertently caught in a chlorine gas cloud. While this may have caused others to question the safety of deploying chlorine gas, and the risk to the deploying force, Koizumi not deterred. While he was fortunate enough to make a full recovery, instead of being cautious about the use of chemical weapons, his near-death experience had only invigorated him and further strengthened his conviction that biological and chemical weapons were potent. Ishii did not have a difficult task persuading Koizumi to support his research.

As a fierce nationalist, Koizumi had a strong desire to investigate further whether chemical warfare was a viable option to add to Japan's blossoming arsenal.¹⁴⁹ Having met many years earlier before calling on him for support, Ishii and Koizumi had the same *"drive to make Japan the foremost nation in biological warfare."*¹⁵⁰ Once more, Ishii's charm offensive years earlier was now paying dividends. The prospects of his change in research focus being supported by the Army was increasing on a daily basis.

In January 1931, Ishii's career progressed further after he was promoted to Surgeon-Major. Later that year, he wrote to his superiors in Tokyo, stating that *"due to your great help, we have already achieved a great deal in our bacteria research. It is time we start to experiment. We appeal to be sent to Manchukuo to develop new weapons."*¹⁵¹ This was the first time that the Imperial Army had been alerted to Ishii's desire to create a research facility, specifically in Manchuria.

¹⁴⁹ Harris *'Factories of Death: Biological Warfare, 1932-45, and the American Cover-Up'* 2nd Edition (Routledge: 2002) at page 19.

¹⁵⁰." Barenblatt *'A Plague Upon Humanity'* (Harper Collins: 2005) at page 15.

¹⁵¹ Harris *'Factories of Death: Biological Warfare, 1932-45, and the American Cover-Up'* 2nd Edition (Routledge: 2002) at page 13.

It is interesting to note Ishii's specific reference to Manchuria. It is unknown whether this was in response to a previous directive, or whether Ishii had spotted an opportunity at an early stage to carry out his biological research on human subjects in a region where he would have little, if any, intervention.

Ishii also knew that, if he were to progress his dream of a world-leading biological warfare research program, he would need the assistance of not only his superiors, but the support of the Imperial Family. At the time of his request, Hirohito had been on the Throne for some five years. This thesis will now consider the involvement of Hirohito and whether he had any direct influence or knowledge of Ishii and his Unit.

Emperor Hirohito: War Criminal?

When Hirohito announced Japan's surrender on 9th August 1945, he ran the risk of ending the Imperial Family's two millennia old dynasty. Therefore, he did not take that decision lightly and would have been all too aware of the potential for proceedings being brought against him and other members of the Imperial Family. So, how did we get from the rule of Emperor Meiji to Hirohito?

It is important to note that Emperor Meiji nor his successor, Emperor Yoshihito, had any involvement in Unit 731, nor is there any evidence of direct knowledge of their biological warfare program. Indeed, having charted the rise of Shiro Ishii, much of his work in creating Unit 731 would come following Hirohito's ascension to the Throne. It would be Emperor Hirohito that brought biological warfare to the fore, and who would wage an aggressive expansion policy.

Previous literature has tended to shy away from the implicit role that the Emperor would have played in developing Japan's extensive biological warfare research program.

It would be wrong to suggest that Japan had been solely moulded by external factors or other nations on the road to Unit 731 and, generally, Japan's war-time 'conduct'. The man with ultimate culpability for the atrocities committed on behalf of, and in the name of, Japanese expansionism, whether biological or otherwise, has to be the head of the Imperial Family at that time: Hirohito. Not only was he the key figure in Japan, but he would also play a pivotal role in the formation of Unit 731 and the aggressive policies adopted by Japan during the Second World War that would allow it to flourish.

This thesis does not intend to go into the same exhaustive commentary of Hirohito and his reign, as other authoritative academics such as Herbert P Bix and Edward Behr have done.¹⁵² Instead, as his thesis has done for Ishii, it intends to simply provide a brief background to Hirohito's upbringing, the circumstances in which he began his reign, his interest in bacteriological research, his involvement with Unit 731, and finally, the issue of surrender and immunity.

Hirohito, and the Allied nations, caused international dismay when he was granted immunity in return for Japan's surrender to the Allied powers at the end of the conflict. Hirohito proved to be a divisive and controversial figure throughout his reign. Therefore, it is vital to understand the significant role that the Emperor played in Japanese society, and why the United States felt it appropriate to make Hirohito, seen as a living deity, immune from prosecution for his involvement in the war crimes committed by Japan. Were the atrocities that were committed under his watch committed and encouraged due to incompetence or by design? It is essential to briefly consider and contrast the upbringing of Hirohito alongside the changes that Japan, as a whole, had undergone at the same time, in order to see whether this impacted his development and views. Was he

¹⁵² See: Bix *'Hirohito and the Making of Modern Japan'* 1st Edition (HarperCollins: 2001) and Behr *'Hirohito: Behind the Myth'* (Penguin Books: 1990)

just a weak, easily-led individual, or did he share the same dictatorial tendencies as Hitler and Stalin displayed? Was that omission to act in itself a valid excuse to avoid prosecution?

The position of the Emperor in Japanese culture was important not only as a near-religious deity, but also in the administration of government following the Meiji Restoration. The Meiji Constitution of 1889 vested ultimate power with the Emperor. Not only did the constitution provide him with the supreme command of the Japanese armed forces, but it also afforded him the ability to not only wage war, but also to make peace.¹⁵³

Hirohito was born on 29th April 1901 to Crown Prince Yoshihito, and was the grandson of Emperor Meiji, born into an era of great transition and constitutional change triggered by the Meiji Restoration of 1868.¹⁵⁴ From a modern-day perspective, Hirohito's upbringing appears peculiar. Japanese custom provided that the children of Japanese royals be raised away from their parents, and as such, the young Hirohito was taken away from his father, Crown Prince Yoshihito, and his mother, Princess Sadako. Although appearing strange by modern values, it was arguably no different from the approach and traditions adopted by other royal families at the turn of the 20th Century.

From a young age, Hirohito had demonstrated a preference for the Navy, and a keen interest in the Navy would continue into his adult life and undoubtedly influence his decision making and funding of elaborate, and arguably excessive, warships.¹⁵⁵ The young Hirohito's awareness of Japan's foreign affairs at an impressionably young age, against a backdrop of continued Japanese expansionism and success, has already been

¹⁵³ <https://history.hanover.edu/texts/1889con.html> - last accessed 6th May 2020

¹⁵⁴ Wetzler *'Hirohito and War: Imperial Tradition and Military Decision Making in Prewar Japan'* (University of Hawaii: 1998) at page 82.

¹⁵⁵ Bix *'Hirohito and the Making of Modern Japan'* 1st Edition (HarperCollins: 2001) at page 26 – Ito, amongst other statesmen, had been bestowed the hereditary title 'Prince' as a result of serving in the Russo-Japanese conflict.

extensively detailed in the first part of this thesis. Hirohito could only ever see Japan as a victorious nation, having not experienced or witnessed defeat. Did this subsequently give Hirohito a belief of Japan and its people as a superior or invincible race?

When his grandfather, Emperor Meiji, died on 30th July 1912, his father assumed the Throne, which left Hirohito as next in line as Crown Prince¹⁵⁶; he was replacing the role of his father, Yoshihito. Because the First World War had only begun in 1914, Hirohito was sheltered from the harsh reality and bloodshed of this stationary war of attrition. The impact of the modern weaponry deployed by both sides, including chemical warfare, did also not come to his attention at this time. Instead, Hirohito was taught the idealistic, traditional, and strict views of *Bushido*, despite it having been all but removed from their nation's newly-formed Army.

There had been no direct involvement in the horrors of the First World War for Japan. In turn, this resulted in the Japanese Imperial Army failing to consider the new developments in warfare and their uses, and did not adopt these advancements or weapons within their arsenal; this was reflected in Hirohito's military education. It would only be during the rule of Hirohito that Japan would take the use of biological and chemical weapons seriously. Hirohito had given clues from an early age that he would deal with issues that arose with an iron fist, even if it was against his people. By 1916, Hirohito had become a Captain within the Imperial Army and a Lieutenant in the Navy. Two years later, the Japanese Imperial Army was called to deal with conflict on home soil. In the summer of 1918, it had to deploy some 57,000 troops in response to the Rice Riots; civilian unrest at extreme poverty levels and famine. Public unrest was not suppressed,

¹⁵⁶Bix '*Hirohito and the Making of Modern Japan*' 1st Edition (HarperCollins: 2001) at page 39.

and further dissatisfaction was publicly displayed in the next three years;¹⁵⁷ and this forceful response, as ordered by the Imperial Family, further detached the everyday Japanese working man from the monarchy.¹⁵⁸

Hirohito had failed to consider these social and economic perspectives, which increasingly called into question the Imperial Family's validity, leading to growing opposition to the Imperial Family.¹⁵⁹ Bix has attributed this stark failure to two distinct factors: firstly, the need to ensure that Hirohito implicitly understood his role as Supreme Commander of the Japanese Armed Forces; and secondly, as a living God, Hirohito was to act independently and exclusively from external influences.¹⁶⁰

Since the Meiji Restoration, his grandfather and father before him had been given powers that amounted to autocracy. In light of this, the Imperial Family ensured that Hirohito was taught on all aspects of governance, since he would need to make numerous decisions with limited delegation. It is clear that, although there had been a clear structure of power to include the Privy Council and Diet, the Emperor was still expected to make the final decision on a range of issues. At eighteen years of age, Hirohito wrote:

“The realm of ideas is greatly confused; extremist thought is about to overwhelm the world; and an outcry is being made about the labour problem. Witnessing the tragic aftermath of the war, the peoples of the world long for peace and international conciliation among the nations. Thus we saw the establishment of the League of Nations and, earlier, the convening of a labour conference... Concerning the League of Nations

¹⁵⁷ Crump *‘The Anarchist Movement in Japan, 1906 – 1996’* Anarchist Communist Editions ACE Pamphlet, Pirate Press 8. (1996)

¹⁵⁸ Over the next three years, there would be various strikes that were violently dismantled by the Imperial Army; these were the Tokyo Artillery Arsenal (1919 and 1921), Kamaishi Iron Mine (1919), Yawata Steel (1920), the Ashio Copper Mine (1921) and finally the Kawasaki-Mitsubishi Shipyards (1921).

¹⁵⁹ Bix *‘Hirohito and the Making of Modern Japan’* 1st Edition (HarperCollins: 2001) at page 54.

¹⁶⁰ Ibid at page 55.

in particular, we are truly delighted and, at the same time, also feel a grave burden of the state... I shall obey the Covenant of the League and develop its spirit."¹⁶¹

This acknowledgement - from Hirohito - of international and national outcry contradicts Bix's assertion that Hirohito was not aware of issues that arose from the First World War or the growing disgruntlement of his people. On the face of it, the young Emperor-in-waiting appears to be in favour of a united international approach to ensure future peace for humanity after the First World War had drawn to a conclusion. Hirohito's early enthusiasm was not, indeed, an affirmed belief, with Japan subsequently removing itself from the League of Nations under his rule.

Bix argues that Hirohito's use of the phrase "extremist thought" may well be misinterpreted and that, given his pro-monarchy upbringing, he could well have classed democratic thinking, anti-militarism, socialism, and communism as "extremist thought", as opposed to those who wished to wage war.¹⁶² *Bix's* interpretation is somewhat charitable towards Hirohito's words and actions when his actions subsequently do and do not support a peaceful approach.

Shortly after being appointed Regent of Japan on 25th November 1921, his father became unwell. Hirohito had to deputise as Emperor while his sickly father recovered.¹⁶³ He assumed all of the duties of the Emperor and, effectively, held the role in all but title. Shortly after, Hirohito's ideological peace drive continued. In support of international peace, Hirohito took to international diplomacy like a duck to water. He backed the United States in their disarmament plans and subsequently agreed to the Washington Conference, and was directly involved in the post-war framework after the First World

¹⁶¹ Bix *Hirohito and the Making of Modern Japan* 1st Edition (HarperCollins: 2001) at pages 91-92.

¹⁶² *Ibid* at page 91.

¹⁶³ Lentz 'Heads of States and Governments since 1945: A Worldwide Encyclopaedia of Over 2,300 Leaders, 1945 through 1992' (Routledge: 1994) at page 453.

War.¹⁶⁴ Such peaceful policymaking hit its first hiccup in 1923 when Hirohito had to discuss the potential deviation from the Washington Conference with the Army and Navy Generals' chiefs. They had concerns arising from the rise of the Soviet Union and further international pressure from the United States. After extensive discussions between Hirohito and his staff, it was agreed that the Army would prepare for war on the Asian continent, with the Soviet Union the first target in the crosshairs.

After a soft start, Hirohito had now adopted an aggressive foreign policy to expand its influence within the region and internationally, and to attempt to reduce the Soviet Union's involvement. The Navy would continue to comply with the Naval Arms Reduction Treaty that Japan had signed up to, but would carry out defensive manoeuvres and increase their presence in areas where the United States had naval bases.¹⁶⁵ ¹⁶⁶ This is clear evidence that Hirohito had adopted a hands-on approach to his rule as Regent, never mind as future Emperor, and flies in the face of subsequent allegations that he was Emperor in title only when the issue of immunity arose.

While overseeing the alleged reduction in naval forces, Hirohito intelligently adopted a policy of scrapping older vessels and ensuring that the limited number of new vessels focused on a modern fleet of ships with air capability, as well as submarines. While also appearing to ensure peace by withdrawing Army troops from China between 1923 and 1925, the Japanese Army took this opportunity to reorganise and modernise their Armed Forces to prepare future military plans.¹⁶⁷ Japan increased spending on its

¹⁶⁴ However, Hirohito's role in the Conference has been downplayed by other academics (see: Kawamura *'Emperor Hirohito and the Pacific War'* (University of Washington: 2015) at page 30.

¹⁶⁵ Bix *'Hirohito and the Making of Modern Japan'* 1st Edition (HarperCollins: 2001) at page 151.

¹⁶⁶ Mauch *'Sailor Diplomat: Nomura Kichisaburo and the Japanese-American War'* (Harvard: 2011) at pages 67 - 74

¹⁶⁷ The withdrawal of troops was also widely published in the United States (see: Chow & Chuma *'The Turning Point in US-Japan Relations: Hanihara's Cherry Blossom Diplomacy in 1920-1930'* (Palgrave Macmillan: 2016) at page 113.

armed forces continually, year on year, during Hirohito's pre-war reign. For comparison, between 1920 and 1940, overall Japanese military spending increased from \$668M to \$£3,128M, and the United States fell from \$3,296M to \$2,355.¹⁶⁸ It cannot be reasonable to assert that Hirohito was a man of peace when there was a prolonged and planned policy of increased military spending, and playing fast and loose with international agreements all in the name of expansionism.

So far, we have seen that Hirohito not only misled the international community as to his intentions for peace, but a similar strategy was adopted in the method of declaring war on the United States nearly two decades later. It was not merely an interest in the armed forces and Navy that received Hirohito's attention and investment.

Hirohito was also starting to plough investment into his other interests, including biological research. By September 1925, the Emperor had extensive building work completed to have his private research laboratory constructed within the confines of his Akasaka Palace.¹⁶⁹ Not content with this own personal research facility, Hirohito opened the cheque book once more with the Imperial Research Institute's creation in Fugiage Gardens.¹⁷⁰ Having excelled while undergoing his Imperial education, with his former tutor, Professor Hattori Hirota, stating that "*he (Hirohito) did not just hand them material he had collected. Rather, he first thoroughly investigated that material himself, and on that point, he is no amateur.*"¹⁷¹ While not direct evidence of involvement in the Japanese biological warfare program, it would not be beyond the realms of possibility to suggest that Hirohito may have taken a keen interest in the biological research conducted by Ishii over the coming years.

¹⁶⁸ Ross & Woodward 'Pearl Harbor' (Encyclopaedia Britannica: 2015) at page 18

¹⁶⁹ Low 'Japan on Display: Photography and the Emperor' (Routledge: 2006) at page 124.

¹⁷⁰ Bix 'Hirohito and the Making of Modern Japan' 1st Edition (HarperCollins: 2001) at page 60.

¹⁷¹ Ibid at page 61.

Regent Hirohito was showing all the signs of a strong-willed individual with a penchant for military spending, biological research, and an aggressive international foreign policy. While his quiet nature and slight frame suggested to the contrary, his acts in ruling were explicit. Hirohito was beginning to show the hallmarks of a war-monger, evidenced two decades before the conclusion of the Second World War, and he was yet to ascend to the Throne. He did not have long to wait.

Having been ill since late-1921, on 25th December 1926, Hirohito's father passed away following a heart attack.¹⁷² The Showa Era was now underway, and Hirohito was now Emperor. He had to assert Imperial Rule at a difficult time as there was: considerable civil unrest; a failing economy; a military that was fast exerting more power, both by legal means and otherwise, than the cabinet; and the constant fear of violence by the military against anyone deemed to be a political opponent. Hirohito had to find a way to bring together these warring factions and unify a nation. He had to assume control of the nation through peaceful means or otherwise and, in doing so, became politicised.

As with Nazi-Germany, Hirohito would soon understand the value of propaganda. The Emperor and his selected government could use propaganda and control of the media to manipulate public opinion in their favour. The government soon appointed what was later referred to as "thought police", responsible for suppressing the views of anyone who spoke out against the Imperial state, in particular against communists and other radicals.¹⁷³ ¹⁷⁴ If Unit 731 were to be built, secrecy would be tantamount. The imperial family, in particular Hirohito, would need to have plausible deniability. The easiest way

¹⁷² Wetzler *'Hirohito and War: Imperial Tradition and Military Decision Making in Prewar Japan'* (University of Hawaii: 1998) at page 162.

¹⁷³ Bix *'Hirohito and the Making of Modern Japan'* 1st Edition (HarperCollins: 2001) at page 187.

¹⁷⁴ Shillony *'The Emperors of Modern Japan'* (Brill: 2006) at page 279.

of doing this degree of separation would be to ensure that such research did not occur on Japanese soil.

Building Unit 731

After years of lobbying, Ishii would eventually get his wish. On 31st August 1931, both he and a close friend, Masuda Tomosada, were posted to Manchuria for one month.¹⁷⁵ While their objective remains unknown, it is more than plausible that this region's tour would have significantly helped Ishii in earmarking potential sites for his future biological warfare program in Manchuria.¹⁷⁶ This visit's secrecy further supports that assumption, as secrecy would remain the one constant throughout the lifetime of Unit 731.

Ishii remained in Manchuria beyond his initial month's tour.¹⁷⁷ His long-awaited plans were now well on the road to becoming a reality. Ishii finally established the Epidemic Prevention Laboratory in mid-1932, which would ultimately form part of, and be an extension to, the pre-existing Army Medical School in Tokyo. Ishii had established a base in Harbin, located in Northern Manchuria, in a province that had already been heavily occupied by Japanese troops ever since trouble had erupted, and that could be considered a stronghold at that time.¹⁷⁸

As with Manchuria as a whole, Harbin was a diverse and cultured region, transformed through investment by the Russians at the end of the 19th Century. It became a vital part of the railway network and enjoyed the other trade and industries that naturally

¹⁷⁵ Harris 'Factories of Death: Japanese Biological Warfare, 1932-45, and the American Cover-Up' (Routledge: 2002) at page 21.

¹⁷⁶ Ibid at page 23.

¹⁷⁷ Geissler 'Biological and Toxin Weapons: Research, Development, and Use from the Middle Ages to 1945' (Oxford University Press: 1999) at page 149.

¹⁷⁸ Harris 'Factories of Death: Japanese Biological Warfare, 1932-45, and the American Cover-Up' (Routledge: 2002) at page 27.

followed a significant railway infrastructure.¹⁷⁹ A metropolitan area, there were numerous ethnicities, religions, and social classes present who could live harmoniously. Harbin could be said to be a melting pot of ideas, cultures, and beliefs.¹⁸⁰ This, in itself, proved to be of concern to Ishii, who had intended on carrying out experiments in the region, but he now feared that the local population would discover his research if ultimate secrecy were not enforced at the very outset.

Ishii was also fully aware that the research he needed to carry out would have to be done so exclusively away from Tokyo's prying eyes, where he would be unlikely to garner any public support to work on live human subjects. Ishii was cunning in adopting the approach of "ignorance is bliss", knowing that he could keep his research and results yielded in-house. In addition to this, Ishii was aware of the probability of obtaining Chinese Prisoners of War and the local population in Manchuria to experiment upon while still under the Kwantung Imperial Army's control and funding.^{181 182} Deciding that the risk was worthwhile, and potential rewards significant, Ishii proceeded with Harbin and set up his first laboratory in the industrial sector, forcing the local population to abandon their homes and businesses.¹⁸³

This new venture was only officially announced in the Fifty-Year History of the Army Medical School in 1936, some five years after Ishii had first earmarked a site in Harbin, and four years after other satellite sites had been created in Manchuria. In keeping

¹⁷⁹Ibid, at page 29.

¹⁸⁰ Fogel 'The Japanese and the Jews: A Comparative Analysis of Their Communities in Harbin, 1898-1930' in Bickers & Henriot 'New Frontiers: Imperialism's New Communities in East Asia, 1842-1953' (Manchester University Press: 2000) at page 88.

¹⁸¹ Report on Japan's War Responsibility' No. 2 (1993) at page 35.

¹⁸² Gold 'Unit 731: Testimony' (Tuttle Publishing: 1994) at page 29.

¹⁸³ Harris 'Factories of Death: Biological Warfare, 1932-45, and the American Cover-Up' 2nd Edition (Routledge: 2002) at page 31.

with Ishii's desire for ultimate secrecy, the publication provided the following explanation of Unit 731's role as: -

*“The Epidemic Prevention Laboratory is newly established in the Army Military Surgeon School as a research facility associated with the national military epidemic prevention tactical warfare mission operations... Army Surgeon Colonel Ishii Shiro ... noting there were no corresponding facilities in our country, felt keenly a severe defect in our national defense; and upon completing his European tour in 1930, and returning to Japan, pointed out the aforementioned defect... and proposed to his superiors that this was an issue that required top priority research implementation... In 1932, the issue met with the approval of the superiors because of the tremendous support from Instructor Koizumi.”*¹⁸⁴

Notably, the publication notes that Ishii had highlighted a defect in that no research had been carried out in Japan, but had created Unit 731 to be based in a foreign country, namely China. The Unit was provided with a starting annual budget of 200,000 yen by the military, from a secret personal account of Emperor Hirohito, which allowed Ishii to become one of the best-funded researchers of biological weapons; something that would only change in the final days of the war.^{185 186} It also gives rise to question of the extent of Hirohito's knowledge of the Unit. Given he was directly funding Ishii's research, and, on balance, given Hirohito's interest in this field of study, it is more likely than not he would have taken a keen interest in Ishii's work.

Ishii knew that, if his Unit was going to be successful, he would have to conduct research into four distinctly different areas, in particular:

¹⁸⁴ Tsuneishi ‘*The Germ Warfare Unit That Disappeared*’ (US Army Intelligence and Threat Analysis Center: 1982) at page 11.

¹⁸⁵ Behr ‘*Hirohito: Behind the Myth*’ (Penguin Books: 1990) at page 57.

¹⁸⁶ Tsuneishi & Asano *The Bacteriological Warfare Unit and the Suicide of Two Physicians*’ (Tokyo: 1982) at page 50.

*"Two types of biological warfare, A and B. A was assault research, and B was defense research. Vaccine research is of type B and could be done in Japan. Type A was to be done abroad... the biological warfare carried out by the Japanese during World War II was a case of systematic biological massacre against humanity."*¹⁸⁷

As a consequence of these vastly different areas of study, Ishii concluded that, although initially he had felt secure in Harbin to carry out his desired research, he would only be able to carry out vaccination research in the densely populated area (type A) without raising questions as to the real purpose of his Unit. That being the case, if Ishii wished to carry out large-scale field experiments on human subjects (type B), that being the local populous, it was abundantly apparent that Ishii would need to locate a more suitable and discreet area, most likely in a rural location. It is apparent that Ishii was fully aware that the work he was committing was both unethical and could cause him difficulty if he had to explain the real purpose of it; it, therefore, cannot be said that the lack of medical ethics and standards in Japan at that time had caused him to be ignorant to the ethicality of his work.

Kei-ichi states that *"the scientists and technologists were better accommodated in Manchurian than in Japan with respect to availability of research funds and freedom to select research themes. Manchuria was probably like a newly found paradise for these people."*¹⁸⁸ It is difficult to disagree with this assessment; it is apparent that Manchuria had all the raw ingredients that Ishii required for his Unit at that time, which is an abundance of "disposable" local civilians, utmost secrecy, and extensive funding for any research Ishii saw fit. There was little, if any, real supervision of Ishii or the work being

¹⁸⁷ Barenblatt *'Plague Upon Humanity: The Hidden Horrors of Japan's Biological Warfare Program'* (Harper Collins: 2005) at page 17.

¹⁸⁸ Tsuneishi *'The Germ Warfare Unit That Disappeared: Kwantung Army's 731st Unit'* (Tokyo: 1981) at page 8.

undertaken. Ishii and his fellow researchers cannot have pleaded ignorance; as this thesis has already documented, at the turn of the 20th Century the Japanese had tended to tens of thousands of wounded Russian troops. Ishii would have received his medical training at University and in the military from individuals who had been involved in the provision of that care. While there may have been no expressly stated doctrine on medical ethics at the turn of the 20th Century, it is clear that the medical and military communities in Japan had a strong moral obligation to provide medical assistance, even to those they considered enemies.

A matter of months later, the exact date unknown but said to be in or around July or August of 1932, Ishii created a secondary Unit to Unit 731, which he named the Togo Unit.¹⁸⁹ This satellite division was based in Beiyinhe, Manchuria, and would act as a subdivision of the Epidemic Prevention Laboratory in Tokyo. They would have a new home that would later be known as the Zhongma Fortress.

Not only was Ishii given considerable financial support, but he was also given command over some 300 men to construct the site and work. Local Chinese labourers were also drafted to assist in constructing a joint prison and research centre, which was to be divided into two separate wings. The first contained the prison, laboratories, and crematorium to dispose of human subjects after their experimental purpose had ceased in Ishii's eyes. The second wing contained offices, barracks, warehouses, a canteen, and Ishii's staff's parking facilities.¹⁹⁰ The Fortress was seen as an ideal home for the Unit as *"the ever-dependable and expanding South Manchuria Railway provided a means of transporting equipment and, more importantly, human lab materials."*¹⁹¹ There are

¹⁸⁹ Harris *'Factories of Death: Biological Warfare, 1932-45, and the American Cover-Up'* 2nd Edition (Routledge: 2002) at page 13.

¹⁹⁰ Ibid at page 32.

¹⁹¹ Gold *'Unit 731: Testimony'* (Tuttle Publishing: 1994) at page 33.

haunting parallels with Nazi-Germany's use of their railway network in the Final Solution to that same reliance being used by Unit 731 to conduct these studies, without either nation knowing that they were using the railway network for such sinister purposes.

Once finished, the Togo Unit became fully operational at the Zhongma Fortress, which could hold up to an estimated 1,000 prisoners at any given time, ranging from anti-Japanese activists, bandits, and completely innocent people rounded up as having been "suspicious", akin to the systems in place in both Nazi-Germany with the Gestapo and the use of Gulags in Soviet Russia.¹⁹² Once prisoners had arrived at the Fortress, they would be placed in cells and, somewhat surprisingly, provided with a well-rounded diet and plenty of exercise. It would be wrong to assume that this was some form of benevolence on the part of Ishii, who was in no way concerned for their wellbeing or any great humanitarian act; rather, Ishii wished to ensure his subjects would last the entirety of his experiments, and believed this to be the most efficient and cheapest way of achieving this goal.

Ishii and his researchers kept fastidious records of their subjects, with blood samples being taken every three to five days to monitor their various experiments' effects. Once these experiments had run their course, the victims would be put to death by lethal injection, their bodies dissected, and the remains cremated.¹⁹³ Such was the efficiency of Ishii and his men in destroying records from the experiments conducted at the Fortress in 1945 when the Japanese surrender was all but imminent, now only witness testimony from researchers who participated in such experiments survives to this day.

¹⁹² Lockwood *Six-Legged Soldiers: Using Insects as Weapons of War* (OUP USA: 2010) at page 93.

¹⁹³ Harris *Factories of Death: Biological Warfare, 1932-45 and the American Cover-Up* 2nd Edition (Routledge: 2002) at page 33.

Although Ishii had set about destroying all records held concerning the Fortress, he had not anticipated that it would have become infamous amongst the local Chinese population, and, importantly, it was common knowledge that “*the life expectancy of prisoners at the fortress was a maximum of one month.*”¹⁹⁴ The facility has subsequently been referred to as “*Auschwitz before there was an Auschwitz.*”¹⁹⁵

One such event that led to the local public's attention being drawn to the Fortress took place in 1934, when the soldiers and other staff were keenly celebrating the mid-Autumn festival. The alcohol was flowing, and those who were meant to be guarding the Fortress were leaving their posts, eager to join in the celebrations. The prisoners took note of this and promptly took advantage of the situation, leading to the Fortress being abruptly placed into an emergency shut-down due to a prisoner rebellion that resulted in some successfully escaping and informing the outside world of Ishii's experiments.¹⁹⁶

The keystone of Ishii's Unit, secrecy, had now been dealt a fatal and embarrassing blow. One may have hoped that such a disaster for Ishii would have been the end of his biological research.

Forced Relocation

The embarrassment of the prison rebellion and breakout at the Zhongma Fortress did not hurt Ishii's reputation amongst his superiors, who declared that the Fortress had been a monumental success for biological warfare. After the prisoner rebellion of 1934, it was accepted that Ishii and his Unit would have to find a new, unblemished location in order

¹⁹⁴ Gold ‘*Unit 731: Testimony*’ (Tuttle Publishing: 1994) at page 36.

¹⁹⁵ Barenblatt ‘*A Plague Upon Humanity*’ (Harper Collins: 2005) at page 30.

¹⁹⁶ Barenblatt ‘*A Plague Upon Humanity*’ (Harper Collins: 2005) at pages 35-36.

to continue his research on human subjects, as well as to expand his research into field-experiments on the local unsuspecting populous.

It would take approximately two years, in or around August 1936, for Ishii's Unit 731 to formally replace the previous guise of the Epidemic Prevention Laboratory, with the official approval of Emperor Hirohito to restructure and increase the Togo Unit, creating the Epidemic Prevention Department of the Kwantung Army.¹⁹⁷ Again, Emperor Hirohito can be seen to have had direct involvement in the expansion of Unit 731, and it is highly unlikely that Hirohito would have sanctioned such expansion and, in turn, additional funding, without having evidence of the progress made to date by Ishii and his staff. Ishii was duly appointed Chief of this rebranded enterprise, once more giving Ishii and Unit 731 the secrecy that was vital to its work, having been formally integrated into the Kwantung Army by Emperor Hirohito. Nobody could dispute the value or plausibility of a purification branch of the Army, especially given that the same forces had previously been riddled with disease and, therefore, reasonable suspicion was not aroused.

Shortly after the “rebranding” of the Unit, Ishii discovered Ping Fan, a group of villages spread across twenty-four kilometres, and Ishii decided that they should relocate Unit 731 to this rural location, just south of Harbin, which had remained the multicultural focal point of trade and the arts. After the Russo-Japanese War, there had been an established dense population of Russian and Chinese citizens living in Harbin. It was the wealth of natural resources, such as ore, that had led Russia to increase its interests in the region at the end of the 19th Century. With Russia providing more significant resources to Manchuria, the region flourished, and once simple villages turned in thriving cities. As

¹⁹⁷ Sankeisha *‘War & Medicine’* 27th General Assembly of the Japan Medical Congress (2007) at page 13.

a result, Russia had a strong hand in any negotiations with China, as it could stop any future investment in the infrastructure of Manchuria.

Increasing their influence in the area, in 1898, the Russians ensured that the Chinese granted them a lease over land covering Port Arthur, Dairen, and the Peninsula of southern provinces, for twenty-five years.¹⁹⁸ Russia was replaced as leaseholders of the land after their defeat in the Russo-Japanese War, with Japan taking their place. Ishii was aware that, given the high numbers of Russian troops along the Soviet-Manchurian border, an armed clash between the Japanese and Russians was to be expected. Therefore, he began his new operation slowly, with minimal staff relocating and maximum secrecy instilled in them; hence the façade of The Epidemic Prevention Department.

In a matter of months after first arriving in Ping Fan, Ishii and his men had taken control of a significant proportion of the villages in the region, forcibly removing the villagers that resided there. It is estimated that the Unit uprooted some 600 Chinese families in order to clear the area for their new facility, such was the planned vastness of his new site.¹⁹⁹ In the same year, a researcher of Unit 731 justified the transition of research to himself and others as:

“Our God-given mission as doctors is to challenge all varieties of disease-causing micro-organisms; to block all roads of intrusion into the human body; to annihilate all foreign matter resident in our bodies; and to devise the most expeditious treatment possible. However, the research upon which we are now about to embark is the complete opposite of these principles and may cause us some anguish as doctors. Nevertheless, I beseech you to pursue this research based on the double medical thrill; one, a scientist to exert

¹⁹⁸ The Convention for the Lease of the Liaotung Peninsula signed 27th March 1898.

¹⁹⁹ Harris *‘Factories of Death: Biological Warfare, 1932-45 and the American Cover-Up’* 2nd Edition (Routledge: 2002) at page 42.

effort to probing the truth in natural science and research into, and discovery of, the unknown world, and two, as a military person, to successfully build a powerful military weapon against the enemy."²⁰⁰

It is abundantly clear, from the words of Ishii's staff members, that they had been indoctrinated to believe that, whilst they knew the experiments they were conducting on human subjects "*is the complete opposite of these principles*", they must do so in order to successfully build a powerful bacterial arsenal to use against their enemies.

Once Ishii's new research facility had been completed in 1939, the scale of the complex at Ping Fan was unimaginable. The Unit's new complex consisted of some 150 buildings, and included its private airfield and railroad to link the facility to the existing railway system already in place at Harbin. In addition to the main site at Harbin, other satellite research centres were established at that time in addition to Ping Fan. An open airfield test site was opened in Anda and Unit 100 was located in Xinjing, who would be responsible for carrying out similar experiments to the existing sites, but would inoculate livestock, as opposed to humans, with bacteria. In Guangzhou, Unit 8604 was tasked with infecting rats with plague and monitoring the spread of diseases on the local populous. A final unit, Beijing Unit 1855, would also carry out similar research to that of Unit 8604.²⁰¹

Ishii had now created an extensive network of research facilities that needed to be greatly staffed by both researchers and support staff. He had already been able to draw upon upcoming researchers through the Army's Medical School in Tokyo. To cope with the increase in size that Emperor Hirohito had allowed, he began getting back in contact with the various Presidents he had become friendly with whilst in academia, which

²⁰⁰ Williams & Wallace '*Unit 731: Japan's Secret Biological Warfare in World War II*' (1989) at pages 37-38.

²⁰¹ Gold '*Unit 731: Testimony*' (Tuttle Publishing: 1994) at pages 48-54

allowed him to carry out recruitment directly from several Japanese Universities; this led to further branches of the Unit being created in Beijing, Nanjing, Guangdong, and Singapore.

Ishii ensured that his Unit would only recruit the finest graduates onto his staff, and it is reported that, at its peak, the Unit employed up to 3,000 researchers (300 medical staff and 2,700 support staff), and a total of 20,000 staff under Ishii's control at any one time.^{202 203} In addition to this, Ishii would, in return for the steady supply of research students into his various Units, make several trips a year back to Kyoto Imperial University, as well as other prestigious Universities, and provide talks to their medical students at the various institutes within the military and careers that could be pursued, with particular emphasis on his Unit.²⁰⁴

Unit 731 comprised of civilian staff, researchers, and assistants, as well as military staff. Gold explains why Ishii's recruitment drive was so compelling: -

*"In defense to some of the people recruited, it must be acknowledged that not all of them knew what they were getting into and were themselves used by Ishii and his henchmen. There were also students who were pressured by their professors to go work with Ishii's organization. Defying a professor in Japan's strict academic hierarchy was (and remains today) equivalent to career suicide."*²⁰⁵

It is a fair assertion of Gold to make; it is apparent that Ishii had an extensive network of staff, totalling in the tens of thousands; it would be unfair to castigate all of them. Some of his staff may have been simple prison guards, administrators, or alike, who

²⁰² Taylor 'Denial. History Betrayed' (Melbourne University Press: 2008) at page 82.

²⁰³ Tanaka 'Hidden Horrors: Japanese War Crimes in World War II' (Westview Press: 1996) at page 137.

²⁰⁴ Harris 'Factories of Death: Biological Warfare, 1932-45 and the American Cover-Up' 2nd Edition (Routledge: 2002) at pages 17-18.

²⁰⁵ Gold 'Unit 731: Testimony' (Tuttle Publishing: 1994) at page 60.

will have had little, if any, knowledge of the experiments being undertaken at the facility. By contrast, those researchers who conducted live vivisections would, or should, have been fully aware that the acts they were committing were both unethical and inhumane. It would also be unfair to strongly criticise those directed straight from universities across Japan, likely being their first foray into employment and unlikely to know whether or not the research being conducted was anything other than normal within the profession.

Of those 20,000 staff under Ishii's control, also included were the Kempeitai Military Police, who were responsible for rounding up Chinese civilians for testing for Unit 731 with little or no reason for selection. When on trial by the Russians in the Khabarovsk Trial, Kawashima Kiyoshi spoke of his time as Head of Division One for Unit 731, in that the Military Police would allow:

*"Constant experiments on living human subjects – Russian and Chinese prisoners – were conducted. They were transported to Unit 731 by Japanese gendarmerie in Manchuria – to test biological warfare samples as well as to investigate the ways of treating epidemic diseases in the Unit. Unit 731 had a dedicated prison for these detainees, where "experimental humans" were kept in stringent conditions, including isolation."*²⁰⁶

The above statement by a key figure in the Ishii administration shows how the local Japanese Police were not only complicit in the atrocities committed by the Unit, but also vital as they would round up Prisoners of War for experimental purposes, with an inbuilt prison used to detain them whilst they were prepared by the researchers. When running low on human subjects for experimentation, or the need for female subjects, the Japanese Police would not restrict their search to Prisoners of War, but also include innocent civilians in order to meet their quota and quench Ishii's escalating demand. The

²⁰⁶ Nie, Guo, Selden & Kleinman 'Japan's wartime Medical Atrocities: Comparative Inquiries in Science, History and Ethics' (Routledge: 2010) at page 65 - The Khabarovsk Trial (1950) at 55-56.

Kempetai were Japan's equivalent of the German Schutzstaffel, and were responsible for controlling the population in Manchuria.

As a consequence of the endless resources available to Ishii, both granted by Hirohito and Manchuria, Japan's biological warfare program became world leading, surpassing the United States; partly due to the high level of funding granted to it, but also as a result of their use of human test subjects. Their successes became so well known that Japan and Nazi Germany would assist one another. Adolf Hitler ordered a medical team to visit the Japanese biological warfare facilities to study their results and, in return, Shiro Ishii's assistant, Hojo Enryo, visited the Berlin Military Academy of Medicine in 1941 to lecture on bacteriological warfare.²⁰⁷ On the basis that Hitler had ordered his researchers to visit Ishii's Unit, it can reasonably be adduced that Hirohito would have likely signed off on Hojo Enryo's return visit.

Even Germany did not commit the same level of wide-scale atrocities and experiments on Prisoners of War. In the early years of their occupation of Manchuria, the invasion of China was only ever retrospectively confirmed by Prime Minister Hirota Koki, on 07th August 1936, as one of the 'Fundamentals of Japanese Policy'.²⁰⁸ Given that Japan had always claimed that its invasion of north-eastern China had been in self-defence, with the botched attack on their railway line, it argued that the international rules of war did not apply to it. Japan would therefore have no subjective obligation to treat any prisoners of war or members of the local population under international law. In the same year, on 25th November 1936, Japan and Germany had agreed on the Anti-Comintern Pact, with the shared aim of obstructing communist activities. Japan had now

²⁰⁷ Martin 'Japanese-German Collaboration in the Development of Bacteriological and Chemical Weapons and the War in China' (London: Routledge, 2006) at page 207.

²⁰⁸ Beasley 'Japanese Imperialism 1894 – 1938' (Clarendon: 1987) at page 201.

shown its hand to the international community, that it did not care with whom it associated itself, so long as they shared the same ideological views. This shared view was also to be reflected in Ishii's treatment of Soviet prisoners of war, or those from the Manchurian region of Russian descent.

Hirohito and the Unit

Japan had now, in effect, chosen their side in the dawn of the most significant conflict that the world would see. In addition to this, Japan had strongly reiterated its foreign policy against Russia and China, which was not yet a Communist state, but would only in turn further drive away former Western allies Britain and the United States, who continued their support of China over Japan.

As the first part of this thesis has detailed, Japan engaged in an aggressive foreign policy that increased in severity in the early-1930s, until their eventual occupation of Manchuria and involvement in the Second World War at the turn of the 1940s. This coincides almost perfectly with the inception of Unit 731 and its rapid growth during the same period. Could it only have been a coincidence, or was it a deliberate strategy on Hirohito's part to ensure that the research of Unit 731 could be used against their enemies?

Under Hirohito's rule, Japan was increasingly reverting to an isolationistic state, albeit that, in the early years that preceded his reign, isolation had not been Japan's desire. Indeed, by the time Hirohito had assumed the Throne, Japan had intentionally become isolated and antagonistic. By 1936, Japan now cared little for any further international condemnation, even if from the United States, Russia, or China.

From 1936, there can be seen to be a marked increase in the activities of Unit 731 and the number and frequency of atrocities committed by Ishii and his men in the name

of scientific research. Emperor Hirohito approved the deployment of biological weapons in Manchuria. Not only had Emperor Hirohito set up Ishii's Unit by Royal Decree, one of only two times during his entire reign, but *"Imperial Headquarters Army Order Number 201, sealed by Hirohito on 15th May, 1939, authorised the carrying out of field studies of chemical warfare along the Manchukuo-Soviet border."*²⁰⁹ Hirohito was not only allowing Unit 731 to exist; he was actively encouraging extensive field experiments to be carried out against innocent Chinese civilians. That cannot, indeed, be any different to the murderous Nazis who sent innocent Jews to their deaths in the concentration camps of Europe.

By this point in time, Ishii appears to have had the full support of Hirohito. Following the green light of approval, Ishii began to ramp up the level and intensity of field experiments that the Unit was conducting. Once he had approved such extensive tests to be carried out, Hirohito did not take a passive role in Unit 731. The Emperor had ensured that he remained fully aware of all developments relating to Unit 731, and Hirohito also took it upon himself to read all Directives relating to the Unit before they were posted.²¹⁰ We have direct evidence that, not only did the Emperor of Japan order field studies of Manchuria by Unit 731, but also that he was kept abreast of all developments in their research.

Not content with this level of control, the Emperor took a furthermore damning step when he appointed his cousin, Prince Takeda, to hold executive responsibility for Unit 731.²¹¹ It is outlandish to suggest anything other than, by the end of the 1930s, Hirohito not only knew of the existence of Unit 731, but that he was also actively

²⁰⁹ Harris *'Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up'* 2nd Edition (Routledge: 2002) at page 144.

²¹⁰ Bix *'Hirohito and the Making of Modern Japan'* (Harper Collins: 2001) at pages 362-364.

²¹¹ Williams & Wallace *'Unit 731'* (Hodder & Stoughton: 1989) at page 16.

encouraging such war crimes to take place and providing direct funding for said research to be conducted. Ishii's ability to charm his superiors from his early days whilst studying at University had allowed him to expand and advance Unit 731 and the research carried out therein. This charm had now extended to the Imperial family.

With this additional source of funding from Hirohito came other units. As has already been touched upon, it would be naïve to assume that Japanese biological research was simply confined to Unit 731, as opposed to being widespread across their ever-expanding empire. Further units were hastily created to form a large-scale operation, predominantly operating under the control of Unit 731 and Ishii. Other units had complete autonomy away from Ishii, but must have still fallen under the intrigued Hirohito or, at the very least, his cousin.

Unit 100 was located in Changchun, the capital city of Manchuria at the time. The primary focus of Unit 100 was in veterinary diseases, which could affect Japan's agricultural industry. Unfortunately for the local population of Changchun, their research was by no means confined to field testing animals or crops. Instead, they carried out extensive research on human subjects, including the use of anthrax²¹² A large proportion of the human subjects used by Unit 100 are likely to have been Russian prisoners of war, as was indicated to the United States investigators in 1946.²¹³

Another of the research units was Unit 1644, established in Nanking just over a year after the Rape of Nanking and was up and running in April 1939.²¹⁴ Unit 1644 was specifically created to manufacture, on a large scale, bacterial material to be used in

²¹²Barenblatt ' *A Plague upon Humanity*' (Harper Collins: 2005) at page 40.

²¹³ Williams & Wallace ' *Unit 731*' (Hodder & Stoughton: 1989) at page 203

²¹⁴ Harris ' *Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up*' 2nd Edition (Routledge: 2002) at pages 135-137

offensive attacks or field experiments²¹⁵ Unit 1644 also received an assignment of venoms from blowfish and various snakes such as cobra, habu, and magasa. These had been delivered by the 9th Army Technology Research Institute, and were used by Unit 1644 in conjunction with Unit 731.²¹⁶ Another key Unit to have corroborated with Unit 731 was Unit 516, located in Qiqihar in Heilongjiang province, China. Unlike the other units that Ishii was involved with, Unit 516 differed in that it predominantly focused on chemical, as opposed to biological, warfare research. This is not to say that Unit 731 did not carry out their own chemical research on occasion, as there is documented evidence of limited research involving chemicals such as carbon monoxide.²¹⁷ Units 731, 100, and 1644 were primarily involved in biological research.

Other smaller units formed part of Ishii's network of research facilities. Whilst little is known about Unit 1855, it is understood that they carried out attacks using biological material in conjunction with Unit 731 and Unit 1655; with one such attack in Baoshan resulting in the deaths of approximately 200,000 people through the deployment of biological material contaminating water and food sources.²¹⁸

Areas of Research

On the basis that our attention is focused solely on the work of Unit 731, the Unit researched opposite ends of the spectrum. On the one hand, some research carried out would provide practical life-saving medicine to Japan's troops, whereas at the other end of the spectrum the Unit also carried out extensive research that would inflict

²¹⁵ Barenblatt 'A Plague upon Humanity' (Harper Collins: 2005) at page 124.

²¹⁶ Harris 'Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up' 2nd Edition (Routledge: 2002) at page 145

²¹⁷ Harris 'Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up' 2nd Edition (Routledge: 2002) at pages 334-335.

²¹⁸ Barenblatt 'A Plague upon Humanity' (Harper Collins: 2005) at pages 164-165.

unimaginable suffering and death to countless innocents. This thesis shall start with the good before moving on to the bad. Just as Hirohito's views were conflicted, it can be seen that Ishii's very own research was conflicted between benevolent and malevolent research.

Frostbite had become a significant concern for the Japanese troops stationed in Manchuria, and, following the initial invasion of Manchuria in 1931, the Japanese troops had not been adequately prepared for the harsh winters in the region. As a consequence, the medics had to deal with a large number of cases by primitive methods of ointment or amputation. The problem became so extensive that the Imperial Army felt an urgent resolution was required, and physiologist Yoshimura was called in to research treatment and prevention of frostbite for Japanese troops. Yoshimura decided that the best way to achieve a quick solution was by deliberately inducing frostbite on human subjects in a predictably barbaric fashion.²¹⁹ Subjects were taken from nearby prisons and would be tied up with their limbs exposed, where temperatures often fall between minus 20-30 degrees Celsius. Water would then be applied to their bare limbs in order to speed up the freezing process. The results were always the same: gangrene and rot set in, resulting in the loss of limbs to the innocent human subjects.

It is arguable to say that some good came from this research. Yoshimura had found from his tests that the previous technique of warming affected limbs by hand was not the best method of recovery to prevent loss of limbs. After countless experiments, Yoshimura perfected his water submersion approach and found that the chances of recovery were drastically improved if the affected limb was placed in water between 37 and 40 degrees

²¹⁹ Nie, Tsuchiya & Li *'Japanese Doctor's Experimentation, 1932-1945 and Medical Ethics'* (Cambridge: 2009) at pages 589 – 594.

Celsius.²²⁰ Lives were lost, but it is clear that there was some benefit gained at the end of such unethical research by the Unit. Such crucial data may not otherwise have been obtainable or relatable to human beings, and some of the results of the German and Japanese researchers remain in use to this day.

Once Japanese troops had invaded, then began their occupation of Manchuria. During this occupation, there had been numerous outbreaks of disease amongst the troops occupying railways on the border between China and the Soviet Union, which had intensified since 1938. It had been initially suspected that the outbreaks were caused by *Rickettsia*, not to be confused with the better-known Rickets (a vitamin D deficiency predominantly found in children). The researchers found that the virus was being carried and deployed by ticks, and so set about finding a method of extracting the virus from its host in order to use as a weapon in the war effort.

Research papers explained the process carried out, that being that they would crush and mix hundreds of infected ticks with saline, allowing the virus to be administered in liquid form. The researchers would then repeatedly inject 'monkeys' with the saline solution and track the progress and effects of the virus on the various subjects. In one research paper, the researchers detailed body temperatures of up to 40.2 degrees Celsius as a result of the virus taking hold of the subject. The temperature of a monkey would not reach such temperatures; instead, the test subjects used were humans. Unfortunately, this kind of open secret was widely known across the medical community, and is a sad indictment of the ethics in place at the time that alarm bells had not started to ring.²²¹

Having now discussed the arguably beneficial research conducted by Unit 731, it is now appropriate to shed light on the experiments conducted for purely offensive

²²⁰ Gold *'Unit 731: Testimony'* (Tuttle Publishing: 1994) at pages 82-83

²²¹ Gold *'Unit 731: Testimony'* (Tuttle Publishing: 1994) at page 74.

purposes; that being to wage aggressive war against Japan's enemies through the use of biological warfare.

Although the above two experiments were conducted in a controlled environment, it was also necessary for the researchers to carry out field experiments on the local population. This thesis will document in Part Three how Emperor Hirohito not only had knowledge of such field experiments, but also endorsed them. A variety of diseases, such as cholera, would be injected into a human subject or a domestic animal, such as dogs, before the researchers allowed the infected person or animal to be released, unwittingly spreading cholera in local towns and villages.²²² Once the disease had taken effect, the researchers would enter to extract victims for further exploration back at their research base, and to monitor the impact on the local villagers.

This allowed Ishii and his men to see how the disease affected the human body as well as test potential vaccines on infected live subjects. An offensive act to deliberately contaminate a local population with a potentially deadly disease, the incubation period for cholera was around twenty days, meaning that it would not be a viable biological weapon to deploy as the effect would not be instant. Any benefit from the experiments into cholera would, therefore, have only been beneficial in the prevention of the disease.

The last, and possibly most devastating, area of research carried out by the Unit was into the deployment of plague as a biological weapon. Ishii ensured that the bulk of the Unit's research fell within this final category.²²³ In human victims, plague typically results in internal bleeding, blackening of the skin, and death occurring anywhere between a matter of hours to days. Unit 731 deliberately bred rats and infected them, most

²²² ATIS Enemy Publications No. 197 "Use of Poison Tester" – Cunliffe 'Select Documents on Japanese War Crimes and Japanese Biological Warfare, 1934 – 2006' at page 67

²²³ Gold 'Unit 731: Testimony' (Tuttle Publishing: 1994) at page 75.

commonly by feeding them with infected wheat. The researchers of Unit 731 would then introduce fleas into the rat enclosures which, in turn, would become infected from the rat's blood.

The plague had been fully established as satisfying the two key aims of Unit 731. Firstly, they required an effective strain of plague in which to kill their victims. Secondly, such strain of plague needed to be highly contagious to allow any attack to maximise the number of victims. The plague has been well known to satisfy both of these requirements. The first recorded epidemic was the Plague of Justinian between 541-542, which affected the Byzantine Empire with an estimated twenty-five million attributable deaths and centuries of reoccurrence. It had later been discovered that the strain of plague would later be the same as the bubonic plague approximately six centuries later. It is not known precisely how many died during the Black Death epidemic; some suggest that the death count was as high as 200 million.²²⁴

There were six documented field attacks carried out by the Unit, in which plague would be combined with simple materials, such as cotton or corn, and dropped by air on an unsuspecting village. The airfield constructed next to the Ping Fan complex proved invaluable for deploying various biological material. The tests were highly effective, with hundreds of innocent people dying within a matter of days. The plague deployed by the Unit was so dangerous that many of the areas affected were cordoned off from members of the public until the 1960s.²²⁵ Japanese soldiers would follow up inspections on the ground to review, first hand, the damage caused days after the attack, and would then take the dead or dying away for closer inspection and live vivisection.

²²⁴ DeLeo & Hinnesbusch 'A Plague upon the Phagocytes' (Nature Medicine 11: 2005) at pages 927 - 928

²²⁵ Gold 'Unit 731: Testimony' (Tuttle Publishing: 1994) at page 76.

After some success with air deployment of plague attached to cotton or corn, the Unit was limited to using low flying planes at slow speed. In the theatre of war, planes would need to fly at a far greater altitude and over twice the speed, which made the current method unusable to the Japanese military. Ishii, therefore, had to set about developing various containers to drop live hosts, such as fleas, that had been infected with the plague, on the unsuspecting population below.

Initially, Ishii had considered using live explosives, but, somewhat predictably in hindsight, upon impact, the detonation would also kill the fleas inside. Glass bombs were then trialled before he began to favour the use of ceramic bombs to drop the infected fleas on their target. The ceramics would shatter upon impact, taking much of the force and allowing the fleas to survive and spread out across the target area. Ishii and the Unit now had a successful method of deploying biological weapons at high altitude and sufficient speed, adequate for use in the battlefield. The Japanese biological threat was now entirely viable, and only a matter of time until it was deployed.

This new arsenal of deadly weapons would never come to fruition. Events had moved on in the war in the Pacific, and the Japanese were now desperate to defend Saipan. Loss of life to the Japanese had been unsustainable if they were to mount a defence successfully. Ishii saw an opportunity to use his new ceramic bombs against the enemy and, in turn, save Saipan. As a result, Ishii ordered twenty researchers to take a vast array of biological weapons under the command of two Army Medical Officers to deploy plague against the Allies in mid-1944.²²⁶ Such was the poor state of Japan's navy and aerial defence at that time, the convoy's ship was sunk en route to Saipan, and so the

²²⁶ The Battle of Saipan took place between 15th June and 09th July 1944.

deployment of plague never took place.²²⁷ The Japanese biological threat was over before they had the opportunity to use it against the Allies.

With the Second World War now drawing to an end, in in the final months, weeks, and days, Japan was all too aware that the Soviet Union were increasingly taking back more and more land in Manchuria by the day. Once felt to be a haven by Ishii for the creation of his Unit, Ishii now had to consider when he would have to pull the plug on his life's work. The Unit, under the order of Ishii, therefore, took desperate steps to cover their tracks and destroy any evidence that implicated the studies and research undertaken by them. This included bricks and mortar, as well as human beings.

In early August 1945, the Soviet Army had begun their assault across the Manchurian border, with 5,500 tanks and nearly 3,900 combat planes used. Ishii was abundantly clear in his orders: anything and anyone relating to his Unit must be destroyed. Those who had been involved in the construction of key sites, namely Chinese labourers, were rounded up and administered with lethal cyanide injections. Prisoners who had been, or were to be, used as research subjects were also murdered to prevent their story from being told once the Soviets had liberated them from Japanese occupation.²²⁸ The Unit also started blowing up any buildings that had been used or occupied by the Unit. The Zhongma Fortress, a testament to Ishii's plans when building his first research unit, proved impossible to destroy, and remains to this day as a stark reminder of the atrocities committed by Ishii and his Unit.

Japan intentionally left behind teams of workers in Manchuria to carry out the demolition of key sites, whilst soldiers and key members of the Unit - such as researchers - were ordered to withdraw from the area to avoid capture and interrogation. The South

²²⁷ Gold *'Unit 731: Testimony'* (Tuttle Publishing: 1994) at page 86.

²²⁸Barenblatt *'A Plague Upon Humanity'* (HarperCollins: 2005) at page 172.

Manchuria Railway proved a highly efficient tool in the rapid evacuation of the area, with special trains laid on simply to remove members of the Unit from Harbin and Pingfan, and take them to the Korean peninsula, still under the control of Japan. From there, members of the Unit would make their own arrangements using public transport to return home.

The Unit could do nothing about the various chemical and biological weapons that had been deployed in Manchuria, which would continue to plague the local population for years to come. Nor could they destroy the evidence of their ties with universities, hospitals, and the pharmaceutical industry. Unlike the Manchurian population that Unit 731 had devastated during their decade of research, Ishii and his men were safe for now and back on home soil. With Japan having failed to use biological weapons in the Second World War successfully, it is appropriate to now consider what steps had been taken by other nations involved in the conflict.

Biological Research Elsewhere

Given that it is already documented that Japanese researchers collaborated with their German counterparts, it would only be fair to document the work being carried out by other nations at the time of Unit 731. The research carried out by Nazi-Germany is arguably the best comparator for the atrocities committed by Japan in the name of advancing their understanding of biological warfare, not only because of the research conducted, but also because of the beliefs and ethics, or lack thereof, adopted by both nations' medical professionals.

As with Japan, Germany had a gradual degradation of medical ethics and personal accountability, which was achieved through the deploying of tactics such as passing

restrictive legislation or creating poor employment prospects for medical students, instead funnelling them into more attractive and lucrative Nazi Party projects. Under Hitler's leadership, medical research became ingrained in Nazi ideology. Hitler himself was described as being the "*doctor of the German people*", with the National Socialist Physicians League having stated, in 1931, that one of its beliefs was "*the primacy of national biology over national economy*".^{229 230}

It was on 30th January 1933 that Adolf Hitler was inaugurated as Chancellor, by Reich President Paul von Hindenberg. Hitler's ideology was ingrained with beliefs of Aryan superiority, similar to the Japanese belief that they were the superior race. It was this belief that led Hitler to insist that those not of the Aryan race were present in the world only as an aid to the Aryan race in their development, by serving as '*beasts of burden*'.²³¹ Hitler spoke of non-Aryan people as if they had a sickness that needed a medical "solution". For example, he said that "*the Germans as being assailed by a 'creeping sickness', 'harmful poisons', and a 'malignant degeneration'*", echoing further similarities with the Japanese term '*maruta*' and the belief that they were somehow a superior race.²³² According to Professor Alexander, a consultant for the United States Counsel at the subsequent Nuremberg Doctor's Trial, he believed that:

"Whatever proportions these crimes finally assumed; it became evident to all who investigated them that they had started from small beginnings. The beginnings at first were merely a subtle shift in emphasis in the basic attitude of physicians. It started with the acceptance of the attitude... that there is such a thing as life not worthy to be lived... Gradually the sphere of those to be included was enlarged to encompass the socially

²²⁹ *Die Volksgesund-heitswach*, Ostermond (1935) at page 3.

²³⁰ *Nationalsozialistische Monatshefte*, 2 (1931) at page 38.

²³¹ Hitler '*Mein Kampf*' 1924 (Ralph Manheim's translation: 1971) at pages 294-295.

²³² Lipman '*The Nazi Doctors Trial and the International Prohibition on Medical Involvement in Torture*' (15 Loy. L.A. Int'l & Comp. L Rev 395: 1993) at page 6.

unproductive, the ideologically unwanted, the racially unwanted and finally all non-Germans."²³³

These humble beginnings began with the rise of the eugenics movement in the early 20th Century, and the notion that a person's characteristics were entirely formed from genetic inheritance.²³⁴ Rudolph Hess proclaimed that "*National Socialism is nothing but applied biology... We wanted to put into effect the laws of life, which are biological laws.*"²³⁵ The attitude that some lives are superior to others, and that those lives are by default worthless, was a chilling belief shared by their Japanese counterparts; "*the destruction of the boundary between healing and killing*" had been successfully achieved in both Germany and Japan before the outbreak of the Second World War.²³⁶

It is important to note that both Japan and Nazi Germany were able to eradicate the distinction between healing and killing human beings, owing to deeply rooted and widespread racism. Whilst Nazi Germany had oppressed mainly the Jews and other minority groups from the early 1930s, the Japanese had a much wider intolerance towards any non-Japanese people, as previously discussed. Any non-Japanese person was seen to be of an inferior class; although this was more a long-standing cultural view, as opposed to the overt racism displayed by many Western nations during that time. Unfortunately, these views were somewhat strongly ignited in many Japanese people at a time where there was a robust ultra-nationalist movement, and were a mind-set shared by ardent ultra-nationalists such as Ishii.

²³³ Hanauske-Abel '*Not a Slippery Slope or Sudden Subversion: German Medicine and National Socialism in 1933*' (A5 Medical & Global Survival: 1996) Volume 3 at page 2.

²³⁴ Burleigh & Wippermann '*The Racial State: Germany 1939-1945*' (Cambridge University Press: 1991) at pages 23-43.

²³⁵ Lifton '*The Nazi Doctors: Medical Killing and the Psychology of Genocide*' (Basic Books: 1986) at page 31.

²³⁶ Ibid at page 14.

The Japanese had the opportunity to utilise the population of neighbouring countries to fuel their unethical research, just as the Germans had done in Eastern Europe. There was an element of opportunism on the part of the Japanese, who would also carry out research on prisoners of war where possible. However, it is important to distinguish Nazi-Germany and Japan in the 1930s. While Japan had shown a wanton disregard for human life overwhelmingly against those that they considered to be 'lesser' or 'unworthy of life', there is no evidence to suggest that they had any desire to implement industrial murder or a "final solution" on the scale of the Nazis.

In his opening statement at the Nuremberg Trial, Taylor Telford, assistant Counsel for the US prosecution, put forward Nazi-Germany's rationale behind such experiments having taken place:

"A sort of rough pattern is apparent on the face of the indictment. Experiments concerning high altitude, the effect of cold, and the potability of processed seawater have an obvious relation to aeronautical and naval combat and rescue problems. The mustard gas and phosphorous burn experiments, as well as those relating to the healing value of sulfanilamide for wounds, can be related to air raid and battlefield medical problems. It is well known that malaria, epidemic jaundice, and typhus were among the principal diseases which had to be combated by the German Armed Forces and by German authorities in occupied territories.

To some degree, the therapeutic pattern outlined above is undoubtedly a valid one, and explains why the Wehrmacht, and especially the German Air Force, participated in these experiments. Fanatically bent upon conquest, utterly ruthless as to the means or instruments to be used in achieving victory, and callous to the sufferings of people whom

they regarded as inferior, the German militarists were willing to gather whatever scientific fruit these experiments might yield."²³⁷

Focusing solely on biological research conducted by Nazi-Germany, the research conducted tended to be for prevention and treatment as opposed to the offensive action intended by the Japanese. For example, malaria experiments occurred from February of 1942 until April 1945, at Dachau Concentration camp. This experiment involved over 1,200 subjects, with the ultimate aim being to find an immunisation and treatment for malaria. The subjects were infected with malaria; subsequently, attempts were made, with various drugs, to find a treatment or immunisation – this directly caused the deaths of thirty subjects, with a further 300-400 dying from subsequent complications after they were infected.

There were also Sulphanilamide experiments conducted at Ravensbruck, from July 1942 until September 1943. The purpose of these tests was to check the effectiveness of using Sulphanilamide in combating infected wounds, and wounds were replicated and deliberately infected to create similar injuries to those serving on the front line. The Nazi researchers were also involved in spotted fever experiments that took place from December 1941 until February 1945. The researchers intended to test how the fever developed in a human subject. Over 90% of those involved died as a result of being infected.

Finally, experiments with poison were held from December 1943 until October 1944, conducted at the Buchenwald concentration camp. Those that survived poisoning were killed in order for the researchers to conduct autopsies on the subjects. One other

²³⁷ *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10. Nuremberg, October 1946–April 1949.* Washington, D.C.: U.S. G.P.O, 1949–1953 at page 37.

difference to the research conducted by Nazi-Germany during the Second World War was the lack of field experiments, which the Japanese had conducted extensively.

It would be unjust to simply focus on the losing sides of the Second World War in a vain attempt to cast them as the only nations involved in bacteriological research or unethical experiments. As shall now be detailed, it was looked at extensively by other nations, to include both the United States and Great Britain.

The superpowers in the 1930s, by comparison to Japan, had differing views on the viability of a biological warfare program. The Japanese had undergone an extensive and influential warfare program in the early 1930s, both at home and abroad. This was not the case for other nations such as the United States, Great Britain, and France. Whereas the Japanese had adopted an aggressive foreign policy in the decades leading up to, and continuing throughout, the 1930s, the United States was still in a period of isolation, as had been the case ever since the conclusion of the First World War. The once great American military had been reduced to nothing more than a peacekeeping force, and so investment in research and development was nearly non-existent.²³⁸ The Great Depression only served to decrease what little funding was invested in their armed forces.

Major Leon A. Fox, Chief of the Medical Section, U.S. Chemical Warfare Service, produced a research paper in March 1933 in which he concluded that the use of biological warfare was not cost-effective given its limited success in the past.²³⁹ Fox also argued that developed countries should not be concerned by the development of biological weapons as many could of its citizens could be immunised before any attack, if needed. Ishii is said to have read Fox's article and used it in support of his request for a

²³⁸ Harris *Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up* 2nd Edition (Routledge: 2002) at page 202.

²³⁹ L.A. Fox *Bacterial Warfare: The Use of Biologic Agents in Warfare*, *The Military Surgeon* 90 (5) (1942 [1933]) at pages 563-579.

Japanese biological program; arguing that other nations, such as the United States, had failed to develop research in this area and would therefore be unable to defend such an attack.²⁴⁰

When the Clinton administration had ordered the release of a vast array of restricted documents held by the National Archives, it became apparent that the United States had also conducted unethical experiments during the Second World War. For example, it is said that they had engaged in carrying out human experimentation “*with mustard gas and other chemical agents, exposed others to radiation tests, and still others to a variety of pathogens without the subjects’ knowledge or consent.*”²⁴¹

The British had been concerned with the potential development of biological weapons as early as 1934. British journalist Wickham Steed published various articles alleging the Germans were preparing to introduce biological weapons into Paris and London underground stations through ventilation shafts. The concern of biological weapons appeared, at this time, to be a European issue, with the United States not prepared to respond to speculation of a biological attack on U.S. soil. Major Fox’s assessment would remain the official position of the United States, who remained unconcerned and unprepared.²⁴²

The United States had started to take the potential threat more seriously following the request of Japanese doctor Naito Ryiochi to the Rockefeller Institute, who asked that they provide him with a sample of the virus that causes yellow fever in humans. The initial request was denied. Not accepting the request, a member of staff at the Rockefeller Institute was then offered \$3,000 to steal the sample. Again, the Japanese approach was

²⁴⁰ Ibid at page 213

²⁴¹ Ibid at xiii.

²⁴² Harris ‘*Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up*’ 2nd Edition (Routledge: 2002) at page 203.

unsuccessful. In August 1939, a Japanese bacteriologist, Dr Miyagawa Yonetsugi, approached the Rockefeller Institute Laboratory Director, Dr Wilbur Sawyer, requesting that he provide a sample of the virus.²⁴³ This latest request was rejected, and all approaches were reported to Washington.²⁴⁴

The Japanese had not been alone in their research of biological weapons. In May 1941, reports filtered through to Washington that German researchers were developing botulinum toxin that could be dropped by plane from the air.²⁴⁵ Botulinum toxin infects the body and is the most acutely lethal toxin known to man, resulting in the potentially fatal disease of Botulism.

The inevitable conflict that would later become the Second World War led the United States to take the biological threat more seriously. In August 1939, the Army began consulting numerous experts on the subject, concluding that there could be a viable threat of an enemy deploying biological weapons, likely to be infected insects, from the air. In April 1941, the Chief of the Chemical Warfare Service stated that it was his opinion that *“while the danger of enemy use of bacteria or infected insects, disseminated by airplane or parachute troop landings, is relatively small, the possibility should not be ignored.”*²⁴⁶ Some eight years after Fox's first scepticism of biological warfare, the United States had started to assess the threat of deployment against them seriously.

On 1st October 1941, Henry Stimson, Secretary of War, wrote a letter to the President of the National Academy of Sciences asking that he establish a civilian biological committee, ultimately becoming the WBC Committee. It comprised of highly

²⁴³ Williams & Wallace *'Unit 731'* (Hodder & Stoughton: 1989) at pages 91-93.

²⁴⁴ 'Japanese Attempts to Secure Virulent Strains of Yellow Fever Virus' G-2 to Office of the Surgeon General' 03rd February 1941

²⁴⁵ Cochrane *'Biological Warfare Research in the United States'* (Chemical Corps: 1947) at page 6.

²⁴⁶ Harris *'Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up'* 2nd Edition (Routledge: 2002) at pages 204-205.

respected biologists, who made various recommendations upon their conclusion, in February 1942, on both the defensive and offensive purposes of biological weapons, as well as the likelihood of their deployment. All of the recommendations made by the WBC Committee were forwarded onto President Roosevelt, who agreed with each suggestion made by them.²⁴⁷

In late 1942, America began its biological warfare program with an initial grant from President Roosevelt of \$250,000, some twelve years behind the Japanese research program.²⁴⁸ The United States Army Chemical Warfare Service began conducting biological warfare research in November 1942 at the Edgewood Arsenal in Maryland. The Chemical Warfare Service soon realised that the site was inadequate if they were to take the research seriously; locating a National Guard airfield in Maryland, which would later become Fort Detrick. It was their intention from the very outset to ensure the new site remained secret and away from prying eyes, as was the case with the Japanese. At its peak, Fort Detrick would house some 3,900 staff; over 900 more than the Japanese Ping Fan facility at its height.

Just as had happened in Japan, satellite bases cropped up across America, including Horn Island and Granite Peak, Utah. By spring 1944, the United States had developed their program to the point that plans were made to load anthrax into British 4lb bombs, with the potential capacity to produce 500,000 units a month by 1945 if the war effort required it. By the time of the Japanese surrender, the United States had nearly 8,000lb of the anthrax agent in its possession.²⁴⁹ Unfortunately, the project was

²⁴⁷ Bernstein 'America's Biological Warfare Program in the Second World War' (Journal of Strategic Studies: Volume 2, no.3) at pages 292-293.

²⁴⁸ Harris 'Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up' 2nd Edition (Routledge: 2002) at page 207.

²⁴⁹ Harris 'Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up' 2nd Edition (Routledge: 2002) at pages 209-210

immediately out-of-date the moment that the United States dropped the atomic bombs on Japan.

By contrast to the United States, Great Britain had been keenly involved in biological warfare research at their Porton Down and Salisbury Plain sites since the 1930s, as had France and Nazi-Germany. Despite entering biological warfare research late, in 1942, the achievements and progress made by them in three years were highly impressive. It is important to note once more that Japan had a twelve-year head-start with their research, and notably greater funding throughout Unit 731's existence.²⁵⁰ In its entirety, the United States' biological warfare program between 1942 and 1945 only cost \$60 million, considerably cheaper when compared with other areas of warfare research.

Grounds for an Immunity Deal

Japan was not alone in their research and exploration of bacteriological warfare, but, importantly, they were now on the losing side. Steps had already been taken by Ishii to cover his tracks through the physical destruction of buildings and research subjects, but it would have been abundantly clear to Ishii, a well-educated man, that he would need to do more than this if he was to escape prosecution. Once again, Ishii would have to rely upon his charm to ingratiate himself with the Allied powers.

As we have seen, it had not only been the Axis nations that had engaged in highly unethical experiments during the early to mid-part of the 20th Century. Ignoring for one moment the complete lack of any informed consent on the part of the research subjects, whether or not it was illegal was, in itself, a separate argument. Morality and legality are

²⁵⁰ Clendinin 'Science and Technology at Fort Detrick, 1943-1968' (Fort Detrick: April 1968) at page 23.

usually, and unfortunately, two separate competing interests that on occasion, align. Before the proclamation of the Universal Declaration on Human Rights in 1948 by the League of Nations, there was no clear guidance on how one should go about researching human beings. As a direct consequence of the atrocities committed during the Second World War by medical professionals, the Nuremberg Code was established in 1947, regarding the issue of consent as an internationally acknowledged mandatory standard.

A clear difference between the experiments being carried out by say, Nazi-Germany and Japan as compared against Great Britain and the United States, is as to the status of the subject of such testing; Great Britain and the United States had not directly engineered a social situation whereby it was deemed acceptable to lower the standard of medical care provided (whether that be Jew or Chinese). Or had they?

The British had carried out mustard gas and nerve gas tests on soldiers from its own Armed Forces, albeit on colonial soil and by using members of Indian and Irish divisions.²⁵¹ It is questionable as to whether there was any informed consent obtained as defined by modern standards. The United States had been conducting the Tuskegee Syphilis study from 1932 right up until 1972, focusing solely on African-Americans. The subjects were not made aware that they were being infected, nor were they provided with any real medical care (albeit assurances had falsely been made at the outset that full care would be provided to participants).

This goes to the very heart of what acts should and should not be considered criminal; and in turn, what acts warrant the offering of an immunity deal. There is then the ethical concern as to what one should do with any research data obtained via unethical means. The issue of an immunity deal will always raise more questions than it answers;

²⁵¹ <https://www.theguardian.com/uk/2007/sep/01/india.military> last accessed 30th March 2020.

it is not the intention of this thesis to answer all of these questions, nor would it be possible to do so. The complicated issues of legality and morality surround any immunity deal. The problems now facing the Allied powers in the final days of the Second World War were equally complex - should an immunity deal be offered? If so, what did the Allies want in return? What should their price be? How should such data be used? Whom should such data be shared with?

PART THREE

SUSPICIONS, SURRENDER AND THE U.S. IMMUNITY DEAL

The conflict in the Pacific had now drawn to a close and the Allied nations were keen to investigate the Japanese biological warfare programme and, importantly, to locate and interrogate Ishii himself. Other, less altruistic, motives would also come to the fore. This thesis has already detailed the work of Shiro Ishii along with the unethical research studies conducted by him and his men. There is also clear evidence that Hirohito not only knew about the existence of Unit 731, but that he was directly involved in both the funding of this organisation and their various deadly research “projects”.

The third part of this thesis will now look to detail the knowledge already in the possession of the Allied Powers before the end of the Second World War, along with the evidence gleaned by them during the course of their occupation of Japan following Hirohito’s surrender. During this occupation, the Allies conducted various extensive investigations into the research conducted by Unit 731. Despite having sanctioned investigations, and the evidence that had been collated being damning, the United States ultimately offered an immunity deal to Ishii and his men. What were the terms? What did the immunity deal accomplish? Although neither can be answered definitively due to the secretive nature of this agreement, still sealed in the U.S. National Archives, we can make some educated guesses as to the beneficiaries of such an agreement.

Once the investigations and immunity deal are documented by the third part of this thesis, we shall then consider the impact of this unilateral immunity deal and its far-reaching implications regarding the rule of law, ethics, and the role that the United States played in bolstering their own arsenal. Surely, the United States had a duty to the other Allied nations and the victims of Unit 731 to prosecute Ishii and his men. After the Judgment at the Nuremberg Trial, it would have been unthinkable for the Allies to have not considered Ishii and his men as war criminals. Logically, an immunity deal would only have been offered if there was a reasonable prospect of successful prosecution against those responsible for Unit 731, to include Hirohito himself. This part will then detail how the Soviet Union carried out their own prosecution at the end of the Second World War, the Khabarovsk Trial, which incriminated some members of Unit 731.

Finally, this part will then lead onto the fourth part of this thesis, which will detail the subsequent creation by the Allies of the Tokyo Trial, intended to mirror the prosecutions that had already taken place in Nuremberg. First, we must consider what information, if any, the Allied nations had before Japan's surrender.

Allied Knowledge

It would be wrong to suggest that the Allies had only become aware of Japanese biological research after the end of the Second World War. The Allies had been aware of an extensive biological warfare programme in Manchuria, or at least suspected the existence of one, many years prior to the conclusion of the Second World War. As the previous part of this thesis has documented, the Americans in particular had been tipped off, as early as 1939, that the Japanese had a wide-scale biological research facility. The United States had, by August 1939, concluded that there were nine "diseases" that could be deployed

against them.²⁵² As with the Nazi-German concentration camps across Eastern Europe, there was clear evidence to suggest that the Allied nations, predominantly the United States, had been aware of Unit 731 and other enterprises many years before the end of the conflict. Investigations that were to take place after the war had concluded would only serve to confirm the true extent of these atrocities.

The increased focus, by the United States, on developing their own biological warfare research was not borne from a fear of the Japanese, rather the capabilities of Nazi-Germany in this field of research. The United States were convinced that their German counterparts had been responsible for numerous outbreaks of cholera close to where American troops were stationed across Europe, fearing the outbreak to be a deliberate attack.²⁵³ The Japanese threat was initially dismissed by the Allies until, as we shall see, in late-1942, despite there being evidence that the Allies had been aware of the deployment of biological weapons in China as early as 1937.²⁵⁴ Could it be that the Japanese threat was discredited because, unlike the work of Nazi-Germany, the Allies did not consider a threat to their own troops? Or, alternatively, were racial stereotypes of Japan at such extremes that they did not consider Japan a realistic threat?

As time goes on, more and more information has been revealed about the activities of Unit 731, after many years of enforced secrecy by the Japanese and American governments, stifling any requests for information on the issues of biological research or the immunity deal granted.²⁵⁵ In 1942, the Allied powers had strongly condemned Japan's

²⁵² *Technical Study No. 10* 'Chemical Warfare Service, 28th August 1939 (see: Brophy, Miles & Cochrane *The Chemical Warfare Service: From Laboratory to Field* (Center of Military History United States Army: 1988) at page 102.

²⁵³ *Digest of Information Regarding Axis Activities in the Field of Bacteriological Warfare* 08 January 1943 at pages 1-2.

²⁵⁴ Harris *Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up* 2nd Edition (Routledge: 2002) at pages 218.

²⁵⁵ Gold *Unit 731: Testimony* (Tuttle Publishing: 1994) at page 9.

conduct during the war, and hinted at potential war crimes having been committed by their troops. Such was the evidence that even Soviet leader Stalin agreed, and in an address of 6th November 1943 he stated:

*“In conjunction with our Allies we shall have to take... measures to ensure that all the fascist criminals who are responsible for this war and the suffering the people have endured shall meet with stern punishment and retribution for all the crimes they have committed, no matter in what country they may hide.”*²⁵⁶

The desire to pursue the Japanese for war crimes after the conclusion of the Second World War was clear. Hirohito and Ishii had been put on notice. Less than a month later, the United States, China, and Great Britain agreed the Cairo Declaration, in which they confirmed that they were *“fighting this war to restrain and punish the aggression of Japan.”*²⁵⁷ It could not have been any clearer for Japan that, if they were not the victorious nation, they would face *“punishment and retribution”*. This was the first mention of “aggression” being seen as a criminal act in war.²⁵⁸

At this stage, it would be appropriate to note that the Japanese had not always conducted themselves in this manner. At the very outset of this thesis, it was clear that Japanese army medical doctors had previously treated the Chinese during the First Sino-Conflict, in particular their prisoners of war, with a great deal of dignity and respect.²⁵⁹ They had also provided the same level of care to their Russian opponents. This corrosion of Japanese morals also coincided with the removal of historic concepts such as *Bushido*,

²⁵⁶ Hosoya *The Tokyo Trial: An International Symposium* (Tokyo: 1986) at pages 125-126.

²⁵⁷ Cairo Declaration, 01 December 1943 (1944) 38 *American Journal of International Law* (special Supplement) 8, at 11.

²⁵⁸ VanLandingham *Criminally Disproportionate Warfare: Aggression as a Contextual War Crime* (Case Western Reserve Journal of International Law (2016)

²⁵⁹ Tanaka *Hidden Horrors: Japanese War Crimes in World War II* (Boulder: Westview Press 1996) at page 197.

which taught how to live a noble life, replaced with a new penal code implemented by the Kwantung Imperial Army. The old way was inconsistent with the new. This would fundamentally change the psychology of both the soldiers and medical staff in Japan, no longer seeing it as their duty to carry out their duties for what many would consider to be moral or altruistic purposes.²⁶⁰ Instead, with the slow degradation of medical ethics come the turn of the 20th Century, along with the eradication of traditional concepts of *Bushido* in military circles, those who were trained to treat and protect Japan and her people in the 1920s through to the 1940s were not given any moral education at a state and institutional level. It could be argued that Ishii himself was a product of this systematic erosion of morality in Japanese culture. Japan had eroded her traditional values and principles following the Meiji Restoration and had yet to find an adequate replacement.

On paper, the acts committed by the Japanese during the Second World War breached their own domestic Japanese military law. Had these laws been strictly applied, it would have led to a Court Martial of the offending personnel as required by law.²⁶¹ Unfortunately, there does not appear to have been any appetite for this from those in positions of authority, nor from the upper echelons of the Kwantung Army. This change can be contrasted by the application of Japanese military law before the Second World War. One example of this rapid change in practice can be seen on 26th February 1936 when there was a rebellion within the Kwantung Army.²⁶² The “Young Officers Rebellion” that took place failed, and the rebels were duly prosecuted secretly. The senior members of the rebellion implicated were promptly dismissed from the Army.²⁶³ Could

²⁶⁰ ‘*Researching Japanese War Crimes: Introductory Essays*’ (Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group: 2006) at page 22.

²⁶¹ Wai Keng Kwok ‘*Justice Done? Criminal and Moral Responsibility Issues in the Chinese Massacres Trial Singapore, 1947*’ (Genocide Studies Programme Working Paper No. 18, Yale University: 2001) at page 27.

²⁶² Beasley ‘*Modern Japan: Aspects of History, Literature, and Society*’ (University of California: 1975) at pages 82 – 84.

²⁶³ Bergamini ‘*Japan’s Imperial Conspiracy*’ (Heinemann: 1971) at page 6.

it be that the Japanese Army were more concerned with wrongs being committed against them as opposed to against others, such as the “kindred” or “guest” races?

The most likely answer is that the application of this military code was nothing more than self-preservation against what the Imperial family and Kwantung Army would have seen as a mutiny within their ranks. Given the atrocities that had already been committed by Japanese forces prior to 1936, their own military code was nothing more than writing on paper. If there had been no code in existence and a rebellion had taken place, it is highly likely that the same outcome would have been applied in retribution. Although the Allies had publicly shamed Japan in earlier releases, the United States had been stronger in their individual condemnation of Japan’s wartime conduct, particularly in light of their intelligence reports on Unit 731 and other associated biological warfare programmes. In 1943, President Roosevelt could not have made the stance of the United States any clearer when he proclaimed:

*“Authoritative reports are reaching this government of the use by Japanese armed forces in various localities in China of poisonous or noxious gases. I desire to make it unmistakably clear that if Japan persists in this inhuman form of warfare against China or against any other of the United Nations, such action will be regarded by this government as though taken against the United States and retaliation in kind and in full measure will be meted out.”*²⁶⁴

Two years before the end of the Second World War, the United States had evidence that it felt conclusive and credible enough to make public. Not only were the United States alleging that Japan were waging illegal and aggressive war in Manchuria, they were now making direct reference to the work of Unit 731 and the other satellite

²⁶⁴ Harris ‘Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up’ 2nd Edition (Routledge: 2002) at pages 73-74

divisions. If the Cairo Declaration had not been sufficient, alarm bells must have now been ringing for the secretive Ishii, who had always strived to ensure his research remained private. Following on from President Roosevelt's speech, the United States started to step up their intelligence reports; both as a result of their own earlier data, but also in light of strong rumours that Russia had captured a former German research facility. Given that Nazi-Germany and Japan had previously traded information in this area, it was likely that the Soviets would uncover some of these shared secrets, which would in turn implicate Unit 731.²⁶⁵

The United States, having previously seen Nazi-Germany as their main threat for bacteriological superiority, now felt within the space of a year that they were in a race to uncover the full extent of Japan's biological warfare programme before the fast-approaching Soviets did. Japan had now become the priority with the Cold War blossoming. United States Intelligence had first been made aware of Japan's field experiments as early as 1941, when China had invited the Red Cross to visit the areas afflicted by biological experiments.²⁶⁶ The reports from the Red Cross were made available and put into circulation, explaining that innocent villagers had been infected with bubonic plague by fleas dropped from the sky. The United States and Western media outlets showed no interest in the story.²⁶⁷

Owing to their own wartime propaganda, the Allies thought it unthinkable that the Japanese would be able to create such an elaborate and successful biological programme.²⁶⁸ This failure to act in 1941 allowed Unit 731 to continue its deadly field experiments and to come within months of deploying biological material against Allied

²⁶⁵ Kennedy *'The Library of Congress World War II Companion'* (Simon & Schuster: 2007) at page 404.

²⁶⁶ *'Bulletin of the Atomic Scientists'* Volume 37, No. 8 (October 1981) at page 49.

²⁶⁷ Barenblatt *'A Plague Upon Humanity'* (HarperCollins: 2005) at pages 184-187,

²⁶⁸ Harris *'Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up'* 2nd Edition (Routledge: 2002) at page 161.

troops. Fortunately for the Allies, the Second World War had concluded before Ishii had been given opportunity to show the deadly potential of his research in the theatre of war. The attempts by Ishii, Hirohito, and others were clear: orders were given to begin destroying any evidence of Unit 731's research, with the destruction of all buildings relating to the Unit blown up with explosives.²⁶⁹ This included the mass-murder of any existing test subjects, or prisoners due to be tested on, in order to avoid any future testimony against the Unit. Mass graves were found by the Soviets as they advanced across Manchuria.²⁷⁰

The thousands of researchers who had once called Unit 731 their home were ordered to board trains, which had been specially laid on for their extraction, and to hastily retreat back to Japan. As a parting gift, Ishii had instructed all staff of the Unit that they must never hold a seat in public office, must not contact fellow staff, and must take the secret with them to the grave. Ishii was to take all of the documents he had fastidiously recorded with him back to Japan.²⁷¹ This extensive research data would likely have been the basis for what would later become his bargaining tool against the Allies when the immunity deal was brokered.

On 26th July 1945, with the net tightening around them, the Allied powers presented the Japanese with a simple choice via the Potsdam Proclamation. Japan were being granted a last chance to end the war, lest they face further heavy losses on an unimaginable scale. What Japan didn't know was that the United States, courtesy of the Manhattan Project, now had the capability to produce nuclear bombs.²⁷² On the face of it,

²⁶⁹ Yan-Jun & Yue-Him 'Unit 731: Laboratory of the Devil, Auschwitz of the East: Japanese Biological Warfare in China 1933-45' (Fonthill: 2018) at page 137.

²⁷⁰ Eckart 'Man, Medicine, and the State: The Human Body as an Object of Government Sponsored Medical Research in the 20th Century' (Franz Steiner Verlag Stuttgart: 2006) at page 173.

²⁷¹ Gold 'Unit 731: Testimony' (Tuttle Publishing: 1994) at page 93.

²⁷² See: Gosling 'The Manhattan Project: Making the Atomic Bomb' (Department of Energy: 1999)

the position of the Allies towards a Japanese surrender had appeared to soften. The Cairo Declaration of 1943 had demanded the categorical surrender of Japan with immediate effect. The Potsdam Proclamation included terms by the Allied nations, which would suggest that there would be room for negotiation between the Allies and Japan in the mediation of their surrender. There appeared to be a more co-operative approach being taken by the Allies in an attempt to entice Japan to surrender.²⁷³

The terms of surrender were also very straightforward, focusing on four key demands. Firstly, the demobilisation of Japan's armed forces. Secondly, the Allied occupation of Japan post-surrender. Thirdly, elimination of those who had deceived the Japanese public during the conflict. Fourthly, to bring before an Allied Tribunal all those who had engaged in war crimes. Given that these terms would be no different to those of Nazi-Germany, it should not have come as a surprise to Hirohito and the Cabinet. It was the last of these terms that proved to be a stumbling block for early surrender – those at the highest levels within Japan's cabinet realised that the Allies would not only pursue conventional war criminals (those who physically engaged in the commission of war crimes), but also those policy-makers who encouraged and made war crimes possible.²⁷⁴ Self-preservation was now the order of day for those in the upper-echelons of Japan's newly-created hierarchy.

The world had already witnessed how the Allies had efficiently rounded up Nazi government officials after their surrender, and placed them under arrest for various war crimes. Japan would be next. By this point, Japan's Army had been defeated in the Philippines. Their navy had all but been destroyed at the Battle of Leyte Gulf and the

²⁷³ Newman *Enola Gay and the Court of History* (Peter Lang USA: 2004) at page 21.

²⁷⁴ Wagner-Pacifici *The Art of Surrender: Decomposing Sovereignty at Conflict's End* (University of Chicago: 2005) at page 68

nation's industries had been obliterated by Allied bombing campaigns.²⁷⁵ Some members of the government wished to discuss and begin negotiating the terms of surrender, but an equal number also believed that Japan could continue their fight. Just as had been the case in 1853 when Commodore Perry had forced Japan to open trade to the Western nations, America were once again striking fear into those close to the Emperor.

In light of the lack of response from the Japanese to the Potsdam Proclamation, President Truman authorised the dropping of the atomic bomb. His logic was that to take this radical step would avoid the deaths of millions of people should a land invasion by Allied troops be required.²⁷⁶ The Americans had already seen how Okinawa had been defended. On 6th August 1945, the first bomb was dropped on Hiroshima.

Still, there was no response from the Allied request for surrender. A second bomb was dropped on Nagasaki three days later. The death toll, within a matter of seconds, was unimaginable. By the end of 1946, the higher end of the death toll estimate suggests that some 140,000 men, women, and children had lost their lives as a direct result of the atomic bomb being dropped on Hiroshima.²⁷⁷ At Nagasaki, the higher estimate placed the loss of life at 80,000.²⁷⁸ While the scale of devastation caused by the dropping of the atomic bombs was unimaginable, the final death toll is a shadow compared to the genocide committed by Unit 731. Harris suggests that the death toll from Unit 731 was approximately 300,000,²⁷⁹ whereas Barenblatt suggests a figure of at least 580,000.²⁸⁰

²⁷⁵ Wood *Japanese Military Strategy in the Pacific War: Was Defeat: Was Defeat Inevitable?* (Rowman & Littlefield: 2007) at page 76.

²⁷⁶ Bulletin of the Atomic Scientists (Vol. 42, No. 6, June 1986) at page 38.

²⁷⁷ Strickland *The Men of Manhattan: Creators of the Nuclear Era* (Lulu: 2011) at page 296

²⁷⁸ Edwards *The Atomic Bomb in Japanese Cinema: Critical Essays* (McFarland & Co: 2015) at page 13.

²⁷⁹ Harris *Factories of Death: Japanese Biological Warfare, 1932-45, and the American Cover-Up* at page 67.

²⁸⁰ Barenblatt *A Plague upon Humanity: The Secret Genocide of Axis Japan's Germ Warfare Operation* (Harper Collins: 2004) at page 181.

They both have one thing in common: the true extent of devastation caused is not likely to ever be fully realised.

With Nagasaki and Hiroshima laying in ruins, the clock was ticking for Hirohito to make a decision and to protect his people.

Hirohito's Final Act

As early as February 1945, Prince Konoe had advised the Emperor that, in his opinion, the war was lost. He had strongly urged the Emperor to abdicate in order to avoid any difficulties that may, and did, arise as a consequence of Japanese surrender.²⁸¹ The request fell on deaf ears. Hirohito was not prepared to surrender at that time. When the Allies had made their clear threat of an escalated bombing campaign at the Potsdam Declaration, the Emperor again made no attempt to alter the Japanese government's position on their threat.²⁸² This was, quite clearly, a calculated decision by Hirohito to fight on, regardless of the loss of life.

After the United States dropped the first nuclear bomb on Hiroshima on 6th August 1945, the Emperor and the government met urgently to discuss the future of Imperial Japan. At the time, it was not clear exactly what had happened. A pilot was dispatched to see exactly what had occurred in Hiroshima and, upon their return, it was confirmed that the city had been obliterated. By what, Hirohito could not be sure. It was agreed at that meeting that there would be no surrender unless the Allies agreed to preserve the Imperial institution, and that power remain with the Imperial institution to control disarmament. Simply put, that the Allies would agree the status quo remained in Japan, with Hirohito

²⁸¹ Cox 'Japan at the End of Her Tether' in Hart, Basil Liddell 'History of the Second World War' Volume 6 (Purnell: 1969) at pages 2,540 – 2,544.

²⁸² Bix 'Hirohito and the Making of Modern Japan' 1st Edition (HarperCollins: 2001) at page 290.

calling the shots. In addition to this, Japan would also demand that there would be no Allied occupation of the Japanese home islands.

There was a further final sting in the tail for an amicable surrender. There would also be a demand by Japan that the power remain with them to prosecute its own war criminals at a domestic level.²⁸³ That would be problematic for Roosevelt (albeit at this point he had been replaced by Truman) and Stalin, who had already made public statements confirming their intention to bring punishment and retribution against Japanese war criminals.

On 7th August 1945, Truman ended any speculation in a radio broadcast to the American public. He could not have been clearer to Japan: surrender, or face annihilation. He stated, *“if they do not now accept our terms they may expect a rain of ruin from the air, the like of which has never been seen on this earth.”*²⁸⁴ The walls continued to close in on Japan. On 8th August 1945, the Soviet Union confirmed that, as of midnight, the Soviets would formally be at war with Japan.²⁸⁵ Shortly after midnight, the Soviet war machine poured millions of troops into Manchuria. The Japanese, and Hirohito, were now firmly on the back foot and spread thinly across all fronts.

Hirohito and the Supreme Council met for further discussions on 9th August 1945, in an attempt to try and digest the events of the last couple of days. The meeting was abruptly ended. At approximately 11 am, they started to receive further reports of a similar bomb having been dropped on the city of Nagasaki.²⁸⁶ They knew that the devastation that had taken place in Hiroshima had now also occurred in Nagasaki.

²⁸³ Bix *‘Hirohito and the Making of Modern Japan’* 1st Edition (HarperCollins: 2001) at page 512.

²⁸⁴ <https://www.atomicheritage.org/key-documents/truman-statement-hiroshima> last accessed 6th May 2020.

²⁸⁵ Hara *‘Japanese-Soviet/Russian Relations since 1945: A Difficult Peace’* (Routledge: 1998) at page 14.

²⁸⁶ Webb *‘Letters from Tinian 1945’* (Webb: 2009) at page 45.

The Meiji Constitution of 1889 had clearly set out Hirohito's ability as Emperor to exercise absolute control if necessary, specifically in relation to the ability to wage war and, importantly, to make peace. Initially, Hirohito had wanted universal agreement in favour of surrender; it quickly became apparent to Hirohito that this would not be possible shortly after a deadlock arose. The difficulty arose in that half of the Supreme Council were happy with surrender, subject to the Imperial family's rule being preserved. The other half wanted to demand not only this term, but also complete control over Japan's disarmament, there must be no occupation, and any war crime trials would be held by Japan's domestic courts.²⁸⁷

The decision would, therefore, have to be made by Hirohito. It was also abundantly clear to the other members of the Supreme Council that they knew the decision ultimately rested with him. Submissions were being made to Hirohito by members of the Supreme Council as to the correct path, in their opinion, for him to take. On 10th August 1945, Hirohito had heard enough. The Emperor is reported to have said:

"I agree with the Foreign Minister's plan. I have given serious thought to the situation prevailing at home and abroad and have concluded that continuing the war can only mean destruction for the nation and a prolongation of bloodshed and cruelty in the world. Those who argue for continuing the war once assured me that new battalions and supplies would be ready... As for those who wish for one last battle here on our own soil, let me remind them of the disparity between their previous plans and what has actually taken place. I cannot bear to see my innocent people struggle any longer. Ending the war is the only way to restore world peace and to relieve the nation from the terrible distress with

²⁸⁷ Wells 'The A to Z of World War II: The War against Japan' (Scarecrow Press: 2009) at pages 138 – 139.

which it is burdened... I cannot but swallow my tears and sanction the proposal to accept the Allied Proclamation on the basis outlined by the Foreign Minister."²⁸⁸

This was not an Emperor who could say he had been dictated to by the government of Japan. This was an Emperor who knew his own mind, had been involved in the failed plans for the domination of the Pacific nations, and who now, having seen the writing on the wall, was ordering surrender in order to preserve the Imperial family. No member of the Supreme Council objected at that meeting. Accepting the Proclamation would be to not only allow the Allied occupation of Japan, but also open the Emperor and others up to the possibility of being prosecuted for war crimes. These had been the difficulties that Prince Konoe had warned the Emperor of some six months earlier.

At midnight on 10th August 1945, the Japanese sent a message to the governments of the United States, Great Britain, the Soviet Union, and China via the nations of Switzerland and Sweden, who were acting as intermediaries. The message said:

"In obedience to the gracious command of his Majesty the Emperor... the Japanese Government are ready to accept the terms enumerated in the joint declaration which was issued at Potsdam on July 26, 1945... with the understanding that the said declaration does not compromise any demand which prejudices the prerogatives of His Majesty as the Sovereign Ruler."²⁸⁹

Having considered the Emperor's request, the Americans drafted a response and forwarded this on to the governments of Great Britain, the Soviet Union, and China. After some discussions, they all broadly agreed that the Emperor could remain in place to allow

²⁸⁸ <https://www.history.navy.mil/research/library/online-reading-room/title-list-alphabetically/j/japans-struggle-end-war-1946.html> at pages 7 - 8. Last accessed 10th May 2020.

²⁸⁹ "Reports of General MacArthur: pts. 1-2. Japanese operations in the southwest Pacific Area compiled from Japanese Demobilization Bureau records" (Center of Military History: 1966) at page 715.

the Allies to exert a greater degree of control during any subsequent occupation of Japan. It would be mutually beneficial to all sides for the Imperial family to remain in place, and the Allies were rightly fearful of the significant disharmony that would be caused if they attempted to dethrone Hirohito. A response was sent on to Tokyo to clarify the Allies' position as follows:

*“From the moment of surrender the authority of the Emperor and the Japanese Government to rule the State shall be subject to the Supreme Commander of the Allied Powers... the Emperor will be required to authorise and ensure the signature... of the Surrender Terms... and shall issue his commands to all the Japanese Military, Naval and Air authorities and to all the forces under their control, wherever located, to... surrender their arms...”*²⁹⁰

Hirohito had his assurance. In the coming days, there would be internal struggles amongst the Supreme Council amongst those who wanted to surrender and the fanatics who hoped Japan would fight on. In the early hours of 14th August 1945, Hirohito met with the Supreme Council for the Direction of War in the bomb shelter under the Imperial Palace.²⁹¹ The Imperial Army were opposed to any consideration of surrender, and instead suggested that their remaining troops fight to the death, killing as many Allied soldiers as possible in the process. General MacArthur was well aware of this potential risk, having already prepared for the likely outcome of an invasion on Japan. “Operation Olympic”, the official invasion plan prepared by the U.S. War Department, was based on an estimate of 750,000 Japanese ground troops.²⁹²

²⁹⁰ <http://www.ibiblio.org/pha/policy/1945/450729a.html> - last accessed 10th May 2020.

²⁹¹ Manning *'Hirohito: the War Years'* (Dodd, Mead & Co: 1986) at page 1.

²⁹² 'Murray & Millett *'A War to be Won: Fighting the Second World War'* (Harvard: 2009) at page 520.

MacArthur was fully aware that these figures were grossly inaccurate. In reality, the Japanese would have had access to: 2,350,000 regular soldiers; 250,000 garrisoned troops; and an additional 32.5 million civilian militiamen, all prepared to die in the name of the Emperor should he so demand. There was also the threat of Japan utilising the remaining 10,000 kamikaze pilots ready to go at a moment's notice, albeit with a distinct lack of aircraft now available to them.²⁹³ MacArthur estimated that the invasion of Japan would cost “*one million American casualties alone*”.²⁹⁴ Such a loss of life would be unacceptable and would surely be unacceptable to the public back at home in America. The problem that MacArthur now had was that Truman, in his public radio address of 8th August 1945, had already spoken of an extensive landing of American troops on Japanese soil. If he ordered a land invasion, MacArthur knew that he would be sending a million American troops, and millions of Japanese troops and civilians, to their death.

In concluding, the Emperor addressed the Supreme Council for the Direction of War, having considered the arguments being advanced by both sides of his advisors. He knew at this point that further conflict would not only weaken his negotiating position, but also result in the death of millions of his subjects. That in turn, even if Japan survived the Second World War, would likely be the final nail in the coffin for Imperial rule. In announcing his decision to the Supreme Council, Hirohito said that:

“I have listened carefully to all the arguments opposing Japan’s acceptance of the Allied reply as it stands. My own opinion, however, has not changed. I shall now restate it. I have examined the conditions prevailing in Japan and in the rest of the world, and I believe that a continuation offers nothing but continued destruction. I have studied the terms of the Allied reply, and I have come to the conclusion that they represent a virtually

²⁹³ Manning ‘*Hirohito: the War Years*’ (Dodd, Mead & Co: 1986) at page 2.

²⁹⁴ Manning ‘*Hirohito: the War Years*’ (Dodd, Mead & Co: 1986) at page 3.

complete acknowledgement of our position as we outlined it in the note dispatched a few days ago. In short, I consider the reply to be acceptable...

Although some of you are apprehensive about the preservation of the national structure, I believe that the Allied reply is evidence of the good intentions of the enemy. The conviction and resolution of the Japanese people are, therefore, the most important consideration. That is why I favour acceptance of the reply. I fully understand how difficult it will be for the officers of the army and navy to being disarmed and see their country occupied. I am aware also of the willingness of the people to sacrifice themselves for their nation and their Emperor. But I am not concerned with what may happen to me. I want to preserve the lives of our people. I do not want them subjected to further destruction. It is indeed hard for me to see my loyal soldiers disarmed and my faithful ministers punished as war criminals.

If we continue the war, Japan will be altogether destroyed. Although some of you are of the opinion that we cannot completely trust the Allies, I believe an immediate and peaceful end to the war is preferable to seeing Japan annihilated. As things stand now, the nation still has a chance to recover.

*I desire the cabinet to prepare as soon as possible an Imperial Rescript announcing the termination of the war.*²⁹⁵

With that, Hirohito left the bomb shelter under the Imperial palace and set about preparing himself and the nation for Japan's surrender. Recorded a day in advance of broadcast,²⁹⁶ the recording was hidden in a secret vault for fear of it being destroyed. This proved to be a wise decision by Hirohito. Upon learning of Japan's imminent surrender,

²⁹⁵ Manning 'Hirohito: the War Years' (Dodd, Mead & Co: 1986) at pages 4-6.

²⁹⁶ Pike 'Hirohito's War: The Pacific War, 1941-1945' (Bloomsbury: 2015) at page 1,118.

many distraught members of the armed forces marched on the Imperial Palace, attempting to destroy the recording as well as seeking to cause harm to Lord Privy Seal Kido, Prime Minister Suzuki, and the Emperor himself, all of whom were now considered traitors by the radical factions of Japan's military.

The announcement of Japan's surrender was broadcast the following day, at noon on 15th August 1945, by the national network, NHK. This would be the first radio broadcast made by any Emperor of Japan, although it is likely he would have wanted this landmark to have occurred in happier circumstances. Hirohito proclaimed to the Japanese people: -

“We, the Emperor, in view of world conditions and the present situation of Japan, hereby announce to you, our loyal subjects, that in our profound anxiety to bring an end to this state of affairs by some extraordinary measure we have instructed the Japanese government to accept the Joint Declaration of the United States, Great Britain, the Soviet Union and China.

In conformity with the precepts handed down by our Imperial ancestors we have always striven for the welfare of our subjects and for the happiness and welfare of all nations. This is precisely why we declared war against Great Britain and the United States. It was out of our anxiety to preserve the confidence of the Empire and maintain the stability of East Asia that we took this step. It was not our intention to infringe on the sovereignty of other nations or to carry out acts of aggression against their soil.

However, the war now has lasted for four years and despite the valour of our land and naval forces, despite the valour of our heroic dead and despite the continued efforts the situation has not taken a turn for the better and neither has the aspect of the world situation taken a more favourable turn.

What is more, the enemy has employed its outrageous bomb and slaughtered untold numbers of innocent people. The damage is incalculable.

Accordingly, to continue the war under these circumstances would ultimately mean the extinction of our people and the utter destruction of human civilisation. Under these circumstances, how were we to save the millions of our subjects or justify ourselves to save the spirits of our Imperial ancestors? It was this which led us to have the Imperial government comply with the Joint Declaration.

We must express our regrets to our Allies who have fought alongside us for the emancipation of East Asia. We are now thinking of our subjects who met an untimely death and our brave warriors, and of those they have left behind. We also feel deeply for the welfare of those who have suffered great losses in the pursuit of victory and those who have lost their livelihood.

We are aware that the Empire is now confronted with the unparalleled distress and fully know how you, our subjects, feel. However, by patiently enduring the tide of events, however difficult it may be, we will open the way for peace for generations to come. By maintaining our national structure, we shall encourage you our loyal subjects in the singleness of purpose. We are ever with you. If you should now become agitated and create needless complications, thus making difficulties with each other, you would only infringe the principles of morality and lose the respect of the world. We therefore earnestly warn you against such agitation.

Let us therefore face the long road ahead of us as one united nation in firm fidelity to the Throne and in full confidence in the indestructability of our Divine Land, and let us resolve to bend all our energies to future reconstruction, let us be strong in our moral

principles and firm in our ideals. My subjects, let us carry forward the glory of our national structure and let us not lag behind the progress of the world.

Submit, ye, to Our Will!”²⁹⁷

The Second World War was finally over. Unit 731 was no more. The army under which Ishii’s operation fell was to be disbanded. The Japanese surrender was to usher in a new period of occupation, American cover-ups, and prosecutions for Japanese war criminals. Just as Commodore Perry had docked unwelcomed in a Japanese Harbour, in September 1945 the American ship Sturgess docked in Yokohama with the intention of once again forcing American desires onto the Japanese people.

American Investigations

The Americans had not only boarded Sturgess with military men to begin the occupation of Japan. They were also intent on beginning formal investigations into alleged Japanese war crimes, with a view to prosecuting any proven atrocities. Unit 731 would come within the scope of these investigations, with the inclusion of well-respected microbiologist Lieutenant Colonel Murray Sanders. The formal Allied investigation into Unit 731 and other biological research programmes in Japan was finally underway. Sanders had been tasked with uncovering the extent of Japan’s wide-scale biological warfare programme and, importantly, to glean whatever data had been gained by Ishii and his men from carrying out both their human and field experimentation.²⁹⁸

²⁹⁷ Manning ‘*Hirohito: the War Years*’ (Dodd, Mead & Co: 1986) at pages 7-9.

²⁹⁸ Zilinskas ‘*The Microbiologist and Biological Defense Research: Ethics, Politics, and International Security*’ (New York: 1992) at page 41.

Sanders, on initial inspection, was a promising microbiologist who had held roles as a lecturer and assistant professor at Columbia University's College of Physicians and Surgeons, before being commissioned as a Major in the United States Army in 1943. Sanders' role was to conduct research into microbiology at Ford Detrick, with a particular focus on studying Japan's research into encephalitis, as well as developing defences and deployment tactics against various toxins.²⁹⁹ His investigations in Manchuria would further improve the Americans' knowledge of Japanese biological warfare research.

Sanders had displayed an excellent ability to conduct research into his chosen field and, on the face of it, his appointment appeared to be a wise move by the United States. What he lacked was real-world experience and the capacity to interrogate suspects and draw the required information from them when needed.³⁰⁰ Instead, he favoured befriending suspects in the hope that they would provide him with information of their own accord as a goodwill gesture. The initial Allied investigation was doomed to fail at the very outset; the Americans had backed the wrong horse and underestimated the ability of the Japanese to withhold such a wide-scale operation.

It was absolutely vital for the Allies to uncover as much about the Japanese biological warfare programme from the testimonies of those involved. Not only would any information Sanders gleaned from Ishii and his men potentially be used to prosecute them, it would also be vital to ensure that the Soviets did not obtain sensitive research data instead of the Allies or rather, the Americans. Equally, the Soviets would press just as hard in their own investigations for the exact same reason: they did not want the information that they suspected that Ishii and his men had to fall into the hands of the

²⁹⁹ Harris *Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up* 2nd Edition (Routledge: 2002) at page 180.

³⁰⁰ MacLeod *Science and the Pacific War: Science and Survival in the Pacific, 1939-1945* (Kluwer: 1999) at page 255 – 256.

United States. The Soviets had, however, initially approached the United States and proposed a joint investigation be conducted in to Unit 731.³⁰¹ The United States had declined, thus sparking a race against time for both the United States and the Soviet Union to locate, obtain, and interrogate members of Unit 731.

The problem for Sanders was that the Soviets had already occupied Manchuria following the end of the war in the Pacific, and had restricted access to the Allies as a consequence.³⁰² Their invasion of the region, after declaring war on Japan on 8th August 1945, had been swift and decisive. Japan's forces were in retreat and heavily weakened, proving easy pickings for the Soviets. The Soviets would take over half a million Japanese troops as prisoners;³⁰³ the process of interrogating them all would be long and arduous, even if the Japanese troops had not chosen to be evasive.

Because of the Soviet occupation of Manchuria, and their unwillingness to comply with requests, Allied investigators were unable to visit the sites of alleged biological warfare research facilities, such as that of Unit 731 in Harbin. The distrust displayed by the Allies and Soviets to one another only served to make the process of understanding exactly what happened near impossible for both sides. The self-interests of both the United States and Soviet Union would stifle justice. Ishii was the key figure who could confirm exactly what occurred at Unit 731; once located, he would do so to the highest bidder. The Allied powers had knowledge of Japan conducting experiments with both biological and chemical weapons, but they were not sure as to the extent of any research undertaken by them. A matter of months after Sanders' arrival in Japan, there had been a number of reports obtained by various Allied nations - to include the United States, Great

³⁰¹ Tanaka *'Hidden Horrors: Japanese War Criminals in World War II'* (Avalon: 1996) at page 159.

³⁰² Harris *'Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up'* 2nd Edition (Routledge: 2002) at page 265.

³⁰³ Rosefielde *'Red Holocaust'* (Routledge: 2010) at page 60.

Britain, and Australia - from returning soldiers who had been kept as prisoners of war by Japan. They indicated that they had been subject to human experimentation by their Japanese captors, led by Ishii and his satellite units.³⁰⁴

It is not even possible to say that the evidence of these soldiers did not make its way to the very upper echelons of the Allied hierarchy. Shortly after the occupation of Japan, General MacArthur had received a letter in 1946 by a “Hisashi Okada”, requesting *“a full investigation of the persons who conducted bacteriological experimentations on PoW which resulted in three deaths.”*³⁰⁵ The evidence to the Allies of considerable wrongdoing could not have been clearer at this time, and the man responsible for investigating and prosecuting Japanese war crimes had been alerted.

This initial investigation into the biological warfare was doomed from the outset. Sanders would unwittingly allow the Japanese time to cover-up their own atrocities and allow Ishii to strike a deal with the Americans. Ishii had learned of Sanders’ arrival and his right-hand man, Naito Ryoichi, was duly dispatched to intercept Sanders in the guise of offering his services to him as an interpreter. Sanders gleefully accepted the offer. It was Naito’s intention to prevent, or at the very least divert or delay, Sanders’ attention away from Unit 731 and Ishii. He proved to be extremely successful in blocking Sanders and the Allies from making any real headway in their investigations. Naito stopped Sanders from interviewing any key witnesses and, even if he had facilitated investigations, did not provide accurate interpretations of the evidence being given.³⁰⁶

³⁰⁴ Cunliffe ‘*Select Documents on Japanese War Crimes and Japanese Biological Warfare, 1934 – 2006*’ (Washington: National Archives) at page 35.

³⁰⁵ Cunliffe ‘*Select Documents on Japanese War Crimes and Japanese Biological Warfare, 1934 – 2006*’ (Washington: National Archives) at page 39.

³⁰⁶ Gold ‘*Unit 731: Testimony*’ (Tuttle Publishing: 1994) at page 96.

In the early days of his investigations, Sanders had questioned numerous persons suspected of being linked in some way to the Japanese biological programme. All of those interviewed denied that Hirohito had any knowledge of Japanese biological research, most likely at the direction of Naito. Even if such a research programme were to exist, those interviewed, via Naito, were keen to impress upon Sanders and the Allies that even if such experiments had been carried out, they were without the knowledge or approval of Hirohito.³⁰⁷ How small-time players within Unit 731 and other bases would know about the knowledge of involvement of Hirohito is questionable and, likely, non-existent. The evidence to date clearly points to the contrary and firmly implicates Hirohito in not only the funding of Unit 731, but also the day-to-day running of it and appointments being made.

To his credit, Sanders did eventually become wise to Naito's tactics and rightly warned him that it would be better for Japan if America, rather than the Soviet Union, were to learn of the truth. By now, the Soviet's own investigations were firmly underway into the Japanese biological warfare programme. Unsurprisingly, their tactics of interrogation were far less favourable than the amicable approach being taken by Sanders. He was also not lying to Naito; the treatment Ishii and his men would receive, along with the likely financial "reward", would be considerably better with the United States than had they fallen into the hands of the Soviets.

The threat clearly worked. Once Naito had relayed the news to Ishii, those being investigated by Sanders became increasingly more forthcoming with details of Unit 731. Slowly, Sanders began to piece together the structure and hierarchy of Unit 731. He reported back to General MacArthur, who was responsible for assessing the information

³⁰⁷ Harris *'Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up'* 2nd Edition (Routledge: 2002) at page 179.

and deciding whether to prosecute the individuals involved or, as would transpire, agreeing an immunity deal in exchange for the research data Ishii had obtained.³⁰⁸ In effect, the Unit was now negotiating its unethical research data to the highest bidder. MacArthur was clear to Sanders: draw out the information at all costs to avoid it falling into the hands of the Soviet interrogators. Sanders was unfortunately not the man to glean the full extent of Unit 731, albeit he was now making some headway.

The Allied investigators were not only worried about the Soviet Union or Naito hampering their investigations. They were also having to contend with the secretive work of Lieutenant Colonel Niizuma Seiichi, a member of the Japanese Army's Department of Military Work. It was his responsibility, in the post-war years, to ensure records of Japan's biological, chemical, and nuclear research data. Whilst the Soviets and United States had wanted to obtain the research data, Japan also wanted to retain as much information as possible.

Given the mass-destruction of documents at the end of the war by Ishii and his men, it was entirely possible that the research of Unit 731 would be lost to Japan if he was offered and accepted immunity by either the Americans or Russians. To this end, Seiichi was responsible for attempting to dictate who could be interviewed by the Allied investigators, along with what information could be revealed.³⁰⁹ The information was in essence a tap, being turned on and off at the order of Seichii and the direction of Naito.

MacArthur had been clear: obtain information at any cost. Ishii had been fully aware that the atrocities he had committed would likely face prosecution. On that basis, neither he nor his men were prepared to indict themselves by providing any damning

³⁰⁸ Beauchamp, Kahn, Walters, Mastroianni *'Contemporary Issues in Bioethics'* (Thomson/Wadsworth: 2008) at page 62.

³⁰⁹ Harris *'Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up'* 2nd Edition (Routledge: 2002) at page 180.

evidence to the Allies. It was clear to the Allies that they would need to take drastic action in order to obtain information from Ishii. Once the green light had been given by MacArthur, all of the potential informants were offered immunity from the forthcoming judicial proceedings in return for their information. Unsurprisingly, the information being provided by the Japanese informants went from a gentle trickle to a raging torrent.³¹⁰ Whether it was true was a different matter altogether.

Once the verbal assurances were made by Sanders, he recalled that “*the data came in waves. We could hardly keep up with it.*”³¹¹ Relying on the information provided, Sanders failed to realise that much of the information given was false or, at best, hindering his ability to accurately establish the true extent of the Japanese biological programme. He was once again naïve in simply taking the information being provided to him at face value, without considering the ulterior motives at play. Had he been a seasoned interrogator, it is likely that he would have been more challenging of the informants and sceptical as to the information now being given to him.

Unfortunately for Sanders, and the Allied investigation, he came to the fatal conclusion that the biological warfare programme seemed to “*have been largely a military activity, with civilian talent excluded in all but minor roles.*”³¹² He could not have been further from the truth. Unit 731 had been insidious within many educational institutes in order to get a steady source of fresh-faced graduates to fill the research positions within the Unit. Just as their Nazi-German counterparts had coupled up with large pharmaceutical companies, Ishii had ensured that he linked with prestigious universities to give credibility to his operation. In light of this false assumption, Sanders

³¹⁰ Gold ‘Unit 731: Testimony’ (Tuttle Publishing: 1994) at page 97.

³¹¹ Barenblatt ‘A Plague Upon Humanity’ (Harper Collins: 2005) at page 207.

³¹² Sanders Report ‘Summary’ at page 1 (see: Williams & Wallace ‘Unit 731: Japan’s Secret Biological Warfare in World War II’ (Free Press: 1989) at page 262.

wrongly focused on the Japanese army, whom he believed to be the chief suspect as opposed to the enabler.³¹³

Colonel Idezuki, chief of the Division of Preventative Medicine at the Tokyo Army Medical College, claimed that “*the offensive phase of biological warfare was never studied*”³¹⁴ in the home islands. This was quite clearly a lie and, even with the limited evidence and testimony that they had obtained to date, should surely have been sufficient to have known so at that time. There appeared to be an acceptance by the American investigators that they would simply not uncover the full extent of Unit 731. Idezuki was not alone in his lies to the Americans. When questioned, Colonel Inoue, chief of the Bacteriological Section at the Tokyo Army Medical College, informed Sanders that “*no type of artificial infection experiment had been carried out and that the approach to the problem of biological warfare was based on general medical concept. Furthermore, 90% of their efforts had been expanded towards the improvement of vaccines.*”

To the credit of those at the top of Army command, their lies were at the very least consistent. Lieutenant General Kambayashi Hiroshi was Surgeon General, therefore having responsibility for all medical activities conducted by the Army. He would have undoubtedly known of the varied research of Unit 731. When questioned, he denied any knowledge of an alleged biological warfare programme, conceding that there may have possibly been “*certain offensive activities... carried out in relation to defensive evaluation...*”³¹⁵ The official line of nearly all of those investigated was that they were not aware of any offensive biological warfare research being carried out and, if such were, it would not have been on a large-scale. These statements were clearly false; Sanders,

³¹³ Harris ‘*Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up*’ 2nd Edition (Routledge: 2002) at page 181.

³¹⁴ Sanders Report – Appendix, at 29-A(a)(2)

³¹⁵ Sanders Report at 29-C(a)(2)

fatally, appears to have accepted them without any substantive critical assessment. Somehow, Ishii and his men were successfully hiding the fact that Japan had developed a world-leading biological research programme that had conducted extensive, deadly field experiments on civilians across Manchuria. Roosevelt himself had stated, in 1943, that the Americans were aware of biological field experiments having taken place in Manchuria.³¹⁶ Three years later, Sanders was accepting the evidence of war criminals at face-value.

All those interviewed by Sanders, who had held positions of authority, denied any knowledge or involvement in an alleged biological warfare programme.³¹⁷ Instead, they lay the blame solely at the door of Ishii, who was currently in hiding.³¹⁸ A picture was being painted of Ishii as a loner who had gone rogue, with Unit 731 certainly not being an endorsed entity. Sanders has since claimed that he did, in fact, question Ishii; there is no documented evidence to support this, nor does his investigation suggest that he got anywhere near to the true extent of Ishii's Unit.³¹⁹ Not only did Sanders accept that Unit 731 and other operations had not been wide-scale, he also reported back to Washington that he had "*uncovered absolutely no evidence of offensive biological warfare activities... but I can assure you that every effort will be made to continue this search... It is my impression that Japanese biological warfare was not a major activity and that it will not be necessary to extend this investigation as originally planned.*"³²⁰

³¹⁶ Chauhan 'Biological Weapons' (APH: 2004) at page 196

³¹⁷ Harris 'Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up' 2nd Edition (Routledge: 2002) at page 181.

³¹⁸ MacLeod 'Science and the Pacific War: Science and Survival in the Pacific, 1939-45' (Kluwer Academic: 2000) at page 256.

³¹⁹ Williams & Wallace 'Unit 731: Japan's Secret Biological Warfare in World War II' (Hodder & Stoughton: 1989) at pages 121-140.

³²⁰ Harris 'Factories of Death: Biological Warfare, 1932-45 and the American Cover Up' 2nd Edition (Routledge: 2002) at page 182.

Harris is rightly critical of Sanders' approach, arguing that "*Sanders was his own worst enemy... He was not seeking clues to war crimes that might have been committed by the Japanese scientific and medical communities.*"³²¹ The failings of Sanders were both numerous and critical. It would be unfair to pin the blame entirely on Sanders, who is an easy and rather obvious scape-goat for the failures of the initial Allied investigation into suspected biological research by the Japanese.

Harris' viewpoint ignores the fact that Sanders had been chosen by his superiors based on his academic abilities, rather than on interviewing skills that the role clearly required, which would mean the man responsible would have to be able to obtain evidence and successfully interrogate witnesses. It was apparent that he would be at a considerable disadvantage from the outset. It would be a reasonable expectation that the Allies would have investigated a potential Japanese biological warfare programme with more vigour, especially given the revelations from Nuremberg of near-identical studies.

The true blame should lie with the Allies, in particular the United States, who failed to appoint the correct personnel for their initial investigation, at the very outset, in order to achieve their desired objective. Sanders can be seen to have done the best to his abilities with little or no assistance. Sanders had been easily misled by his interpreter, Lieutenant Colonel Naito Ryoichi, who Sanders had often allowed to take the lead on questioning.

In turn, Naito directing them away from potentially lucrative information on Unit 731. Had Sanders been properly assisted during the interviewing process, and the Allies not relied upon Naito to provide translation skills, it is likely that the investigation would have not taken such an unproductive turn. The fact that the Americans appeared happy to

³²¹ Ibid at page 182.

have Naito interpret for Sanders also shows a naivety on their part, as well as a significant failure to provide Sanders with the independent resources and personnel that he required.

Harris rightly highlights the contradictory nature of Sanders' report, but this only serves to reinforce how poor Sanders' performance had been throughout the interview process. In summary, Sanders had stated in his report that *"from 1936 to 1945 the Japanese Army fostered offensive biological warfare, probably on a large scale."*³²² Later, in the Appendix to his report, Sanders went on to state that *"on the basis of the material previously provided by officers responsible to the Surgeon Generals of Army and Navy, a tentative conclusion had been drawn that Japanese biological warfare activities in the military programme constituted an unimportant minor activity."*³²³

Whilst it is fair to point out that his interviewing skills left a lot to be desired, Sanders did at least appear to accept that he had been misled. In his report, Sanders stated that he did not necessarily take those he interviewed at face value, by observing that *"it was further pointed out to the Surgeon Generals that the investigating officer was perfectly willing to accept the Japanese version of biological warfare, but that in view of the complete absence of offensive data, it would be difficult to convince others that the whole story had been told."*³²⁴

Perhaps the most important part of Sanders' report was his ability to reflect on his own shortcomings. He had significant hindrances, some of which were self-induced. However, to his credit, Sanders did document that he suspected a large-scale programme

³²² Sanders Report – Summary – at 1 (see: Cunliffe *'Select Documents on Japanese War Crimes and Japanese Biological Warfare, 1934-2006'* at 1945/11/23 - page 96; Dando *'Bioterror and Biowarfare'* (Rosen: 2009) at page 31)

³²³ Sanders Report – Appendix – at 29C(b)(1) (see: Harris *'Factories of Death: Japanese Biological Warfare, 1932-1945, and the American Cover-up'* (Routledge: 2002) at page 183.

³²⁴ Sanders Report – Appendix – at 29C(b)(2) (see: see: Harris *'Factories of Death: Japanese Biological Warfare, 1932-1945, and the American Cover-up'* (Routledge: 2002) at page 136).

had taken place between 1936 and 1945, and that he had simply failed to find corroborating evidence to support his theory.³²⁵ His theory was correct; he had been unable to find any evidence in support. Sanders had provided a balanced report, making clear what he could and could not substantiate. He could not be accused of having contained any unfounded allegations within his report and, perhaps most crucially of all, he had left the door open for further investigations into a potential large-scale programme should the Allies so desire.

The commissioning of a second investigation, sponsored by Fort Detrick, supports the notion that Sanders' report sufficiently notified the Allies that evidence may have existed to prove the existence of a Japanese biological programme. In that sense, it could be considered to have been a partial success. The appointment of Lieutenant Colonel Arvo Thompson would also suggest that Sanders' inexperience of interrogation had been a cause for concern. Thompson was tasked with expanding upon Sanders' initial findings, using his previous experience of carrying out interviews on Japanese high-ranking officials. Despite being a flawed report, Sanders' report had concluded that Ishii had been a key figure in Japan's biological warfare programme.³²⁶ That much was correct; Thompson now had a key target to interrogate and, for the first time, Ishii was in the crosshairs.

As informants came forward and immunity started to be granted one by one, Ishii came out of hiding in January 1946. Following an intensive search to locate him, he had been found hiding out in his home village. After coming to the attention of the occupation forces, he was placed under house arrest until he could be brought to the Supreme

³²⁵ Drea, Bradsher, Hanyok, Lide, Peterson & Yang *Researching Japanese War Crimes: Introductory Essays* (Records Administration for the Nazi War Crims and Japanese Imperial Government Records Interagency Working Group: 2006) at page 95.

³²⁶ Harris *Factories of Death: Biological Warfare, 1932-45 and the American Cover Up* 2nd Edition (Routledge: 2002) at page 264.

Command Allied Powers, which they duly did on 18th January 1946.³²⁷ Ishii's time on the run was now over.

Whereas Sanders took a soft approach to questioning suspects, Thompson was far more brutal and persistent in his pursuit of the truth. With the inclusion of Ishii for questioning, Thompson's report was considerably more detailed than Sanders. Thompson also did not have to contend with Naito "interpreting" each interview that he conducted. Thompson was also far more critical in his analysis than Sanders. For example, where Sanders had failed to discover the true scale of Unit 731, Thompson was able to unearth that Ishii and his fellow researchers had entered into a non-disclosure pact before the end of the war. Having interviewed Ishii, Thompson was also fully aware that Ishii desired an immunity deal and had information to offer to the United States.³²⁸

Despite the differing approach, the tactical change by the Allies, ultimately Thompson did not seem to find any "smoking gun" in the evidence to support both his and Sanders' belief of a wide-scale, state-sponsored biological warfare facility. Thompson noted that that the full story remained to be told, having come into the same difficulties as Sanders with deceitful mistruths told to him by persons interviewed, including Ishii. Thompson concluded on his dealings with Ishii that "*on the subject of biological warfare research and development, Ishii's replies to questions were guarded, concise and often evasive.*"³²⁹

Thompson conceded that he suspected Ishii of possessing a great deal of data gained from his earlier research, despite Ishii alleging all records had been destroyed.

³²⁷ Ibid at page 247.

³²⁸ Yan-Jun & Yue-Him 'Unit 731: Laboratory of the Devil, Auschwitz of the East: Japanese Biological Warfare in China 1933-45' (Fonthill: 2018) at pages 119 - 121

³²⁹ Thomson Report at page 1 (see: Williams & Wallace 'Unit 731: Japan's Secret Biological Warfare in World War II' (Hodder & Stoughton: 1989) at page 159.

Thompson commented that the *“technical information obtained from Ishii, however, indicates an amazing familiarity with detailed technical data. It leads one to question the contention that all records pertaining to biological warfare research and development were destroyed. In all probability, much of the information Ishii presented was compiled with the assistance of his former associate at Ping Fan.”*³³⁰ Thompson also noted that *“while Ishii maintained that no official directive existed for the prosecution of this activity and that it was conducted as a phase of military preventative medicine, it is evident from the progress that was made that biological warfare and development in all its phases was conducted on a large scale, and was officially sanctioned and supported by the highest military authority.”*³³¹

Thompson was close to the truth. Unit 731 had been officially sanctioned by the highest authority; it had been Hirohito and not the military. Thompson would, in the end, return to Fort Detrick as Sanders had done, having failed to uncover the full extent of the truth, or rather the true extent of the biological research undertaken by Ishii and his men. Shortly after his return, Thompson sadly committed suicide in 1948, the reason for which is unknown.

There were other subsequent Allied attempts to uncover the full extent of the biological warfare programmes that Japan had engaged in. An American army military intelligence report focusing on foreign nations’ biological warfare capabilities, established in 1946, recognised five key personnel involved with Unit 731, as well as three sites used for research purposes.³³²

³³⁰ Thompson Report at pages 11-12 (see: Williams & Wallace *‘Unit 731: Japan’s Secret Biological Warfare in World War II’* (Hodder & Stoughton: 1989) at page 159.

³³¹ Harris *‘Factories of Death: Biological Warfare, 1932-45 and the American Cover Up’* 2nd Edition (Routledge: 2002) at page 184.

³³² *‘Biological Warfare Activities & Capabilities of Foreign Nations’* Annex H, at pages 2-6.

The later Khabarovsk Trial, conducted by the Soviets in 1949, included key testimony from persons involved directly and indirectly in Unit 731, confirming the suspicions of both Sanders and Thompson. The Soviet Trial took place a year after the conclusion of the Tokyo Trial and, at the same time, a decision had been made by the Allies to release any outstanding war criminals detailed who had not yet been tried.

Whatever the evidence collated by either Sanders or Thompson, it was clear that the Allies had not extensively investigated Ishii or his men in relation to the true extent of their research. Ishii now held the upper hand against the United States, who on the one hand wanted to administer justice for the world to see, but on the other, now knew that Ishii and his men had research data far more “advanced” than their own research programmes back in America had managed to uncover. Whilst the United States took the lead on behalf of the Allies, it would soon become apparent that they were not necessarily acting in the best interests of the other Allied nations.

The strategy adopted by Ishii and his fellow researchers appears to have worked. The United States Department of Defense aired their concerns about pursuing members of Unit 731 as being problematic, on 3rd June 1947. In a telegram to MacArthur’s legal department, they said that “... *all evidence and information provided by Shiro Ishii and members of his division must be provided to the States in telegram as soon as possible...*”³³³, to which MacArthur’s legal department responded on 6th June 1947 that “*the reports and files... on Ishii and his co-workers are based on anonymous letters, hearsay affidavits and rumours... the alleged victims are of unknown identity...none of*

³³³ Yan-Jun & Yue-Him ‘Unit 731: Laboratory of the Devil, Auschwitz of the East: Japanese Biological Warfare in China 1933-45’ (Fonthill: 2018) at page 131.

Ishii's subordinates are charged or held as war crimes suspects, nor is there sufficient evidence against them.”³³⁴

On 22nd June 1947, the Department of Defense reiterated their desire to know exactly what research data the Allies had uncovered on Unit 731. Importantly, this later request from the Department of Defense confirmed that they knew the “*evidence now in its possession warrants opinion that Japanese BW group headed by Ishii did violate rules of land warfare...*”³³⁵ later clarified on 27th June 1947 to be that “*Japanese BW group headed by Ishii did violate rules of land warfare, but this expression of opinion is not a recommendation that group be charged and tried for such.*”³³⁶

The decision had already been made: Ishii would not face prosecution, and the obtaining of Unit 731’s research data trumped the rule of law. Final confirmation, if ever any was needed, came on 13th March 1948 in an order from the Joint Chiefs of Staff to MacArthur, in which it was confirmed “*technical experts who have returned from your theatre indicate that to date necessary information and scientific data has been obtained to your satisfaction.*”³³⁷

The immunity deal appears to have been completed by no later than early-1948.

³³⁴ Large ‘*Showa Japan: Political, Economic and Social History 1926-1989*’ Vol. II, 1941-1952 (Routledge: 1998) at page 164

³³⁵ Yan-Jun & Yue-Him ‘*Unit 731: Laboratory of the Devil, Auschwitz of the East: Japanese Biological Warfare in China 1933-45*’ (Fonthill: 2018) at page 132.

³³⁶ Large ‘*Showa Japan: Political, Economic and Social History 1926-1989*’ Vol. II, 1941-1952 (Routledge: 1998) at page 164.

³³⁷ Cunliffe ‘*Select Documents on Japanese War Crimes and Japanese Biological Warfare, 1934 – 2006*’ (Washington: National Archives) at page 165

The Immunity Deal

In order to fully appreciate the motivation behind the United States entering into an immunity deal with Ishii, it is vital to understand the state of their own state-sponsored domestic biological warfare research.

Following the First World War, Ishii had appreciated the true potential of both biological and chemical warfare. The United States, on the other hand, considered it to be a “spent” force in any military arsenal. While Ishii was furiously laying the foundation for Japan’s own biological warfare research facility, the United States were intentionally moving away from any research into such. In 1933, the year Hitler came to power in Nazi-Germany, Major Leon Fox, Chief of the Medical Section of the Chemical Corps, opined that biological weapons were a thing of the past, with nations increasingly immunising their citizens against a vast array of disease.³³⁸ Major Fox’s publication gained traction and, in turn, became national policy.

By the time that the United States entered the Second World War in December 1941, they found themselves nearly a decade behind Japan and Nazi-Germany in terms of research and development. At the outbreak of war, the Chemical Corp had commissioned a study into potential threats that the nation may face in the event of bacteriological warfare. The Corp shortlisted nine potential threats to national security.³³⁹

The Chemical Corp found itself in a moral quandary, just as Ishii and all others who engaged in biological warfare research. On the one hand, they entered the medical profession for the benefit and advancement of humankind.

³³⁸ Fox ‘*Bacterial Warfare: The Use of Biological Agents in Warfare*’ Military Surgeon 72 (March 1933).

³³⁹ ‘*Technical Study No. 10*’ Chemical Warfare Service 28th August 1939.

Now, they were being asked to carry out research not only for defensive purposes, which may be justifiable, but also for offensive weapons. In order to alleviate this, the secretary of state, Harry Stimson, suggested that any such research should be outsourced to civilian contractors in order to avoid any criticism being aimed at the United States. President Roosevelt agreed to Stimson's proposal, on the basis that the reports from Nazi-Germany and Japan's own research programmes could pose a threat to the United States.³⁴⁰

To this end, the War Research Committee (WRS) was given the responsibility of researching and developing biological weapons, as well as means of defending the United States from such attacks. In April 1943 the WRS was allocated to Fort Detrick, Maryland. The enterprise quickly grew in size and, at the end of the war, just as Ishii and the 3,000 members of Unit 731 were on the run, the WRS had grown to approximately 4,000 employees in various capacities.

The immunity deal was, and remains, redacted. There is no evidence as to the precise terms of this, nor even whether one took place at all. This thesis, therefore, intends to simply chart the events after the occupation of Japan: the failed American investigations; the acts that prevented Ishii and his men facing trial; and the inferences that can be made.

On 2nd March 1946, Colonel Thomas H. Morrow, principal assistant to chief war crimes prosecutor Joseph B. Keenan at Tokyo, sent a memorandum to Keenan *"requesting that arrangements be made if possible to interrogate General Ishii... he has been conducting experiments in bacteriology, in conjunction with the Japanese Army, since 1941... This matter, as well as the poison gas episodes, assumes importance... and*

³⁴⁰ Endicott & Hagerman *'The United States and Biological Warfare: Secrets from the Early Cold War and Korea'* (Indiana: 1998) at page 29.

indicates that such prohibited methods of warfare were carried out by the Tokyo Government and not the field commanders."³⁴¹

Morrow had been alerted to the atrocities that had been committed by Unit 731. As any diligent prosecutor would do, he requested that he be permitted to investigate these allegations further to consider whether there had been any indictable offences committed by Ishii and his men. The memorandum from Morrow has a factual tone and, importantly, appreciated that the biological warfare programme was not the whim of dissenting soldiers and was, instead, a state-funded criminal enterprise.

A matter of days after Morrow's request, and in the lack of any reply from Keenan, Morrow took it upon himself to investigate the matter further. He boarded a plane and flew to China, successfully gathering documents in support of indicting Ishii and others involved in a large-scale biological warfare programme, to include Unit 731. What Sanders and Thompson failed to do, Morrow had achieved in a matter of weeks. Morrow duly reported his findings in full to Keenan on 23rd April 1946,³⁴² the evidence was damning and should rightly have led to Ishii and his men being indicted in the upcoming criminal proceedings.³⁴³

It was now indisputable that there had been a large-scale biological warfare programme in Manchuria, with considerable loss of life to rival that caused by the Nazis. Morrow was unfortunately misguided in his assumption that Keenan would use this information to prosecute Ishii and his men. Sanders had been naïve to trust the Japanese

³⁴¹ Memorandum – Morrow to Keenan 8th March 1946 - Cunliffe '*Select Documents on Japanese War Crimes and Japanese Biological Warfare, 1934 – 2006*' (Washington: National Archives) at pages 107-108

³⁴² Bulletin of the Atomic Scientists, October 1988, Vol. 44 No. 8, at page 17.

³⁴³ Williams & Wallace '*Unit 731: Japan's Secret Biological Warfare in World War II*' (Hodder & Stoughton: 1989) at pages 174-176.

witnesses he investigated; Morrow had been naïve to trust that the United States had any intention of prosecuting these men.

No formal acknowledgement was given was by Keenan to the evidence provided by Morrow. This was, presumably, to prevent any paper trail to implicate Keenan or any other persons involved with the immunity deal. With no clear reason, Morrow was immediately transferred back to a desk job in Washington and had no further involvement on behalf of the Allied prosecution, nor was he able to carry out any further field research into the allegations levelled against Ishii.^{344 345}

Morrow had uncovered extensive atrocities. Now the United States were intentionally and irrefutably refusing to take any action. Morrow had gone some way to uncover the truth. Importantly, his memorandum and subsequent report prove beyond doubt that not only were the United States aware of the atrocities of Unit 731, but also the United States Chief Prosecutor Keenan. In his role as Chief Prosecutor on behalf of not only the United States, but also the Allied nations, he had failed to act and instead had been complicit in an immunity deal being facilitated.

It could reasonably be implied that pressure had been placed on Keenan or other superiors, possibly even General MacArthur, from high-ranking officials in Washington to have Morrow returned to the United States to prevent him jeopardising an immunity deal. They may well have been entirely innocent or had no knowledge of an immunity deal, but at the very least it is fair to expect that they had assumed something awry. In light of an impending immunity deal being offered, it would have been undesirable for Morrow's evidence to be leaked as to the true extent of Ishii's wrongdoing. Immunity

³⁴⁴ Harris *Factories of Death: Biological Warfare, 1932-45 and the American Cover Up* 2nd Edition (Routledge: 2002) at page 249.

³⁴⁵ MacLeod *Science and the Pacific War: Science and Survival in the Pacific, 1939-1945* (Kluwer: 2000) at page 259.

deals only work if the utmost secrecy is ensured, and Morrow had jeopardised that. It is not beyond the realms of possibility to say that the reports of Sanders and Thompson could have been deliberately stifled by the Americans, or their reports dampened down before publication.

To provide some balance, Keenan's lack of reply could also suggest that the ambitious prosecutor was simply towing the line with Washington. Keenan had hoped to run for Senate upon his return to the United States, but had been made fully aware of the Japanese biological warfare programme by his own principal assistant. His failure to instigate proceedings against Ishii and others involved in Unit 731, by no later than April 1946, is clear evidence of the United States' cover up in full swing. Keenan had been given a clear mandate: to prosecute Japanese war criminals. In respect of Unit 731, here Keenan was wilfully ignoring evidence to incriminate potential defendants, namely Ishii and other members of the Unit. Morrow had been punished for digging too deep. There had also been a complete failure by the prosecution to investigate the issues raised within Morrow's report and memorandum. There can be no rational explanation, save for the fact that the United States had either concluded negotiations for an immunity deal, or they were still ongoing.

The initial promise of immunity being granted during Sanders' primary investigation, in return for suspects revealing data to the United States, had clearly yielded results not recorded by either Sanders or Thompson. The seeds had been sown for an immunity deal and Ishii will have known that, at that time, this route was his best option to survive any impending prosecution. Ishii will also have known that it would be far more preferable to assist the Allies than to fall into the hands of the Soviets. It is unlikely that Sanders or Thompson would have been trusted with negotiating the terms of an immunity deal, save to obtain information.

After April 1946, it was being made increasingly difficult for any persons to question those suspected of being involved in the Japanese biological warfare programme, and a press black-out on the topic of biological weapons appeared to be in operation. The tabloids next discussed this subject six years later in 1952, after the People's Republic of China and North Korea alleged the United States of having deployed biological weapons with the assistance of Japan.³⁴⁶ The investigations remained ongoing and, unsurprisingly, unpublicised.

By July 1946, General MacArthur had received direct orders to obtain and protect any evidence from Unit 731 that would “*jeopardise American national security.*”³⁴⁷ What constituted “*national security*” was likely a deliberately vague term. In Washington, steps were also being taken to protect and collect information obtained by Japanese biological researchers, despite knowing that the Allies of the United States wished to bring public proceedings against these potential war criminals. The United States were not alone in attempting to uncover research data, and did not simply have to try and silence the likes of Morrow from jeopardising their immunity deal. The Soviets had begun to intensify their own investigations into Japan's biological warfare programme and, some six months later, in January 1947, the Soviets requested formal questioning of Ishii and his role in the Unit.

Although the United States eventually granted this request, Washington made it clear to General MacArthur once again that any information gained to date from Japanese researchers must not be made available to other nations, in particular the Soviets.³⁴⁸ The Americans were not acting on behalf of the Allied nations, rather, unilaterally to protect

³⁴⁶ Harris *Factories of Death: Biological Warfare, 1932-45 and the American Cover Up* 2nd Edition (Routledge: 2002) at page 261.

³⁴⁷ Williams & Wallace *Unit 731: Japan's Secret Biological Warfare in World War II* (Hodder & Stoughton: 1989) at pages 185.

³⁴⁸ Barenblatt *A Plague Upon Humanity* (Harper Collins: 2005) at page 207.

their own self-interests. It was imperative that they obtained Ishii and his research data, as opposed to allowing it to fall into the hands of another nation, none more so than the Soviet Union. As the International Military Tribunal for the Far East was convening, America had only scratched the surface of Japan's biological warfare programme, but it was sufficient for them to reasonably suspect human experimentation had taken place without the consent of the test subjects. There was further evidence from Morrow that they were aware of the wide-scale use of field tests in Manchuria that, at the very least, required further investigations to be made.

It would have been a logical step to include Ishii and those others involved in Unit 731, and other satellite Units, as Defendants in any upcoming proceedings, as had already been done at Nuremberg for similar atrocities committed by German researchers under the guise of advancing the Nazi state. On the face of it, the United States then made a surprising U-turn just over a year after Morrow had first raised the potential investigation and prosecution of Unit 731 members, to include Ishii. In June 1947, Alva Carpenter, an investigator in General MacArthur's legal attaché, was asked to look into what evidence was now in the hands of the United States that may assist in prosecuting the likes of Ishii and other Unit members who had by now requested immunity in return for information.

Looks can be deceiving. This was not a U-turn, rather it was a ploy to ensure that, if the immunity deal were to come to light, the United States could argue that they were justified in not prosecuting Ishii and his men. Carpenter unsurprisingly concluded his investigations by stating that there were merely allegations of Japan having conducted biological warfare research against the Chinese, but that there was no evidence to confirm these allegations. The investigation was a farce and flew in the face of the clear evidence of atrocities having been committed in the reports of Sanders, Thompson, and now Morrow.

Carpenter had a clear mandate and, in doing so, facilitated the United States in circumventing justice. In his findings, Carpenter suggested that if the other Allied nations were to bring up these allegations and properly suggest that Unit 731 members be indicted, the United States would be able to counter by arguing a lack of evidence that experiments amounting to war crimes had occurred, and thus was justification in not prosecuting these individuals.³⁴⁹ Again, the United States can be seen to have acted unilaterally. Carpenter's mission was to look at the evidence objectively and to see if there was any plausible defence available to the United States only for withholding the evidence they had to date on Ishii and his men, as opposed to passing this over to the Allies for their own consideration.

It is important to remember that the allegations of Japanese biological warfare research were not confined to testing on the Chinese, but also captured Allied troops, including Americans. On this point, Carpenter accepted that experimentation may have taken place on American soldiers in Mukden. If the American public had been made aware of their government having wilfully granted immunity to the Japanese doctors and scientists who had carried out such heinous acts against their own troops, there would have been a very public and justified outrage. In addition to the evidence obtained by the previous investigations obtained by Sanders and Thompson, the International Prosecution Section, which was independent to the United States military, obtained testimony from several members of Japan's biological warfare programme, which corroborated the allegations that had been made. Despite this, the International Prosecution Section did not call any witnesses, nor introduce the written testimonies obtained at the later Tokyo Trial.

³⁴⁹ Barenblatt *'A Plague Upon Humanity'* (Harper Collins: 2005) at page 213.

In the coming years, the Allies would bring over 2,000 separate Court proceedings, involving over 5,700 individuals involved in the Japanese war machine. Not a single member of the biological warfare programme faced prosecution by the Allies, whether for crimes connected with Unit 731 or otherwise. The impact of the United States having acted unilaterally had a significant knock-on effect to the subsequent trials that took place across Japan.³⁵⁰ Ishii had successfully navigated an escape from punishment ahead of the impending trials of war criminals; but what about Hirohito, who not only bankrolled his criminal enterprise, but also taken a keen personal interest in its research and development? Hirohito had also approved a request for field experiments to take place in Manchuria.

Hirohito on Trial?

This thesis has given both contemporaneous and retrospective evidence that definitively links Emperor Hirohito, at the very least, to the inception of Unit 731 and other biological and chemical warfare programmes. There is also considerable evidence to infer that Hirohito had knowledge of the day-to-day operations and research being conducted by Ishii and Unit 731. Hirohito had been responsible for both Unit 731's involvement in Manchuria, as well as Japan's general conduct during the Second World War. Hirohito was equally culpable as Ishii.

This thesis does not intend to repeat discussion of the various other atrocities committed during the Emperor's rule, and instead will solely focus on the central issue of whether or not Hirohito could be directly linked to Unit 731 and, if so, whether any of his

³⁵⁰ Harris *Factories of Death: Biological Warfare, 1932-45 and the American Cover Up* 2nd Edition (Routledge: 2002) at pages 265-266.

acts or omissions could have warranted prosecution under the subsequent Allied Military Tribunal. This thesis hopes thus far to have displayed evidence to prove the first part of this central issue: that Hirohito could be directly linked to Unit 731. This part does not intend to consider, at this stage, whether Hirohito would likely have fallen foul of any other charges not relating to Unit 731; albeit, as the effective Head of State for Japan, he should have borne ultimate responsibility for his nation's "war crimes" committed during his reign.

The Emperor had been aware "*as early as 1942 that the trial of major war criminals was an official Allied war aim.*"³⁵¹ When first considering Japanese surrender, the Emperor and his aides were thus all too aware of the possibility that Hirohito would likely face charges for his involvement during the conflict, whether by implication or otherwise. This was also at the forefront of Hirohito's mind when considering whether to accept the Allied Terms of Surrender in August 1945. Japanese fears were soon realised some three weeks after their surrender when, on 11th September 1945, General MacArthur issued an arrest warrant on key Japanese officials, including the Prime Minister. During Hirohito's twenty-year reign, Japan had gone through fifteen Prime Ministers; the only constant for Japan's government was the Emperor. The former Prime Minister, Tojo, attempted to commit suicide by shooting himself in the chest upon the American forces attempting to affect his arrest.

At this stage, it was anticipated that the Emperor would also be held accountable for his involvement and, if there was to be a surrender, an immunity deal would have to be sought for the Emperor. It is unclear whether or not an agreement had been made between the Imperial family and the Allies for immunity prior to surrender. The evidence

³⁵¹Bix *'Hirohito and the Making of Modern Japan'* 1st Edition (HarperCollins: 2001) at page 581.

suggests that no such deal was in place in August 1945, when Hirohito ordered the Japanese surrender. The day after MacArthur had issued the arrest warrant of key officials, 12th September 1945, a policy document (SWNCC 57/3) was sent to MacArthur from Washington. At paragraph 17 of that document, it expressly stated that MacArthur must “*take no action against the Emperor as a war criminal*” unless authorised to do so by Washington.³⁵² Such action would therefore have required the approval of the highest-ranking officials in the United States.

An immunity deal was clearly now on the horizon for Hirohito - if not already agreed - and, from the very outset of their occupation, the Allies knew that indicting the Emperor could prove to be extremely problematic for them if they wished to occupy Japan by the will of the people. The policy document did still leave the possibility of proceedings being left available to MacArthur, subject to the agreement of those in Washington. This could perhaps be to have allowed General MacArthur to have some “bite” when negotiating an immunity deal with Hirohito. The threat would be clear: submit to our terms or face indictment. Whilst it appeared unlikely that Hirohito would have ultimately faced indictment, at the very least he could be summoned to be a witness in any upcoming proceedings, which would then put him in direct conflict with those under his rule, whether that be members of his Council or the Diet.

In order to avoid the Emperor facing war crimes charges, it was proposed to Hirohito that Japan conduct its own trial based on national law. There had also been no appetite from the Allied nations for this to occur again following the failed Leipzig Trials after the First World War.³⁵³ This suggestion of domestic trials was also strongly rebuffed

³⁵² Bix *Hirohito and the Making of Modern Japan* 1st Edition (HarperCollins: 2001) at page 587.

³⁵³ The *Leipzig war crimes trials* took place in 1921 in the German Supreme Court to try alleged German war criminals under the terms of the Treaty of Versailles (1919). They are largely considered to have been a farce, with the typical sentences handed down (if found guilty) were six months imprisonment and a maximum term of two years.

by the Emperor, who believed that this would leave him in the awkward predicament of punishing those he had ordered to act in the first instance. This would also, inevitably, lead to the implication during such domestic trials that Hirohito was, himself, ultimately responsible for Japan's conduct during the various conflicts.

The Allies were broadly of the opinion that prosecution of Emperor Hirohito would be distasteful. They, in particular the United States, had realised early on that they would likely require the cooperation of the Japanese people whilst in occupation of mainland Japan, should they wish their time there to be peaceful. If the Allies were seen to be prosecuting the Emperor, who was seen by the Japanese people as a living god, there would almost certainly have been civil unrest and disobedience. This was not a universal view across the Allied nations. Australia, in particular, were keen to see the Emperor face trial. The Soviet Union would eventually follow Australia's lead, albeit in the minority.

So important was it for Hirohito to escape punishment that the Allies, in particular the Americans, sent Brigadier General Fellers to ensure Hirohito's record was cleansed of all alleged sins. The immunity deal was not as voluntary as first implied by the policy-makers in Washington. The individual chosen to facilitate the immunity deal, Fellers, had also been hand-picked, having conveniently fostered strongly-held beliefs as to the virtues of the Emperor. He wrote to MacArthur stressing that, whilst Japan should rightly be prosecuted, the *"hanging of the Emperor to them would be comparable to the crucifixion of Christ to us."*³⁵⁴

Fellers soon set about interviewing *"about forty Japanese war leaders... Fellers' activities placed all the major war criminal suspects on alert... and allowed them to coordinate their stories so that the Emperor would be spared indictment."*³⁵⁵ In the end,

³⁵⁴ Dower 'Embracing Defeat: Japan in the Aftermath of World War II' (Penguin: 2000) at page 285.

³⁵⁵ Bix 'Hirohito and the Making of Modern Japan' 1st Edition (HarperCollins: 2001) at page 583.

all those interviewed would only spout the benevolent virtue of Hirohito in ending the war and, in turn, sparing potentially millions of lives. Those interviewed would not attribute any blame to him for any of the undesirable behaviour of Japanese forces during the conflicts. It would also allow those indicted war criminals to ensure that they had understood the importance of not inferring any guilt upon Hirohito in the impending criminal proceedings against them.

From the moment MacArthur had received notification on 12th September 1945, there was little intention of prosecuting Hirohito nor calling him as a witness, which was further strengthened by the arrival of Fellers. Although previous Allied tactics to spare the Emperor indictment could be seen as being subtle, once the United States had learned of the Soviets' desire to prosecute the Emperor, it was felt necessary to abandon the niceties. In doing so, the United States proceeded to rather abruptly advise the Japanese of the dilemma that not only faced the United States, but also Japan. Fellers summoned Admiral Mitsumasa to his office and informed him of the situation, suggesting that:

“To counter this situation, it would be most convenient if the Japanese side could prove to us that the Emperor is completely blameless. I think the forthcoming trials offers the best opportunity to do that. Tojo, in particular, should be made to bear all responsibility at his trial. In other words, I want you to have Tojo say as follows:

*“At the imperial conference prior to the start of the war, I had already decided to push for war even if his majesty the Emperor was against going to war with the United States.”*³⁵⁶

It was clear that, whilst the Allies intended to pardon Hirohito, they would in turn require a scapegoat to satisfy, at least superficially, the international condemnation of

³⁵⁶ Bix *'Hirohito and the Making of Modern Japan'* 1st Edition (HarperCollins: 2001) at page 584.

Japan's wartime conduct. Shockingly, it appeared that the United States were now attempting to not only manipulate, but to dictate, the evidence to be heard at the forthcoming trials. Fellers had set his crosshairs on Tojo. When the arrest warrants had been issued on 11th September 1945, Tojo had attempted to commit suicide.³⁵⁷ Had he have succeeded, this may have been beneficial to Fellers in dictating the evidence that Tojo was to blame for Japan's war crimes.

The truth was that Tojo would prove to be of far more use to Japan alive than dead. Whilst recovering from his failed suicide attempt, Tojo was advised, in no uncertain terms, that it was his duty to protect the Emperor from indictment; to do so, he must stay alive. Tojo was more than happy to accept full responsibility if it meant protecting the Emperor from any impending prosecution. This, in turn, would make a farce of the Tokyo Trial. Tojo would simply say what he thought the Allies wanted to hear, as opposed to the truth. Both the Emperor and the United States had their scapegoat. The official line that was soon to be played out was simple: Emperor Hirohito had only agreed to attack the United States in December 1941 because it had already been signed off by those in power.³⁵⁸ This painted a picture of the Emperor being subservient to the Cabinet and, in particular, Tojo as Prime Minister. The reality was in stark contrast to the lie being sold. This thesis has already provided numerous examples of Hirohito being politicised throughout his reign, and his day-to-day interest in the running of Unit 731 appears to have applied to many other areas of his rule. The Emperor wanted to be in control of as much as possible; to suggest otherwise would be disingenuous.

³⁵⁷ Toland *'The Rising Sun: The Decline and Fall of the Japanese Empire, 1936 – 1945'* (New York: 1970) at 871 - 872

³⁵⁸ Bix *'Hirohito and the Making of Modern Japan'* 1st Edition (HarperCollins: 2001) at page 586.

Hirohito would have undoubtedly approved such orders, especially an order that he knew would receive international condemnation for playing fast and loose with the respected sufficient notice of hostilities. Such an order of this magnitude would commit Japanese troops to enter into the Second World War across many fronts, which would require wars to be waged not only against China and the Soviet Union, but now the United States, Great Britain, and the other Allied nations. It is entirely implausible and illogical for the United States to have suggested that Hirohito would have had no say in the attack on Pearl Harbor, nor believable for Tojo to make such a suggestion. The official line was to be maintained and, ultimately, “believed”.

This suspicion was all but confirmed when Hirohito travelled to see MacArthur on 27th September 1945. There is no direct record of that meeting available for general consumption, save for the memoirs of the few men present at that meeting and the diary of Hirohito that remains sealed to this day. Over the course of the coming months, whatever the outcome of this pivotal meeting, Hirohito would be utilised to develop Japan into a democratic nation as opposed to being seen as a stumbling block to democracy. In his New Year’s address to the nation, Hirohito took the drastic step of renouncing the Emperor’s two millennia long ‘divinity’.³⁵⁹ On the same day, MacArthur approved the Charter to establish the Tokyo Trial that we shall discuss in the next chapter. He then wrote to Washington advising that, in his view, the Emperor should not be prosecuted, in order to allow for a peaceful transition from occupation to self-rule in Japan.

By March 1946, the Emperor had to set about finalising his defence should any indictment, albeit unlikely, be issued against him. The approach being taken by the United States would dictate their future approach and views on Japanese war crimes. There only

³⁵⁹ Dower ‘Embracing Defeat: Japan in the Aftermath of Ward War II’ (Penguin: 2000) at page 314.

appeared to be a concerted effort to prosecute those considered responsible for the attack on Pearl Harbor, as well as any atrocities committed against Allied troops.³⁶⁰ A surprise attack against them on home soil had been an international embarrassment to the naval prestige of the United States. There was, and would remain, little or no appetite for the Allied powers to prosecute or actively investigate any Japanese actions that did not directly involve atrocities being committed against Allied forces. Therefore, the war crimes committed by Unit 731 and Ishii in China had gone completely under the radar, whether by design or otherwise. Unsurprisingly, this secret enterprise would make absolutely no appearance within the Emperor's pleaded defence, which was subsequently transcribed, despite the fact that the Emperor had clear knowledge at that time of the actions and field experiments of Ishii and his men. Any reasonable person would have known that such acts were unethical and potentially illegal.

The Emperor would only deal with issues within his defence that he considered would be most likely to arise at Trial if he was indicted. There would be no offering of further evidence to assist the Allied nations; rather, Hirohito would provide the bare minimum in an attempt to absolve himself of guilt. Whilst Hirohito referred to the Manchurian Incident of 1931, no mention was made of the large-scale biological warfare programme that was facilitated as a direct result of this act.

There had been clear evidence to suggest that both Emperor Hirohito and the Imperial family had direct knowledge and involvement in their nation's biological warfare programme, with Hirohito signing off all major developments and taking a general interest in the day-to-day running of the facility. Eyewitness evidence named Prince Takeda, the Emperor's cousin, whom the Emperor had personally given the

³⁶⁰ Bix *Hirohito and the Making of Modern Japan* 1st Edition (HarperCollins: 2001) at page 589.

responsibility of running their biological programme, as well as Tanaka having been present when field experiments were being conducted.³⁶¹ This evidence alone is unlikely to have been sufficient evidence to prove their direct involvement, nor is it in fact damning of the Emperor himself, but it does show a pattern of inconsistencies with the Emperor's evidence.

For such damning evidence to have come out, the Emperor would have had to have implicated either himself or his cousin, which, in turn, would bring shame on the Imperial family and open the door for other alleged involvement in the commission of war crimes. Given that there had also been no mention by the United States of the atrocities they knew had been committed by Ishii or his researchers, there was little point in, and no reward for, Hirohito making any reference to this. What is perhaps more damning for the Emperor is the fact that there was documented evidence to link Hirohito to Unit 731; Hirohito had signed various orders to expand the Unit.³⁶² A clear paper trail existed that would have been available to the Allies to link the Emperor to the Unit and Ishii beyond reasonable doubt, had there been a clear desire from the outset for the United States to pursue this line of investigation on behalf of the Allied nations. There was no such appetite.

The investigations carried out by the United States into alleged biological warfare carried out by Japan in Manchuria was not in the interests of justice, rather it was an exercise in due diligence to assess whether Ishii and his men had research data of such worth that it required an immunity deal to be granted. Had the research data been largely worthless, then it is likely that Ishii and his men would have not been offered immunity. Despite the fact that the United States had no intention of pursuing war criminals involved

³⁶¹ Barenblatt *'A Plague Upon Humanity'* (Harper Collins: 2005) at pages 32-33.

³⁶² Barenblatt *'A Plague Upon Humanity'* (Harper Collins: 2005) at page 37.

with Unit 731, the same cannot be said of the Soviets. The investigations by the Soviets had been deliberately hampered by the United States, with the delay and prevention of the Soviets in interrogating key suspects. The evidence that they were able to obtain would result in indictable offences.

The Emperor should not have been worried. Whilst he had set about finalising his Defence in March 1945, MacArthur had also been busy ensuring that he would not stand trial. Fellers, in particular, had been passing messages onto those he had been investigating. He reportedly said to one of those being held, Yonai, that:

*“It would be most convenient if the Japanese... could prove to us that the Emperor is completely blameless. I think the forthcoming trials should be the best opportunity to do that...”*³⁶³

On 18th June 1946, the chief prosecutor at Tokyo announced that there were no grounds for indicting the Emperor. When the immunity deal had been finalised, and with the Tokyo Trial ongoing, the United States requested the International Prosecution Section’s assistance in allowing members of the Unit to avoid future prosecution in return for all of their knowledge and data on biological warfare.³⁶⁴ The Soviets understood what was happening and promptly raised concerns over the legal process, having supplied information – that went unused – to the International Prosecution Section gained from two witnesses in Soviet custody. Eugene D. Williams wrote to Tavenner on 4th December 1946, eight months into the Tokyo Trial, informing him that:

“General Vasiliev is somewhat disturbed because in the Chinese phase certain evidence provided by the Russians was not used to prove that the Japanese resorted to

³⁶³ Dower *‘Embracing Defeat: Japan in the Aftermath of World War II’* (Penguin: 2000) at page 323.

³⁶⁴ Finn *‘Winners in Peace: MacArthur, Yoshida, and Postwar Japan’* (Berkeley: University of California Press: 1992) at page 186.

bacteriological warfare. He says that Russians have two witnesses now in Vladivostock who are available to supplement what evidence we have here. I informed him that I had reviewed the evidence available during the Chinese case and had reached the conclusion that it was not sufficient to warrant opening that issue. He is disturbed, however, and would like to have a definitive decision reached. I think you should take this matter up with him.”³⁶⁵

In response, Frank Tavenner Jr., Acting Chief of Counsel, wrote to Major-General A. N. Vasiliev, the Soviet associate prosecutor, arguing that:

*“No evidence was brought to light which would indicate that these experiments were being made at the direction of the General Staff in Tokyo or that any reports have been received relating to these experiments. Chance of success... so slight that it is not considered wise or reasonable to request the U.S.S.R. to produce the witnesses under the circumstances.”*³⁶⁶

This was a brazen falsehood, regardless of whether or not Tavenner knew it.

Implications of the Immunity Deal

Even before the opening submissions of the Tokyo Trial, all members linked to Unit 731 had already escaped prosecution from the Allies and, in striking an immunity deal, had also avoided prosecution from the Soviets. The exact terms of the immunity deal are not known and are likely to remain redacted for many decades to come. It could well be the case that no such immunity deal took place and that Ishii and his men were not pursued

³⁶⁵ Letter from Eugene D. Williams to Frank S. Tavenner dated 04 December 1946 <http://lib.law.virginia.edu/imtfe/content/page-1-586> (accessed 7th October 2015)

³⁶⁶ Memorandum to Major-General A.N. Vasiliev from Frank S. Tavenner dated 13 December 1946. <http://lib.law.virginia.edu/imtfe/content/page-1-647> (accessed 7th October 2015)

simply due to incompetence or a general belief that there had been no wrong-doing. The evidence does suggest that an immunity deal was offered. There is also clear and direct evidence that the Emperor was offered immunity; the Allies had made it publicly clear that they would not prosecute Hirohito in return for him complying and facilitating their occupation.

It is clear that any such immunity deal would have granted immunity from prosecution and, on the evidence available at present, this is highly indicative of such an offer being made in return for the knowledge, expertise, and research data obtained by Ishii and other researchers of Unit 731 being made available solely to the United States, as opposed to the Allied nations as a whole. MacArthur had been clear that any information of use to the Americans, or that put their domestic security at risk, should be obtained at any cost. Presumably, the only risk to domestic security would have been if Ishii's research data had fallen into the hands of the Soviets.

In the first instance, what data did the United States obtain from Unit 731? So far, it has been confirmed that, between 1947 and 1948, Japanese researchers provided the United States with approximately 8,000 slides of human blood and tissue samples that are said to have conveniently gone missing in transit to Fort Detrick for assessment.³⁶⁷ We know that the Unit's research was diverse, but by-and-large the field experiments were for the purpose of either epidemic outbreaks or deployment of biological weapons. There does not appear to be any documented or substantiated evidence of either of these methods being used by the United States following the end of the Second World War.

³⁶⁷ Harris *Factories of Death: Biological Warfare, 1932-45 and the American Cover Up* 2nd Edition (Routledge: 2002) at pages 206-207.

There have been suggestions that the United States had deployed bacteriological weapons shortly after the end of the Tokyo Trial, during the Korean War between 1951 and 1952, with breakouts of bubonic plague, smallpox, and anthrax said to have been deployed by United Air Force planes.³⁶⁸ Whilst such allegations are largely unsubstantiated, it does raise the question as to why such allegations had striking similarities with not only the bacteriological weaponry of choice from Unit 731, but also the method of delivery, so soon after an immunity deal had been granted to them. There would have been no way for the Korean people to have known the modus operandi of Ishii and his men.

Just as the details of a potential cover-up are murky, the fate of Ishii is also not entirely clear. It is largely accepted that he returned home shortly after an immunity deal was granted and allegedly kept his army pension, albeit unlikely that money was an issue at the forefront of his mind given his family's pre-existent wealth. There is some suggestion that Ishii passed away in 1959 as a result of throat cancer, but it is not known whether this was in any way linked to the activities of Unit 731.

The idyllic life of Ishii returning home after the war and living out his final days in peace has been somewhat muddied by an allegation made by Sanders in 1985. Shortly after his failed investigation into Unit 731 and other biological research, Sanders had left the army in 1946 to begin a career of university lecturing. It is alleged, albeit there is no clear evidence on this point, that he stated to students during the course of one lecture in 1985 that Ishii had secretly travelled to Fort Detrick in the 1950s to give a lecture on how best to conduct germ warfare. This is hearsay evidence at best, but Ishii would at that time have been considered to have unrivalled knowledge on this subject to assist their own

³⁶⁸ Barenblatt *'A Plague Upon Humanity'* (Harper Collins: 2005) at page 227.

researchers' knowledge of the topic. As distasteful as it may be, Ishii was a world-leading authority on biological warfare.³⁶⁹

It is not possible to either confirm or deny Sanders' statement, which must be taken with a pinch of salt. Sanders left the army in 1946 and began civilian life thereafter. It is unclear why or how he would have inside knowledge of events that took place in the 1950s, that are said to have been classified. On the face of it, this supposed admission by Sanders, if he did in fact say it, does not seem to be an entirely implausible or preposterous statement. As with anything to do with Unit 731, there is always going to be a degree of uncertainty and reliance upon hearsay evidence. There is no way at present of knowing the exact terms of the immunity deal, but this allegation of Ishii giving a lecture would also coincide with the separate allegations of biological weapons being deployed by the United States Air Force in Korea between 1951 and 1952.

To contradict this, Ishii's eldest daughter had denied that her father had ever travelled to the United States to give lectures of any kind.³⁷⁰ Whether or not his daughter would either have had knowledge of Ishii's whereabouts at that time, or whether she would want to publicly implicate her father in such activities, is clearly up for debate and she cannot, at best, be said to be impartial.

There then has to be the question as to why the Soviets had been so lenient in their sentencing of those involved with Unit 731 at the Khabarovsk Trial when, as a regime, they were well accustomed to ensuring significant sentences, to include the death penalty and decades of hard labour. The death penalty had been made a distinct option from the very outset of the Soviets' attempt to prosecute Japanese war criminals, but had

³⁶⁹ Ibid at page 226.

³⁷⁰ Tabata *'Daughter's-Eye View'* The Japan Times, 29th August 1982 (see: Boyd *'General Shiro Ishii: His Legacy is That of Genius and Madman'* East Tennessee State University: 2005 at pages 41 – 42)

subsequently, and surprisingly, been withdrawn by Stalin. At the end of the Khabarovsk Trial, and once sentencing had been handed down, this penalty had then been reinstated. Clearly both the Soviets and the United States had no real desire to ensure any extreme punishments be meted out against the members of Unit 731.

The charges brought against the Defendants in the Soviets' Trial were based upon Article 1 of the Decree of the Presidium of the Supreme Soviet of the U.S.S.R. It provided that:

*“criminals guilty of the murder and torture of Soviet civilians and Red Army prisoners of war; also spies and traitors to the Fatherland among Soviet citizens and their accomplices.”*³⁷¹

The Decree provided for the death penalty to be applied where it was deemed the only suitable sentence and, on 26th May 1947, the death penalty included within the above Presidium Decree was removed. In line with their own investigations prior to their own proceedings, the Soviets had placed further pressure on the United States, in late-1946, to investigate the matter of the Japanese using live human subjects for experimentation further; and the Hill and Victor report was released on 12th December 1947. It makes for interesting reading, as it makes clear that it is aware of the nature of experiments that the Japanese created and partook in, but refuses to be drawn on anything other than the medical knowledge gained. The report spoke of:

“Data... obtained by Japanese scientists at the expenditure of many millions of dollars and years of work. Information had been accrued with respect to human susceptibility to those diseases as indicated by specific infectious doses of bacteria. Such information

³⁷¹Article 1 of the Decree of the Presidium of the Supreme Soviet of the U.S.S.R of 19 April 1943

could not be obtained in our own laboratories because of scruples attached to human experimentation.”³⁷²

Such a report, in black and white, shows that the United States had quantified and valued the information that the Japanese had gained from such illegal and immoral experiments, and something that they would later class as ‘*a bargain*’, referred to as “*a mere pittance by comparison with the actual cost of the studies*”, with publishing of the data received advised to be kept secret by the United States from the rest of the world.³⁷³ Once more, the report evidenced that the United States had failed in their responsibility to pursue Japanese war criminals on behalf of the Allied powers and, rather, would act in their own self-interest to obtain research data from Ishii and his fellow researchers. At this point, it is indisputable that the United States knew at the time of making an immunity deal with Ishii, the Emperor, and other members of Unit 731, that the actions of the Japanese scientists that they were cooperating with were no different, and no-less humane, to those which had already been prosecuted at the Nuremberg Doctors’ Trial in Germany.³⁷⁴

Having failed in their bid to obtain Ishii’s research data, the Soviet desire to investigate and prosecute those involved intensified and the proceedings finally reached Trial on 25th December 1949. They had spent over four years preparing to prosecute Japanese war criminals at the end of the war. Unlike the Allied trial, the Soviet brand of “justice” would be dispensed with not in years, but days. On 30th December 1949, five days after the Trial had convened, sentences had been handed down.³⁷⁵ Questions do have

³⁷² Hill and Victor Report, 12 December 1947

³⁷³ Gomer ‘*Japan’s Biological Weapons*’ The Bulletin of Atomic Scientists (October, 1981) 43, RG 226, NARA.

³⁷⁵ Cathcart & Nash ‘*To Serve Revenge for the Dead: Chinese Communist Responses to Japanese war Crimes in the PRC Foreign Ministry Archive, 1949 – 1956*’ The China Quarterly No. 200 (Dec. 2009) at page 1,057

to be raised from the outset as to the veracity of these proceedings and whether, with such complex issues at hand, it is possible to have what could be considered by a reasonable person to be a fair trial within a matter of five days. Notwithstanding this, despite the failings of the Allied powers to mete out any form of justice, the Soviet Union, often cast as the international villain, had done precisely that. They had brought before a Court those that they considered responsible for experimenting on human subjects and, where appropriate, had found them guilty and passed sentence.

Given the length of the trial, a matter of only five days, some have argued that the sentences were already pre-determined in order that the defendants may get off lightly.³⁷⁶ By inference, this line of thought clearly holds some weight; it would have been impossible to have gone through all of the evidence relating to twelve separate defendants at trial within a matter of days. Furthermore, the Trial took place four years after the end of the Second World War and, on the whole, the world had little interest in seeing further prosecutions against Japan. In addition to this, the death penalty was subsequently later reinstated in 1950, further fuelling the belief that the Russians deliberately avoided handing down severe sentences to the Japanese defendants. The Court delivered its Judgment on 30th December 1949. All twelve defendants were found guilty of the charges brought against them and sentenced to various terms working in hard labour camps throughout the Soviet Union.

The maximum available sentence of twenty-five years of imprisonment was given to: General Yamada, a former Commander-in-Chief of the Kwantang Army; Lieutenant General Kajitsuka, a former Chief of Medical Administration of the Kwantang Army; Lieutenant General Takahashi, former Chief of the Veterinary Division of the Kwantung

³⁷⁶ Nie, Guo, Seldon & Kleinman *Japans Wartime Medical Atrocities: Comparative Inquiries in Science, History and Ethics* (Routledge: 2010) at page 63.

Army; and Major General Kawashima, a former Chief of the Department of Biological Production of Unit 731.

There were then lesser sentences, ranging from between ten to twenty years imprisonment, given to: Major Karasawa, a former Chief of a Section in the Department of Biological Production of Unit 731, who received twenty years imprisonment; Major General Sato, a former Chief of Medical Services, who received twenty years imprisonment against the recommendations of Chief of Prosecution for the Court, who desired twenty-five years imprisonment; Lieutenant Colonel Nishi, a former Chief of Branch 643, a satellite of Unit 731, who received twenty years imprisonment; Major Onoue, a former Chief of Branch 643 of Unit 731, who received twelve years imprisonment; Lieutenant Hirazakura, a former researcher in Unit 100, who received ten years imprisonment; and, finally, Senior Sergeant Mitomo, a former member of Unit 100, who received twenty years imprisonment.

For the remaining two Defendants, sentences up to three years were given to: Private Kikuchi, who was a former laboratory orderly in Branch 643 of Unit 731, who received two years imprisonment; and Private Kurushima, who was a former laboratory orderly in Branch 643 of Unit 731, who received three years imprisonment.

The Trial highlighted, beyond all reasonable doubt, that human experiments had been conducted by the Japanese and, in particular, by Ishii's Unit 731. The Trial also documented that such damning evidence had already been brought to the attention of the United States prior to the Tokyo Trial, which had concluded prior to the start of the Khabarovsk Trial, and that the Allies had deliberately neither acted upon nor mentioned any of the atrocities committed. The Khabarovsk Trial also brought to the fore the belief of many at that time that those Japanese scientists responsible for such acts against

humanity were “*granted immunity from prosecution in exchange for supplying their research data.*”³⁷⁷ The Khabarovsk Trial also exposed the many inadequacies of the Tokyo Trial, and did not go any way to relieve rising tensions between the United States and Russia in doing so. It should have brought the issue of immunity to the fore. Instead, Western nations and media outlets lazily considered the Trial to be nothing more than propaganda.³⁷⁸

It was only because of the failures of the United States, in the eyes of the Soviet Union, to bring to justice the Japanese for their medical war crimes, that they issued proceedings against the Japanese themselves. This is not to say that the Soviets themselves were an innocent party; they also actively pursued the Japanese scientists in order to employ them in direct competition with the Americans. After the Soviets had taken control of the biological plant that Unit 731 had operated out of in September 1945, documents were passed on to Stalin and, by 1946, the Red Army had created their own Biological Research complex based upon the blueprints of Unit 731, in Sverdlovsk.³⁷⁹ Ishii and his men had clearly been in high demand from both the Allies and Soviets and, even without an immunity deal, the Soviets had still benefitted from the work of Ishii.

The same problems that hampered Ishii’s desire for secrecy would subsequently befall the Soviet’s new facility in Sverdlovsk. In April of 1979, an explosion at the plant led to an outbreak of pulmonary anthrax, leading to many deaths and a subsequent cover-up by the Soviets. Incidentally, it was in fact the increased interest from the Soviet Union that led to Ishii siding with the Americans; it is said that, once Ishii had been offered

³⁷⁷ Nie, Guo, Seldon & Kleinman *‘Japans Wartime Medical Atrocities: Comparative Inquiries in Science, History and Ethics’* (Routledge: 2010) at page 61.

³⁷⁸ Nie *‘The West’s Dismissal of the Khabarovsk Trial as “Communist Propaganda”’* Journal of Bioethical Inquiry, April 2004, Vol. 4, Issue 1 at pages 32 – 42.

³⁷⁹ Alibek & Handleman *‘Biohazard: The Chilling True Story of the Largest Biological Weapons Programme’* (Delta: 2000) at page 37.

immunity by Col. Murray Sanders on behalf of General MacArthur in return for all of their data gained, he went out into his flower garden and dug up all of the documentation, handing it to the Americans.³⁸⁰

Whilst it is laudable that some justice was handed out by the Soviets, as with the Allied powers, their motives were somewhat questionable. It is also unclear, given the lack of information after the sentences were handed down, whether or not those punished did in fact complete the entirety of their sentences, albeit unlikely as there are suggestions that, by 1956, the last remaining Defendants had returned to Japan. This as an aside, it does suggest that, at the very least, if the Soviets were capable of locating and pursuing members of, or people linked to, Unit 731, then the Allied investigators should also have been competent enough to have done so. As has been demonstrated, there was little, if any, appetite by the Allies to prosecute the Japanese researchers and, it could be argued, the desire for the Soviets to do so only arose as a result of their failed attempt to secure the research data that had been collated and stored by Ishii.

If it is accepted that the Soviets had also allowed all remaining Defendants to return home to Japan by 1956, then it has to be a fair assumption that by this time, they had felt adequately assured that they had gleaned as much research data and knowledge possessed by those Defendants in relation to Unit 731 as possible. Alternatively, the Soviets may have discovered that, after six years of captivity, the Defendants that they had managed to prosecute simply did not hold any data of use to them. This is entirely plausible given the considerable efforts made by the United States to scupper the Soviet attempts to interrogate Unit 731 members detained by the Allies.

³⁸⁰ Bull & Kelly *'Many Nations Used People in Experiments'* Saginaw News, Michigan 1 October 1989.

Upon their return to Japan, many of the defendants would become prominent figures in post-war Japan, becoming academics, officials, or executives of large pharmaceutical companies. The only exception to this was Tomo Karasawa who, shortly after returning home to Japan, committed suicide. The reason behind his suicide is unclear. It could well be that, like the approach that the Allies had adopted, the Soviets felt that a lenient approach would be more favourable to them in what would become known as the Cold War years.

The next question to be asked is: why did Japan commit such overly-aggressive, vitriolic atrocities in the name of “warfare” against other nations? Were Japan and Nazi-Germany the only perpetrators of war crimes?

Justification for Japanese War Crimes?

What would ensue at the Tokyo Trial, would be a stubborn Defence of the atrocities committed by Japan between 1928 and 1945. However, Japan had not been alone in committing war crimes during the Second World War, although that should not diminish the harrowing nature of the atrocities committed by her. This thesis has already established the seismic changes that occurred in Japanese society, culture and politics in the decades that led up to Unit 731.

It is also crucial to understand the power that an ideology can have on a person and how the people of Japan, despite their unique society, were ultimately no different to those of Nazi-Germany and how easily a population can become indoctrinated. Just like in Nazi-Germany, Japan could not be said to have been a particularly religious nation. They saw the Emperor as a living God, and in turn, just as British troops pledged their allegiance to the Queen, Japanese troops were prepared to fight and die in the name of

Emperor Hirohito. Hitler had sought to recreate such stubborn loyalty in his troops to himself and the Reich.

The Japanese had become a battle-hardened nation in the early years of the 20th Century. They had already been at war with China since 1937, before infamously entering the Second World War four years later on 7th December 1941. Japan had proven themselves to be worthy adversaries. Their downfall would be the same as that of Nazi-Germany; they were trigger-happy, failed to take the time to consolidate their war-efforts and would waste an inordinate number of lives on ideological arguments. Japan had spread their offensives over many differing fronts, stretching their resources thinly, making their newly-gained territories easy pickings once the Allies had been able to regroup following the initial blistering attacks. As quickly as Japan had won a territory, they had lost it and were on the back foot.

Had there been a concerted effort by both Japan and Nazi-Germany, their respective offenses would probably have been successful; for example, had Nazi-Germany not focused on *Operation Barbarossa*, it is probable that their campaign in Europe would have continued successfully. Similarly, had Japan simply focused on the Pacific and not attacked the United States at Pearl Harbor, then it is likely they would have continued to enjoy success against their neighbours. The concept of victor's justice at Tokyo may never have come to fruition.

It would, however, be foolish to have done so had military expansionism been the sole ideology from a tactical perspective. The conflict also shares ideological similarities between the two nations, with Nazi-Germany's attempts to make another people and their resources subservient to them, and to use foreign land for their own benefit. The ideological misapprehension of "them" versus "us" or a hierarchy that places one race or nation at the top in some arbitrary manner. Just as Nazi-Germany had a belief that the

Aryan race was a superior “breed” of people, the Japanese had a similar belief that, unsurprisingly, the Japanese people were a superior race. Hence, those deemed to be "beneath them" must be eradicated or made subservient. The Japanese classed themselves as the Yamato Race, which *Dower* succinctly explained as being:

*“The master race [Japan], second was the kindred races such as China and Korea, and third was the guest races that were made up of the island people like the Samoans. All the non-Japanese races were seen as lower life forms and should be servient to Japan.”*³⁸¹

The classification of people into kindred, guest, and non-Japanese races would have significant consequences for each separate class of people. Their disregard for life was not only highlighted by the atrocities committed by Unit 731 that will be discussed later in this study, but the lives lost during both the Second Sino-Conflict and the Second World War. Here, the wartime policies of the Japanese were responsible were approximately 20-30 million Chinese casualties during their 14-year occupation, not to mention the 9 million Koreans, 4 million Indonesians, 2 million Vietnamese, 1.5 million Indians, 1 million people from the Philippines, and the other Asian countries such as Burma, Thailand, Malaysia, and Singapore.

This comprehensive and racially motivated strategy devised by Japan clearly shows an intentional focusing of their aggression, specifically against the "kindred" and "guest" races during their years of expansionism under Hirohito. Arguably, it is almost impossible for the Emperor to have not been culpable, whether by act or omission, as he oversaw an unrivalled killing machine designed to bring death to the civilian population of other surrounding nations. The death toll was disproportionately higher against these "kindred" races than against the Allies and amounted to nothing more than "ethnic

³⁸¹ Dower *‘War Without Mercy: Race and Power in the Pacific War’* (New York: Pantheon Books: 1986) at page 8; Galvin *‘Japanese War Crimes in WWII’* 11 Tul J Int’l & Comp. L. at page 65.

cleansing" on a scale far more than those attributable to Nazi-Germany. Whether or not Hirohito shared these ancient beliefs or any other views on superior races is mainly irrelevant. The Emperor had travelled extensively before assuming power. He would have been fully aware that if he intended for Japan to be a peaceful nation within the international community, such views should be eradicated or significantly reduced as utterly incompatible with the modern world.

Hirohito also cannot have had the same excuses of his predecessors; he was a well-travelled and extremely well-educated man who had traveled extensively to the nations unlike many of those within the Cabinet or military he had now provoked into becoming enemies. He cannot be deemed innocent of all charges or responsibility.

There is then the human psychology of committing a heinous crime against an innocent person. The answer was simple: dehumanise the victim and remove the guilt usually associated with wronging another human being. The Nazi's did this in several ways, not least by demonizing Jews via propaganda. The dark method of tattooed numbers on to the wrists of those entering the concentration camps was an intentional act to remove that person's name and identify, turning them from a person into something quantifiable and disposable.

The Japanese, also seeing themselves as the superior race, justified their beliefs through a near-identical de-personification from which Unit 731, in particular, would thrive. Researchers of the infamous unit would refer to their research subjects as "objects" instead of human beings and subjects, further withdrawing those involved from the atrocities they were committing. For example, the Japanese researchers of Unit 731 who referred to their victims as '*marutas*.' This translates from Japanese into English as '*logs*' and would become a sick joke amongst Unit 731 members that their facility was a timber

yard. Through such ideological characterisations, the transition from murdering innocent people to merely carrying out their jobs was complete.

The treatment of the "kindred" and "guest" races was extended to others, predominantly prisoners of war who saw disproportionate levels of mortality and violence from the Japanese. In addition to this view of racial superiority, the Japanese had a belief in the principles of *Kodo* and *Hakko Ichiu*. These principles were well documented at the Tokyo Trial, which provided background to the principles as being:

“The reputed date of the foundation of the Empire of Japan is 660 B.C. Japanese Historians ascribe to that date an Imperial Rescript said to have been issued by the first Emperor, Jimmu Tenno. In this document occur two classic phrases upon which there gradually accumulated a mass of mystical thought and interpretation. The first is “Hakko Ichiu” which meant the bringing together of the corners of the world under one roof, or the making of the world one family ... The second principle of conduct was the principle of “Kodo”, a contraction for an ancient phrase which meant literally “the oneness of the Imperial Way” ... These two ideas were again associated with the Imperial dynasty after the Meiji Restoration... They represented a constitutional rallying-point, and an appeal to the patriotism of the Japanese people.”³⁸²

For generations, Bushido had taught Japanese soldiers the value of benevolence and discipline and severely punished those who failed to abide by the strict expectations placed upon them by Bushido. For example, should an Officer of the Kwantung Imperial Army commit an offence classed as unforgivable, he must commit *seppuku*, suicide by stabbing themselves through the chest with their sword. While easy to see this concept as extreme and unnecessary by Western standards, it is arguably no different from the long-

³⁸² Majority Judgment of the Tokyo International Military Tribunal at 48,515.

held and widely accepted tradition of a captain going down with their ship. In teaching the notion of benevolence, Strangely, Bushido did not permit unfavourable treatment of the weak, such as women, children, or other innocents such as Prisoners of War.³⁸³

The penal code that was slowly introduced to degrade and replace Bushido following the Restoration, which had traditionally stressed the importance of self-focus and improvement, would instead be replaced by teaching the importance of hierarchy as:

*“The chain of responsibility was conceived of as predominantly unidirectional, from subordinate to superior ... Universal responsibility thus laid the groundwork for a comprehensive irresponsibility in individual conduct.”*³⁸⁴

Japanese academic Yuki Tanaka argues that this move away from Bushido towards a penal code can be traced back to an order given by Commander Aritomo Yamagata that soldiers serving under him must commit suicide as opposed to surrendering to their enemies, which goes some way to explain the use of Kamikaze pilots and the aggressive, suicidal defence of the Home Islands which ultimately led to the United States dropping the nuclear bomb on Japan to prevent such conflict extending to Japanese soil.³⁸⁵

The world would bear witness to death on an unimaginable scale during the First World War, and the Second World War saw a shift in tactics from trench warfare to Total War. It was therefore vital to obtain an advantage over one’s opponents, whether by deploying weapons capable of killing an entire army or the brutal treatment and torture

³⁸³ Tanaka *‘Hidden Horrors: Japanese War Crimes in World War II’* (Boulder: Westview Press 1996) at page 207.

³⁸⁴ *Ibid* at page 201.

³⁸⁵ *Ibid* at page 198.

of Prisoners of War in the hope of gathering military intelligence. Uno Shintaro, a former Japanese Army Officer, reasons that:

“The major means of getting intelligence was to extract information by interrogating prisoners. Torture was an unavoidable necessity. Murdering and burying them follows naturally. You do it so you won’t be found out. I believed and acted this way because I was convinced of what I was doing. We carried out our duty as instructed by our masters. We did it for the sake of our country. From our filial obligation to our ancestors. On the battlefield, we never really considered the Chinese humans. When you’re winning, the losers look really miserable. We concluded that the Yamato race was superior.”³⁸⁶

Hirohito cannot claim to have not been aware of the atrocities or work committed by Unit 731 and their various other satellite organisations. As of 2002, the International Symposium on the Crimes of Bacteriological Warfare estimates that owing to Japan's exploits in biological warfare, it was estimated that some 580,000 people died.³⁸⁷ Japan’s shift from helping enemy troops to mass-genocide and appalling treatment within 30 years appears stark and could not have gone unnoticed.

Extensive research following the Second World War teaches us that the German and Japanese people were not evil, particularly unique or different from any other race or nation. Following the Trial of Adolf Eichmann in Jerusalem in 1961, renowned psychologist Stanley Millgram devised and began in July 1961 to become an international experiment to answer a common question: Were the Nazis who committed such atrocities in the concentration camps merely following orders or willing participants? If so, was this solely an issue confined to the people of Germany?

³⁸⁶ Cook & Cook ‘*Japan at War: an Oral History*’ (New Press: 1993) at page 153.

³⁸⁷ Barenblatt ‘*A Plague Upon Humanity*’ (Harper Collins: 2005) at page 173.

The experiments were damning internationally; people from every corner of the globe, of all ethnicities, nations, political persuasions, and religious beliefs, took part. The results remained consistent; people would follow orders no matter how distasteful or deadly if such orders were given by people perceived to be in a position of power.

In summary, there can be little if no justification for the aggressive war adopted by Japan from the turn of the 20th Century across various fronts. The wide-scale nature of such atrocities, which, for this thesis, are limited to those committed by Unit 731, was widespread, with hundreds of thousands of lives said to have been lost as a consequence. Therefore, it is highly improbable that Hirohito, who assumed ultimate control over Japan during the entirety of the conflicts and with a keen interest in biological research, had not been aware on some level of the studies being conducted on live human subjects or the test conditions utilised. As with Nazi-Germany and the involvement of Adolf Hitler as head of the Reich, the evidence after the Second World War was and remained a damning indictment on Emperor Hirohito. It is important to now consider how Unit 731 was created and, significantly, how its psychotic founder Shiro Ishii capitalised on the conflict in Manchuria and an Emperor with a keen interest in biological warfare to the detriment of humanity.

Whilst we know that the Soviets had prosecuted members of Unit 731, it is important to now detail the inception of the Allied prosecution, charges, and the framework and rationale utilised so that discussion can then be made as to whether, save for the immunity deal, members of Unit 731, to include both Ishii and Hirohito, would have likely been found guilty of charges had they been brought.

PART FOUR

THE TOKYO TRIAL

Just as the earlier trials of Nazi war criminals at Nuremberg had been, the Tokyo Trial was now set to be a very public proceeding. Broadcast on the international stage, the Trial opened on 3rd May 1946 at the Imperial Army building in Tokyo, a subtle slight against the losing nation. Such a slight should not have come as a surprise to the Japanese. The Allies had chosen Nuremberg to embarrass Germany, given that it was widely considered to be the ceremonial birthplace of the Nazi party, hosting large rallies throughout the 1920s and 1930s during Adolf Hitler's rise to power.³⁸⁸

The Japanese Imperial Army had been integral in the atrocities committed by Japan from the turn of the 20th Century, as well as the indoctrination and radicalisation of her troops. The fact that there had previously been attempts to assassinate the Emperor and illegally seize power made it easy for the Allies to prosecute those linked to the Imperial Army and not the Emperor.³⁸⁹

The intention of the eleven Allied nations at Tokyo was made clear right from the outset, just as it had at Nuremberg: to punish Japanese atrocities and purported "war crimes" committed, specifically limited to the years between 1928 and 1945. This thesis has already documented the extensive steps taken by the United States, not only to grant immunity to Hirohito, but also members of Unit 731. It is therefore intended that this

³⁸⁸ Overy *Interrogations: The Nazi Elite in Allied Hands* (London: 2001) at pages 19-20.

³⁸⁹ Attempts were made to overthrow the Emperor in 1932 and 1936 by radicalised members of the Imperial Army, known as the May 15th and February 26th incidents respectively.

fourth part of the thesis will now focus on the implementation of the Tokyo Trial, the proceedings and subsequent findings, before the fifth section considers whether, had those intrinsically linked to Unit 731 faced trial, what the likely outcome would have been. This thesis will then be able to critically examine whether the Allied failure to not prosecute those linked to Unit 731 led to a miscarriage of justice.

As had been the case at Nuremberg, and in the investigations undertaken by the Allies to date against potential Japanese war criminals, the United States looked to directly influence, manipulate and tailor the evidence presented at the Trial. That being the case, the trial was flawed from the very outset. Any subsequent judges would only hear allegations of atrocities committed by defendants handpicked by the United States, with the inevitable omission of key individuals to include Hirohito and Ishii. Hirohito had very publicly avoided prosecution, notwithstanding the secretive nature of immunity deals that had allowed a horde of war criminals, including Ishii, to avoid just retribution. The political justification for not pursuing Hirohito did not apply to Ishii.³⁹⁰

The United States exerted almost complete control over the proceedings: the creation of the Tokyo Trial; the Justices appointed to the bench; the Defendants who were ultimately prosecuted; the charges levelled against them; and the impact the immunity deal had on the “implementation” of justice, or at least the perception thereof. The proceedings can be summarised as “Allied” in title only, with the other Allied nations seemingly happy to give the United States carte blanche to proceed as they wished. This is reflected in the period of time scrutinised by the Allied Prosecutors. Although the United States had only entered the conflict on 8th December 1941 - following the surprise attack of Pearl Harbor by the Japanese - the war itself had started over a decade earlier,

³⁹⁰ Yokoshima *'The Shadow Behind the Tokyo Trial: Why was not the Head of State Prosecuted?'* [Treatise] at page 31.

following the invasion of Burma, China, Indochina, the Philippines, Malaysia, Manchuria, Wake Island, Hong Kong, Singapore and the Aleutians. Other Asian nations had suffered disproportionately more than other European and American nations at the hands of the Japanese. On that basis, alleged war crimes committed by the Japanese would be pursued from as early as 1928;³⁹¹ however, atrocities committed prior to this date, against nations such as China and Korea, were omitted from the indictment.

This thesis has already demonstrated that, in the course of their investigations into alleged Japanese war crimes and offering of immunity deals, the United States had little interest in pursuing or prosecuting wrongs committed against other nations, nor acts pre-dating their introduction. Had the Japanese successfully deployed biological weapons against the Allied Nations, or solely the United States, it is highly unlikely that Ishii and his men would have avoided justice. As this part of the thesis will show, those deemed culpable for the attack on Pearl Harbor, for example, faced stern justice at Tokyo. The United States had been embarrassed by the attack and now sought retribution.

The key goal at Tokyo, although never expressly stated by the Allies, would be for the Allied nations to pursue Japanese war criminals for atrocities specifically committed against them. There was little interest in creating a universally applied principle of war crimes for their own war time conduct. The fact that the Allies had ignored Japanese atrocities in China and Korea, as well as the whitewash of Allied and Soviet atrocities, goes some way to evidence this.³⁹² By no means were the principles established at Nuremberg universally applied, which has led to the fair criticism from academics, such as Minear, that Tokyo amounted to nothing more than '*victor's justice*'.

³⁹¹ The Kwantung Imperial Army had been involved in the assassination of Zhang Zuolin, Grand Marshal of China, in 1928 having previously been supported by Japan during his rise to power.

³⁹² Takeyama '*The Scars of War: Tokyo during World War II: Writings of Takeyama Michio*' Edited & Translated by Richard Minear (Rowman & Littlefield: 2007) at page 125.

On the one hand, the Allies were seeking to create a recognised principle of war crimes to an international standard. This would be a moral and legal standard. However lofty that ambition may have been, on the other hand at both Nuremberg and Tokyo, the exercise of these retrospective principles would not be applied equally, ignoring the issue of immunity for one moment. Only the losing nations would be prosecuted, with the Soviets having switched sides only after the invasion by Nazi-Germany in 1941.³⁹³

The Allied powers were acutely aware that they would have to tread carefully. They too had committed barbaric atrocities during the Second World War, which could have equally been construed as war crimes, had they been on the losing side. If war crimes are to be considered a universal principle, then it follows that the application of these laws should rightly be applied evenly, regardless of who the victors are. For example, the Soviets had been unnecessarily brutal in their advances in the final days of the conflict, not only towards the people of Germany, but also across Manchuria. Rape, executions and forced labour were commonplace. In the week following the Soviet declaration of hostilities against Japan, Russia took over half a million Japanese prisoners. It is estimated that one-fifth of these prisoners passed away during captivity, due to starvation or mistreatment.³⁹⁴

The Soviet Union were not alone. The United States infamously dropped two atomic bombs on Japanese cities; the strategic purpose, or arguably lack thereof, of this is still a topic being hotly debated to this very day. The British carried out large-scale “carpet bombing” of German cities - in particular Berlin, Hamburg and Dresden - often using incendiary bombs that, in turn, created firestorms. Hundreds of thousands of

³⁹³ The surprise invasion of then-Allies Nazi-Germany and Soviet Russia, known as Operation Barbarossa, began on 22nd June 1941 and opened up the “Eastern Front”. In turn, this led to Soviet Russia joining the Allied nations in the same month.

³⁹⁴ Dower *‘Embracing Defeat: Japan in the Aftermath of Ward War II’* (Penguin: 2000) at pages 51-52.

innocent civilians perished as a consequence of these attacks by the Allied bombers.³⁹⁵ Although referred to as “strategic bombing”, they were often trigger happy, and rarely hit their designated targets. The loss of life from the Allied bombing campaign was disproportionate when compared with the Axis’ campaign; for example, during the “Blitz” of London, only 13,000 perished.³⁹⁶ The fact that the Allied nations would not prosecute either German or Japanese commanders for similar types of bombing attacks arguably signifies that the Allied prosecutors knew that, had they done so, they would be on shaky ground.

The matter of prosecuting and punishing both the alleged Japanese and Germans war criminals for atrocities committed during the Second World War, had been a constant headache and a source of concern throughout the conflict for all the Allied powers, not only the United States. Whilst there had been a clear desire on the part of the Allied nations for retribution and punishment, it was unclear precisely how this would be administered, in both a practical and legal sense.

Shortly after the attack on Pearl Harbour, there was at least some indication as to how the Allied nations might feasibly address this conundrum. A matter of weeks after the surprise attack on Pearl Harbour, the wheels were set in motion for criminal proceedings to be brought about. On 13th January 1942, the St James Declaration was issued by nine European states. in which they put the Axis nations on notice that they would pursue “*the punishment, through the channel of organized justice, of those guilty or responsible for these crimes.*”³⁹⁷ This was the publication to the world of the Allied intention to pursue the Germans, Italians and Japanese should they prove to be the victors

³⁹⁵ Frankland & Webster *The Strategic Air Offensive Against Germany, 1939 – 1945, Volume II: Endeavour, Part 4* (London: 1961) at pages 260 - 261

³⁹⁶ Richards *Royal Air Force 1939 – 1945: Volume I The Fight at Odds* (London: 1954) at page 206.

³⁹⁷ Kochavi *Prelude to Nuremberg: Allied War Crimes Policy and the Question of Punishment* (University of Carolina: 1998) at page 20.

emerging from the conflict. Conversely, the Axis nations made no such threats. Bringing retribution at the end of the conflict was very much a desire of the Allies.

At the turn of 1942, the European states were predominantly aiming this declaration at Nazi-Germany, which had caused irreversible and irreparable damage to states and their citizenry throughout continental Europe. While Japan, at this moment in time, was a secondary concern.³⁹⁸ The real desire to prosecute Japanese war criminals came following the conclusion of the war in Europe and the shift in Allied focus, resources and manpower to the bloody war in the Pacific that ensued. The barbaric treatment of Allied prisoners of war became public knowledge, just as the concentration camps across Eastern Europe had.

Pursuant to the occupation of Japan in the post-war years, and forming part of the terms of surrender, the United States had determined several key objectives that they wished to accomplish. Firstly, they were acutely concerned about the growing global Communist threat and wished to ensure its influence did not spread to Tokyo.³⁹⁹ Berlin had been split between the Allied Western nations and the Communist Soviet Union. It was undesirable for that to occur on Japanese soil. The best solution was, therefore, for Japan to see the United States as a friend rather than foe. This, in itself, was incompatible with harsh retribution being handed out to key Japanese officials, and far less so to members of the Imperial family.

If the United States were to have a constructive future relationship with the new post-war Japan, the Allies would either have to “go easy” on the Japanese hierarchy responsible for the Japanese war machine, or the entire hierarchy would need to be

³⁹⁸ Horowitz ‘*The Tokyo Trial (International Conciliation)*’ (Carnegie: 1950) at page 477.

³⁹⁹ Kopstein & Lichbach ‘*Comparative Politics: Interests, Identities, and Institutions in a Changing Global Order*’ (Cambridge University Press: 2000) at page 178

replaced. Clearly the latter option was undesirable and, perhaps of greater relevance, impractical for a “successful” occupation of Japan.

Secondly, Washington had informed General MacArthur to obtain and secure all information pertaining to Unit 731 and other units responsible for carrying out biological warfare research.⁴⁰⁰ The United States may not be able to ascertain the full extent of the research program, nor obtain all data, if they were to prosecute such individuals. Not only would this create resentment from the researchers of Unit 731 towards the Allies and make it less likely that they would cooperate, the exposure of their activities would result in sensitive research data and field-studies being referred to in the trial documentation (indictments; transcripts of evidence and, in turn, the Judgments themselves). In turn, this would not only tip off the other Allied nations as to Ishii’s work, but would also have caused public outrage, making it less likely that an immunity deal could be agreed.

The secretive nature of Unit 731 during Ishii’s reign would have to continue under MacArthur’s. There was, however, an easy solution to this second problem: money. The United States arranged payments to members of Unit 731. There is evidence to suggest payments in the region of 150,000 to 200,000 yen, “*equivalent of 20 million yen to 40 million yen today...*”, with the United States G2 intelligence unit referring to the payments as a “*mere pittance*”, which was “*netting the (United States) the fruit of 20 years’ laboratory tests and research*”.⁴⁰¹

If the attainment of an objective standard of justice had been the true principle of the United States at Tokyo, this goal should not have been too complicated to achieve. However, the more sinister motives at play complicated matters considerably for the

⁴⁰⁰ Emanuel, Grady & Crouch ‘*The Oxford Textbook of Clinical Research Ethics*’ (OUP: 2011) at page 41.

⁴⁰¹ <https://www.japantimes.co.jp/news/2005/08/15/national/u-s-paid-unit-731-members-for-data/> (retrieved: 10/02/2021).

Allies, staining the principle of the rule of law. As detailed in the preceding part of this thesis, the United States seemingly had no compunction in subordinating the ideals of 'justice' to the pursuit of their own bacteriological program. If this entailed failing to prosecute members of Unit 731, then this was a price they deemed worth paying. The rounding up of German and Japanese researchers at the end of the conflict was widespread, notably Operation Paperclip, in order to fuel their own military ambitions at the expense of justice.

Thirdly, and perhaps the trickiest objective to satisfy of all, was the Allied desire to ensure that prosecutions were made against Japanese war criminals, simultaneous to maintaining and developing strong relationships with the researchers of Unit 731 and those responsible for the biological warfare programme as a whole.⁴⁰² If the Allies were seen to be too harsh in their treatment of these personnel, this involved a risk of perpetrators 'defecting' to the Soviet Union, who were already aware of the biological research programme having advanced rapidly across Manchuria in the final days of the conflict. The United States were, thus, faced with a balancing act between the best collective interests of the Allied Nations and their own self-interest, buying into the proverb "my enemy's enemy is my friend."

While the horrors of Unit 731 would remain secret, many of the brazen and barbaric acts of the Japanese during the Second World War were gleefully broadcast across the globe as part of the Allied propaganda machine, in support of the misguided and prejudiced view that the German and Japanese people were somehow primitive, bloodthirsty monsters. Just as the Japanese had seen other Asians as inferior, Americans

⁴⁰² Williams & Wallace '*Unit 731*' (Hodder & Stoughton: 1989) at page 188.

were now looking down upon the Japanese as lesser people. It was unthinkable that these individuals, who had committed such atrocities, may escape prosecution.

In the Footsteps of Nuremberg

The Tokyo Trial would be justice by deception: the United States would ensure that the public saw, or at the very least believed, that justice was being carried out. The illusion of justice would be all that was required in order for them to proclaim the Trial as a success, and for the world at large to have closure. The atrocities that had been committed by Japan, in particular those documented during the years of the Second World War, were of such a horrendous nature that it would be unimaginable, to the general public, that they should go unpunished. Germany is still reminded of her past to this very day. That is not the case with Japan.

So, how precisely did this predicament for the United States arise? While there had been a declaration that the Allies intended to prosecute the Axis nations at the end of the conflict, as has already been detailed, there had been no real consideration as to how this would be administered.

In mid-1945, the United Kingdom, France, the United States and the Soviet Union convened the London Conference to decide how exactly they were going to round up and punish high-ranking Nazi war criminals. There was little thought given as to how precisely they would pursue Japanese war criminals, with the subsequent agreement focusing solely on the European Axis.⁴⁰³ As we shall see from Tokyo, the Allies adopted a “one size fits all” approach with the creation of the Nuremberg Charter. At the London

⁴⁰³ Jackson ‘Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials’ 29th December 1947 (retrieved 11/02/2021: https://avalon.law.yale.edu/imt/jack_preface.asp)

Conference, the Big Four powers of the United States, Great Britain, the Soviet Union and France unanimously agreed that those implicated in war crimes ought to be brought before a panel of judges, to be appointed by the Allied powers, who would preside over the proceedings brought against each defendant.

What followed from the London Conference was the London Agreement, dated 8th August 1945.⁴⁰⁴ This, in turn, created the International Military Tribunal that would convene at Nuremberg on 20th November 1945 and close nearly a year later, on 1st October 1946.

The Tokyo Trial would, in essence, mirror the Nuremberg Trial in many aspects. This was, on one hand, a sensible approach to take; there was little point in needless duplication of effort and the Allied nations intended, from the outset, that Tokyo would, hopefully, cement the legal framework established by Nuremberg. On the other hand, this was a “one size fits all” approach and failed to take into account many of the cultural differences between the Japanese and German people. The Tokyo Trial was created through a combination of the Cairo Declaration, the Potsdam Declaration (also referred to more formally as the “Proclamation Defining Terms for Japanese Surrender”), the Moscow Conference and the Instrument of Surrender agreed with Japan ending the conflict and signed on 2nd September 1945 on behalf of Hirohito, accepting the provisions of the Potsdam Declaration.⁴⁰⁵

The Potsdam Declaration, comprising China, the United Kingdom, the United States and the Soviet Union, had clearly established the intention of the Allies to eliminate

⁴⁰⁴ “Agreement for the prosecution and punishment of major war criminals of the European Axis. Signed at London, on 8 August 1945” (retrieved 11/02/2021: http://www.cvce.eu/obj/london_agreement_8_august_1945-en-cc1beb97-9884-4aa1-b902-e897a8299bec.html)

⁴⁰⁵ The Tokyo Charter laid out the precise legal basis for the establishment of the IMTFE at the very outset.

*“for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest... we do not intend that the Japanese shall be enslaved as a race or destroyed as a nation but stern justice shall be meted out to all war criminals...”*⁴⁰⁶ However, the Potsdam Declaration did not go so far as to say that war crimes trials would follow.⁴⁰⁷ This was resolved with the agreement from Hirohito to the terms of Japan’s surrender, which specified the desire to prosecute war criminals.

In the same month as the Japanese surrender, the United States had directed that there should be extensive investigation, apprehension and detention of individuals believed to have committed war crimes against either the United States or other Allied nations. Those investigations relevant to the biological research programme have already been detailed by this thesis. Whether or not the outcome of these investigations was disseminated to other Allied nations is a separate question altogether, or whether the evidence gathered was cherry picked. Alternatively, if crimes had purportedly been committed against other nations, the individual in question was to be detained and handed over to the nation who had been wronged. In the case of Unit 731, the overwhelming victims of their barbarity were the people of China.

Previously, there had been collective action taken by the Allies to declare a desire to prosecute war criminals at the end of the Second World War. However, the United States were now acting unilaterally within a matter of weeks of Japan’s surrender, with the other Allied nations taking the back seat. This may well have been the plan all along, or simply the other nations had lost interest in prosecuting war criminals after Nuremberg,

⁴⁰⁶ Horowitz *‘The Tokyo Trial (International Conciliation)’* (Carnegie: 1950) at page 479.

⁴⁰⁷ Potsdam Declaration – ‘Proclamation Defining Terms for Japanese Surrender’ issued 26 July 1945 (retrieved 11/02/2021: <https://www.ndl.go.jp/constitution/e/etc/c06.html>)

instead wanting to look forward to building their own nations up after the devastation of the conflict.

That is not to say that the United States had excluded other nations from participating in the policy-making and formulation of the Tokyo Trial; they would let others hold the metaphorical gun, but the United States had to be seen to pull the trigger by the media. In December 1945, the “*Terms of Reference of the Far Eastern Commission*”⁴⁰⁸ were issued with approval from all nations who would ultimately have a Justice appointed to the bench at the Tokyo Trial. Any such decisions by those nations would only be enacted by the United States; once a decision had been made by the Far Eastern Commission, this would be relayed to MacArthur to put the directive into practice. The United States would, therefore, act as the “filter” throughout the entire judicial process, siphoning out any undesirable evidence or failing to indict war criminals they deemed as being useful.

Tokyo had the unenviable task of following the standards established at Nuremberg, which were, by any standard, ground-breaking. However, the hard work of carving out legal precedent and dealing with the landmine posed by the deployment of retrospective criminal law, had already been addressed comprehensively at Nuremberg.

On the face of it, the Allies at Tokyo simply had to follow the process already established, and then administer justice accordingly. While the Allied nations had been very clear in establishing their desire to prosecute war criminals at the end of the conflict, how this was formalised in a legal sense was a different matter altogether. The Trial itself was established via the authority granted from the Japanese Instrument of Surrender and

⁴⁰⁸ <https://www.ndl.go.jp/constitution/e/shiryo/01/019shoshi.html> (retrieved 12/02/2021)

the Potsdam Declaration. This only provided, ambiguously, and unhelpfully, that any justice administered would be 'stern'.

General Douglas MacArthur had been appointed as the Supreme Commander of the Allied Powers. In this capacity, he was responsible for enforcing the terms of the Japanese surrender. Instructed by the United States War Navy Co-ordination Committee in Washington,⁴⁰⁹ emerged the "International Military Tribunal for the Far East". In respect of Japanese war criminals, MacArthur was responsible for punishing Japan's war criminals and passing down appropriate sentences, or rather approving the sentences proposed by a panel of Justices.⁴¹⁰ The Proclamation of the Tribunal was based upon the Allied authority over Japan, as well as being founded on the Instrument of Surrender and the Potsdam Declaration. The earlier Nuremberg Trial had been created pursuant to the Meeting of the Big Four at the London Conference. Unlike Nuremberg, the Tokyo Trial did not receive such meticulous planning as it was considered, by the Allied nations, that Nuremberg had achieved its aims, broadly speaking. On that basis, the Allies considered it prudent that the same template should be followed at Tokyo.

The Tokyo Charter

The Tokyo Trial was, in fact, created by the Tokyo Charter, an Executive Decree by General MacArthur, in his capacity as the Supreme Commander for the Allied Powers in Japan. On 19th January 1946, General Douglas MacArthur issued the proclamation ordering the creation of the International Military Tribunal for the Far East.⁴¹¹

⁴⁰⁹ The Directive on the Identification, Apprehension and Trial of Persons Suspected of War Crimes, undated.

⁴¹⁰ Horwitz *'The Tokyo Trial'* International Conciliation 465 (November 1950) at page 480.

⁴¹¹ Horwitz *'The Tokyo Trial'* International Conciliation 465 (November 1950) at page 482.

Simultaneous to this proclamation, General MacArthur also agreed the Charter of the International Military Tribunal for the Far East.⁴¹² This Charter specifically dealt with how the practicalities of the Tokyo Trial would operate; such pragmatisms included how the Trial was to be formed and which crimes were to be prosecuted.

The Nuremberg Charter had proven to be a decisive moment in the development of international criminal law, with the inclusion of new charges to be applied retrospectively; namely, crimes against peace and, to a lesser extent – and from a positivistic perspective – crimes against humanity. The intention of the Allies was to ensure that high-ranking officials within the Nazi-party did not avoid prosecution under the pre-existing definition of war crimes per se. On the same basis, Ishii and Hirohito could potentially have fallen foul of these new charges, shifting from a traditional view of individual responsibility to a culpability being placed upon the hierarchy, who often did not get their hands dirty in the actual commission of an atrocity.

The Tokyo Charter itself had, unsurprisingly, been drawn up predominantly by the United States, and in particular the American Chief Prosecutor Joseph B. Keenan.⁴¹³ Keenan played a key role in the immunity deal and American cover-up by, at the very least, failing to act upon the reports of his assistant, Morrow. At worst, albeit with no clear evidence, he assisted the immunity deal by allowing war criminals to avoid prosecution. It is a fair observation at this juncture to suggest that the Charter, drafted and implemented almost entirely unilaterally by the United States, would inevitably be designed to be most favourable to the United States. This would be an American brand of justice.

⁴¹² 'Charter of the International Military Tribunal' 19 Temp L.Q. 162 (1945-1946)

⁴¹³ Minear 'Victor's Justice: The Tokyo War Crimes Trial' (University of Michigan: 2001) at page 21.

The Tokyo Charter, simply put, called for a “*just and prompt trial and punishment of the major war criminals in the Far East*”⁴¹⁴, allowing the Military Tribunal to decide on matters including “*crimes against peace, conventional war crimes, and crimes against humanity*.”⁴¹⁵ This was somewhat more concise than “stern” justice, but still left more questions than answers. This would of course be academic for the major war criminals, to include Emperor Hirohito and Shiro Ishii, who would never be subjected to ‘stern justice’.

The International Military Tribunal for the Far East Charter was enacted on 19th January 1946, and was split into five distinct parts. The Articles of the Tokyo Charter are detailed in full in ‘Appendix I’ of this thesis. In summary, the Charter provided as follows: Part I of the Charter dealt with the constitution of the tribunal and established the permanent seat of the Tribunal as Tokyo; Part II of the Charter dealt with the Trial’s jurisdiction and other general provisions, establishing jurisdiction to prosecute alleged war criminals. Importantly, Part II itemises the three offences as follows:

- (a) *Crimes against Peace*: Namely, the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
- (b) *Conventional War Crimes*: Namely, violations of the laws or customs of war;
- (c) *Crimes against Humanity*: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political or racial

⁴¹⁴ Part I – Constitution of Tribunal: Article 1 of the International Military Tribunal for the Far East Charter (also referred to as the Tokyo Charter).

⁴¹⁵ Part II – Jurisdiction and general provisions: Article 2 of the Tokyo Charter.

grounds in execution of, or in connection with, any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organisers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan.

Part III of the Charter laid out the necessities to ensure that the Defendants were entitled to a fair trial. This allowed for a plain and concise indictment, translation of proceedings for the accused, Counsel to be provided for the accused and an obligation on the Tribunal to produce witnesses or documents at the request of the Defence. Part IV of the Charter allowed the Tribunal to summon witnesses to the Trial, interrogation of the accused, disclosure and witness evidence. This provision required that the Tribunal “confine the trial strictly to an expeditious hearing of the issues raised by the charges”, thereby effectively excluding the possibility of evidence relating to the acts of Unit 731, Ishii or Hirohito being raised at the Trial. Keenan and the United States had effectively prevented the Justices from hearing the truth by stifling the evidence presented to them, resulting in a Trial that could never be seen as fair or just.

Finally, Part V of the Charter set out the protocol for both Judgment and Sentence, granting the “*power to impose upon an accused, on conviction, death or such other punishment as shall be determined by it to be just*”. It decreed that any Judgment be made in open court, with the ability for MacArthur, as Supreme Allied Commander of the Allied Powers, to reduce or alter the sentences, save to increase their severity. The Trial was by no means impartial. Questions can be raised as to the validity of the Charter in creating the Tokyo Trial; General MacArthur was granted powers to reduce or amend, as he sought fit, any sentences handed down by the eleven Justices. A cornerstone of democracy is the

doctrine of separation of power, that being the executive, the legislative and the judiciary. The separation of these separate limbs is intended to provide for checks and balances, to avoid any one limb abusing or exceeding the remit of their powers.

Not only was General MacArthur involved in the drafting of the Tokyo Charter, and therefore formed part of the legislative arm, but as has already been detailed, the latitude of his decision-making capacity was heavily circumscribed by Washington, the executive branch. Serious concerns arise because it was General MacArthur and high-ranking officials in Washington who were orchestrating the Tokyo Trial, rather than Justices appointed to adjudicate the conduct and outcome of the proceedings on behalf of the eleven Allied nations allowed a seat at the bench. The Trial ran the risk of politicisation, the exact allegation that the United States had levelled at the subsequent Khabarovsk Trial.⁴¹⁶

While the Tokyo Charter echoed Nuremberg in many respects, there were some key differences between the two Trials, and the Charters that established them. For example, at Nuremberg, the United States, Great Britain, France and Soviet Russia appointed their own Chief Prosecutors⁴¹⁷ to act in collaboration with the other prosecutors, but also to specifically pursue atrocities committed against their own respective nations. At Tokyo, the Charter provided that each of the Allied Powers would be represented by only one Chief Prosecutor, to be supported by an Assistant Prosecutor, Investigators and administrators. Keenan, who had effectively drafted this provision, would unsurprisingly be appointed Chief Prosecutor.

⁴¹⁶ Nie *'The West's dismissal of the Khabarovsk trial as 'communist propaganda': ideology, evidence and international bioethics'* (J Bioeth Inq: 2004) at 32-42.

⁴¹⁷ Robert H. Jackson for the United States, Sir Hartley Shawcross for Great Britain, Auguste Champetier de Ribes for France and Roman A. Rudenko for Soviet Russia.

While it may seem simple on paper for one party to effectively co-ordinate the proceedings on behalf of eleven nations, in reality issues quickly arose. For example, the concept of “*criminal organisations*”, as defined in the Nuremberg Charter at Articles 9 and 10, was omitted from Tokyo; merely the members of organisations could be pursued. At Nuremberg, organisations could, in their own right, be declared criminal. The United States argued against the inclusion, claiming there had been no evidence of a Japanese “organisation” equivalent to that of their Nazi counterparts, in particular organisations such as the Gestapo or the SS. This argument is, however, entirely implausible and does not stand up to any reasonable scrutiny.

While there may have been structural differences between how Japan and Nazi-Germany had set about mass murder, the results were the same. The problem confronting Tokyo was that Nuremberg had been tailored to address the war crimes perpetrated by Nazi-Germany. The United States were now attempting to recycle that Charter and apply it to the atrocities committed by Japan, some of which were similar but others were distinctly separate. At the very beginning of this thesis, the societal differences and hierarchy in Japan were detailed, and it was explained why Japanese society was profoundly unique when compared with nearly all other civilised nations in the world at the material point of time.

The structure of the Imperial Family or Cabinet cannot be readily compared with that of Hitler and his inner circle. However, members of Unit 731 could have been. For example, Josef Mengele, the “Angel of Death”, was an Officer within the Schutzstaffel (SS), the paramilitary organisation of the Nazi Party. The SS were rightly considered to be a criminal organisation. Mengele carried out inhumane medical experiments on prisoners at Auschwitz, including children, without the consent of the research subject; these prisoners were often misled or physically forced to participate. Ishii, a General

within the Japanese Imperial Army, had also carried out medical experiments on both prisoners of war and civilians under the remit of Unit 731, part of the Kwantung Army.⁴¹⁸ There are clear similarities between the two, and yet, only Mengele was considered to be a member of a “*criminal organisation*”. The only difference here is purely cosmetic, but the end result was the same: deadly and barbaric. This point is again academic in light of the Allied failure to prosecute Ishii and his co-conspirators.

A final difference between the Charters at Nuremberg and Tokyo was another stark reminder of the inequality of arms between the prosecuting powers and the defendants. At Nuremberg, the Allied Powers had rightly arranged for all court documents and proceedings to be conducted in English, French, Russian and the language of choice for each Defendant.⁴¹⁹ That allowed a fair trial to proceed, with all parties able to fully understand the proceedings as they unfolded and, in the simplest of terms, the case being brought against them. Without any real justification, this most basic of principles was not extended to the defendants at Tokyo. Such requirement for a multi-lingual trial were omitted without explanation. All the Defendants spoke Japanese. There would have been a need to translate the proceedings in English, French, Russian, Japanese, Mandarin, Dutch and Spanish. It was said that such extensive translation would have been burdensome on the Trial, notwithstanding the fact that the cost of provision by the United States army, for example, would have been a drop in the ocean as against the total cost of the proceedings as a whole.⁴²⁰

The proceedings at Nuremberg had also appeared unhindered by the requirement to transcribe into multiple languages. On the one hand, the United States were vaunting

⁴¹⁸ Horwitz ‘The Tokyo Trial’ Issue. 465 International Conciliation (11/1950) at pages 486 – 488.

⁴¹⁹ <https://www.nationalww2museum.org/war/articles/translating-and-interpreting-nuremberg-trials> (retrieved 12/02/2021).

⁴²⁰ Mesa ‘Comparative Analysis of the Language Interpretation at the Nuremberg and Tokyo Trials following the Second World War’ (Universidad Pontificia de Comillas: 25 June 2019) at pages 15 – 18.

these proceedings as a shining light of international justice while, on the other hand, would not go to the time or expense of ensuring that the accused could properly understand the allegations being levelled at them. Minear succinctly points out that, although there were no key differences, there were some ‘cosmetic’ changes from the Nuremberg Trial. The Tokyo Charter provided for “*eleven justices with no alternatives instead of four justices with alternatives; a chief prosecutor and ten associate prosecutors instead of four prosecutors; a restriction of the trial to persons charged with crimes against peace; no provision for the trial of criminal organisations; two languages instead of four.*”⁴²¹

Unlike at Nuremberg, there was also no possibility of the Justices appointed to the bench being changed under Article 2 of the Charter at Tokyo. The intention and process of Nuremberg and Tokyo remained both simple and consistent. The aim of both was to bring the defendants to Trial, have a panel of representative Justices determine whether those indicted were guilty as charged and then, if guilty, to impose as strict a sentence as was possible under the respective Charters to deter future war crimes. The indictment was concise and enabled defendants to be charged on a broad range of issues.

On 26th April 1946, General MacArthur issued “General Order 20”, which amended the original Charter. This amended Charter established a Tribunal with 11 Justices drawn from the signatories and two other members of the Eastern Commission, India and the Philippines.⁴²²

The Tribunal was granted jurisdiction over crimes against peace, crimes against humanity and war crimes.⁴²³ The Tribunal was designed to serve several purposes. Firstly, it would

⁴²¹ Minear ‘*Victor’s Justice: The Tokyo War Crimes Trial*’ (University of Michigan: 2001) at page 22.

⁴²² Article 2 of the Tokyo Charter

⁴²³ Article 5 of the Tokyo Charter

act as a comprehensive summary of Japanese modern history and war crimes, and provide an extensive history of Japanese involvement in the conflict.⁴²⁴ The viewpoint and rationale behind this was that it was important to document not just the atrocities that had been committed, but also the incremental steps that led to Japan having purportedly committed such a vast array of war crimes.

The second purpose of the Trial was to highlight, to the world, that the acts of the Japanese defendants were merely those of common criminals.⁴²⁵ This is potentially a more politically motivated ideology, rather than being grounded in any real science or logic. The planning, extent of funding and manpower of the atrocities committed specifically by Unit 731 goes above and beyond that of a “common criminal”. Going one further than this, neither Ishii nor Hirohito could reasonably be labelled as “*common criminals*”. Both men arguably played decisive parts in the mass-genocide of an innocent civilian population in Manchuria. However, for the both of them conspiring to create a world-leading biological warfare facility, it is more than likely that Unit 731 would not have existed or, if it had under some other guise, would not have thrived to such a murderous extent.

The United States were extremely eager to highlight the wrongdoings of the Japanese during the conflict and to bring their deeds to an international stage, whilst seeking to whitewash their own questionable acts. The United States failed to address their decision to drop atomic bombs over civilian populations, which was an act arguably little better than the field-experiments conducted by Ishii’s unit, and was later declared

⁴²⁴ Piccigallo ‘*The Japanese on Trial*’ (University of Texas Press: 1979) at page 15.

⁴²⁵ Comyns-Carr ‘*The Judgment of the International Military Tribunal for the Far East*’ (Transactions of the Grotius Society Vol. 34, Problems of Public and Private International Law: 1948) between pages 141 – 151 (https://www.jstor.org/stable/743310?seq=1#metadata_info_tab_contents) last accessed 19/04/2020.

illegal by a Japanese Court of law.⁴²⁶ The concept of internationally recognised laws and their implementation must be universal and even-handed, if an objective standard of justice is to be attained. The United States went even further in their exploitation of authority over the Tribunal. As previously mentioned, they ensured that there would be no reference, by any side, to the use of atomic bombs during the entirety of the Trial.⁴²⁷ If the Soviet's subsequent Khabarovsk Trial could be deemed propaganda, the Tokyo Trial was little better. To this very day, the act of dropping the atomic bombs remains a controversial and divisive moment in the pages of history.

If the concept of international law was to truly be universal, the acts of the Allied nations should have also been considered. That would have, however, been political suicide given the entire Allied propaganda machine had been based upon the principle of good versus evil. Simply winning a war does not cleanse a nation of its own sins. The Tokyo Trial did, however, cement in place international legal precedents created by the earlier Nuremberg Trials,⁴²⁸ which in turn helped to establish the provisions still used to this day under international law. Whether flawed or otherwise, principles had now been established on the international stage, on which to judge future indicted defendants. A degree of certainty had now been implanted in international law, based upon morality.

On the issue of morality, by the final day of the Tokyo Trial in November 1948, no members of Unit 731 had been prosecuted, nor had the Prosecution brought to the attention of the Justices any of the atrocities they had committed.

⁴²⁶ *Ryuichi Shimoda et al v The State* (Japanese Annual of International Law, No. 8: 1964) at page 212.

⁴²⁷ Brook 'The Tokyo Judgment and the Rape of Nanking' (The Journal of Asian Studies: 2001).

⁴²⁸ Kopelman 'Ideology and International law: The Dissent of the Indian Justice at the Tokyo War Crimes Trial' (New York University Journal of International Law and Politics: 1990-1991) at pages 373-380.

The Justices

On 15th February 1946, nine of the signatories to the Instrument of Surrender had each nominated a judge to represent them on the panel.⁴²⁹ To ensure that the Trial would be free from national bias, MacArthur approved and appointed a panel of 12 Judges of different nationalities and who practiced in separate legal jurisdictions. No nominated judge was rejected by MacArthur. Ultimately, however, MacArthur would be the unofficial 13th Justice.

The panel would prove to be incredibly diverse. Where the panel was to be found lacking, however, was in their understanding of international law. This was mitigated by the fact that the Allies had already successfully applied laws retrospectively at Nuremberg. The Judgment and rationale behind it was handed down in October 1946, only a few months after the Tokyo Trial had convened.

All of the Justices were of European ancestry, bar the Chinese appointment. The legal system of seven of the eleven nations represented on the Bench would be of the common law tradition. In turn, this would raise many internal issues for the Bench; each Justice would have their own understanding of legal concepts and principles. Some principles would be present in one jurisdiction but not in another. Other jurisdictions, affected by societal and political circumstances, would have different aims, objectives and desired outcomes from the Trial; most notably, the Soviet Union. The Tokyo Trial would be a perfect example of competing interests coming to the very fore, right from the very outset.

⁴²⁹ Brackman *'The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials'* (Morrow & Co: 1987) at page 63.

Sir William Webb of Australia would be key in the proceedings as President of the Tribunal. All decisions made by the Justices would need to be done on the principle of a majority, with Webb having the deciding vote in the case of a deadlock. On procedural matters, Webb could also deal with these unilaterally. A former Japanese prisoner of war, he had never previously sentenced any convicted defendant to death by hanging. Brackman suggests that Webb was opposed to capital punishment as a concept.⁴³⁰ There was some element of conflict at the time, with talk of Webb disqualifying himself from the Bench. Simultaneously with having been elected to the Panel, he had also been appointed to lead an investigation of Japanese atrocities against Australian troops.⁴³¹ MacArthur was made aware of this and it was concluded that his role as a war crimes investigator would not disqualify him from the Panel. Webb's experiences and understanding of Japanese brutality was greater than that of his peers. Again, he did not have any experience of international law, having been appointed to the Australian High Court in May 1946 having previously sat in the Supreme Court.

The appointment by the United States would be less than straightforward. Despite having failed to respond to his former assistant prosecutor, Morrow, in relation to the issue of biological research studies in Manchuria, Keenan would not be as silent regarding the nomination by the United States. Keenan had initially nominated Willis Smith, then president of the American Bar Association, or, failing this, Roscoe Pound, Dean of Harvard Law School. Both nominations by Keenan were well-respected men of great stature, not only nationally but, importantly, internationally. Keenan's nominations would fall on deaf ears. Washington indicated that it would appoint John P. Higgins, the Chief

⁴³⁰ Brackman *The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials* (Morrow & Co: 1987) at page 64.

⁴³¹

https://web.archive.org/web/20051130084625/http://www.naa.gov.au/publications/fact_sheets/fs61.html (retrieved 14/02/2021)

Justice of the Massachusetts State Superior Court. Keenan was blunt in his response, stating he was “disturbed” by Higgins’ appointment, stressing that he would be a second-rate Justice when compared to the names being banded around by the other nations.^{432 433}

MacArthur appears, by implication (in the absence of any express evidence), to have agreed with Keenan’s vehement objection to Higgins, who was duly replaced with Myron C. Cramer, the Judge Advocate General of the United States’ Army. Keenan was once again showing his willingness to orchestrate the Trial, firstly with the blocking of Morrow’s investigations and now with the appointment of members of the judiciary.

From north of the American border, Canada had appointed Edward Stuart McDougall to represent her interests on the bench. At the time of his appointment, McDougall was Justice of the Court of King’s Bench of Quebec, and was seen at the time as a relatively unspectacular appointment. An undistinguished Jurist, many felt McDougall to be a political appointee rather than one based on judicial merit. However, he had been a military man, seeing combat action in the First World War.⁴³⁴ As with many of the Justices appointed, McDougall had little or no understanding of international law and its application.

The country that could claim to be the primary victim of Unit 731 was China. She appointed Mei Ju-ao, who was an Attorney and Member of the Legislative Yuan. He had studied at both Stanford and the University of Chicago, but had no real grasp of international law or war crimes. He had, however, studied extensively in the United States at both Stanford and Chicago.⁴³⁵ Although China had preferred to appoint Chief Justice

⁴³² Brackman *The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials* (Morrow & Co: 1987) at page 64.

⁴³³ Takatori *The Forgotten Judge at the Tokyo War Crimes Trial* Massachusetts Historical Review Vol. 10 (2008) at pages 115 - 116

⁴³⁴ <https://www.awm.gov.au/collection/R2065579> (retrieved 14/02/2021)

⁴³⁵ <https://www.law.uchicago.edu/news/mei-ju-ao-28-remembering-my-father-war-crimes-judge> (retrieved 14/02/2021)

Major Shih Mei-yu, it was felt, on balance, that the latter was best placed to stay in China to prosecute the two thousand Japanese war criminals on a domestic level.

From New Zealand, Erima Harvey Northcroft was appointed. A Judge of the Supreme Court, he had come from a military background after having served in both the First and Second World Wars, directly against Japanese forces.⁴³⁶ This was also the case for the Philippines appointment, Colonel Delfin Jaranilla. The Attorney General, he had been held as a prisoner of war by the Japanese. This issue would ultimately be raised by the Defence as ‘prejudice’, albeit unsurprisingly being rejected by the Bench. Both Jaranilla and Northcroft had seen, first-hand, the brutality of the Japanese during the conflict, and, as with many prisoners of war, had been left with a lasting impression. Whether they could be impartial, even on a subconscious basis, remained to be seen.

From Great Britain, the Honourable Lord Patrick was a Judge of the Scottish Supreme Court, King’s Counsel and Dean of the Faculty of Advocates. He epitomised the traditional English legal system and was widely respected by his peers on the Bench.⁴³⁷ From the Soviet Union, which had been a constant thorn in the side of the American’s immunity deal, Major-General Zarayanov was appointed. He was a member of the Supreme Court⁴³⁸ and his involvement would prove to be controversial and difficult for the other members of the Bench. Zarayanov not only had no real grasp of international law, he was also not fluent in English. There was also controversy as to whether the Soviet Union should be allowed a seat on the Bench at all; it had declared war a week before Japanese surrender and, in doing so, had breached their earlier Non-aggression Pact.

In total, there would be 11 Justices appointed. The last three would, to varying degrees, prove just as controversial as Zarayanov. France had initially appointed Henri

⁴³⁶ <https://teara.govt.nz/en/biographies/5n16/northcroft-erima-harvey> (retrieved 14/02/2021)

⁴³⁷ <https://universitystory.gla.ac.uk/ww1-biography/?id=4523> (retrieved 14/02/2021)

⁴³⁸ Cheng *‘A History of War Crimes Trials in Post 1945 Asia-Pacific’* (Shanghai: 2019) at page 308

Reimburger, who resigned five days into his new role, citing personal reasons.⁴³⁹ The French were swift in bringing in a replacement, Henri Bernard. Once again from a military background, Bernard had served at the Somme and Ardennes offensives in the First World War. He had served as Chief Prosecutor in France after the Second World War and prosecuted both Nazi war criminals and collaborators. Bernard had, at least on a domestic level, some experience of trying alleged war criminals.

From the Netherlands, the youngest member of the Bench would be appointed. Bert Roling was a Professor of Law at Utrecht University, having varied interests outside of law and the Trial itself. A keen student of Buddhism and a well-respected mountain climber, he took the time to scale Mount Fuji whilst the Trial was ongoing.⁴⁴⁰ Whilst he had little or no experience of international law, his subsequent dissenting Judgment would provide balance and fair critique of the proceedings.

The most controversial appointment would come from India. Rabhabinod Pal was a Judge of the Calcutta High Court. India had played a key role in supporting the British Commonwealth Occupational Force, repelling attacks from Japan. Given that France had limited involvement in the Pacific conflict, it was rightly seen as being fair to include India in the represented nations of the Bench. Pal was also arguably the only elected Justice to have any real sound understanding of international law.⁴⁴¹ His dissenting judgment would prove to be most controversial of all.

Before the Justices from India, the Philippines and Soviet Union had arrived in Tokyo, there had been agreement amongst the remaining eight Justices that there would only be the publication of one Judgment with no dissenting Judgments. Whilst the Justices

⁴³⁹ Fleury *'Hirohito: Guilty or Innocent'* (Xlibris: 2019) at Chapter 2(a): The Composition of the Court: Judges

⁴⁴⁰ Bergsmo, Wui Ling and Yi Ping *'Historical Origins of International Criminal Law: Volume 2'* (Torkel: 2014) at page 184

⁴⁴¹ Alexander *'International Law in India'* (the international and Comparative Law Quarterly: July 1952) at 289 – 300.

of the Soviet Union and the Philippines agreed with this suggestion, the Indian Justice Pal did not agree to be bound either by the majority judgment or the inability to publish a dissenting Judgment. Although the only Justice who then wanted separate Judgements, Pal would not be the only Justice ultimately to file a dissenting Judgment at the conclusion of the Trial.⁴⁴² There is clear evidence of disharmony on the Bench in the very first days of the panel having convened. Pal would prove to file the strongest dissenting Judgment, containing a damning indictment not only on the state of international law, but also concerns over the procedure and jurisdiction of the very Trial he had helped to oversee.

Regardless of the independence of the Judiciary, always of paramount importance in any criminal case, the Justices would be handicapped by the censored evidence and pre-determined witnesses and Defendants put before them. It is not a criticism of the Justices that they failed to unearth the atrocities committed by Unit 731 when the gatekeeper of the Trial, the United States, were censoring anything that impacted upon either the immunity deal or their own war-time conduct. Following the appointment of the Justices, other issues with the Trial were already beginning to emerge.

The Indictment

The indicted Defendants were charged with a variety of offences. The indictment, perhaps surprisingly, did not target those individuals responsible for crimes against humanity; the focus was on aggression and war crimes per se.⁴⁴³ As a result, the indictment did not address those responsible for the commission of atrocities against civilians that fell

⁴⁴² Ushimura 'Pal's "Dissenting Judgment" Reconsidered: Some Notes on Postwar Japan's Responses to the Opinion' (Japan Review: 2007) 19: at pages 215 – 224.

⁴⁴³ Tanaka 'Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited' (Koninklijke Brill: 2010) at page 2.

outside the definition of war crimes in the traditional sense. This, therefore, obviated the possibility of individual or collective criminal liability, or responsibility for the sexual enslavement of ‘comfort women’ and, very importantly, the genocide committed by Unit 731 in Manchuria in the name of scientific research.

Whilst there has rightly been criticism of the Khabarovsk Trial for appearing to be pre-determined, it is quite clear that the prosecution, led by the United States, was being highly selective on the issues that they wished the Justices to consider when the Trial convened. Drawn up predominantly by the British Associate Counsel, the indictment described the Japanese Government as having been rife with “*criminal, militaristic clique*” dating as far back as 1st January 1928. All defendants pleaded not guilty to the charges that they were accused of,⁴⁴⁴ except for Okawa, who had been dismissed by the Tribunal as he was considered not fit to face trial on psychiatric grounds.⁴⁴⁵

The indictment departed from the precedent set out at Nuremberg by laying out separate counts specifically detailing the allegation of aggressive war. In total, there were 55 specific counts to the indictment that the Prosecution could level at the Defendants. A full list of the 55 different charges is detailed in Appendix II of this thesis. Unsurprisingly, many of the 55 counts were discredited by the Tribunal as being groundless or repetitive of earlier charges. The Tribunal would only convict the Defendants on Counts 1, 27, 29, 31, 32, 33, 35, 36, 54 and 55. The Prosecution had only managed to convince the Justices that 10 of the 55 charges had any merit.

⁴⁴⁴ Comyns-Carr ‘*The Tokyo War Crimes Trial*’ (Far Eastern Survey, Vol. 18, No.10 (May 18, 1949) at pages 109 – 114.

⁴⁴⁵ <https://www.japantimes.co.jp/culture/2014/04/12/books/book-reviews/the-curious-tale-of-the-man-who-slapped-tojo/> (retrieved 14/02/2021)

The prosecution had established the three different categories of war crimes against which they would prosecute the Defendants. The “Class A” charges were reserved for Japan’s elite, those who were seen to have committed crimes against peace. The remaining “Class B” and “Class C” charges could be directed at any Defendant, regardless of stature or involvement. The indictment alleged that the Defendants had:

“contemplated and carried out... murdering, maiming and ill-treatment prisoners of war (and) civilian internees... forcing them to labour under inhumane conditions... plundering public and private property, wantonly destroying cities, towns and villages beyond any justification of military necessity; (perpetrating) mass murder, rape, pillage, brigandage, torture and other barbaric cruelties upon the helpless civilian population of the over-run countries.”

This thesis will focus solely upon the ten successful charges brought. In summary, Count 1 detailed that the Defendants had *“as leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy to wage wars of aggression, and wars of wars in violation of international law”* between 1st January 1928 and 2nd September 1945. Counts 27 to 36 charged the defendants with waging aggressive war against specific nations (Count 27 for China, 29 for the United States, 31 for the British Commonwealth, 32 for the Netherlands and Dutch East Indies, 33 for France and French Indochina and finally 35-36 in respect of the USSR). Count 54 charged the conspiracy to authorise and permit inhumane treatment of prisoners of war and others. Count 55 charged the Defendants with having *“deliberately and recklessly disregarded their duty to take adequate steps to prevent atrocities.”*

The failure of the indictment to do more than regurgitate the main provisions of the Charter suggested a weakness in the definition of the crimes themselves, compounded by the failure of the Prosecution to provide more clarification of the individual's personal

contribution to the alleged crimes, other than merely by inference. The Prosecution had also only belatedly provided a translation of the Indictment into Japanese, with concerns raised that the translation provided was of poor quality,⁴⁴⁶ despite Article 9(a) of the Charter requiring a delivery of the translation to be done promptly.⁴⁴⁷

Although the Prosecution only had the Tokyo Charter and the earlier Nuremberg Charter for reference, it is arguable that the Indictment was poorly drafted with the omission of key individuals - specifically for the purposes of this thesis, Hirohito and Ishii - duplication of charges and the failure to charge persons whom they felt had not been involved in the commissioning of war crimes.

Before the Trial had even convened, there is clear evidence to show fundamental and biased flaws with the drafting of the Charter, selection of the Justices and Defendants, and failure to pursue prosecution of 'crimes against humanity', though this category of offence was listed in the Charter. It is telling that crimes against humanity were mentioned only once in the Indictment, and very briefly in the majority Judgment. The Trial was now in a position whereby the Justices could only make a ruling on the evidence before them, having been completely whitewashed by the United States. The Bench could deal only with the issues that the United States wanted to make public; there would be no reference to the Allies' wartime conduct, including the dropping of atomic bombs, nor deadly Allied bombing campaigns; neither would mass-murder and rape committed by the Soviets be included. There would also be no blame apportioned to Hirohito, nor Ishii's name or deadly Unit referred to.

⁴⁴⁶ <https://imtfe.law.virginia.edu/subject-8> (retrieved 14/02/2021)

⁴⁴⁷ Boister & Cryer *Documents on the Tokyo International Military Tribunal: Charter, Indictment and Judgments* (Oxford: 2008) at page 73.

Next, it is important to scrutinise the defendants who faced trial and consider which of them, if any, were comparable to Ishii and Hirohito.

The Defendants

As seen, the Indictments against the Defendants were divided into three distinct categories of war crimes. “Class A” crimes were solely for those involved in the joint conspiracy to start and wage war. This classification was intended to be used against those at the top of the Japanese hierarchy. “Class B” crimes were for those who had committed conventional war crimes or crimes against humanity (though the latter were not actively pursued). “Class C” crimes were intended to be a catch-all category for those who were involved in the planning, ordering, authorisation, or even a failure to prevent, such criminal acts.

From these categories, the individuals to be indicted were done so unanimously. Where a unanimous decision could not be reached, a referral was made to judicial officers to consider the documents submitted. Following compilation of a list of suspects, the final selection was passed to Chief Prosecutor Keenan and a number of other prosecutors representing the Allied Powers, with the final decision to be made on a majority basis. In the case of a tie, Keenan had the determining vote. Naturally, on this basis, voting was always made in favour of the United States’ preferred defendants, given that they had a Justice on the panel who could veto any nomination (a Justice who had been one of the choices suggested by Keenan).⁴⁴⁸ Finally, the decisions then needed to be approved by General MacArthur and, following his approval, the final list of indictments could be publicised.

⁴⁴⁸ Brackman *The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials* (Morrow & Co: 1987) at page 63.

The Prosecution began by considering the issue of Japanese aggression, which could be traced back to the invasion of Manchuria (but, as has been discussed in the very first part of this thesis, the Japanese waged an aggressive campaign at the turn of the 20th Century). Many of the indictments relied on the evidence of Japanese prisoners, as a result of Allied questioning, given that the Japanese had successfully destroyed many official documents and papers prior to the invasion and occupation.⁴⁴⁹ The concept of aggression was so broad that, in principle, it allowed proceedings to be brought against any person in office who was involved in the preparation or waging of aggressive war.

On 11th September 1945, General Douglas MacArthur ordered the arrest of 39 Defendants, predominantly those suspected of “Class A” war crimes carried out whilst in office.⁴⁵⁰ As many as 50 potential Defendants were later released without the selection criteria being made public. The process could have been completely arbitrary, or it could have been elaborate and precise; no specific evidence is available on this point. One of those released was Ishii, who was to be granted immunity in response to his disclosure of his research data. On 10th April 1946, Keenan submitted his final list of suspected war criminals. Subsequently, two further suspects were added to the list on 13th April 1946, following the late arrival of the Soviet prosecutors. In total, more than 5,700 people faced prosecution by the Allies in separate trials, convened not only by the United States, but also Australia, Holland, France, the Philippines and Great Britain.⁴⁵¹

China alone held 13 Tribunals, with over 500 convictions and 149 executions as a result. These prosecutions typically involved ill-treatment of prisoners of war, rape, slavery, execution and, importantly, inhumane medical treatment and experiments. They

⁴⁴⁹ Boister & Cryer *Documents on the Tokyo International Military Tribunal: Charter, Indictment and Judgments* (Oxford: 2008) at pages 51-52.

⁴⁵⁰ <https://www.nytimes.com/1945/09/12/archives/roster-of-40-ordered-arrested-as-war-criminals-by-macarthur.html> (retrieved 14/02/2021)

⁴⁵¹ Dower *Embracing Defeat: Japan in the Wake of World War II* (Norton: 1999) at page 447

did not have access to the members of Unit 731 who had ravaged Manchuria during their reign of terror.

Of the other 80 “Class A” criminal suspects that had been detained at Sugamo prison after Japan’s surrender, some 28 men were shortlisted to go before the Trial. The accused comprised four former Premiers, three former foreign ministers, four former war ministers, six former Generals, two former ambassadors, three former economic and financial leaders, one imperial advisor, one radical theorist, one Admiral and one Colonel. There was no individual linked to the Japanese medical profession pursued at the Tokyo Trial, nor was there the equivalent of the Nuremberg Doctors’ Trial.

The 28 Defendants approved to face the above Judges, predominately those who were alleged to be responsible for “Class A” crimes, were made public on 29th April 1946. The full list of all Defendants is in ‘Appendix III’, together with a summary of the charges that they faced and those of which they were subsequently convicted. This thesis does not intend to detail the list of Defendants within the body of text, save for the subsequent consideration of Defendants similar to those of Ishii and Emperor Hirohito in Part Five.

The selection of the Defendants was meant to be representative of the various involvement from the different limbs of the Japanese state.⁴⁵² The initial Trial was never intended to involve all who could be pursued. Rather, these would be “mopped up” by the subsequent Trials that took place after the conclusion of the grandstand Tokyo Trial. The breakdown of the accused was a near reversal of those pursued at Nuremberg. Whereas at Nuremberg there had been a higher proportion of civilians indicted, at Tokyo, of the 28 Defendants indicted, there were nine who were civilians and 19 who were from military backgrounds. This may be because of the Allied reluctance to pursue those linked

⁴⁵² Keenan and Brown ‘*Crimes Against International Law*’ (1950) at page 463.

extensively to Hirohito. Given Ishii was deemed a military man and, if justice was the main aim of these proceedings, there should arguably have been a clear desire from the Allies to have pursued him for his involvement in the Japanese biological programme, under the guise of the Kwantung Army.

All of the 28 Defendants were Japanese nationals. The Nuremberg Charter had sought to pursue all major war criminals of the European Axis countries, whereas the Tokyo Charter had sought to pursue only the major war criminals in the Far East. Several other major figures in the pre-war and wartime governments were not indicted. Some were arrested and held at Sugamo, including Ishii, but were ultimately released; the rationale or reasoning for these omissions is, again, not known. General Ishiwara Kanji was not indicted even though he was thought to be one of the young Kwantung Army officers who instigated the annexation of Manchuria. General Masaki Shinzaburo, head of the *kōdōha* in the 1930s, also escaped indictment.

The failure of the Allies to indict prominent leaders was likely the result of the political factors in play at the time. Following Japanese surrender, the United States had adopted a policy that the occupation was intended to allow them to implement their own objectives and motives, both political and militarily, during the rebuilding of Japan. This ambition could only be achieved by involving Japanese politicians who supported this goal, and with the removal of military officials who opposed the occupation, which may explain why Okawa had been prosecuted. This is reflected in the breakdown of civilian and military Defendants at the Trial.

The Tokyo Trial was simply a mechanism adopted by the Allies and, in particular, the United States, to assist with the transition from enemy to friendly government. If such a biased selection was to have been conducted by the Soviet Union at that time, there would have been little surprise. The United States were acting improperly in pursuing

certain Defendants who had little, if any, involvement in the Japanese war machine or in the atrocities alleged to have been committed. Instead, it can be argued that the United States was simply using the Tokyo Trial to incapacitate and suppress political opponents, while simultaneously allowing the United States to demilitarise Japan and change their government from foe to friend.

There was also a complete absence from the Allies of indicting members of the financial and industrial corporations who profited from, and helped to fuel, the conflict. Such persons were rightly tried at Nuremberg. A distinguishing feature was perhaps that the Japanese industrialists had not directly utilised slave labour, whereas the German industrialists had.⁴⁵³ The Prosecution was of the view that they could not indict any person from the financial and industrial corporations. This Charter required such persons to have been involved in crimes against peace, meaning that although their financial and economic involvement was vital in waging an aggressive war, they were unable to put forward a strong case that these individuals had been involved in crimes against peace.

This section would not be complete without reiterating the omission of those persons involved in the Japanese biological warfare programme, where crimes against humanity had been committed against both civilians and prisoners of war. There was no reference to these individuals during the Trial, despite the United States having had clear evidence of these atrocities having been committed. The only brief reference was made at Appendix D of the indictment, with reference made to the use of poison gas by the Japanese in China. When Justice Webb pressed the Prosecution to expand on this point, they declined to put forward any evidence in support and the matter was dropped from consideration by the Justices.⁴⁵⁴

⁴⁵³ Although the Japanese Imperial Army famously used slave labour from prisoners of war for a variety of purposes, such as the building of railways.

⁴⁵⁴ Tallgren '*Watching Tokyo Trial*' (London Review of International Law, Volume 00, Issue 0: 2017) at page 21.

There was now clear evidence that the Prosecution had entirely omitted to charge any member of Japan's biological warfare programme, despite evidence indicating their awareness of these atrocities prior to the Indictment. It also cannot be doubted that there was evidence that such attacks had required clear planning, preparation and the waging of aggressive war. The genocide that took place in China amounted to a crime against humanity. Importantly, the prosecution had also had witnesses available to them before deciding that the evidence was insufficient.

The selection of Defendants was poorly organised and difficult to justify, not least because of the omission of other potential Defendants of similar or greater culpability, including the Emperor and Ishii. The overly-politicised selection of Defendants arguably undermined legal legitimacy of the Trial before it had even convened. The immunity deals granted by the United States were an intentional obstruction of justice for the benefit of their own biological research programme, as opposed to any real desire to bring prosecutions against any and all Japanese war criminals. In addition, the Charter itself failed to provide guidance on how to select Defendants, which, in essence, gave the Prosecution, under the control of MacArthur, *carte blanche* to do as it wished.

The Trial

The Tokyo Trial finally convened on 29th April 1946, to hear the charges brought against those Defendants alleged to have been responsible for, or involved in, a variety of war crimes.⁴⁵⁵ The Trial was also important for a secondary purpose; in the wake of the Nuremberg Trials, the Tokyo Trial would also contribute to the development of criminal international law, which was then still very much in its infancy. Due to the ensuing onset

⁴⁵⁵ <https://libguides.law.uga.edu/c.php?g=177176&p=1164581> (retrieved 14/02/2021)

of the Cold War, both the Nuremberg and Tokyo Trials would stand for decades as the model and precedent for future war crime trials, albeit not truly the gold standard.

At the very outset of the Trial, the legal legitimacy of it was called into question by seven of the accused, in the U.S. Supreme Court.⁴⁵⁶ This reflected the concern that the Tokyo Trial was, in essence, a military tribunal for which the U.S. Supreme Court held jurisdiction and that, given the tribunal had not been created using Treaty or under pre-existing international law, there were no grounds for it. Unsurprisingly, the U.S. Supreme Court disagreed and provided their rationale as follows:

“We are satisfied that the tribunal sentencing these petitioners is not a tribunal of the United States. The United States and other allied countries conquered and now occupy and control Japan. General Douglas MacArthur has been selected and is acting as the Supreme Commander for the Allied Powers. The military tribunal sentencing these petitioners has been set up by General MacArthur as the agent of the Allied Powers. Under the foregoing circumstances the courts of the United States have no power or authority to review, to affirm, set aside or annul the judgments and sentences imposed on these petitioners and for this reason the motions for leave to file petitions for writs of habeas corpus are denied.”⁴⁵⁷

The Tokyo Trial proceeded unhindered. Whilst clearly there would never have been any other outcome, it is equally as important to understand that the Tokyo Trial had been set up due to the implementation of the Cairo Declaration, Potsdam Declaration, the Instrument of Surrender and the Moscow Conference. Thus, its very creation emanated

⁴⁵⁶ Glazer ‘Americans on the Defence Team in the Tokyo War Crimes Trial, 1946 – 1948: Understanding the Mentality Behind Defending the “Enemy”’ (Ezra’s Archives: 2017) at pages 76 - 89

⁴⁵⁷ Boister & Cryer ‘Documents on the Tokyo International Military Tribunal: Charter, Indictment and Judgments’ (Oxford: 2008) at pages 29-30.

from the will of all Allied powers. The US Supreme Court was thus correct in asserting that this was an international trial.

The Defence raised a number of other issues at the start of the Trial, listing a number of challenges to the legality and jurisdiction of the Tribunal itself that:

1. It was impossible for a fair and impartial trial given that only the victorious Allied nations were represented on the Bench. Whilst this is a fair argument to make, it has already been detailed that Hirohito had been given the opportunity to have such war criminals tried by domestic Japanese Courts, and had refused.
2. It was not possible for the Defendants to have a fair trial. This would, however, have been a difficult challenge to sustain given the lack of supportive evidence.
3. General MacArthur did not have sufficient power to create the International Military Tribunal on the basis his powers had only been conferred upon him by the domestic law of the United States (namely that there was no international charter or treaty to support MacArthur's actions). As discussed, this is wrong in law.
4. Disputed the inclusion of crimes against peace, war crimes and murder within the Tribunals' jurisdiction. Whilst rejected initially, this was a view ultimately accepted by Judges Bernard, Roling and Pal at Trial, who believed that the Potsdam Declaration implied that the Allies would only pursue the defendants for crimes that existed at the time of the Declaration, and not retrospectively.
5. Arguments were raised as to exactly what powers the Potsdam Declaration granted MacArthur on behalf of the Allies. Because there had been an unconditional surrender by the Japanese, international law at that time

incorporated the Potsdam Declaration, thereby granting the United States occupation of Japan from which the terms of surrender had agreed.

6. If the Tribunal was in fact based on the Potsdam Declaration and the Instrument of Surrender, it had no jurisdiction over events not included in those documents. This included various conflicts between Japan and the Soviets that had commenced well before the Second World War.
7. In the view of four Defendants who had been members of the Japanese armed forces, they were protected by Article 60 of the Geneva Convention on Prisoners of War 1929. They argued that the protecting power, Switzerland, had not been given notice of the Trial by the Allies and that the Tribunal was not compliant with Article 63 of the 1929 convention. They also argued non-compliance with several procedural points for bringing proceedings against them.
8. Diplomatic immunity had been ignored by the Allies. Oshima had previously been Ambassador to Germany and had immunity from prosecution.

All arguments put by the Defence were ultimately rejected by the Tribunal. None of the challenges to the Tribunals' jurisdiction undermines the legality of the Tribunal. The only credible argument was on the issue of the Geneva Convention, as there had been some disagreement as to whether the Convention was applicable. The failure of the Allied powers by not serving Switzerland with notice of the Trial and in failing to comply with Article 63 of the 1929 Convention was, however, unlikely to have resulted in the acquittal of any of the accused.

The most significant issue for the Tribunal was the manner in which it had dealt with the various challenges to its jurisdiction. The Tribunal had been given jurisdiction for the

*'just and prompt trial and punishment of major war criminals in the Far East'*⁴⁵⁸ and, therefore, was able to *'try and punish far eastern war criminals who as individuals or as members of organisations are charged with offences which include crimes against peace'*, crimes against humanity and war crimes.⁴⁵⁹ When its jurisdiction was challenged by those indicted, the manner in which the Tribunal determined these issues often, however, appeared overly-defensive and protective of the overriding objective of the Trial, rather than dealing with relevant issues on a strictly legal footing.

Following the failed initial applications by the Defence, the Prosecution opened its case against the Defendants on 4th June 1946 and sought to establish that, between 1928 and 1945, the Defendants had participated in a concerted effort, a common plan, to dominate and control the Pacific region under the misapprehension that the Japanese were a superior race.⁴⁶⁰ This was certainly a system utilised by Ishii and his men, referring to their victims as *'maruta'*.⁴⁶¹ The Prosecution also sought to assert that the chief conspirators of this common plan had effectively nullified the Emperor and had instead seized control of the Japanese government, infiltrating key posts within their political structure. This common plan was said to have been achieved through the waging of aggressive war against Japan's opponents, or rather the nations Japan sought as key targets to cement its position within the Pacific region.

The Prosecution also made repeated reference to the Manchurian crisis in September 1931 as the first evidence of a concerted effort, a common plan, to adopt an aggressive policy of foreign expansion by political and military deceit. By 1936, the Prosecution's

⁴⁵⁸ Article 1 of the Tokyo Charter

⁴⁵⁹ *Ibid*, Article 5

⁴⁶⁰ <http://imtfe.law.virginia.edu/collections/morgan/3/4/prosecution-opening-statement> (retrieved 14/02/2021)

⁴⁶¹ *'Maruta'* in English translating to *'logs'*, a joke by Ishii and his men who saw their victims as nothing more than timber.

case was that these conspirators had become so ingrained within Japanese politics that the nation, as a whole, had adopted their common plan, thereafter rapidly expanding their military capability and preparing the nation for foreign expansion by force, with particular focus not just on China, Mongolia and Thailand, but also all prosecuting nations.⁴⁶² The Prosecution had hoped that it would paint a broad picture of Japan's conduct between 1928 and 1945, without becoming immersed in individual incidents.

Instead, the Prosecution intended on breaking down this period of time into separate phases. The aim of the first phase was to establish the framework of Japanese policymaking, where the Defendants fitted into that framework, and the responsibilities that those persons had in actioning this common plan. Once each Defendant's role had been established, the Prosecution hoped that this would assist the Tribunal in finding that each Defendant had played a role in the atrocities committed. This posed difficulty for the Prosecution, who attempted to suggest that rogue individuals, the Defendants, had hijacked Japanese politics in order to implement this common plan. The Japanese political framework was, in nature, similar to that of various European nations, including Great Britain. At its Head, it had a constitutional monarch, the Emperor. In turn, this monarch, Hirohito, governed via the Diet.

On the one hand, the Prosecution were attempting to apportion blame upon members of the Diet and Japan's military, while intentionally avoiding the role, responsibility and, importantly, the power and influence that Hirohito had over the Cabinet and Diet. The Prosecution were attempting to frame the Emperor's role as being similar to of the Monarchy of Great Britain today: Parliament propose laws and policies, which in turn are approved by the Head of State. This was, however, incompatible with the Charter. The

⁴⁶² Dower *War Without Mercy: Race and Power in the Pacific War* (Pantheon: 1987) at page 22

prosecution sought to attach blame to those who had held, in their view, key roles within Japan between 1928 and 1945, and had been either active or passive in the common goal. At best, the Emperor played a passive role in the acts committed by Japan over a 17-year period, and at worst actively engaged in and encouraged their commission.

The second phase of the Prosecution addressed how the Defendants had attained their respective roles, and the control that the Prosecution averred each individual had, and exerted, upon the Diet and military. This second phase apportioned no blame at the door of the Japanese people. Perhaps this was a political or strategic decision: if the Trial was intended to “draw a line in the sand”, and the United States and Japan hoped to have a positive future relationship, little good would come from continuing to demonise the Japanese people.

The second phase of the Prosecution’s case was incredibly time consuming. In the 17-year period in which the Prosecution held that the Defendants had committed war crimes, or conspired in a common plan, there had been 15 Cabinets. In truth, the one constant during this period was the Emperor, who had avoided culpability. For the Allied Prosecution to argue that he had not been politicised was, at best, disingenuous. To deal with this point, the Prosecution would have to show that, despite the wholesale changes that took place, the common plan and its conspirators remained and exerted influence over the Emperor.

The purported indoctrination of the Japanese people was a key argument raised by the Prosecution, who argued that, just as the Nazis had systematically used propaganda to infiltrate all aspects of normal life, so had the Japanese Defendants. From the education that they received to the newspapers they read, the radio they listened to and the films that they watched, the Prosecution submitted that censorship and propaganda had

manipulated the people into believing that not only were the Japanese people superior, but that the actions of their government were justified. The Defence vehemently opposed this assertion.⁴⁶³

Compared to the two prior phases, the third phase was relatively straightforward. It dealt with the specific issue of Japanese aggression in Manchuria, the subsequent occupation and installation of a puppet government, and the exploitation of the Chinese population for the benefit of Japan. In terms of evidence, the third phase was also not too burdensome on the Prosecution to prove. For example, the Prosecution had collated an abundance of witness evidence, in addition to that obtained by the Lytton Commission in October 1932.⁴⁶⁴

The fourth phase artificially split the puppet state of Manchuria from the rest of China, dealing with the atrocities committed by Japan in China as a whole. The evidence in support came from those prosecuting nations that had direct involvement in China, to include the testimony of Chinese, British and American witnesses, as well as documents obtained from the Defendants.

The fifth phase of the Prosecution's case addressed Japan's involvement in the trafficking of drugs in China to fund its aggressive wars, contrary to established international law; this being that Japan was a participating party in the International Drugs convention, which prevented the production and use of narcotics. Such activities were almost exclusively conducted in Manchuria.

The sixth phase alleged the systematic exploitation of China's resources for the economic benefit of Japan as a result of its illegal occupation of Chinese territory, in much

⁴⁶³ Kobori *'The Tokyo Trials: The Unheard Defense'* (Kodansha: 1995) At pages 131-132

⁴⁶⁴ Kuhn *'The Lytton Report on the Manchurian Crisis'* (American Journal of International Law 27.1 (1933) at pages 96 – 100.

the same way that Nazi-Germany had systematically raped and pillaged both natural resources and the population of occupied nations across Europe. Unit 731 could be said to have extensively “raped and pillaged” Manchuria through exploitation of land, resources and civilians. This would, however, never form a part of the Prosecution’s submissions.

The seventh phase of the Prosecution’s case dealt with the international planning and preparation by the Japanese in readiness for the waging of an aggressive war through the forging of alliances with nations such as Italy and Nazi-Germany. Japan had adopted a clear foreign policy, albeit making the same fatal mistake as their allies, Nazi-Germany, by needlessly fighting a war on two fronts. Initially, Japan had rightly seen the Soviet Union as an immediate threat to them before entering the war against the Allied nations following the bombing of Pearl Harbor in December 1941. Only a month earlier, in November 1941, Japan had finalised the Tripartite Pact with Nazi-Germany and Italy, giving undertakings to Japan of aid should they enter the fight against the Allied powers.⁴⁶⁵ By January 1942, the Axis nations had further agreed their respective regions to occupy, as well as mutual peace assurances.

The eighth phase of the Prosecution’s submission detailed the preparation and mobilisation of Japan’s military forces above and beyond the level necessary for self-defence. In their view, the rapid increase in Japan’s military capabilities was a clear indicator of Japan’s intention to wage aggressive and illegal war, without legitimate reason. Again, this limb proved fairly straightforward for the Prosecution, who provided documented evidence that Japan’s War Ministry had approved, in 1937, a five-year strategy for what they considered “Important Industries”, that being the state-endorsed

⁴⁶⁵ Cooke *History of World War II: Volume 1 – Origins and Outbreak* (Cavendish: 2005) at page 154.

support for key industries required to sustain a prolonged war-effort.⁴⁶⁶ The increase of Japan's armed forces also proved ample evidence, with Japan having increased Naval personnel three-fold between 1936 and 1941, and army personnel increasing in size over eight times from a quarter of a million men to 2.1 million men, to cope with the increasing number of nations subject to their occupation.

Following on from the Prosecution having established a common plan, alliances having been established with Nazi-Germany and Italy for a shared goal of mutual domination, and the clear increase in military capability above and beyond that expected for reasonable self-defence, phase nine sought to establish that it was a fundamental desire of Japan to incapacitate Soviet Russia. In turn, phase ten dealt with aggression against France, phase eleven against the United States, Great Britain and Commonwealth, and phase twelve against the Netherlands.

The penultimate, and one of the most difficult for the Prosecution to prove, was phase thirteen. In the earlier phases, they could refer to evidence to support linking individual defendants to atrocities conducted by Japan's armed forces. Now, however, this phase sought to aver that the Defendants should be liable for the acts or omissions of military personnel in violation of international law or the established customs of war. The Defendants could logically only be found guilty on this limb if the Prosecution were able to establish that a Defendant had direct knowledge of the atrocities committed against civilians and prisoners of war, and either ordered such atrocities or an omission led to these acts being committed or, alternatively, having had knowledge of such acts, allowed such atrocities to continue to be committed without recourse.

⁴⁶⁶ Cohen 'The Japanese War Economy: 1940 – 1945' Far Eastern Survey Vol. 15 No. 24: December 1946, at pages 361 – 370.

In terms of international laws in place at the time the atrocities were committed, the Defendants were bound by the agreement of Japan to The Hague Convention of 1907, the Red Cross Convention 1929, and application of the Geneva Prisoner of War Convention 1929 *mutatis mutandis*, that being agreement to the key provisions of the Convention. The final phase, fourteen, largely reaffirmed the allegations made by the Prosecution in phase thirteen, but allowed for further disclosable evidence in relation to specific acts linked to Defendants, as opposed to a generic failure to act.

The Prosecution closed their submissions on 24th January 1947,⁴⁶⁷ after which the Defence filed motions on behalf of all Defendants alleging that the Prosecution had failed to prove any of the charges set out in the Indictment. After deliberation, the Justices denied all motions put forward on behalf of the Defendants on 3rd February 1947. Following this failed attempt to end the Trial at an early juncture, the Defence opened their submissions on 24th February 1947 with a blanket denial of any common plan or conspiracy on the part of the Japanese Defendants to further Japan's ambitions by committing crimes against peace. If this was not accepted, the Defence further submitted that the acts and omissions committed by the Defendants and Japan was as a result of self-defence in the face of provocation by other nations. As the Prosecution had done, the Defence broke down its submissions into distinctly separate phases.⁴⁶⁸

In phase one, the Defence directly replied to the Prosecution's explanation of Japan's political framework, accepting this description of events with small disputes as to inferences made by the Prosecution during their own submissions. The second phase of the Defence's submissions turned the tables on the Allied nations, by citing the various

⁴⁶⁷ Picart 'Attempting to Go Beyond Forgetting: the Legacy of the Tokyo IMT and Crimes of Violence Against Women' *University of Pennsylvania East Asia Law Review* [Volume 7] 2011 at page 9

⁴⁶⁸ Tanaka '*Beyond Victor's Justice? The Tokyo War Crimes Trail Revisited*' (Leiden: 2010) at pages 7 - 15

acts and omissions committed by them during the same period 1928 to 1945 under existing international law, and the retrospective standards that the Prosecution now sought to apply. Unsurprisingly, the Tribunal rejected this assertion, save for Pal in dissent, on the basis that these issues were not before them and therefore fell outside the scope of their jurisdiction. Whilst that approach is correct, the Tribunal appear to have conveniently ignored the points being raised by the Defence; that being the complete failure of the Allied powers to apply these standards equally, as opposed to solely the losing nations.

The third phase of the Defence averred that there had been no conspiracy perpetrated by the Defendants, highlighting the 15 changes of Cabinet in the 17 years between 1928 and 1945, on which the Prosecution had focused. The Defence were also able to show that the Defendants had, at times, disagreed on key issues and policies and, therefore, this was incompatible with the conspiracy alleged by the Prosecution. In truth, the Japanese political landscape had been one of disharmony during the war years.

The economic activities of Japan were addressed in phase four of the Defence submissions, who accepted the statistics provided by the Prosecution in respect of the growth of industries and military personnel. It was argued by the Defence that Japan had no desire for war in the Pacific until a few short months prior to the attack on Pearl Harbor in December 1941. As for the five-year strategy adopted in 1937, the Defence averred that this was agreed in peacetime and that the subsequent occupation in Manchuria rendered the five-year strategy null and void.

Whilst the alleged Japanese desire for peace in the Pacific may be more than questionable, the fact that they had planned for the waging of aggressive war in 1937 somewhat contradicts the Defence stance on this point, and coincides with the ramping

up of experiments being conducted by Ishii and his men in Manchuria. The Defence also disputed the allegation that the Defendants had ingrained, in the Japanese people, the need for an aggressive expansion policy through propaganda and education. Importantly for this thesis, the Defence had reiterated that, in respect of their activities in China, Japan had acted in self-defence from 1937 as a result of a combination of Communists in Northern China and that the atrocities, as alleged, were either singular events - as opposed to a prolonged campaign resulting in crimes against peace - or had been exaggerated by the Prosecution.

In any event, the Defence argued that Manchuria had its own government, independent from Japan, and in no way did this amount to a puppet state. The extent of Japan's occupation of Manchuria renders this argument as fundamentally flawed; it exercised absolute control over the region and, as we know, ruled with impunity.

All the Defendants were in agreement that the acts committed by Japan amounted to self-defence and were therefore justified as a result of their belief that Japan's independence was under threat from the Communists in China, the Soviet Union and the Allied nations. The Defendants also refused to accept that they had any intent that could amount to criminality; in the first instance, the Defence argued that they could not have known any acts they committed were illegal as they had not been in violation of any current international law. This argument has some cogency, given that aspects of both Nuremberg and Tokyo were open to charges of retrospectivity. Such was the belief in this Defence that Tojo founded his entire case upon the concept of self-defence and the lack of criminal intent on his part. The remaining Defendants did not adopt the same strategy and, instead, sought to downplay their own role, within the framework established by the Prosecution.

The Defence closed its submissions on 12th January 1948. Evidence in rebuttal and mitigation was then duly provided. The Justices now had to consider the extensive evidence and hand down Judgment.

PART FIVE

JUDGMENT & CRITIQUE

Beginning on 29th April 1946, the Tokyo Trial took approximately two and a half years to complete. Judgment was pronounced on 4th November 1948. The path to the Judgment had not been smooth; nor was it unanimous, despite having had the benefit of Nuremberg as a precedent to follow. In contrast, the Justices at Nuremberg handed down their unanimous Judgment within twelve months of commencement of proceedings: justice had been disposed of promptly at Nuremberg, but had lingered at Tokyo. The Soviet response to Japanese war criminals, the Khabarovsk Trial, was somewhat swifter. Whereas the Justices at Tokyo took two and a half years to conclude the Allied response, the Soviet Trial was concluded in just five days.⁴⁶⁹ This is a comment, rather than a criticism, because while members of Unit 731 were tried at Khabarovsk, the legal framework upon which it was based was not comparable to either Tokyo or Nuremberg. What can be extrapolated, however, is that in using a similar framework, the Justices at Nuremberg managed to conclude proceedings far more expeditiously than their counterparts at Tokyo.

So, what had been the reason for such delay? At its conclusion, the Justices at Tokyo had considered over four hundred statements from witnesses, and over ten times that figure in various other documents.⁴⁷⁰ Of all the criticisms that had been levelled at

⁴⁶⁹ Harris *'Factories of Death: Japanese Biological Warfare, 1932 – 1945, and the American Cover-up'* (Routledge: 2002) at 318.

⁴⁷⁰ Cho *'The Tokyo War Crimes Trial'* *The Quarterly Journal of the Library of Congress* Vol. 24, No.4 (October 1967) at pages 309 – 318.

the Tokyo Trial, it could not be said that the Justices had failed to consider the extensive evidence put before them. Whether or not the process and ultimate conclusions were fair and valid are, however, separate issues entirely, which will be addressed by this thesis in due course.

It had become clear, at the half-way point of proceedings, that a unanimous majority Judgment would not be possible. The first Justice to notify the Bench of his decision to file a dissenting Judgment was the French appointee, Bernard, in January 1947. In turn, both Roling of the Netherlands and Pal of India indicated their intention to file dissenting Judgments, all of which were not read out at the Tokyo Trial. 1947 proved to be a disastrous year for the Bench. Not only had it been clear that a majority Judgment would not be possible, but there was disharmony amongst the ranks caused by the way in which the Australian Justice, Webb, as President of the Bench, had returned home to Australia to sit on a High Court matter.⁴⁷¹ In his absence, Patrick, Northcroft and MacDougall began to draft the majority Judgment.⁴⁷² Justice would be administered, even if the President of the Bench had gone missing in action. Webb was ultimately forced to accept the majority Judgment, drafted in his absence. He also had the responsibility of reading it out on 4th November 1948.

The three dissenting Judgments provided varying degrees of scepticism. Bernard provided a dissenting Judgment on what could be considered as ‘novel’ points that did not really get to the very heart of the issues at hand.⁴⁷³ Roling provided a separate Judgment in which he agreed and dissented, in almost equal measures, with the Majority

⁴⁷¹ Cohen & Totani *The Tokyo War Crimes Tribunal: Law, History and Jurisprudence* (Cambridge University Press: 2018) at pages 391 – 430.

⁴⁷² Wakeling *Stern Justice: The Forgotten Story of Australia, Japan and the Pacific War Crimes Trials* (Penguin: 2018) at page 167.

⁴⁷³ *The Tokyo Major War Crimes Trial: The Records of the International Military Tribunal for the Far East, with an Authoritative Commentary and Comprehensive Guide* (2002) Vol 105, Dissenting opinion of Bernard.

Judgment and was arguably, because of this approach, the most balanced Justice on the bench. Roling, notably, did not blindly accept the evidence put forward by the Prosecution or Defence, nor did he always agree with the interpretation advanced by other Justices far more senior than he was at that time. For example, Roling did not accept the verdict and sentences against eight of the Defendants, believing that some had been too excessive and, conversely, that others had not been punished adequately. Pal provided his own comprehensive dissenting Judgment, in which he provided unwavering dissent on all issues contained within the Majority Judgment.⁴⁷⁴

By the end of various Trials against the Japanese war criminals that followed, there had been some 5,700 Japanese tried for conventional War Crimes, and some 920 of these were charged and executed before domestic or national courts.⁴⁷⁵ As had been the case at Nuremberg, the Tokyo Trial took centre stage with the major war criminals of Japan being prosecuted by the Americans. But for the Nuremberg Trial, Tokyo would have been unprecedented and, arguably, the scrutiny upon it far greater than the passing interest the international media showed it.

The failings of Tokyo were clear and obvious: chiefly borne out of a failure to produce a united decision. As this thesis has already detailed, the United States had intentionally and significantly hampered the ability of the prosecution due to the immunity deals they had granted. In turn, the Justices were only able to preside over the evidence put before them and, therefore, the extent of their power was limited. This thesis has already set out the various counts within the indictment and, having detailed the charges that could feasibly have been brought against Hirohito, Ishii and other research

⁴⁷⁴ *The Tokyo Major War Crimes Trial: The Records of the International Military Tribunal for the Far East, with an Authoritative Commentary and Comprehensive Guide* (2002) Vol 109, Dissenting Opinion of Justice Roling.

⁴⁷⁵ Minear 'Victor's Justice: The Tokyo War Crimes Trial' (University of Michigan: 2001) at page 6.

staff for their involvement in Unit 731, Part Five of this thesis will document the Majority Judgment, Dissenting Judgments and sentences handed down by the Justices at Tokyo. Once these are each explained, this final part of the thesis will then be in a position to apply the legal framework, as used by the Justices at Tokyo, to key persons involved with Unit 731 and Emperor Hirohito (though only in relation to his purported involvement in Japan's biological warfare programme). Only then will this thesis be able to detail the true extent of the Allied failure to bring justice to the victims of Unit 731 for the inhumane and barbaric experiments in which the Unit had engaged in.

The purpose of this thesis is to document the Judgment, and later apply that same legal framework to the theoretical situation had key members of Unit 731 been prosecuted. This thesis is not intended to provide an extensive commentary on the dissenting Judgments on the basis that the criteria applied that ultimately led to the prosecution of Japanese war criminals was applied from the Majority and not the dissenting arguments. It is understandable why, with such a smorgasbord of issues, a united Judgment was not possible at Tokyo. On that basis, this thesis will now provide an overview of the Majority Judgment, and, importantly, their findings of fact and rationale in support.

The Majority Judgment

The Trial reconvened on 4th November 1948. The Justices had spent over six months considering the extensive evidence put before them, and deliberating over the finer details of their Judgments. This considerable delay yet again reflects the complexity of the issues, as well as the unnecessary delay caused by the Justices effectively “coming and going” as they pleased, particularly Webb. The fact that a unanimous Judgment was also not

reached further highlights the lack of unity amongst the Justices, who, even amongst those of the Majority Judgment, struggled to agree on every issue before them.

The Trial sat for 417 days and conducted 818 sessions, hearing oral testimony from 419 witnesses and considering the written evidence of a further 779 witnesses. The transcript stretched over 48,000 pages.⁴⁷⁶ The Judgment was no less extensive, spanning 1,200 pages with some 300 appendices in support of their rationale.⁴⁷⁷ There had been a desire for the Judgment, as had been the case at Nuremberg, to chart events leading up to and including the war crimes committed, much like this thesis has attempted to do. The historical overview provided by the majority Judgment was a whitewash in favour of the Allied nations, in the aim of not only embarrassing the losing nation, but also acting as a reminder to the world. There was no mention of the potential war crimes that the Allied nations had committed, nor mention as to how other nations had effectively forced Japan back in to isolationism in the 1920s.

When the Majority Judgment was handed down, no individual defendant was convicted on all counts, and no defendant was found innocent on all counts; each defendant would ultimately face sentencing. Eleven defendants were sentenced to death by hanging, sixteen defendants received life imprisonment, two had died during the trial with one deemed to lack the sufficient capacity to be tried.⁴⁷⁸ Most of the Judgment had been dedicated to the Justice's findings on issues of fact, divided into five distinctly separate parts. The first part addressed the issue of Japan's military and their preparation and planning for war. The second, third and fourth parts of the Judgment dealt with specific issues of Japanese aggression within the Pacific theatre. Specific allegations as

⁴⁷⁶ Takatori 'The Forgotten Judge at the Tokyo War Crimes Trial' Massachusetts Historical Review, Vol. 10 (2008) at page 117.

⁴⁷⁷ Horowitz 'The Tokyo Trial (International Conciliation)' (Carnegie: 1950) at page 541

⁴⁷⁸ The full sentences have been listed at Appendix III of this thesis.

to atrocities committed by Japanese troops were addressed in the fifth part. These elements formed a key part of the Judgment.

The evidence adduced from the Allies' earlier investigations had been, or, at least in the public view of the United States, largely circumstantial and by no means clear-cut. With the exceptions of Pal, Bernard and Roling, the Justices appeared more than happy to accept the evidence advanced by the Prosecution as fact at face value, in addition to the theories submitted as to the Japanese rationale for their acts and omissions.^{479 480} There appeared to be no appetite amongst the Justices to delve deeper into the prosecution case when questions arose. The truth was, in fact, much less clear-cut.

By implication, the Justices did not accept much of the evidence submitted by the Defence, which was not surprising given their blanket refusal of the variety of preliminary issues raised by the Defendants, not only as to procedural points, but also regarding the issue of jurisdiction, or lack thereof, to pursue the Japanese defendants for crimes that did not appear to exist at the time they were committed. The Majority Judgment did not make any reference to the initial Defence's argument that a fair trial was not possible on the basis that the Justices were all drawn from nations of the victorious Allies. This approach was arguably the easiest and simplest way of disposing of the Trial for the Justices; whether it was the most just approach remains hotly debated to this very day.

It was also unpalatable for any of the Justices to be seen to side with the Defence (save for Pal), that being the "*enemy*", and certainly even less desirable to allow the Defendants to walk-away as free men, even if from a legal perspective no crimes had been committed. As this thesis has already detailed, several of the Justices had seen first-

⁴⁷⁹ Minear 'Victor's Justice' (Princeton: 1971) at pages 122-123.

⁴⁸⁰ Brackman '*The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials*' (Morrow & Co: 1987) at page 60.

hand the brutality of the Japanese, to include the President of the Bench. Those who had experienced the brutality of the Japanese would ultimately seek the harshest of punishment.

The world had been repeatedly told by the Prosecution about the heinous crimes committed by the Japanese defendants. Such was the feeling of animosity that there had been a potential walk-out by Northcroft, Patrick and MacDougall in March 1947, when there was a real prospect that the Defendants would avoid conviction.⁴⁸¹ A year and a half before the Judgment, it appeared several of the Justices had already made their minds up. Whatever the difficulties the Justices had faced, they had now drafted a Majority Judgment that had been approved and handed down by Webb.

This thesis will only detail the Counts that were ultimately proven against the Defendants. From the 55 counts advanced, only 10 were accepted by the Justices. As to Count 1 of the indictment, they found that all but two of the Defendants, Matsui and Shigemitsu, had been guilty of waging an “aggressive” war against the United States of America, China, the British Commonwealth, the Netherlands, the Soviet Union and the Mongolian People’s Republic. This was not surprising given that nearly all of the Defendant’s had held high-ranking positions in either Japanese politics or her military.

The acid test came when considering whether such aggression was warranted (i.e. whether it was truly perceived self-defence as the Defendant’s had advanced), and then whether any such aggression was reasonable and proportionate in the circumstances. The argument raised by the Defence, that they were acting in self-defence, was largely dismissed by the Justices and, given the acts that were committed by Japan throughout their involvement in the Second World War, it would take a bold person to say that those

⁴⁸¹ Wakeling *‘Stern Justice: The Forgotten Story of Australia, Japan and the Pacific War Crimes Trials’* (Penguin: 2018) at page 165.

acts were proportionate as opposed to an unnecessary escalation of violence. On this front, the approach of the Majority appears reasonable.

Counts 27 to 36 charged the defendants with crimes against peace and aggressive war in violation of international law, against various nations. The issue before the Court was not just whether the war itself was legitimate under international law, but whether its very nature was acceptable under international law or customary law. It appeared that, of the Allied nations who had pursued justice against the Japanese, that it was only the Americans who had the intention of prosecuting this newly founded war crime, but had found difficulty in drumming up support, in particular with Britain and France.⁴⁸² Keenan had argued, on behalf of the Prosecution, that the Pact of Paris, amongst other international conventions, meant that wars of aggression were illegal under international law itself. Counsel for the Defendants countered that the Pact of Paris had not adequately defined the definition of self-defence, and the circumstances in which a nation can use that as an excuse for military action.

Although not unanimous in their rationale, the Justices had agreed that wars of aggression were illegal under international law, with the exception of Justice Pal. He argued that only the victor of a war would always be immune from such prosecution,⁴⁸³ which was precisely what was happening at Tokyo and Nuremberg. There had been no indication from Nazi-Germany or Japan during the conflict that they too had intended to pursue the Allied nations if they were victorious. Pal does, however, appear to have been approaching the Trial from a more ideological perspective, as opposed to the role he had been appointed for: to preside over the charges brought and consider whether guilt was

⁴⁸² London Conference at 383-384 (see: [The Avalon Project : International Conference on Military Trials : London, 1945 - Minutes of Conference Session of July 23, 1945 \(yale.edu\)](https://avalon.libraries.yale.edu/imt/london1945.htm) accessed 21/02/2021).

⁴⁸³ Pal 'Dissenting *Judgment*' at 44-59 (see: Ushimura 'Pal's Dissenting Judgment' Reconsidered: Some Notes on postwar Japan's Response to the Opinion' Japan Review No.19 (2007) at pages 215 – 223.)

attached to any of the Defendants, as alleged. This is the one flaw of Pal; he was so fundamentally opposed to the Trial having any jurisdiction that it prevented him from providing any real degree of balance within his dissenting judgment.⁴⁸⁴

In terms of the Counts relating to aggressive war having been waged by Japan against China, Great Britain and the Commonwealth nations, the United States, Soviet Russia, the Netherlands and France, the Tribunal found-

“The war which Japan waged against China, and which the Japanese leaders falsely described as the “China Incident” or the “China Affair” began on the night of 18 September 1931 and ended with the surrender of Japan in Tokyo Bay on 2 September 1945. The first phase of this war consisted of the invasion, occupation and consolidation by Japan of that part of China known as Manchuria, and of the Province of Jehol. The second phase of this war began on 7 July 1937, when Japanese troops attacked the walled city of Wanping near Peiping following the “Marco Polo Bridge Incident,” and consisted of successive advances, each followed by brief periods of consolidation in preparation for further advances into Chinese territory”⁴⁸⁵

The Majority Judgment confirmed agreement that the argument of self-defence be dismissed. The Majority also considered that the various “surprise” attacks that Japan initiated, such as at Pearl Harbor, were not consistent with any justifiable measure of self-defence given they were initiating the conflict.

The next key point of dispute was the Defence’s argument that, whilst aggressive war was not a crime, killing another in the theatre of war did not constitute murder in the traditional sense. This argument had some weight as the definition had to be exactly that: definitive. This question was problematic to the Justices; if the answer was “yes”, then

⁴⁸⁴ Nakajima ‘*The Radhabinod Dissenting Judgment and Nationalism in Post-War Japan*’ (Hokkaido University: 2009) at pages 253 – 271

⁴⁸⁵ ‘International Military Tribunal for the Far East : Judgment of 4th November 1948’ at page 261

the same principles would surely have had to apply to the Allied powers who were now prosecuting the Japanese. If the answer was “no”, then the Defendants could not be found guilty of committing murder. The answer would arguably be even more important for future Trials than the issue of retrospectivity, as it would set the benchmark for what did and did not constitute murder in the theatre of war. Unfortunately, in the end, the Majority Judgment simply avoided the question altogether by considering it unnecessary to determine counts 39 to 43 and 45 to 52.

The Majority Judgment did raise the interesting concept of a “good war” versus a “bad war” by stating: *“If, in any case, the finding be that the war was not unlawful, then the charge of murder will fall with the charge of waging unlawful war. If, on the other hand, the war, in any particular case, is held to have been unlawful then this involves unlawful killing...”*⁴⁸⁶

This approach was, and remains, fundamentally wrong and, most concerning of all, aside from the creation of a “good war” versus a “bad war”, appears to hark back to the days of a Holy Crusade. If it is deemed to be a “good war”, thus allowing murder to be carried out without fear of violating international law, then what, and who, precisely defines what is “good” and what is “bad”? That clearly cannot be right, morally or legally, especially when the people defining this will undoubtedly belong to the victorious side.

This view of the Allies, that they conducted a “legitimate war”, appears to have been supported throughout the entire process of prosecuting war criminals at the end of the Second World War. For example, the Germans invaded Poland. They did not declare war on Great Britain; rather, Great Britain declared war on them. Great Britain, in that

⁴⁸⁶ ‘International Military Tribunal for the Far East : Judgment of 4th November 1948’ at page 42

scenario, could be seen as the aggressor, albeit protecting its ally. Would this be tantamount to a legitimate war?

In the same vein, when Japan attacked Pearl Harbor, it declared war on the United States and Great Britain. It did not specifically declare war on the other nations represented by the Panel of Justices; would the aggression waged by their nations against Japan be considered legitimate, if other than self-defence? The whole concept of what is or is not a legitimate war is entirely subjective and, as has been shown already, often raises more questions than there are answers.

Although Japan's incursions in to Manchuria were based on an unlawful ruse,⁴⁸⁷ had the Japanese actually been acting in self-defence, would the attacks and experiments conducted by Unit 731 that followed have not been tantamount to murder? That surely must be the default position based upon the Majority Judgment, if the concept of "good versus bad" is applied. Hypothetically, if Japan had indeed been attacked by the Chinese and had acted in self-defence by stationing troops in Manchuria, it follows that any subsequent killings (no matter by what method, biological or otherwise) could not constitute murder in law. Was the dropping of the atomic bomb in self-defence or as an act of aggression? And if that act was in self-defence, was it reasonable and proportionate? The Judgment was, in this regard, not only poorly thought out but also potentially dangerous in the context of the *future* conduct of warfare.

This highlights the overwhelming problem that faced the Allies at the end of the war. They had made it clear while the war was raging on that they had a desire to prosecute the Axis nations for their war crimes. The Axis had made no such threat. The concept of a "good" or "bad" war depends entirely upon the persons defining them.

⁴⁸⁷ 'International Military Tribunal for the Far East : Judgment of 4th November 1948' at pages 115 and 307.

Invariably, when the nations who suffered atrocities committed by Japan determine what is or is not a war crime, questions of impartiality must be raised and properly addressed by the Justices, while also balancing the rights of the victims and the obvious need for an international standard to avoid such atrocities being committed again.

The reliance of the Defendants on self-defence, throughout the Trial, wore thin with the Justices. It had been straightforward for the Prosecution to demonstrate that Japan's decision to expand across the Pacific, at the expense of her neighbours, had been made well in advance of any economic measures aimed against her and that, regardless of the sanctions, had not been departed from. The evidence put forward by the Prosecution established, contrary to the contention of the self-defence, that the acts of aggression against France, Great Britain, the United States and the Netherlands were prompted by the desire to deprive China of any potential aid in the war-effort against Japan.

On the basis that self-defence had not been proven during Japan's involvement in the Second World War, it was not deemed necessary for the Justices to deliberate over Japan's activities between 1940 and 1941. Whether or not this amounted to waging a war of aggression, they had already found that, as of 1945, Japan had been waging aggressive war. Additionally, the fact that the Netherlands had declared war on Japan, and not vice-versa, gave the Justices consideration regarding who had been waging aggressive war against whom. The Netherlands, being fully apprised of the imminence of the attack, in self-defence declared war against Japan on 8th December. Therefore, they officially recognised the existence of a state of war that had been begun by Japan, which demonstrates a war of aggression on the part of Japan.

In respect of Count 30 of the Indictment, the Defendants were charged that a war of aggression had been waged against the Commonwealth of the Philippines. In view of the fact that, during the war, the Philippines was not a completely sovereign state and, for

purposes of international relations, was part of the United States, the Tribunal decided, that although a war of aggression was waged against the Philippines, for the sake of technical accuracy, they would consider it as part of the war of aggression waged against the United States instead.⁴⁸⁸

Count 54 charged the defendants with ordering, authorising and permitting the commission of Conventional War Crimes.⁴⁸⁹ Count 55 focused on the failure, on the part of the defendants, to take adequate steps to secure the observance and prevention of breaches of international laws and conventions of war, in respect of prisoners of war and civil internees.⁴⁹⁰

This highlighted the issue of whether individuals would be held accountable for their actions under international law. Again, the London Conference proved fertile ground for arguments over international law, all of whose participants believed that, morally, they should be able to pursue individuals. In a slight change, France, Britain and America all agreed that international law did not expressly give them the right to prosecute on the grounds of individual responsibility for war crimes.⁴⁹¹

The evidence provided by the Prosecution in relation to the atrocities and conventional war crimes presented before the Tribunal established that, from the start of hostilities and occupation in China until the surrender of Japan in August 1945, there had been wide-scale torture, murder, rape and other cruelties committed by both the Japanese Army and Navy. Over a period of several months, the Justices heard evidence from a number of witnesses who testified to atrocities committed in all theatres of war on a wide scale, leading to the conclusion that the atrocities were either ordered in private or were

⁴⁸⁸ ‘International Military Tribunal for the Far East : Judgment of 4th November 1948’ at page 489.

⁴⁸⁹ Ibid at page 558.

⁴⁹⁰ ‘International Military Tribunal for the Far East : Judgment of 4th November 1948’ at page 558.

⁴⁹¹ London Conference at 297.

actually permitted and encouraged by the Japanese Government or members of the Japanese government or armed forces.

The Justices concluded that Count 54, charging the ordering, authorising and permitting of the commission of atrocities, had been established as to certain defendants; and that Count 55, charging the failure to take adequate steps to secure the observance and prevent breaches of the conventions and the laws of war, had been proven.

This uncertainty as to international law shone through at the Tokyo Trial, with Joseph Keenan conceding that *“individuals are being brought to the bar of justice for the first time in history to answer personally for offenses that they have committed while acting in official capacities as chiefs of state. We freely concede that these trials are in that sense without precedent.”*⁴⁹² Takayanagi countered that this unprecedented concept was *“perfectly revolutionary.”*⁴⁹³ Not for the first time, only Justice Pal found merit in the defence’s argument, with the remaining justices agreeing that, under international law, the *“authors of ... acts cannot shelter themselves behind their official position in order to be freed from punishment in appropriate proceedings.”*⁴⁹⁴

A somewhat different version of the facts with respect to crimes against peace was taken by Justice Roling. His conclusion was that:

“There existed in Japan a group which, in a peaceful way, was striving for a prosperous Japan, a Japan which would virtually dominate East Asia. On the other hand, there existed a group which aimed at the expansion of Japan by means of force.... The decisive question in this trial is to determine how the relationship of the two different concepts, of expansion by means short of war, and of expansion by force of arms, developed. In studying this development, a rough division into three periods can be made. The first

⁴⁹² Minear ‘Victor’s Justice: The Tokyo War Crimes Trial’ (University of Michigan: 2001) at page 45.

⁴⁹³ Ibid at page 45.

⁴⁹⁴ ‘International Military Tribunal for the Far East : Judgment of 4th November 1948’ at page 36.

period is characterized by a struggle in which the military clique attempted to achieve its aims by threats and assassinations at home, and by independent action abroad...The period of struggle was followed by one of collaboration, in which the two factions came to an agreement with regard to the object to be achieved – the domination of East Asia. Even in this, however, they remained opposed with regard to the methods whereby this object was to be achieved. ... The next and final period starts with the Liaison Conference of September 1940, during which the use of armed force was accepted as government policy, first as an alternative in case other methods failed, later as straightforward policy.”⁴⁹⁵

Roling, therefore, disputed the findings of the majority as to the military involvement, and its importance from the very outset. To the Defendants who could be described as “civilian”, Roling gave them the benefit of the doubt during the second period described above, even when applied to the atrocities committed in China, as they always “*had to consider that there was a power in their country which was prepared to achieve its ends by murder or revolution.*”⁴⁹⁶

This was on the proviso that Roling was not aware of the conduct of Ishii during his time in Manchuria. Whilst Roling may have been of the belief that the murderous desire resided in Japan, it was clear that Ishii was “*prepared to achieve [his] ends by murder or revolution.*” Roling said, in his dissenting judgment, that “*it is well-nigh impossible to define the concept of initiating or waging a war of aggression both accurately and comprehensively... I think that not only should there have been neutrals in the court, but there should have been Japanese also.... they could have convincingly argued issues of government policy which were unfamiliar to the Allied justices.*”⁴⁹⁷

⁴⁹⁵ Whiteman ‘*Digest of International Law*’ Volume 11 (1968) at page 988.

⁴⁹⁶ Boister & Cryer ‘*Documents on the Tokyo Trial Military Tribunal: Charter, Indictment and Judgments*’ (Oxford: 2008) at page 710.

⁴⁹⁷ Ibid at page 703.

In the end, the dissenting Judgments paled into insignificance; other than an indicator as to the protestations of Bernard, Roling and Pal, they did not materially impact upon the findings of the Majority. Whilst Webb had confirmed that the Bench found many of the charges to be duplicated or without merit, once all was said and done, the Trial had found all the Defendants before them guilty on a variety of 10 different charges. Now, all that remained was for the Justices to deliberate over the sentences to be handed down.

Sentencing

A full list of the sentences handed down by the Justices is detailed in ‘Appendix III’ of this thesis. In short, the Justices were required by the Charter to refer their recommendations for approval to MacArthur, as Supreme Commander.

Come the conclusion of the sentences being handed down all but Matsui and Shigemitsu were found guilty of conspiracy to wage aggressive war. Every Defendant but for Matsui, Oshima and Shiratori were found guilty of having waged aggressive war in and against China. All but Araki, Hashimoto, Matsui, Minami, Oshima and Shiratori were found guilty of having waged aggressive war against the United States, Britain and her Commonwealth and the Netherlands. The prosecution only succeeded in proving a case against Shigemitsu and Tojo for having waged an aggressive war against France, whilst Dohihara, Itagaki and Hiranuma were found guilty of waging aggressive war against the Soviet Union (albeit, only the first two having been found guilty specifically at Lake Khassan). Dohira, Itagaki, Kumura, Muto and Tojo were found guilty of having ordered and allowed violations of the laws of war, and Hata, Hirota, Kimura, Koiso, Matsui, Muto and Shigemitsu of having disregarded such duty to preserve the laws of war.

Pal and Bernard, dissenting, would have acquitted the Defendants of all charges. Roling would have acquitted Hata, Hirota, Kido, Shigemitsu and Togo of all charges.⁴⁹⁸ He would have also convicted Oka, Sato and Shimada of conventional war crimes. In contrast, Justice Jaranilla showed considerable dismay at the sentences handed down as being “*too lenient, not exemplary and deterrent, and not commensurate with the gravity of the offence or offences committed*”.⁴⁹⁹ As had previously been challenged by the Defence at the outset of the Trial, Jaranilla had personally suffered injury due to Japanese brutality during the Second World War and may, therefore, have been a little less prone to impartiality.

The Justices had sought to condemn seven Defendants to death by hanging. These were Hideki Tōjō, Itagaki Seishirō, Doihara Kenji, Kimura Heitarō, Matsui Iwane, Mutō Akira and Hirota Kōki. Of those seven, two had been Prime Minister and all but one had, at some point, been either Minister of War or a member of the War Council. Execution of the death sentences was deferred subject to approval being granted by the Supreme Court of the United States. Immediately upon the confirmation of the sentences, motions were filed by the Defendants for leave to file petitions for writs of *habeas corpus* in the Supreme Court. The motion proved to be in vain, and was promptly dismissed by the Justices for want of jurisdiction. The last avenue of appeal was now closed, and a few days after the Supreme Court had announced its action, the death sentences imposed by the Tribunal were carried out on 23rd December 1948.⁵⁰⁰

⁴⁹⁸ Kei ‘Pal’s “*Dissentient Judgment*” Reconsidered: Some Notes on Postwar Japan’s Responses to the *Opinion*’ Japan Review (2007) at page 218.

⁴⁹⁹ Bassiouni ‘*International Criminal Law - International Sentencing: From Leipzig (1923) to Arusha (1996)*’ (Koninklijke: 2008) at page 615

⁵⁰⁰ Wilson ‘*War Criminals in the Post-war World: The case of Kato Tetsutaro*’ War in History, Vol. 22, No.1 (January 2015) at page 96.

Of those that had not been sentenced to death, sixteen were sentenced to life-imprisonment, one to 20 years imprisonment and one to seven years imprisonment. In reality, those imprisoned were paroled by no later than 1958, although the majority had been paroled between 1950 and 1955, save for Koiso and Umezu who passed away in prison. The Trial did not find any organisations culpable, as had been the case at Nuremberg. MacArthur had overseen a political purge following the Allied occupation of Japan, that would have effectively rendered just a finding null and void. Given the delay in finalising the Judgment, MacArthur's purge had produced a considerably quicker outcome.

Having considered the recommendations of the Justices, General MacArthur, Supreme Commander for the Allied Powers, approved them without amendment. On the 22nd November 1945, MacArthur met with representatives of each of the Allied nations to discuss the sentences as recommended by the Justices. Of those nations, six felt that the proposed sentences were appropriate and did not consider any amendments necessary. Four of the nations, Australia, Canada, the Netherlands and - unsurprisingly - India, felt that reductions should be made to the sentences as presented. Having considered the position, two days later on 24th November 1948, MacArthur wrote:

“No duty I have ever been called upon to perform in a long public service replete with many bitter, lonely and forlorn assignments and responsibilities is so utterly repugnant to me as that of reviewing the sentences of the Japanese War Criminal defendants adjudged by the International Military Tribunal for the Far East. It is not my purpose, nor indeed would I have the transcendent wisdom which would be necessary, to assay the universal fundamentals involved in these epochal proceedings designed to formulate and codify standards of international morality by those charged with a nation's conduct. The problem indeed is basically one which man has struggled to solve since the beginning of

time and which may well wait complete solution till the end of time. In so far as my own immediate obligation and limited authority extend in this case, suffice it that under the principles and procedures prescribed in full detail by the Allied Powers concerned, I can find nothing of technical commission or omission in the incidents of the trial itself of sufficient import to warrant my intervention in the judgments which have been rendered. No human decision is infallible but I can conceive of no judicial process where greater safeguard was made to evolve justice. It is inevitable that many will disagree with the verdict, even the learned justices who composed the tribunal were not in complete unanimity, but no mortal agency in the present imperfect evolution of civilised societies seems more entitled to confidence in the integrity of its solemn pronouncements. If we cannot trust such processes and such men we can trust nothing. I therefore direct the Commanding General of the Eight Army to execute the sentences as pronounced by the Tribunal. In doing so I pray that an Omnipotent Providence may use this tragic expiation as a symbol to summon all persons of good will to a realisation of the utter futility of war – that most malignant scourge and greatest sin of mankind – and eventually to its renunciation by all nations. To this end on the day of execution I request the members of all congregations throughout Japan of whatever creed or faith in the privacy of their homes or at their altars of public worship to seek Divine help and guidance that the world keep the peace lest the human race perish.’’⁵⁰¹

MacArthur had approved the sentences, as proposed. He did not consider there had been any technical issues from the Trial requiring his overriding intervention. In any event, a reduction on sentences would be irrelevant, as all Defendants were ultimately paroled well before their sentences were near to completion.

⁵⁰¹ Weekly Report on Japan to the Far Eastern Commission, Issues 15 – 214 at page 4.

And with that, the Tokyo Trial had come to a juddering conclusion. At the time of Judgment being handed down, the Trial had not been well received by those who had knowledge of it. Shortly after its conclusion, a British Foreign Office official stated that the entire exercise had been a complete and utter political failure,⁵⁰² whereas others have argued that it can only be considered “*with a view not to repeat it.*”⁵⁰³ Whatever the criticism, the victims of Japanese war crimes are unlikely to have been concerned as to the procedural issues or technicalities that arose at the Trial; to their mind, justice, even if far from perfect, had finally been meted out.

Application to Hirohito & Ishii

Following the above consideration of the acts committed by Unit 731, the alleged probable American cover-up and immunity deal, and the subsequent Tokyo Trial and Judgment, it is now appropriate to apply the legal framework(s) and rationale of the indictment, verdict and sentencing to the key members of Unit 731: in simple terms, limited to Hirohito, Ishii and more generally the researchers of Unit 731.

Although there are many areas of the Judgment that rightly deserve criticism, it is only fair to praise the Majority Judgment where it took aim at the Allies’ own conduct and, in particular, their failings. Adding weight to the disgruntlement of the Justices about the Allied decision to allow key individuals, such as the Emperor, to avoid prosecution, Justice Webb was vocal in his criticism by stating that “*the suggestion that the Emperor was bound to act on advice is contrary to the evidence*” that had been put before the Tribunal. Webb went even further, by adding that “*no ruler can commit the crime of*

⁵⁰² National Archives (UK), FO 371/69834: Scott, 23/12/48.

⁵⁰³ Boister & Cryer ‘*Documents on the Tokyo International Military Tribunal: Charter, Indictment and Judgments*’ (Oxford: 2008) at page 302.

launching aggressive war and then validly claim to be excused for doing so because his life would otherwise have been in danger... it will remain that the men who advised the commission of a crime, if it be one, are in no worse a position than the man who directs the crime be committed."⁵⁰⁴ The President of the Bench was therefore undeterred in his belief that those who had commissioned the atrocities committed, in particular Emperor Hirohito, ought properly have been indicted and brought before the Tribunal to consider their culpability.

Bernard also considered that, as a matter of law, Emperor Hirohito should have been indicted to face trial.⁵⁰⁵ Whilst a bold statement in principle, neither Webb nor Bernard requested that Hirohito be indicted nor lamented this failure within the Majority Judgment. The observation by Webb that a number of individuals had been omitted from indictment begs the question: what the Justices would have done had they been aware of the immunity deal afforded to Ishii and Hirohito. Alternatively, what would the Justices have done if there had been no such deal and the men had faced trial?

Justice Webb was also significantly concerned by the evidence before the Tribunal, or rather more accurately, the lack thereof. He later stated that "*much evidence existed which was not tendered by the prosecution or the defence and which was not readily accessible to the prosecution or the defence; but the Tribunal had no power of its own motion to order investigations and researches.*"⁵⁰⁶

The United States had clearly been selective as to the information, witnesses and documentation put before the Justices. As this thesis has already detailed, the United States had made absolutely no mention of the decision to drop atomic weapons over the

⁵⁰⁴ Roling & Rutter 'The Tokyo Judgment' (Press Amsterdam: 1977) at page 478.

⁵⁰⁵ Ibid at page 496.

⁵⁰⁶ [Full text of "Japans Imperial Conspiracy" \(archive.org\)](#) – accessed 22/02/2021.

densely populated civilian areas, Hiroshima and Nagasaki. As a consequence, a dissenting Judgment was never read out to the public at the Tokyo Trial and, for a while after the Trial had ended, the dissenting Judgments were banned from publication.

As this thesis has demonstrated, Hirohito not only had direct knowledge of Unit 731, but also had direct involvement in the funding of Ishii's research. At the outset of this criminal venture, Unit 731 had been provided with a starting annual budget of 200,000 yen via the military, from a personal account of Emperor Hirohito.⁵⁰⁷ There was clear evidence that, at the very least, Hirohito had supported Ishii's work and it follows, but for that financial support, Unit 731 would likely not have existed or would have been limited in terms of capacity, scope and deadly capability.

This was not the end of Hirohito's involvement with the Unit. After the embarrassment of the Zhongma Fortress in 1934, and the need for a new facility having been required by Unit 731, in August 1936 there had been a need to restructure the organisation. This re-organisation resulted in a further increase in the already significant funding for Unit 731's research and, along with that, came an increase in staff being made available to Ishii. It was also around this time that Ishii was appointed Chief of this new enterprise, the Epidemic Prevention Department of the Kwantung Army.⁵⁰⁸ Hirohito had helped to provide considerable and direct funding for Ishii's initial venture some four years prior; the formal incorporation of the Unit in to the Kwantung Army coupled with the increase in funding and man-power is, therefore, likely to have also been relayed to Hirohito, if he had not taken a personal interest in the Unit in any event.

⁵⁰⁷ Behr *'Hirohito: Behind the Myth'* (Penguin Books: 1990) at page 57.

⁵⁰⁸ Sankeisha *'War & Medicine'* 27th General Assembly of the Japan Medical Congress (2007) at page 13.

Hirohito can have no defence by pleading ignorance of the work Ishii or his men were carrying out. In any case, the Charter rightly and specifically excluded such a defence. To have authorised such an annual budget for Unit 731, this thesis submits that he would not have blindly approved the budget without, at the very least, some knowledge of their work and what he would be getting in return for his sizeable investment. Coupled with Hirohito's own personal interest in the field of bacteriology,⁵⁰⁹ a reasonable person would likely deduct that Hirohito had, at the very least should have had, knowledge of the work being carried out (and, in turn, the "war crimes" undertaken). In possession of such information and having failed to take any steps to curb such atrocities, Hirohito was, by implication, not only happy for Unit 731 to proceed, but that he also provided substantial funding and support which allowed it to flourish.

Moving away from the issue of funding, there is also clear evidence that the deployment of biological weapons in Manchuria via Unit 731 was given approval by Emperor Hirohito. Not only had Emperor Hirohito set up Unit 731 by Royal Decree, which was only one of two occasions throughout his entire reign as Emperor⁵¹⁰, but there was also an order sealed which stated: "*Imperial Headquarters Army Order Number 201, sealed by Hirohito on May 15, 1939, authorised the carrying out of field studies of chemical warfare along the Manchuko-Soviet border.*"⁵¹¹ Documentary, contemporaneous evidence inextricably links Hirohito not only with the funding of Unit 731, but also with the active endorsement of war crimes being conducted by Ishii and his men. Hirohito may not have pulled the trigger, but he certainly loaded the gun.

⁵⁰⁹ As this thesis has detailed, By September 1925, the Emperor had extensive building work completed to have his private research laboratory constructed within the confines of his Akasaka Palace.

⁵¹⁰ Harris 'Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up' 2nd Edition (Routledge: 2002) at page 144.

⁵¹¹ Bix 'Hirohito and the Making of Modern Japan' (Harper Collins: 2001) at page 362.

This thesis has already documented how the Emperor had taken it upon himself to review any and all directives relating to the Unit before they were posted out.⁵¹² The Emperor had appointed his cousin, Prince Takeda, to hold executive responsibility over Unit 731.⁵¹³ These were not the actions of a man who was taking a “hands off” approach to Japan’s biological warfare program. So, the question now becomes: had Emperor Hirohito been included in the indictment at Tokyo, what charges could he realistically expect to have faced in respect of his involvement with Unit 731?

The obvious starting point is Count 1 of the indictment, which alleged that the Defendants had, *“as leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy to wage wars of aggression, and wars of wars in violation of international law”* between 1st January 1928 and 2nd September 1945. The role of Hirohito was embedded in the Meiji Constitution. Hirohito was a living deity, at the very top of the Japanese hierarchy. He was granted ultimate power, capable of declaring war and making peace as was his Constitutional right. The one constant throughout a tumultuous period of Japanese history was Hirohito. While Prime Ministers and Cabinet members changed on an annual basis, Hirohito remained.

The first requirement of Count 1 is that Hirohito be considered a leader, organiser, instigator or accomplice. He was undoubtedly that, both in practice and ceremony. The second technicality was the timeframe between 1928 and 1945, which is a matter of established fact and not opinion. The third and final requirement of this count was that he had been involved in the execution of a common plan to wage aggressive war. In respect of Unit 731 only, Hirohito directly funded their research and approved the deployment of biological weapons in Manchuria: something that Hirohito knew was both illegal and

⁵¹² Bix *‘Hirohito and the Making of Modern Japan’* (Harper Collins: 2001) at page 364.

⁵¹³ Williams & Wallace *‘Unit 731’* (Hodder & Stoughton: 1989) at page 16.

immoral. All but one of the Defendants, Shigemitsu, were indicted and found guilty of Count 1 of the indictment. Coincidentally, Shigemitsu was given the shortest of all sentences at Tokyo. On balance, this thesis will submit that it is highly likely that Hirohito would not only have been charged with, but found guilty of, Count 1. From 1928, ultimately, he was responsible for the formulation and execution of a plan to wage aggressive war to include the research and development of biological weapons to aid that ambition.

Counts 27 to 36 (excluding counts 28 and 34, which were not accepted by the Justices) charged the defendants with waging aggressive war against specific nations (Count 27 for China, 29 for the United States, 31 for the British Commonwealth, 32 for the Netherlands and Dutch East Indies, 33 for France and French Indochina and, finally, 35-36 in respect of the USSR). Those at the upper echelons of power are perhaps the best comparators for Hirohito, in particular Count 27 for the atrocities committed in Manchuria.

The closest available comparators to Hirohito are naturally those that were “second-in-command”: the Prime Ministers of Japan. Hirota Kōki was Prime Minister between 1936 and 1937. He was charged on all Counts, but importantly was only found guilty on Count 27. Such was the severity of his deemed involvement and influence in the waging of aggressive war in China that he was sentenced to death by hanging. This is from only one year as a Prime Minister, and not the 17 years between 1928 and 1945 that Hirohito oversaw such aggressive war being systematically waged by the Japanese military. A year later, Hiranuma Kiichirō took over as Prime Minister. He was again charged on all available counts and found guilty on all but Counts 33 and 35. He was also sentenced to death by hanging. After this, Hoshino Noaki assumed the role between 1940

and 1941. He was charged on all the counts and found guilty of all Counts 33-36. He was sentenced to life imprisonment.

The longest serving of all was Hideki Tōjō, who was Prime Minister between 1941 and 1944. This thesis will submit that Tōjō is the best comparator to Hirohito when considering his potential culpability. Tōjō was charged with Counts 27, 29, 31, 32, 33 and 36. He was found guilty on all but Count 36 and sentenced to death by hanging. Koiso Kuniaki was Prime Minister between 1944 and 1945. He was indicted on Counts 27, 29, 31, 32, 35 and 36, and found guilty on all but Counts 35 and 36. He was sentenced to life imprisonment.

The overwhelming evidence suggests that, had Hirohito been charged with any or all of the Counts between 27 and 36, he would have been sentenced to no less than life imprisonment, and most probably have received a sentence of death by hanging. There is no clear-cut evidence to show that biological weapons were ever deployed against any of the nations, albeit certainly attempted. On that basis, for the purpose of Unit 731 only, the charges against Hirohito would have likely failed and are not considered by this thesis.

Count 54 charged the conspiracy to authorise and permit inhumane treatment of prisoners of war and others. As this thesis has detailed, there is documentary evidence as well as testimony from prisoners of war, predominantly from the United States and Australian armed forces, that they were given inoculations against their will that caused severe sickness and, in some cases, death. The charge did not, unfortunately, extend beyond prisoners of war and would not have covered the innocent Chinese civilians, whose home, Manchuria, was turned into a biological field-test. From the Defendants charged with this Count, only Hideki Tōjō, Itagaki Seishirō, Dohihara Kenji, Kimura Heitarō and Mutō Akira were found guilty. All were hanged. Given the strength and volume of the testimony of prisoners of war available to the Tribunal, it is a strong

possibility that, had Hirohito been convicted on earlier charges linking him to Unit 731, he would have likely been found guilty of this charge.

Finally, Count 55 charged the Defendants with having “*deliberately and recklessly disregarded their duty to take adequate steps to prevent atrocities.*” If Hirohito were to plausibly deny any knowledge of the atrocities of Unit 731, this would have been his ‘get-out’ option. Interestingly, most who were charged on this Count were not found guilty by the Justices. Of the 24 charged with Count 55, the Justices only found seven of the Defendants guilty. These were: Shigemitsu, Tōjō, Hirota, Muto, Kimura, Koiso and Hata. In terms of sentences, there was a fairly even split between imprisonment (four) and hanging (three). This is perhaps the easiest indictment of all on which the Allied nations could have prosecuted Hirohito; the Emperor knew of the existence of Unit 731 and understood the nature of their work. He did not take any steps to prevent the crimes being committed by Ishii and his men; instead, he actively encouraged and supported them being.

In summary, this thesis considers that Emperor Hirohito, had he been an indicted Defendant at Tokyo, could plausibly have been charged with, and convicted on, Counts 1, 27, 54 and 55 in respect of involvement with Unit 731 only. The sentences ranged from seven years imprisonment to death by hanging; the overwhelming majority were sentenced to death by hanging. It is unthinkable that the Emperor would not have received, at the very least, a custodial sentence.

Now that this thesis has considered the Counts against Hirohito, it is appropriate to consider the man with day-to-day running of Unit 731: Shiro Ishii. As this thesis has displayed, it is beyond all doubt that Ishii, the driving force behind the Unit, had not only condoned, but also devised, a variety of unethical experiments on humans, including:

crude live vivisections, intentional inoculation of lethal bacteria, weapons testing, irradiation and exposure to fatal temperatures. Ishii established the Unit's extensive field research in Manchuria, under the guise of the Epidemic Prevention Laboratory in 1932, at that time a satellite operation of the pre-existing Army Medical School in Tokyo. Ishii's activities in Manchuria were formally recognised in the Fifty Year History of the Army Medical School in 1936. To all intents and purposes, this was a well-organised and effective military operation. On that basis, and differing from the consideration given to Hirohito, Ishii ought to be considered alongside those other Defendants from a military background, in particular those who had been involved in Manchuria during Ishii's atrocities being committed.

Ishii was entrusted with substantial man power, both in the construction of various facilities for him and his men to construct facilities, and in conducting research. At its peak, Ishii had some 20,000 men under his direct control.⁵¹⁴ This figure does not include the hundreds of prisoners that were in his possession at any given time, with the Zhongma Fortress capable of having held an estimated 1,000 prisoners.⁵¹⁵ This was certainly not a small-time operation that could slip under the radar of those in the upwards chain of command. The facility has been referred to as the "*Auschwitz before there was an Auschwitz*", such was its scale and devastating, murderous ability.⁵¹⁶

So, as has been done above with Hirohito, what charges would Ishii, the architect of Unit 731, have faced for the extensive atrocities that this thesis has already documented? Count 1 was alleged that the Defendants had "*as leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or*

⁵¹⁴ Tanaka 'Hidden Horrors: Japanese War Crimes in World War II' (Westview Press: 1996) at page 137.

⁵¹⁵ Lockwood 'Six-Legged Soldiers: Using Insects as Weapons of War' (OUP USA: 2010) at page 93.

⁵¹⁶ Barenblatt 'A Plague Upon Humanity' (Harper Collins: 2005) at page 30.

conspiracy to wage wars of aggression, and wars of wars in violation of international law” between 1st January 1928 and 2nd September 1945. Whilst Ishii could not be considered as a leader of Japan, save for of Unit 731, he could be seen as an instigator and willing accomplice in the formulation and execution of aggressive war through the deployment of bacteriological weapons. Tōjō had been Chief of the Manchurian Secret Police in 1935, Councillor on the Manchurian Affairs Bureau in 1936 and Chief of Staff in the Imperial Army between 1937 and 1938. He would have undoubtedly known of the extensive work being carried out by Ishii and his men. As we already know, he was rightly hanged.

Another useful Defendant to act as a comparator is Itagaki, who had also been the Chief of Staff in the Imperial Army between 1936 and 1937, as well as Chief of Army General Staff in 1939. Again, it is probable that he had some knowledge of the atrocities being committed and, unrelated to any allegations in respect of Unit 731, was hanged in any event. In fact, all the Defendants who had some involvement with Manchuria during their career prior to 1945 received sentences ranging from life imprisonment to death by hanging. Ishii had been the integral link, between those commissioning his research and the actioning of that work out in the field. But for Ishii, the chain breaks down. While others had “merely” ordered atrocities to be committed, this thesis has detailed that Ishii had not only done this, but had personally also engaged in the conducting of war crimes. This thesis submits that the evidence detailed in earlier parts shows that he committed the most barbaric of acts, and would have likely been found guilty of Count 1 and given, as a minimum, life imprisonment but for an immunity deal having been struck.

Counts 27 to 36 would not have applied to Ishii. He cannot reasonably be considered to have waged aggressive war against the named countries given his work was

limited to the Chinese region of Manchuria, not included within those provisions. There were, however, unsuccessful attempts to deploy weapons against Allied Forces.

Count 54 charged the conspiracy to authorise and permit inhumane treatment of prisoners of war and others. As with Hirohito, there is documentary evidence and testimony from prisoners of war to show that they were detained and effectively “experimented upon” without consent, sometimes with fatal consequences. However, there is no direct evidence to show that the experiments on prisoners of war originated from Unit 731, or that Ishii ordered such experiments to be conducted. There can only be implication or assumption. In the absence of any definitive link between Unit 731 and these “inoculations”, this thesis considers that it is unlikely that Ishii would have been found guilty of this charge due to a lack of contemporaneous evidence at the time of the Trial.

Count 55 charged the Defendants with having “*deliberately and recklessly disregarded their duty to take adequate steps to prevent atrocities.*” Ishii and his men were responsible for the mass murder of prisoners (whether civilian or military personnel), on a large scale, and they conspired to authorise and permit the inhumane treatment of prisoners. Ishii also deliberately disregarded his duty to take adequate steps to prevent atrocities being committed under his command. Ishii would have also faced the same conundrum as each Defendant prosecuted at Tokyo faced; Hirohito did not have such burden. In order to avoid some or all of the charges that Ishii would have faced, he would have had to attribute blame to Hirohito, whether directly or indirectly, mitigating his involvement by pinning responsibility upon his seniors.

The cover-up extended not only from the Americans offering Ishii immunity, but also the Defendants in hiding the true extent of Hirohito’s involvement. There is evidence to implicate those Defendants indicted at Tokyo with Ishii; Tojo, for example, knew of

the work Unit 731 were carrying out. Whilst on a personal level there is evidence to suggest Tojo did not agree with Ishii conducting human experimentation, in a professional capacity he never sought to curtail such activities.⁵¹⁷ ⁵¹⁸ The Defendant's, and those who ultimately were not indicted, found themselves in a Catch 22 situation.

Another comparator for Ishii was the Defendant Umezu. He was an interesting Defendant in relation to Ishii and Unit 731. His successor, Otozoo, was more than willing to be frank as to the extent of his own knowledge of Unit 731 and, by implication, if in his capacity he had been provided with such extensive knowledge of Ishii's work, it is likely by implication that his predecessor, Umezu, would also have known.⁵¹⁹ There was also evidence to suggest that Umezu had ordered Colonel Shigeharu to instruct Ishii to destroy all documents in existence relating to his experiments, in August 1945.⁵²⁰ In this respect, if true, Ishii was not the one making the orders, but he was a willing participant and more than happy to satisfy orders from further up the chain of command.

Umezu was found guilty of Counts 1, 27, 29, 31 and 32. Despite Umezu having been found to have been a principal player in the waging of aggressive war against China, the Trial held that there was insufficient evidence to say he was responsible for the commissioning of any such atrocities. As such, he was acquitted of Counts 54 (breaching the laws and customs of war) and 55 (failing in his duty to protect civilians and prisoners under his care). Umezu was sentenced to life imprisonment and died in Sumano prison on 8th January 1949. While the man who was seen to be ordering the atrocities was not

⁵¹⁷ Tsuneishi *'The Germ Warfare Unit That Disappeared: Kwantung Army's 731st Unit'* (Tokyo: 1981) at page 162

⁵¹⁸ Harris *'Factories of Death: Biological Warfare, 1932-45 and the American Cover-Up'* 2nd Edition (Routledge: 2002) at page 185.

⁵¹⁹ Harris *'Factories of Death: Biological Warfare, 1932-45 and the American Cover-Up'* 2nd Edition (Routledge: 2002) at page 186

⁵²⁰ Testimony of Kondo Syoji (08/02/2001) in a hearing in Tokyo regarding a potential law suit of Chinese victims; Harris *'Factories of Death'* at 186

held to account, there is evidence to show that Ishii had committed them in Manchuria. However, on balance, it is far from clear whether Ishii would have been had been found guilty on Count 55, given that ultimately the man who gave Ishii orders was found not guilty of the same charge.

On balance, it is likely that both Hirohito and Ishii would have received sentences ranging from life-imprisonment to death by hanging for their respective roles in Unit 731 but-for the immunity deal.

The Legacy of Tokyo

In comparison with recent international military tribunals (and Nuremberg), the Tokyo Trial has largely been forgotten, which can be predominantly attributed to the failure of the Allies to widely publish the Judgment,⁵²¹ potentially out of fear of criticism for the way in which it dealt with key issues or the immunity deals that had been granted.

Arguably, the greatest criticism of all to be levelled at the Tokyo Trial is not a matter of procedure or jurisdiction, but of access to information and of legacy. This criticism cannot be levelled at the trial itself, but at the United States government that undermined any justice from the Tokyo Trial. The Potsdam Declaration of 1945 made it clear that the Allies “*do not intend that the Japanese shall be enslaved as a race or destroyed as a nation but stern justice shall be meted out to all war criminals*”.⁵²² At the same time, it cannot be said that ‘stern justice’ was meted out. A great number of

⁵²¹ Albertson ‘Review of Richard Minear, ‘Victors Justice’ (1972) 13 Harvard International Law at pages 550-552.

⁵²² Butow ‘*Japan’s Decision to Surrender*’ (Stanford University Press: 1954) at pages 243-244.

individuals should have been indicted and faced justice and, quite simply, this did not happen at Japan.

The Tokyo Trial, as the Nuremberg Trial had been, was always intended to be broadcast around the world as a showcase of Western democracy and justice reigning supreme. At Nuremberg, there had been clear admissions of guilt from some Defendants. The Japanese Defendants at Tokyo were less apologetic. The overwhelming theme at Tokyo was one of having followed orders; an unflappable belief that what they were doing was for Japan and, in particular, the Emperor. MacArthur had feared that the Trials would upset the new-found harmony in post-war Japan and be seen as the victorious side of war exerting nothing more than judicial retaliation upon the losing nation. He was, in fact, surprised at the general apathy of the Japanese public towards the Trial.⁵²³

To this very day, the Japanese medical community, in particular, has continued to deny the atrocities; partly because it was institutionally involved, especially Tokyo and Kyoto University, in terms of the provision of staff or subjects to Unit 731, amongst others.⁵²⁴

Perhaps the biggest critic of the Trial itself was, surprisingly, General MacArthur. He was concerned by as early as 1947, and certainly by no later than 1948, that the Trial was taking an inordinate amount of time. The delay had coincided with a shift in perspective, not only by the governments of Allied nations, but also of their public. Japan was no longer the common enemy, having been replaced by the Soviet Union as the Cold War started to ramp up. Media attention that may have focused on the Trials, was now

⁵²³ Wakeling *'Stern Justice: The forgotten Story of Australia, Japan and the Pacific War Crimes Trials'* (Penguin: 2018) at page 250.

⁵²⁴ LaFleur, Iohme, Shimazono *'Dark Medicine: Rationalising Unethical Medical Research'* (Indiana University Press: 2008) at page 81.

being spent publishing stories on the Soviet blockades of West Berlin, in mid-1948. China itself was in the midst of a civil war between the communist and nationalist factions.

MacArthur knew that the key to Nuremberg had been the engagement of the world and the interest that it had shown in not only the fact-finding process, but also the outcome. MacArthur ordered, in September 1948, that all outstanding indictments be concluded by no later than the end of that year. Once the Tokyo Trial had concluded in November 1948, Washington made the decision to free all remaining “class-A” prisoners being held by them on 26th December 1948, abandoning plans for further trials to be held.⁵²⁵ This was a stark and very public admission by the Americans, who now appeared to have absolutely no desire to prosecute Japanese war criminals. The invasion of South Korea by the North was the final nail in the coffin for any Allied intention to pursue justice for Japan’s war-time conduct. Now, armed forces being used to maintain order in occupied Japan and Germany were being siphoned away to support South Korea and suppress the communist North forces.

No matter how hard the Prosecution and Justices may have tried to hide the point, the elephant in the room would always be the issue of retrospectivity. It would go to the very core of the Trial and the very principles of law and justice. The Defence had rightly contended that waging war itself had not been a crime at the time of the purported acts having been conducted. From a factual perspective, this has to be correct. From a moral perspective, there was a fair argument to say that such acts were knowingly wrong (morally at least), at the time of their commissioning. But the issue of morality has arguably not, and should not, ever form part of a legal trial, at least from a positivist perspective. While the Tokyo Charter would make waging of aggressive war a crime, the

⁵²⁵ Wakeling ‘*Stern Justice: The Forgotten Story of Australia, Japan and the Pacific War Crimes Trials*’ (Penguin: 2018) at page 257.

Justices were being asked to apply this *ex post facto*. The Majority Judgment would follow the precedent set at Nuremberg; whether waging aggressive war was a crime largely depended upon the legal implications of the Pact of Paris. The Justices held that the Pact involved the proposition that war, as an instrument of national policy, was illegal.⁵²⁶

The Justices also took the time to answer criticisms that had been levelled at its jurisdiction, but, at the same time, understood the implication of blankly rejecting those criticisms. Included in the judgment was that:

*“The foregoing expression of opinion is not to be taken as supporting the view... that the Allied Powers or any victor nation has the right under international law... to enact or promulgate laws or vest in their tribunals powers in conflict with recognised international law or rules of principles thereof... such tribunals belligerent powers may act only within the limits of international law.”*⁵²⁷

This statement shows the difficulty in which the Justices found themselves. The Tokyo Trial was always going to support the view upheld in the Nuremberg Trials, that their actions were not contravening the use of *ex post facto* criminal law, but were merely abiding by the international laws laid down in conventions, such as the Pact of Paris.⁵²⁸ Some of the justices were honest and open in their own criticisms of the procedural issues raised with the inception of the Tokyo Trial. Pal, for example, strongly believed that all the defendants were innocent on each and every count on which they had been indicted.⁵²⁹ In support of Pal, there was validity in many of the points raised within his dissenting judgment. It also follows that the application of this international law, not previously

⁵²⁶ Horowitz ‘*The Tokyo Trial (International Conciliation)*’ (Carnegie: 1950) at page 546

⁵²⁷ International Military Tribunal for the Far East – Judgment of 4th November 1948 at page 35.

⁵²⁸ Ibid at page 35.

⁵²⁹ ‘*International Military Tribunal for the Far East: Dissident Judgment*’ (Calcutta: 1953)

defined, had been done so retrospectively against the Defendants, firstly at Nuremberg and now at Tokyo; in support of the Justices at Nuremberg, they had at least had the precedent set at Nuremberg to lend gravitas to their Judgments. The problem for the Justices at Tokyo was that, if they did not follow the precedent laid down at Nuremberg on the waging of aggressive war, this would have not only been embarrassing for the Allied nations but, in practical terms, would have left future war crimes trials in no clearer position than they had been prior to Nuremberg.

In defence of Tokyo, it is perhaps a little too easy to blindly criticise the Trial; it maintained the stance adopted at Nuremberg that *“a leader must take affirmative acts to prevent war crimes or dissociate himself from the government. If he fails to do one or the other, then by the very act of remaining in a government or a state guilty of war crimes, he becomes a war criminal.”*⁵³⁰ At Tokyo, this was somewhat superficial given that the man with ultimate responsibility, Hirohito, had avoided prosecution, and the man responsible for Japan’s biological warfare programme, Ishii, had supposedly been allowed to prosper by the United States. This is not to suggest that the Tokyo Trial was the only war crimes trial pursued against Japanese war criminals. In fact, some 5,700 Japanese were prosecuted on conventional war crimes charges in the subsequent cases tried in the domestic courts and tribunals.⁵³¹

Accountability in the Post-War Years

At the very introduction to this thesis, it was documented that awareness of the crimes of Unit 731 only came to public attention in the 1990s, thanks to a touring exhibition entitled

⁵³⁰ Falk ‘*The Circle of Responsibility*’ (The Nation: 26 January 1970)

⁵³¹ Minear ‘*Victor’s Justice: The Tokyo War Crimes Trial*’ (University of Michigan: 2001) at page 6.

*“the Citizen’s Committee for the Exhibit of Unit 731 Crimes”*⁵³², where the atrocities of Unit 731 were laid bare for all to see. The immunity deal at the end of the Second World War had successfully stifled public awareness of the war crimes committed, or the identity of those who had commissioned and conducted such barbaric research.

This awareness should also be placed against a backdrop in Japan of a nation who had not fully accepted or apologised for their wartime atrocities. There remains to this very day ongoing animosity towards Japan for their conduct spanning back over a century, predominantly from Asian neighbours, as well as a failure to provide reparations. A lack of perceived justice for the victims of these countries has perpetuated and aggravated that animosity.

While Emperor Hirohito had remained in situ at the end of the war, General MacArthur oversaw profound changes to Japan’s constitution post-surrender. Japanese officials had sought to limit any changes MacArthur proposed, reduced down to a minor amendment of the 1889 Meiji Constitution.⁵³³ However, MacArthur saw fit to implement a complete overhaul of the Japanese Constitution to bring them in line with a Western brand of democracy.

MacArthur had three key aims when overhauling Japan’s constitution.⁵³⁴ Firstly, in respect of the Emperor, Hirohito would remain as head of state and his succession would be dynastic. His duties and powers would be exercised in accordance with the Constitution. MacArthur would ensure a system whereby *“the Ministers of State shall form a Cabinet collectively responsible to the House of Representatives;”* and *“that if the*

⁵³²<https://www.nytimes.com/1995/03/17/world/unmasking-horror-a-special-report-japan-confronting-gruesome-war-atrocity.html> last accessed 6th September 2020.

⁵³³ [Comments on the Document "Gist of the Revision of the Constitution"\(Larger image\) | Birth of the Constitution of Japan \(ndl.go.jp\)](#) retrieved 7th July 2022.

⁵³⁴ Dower *‘Embracing Defeat: Japan in the Aftermath of World War II’* (Penguin: 2000) at pages 374-384

*Japanese decide to retain the institution of the emperor, the Emperor shall act in all important matters only on the advice of the Cabinet”.*⁵³⁵ The Allies intended to limit the authority of the Emperor, who could now only act on the advice of the Cabinet, as opposed to ruling with totalitarian authority. The role would and remains similar to that of the British monarchy. The very fact that MacArthur saw fit to limit the Emperor’s powers and authority in the post-war years adds weight to the argument that Hirohito had not been a mere passenger when Japan’s wartime atrocities had taken place.

MacArthur’s second aim was that “*war as a sovereign right of the nation is abolished*”, and it could no longer use war as an instrument to settle disputes or even to act in self-defence. Initially, it was proposed that there would be no Japanese Army, Navy or Air Force. This aim was ultimately softened, with a compromise reached that Japan could maintain a military force for the sole purpose of self-defence, in accordance with the UN Charter.⁵³⁶

Thirdly, the feudal system in Japan would cease entirely and any and all rights or peerage bestowed on individuals (save the Imperial family) would end.⁵³⁷ The new Constitution received the Emperor’s assent on 3rd November 1946 and came in to effect on 3rd May 1947 consisting of a total of 103 Articles grouped in to 11 Chapters.

In short, sovereignty had been transferred from the Emperor to the people of Japan, who would cease to be the Head of State and instead become the “*symbol of the state and of the unity of the Japanese people*”.⁵³⁸ The three aims of MacArthur had been achieved through the implementation of the 1947 Constitution “*the rights and duties of*

⁵³⁵ Draft Report by the State War navy Coordinating Subcommittee for the Far East dated 8th October 1945

⁵³⁶ See Articles 51 and 84 - [United Nations Charter \(full text\) | United Nations](#) – retrieved 7th July 2022.

⁵³⁷ Shoichi ‘The Birth of Japan’s Postwar Constitution’ (Routledge: 1997) at page 79

⁵³⁸ Hellegers ‘We the Japanese people: World War II and the Origins of the Japanese Constitution’ (Stanford University Press: 2001) at page 562

the people”,⁵³⁹ , in addition to the existing rights conferred under Article 29 of the Meiji Constitution which guaranteed “*liberty of speech, writing, publication, public meetings and associations*”. The Constitution pushed Japan away from the nationalism that had been prevalent both before and during the Second World War, with liberal policies underpinning the Constitution and bringing Japan in line with other Western nations. A primary motivation of MacArthur’s occupation would be to transform Japan in to an American ally, conscious of their geographical location in the early days of the Cold War.⁵⁴⁰

While the Constitution may have been liberally-minded, MacArthur did introduce a policy that would have adverse, and perhaps unintentional consequences, impacting the ability of Japan and her people to understand their wartime atrocities and, in turn, take accountability for them. MacArthur required the government of the time to end a system of censorship whereby publications were not circulated amongst the population without approval by the government. The Fundamental Law of Education was introduced in 1947, along with the Ministry of Education being responsible for approval of textbooks prior to circulation. Authors would submit their texts and either receive approval, partial censorship or outright rejection. The intended aim of this provision was to ensure that militarism and nationalism were not encouraged in the post-war years and protect the status-quo implemented by the Allied occupier.

While the policy may have been intended to bring stability over the short term, in reality it has caused an ongoing heated debate within Japan over the last 7 decades. A famous example of this is the case of Saburō Ienaga, a Japanese historian, who drafted a

⁵³⁹ Finn ‘MacArthur, Yoshida, and Postwar Japan’ (University of California: 1992) at page 96.

⁵⁴⁰ The Cold War was a period of geopolitical tension between the United States (and her Allies) and the Soviet Union between 12th March 1947 and 26th December 1991.

textbook entitled “New Japanese History” in 1947 documenting, amongst other things, Japanese war crimes to include Unit 731. Having submitted it for government approval, the text was heavily censored and after a number of unsuccessful attempts to have the text published uncensored Ienaga filed a lawsuit against the government of Japan on 12th June 1965, arguing that the requirement for textbooks to be authorised by the state was both unjust and unconstitutional. It would take three separate lawsuits before the Court would accept that some of the censoring applied, to include Unit 731, had been an abuse of discretion by the State.

It had taken 50 years for Ienaga to reach this point, but crucially the Court had maintained that the state had a constitutional right to censor textbooks which remains to this very day.⁵⁴¹ The issue of censorship remains politicised. As recently as 2007, the Liberal Democratic Party had succeeded in having any reference to “wartime sex slaves” and “forced suicides” removed from school textbooks.⁵⁴² The very fact that it had taken Ienaga 5 centuries to have parts of his text, in particular those relating to Unit 731, published uncensored, undoubtedly would have impacted upon the Japanese public’s ability to learn about these atrocities and take responsibility for them.

Censorship of a different kind, administered this time by the Allied occupation, would also have a lasting effect on Japan’s ability to take accountability for their war time atrocities: their failure to broadcast the barbaric atrocities committed, particularly by Unit 731. By contrast, when the Allies had liberated various concentration camps across Eastern Europe, they rightly broadcast to the world the horrendous treatment of Jews, Roma Gypsies, prisoners of war and other persons oppressed by the Nazi-regime. This

⁵⁴¹ Yoshiko and Hiromitsu ‘*Japanese Education, Nationalism and Ienaga Saburo’s Court Challenges*’ Bulletin of Concerned Asian Scholars, Vol. 30, No. 2 (1998) at pages 37 – 46.

⁵⁴² [Japan urges US publisher to remove comfort women from textbooks | Japan | The Guardian](#) accessed 10th July 2022.

would, however, prove problematic for Unit 731; an immunity deal on the basis of confidential, high-value information being obtained in return for immunity from prosecution is incompatible with subsequent public broadcasting of those very atrocities being broadcast to the world. This thesis has documented how the Allies became aware of Unit 731 by no later than the early-1940s and, upon the conclusion of the War in the Pacific, had set about securing the research data obtained by Unit 731 as opposed to seeking justice for the victims. The Allied occupiers were more concerned with the research data of Unit 731 falling in to the hands of the Soviets.

At the end of the War in Europe, doctors who had served the Nazi regime were hauled before the Court in the Nuremberg Doctors Trial. From that landmark case stemmed the Nuremberg Code. There was no such Trial in respect of the Japanese medical researchers, who were left to carry on their professional careers unhindered once the conflict had come to a conclusion.

Many doctors and medical researchers who had been involved in unethical research and potential war crimes during the Second World War would return to Japan and see their careers prosper. For example, in May 1947 the Japanese National Institute of Health was formed at the request of the Allied occupier. Initially, the JNIH was tasked with assisting the Americans in assessing the human impact following the dropping of atomic bombs on Hiroshima and Nagasaki.⁵⁴³ The JNIH employed former Unit 731 researchers. Until 1983, only one of the Institute's Directors had not served in a biological warfare unit, with half known to have conducted experiments on live human beings, to include vivisection.⁵⁴⁴ Other key members of Unit 731 would go on to enjoy careers at prestigious universities or profitable careers in industry.

⁵⁴³ Harris 'Japanese Biomedical Experimentation During the World War II Era' at page 495.

⁵⁴⁴ Ibid at page 494.

Naito Ryoichi, who had been Ishii's right hand man, founded the Green Cross Company in 1950, along with Major Kitano. The company was the world's first commercial blood bank, and would be at the epicentre of a HIV scandal in the 1980s in which up to 3,000 people were infected despite the company knowing that their products were unsafe.⁵⁴⁵ Ryoichi employed a number of former Unit 731 members for his company,⁵⁴⁶ no doubt as a direct consequence of the information they had obtained by conducting human experimentation.

Major Kitano, who had been second in command of Unit 731, would also publish a number of academic research papers in addition to his work with the Green Cross Company. Many of the academic papers that he published were based on experiments that had undoubtedly been conducted during his time with Unit 731. For example, in 1969 he contributed to an article on haemorrhagic fever for the Defence Agency, in which he referred to a Soviet researcher having also performed experiments on human beings, the implication being that Kitano had conducted experiments on human beings.⁵⁴⁷

Another former key player of Unit 731, Dr Yoshimura, would later become President of the Kyoto University of Medicine. He published papers in the Japan Journal of Physiology in 1950 and 1952 regarding frostbite research that had been conducted on human beings while he worked at Unit 731. One paper in particular was particularly damning, in which Yoshimura confirmed that they "*performed experiments by soaking 3-day-old infants in zero-degree water.*"⁵⁴⁸ His career remained unhindered by these publications.

⁵⁴⁵ <https://www.wsj.com/articles/SB840611447839153000> - accessed 7th July 2022

⁵⁴⁶ [Jan Buruma · Dr Ishii gets away with it · LRB 9 June 1994](#) and [Three Japanese Execs Sentenced in HIV Scandal - Los Angeles Times \(latimes.com\)](#) – accessed 8th July 2022.

⁵⁴⁷ LaFleur, Iohme, Shimazono 'Dark Medicine: Rationalising Unethical Medical Research' (Indiana University Press: 2008) at page 79

⁵⁴⁸ Ibid at pages 79 - 80

The common theme amongst former Unit 731 members was that in the post-war years they did not seek to hide their atrocities, with some publically broadcasting them via research journals.

This thesis has, in addressing accountability, so far only considered the post-war years through the lens of Japanese and American interaction. However, as has already been hinted at, anti-Japanese sentiment in the post-war years had been strong.⁵⁴⁹ This has not been helped by a failure of successive Japanese governments to strongly condemn the behaviour of their armed forces and politicians during the course of the Second World War, and the years that preceded that conflict.

In 1951, Japan agreed the Treaty of San Francisco, which formally ended the legal state of conflict between her and the Allied nations. In return, Japan agreed to provide financial reparations. Despite arguably having borne the brunt of Japanese aggression, China had not been invited to the negotiations, on the basis that it was unclear whether the newly formed Republic of China represented the people of China.⁵⁵⁰ In total, Japan agreed to pay reparations spread across the Philippines, South Vietnam, the International Red Cross, Burma, South Korea, Indonesia, Malaysia, Thailand, Micronesia, Laos, Cambodia, Mongolia, Spain, Switzerland, Holland, Sweden and Denmark.⁵⁵¹

As a consequence, a separate Treaty was agreed between Japan and China in 1952, known as the Treaty of Taipei. The Treaty did not afford Chinese nationals the right to sue the Japanese government, companies or individuals for any war crimes committed, a decision maintained by Japan's Supreme Court in 2007.⁵⁵² In 1956 the Soviets signed the

⁵⁴⁹ In particular from China, Korea, the Philippines, Australia and many other nations that had been on the brunt of Japanese wartime atrocities.

⁵⁵⁰ https://ww2db.com/battle_spec.php?battle_id=316 retrieved 9th July 2022.

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⁵⁵² <https://web.archive.org/web/20070930185223/http://japanfocus.org/products/details/2369> - retrieved 11th July 2022.

Soviet-Japanese Joint Declaration of 1956, which waived any reparations owed to the Soviet Union.⁵⁵³

It would not be until September 1972 that Japan would formally apologise to the people of China, with the then Prime Minister Kakuei Tanaka stating during a visit to China that “*the Japanese side is keenly conscious of the responsibility for the serious damage that Japan caused in the past to the Chinese people through war, and deeply reproaches itself.*”⁵⁵⁴ Despite this apology, there has never been any offer of remuneration from Japan to Chinese victims, and several high profile court cases against Japan, brought by victims, have repeatedly been defeated.⁵⁵⁵ There has never been an apology from Japan for the atrocities committed by Unit 731, or other Units of a similar nature.

In the post-war years, Japan thrived both socially and economically. Japan has maintained a relatively peaceful existence since the end of the Second World War, having only participated in combat alongside coalition forces.⁵⁵⁶ Japan has undoubtedly been shaped by the post-war restrictions placed upon her by MacArthur, with a modest military, a significant reduction in nationalistic sentiment in her population and a step away from the all-consuming divinity of the Emperor.

The Japan of today bears little resemblance to the nation that surrendered to the Allies in 1945. An apology is, however, important in repairing the fractures between Japan and her neighbours. While the people of Japan could perhaps be aggrieved at the Allies for acts such as the dropping of the atomic bomb, their neighbouring Asian

⁵⁵³ <https://www.nytimes.com/1956/10/20/archives/texts-of-sovietjapanese-statements-peace-declaration-trade-protocol.html?sq=Soviet-Japanese+Joint+Declaration&scp=1&st=p> – accessed 11th July 2022.

⁵⁵⁴ [MOFA: Joint Communiqué of the Government of Japan and the Government of the People's Republic of China](#) – accessed 7th July 2022.

⁵⁵⁵ See reference 552.

⁵⁵⁶ For example, the Iraq war between 2003 and 2001 and Operation Ocean Shield protecting sea vessels from Somali pirate attacks between 2009 and 2016.

countries were not, and could not, be seen as aggressors. Unit 731 carried out its research in Manchuria, north east China. The victims of that deadly research (and other wartime atrocities) were disproportionately carried out against Chinese nationals, who in turn were disproportionately prejudiced and continue to be so as a consequence of their exclusion from the San Francisco Treaty.

CONCLUSION

This thesis set out to with five separate aims, divided conveniently in to five separate parts. Ultimately, this thesis concluded that the key players of Unit 731, Hirohito & Ishii, both avoided prosecution due to immunity deals being granted to them. Importantly, this thesis has also evidenced that, but for the immunity deals, had they stood trial the sentences would have likely ranged from life imprisonment to death by hanging. However, this thesis also sought to provide the reader with an explanation, or at least some form of understanding (in the absence of agreement) as to how these atrocities happened and, equally, how they have and could happen again. This thesis was never intended to be a comprehensive piece on each part. However, it was hoped that this would provide the reader with a broad understanding and background to the work and atrocities of Unit 731, and encourage further reading on each distinct topic.

In the first part of this thesis, a historical overview of modern Japan was provided to show the seismic changes to her society, cultures and traditions, politics (both domestic and international) and economy from the forced opening of her shores by the United States in 1853 until the final days of the Second World War in 1945.. This thesis sought to emphasise that the war crimes that both Japan and Nazi-Germany had committed (along with the Allied nations) did not happen by chance, nor did they often occur outside of wartime. They took decades of planning and a degradation of societal beliefs and values, in order to facilitate such atrocities.

Japan had been an isolationistic nation for centuries prior to her forced opening by Commodore Perry in 1853, setting in to motion a modernisation and “westernisation” that Japan had not wanted, nor needed. In a period that spanned decades and not centuries,

societal beliefs and traditions that had prevailed in Japan for millennia, allowing her to exist in isolationist peace, had irreversibly changed. A traditionally feudal society remained more divided than ever, albeit with her moral compass in disarray. In the decades that followed, this thesis highlighted the changes relevant to Unit 731: the evolution of her military in to a well-drilled and deadly machine, capable of waging war against the traditional powers at the turn of the 20th Century.

The Meiji Restoration of 1868 had further “westernised” the existing political hierarchy in Japan led by an elected Prime Minister and Cabinet, who would now fall under the control of one Emperor of Japan.⁵⁵⁷ Where previously an Emperor had ruled with impunity, the process now became complex and purportedly democratic. These changes should have led to Japan aligning herself with other nations, such as the United States and Great Britain, with their shared political structure. However, what the first part of this thesis showed in depth was a strained relationship between Japan and the other world powers, not always as a result of their own actions. The “Westernisation” of Japan had arguably only been completed with MacArthur’s amended Constitution taking effect in 1947.

The modernisation of Japan’s military, society and political landscapes led to an inevitable degradation of her traditions, ethics and beliefs. The checks and balances that had been in place for centuries were now being eradicated piece by piece, all in the name of modernisation. The military, in particular, became a melting pot of opportunity for people such as Ishii who sought to do as they pleased without retribution.

With the boom in Japan, came the same inevitability that had dawned upon Great Britain. Both were island nations, limited to their own resources from limited land. The only way that Japan could foreseeably have become a world power was to adopt a policy

⁵⁵⁷ Beasley *The Meiji Restoration* (Stanford University Press: 1972) at page 325.

of foreign expansion: in simple terms, to wage war on her neighbours. Five years after the Meiji Restoration, conscription had been implemented in 1873 and, by 1874, Japan had invaded Taiwan; the first time that her military had waged war on foreign soil.⁵⁵⁸ Fast-forward to the 1920s, and Japan had become a military force in her own right. Tensions were peaking between her and the League of Nations, with this thesis detailing how politicised and involved Emperor Hirohito had become in Japan's domestic and foreign policies. He cannot be said to have been ignorant to the military decisions being made at that time, and this thesis has documented evidence that he personally signed off military orders by no later than 1928. This is a further damning indictment of his rule, given the bloody battles that occurred in the final days of the Second World War, notably their doomed defence of the home islands.

The second aim of this thesis was to lay out in precise terms what Unit 731 was, why it existed and what atrocities were committed by it as well as the involvement of both Shiro Ishii and Emperor Hirohito. Importantly, this thesis intended to detail just how close Unit 731 had come to deploying biological weapons against the Allied nations. The first two parts of this thesis were intended to lay the groundwork for future discussion on their respective culpability, if any.

While the first part of this thesis had focused on the changes that took place to Japan's society, traditions and military, the second part of this thesis documented the significant changes in their approach to medicine and professional ethics. Just as had been the case in Nazi-Germany, there was no smoking gun, rather a gradual and insidious degradation of the medical profession in Japan as well as a close alignment to her military. Whereas in the first Russo-Japanese war of 1904-05 Japanese troops actively assisting

⁵⁵⁸ Harries & Harries 'Soldiers of the Sun: The Rise and Fall of the Imperial Japanese Army' (New York: 1994) at page 28.

their wounded enemies during conflict, less than three decades later there had been a complete reversal in their morality.

While Ishii was a key player he was only one cog in the Japanese war effort and, along with Hirohito and countless others, his research would constitute war crimes of the most deadly and barbaric kind. This thesis documented how Ishii and other researchers of Unit 731 conducted live vivisections of human beings, intentional inoculation of lethal bacteria, weapons testing, irradiation, and exposure to fatal temperatures. Ishii had spotted the deadly potential of biological warfare, and sought to exploit its value to the fullest. Barenblatt helpfully summarised the position as being that “*germ warfare was cheap in terms of budget expenditure and the raw materials needed, frightening, and, under the right conditions, extremely effective at killing large numbers of people and causing social disruption. Germ warfare was also, more importantly, deniable.*”⁵⁵⁹

It may well, perhaps, have been these motives that attracted Hirohito to become heavily involved with Unit 731. Hirohito’s involvement in Unit 731 cannot be doubted. The creation of that deadly Unit had been created by Royal Decree, one of only two occasions during Hirohito’s entire reign that he took such steps. The order specifically allowed for field studies to be permitted in Manchuria.⁵⁶⁰ Hirohito created Unit 731 and ordered extensive field experiments to be carried out against innocent Chinese civilians. That is no different to Adolf Hitler ordering the death of millions of innocent people in concentration camps across Europe. This thesis also documented that Hirohito had taken it upon himself to read all Directives relating to the Unit before they were posted out⁵⁶¹

⁵⁵⁹ <https://needoc.net/b-altheide> last accessed 29/03/2020.

⁵⁶⁰ Harris ‘*Factories of Death: Japanese Biological Warfare, 1932-45 and the American Cover-Up*’ 2nd Edition (Routledge: 2002) at page 144.

⁵⁶¹ Bix ‘*Hirohito and the Making of Modern Japan*’ (Harper Collins: 2001) at pages 362-364.

and that his cousin was appointed to hold executive responsibility for Unit 731.⁵⁶² The evidence of Hirohito's involvement in Japan's biological warfare program is damning.

It is important, however, to try and provide some form of balance. This thesis provided clear evidence of similar unethical biological warfare research being conducted by Nazi-Germany, the United States and Great Britain from the 1930s onwards. Finally, the second part of this thesis concluded by attempting to provide some justification, albeit weak when faced with such atrocities, for immunity deals to be granted. The complicated issues of legality and morality intertwine when considering any immunity deal and, essentially, the question was whether the Allied nations, in particular the United States, wanted Japan to be her ally or foe in the post-war years. The answer to that question was addressed in the following part.

The aim and part of this thesis addressed Japan's surrender on 15th August 1945 and the Allied response; principally, the investigations carried out by them at the end of the War to ascertain Japan's biological warfare program's true extent, as well as the knowledge the Allied nations had already been in possession of prior to the conclusion of the Second World War. During the United States' occupation of Japan, the Allies conducted various extensive investigations into the research conducted by Unit 731, however even before Japan's surrender they had already been aware of the extensive biological warfare programme in Manchuria, or at least suspected the existence of one, many years prior to the conclusion of the Second World War. The United States had, by August 1939, concluded that there were nine "diseases" that could be deployed against them.⁵⁶³

⁵⁶² Williams & Wallace *'Unit 731'* (Hodder & Stoughton: 1989) at page 16.

⁵⁶³ *'Technical Study No. 10'* Chemical Warfare Service, 28th August 1939 (see: Brophy, Miles & Cochrane *'The Chemical Warfare Service: From Laboratory to Field'* (Center of Military History United States Army: 1988) at page 102.

Once occupied, the Allied investigations into Japan's biological warfare program were, by-and-large, incompetent. That may have been by design or entirely innocent. The first investigation tasked the investigatory force with uncovering the true extent of Japan's wide-scale biological warfare programme and, importantly, to glean whatever data had been gained by Ishii and his men from carrying out both their human and field experimentation.⁵⁶⁴ In defence of the Allied attempts to investigate Ishii and his work, these had been impeded by the mass-destruction of any and all documents relating to Unit 731 and its work when the fall of Manchuria to the Soviets became inevitable. Sanders wrongly concluded that the biological warfare programme seemed to *"have been largely a military activity, with civilian talent excluded in all but minor roles."*⁵⁶⁵ This thesis has extensively documented to the contrary that Unit 731 and other units conducted wide scale field-studies and relied upon an extensive network of universities across mainland Japan for civilian recruitment of researchers.

The Allies had a second bite of the cherry, appointing Arvo Thompson to commission a second report into the existence of Unit 731 and other biological research programs, who got closer to the true extent of Ishii's deadly work. Thompson noted that *"while Ishii maintained that no official directive existed for the prosecution of this activity and that it was conducted as a phase of military preventative medicine, it is evident from the progress that was made that biological warfare and development in all its phases was conducted on a large scale, and was officially sanctioned and supported by the highest military authority."*⁵⁶⁶

⁵⁶⁴ Zilinskas *'The Microbiologist and Biological Defense Research: Ethics, Politics, and International Security'* (New York: 1992) at page 41.

⁵⁶⁵ Sanders Report 'Summary' at page 1 (see: Williams & Wallace *'Unit 731: Japan's Secret Biological Warfare in World War II'* (Free Press: 1989) at page 262.

⁵⁶⁶ Harris *'Factories of Death: Biological Warfare, 1932-45 and the American Cover Up'* 2nd Edition (Routledge: 2002) at page 184.

Thompson had correctly identified that Ishii was conducting offensive warfare on a large scale, and that such research had to have been approved by those at the very top of Japanese hierarchy, however MacArthur and the Allies had little appetite to prosecute them. MacArthur's legal department requested that "... *all evidence and information provided by Shiro Ishii and members of his division must be provided to the States in telegram as soon as possible...*"⁵⁶⁷, to which MacArthur's legal department responded on 6th June 1947 that "*the reports and files... on Ishii and his co-workers are based on anonymous letters, hearsay affidavits and rumours... the alleged victims are of unknown identity...none of Ishii's subordinates are charged or held as war crimes suspects, nor is there sufficient evidence against them.*"⁵⁶⁸ On 27th June 1947 to be that "*Japanese BW group headed by Ishii did violate rules of land warfare, but this expression of opinion is not a recommendation that group be charged and tried for such*"⁵⁶⁹ The groundwork for justifying an immunity deal had been done. The third part of this thesis documented that Ishii's research data was deemed to be more valuable to the United States than any notion of justice, or the rule of law. The victims of Unit 731 were to be considered collateral damage.

The fourth aim of this thesis was to document the legal response to Japan's crimes post-war, in order to then apply the legal framework adopted to the key players of Unit 731 who had avoided prosecution via immunity deals. This fourth part of the thesis detailed the inception of the Tokyo Trial and provided comparison with the earlier Nuremberg Trials, along with analysis of the subtle differences between the two show trials.

⁵⁶⁷ Yan-Jun & Yue-Him 'Unit 731: Laboratory of the Devil, Auschwitz of the East: Japanese Biological Warfare in China 1933-45' (Fonthill: 2018) at page 131.

⁵⁶⁸ Large 'Showa Japan: Political, Economic and Social History 1926-1989' Vol. II, 1941-1952 (Routledge: 1998) at page 164

⁵⁶⁹ Ibid at page 164.

The issue of prosecuting and punishing both the alleged Japanese and Germans war criminals for atrocities committed during the Second World War, had been a constant headache and a source of concern throughout the conflict for all the Allied powers, not only the United States. Whilst there had been a clear desire on the part of the Allied nations for retribution and punishment, it was unclear precisely how this would be administered, in both a practical and legal sense. On 13th January 1942, the St James Declaration was issued by nine European states, in which they put the Axis nations on notice that they would pursue “*the punishment, through the channel of organized justice, of those guilty or responsible for these crimes.*”⁵⁷⁰ While aimed at Nazi-Germany, once the conflict shifted to the War in the Pacific, the same principles would apply to Japan.

This thesis has documented how United States manipulated the evidence presented at the Trial, to include the Defendants and documents or testimony submitted. A great number of Defendants who ought to have faced trial avoided indictment, most likely due to immunity deals struck. The trial was flawed from the very outset, and justice in any true sense would never prevail. The reason for the United States’ impeding Justice was not only for their own gain, but also a matter of self-defence. Placed in context, at the conclusion of the war they were acutely concerned about the growing global Communist threat and wished to ensure its influence did not spread to Tokyo.⁵⁷¹ The attainment of justice had not been the primary objective for the United States’ at Tokyo.

Had the meddling of the United States not been enough, the Justices that had been appointed would not be in agreement. Several Justices filed dissenting judgments, and even those amongst the Majority were not in complete agreement. The evidence that they

⁵⁷⁰ Kochavi ‘*Prelude to Nuremberg: Allied War Crimes Policy and the Question of Punishment*’ (University of Carolina: 1998) at page 20.

⁵⁷¹ Kopstein & Lichbach ‘*Comparative Politics: Interests, Identities, and Institutions in a Changing Global Order*’ (Cambridge University Press: 2000) at page 178

were presented with was censored. Justice Webb stated after the event that *“much evidence existed which was not tendered by the prosecution or the defence and which was not readily accessible to the prosecution or the defence; but the Tribunal had no power of its own motion to order investigations and researches.”*⁵⁷²

There had also been a complete omission of those persons involved in the Japanese biological warfare programme, where crimes against humanity had been committed against both civilians and prisoners of war. There was no reference to these individuals during the Trial, despite the United States having had clear evidence of these atrocities having been committed. The only brief reference was made at Appendix D of the indictment, with reference made to the use of poison gas by the Japanese in China. When Justice Webb pressed the Prosecution to expand on this point, the prosecution tendered no evidence in support. There would be no justice for the victims of Unit 731.

The final part of this thesis detailed the Majority Judgment of the Tokyo Trial, pertinent only to the provisions that would have applied to those involved in Unit 731 before then applying the legal framework for a theoretical discussion as to likely sentences, if any, handed down against Ishii and Hirohito. Whereas other academics addressed the issue of immunity and implied guilt, this thesis intended to critically analyse the relevant charges that could be levelled and then compare these against the sentences passed down to other comparable Defendants.

In dealing with Hirohito, this thesis concluded that, on the evidence available, it was reasonable to adduce that Emperor Hirohito, had he been an indicted Defendant at Tokyo could have been convicted on Counts 1, 27, 54 and 55 in respect of involvement with Unit 731 only. The typical sentences of comparable Defendants ranged from seven

⁵⁷² [Full text of "Japans Imperial Conspiracy" \(archive.org\)](#) – accessed 22/02/2021.

years imprisonment to death by hanging; the overwhelming majority were sentenced to death by hanging. This thesis has highlighted that, at the very least, Emperor Hirohito would have received a custodial sentence. In respect of Ishii, this thesis concluded that had he also been indicted, he would have at the very least been charged and sentenced on Counts 1 and 55 relating to his involvement with Unit 731. Again, it is likely he would have received a sentence ranging from life imprisonment to death by hanging but for the immunity deal.

The Tokyo Trial remains mostly forgotten, whereas the Nuremberg Trial is still a keenly debated topic for academics and laypersons. The greatest legacy of the Tokyo Trial was to cement, into international law, the legal framework established controversially at Nuremberg. However, the Allied nations failed to administer justice at Tokyo and a great number of people who committed atrocities went on to live prosperous lives in the post-war years.

The innocent civilians who suffered at the hands of Ishii and his men still do not have justice for the crimes that they suffered and, unfortunately, given the passage of time probably never will. The Allied nations failed to prosecute Japanese war criminals effectively, and, instead, entered in to an immoral immunity deal that benefitted only the individual war criminals and the United States.

In the post-war years, there was no real need for Japan or those involved in Unit 731 to take any accountability for their crimes; key members of that deadly Unit went on to enjoy prosperous civilian careers, and many would utilise the experiences and research data obtained from human experimentation to further progress their careers. Thankfully, these individuals did not manage to weaponise their deadly research and deploy it against

their enemies. Instead, their research data has gone some way to advance our understanding of both human diseases and their treatments.

APPENDIX I

ARTICLES OF THE TOKYO CHARTER

Proclamation of the Supreme Commander for the Allied Powers dated 19 January 1946 established an International Military Tribunal for the Far East. Charter of this Tribunal is as follows: -

SECTION I - Constitution of Tribunal

Article 1 - Tribunal established

The International Military Tribunal for the Far East is hereby established for the just and prompt trial and punishment of the major war criminals in the Far East. The permanent seat of the Tribunal is in Tokyo.

Article 2 - Members

The Tribunal shall consist of not less than six members nor more than eleven members, appointed by the Supreme Commander for the Allied Powers from the names submitted by the Signatories to the Instrument of Surrender, India, and the Commonwealth of the Philippines.

Article 3 - Officers and Secretariat

- a. President. The Supreme Commander for the Allied Powers shall appoint a Member to be President of the Tribunal.
- b. Secretariat.
 - (1) The Secretariat of the Tribunal shall be composed of a General Secretary to be appointed by the Supreme Commander for the Allied Powers and such assistant secretaries, clerks, interpreters, and other personnel as may be necessary.
 - (2) The General Secretary shall organize and direct the work of the Secretariat.
 - (3) The Secretariat shall receive all documents addressed to the Tribunal, maintain the records of the Tribunal, provide necessary clerical services to the Tribunal and its Members, and perform such other duties as may be designated by the Tribunal

Article 4 – Quorum and Voting

- a. Quorum. The presence of a majority of all Members shall be necessary to constitute a quorum.
- b. Voting. All decisions and judgments of this Tribunal, including convictions and sentences, shall be by a majority vote of those Members of the Tribunal present. In case the votes are evenly divided, the vote of the President shall be decisive.

PART II - Jurisdiction and general provisions

Article 5 - Jurisdiction over persons and offences

The Tribunal shall have the power to try and punish Far Eastern war criminals who as individuals or as members of organizations are charged with offences which include Crimes against Peace. The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

- a. Crimes against Peace: Namely, the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
- b. Conventional War Crimes: Namely, violations of the laws or customs of war;
- c. Crimes against Humanity: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan.

Article 6 - Responsibility of accused

Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such

circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

Article 7 - Rules of procedure

The Tribunal may draft and amend rules of procedure consistent with the fundamental provisions of this Charter.

Article 8 – Counsel

- a. Chief of Counsel. The Chief of Counsel designated by the Supreme Commander for the Allied Powers is responsible for the investigation and prosecution of charges against war criminals within the jurisdiction of this Tribunal, and will render such legal assistance to the Supreme Commander as is appropriate.
- b. Associate Counsel. Any United Nation with which Japan has been at war may appoint an Associate Counsel to assist the Chief of Counsel.

PART III - Fair trial for accused

Article 9 - Procedure for fair trial

In order to ensure a fair trial for the accused the following procedure shall be followed:

- a. Indictment. The indictment shall consist of a plain, concise, and adequate statement of each offence charged. Each accused shall be furnished, in adequate time for defence, a copy of the indictment, including any amendment, and of this Charter, in a language understood by the accused.
- b. Hearing. During the trial or any preliminary proceedings, the accused shall have the right to give any explanation relevant to the charges made against him.
- c. Language. The trial and related proceedings shall be conducted in English and in the language of the accused. Translations of documents and other papers shall be provided as needed and requested.
- d. Counsel for Accused. Each accused shall have the right to be represented by counsel of his selection, subject to the disapproval of such counsel at any time by the Tribunal. The accused shall file with the General Secretary of the Tribunal the name of his counsel. If an accused is not represented by counsel and in open court

requests the appointment of counsel, the Tribunal shall designate counsel for him. In the absence of such request the Tribunal may appoint counsel for an accused if in its judgment such appointment is necessary to provide for a fair trial.

- e. Evidence for Defence. An accused shall have the right, through himself or through his counsel (but not through both), to conduct his defence, including the right to examine any witness, subject to such reasonable restrictions as the Tribunal may determine.
- f. Production of Evidence for the Defence. An accused may apply in writing to the Tribunal for the production of witnesses or of documents. The application shall state where the witness or document is thought to be located. It shall also state the facts proposed to be proved by the witness or the document and the relevancy of such facts to the defence. If the Tribunal grants the application the Tribunal shall be given such aid in obtaining production of the evidence as the circumstances require.

Article 10 - Applications and motions before trial

All motions, applications, or other requests addressed to the Tribunal prior to the commencement of trial shall be made in writing and filed with the General Secretary of the Tribunal for action by the Tribunal.

PART IV - Powers of Tribunal and conducts of trial

Article 11 - Powers

The Tribunal shall have the power:

- a. To summon witnesses to the trial, to require them to attend and testify, and to question them.
- b. To interrogate each accused and to permit comment on his refusal to answer any question.
- c. To require the production of documents and other evidentiary material.
- d. To require of each witness an oath, affirmation, or such declaration as is customary in the country of the witness, and to administer oaths.
- e. To appoint officers for the carrying out of any task designated by the Tribunal, including the power to have evidence taken on commission.

Article 12 - Conduct of trial

The Tribunal shall:

- a. Confine the trial strictly to an expeditious hearing of the issues raised by the charges.
- b. Take strict measures to prevent any action which would cause any unreasonable delay and rule out irrelevant issues and statements of any kind whatsoever.
- c. Provide for the maintenance of order at the trial and deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any accused or his counsel from some or all further proceedings, but without prejudice to the determination of the charges.
- d. Determine the mental and physical capacity of any accused to proceed to trial

Article 13 – Evidence

- a. Admissibility. The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which it deems to have probative value. All purported admissions or statements of the accused are admissible.
- b. Relevance. The Tribunal may require to be informed of the nature of any evidence before it is offered in order to rule upon the relevance.
- c. Specific Evidence Admissible. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:
 1. A document, regardless of its security classification and without proof of its issuance or signature, which appears to the Tribunal to have been signed or issued by any officer, department, agency or member of the armed forces of any government.
 2. A report which appears to the Tribunal to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person who appears to the Tribunal to have personal knowledge of the matters contained in the report.
 3. An affidavit, deposition or other signed statement.
 4. A diary, letter or other document, including sworn or unsworn statements which appear to the Tribunal to contain information relating to the charge.

5. A copy of a document or other secondary evidence of its contents, if the original is not immediately available.
- d. Judicial Notice. The Tribunal shall neither require proof, of facts of common knowledge, nor of the authenticity of official j government documents and reports of any nation nor of the proceedings, records, and findings of military or other agencies of any of the United Nations.
- e. Records, Exhibits and Documents. The transcript of the proceedings, and exhibits and documents submitted to the Tribunal, will be filed with the General Secretary of the Tribunal and will constitute part of the Record.

Article 14 - Place of trial

The first trial will be held at Tokyo and any subsequent trials will be held at such places as the Tribunal decided

Article 15 - Course of Trial proceedings

The proceedings the Trial will take the following course:

- a. The indictment will be read in court unless the reading is waived by all accused
- b. The Tribunal will ask each accused whether he pleads "guilty" or "not guilty."
- c. The prosecution and each accused (by counsel only, if represented) may make a concise opening statement.
- d. The prosecution and defence may offer evidence and the admissibility of the same shall be determined by the Tribunal.
- e. The prosecution and each accused (by counsel only, if represented) may examine each witness and each accused who gives testimony.
- f. Accused (by counsel only, if represented) may address the Tribunal.
- g. The prosecution may address the Tribunal.
- h. The Tribunal will deliver judgment and pronounce sentence.

PART V - Judgment and sentence

Article 16 - Penalty

The Tribunal shall have the power to impose upon an accused, on conviction, death or such other punishment as shall be determined by it to be just.

Article 17 - Judgment and review

The judgment will be announced in open court and will give the reasons on which it is based. The record of the trial will be transmitted directly to the Supreme Commander for the Allied Powers for his action thereon. A sentence will be carried out in accordance with the order of the Supreme Commander for the Allied Powers, who may at any time reduce or otherwise alter the sentence except to increase its severity.

APPENDIX II

THE CHARGES

Count 1. All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, participated as leaders, organisers, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by themselves or by any person in execution of such plan. The object of such plan or conspiracy was that Japan should secure the military, naval, political and economic domination of East Asia and of the Pacific and Indian Oceans, and of all countries and islands therein and bordering thereon and for that purpose should alone or in combination with other countries having similar objects, or who could be induced or coerced to join therein, wage declared or undeclared war or wars of aggression, and war or wars in violation of international law, treaties, agreements and assurances, against any country or countries who might oppose that purpose.

Count 2. All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, participated as leaders, organisers, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by themselves or by any person in execution of such plan. The object of such plan or conspiracy was that Japan should secure the military, naval, political and economic domination of the provinces of Liaoning, Kirin, Heilungkiang and Jehol, being parts of the Republic of China, and for that purpose should wage declared or undeclared war or wars of aggression, and war or wars in violation of international law, treaties, agreements and assurances, against the Republic of China.

Count 3. All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, participated as leaders, organisers, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by themselves or by any person in execution of such plan. The object of such plan or conspiracy was that Japan should secure the military, naval, political and economic domination of the Republic of China, and for that purpose should wage declared or undeclared war or wars of aggression, and war or wars in violation of international law, treaties, agreements and assurances, against the Republic of China.

Count 4. All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, participated as leaders, organisers, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by themselves or by any person in execution of such plan. The object of such plan or conspiracy was that Japan should secure the military, naval, political and economic domination of East Asia and of the Pacific and Indian Oceans, and of all countries and islands therein or bordering thereon, and for that purpose should alone or in combination with other countries having similar objects, or who could be induced or coerced to join therein, for wage declared or undeclared war or wars of aggression, and war or wars in violation of international law, treaties, agreements and assurances, against the United States, the British Commonwealth of Nations..., the Republic of France, the Kingdom of the Netherlands, the Republic of China, the Republic of Portugal, the Kingdom of Thailand, the Commonwealth of the Philippines, and the Union of the Soviet Socialist Republics, or such of them as might oppose that purpose.

Count 5. All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, participated as leaders, organisers, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by themselves or by any person in execution of such plan. The object of such plan or conspiracy was that Germany, Italy and Japan should secure the military, naval, political and economic domination of the whole world, each having special domination in its own sphere, the sphere of Japan covering East Asia and of the Pacific and Indian Oceans, and of all countries and islands therein or bordering thereon, and for that purpose should alone or in combination with other countries having similar objects, or who could be induced or coerced to join therein, for wage declared or undeclared war or wars of aggression, and war or wars in violation of international law, treaties, agreements and assurances, against the United States, the British Commonwealth of Nations..., the Republic of France, the Kingdom of the Netherlands, the Republic of China, the Republic of Portugal, the Kingdom of Thailand, the Commonwealth of the Philippines, and the Union of the Soviet Socialist Republics, or such of them as might oppose that purpose.

Count 6. All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war

in violation of international law, treaties, agreements and assurance, against the Republic of China.

Count 7. All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurance, against the United States of America.

Count 8. All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurance, against the United Kingdom...

Count 9. All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurance, against the Commonwealth of Australia.

Count 10. All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurance, against New Zealand.

Count 11. All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurance, against Canada.

Count 12. All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurance, against India.

Count 13. All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurance, against the Commonwealth of the Philippines.

Count 14. All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war

in violation of international law, treaties, agreements and assurance, against the Kingdom of the Netherlands.

Count 15. All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurance, against the Republic of France.

Count 16. All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurance, against the Kingdom of Thailand.

Count 17. All the Defendants together with divers other persons, between the 1st January, 1928, and the 2nd September, 1945, planned and prepared a war of aggression and a war in violation of international law, treaties, agreements and assurance, against the Union of Soviet Socialist Republics.

Count 18. The Defendants Araki, Dohihara, Hashimoto, Hiranuma, Itagaki, Koiso, Minami, Okawa, Shigemitsu, Tōjō and Umezu, on or about the 18th September 1931, initiated a war of aggression and war in violation of international law, treaties, agreements and assurance, against the Republic of China.

Count 19. The Defendants Araki, Dohihara, Hashimoto, Hata, Hiranuma, Hirota, Hoshino, Itagaki, Kaya, Kido, Matsui, Muto, Suzuki, Tōjō and Umezu, on or about the 7th July, 1937, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurance, against the Union of Soviet Socialist Republics.

Count 20. The Defendants Dohihara, Hiranuma, Hirota, Hoshino, Kaya, Kido, Kimura, Muto, Nagano, Oka, Oshima, Sato, Shimada, Suzuki, Togo and Tojo, on or about the 7th December 1941, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurance, against the United States of America.

Count 21. The same Defendants as in Count 20 on or about the 7th December 1941, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurance, against the Commonwealth of the Philippines.

Count 22. The same Defendants as in Count 20 on or about the 7th December 1941, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurance, against the British Commonwealth of Nations.

Count 23. The Defendants Araki, Dohihara, Hiranuma, Hirota, Hoshino, Itagaki, Kido, Matsuoka, Muto, Nagano, Shigemitsu and Tojo, on or about the 22nd September 1940, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurance, against the Republic of France.

Count 24. The same Defendants as in Count 20 on or about the 7th December 1941, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurance, against the Kingdom of Thailand.

Count 25. The Defendants Araki, Dohihara, Hata, Hiranuma, Hirota, Hoshino, Itagaki, Kido, Matsuoka, Matsui, Shigemitsu, Suzuki and Togo, during July and August, 1938, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurance by attacking the Union of Soviet Socialist Republics in the area of Lake Khasan.

Count 26. The Defendants Araki, Dohihara, Hata, Hiranuma, Hirota, Itagaki, Kido, Koiso, Matsuoka, Matsui, Suzuki, Togo, Tōjō and Umezu, during the summer of 1939, initiated a war of aggression and a war in violation of international law, treaties, agreements and assurance by attacking the territory of the Mongolian People's Republic in the area of Khalkhin-Gol River.

Count 27. All the Defendants between the 18th September, 1931, and the 2nd September 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurance against the Republic of China.

Count 28. All the Defendants between the 7th July, 1937, and the 2nd September, 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurance against the Republic of China.

Count 29. All the Defendants between the 7th December, 1941, and the 2nd September 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurance against the United States of America.

Count 30. All the Defendants between the 7th December, 1941, and the 2nd September 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurance against the Commonwealth of the Philippines.

Count 31. All the Defendants between the 7th December, 1941, and the 2nd September 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurance against the British Commonwealth of Nations.

Count 32. All the Defendants between the 7th December, 1941, and the 2nd September 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurance against the Kingdom of the Netherlands.

Count 33. The Defendants Araki, Dohihara, Hiranuma, Hirota, Hoshino, Itagaki, Kido, Matsuoka, Muto, Nagano, Shigemitsu and Tōjō, on and after the 22nd September 1940, waged a war of aggression Republic of France.

Count 34. All the Defendants between the 7th December, 1941, and the 2nd September 1945, waged a war of aggression and a war in violation of international law, treaties, agreements and assurance against the Kingdom of Thailand.

Count 35. The same Defendants as in Count 25, during the summer of 1938, waged a war of aggression and a war in violation of international law, treaties, agreements and assurance against the Union of Soviet Socialist Republics.

Count 36. The same Defendants as in Count 26, during the summer of 1939, waged a war of aggression and a war in violation of international law, treaties, agreements and assurance against the Mongolian People's Republic and the Union of Soviet Socialist Republics.

Count 37. The Defendants Dohihara, Hiranuma, Hirota, Hoshino, Kaya, Kido, Kimura, Muto, Nagano, Oka, Oshima, Sato, Shimada, Suzuki, Togo and Tōjō, together with divers other persons between the 1st June, 1940, and the 8th December, 1941, participated as leaders, organisers, instigators or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by themselves or by any other person in execution of such plan. The object of such plan or conspiracy was unlawfully to kill and murder the persons described below, by initiating unlawful hostilities against the United States of America, the Commonwealth of the Philippines, the British Commonwealth of Nations, the Kingdom of the Netherlands and the Kingdom

of Thailand, and unlawfully ordering, causing and permitted the armed forces of Japan to attack the territory, ships and airplanes of the said nations or some of those at times when Japan would be at peace with said nations... the said hostilities and attacks were unlawful because they were breaches of Treaty Article 5...

Count 38. The Defendants Dohihara, Hiranuma, Hirota, Hoshino, Kaya, Kido, Kimura, Matsuoka, Muto, Nagano, Oka, Oshima, Sato, Shimada, Suzuki, Togo and Tōjō, together with divers other persons between the 1st June, 1940, and the 8th December, 1941, participated as leaders, organisers, instigators or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by themselves or by any other person in execution of such plan. The object of such plan or conspiracy was unlawfully to kill and murder the persons described below, by initiating unlawful hostilities against the United States of America, the Commonwealth of the Philippines, the British Commonwealth of Nations, the Kingdom of the Netherlands and the Kingdom of Thailand, and unlawfully ordering, causing and permitted the armed forces of Japan to attack the territory, ships and airplanes of the said nations or some of those at times when Japan would be at peace with said nations... the said hostilities and attacks were unlawful because they were breaches of Treaty Articles 6, 7, 19, 33, 34 and 36...

Count 39. The same Defendants as in Count 38, under the circumstances alleged in Counts 37 and 38, by ordering, causing and permitting the armed forces of Japan to attack the territory, ships and airplanes of the United States of America, with which nation Japan was then at peace, at Pearl Harbour, Territory of Hawaii, on the 7th December, 1941, at about 0755 hours (Pearl Harbour time), unlawfully killed and murdered Admiral Kidd and about 4,000 other members of the naval and military forces of the United States of America and certain civilians whose names and number are at present unknown.

Count 40. The same Defendants as in Count 38, under the circumstances alleged in Counts 37 and 38, by ordering, causing and permitting the armed forces of Japan to attack the territory, ships and airplanes of the British Commonwealth of Nations, with which nations Japan was then at peace, at Kota Bahru, Kelantan, on the 8th December 1941, at about 0025 hours (Singapore time), unlawfully killed and murdered certain members of the armed forces of the British Commonwealth of Nations whose names and numbers are at present unknown.

Count 41. The same Defendants as in Count 38, under the circumstances alleged in Counts 37 and 38, by ordering, causing and permitting the armed forces of Japan to attack the territory, ships and airplanes of the British Commonwealth of Nations, with which nations Japan was then at peace, at Hong Kong, on the 8th December 1941, at about 0800 hours (Hong Kong time), unlawfully killed and murdered certain members of the armed forces of the British Commonwealth of Nations whose names and numbers are at present unknown.

Count 42. The same Defendants as in Count 38, under the circumstances alleged in Counts 37 and 38, by ordering, causing and permitting the armed forces of Japan to attack the H.M.S. Peterel, a ship of the British Commonwealth of Nations, with which nations Japan was then at peace, at Shanghai, on the 8th December 1941, at about 0300 hours (Shanghai time), unlawfully killed and murdered three members of the naval forces of the British Commonwealth of Nations whose names and numbers are at present unknown.

Count 43. The same Defendants as in Count 38, under the circumstances alleged in Counts 37 and 38, by ordering, causing and permitting the armed forces of Japan to attack the territory of the Philippines, with which nations Japan was then at peace, at Davao, on the 8th December 1941, at about 0100 hours (Manila time), unlawfully killed and murdered certain members of the armed forces of the United States of America and the armed forces and civilians of the Commonwealth of the Philippines, whose names and numbers are at present unknown.

Count 44. All the Defendants together with divers others between the 18th September, 1931, and the 2nd September, 1945, participated as leaders, organisers, instigators or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by themselves or by another person in execution of such plan. The object of such plan or conspiracy was to procure and permit the murder on a wholesale scale of prisoners of war, members of the armed forces of countries opposed to Japan who might lay down their arms, and civilians who might be in the power of Japan, on land or sea, in territories occupied by Japan, and crews of ships destroyed by Japanese forces, in ruthless pursuit of victory in the unlawful wars in which Japan was, or would, during the said period be engaged.

Count 45. The Defendants Araki, Hashimoto, Hata, Hiranuma, Hirota, Itagaki, Kaya, Kido, Matsui, Muto, Suzuki and Umezu, on the 12th December 1937, and succeeding

days, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the City of Nanking in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered many thousands of civilians and disarmed soldiers of the Republic of China, whose names and numbers are at present unknown.

Count 46. The same Defendants as in Count 45, on the 21st October, 1938 and succeeding days, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the City of Canton in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered large numbers of civilians and disarmed soldiers of the Republic of China, whose names and numbers are at present unknown.

Count 47. The same Defendants as in Count 45, prior to the 27th October, 1938, and succeeding days, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the City of Hankow, in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered large numbers of civilians and disarmed soldiers of the Republic of China, whose names and numbers are at present unknown.

Count 48. The Defendants Hata, Kido, Koiso, Sato, Shigemitsu, Tojo and Umezu, prior to the 18th June, 1944, and succeeding days, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the City of Changsa in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered many thousands of civilians and disarmed soldiers of the Republic of China, whose names and numbers are at present unknown.

Count 49. The same Defendants as in Count 48, prior to the 8th August 1944, and succeeding days, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the City of Hengyang in the Province of Hunan in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered large numbers of civilians and disarmed soldiers of the Republic of China, whose names and numbers are at present unknown.

Count 50. The same Defendants as in Count 48, prior to the 10th November, 1944, and succeeding days, by unlawfully ordering, causing and permitting the armed forces of Japan to attack the Cities of Kweilin and Liuchow in breach of the Treaty Articles mentioned in Count 2 hereof and to slaughter the inhabitants contrary to international law, unlawfully killed and murdered large numbers of civilians and disarmed soldiers of the Republic of China, whose names and numbers are at present unknown.

Count 51. The Defendants Araki, Dohihara, Hata, Hiranuma, Itagaki, Kido, Koiso, Matsui, Matsuoka, Muto, Suzuki, Togo, Tōjō and Umezu, by ordering, causing and permitting the armed forces of Japan to attack the territory of the Union of Soviet Socialist Republics, with which nation Japan was then at peace, in the region of the Khalkhin-Gol River in the summer of 1939, unlawfully killed and murdered certain members of the armed forces of Mongolia and the Union of Soviet Socialist Republics, whose names and numbers are at present unknown.

Count 52. The Defendants Araki, Dohihara, Hata, Hiranuma, Hirota, Hoshino, Itagaki, Kido, Matsuoka, Matsui, Shigemitsu, Suzuki and Tōjō, by ordering, causing and permitting the armed forces of Japan to attack the territory of the Union of Soviet Socialist Republics, with which nation Japan was then at peace, unlawfully killed and murdered certain members of the armed forces of the Union of Soviet Socialist Republics, whose names and numbers are at present unknown.

Count 53. The Defendants, Dohihara, Hata, Hoshino, Itagaki, Kaya, Kido, Kimura, Koiso, Muto, Nagano, Oka, Oshima, Sato, Shigemitsu, Shimada, Suzuki, Togo, Tojo and Umezu, together with divers other persons, between the 7th December, 1941, and the 2nd September 1945, participated as leaders, organisers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy, and are responsible for all acts performed by themselves or by any person in execution of such plan. The objects of such plan or conspiracy was to order, authorise and permit the Commanders-in-Chief of the several Japanese naval and military forces in each of the several theatres of war in which Japan was then engaged, and the officials of the Japanese War Ministry, and the persons in charge of each of the camps and labour units for prisoners of war and civilian internees in territories of or occupied by Japan and the military and civil police of Japan, and their respective subordinates and frequently and habitually to commit the breaches of the Laws and Customs of War, as contained in and proved by the Conventions, assurances and

practices referred to in Appendix D, against the armed forces of the countries... United States of America, the British Commonwealth of nations, the Republic of France, the Kingdom of the Netherlands, the Commonwealth of the Philippines, the Republic of China, the Republic of Portugal and the Union of Soviet Socialist Republics, and that the Government of Japan should abstain from taking adequate steps in accordance with said conventions and assurances and Laws and customs of War, in order to secure observance and prevent breaches thereof. In the case of the Republic of China, the said plan or conspiracy began on the 18th September 1931, and the following Defendants participated therein in addition to those above-named: Araki, Hashimoto, Hiranuma, Hirota, Matsui, Mitsuoka, Minami.

Count 54. The Defendants Dohihara, Hata, Hoshino, Itagaki, Kaya, Kido, Kimura, Koiso, Muto, Nagano, Oka, Oshima, Sato, Shigemitsu, Shimada, Suzuki, Togo, Tōjō and Umezu, between the 7th December, 1941, and the 2nd September, 1945, ordered, authorise and permitted the same persons as mentioned in Count 53 to commit the offences therein mentioned and thereby violated the laws of war. In the case of the Republic of China, the said plan or conspiracy began on the 18th September 1931, and the following Defendants participated therein in addition to those above-named: Araki, Hashimoto, Hiranuma, Hirota, Matsui, Mitsuoka, Minami.

Count 55. The Defendants Dohihara, Hata, Hoshino, Itagaki, Kaya, Kido, Kimura, Koiso, Muto, Nagano, Oka, Oshima, Sato, Shigemitsu, Shimada, Suzuki, Togo, Tōjō and Umezu, between the 7th December, 1941, and the 2nd September, 1945, being by virtue of their respective offices responsible for securing the observance of the said Conventions and assurances and the Laws and Customs of War in respect of the armed forces in the countries hereinafter named and in respect of many thousands of prisoners of war and civilians then in the power of Japan belonging to the United States of America, the British Commonwealth of Nations, the Republic of France, the Kingdom of the Netherlands, the Commonwealth of the Philippines, the Republic of China, the Republic of Portugal and the Union of Soviet Socialist Republics, deliberately and recklessly disregarded their legal duty to take adequate steps to secure the observance and prevent breaches thereof, and thereby violated the laws of war. In the case of the Republic of China, the said plan or conspiracy began on the 18th September 1931, and the following Defendants

participated therein in addition to those above-named: Araki, Hashimoto, Hiranuma, Hirota, Matsui, Mitsuoka, Minami.

APPENDIX III

DEFENDANTS, CHARGES AND SENTENCES

Defendant	Role(s)	Counts Indicted On	Counts Found Guilty	Sentence
Hideki Tōjō ⁵⁷³	- Chief of Manchurian Secret Police (1935)	1 27 29 31	1 27 29 31	Death – Hanged on 23.12.1948
	- Councillor on Manchurian Affairs Bureau (1936)	32 33 36 54	32 33 54	
	- Chief of Staff in Kwantung Army (1937-38)	55		
	- Vice Minister of War (1938)			
	- Minister of War (1940/41)			
	- Prime Minister (1941-44)			
	- Chief of Staff for the Kwantung Army (1936-37)	1 27 29 31	1 27 29 31	
Itagaki Seishirō	- Chief of Staff for the Kwantung Army (1936-37)	1 27 29 31	1 27 29 31	Death – Hanged on 23.12.1948

⁵⁷³ Tōjō had been posted to Manchuria around the same time as Nagata's assassination and had viewed some of Ishii's early films where he proudly displayed human experiments. Despite Tōjō having allegedly shown a distaste for such experiments (see: Tsuneishi 'The Germ Warfare Unit That Disappeared: Kwantung Army's 731st Unit' (Tokyo: 1981) at page 162). Whilst Prime Minister, he did nothing to curb or prevent such research.

	<ul style="list-style-type: none"> - Minister of War (1938-39) - Chief of Army General Staff (1939) - Commander in Korea (1941) - Supreme War Council (1943) - Commander in Singapore (1945) 	<p>32 33 35 54 55</p>	<p>32 35 36 54</p>	
Araki Sadao	<ul style="list-style-type: none"> - Minister of War (1931-34) - Supreme War Council (1934-36) - Minister of Education (1938-39) - Senior Adviser to the Cabinet (1939-40) 	<p>1 27 29 31 32 33 35 36 54 55</p>	<p>1 27</p>	Life imprisonment - paroled in 1955
Hata Shunroku	<ul style="list-style-type: none"> - Supreme War Council (1937) - Commander of the China Expedition Force (1938/1941-44) - Minister of War (1939-40) 	<p>1 27 29 31 32 35 36 54 55</p>	<p>1 27 29 31 32 55</p>	Life imprisonment – paroled in 1955

Shimada Shigetarō	<ul style="list-style-type: none"> - Vice-Chief of Naval Staff (1935-37) - Commander of the China Fleet (1940) - Navy Minister (1941-44) - Supreme War Council (1944) 	1 27 29 31 32 54 55	1 27 29 31 32	Life imprisonment – paroled in 1955
Satō Kenryō	<ul style="list-style-type: none"> - Chief of the Military Affairs Bureau (1942-44) - Assistant Chief of Staff for the China Expeditionary Force (1944) - Army Commander in Indochina (1945) 	1 27 29 31 32 54 55	1 27 29 31 32	Life imprisonment – paroled in 1955
Koiso Kuniaki	<ul style="list-style-type: none"> - Vice Minister of War (1932) - Chief of Staff for the Kwantung Army (1932-34) - Army Commander in Korea (1935-38) - Minister of Overseas Affairs (1939) 	1 27 29 31 32 35 36 54 55	1 27 29 31 32 55	Life imprisonment – died in prison in 1950

	<ul style="list-style-type: none"> - Governor-General in Korea (1942-44) - Prime Minister (1944-45) 			
Oka Takasumi	<ul style="list-style-type: none"> - Chief of Naval Affairs Bureau (1940-44) - Vice Minister of the Navy (1944) 	1 27 29 31 32 54 55	1 27 29 31 32	Life imprisonment – paroled in 1954
Ōshima Hiroshi	<ul style="list-style-type: none"> - German Military Attache (1934-38) - Ambassador to Germany (1938-39 / 1941-45) 	1 27 29 31 32 54 55	1	Life imprisonment – paroled in 1955
Osami Nagano	<ul style="list-style-type: none"> - Naval Minister (1936-37) - Chief of the Imperial Japanese Navy General Staff (1941-44) 	N/A	N/A	Died in 1947
Minami Jirō	<ul style="list-style-type: none"> - Minister of War (1931) - Supreme War Council (1931-34) - Commander of the Kwantung Army (1934-36) 	1 27 29 31 32 54 55	1 27	Life imprisonment – paroled in 1955

	<ul style="list-style-type: none"> - Governer-General in Korea (1936-42) - Privy Council (1942-45) 			
Doihara Kenji	<ul style="list-style-type: none"> - Commander of Kwantung Army (1938-40) - Supreme War Council (1940-43) - Army Commander in Singapore (1944-45) 	1 27 29 31 32 33 35 36 54 55	1 27 29 31 32 35 36 54	Death – hanged on 23.12.1948
Kimura Heitarō	<ul style="list-style-type: none"> - Chief of Staff in the Kwantung Army (1940-41) - Vice-Minister of War (1941-43) - Supreme Council (1943) - Commander in Burma (1944-45) 	1 27 29 31 32 33 35 36 54 55	1 27 29 31 32 54 55	Death – hanged on 23.12.1948
Matsui Iwane	<ul style="list-style-type: none"> - Personal Appointee of the Emperor to the Geneva Disarmament (1932-37) - Commander of the China 	1 27 29 31 32 35 36 54	1	Death – hanged on 23.12.1948

	Expeditionary Forces (1937-38)	55		
Mutō Akira	- Vice-Chief of Staff for the China Expeditionary Force (1937)	1 27 29 31 32	1 27 29 31 32	Death – hanged on 23.12.1948
	- Director of the Military Affairs Bureau (1939-42)	33 36 54	54 55	
	- Commander in Sumatra (1942-43)	55		
	- Army Chief of Staff in the Philippines (1944-45)			
Hashimoto Kingorō	- Commander of the Artillery Regiment (1937)	1 27 29 31 32 54 55	1 27	
Umeza Yoshijirō ⁵⁷⁴	- Section Chief of the General Staff (1931-34)	1 27 29	1 27 29	
	- Commander of the China	31 32 36	31 32	Life imprisonment – died in 1949

⁵⁷⁴ Umeza had been fully briefed on the activities of Unit 731 and in the Khabarovsk Trial his successor, Yamada Otozoo confessed that he had “learned... in July 1944... that bacteriological detachments 731 and 100 were engaged in devising and in the mass production of bacteriological weapons” having personally visited the Ping Fang facility”(see Khabarovsk Trial Judgment at 11 & 39).

	Expeditionary Force (1934)	54 55		
	- Vice-Minister of War (1939-44)			
	- Army Chief of Staff (1944-45)			
Suzuki Teiichi	- Chief of the China Affairs Bureau (1938-41)	1 27 29	1 27 29	Life Imprisonment – paroled in 1955
	- President of the Cabinet Planning Board (1941-43)	31 32 36	31 32	
	- Advisor to the Cabinet (1943-44)	54 55		
Hirota Kōki	- Ambassador to the Soviet Union (1928-31)	1 27 29	1 27 55	Death – hanged on 23.12.1948
	- Foreign Minister (1933-36 / 1937-38)	31 32 33		
	- Prime Minister (1936-37)	35 54 55		
Hiranuma Kiichirō	- Privy Council (1924-39)	1 27	1 27	Life imprisonment – paroled 1952
	- Founder and President of right-wing society (1926-28)	29 31 32 33	29 31 32 36	
	- Prime Minister (1938)	35 36 54		

	<ul style="list-style-type: none"> - Minister of Home Affairs (1940) - President of Privy Council (1945) 	55		
Hoshino Noaki	<ul style="list-style-type: none"> - Chief of Financial Affairs in Manchuria (1932-34) - Director of General Affairs in Manchuria (1936) - Prime Minister (1940-41) - Chief Cabinet Secretary (1941-44) 	1 27 29 31 32 33 35 54 55	1 27 29 31 32	Life imprisonment – paroled 1958
Kido Kōichi	<ul style="list-style-type: none"> - Lord Keeper of the Privy Seal (1930-37 / 1940-45) - Minister of Education (1937) - Minister of Welfare (1938) - Minister of Home Affairs (1939) 	1 27 29 31 32 33 35 36 54 55	1 27 29 31 32	Life imprisonment – paroled 1953
Shiratori Toshio	<ul style="list-style-type: none"> - Director of Information in the Foreign Ministry (1929-33) - Ambassador to Italy (1938-40) 	1 27 29 31 32	1 27 29 31 31	Life imprisonment – died in 1949

	- Advisor to Foreign Minister (1940)			
Tōgō Shigenori	- Foreign Minister (1941-42 / 1945)	1 27 29 31 32 36 54 55	1 27 29 31 32	20 years imprisonment – died 1955
Shigemitsu Mamoru	- Ambassador to China (1931-32) - Vice-Minister of Foreign Affairs (1933-36) - Ambassador to the Soviet Union (1936-38) - Ambassador to Great Britain (1938-41) - Foreign Minister (1943-45)	1 27 29 31 32 33 35 54 55	27 29 31 32 33 55	7 years imprisonment – paroled 1965
Kaya Okinori	- Minister of Finance (1937-38 / 1941-44) - President of the North China Development Company (1939-41)	1 27 29 31 32 54 55	1 27 29 31 32	Life imprisonment – paroled in 1955

Matsuoka Yōsuke	<ul style="list-style-type: none"> - Director of South Manchurian Railway (1922-27) - Vice-President of South Manchurian Railway (1927-30) - Foreign Minister (1940-41) 	N/A	N/A	N/A died in 1946
Ōkawa Shūmei	<ul style="list-style-type: none"> - Political philosopher 	N/A	N/A	Charges dropped – lacked mental capacity

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