



Justice for Strangers:

**Culture and Communication in the Singapore War
Crimes Trials (1946-1948)**

Thesis submitted for the degree

Doctor of Philosophy in Law

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Abstract

This dissertation, entitled *Justice for Strangers*, is an in-depth historical and socio-legal analysis of 131 war crimes trials conducted by the British military in Singapore after the Second World War (the Singapore Trials). These trials involved diverse participants who spoke different languages and hailed from different legal systems and cultures: British and Allied judges and prosecutors; Japanese, Taiwanese and Korean accused; Japanese defence counsel; and hundreds of Asian witnesses from as far afield as the Andaman and Nicobar Islands in the Indian Ocean.

My dissertation is based on under-explored archival material and is also the first comprehensive study of the Singapore Trials, trials that are important because of their regional scope. After the war, Singapore served as the hub for British war crimes investigations in Asia. Allied judges and lawyers from Australia, the U.S. and the Netherlands participated in the Singapore Trials. Defendants were prosecuted for war crimes committed not only in Singapore but throughout the region. The Singapore Trials thus reveal much about British and Allied war crimes policy in Asia.

This study is organised around three questions: (a) How did the cultural difference between trial participants give rise to problems of language, participation, and argumentation; (b) How did judges respond to these problems and why did they choose to do so in particular ways; (c) What could have been done better in the Singapore Trials and what lessons do these trials hold for present-day war crimes trials. Among others, my findings confirm that participants need to share a certain amount of shared cultural knowledge for effective communication at trial. Cultural learning is nevertheless possible, and judicial intervention can minimise the impact of culturally related communication problems.

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ABBREVIATIONS

ALFSEA	Allied Land Forces, South East Asia.
BMA	British Military Administration.
FARELF	Far East Land Forces.
INA	Indian National Army.
JAG	Judge Advocate General
MML	Manual of Military Law.
SEAC	South East Asia Command.
SAC	Supreme Allied Commander.
SACSEA	Supreme Allied Commander, South East Asia.
SEALF	South East Asia Land Forces.
MPAJA	Malayan People's Anti-Japanese Army.

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INTRODUCTION CHAPTER

1. Culture and communication in the Singapore war crimes trials, 1946-1948

21 January 1946. The first British-run war crimes trial in Southeast Asia is about to begin in Singapore's Supreme Court. The courthouse, with its grand Corinthian columns and dome, stands in Singapore's city centre. In front of the courthouse is the 'Padang' field where locals had gathered to witness Japan's surrender just a few months earlier on 12 September 1945. Today, the courthouse bustles with activity again. Military personnel, Allied observers, news cameramen, and reporters jostle among members of the public in the gallery. All eyes turn to watch the ten Japanese military personnel enter the court under armed guard. The accused enter the dock, bow, and stand to attention. They are dressed in the same khaki pants and short-sleeved shirts, with signs numbered from one to ten for identification. At the bench, the three British military judges take their places; two judges are British, and one judge is of Indian ethnicity. The presiding judge calls the court to order and declares that the accused will be treated 'in accordance with the principles of British justice'.¹

Thus began the trial *Gozawa Sadaichi and others*, the first of 131 war crimes trials held by the British in Singapore after the war ('Singapore Trials'). The Singapore Trials involved diverse participants: British and Allied judges and prosecutors; accused from Japan, Taiwan, and Korea; Japanese defence counsel; and hundreds of Asian witnesses from the surrounding region, as far afield as the Andaman and Nicobar Islands in the Indian Ocean. In other words, the Singapore Trials brought together individuals from different countries, legal traditions, and communities. In this dissertation, I critically

¹ This description is based on an account of the trial in Straits Times. 'South-east Asia's first war crimes trial opens', Straits Times, 22 January 1946, p 3.

examine how judges and other participants dealt with culturally related communication issues that occurred in the Singapore Trials. I argue that some cultural issues were more easily resolved than others, and that more attention needs to be paid to culturally related communication difficulties in war crimes trials.

The British military planned and implemented the Singapore Trials on an ambitious scale. Like other British war crimes trials held after the war, the Singapore Trials were conducted pursuant to the 1945 Royal Warrant which had been adopted under royal prerogative powers by the British executive.² From 1946 – 1948, in Singapore, the British tried over 400 Japanese military personnel under the 1945 Royal Warrant for war crimes committed not only in Singapore but throughout Asia. In 1946, there were altogether seven war crimes courts operating throughout Singapore.³ Singapore also served as the centre for all British war crimes investigations in Asia.

Hundreds of Asian civilians served as witnesses in the Singapore Trials, and the trials were widely covered by the media in Singapore. Many of the crimes prosecuted in these trials have entered into the annals of the Second World War: prisoner of war (POW) abuse along the Burma-Siam Death Railway, the ‘sook ching’ or massacre of thousands of Chinese in Singapore, and the inhumane transport of detainees on ‘hell ships’. Apart from these notorious crimes, the Singapore Trials also dealt with less

² Royal Warrant 0160/2498, 18 June 1945, promulgated by the War Office, Army Order 81 of 1945, available at <http://www.legal-tools.org/doc/386f77/>. Hereinafter referred to as ‘1945 Royal Warrant and Regulations’. In Asia, British war crimes trials were also governed by an army instruction issued by the British military operating in this area, namely, Allied Land Forces, South-East Asia (hereinafter ‘ALFSEA’). Note that ALFSEA was reorganised from 1 December 1946 into South-East Asia Land Forces (hereinafter ‘SEALF’). Allied Land Forces, South-East Asia, *War Crimes Instruction No. 1 (2nd Edition)*, 4 May 1946, NAUK, WO 203/6092.

³ ALFSEA Instruction No 1, para 27.

known atrocities, such as the mass killings of women and children in the Andaman and Nicobar Islands, medical experimentation on POWs, and isolated killings of individual civilians.

The Singapore Trials also took place alongside hundreds of other war crimes trials organised in different parts of Asia by the UK, the US, the Netherlands, China, and Australia.⁴ Similar trials of German personnel were also being conducted by the Allied Powers in Europe.⁵ However, the general public today continues to be most familiar with the Tokyo Trial and Nuremberg Trial. While the Tokyo and Nuremberg Trials are important, they should be appreciated against the larger landscape of war crimes trials conducted by individual governments throughout Asia and Europe after the war.⁶ The Tokyo and Nuremberg Trials focused only on a small number of high-ranking Japanese

⁴ For a recent account of Allied trials in Asia using archival material, see Yuma Totani, *Justice in Asia and the Pacific Region, 1945-1952: Allied War Crimes Prosecutions* (Cambridge University Press 2015).

⁵ For examples of recent case studies on post-Second World War trials in Europe, see Christian Pöpken, 'Towards the Domestic Prosecution of Nazi Crimes Against Humanity: The British, Control Council Law No. 10 and the German Supreme Court for the British Zone, 1947-1950' in Morten Bergsmo, Cheah Wui Ling and Yi Ping (eds), *Historical Origins of International Criminal Law*, vol 2 (Torkel Opsahl Academic EPublisher 2014); Ditlev Tamm, 'Prosecution of War Criminals in the North: Danish and Norwegian Experiences after the Second World War' in Morten Bergsmo, Cheah Wui Ling and Ping Yi (eds), *Historical Origins of International Criminal Law*, vol 2 (Torkel Opsahl Academic EPublisher 2014); Immi Tallgren, 'Martyrs and Scapegoats of the Nation? The Finnish War-Responsibility Trial, 1945-1946' in Morten Bergsmo, Cheah Wui Ling and Ping Yi (eds), *Historical Origins of International Criminal Law*, vol 2 (Torkel Opsahl Academic EPublisher 2014); Mark A Drumbl, 'The Supreme National Tribunal of Poland and the History of International Criminal Law' in Morten Bergsmo, Cheah Wui Ling and Yi Ping (eds), *Historical Origins of International Criminal Law*, vol 2 (Torkel Opsahl Academic EPublisher 2014).

⁶ There has been much scholarship on the Nuremberg Trial. An example of a detailed account of the Nuremberg Trial would be Ann Tusa and John Tusa, *The Nuremberg Trial* (Skyhorse Publishing 2010). There has previously been more focus on the Nuremberg Trial than the Tokyo Trial. However, there have been a number of important studies of the Tokyo Trial in recent years: Yuma Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (Harvard University Asia Center: Distributed by Harvard University Press 2008); Neil Boister and Robert Cryer, *The Tokyo International Military Tribunal: A Reappraisal* (Oxford University Press 2008); Yuki Tanaka, Timothy LH McCormack and Gerry Simpson (eds), *Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited* (Martinus Nijhoff 2011).

and German leaders. The bulk of war crime suspects prosecuted at the end of the Second World War were tried in national war crimes trials such as the Singapore Trials.

The British intended the Singapore Trials to showcase British justice in a positive light. This would prove to be a difficult task. The British military was short on resources and had to deal with multiple post-war political and humanitarian demands. Similar obstacles were encountered in other post-war Allied trials. My dissertation focuses on one specific obstacle that has yet to be comprehensively examined by scholars of post-war Allied trials: culturally related communication challenges among trial participants. In the Singapore Trials, participants spoke different languages and referred to diverse culturally influenced norms and practices. Judges, prosecutors, and defence counsel came from different legal traditions. Given participants' diverse cultural backgrounds, how did they communicate with each other? My dissertation examines how cultural differences between trial participants affected trial communication and how participants responded to culturally related communication problems in the Singapore Trials

What do I mean by cultural difference? As explained in greater detail later in Section 3, in my dissertation, I draw on Swidler's definition of culture as a 'tool kit' of 'symbols, stories, rituals, which people may use in varying configurations to solve different kinds of problems'.⁷ The judges, defendants, lawyers, and witnesses of the Singapore Trials each subscribed to significantly different cultural 'tool kits'.⁸ This had particular implications for Japanese military defendants and their Japanese defence

⁷ Ann Swidler, 'Culture in Action: Symbols and Strategies' (1986) 51 *American Sociological Review* 273, 273.

⁸ *ibid.*

lawyers. The accused and their lawyers did not have access to the appropriate cultural ‘tool kit’ that would enable them to navigate the trials or put forward their best possible case. Japanese defence counsel’s unfamiliarity with basic courtroom procedure affected their participation in the trials. The cultural gap between trial participants also had implications for judges charged with determining the guilt or innocence of the Japanese defendants brought before them. For example, Japanese defendants argued that they were acting in a context where norms of obedience, penalties for insubordination, and cultural expectations were very different and much more pronounced than those known to British or Allied judges in the Singapore Trials. These arguments of Japanese trial participants were given different interpretations by non-Japanese trial participants.

By exposing and assessing culturally related communication problems in the Singapore Trials, my project calls for a more critical consideration of how war crimes trials with multicultural participants are implemented. War crimes trials are increasingly viewed as the ideal response to gross atrocities regardless of where these crimes are committed and regardless of who are involved.⁹ My findings show that trial participants need to have a certain baseline of shared cultural knowledge for effective communication at trial. Cultural learning by trial participants is nevertheless possible, and judicial intervention can minimise the impact of culturally related communication problems.

⁹ Nouwen and Werner observe how international criminal law and trials have become “an increasingly popular frame for defining issues of justice” and may risk crowding out alternative approaches. Sarah Nouwen and Wouter Werner, ‘Monopolizing Global Justice: International Criminal Law as Challenge to Human Diversity’ (2014) *Journal of International Criminal Justice* 4.

My study of culturally related communication problems in the Singapore Trials is organised around three questions: (a) How did cultural difference give rise to problems of language, participation, and argumentation in the Singapore Trials; (b) How did judges respond to culturally related communication issues and why did they choose to do so in particular ways; (c) What lessons do the Singapore Trials hold for present-day war crimes trials involving international judges and multicultural defendants and witnesses.

2. Contributions to academic debates

In this section, I explain how my dissertation speaks to two emerging streams of research. The first is research on post-Second World War trials conducted in Asia beyond the Tokyo Trial. While recent years have seen increased research on the Tokyo Trial, our knowledge about other post-war trials in Asia remains incomplete.¹⁰ My study of the Singapore Trials adds to our historical knowledge of post-war justice efforts in Asia.

My project also speaks to a second category of scholarship that critically examines the implementation of war crimes trials. Scholars have recognised the ending of international criminal law's 'honeymoon period' and shifted their focus to examining the 'day-by-day challenges' of implementing international criminal law.¹¹ My project contributes to growing research on trial implementation by highlighting the difficulties of conducting war crimes trials with culturally diverse participants, a situation that war crimes courts continue to face today.

¹⁰ This admittedly is changing given emerging research on post-Second World War trials based on more accessible archival material, as detailed below.

(a) Historical studies of war crimes trials conducted after the Second World War

My study of the Singapore Trials contributes to the renaissance in scholarship on historical war crimes trials, especially research on trials conducted in Asia after the Second World War. For a long time, the definitive work on Allied war crimes in Asia was Philip Piccigallo's book *The Japanese on Trial*.¹² While Piccigallo's work is important and foundational, he relied on secondary sources, such as media reports, because primary sources had not yet been released or made available. Today, there is a significant amount of primary sources made available in archives or through online databases maintained by independent research centres. For example, trial transcripts of British war crimes trials may be accessed by the public at the National Archives of the UK (NAUK). The International Criminal Court (ICC)'s Legal Tools Database now hosts a compilation of post-Second World War trial-related documents alongside contemporary case law and legislation.¹³

Increased access to trial-related primary sources has contributed to the growth of scholarship on post-Second World War trials beyond the Nuremberg and Tokyo Trials. As mentioned above, the Nuremberg and Tokyo Trials were jointly organised by the Allies but only tried a handful of Axis defendants in comparison to the hundreds of defendants tried by individual national authorities. In light of this, if we are to get a more

¹¹ David Luban, 'After the Honeymoon: Reflections on the Current State of International Criminal Justice' (2013) 11 *Journal of International Criminal Justice* 505, 506.

¹² Philip R Piccigallo, *The Japanese On Trial: Allied War Crimes Operations in the East, 1945-1951* (University of Texas Press 2011).

complete picture of the justice efforts undertaken after the Second World War, there is a need to go beyond the Nuremberg and Tokyo Trials and study national war crimes trials such as the Singapore Trials. These national war crimes trials also functioned very differently from the Nuremberg and Tokyo Trials. For example, national war crimes trials were typically streamlined and expedited in nature. While the Tokyo Trial lasted for more than a year, the longest British trial held in Singapore lasted 31 days.¹⁴

At first glance, it would be easy to dismiss the Singapore Trials as a mere exercise in victor's justice. However, a closer look at the trials cautions us against doing so. Courts in the Singapore Trials passed gradated sentences, special findings, and even acquittals. To get a better understanding of the Singapore Trials, it is necessary to examine what took place in the courtroom. This is especially so as the British government delegated primary responsibility for national war crimes trials to British military personnel at trial locations, who at times deviated from the law and procedure on the books when implementing these trials. To understand how these war crimes trials played out, there is a need to study how these trials operated in reality. For this reason, and as described in greater detail below, my dissertation involves a close study of day-to-day trial proceedings recorded in trial transcripts and other secondary material.

No one has yet to study the Singapore Trials in such a comprehensive way. Yuma Totani's important 2015 book *Justice in Asia and the Pacific Region* is the first book to undertake a comparative overview of Allied war crimes trials in Asia based on primary

¹³ <http://www.legal-tools.org/en/what-are-the-icc-legal-tools/>

¹⁴ This was the *Trial of Oisuka Misao and others*, WO 235/975 ('*Trial of Oisuka Misao and others*').

sources.¹⁵ But Totani's study is limited. She studies fourteen national war crimes trials conducted by the British, Americans and Australians. Out of these fourteen trials, Totani examines just four Singapore trials. More generally, no existing study of Allied war crimes trials in Asia focuses on questions of communication or culture. For example, Suzannah Linton's 2012 edited collection *Hong Kong's War Crimes Trials* is a multi-author volume on the Hong Kong war crimes trials that examines different legal topics related to the trials.¹⁶ While the different authors do study the transcripts of trial proceedings, they do this with the aim of answering disparate legal questions such as trial procedure and the definition of war crimes. More relevant to my dissertation's concerns is David Cohen's 2005 study of a selection of Allied war crimes trials in Asia, in which he considers how Western and Japanese trial participants applied different ideas of what constituted a fair trial.¹⁷

Additionally, my dissertation integrates its study of culture and communication with the Singapore Trials' larger legal and political context. Existing work on the politics of Allied war crimes prosecutions does not examine how such politics impacted communication or participant interaction in the courtroom. Barak Kushner's 2015 book *Men to Devils, Devils to Men* studies how Japan and China used Chinese war crimes trials and international law for political purposes such as the building of national identity, but he does not trace how these politics actually shaped communication or participant

¹⁵ Totani (n 4).

¹⁶ Suzannah Linton (ed), *Hong Kong's War Crimes Trials* (OUP Oxford 2013).

¹⁷ David Cohen, 'Military Justice from WWII to Guantanamo: Fair Trials, Judicial Murder, and International Standards in WWII Trials in Asia' in Rainer Maria Kiesow, Regina Ogorek and Spiros Simitis (eds), *Summa Dieter Simon zum 70. Geburtstag* (2005).

interaction in the trials.¹⁸ By examining how culturally related communication problems were shaped by broader political factors and ideas, my study of the Singapore Trials shows how politics impacted the trials at the level of participant interaction.

(b) The universal war crimes trial and culturally diverse participants

My dissertation also engages a second stream of scholarship on war crimes trials. International criminal law scholarship has moved from the promotion of war crimes trials to the critical assessment of these trials' implementation and impact.¹⁹ Many scholars have criticised the ability of war crimes trials to achieve their expansive goals of reconciliation, truth-telling, historical record-keeping, and norm expression, among others.²⁰ More recent scholarship has cast doubt on the ability of war crimes trials to carry out basic functions of fact-finding and guilt allocation. In her 2011 book *Fact-finding without Facts*, Nancy A. Combs explains how cultural factors, among others, undermine the fact-finding ability of contemporary war crimes courts operating in non-Western societies.²¹ In his 2010 book *Culture under Cross-examination*, Tim Kelsall studies the problems that arose when international personnel were confronted with cultural practices and beliefs of the accused and witnesses at the trial of Civil Defence

¹⁸ Barak Kushner, *Men to Devils, Devils to Men: Japanese War Crimes and Chinese Justice* (Harvard University Press 2015).

¹⁹ Luban (n 11).

²⁰ Focusing in particular on the reconciliation objective, Akhavan reminds that the 'protagonist in a criminal trial, however, is the defendant' and that the trial should not be 'manipulated to achieve objectives that are ulterior to individual criminal responsibility'. Payam Akhavan, 'The Rise, and Fall, and Rise, of International Criminal Justice' (2013) 11 *Journal of International Criminal Justice* 527, 533.

²¹ Combs considers the impact of three factors on fact-finding abilities of war crimes tribunals, namely, education, interpretation and culture. *Fact-Finding Without Facts: The Uncertain*

Force leaders (the CDF trial) of the Special Court for Sierra Leone (SCSL).²² My dissertation builds on the work done by Combs and Kelsall.

Based on her study of trial transcripts of the SCSL, the International Criminal Tribunal for Rwanda (ICTR) and the Serious Crimes Panel of Timor Leste (SCP), Combs studies how non-Western witnesses are often unable to testify in the way expected of witnesses in a Western criminal trial due to different linguistic, educational, and cultural backgrounds.²³ Her interest lies largely in the testimony given by witnesses. My dissertation adopts a sociological analytical framework and focus that is different from Combs'. First, as explained in greater detail below, I employ an analytical framework based on sociological definitions of culture, specifically, Swidler's definition of culture as resource 'tool kit'.²⁴ This enables me to examine linguistic, participatory, and argumentative communication problems in a holistic way. Second, I focus on judicial interventions and responses with the aim of examining the extent to which judges successfully dealt with such communication problems.

Kelsall's *Culture under Cross-examination* adopts a more explicit theoretical framework when examining culture at the SCSL. Kelsall's work is based on an

Evidentiary Foundations in International Criminal Convictions (Cambridge University Press 2010) 100.

²² Kelsall explains how Sierra Leoneans' 'different ideas of social space and time, of causation, agency, responsibility, evidence, truth and truth-telling' differed from that 'employed by international criminal courts'. Tim Kelsall, *Culture under Cross-Examination: International Justice and the Special Court for Sierra Leone* (2013) 17.

²³ Combs concludes that '[l]ack of education stands as the most prominent' of the factors she considers. Combs (n 24) 100.

²⁴ Swidler (n 7) 273.

anthropological and political analysis of the CDF trial by the SCSL.²⁵ However, Kelsall looks at only one trial. In my dissertation, I examine 131 trials conducted by different judicial panels in Singapore. Also, Kelsall and Comb's books examine war crimes trials operating in countries like Sierra Leone, Rwanda, and Timor Leste. These countries are very different in developmental and social terms from the West. By examining communication problems between Japanese and non-Japanese participants, my dissertation demonstrates that culturally related communication problems may also plague war crimes trials involving defendants from societies like Japan which have adopted Western institutions and practices. My study of the Singapore Trials also emphasises how such culturally related communication problems are not a recent phenomenon but were similarly experienced in historical trials.

My dissertation thus intervenes in ongoing debates about the challenges of implementing war crimes trials by highlighting issues that arise when such trials bring together culturally diverse trial participants. By illustrating the range of culturally related communication problems encountered in the Singapore Trials, and by analysing how judges tried to address these problems, my dissertation reminds us of lessons which we should have learned a long time ago from Allied war crimes prosecutions and which we should keep in mind today when organising war crimes trials.

²⁵ Kelsall (n 22) 19.

3. Research methodology

In this section, I describe my dissertation's research methodology which draws on theories and methods from the disciplines of history and socio-legal studies. I first explain the conceptual framework I used when analysing my data. I then describe my data collection process. I proceed to elaborate on how I read my data in their historical context and how I conducted a socio-legal analysis of this data to identify and assess culturally related communication issues.

(a) Conceptual Framework: Cultural difference and culture as a 'Tool kit'

Social scientists continue to debate the many definitions of culture. Some social scientists give more emphasis to culture as a system of meaning. For example, in his now classic definition, Geertz describes culture as a 'historically transmitted pattern of meanings embodied in symbols'.²⁶ Others see culture as a 'sphere of practical activity'.²⁷ As my interest lies in how the cultural difference between trial participants impacted trial participant communication, I draw on more actor-centric definitions of culture that see culture as the meaning-making resources that we draw upon to communicate with others and make sense of the world.

Particularly useful for my purposes is Swidler's definition of culture as a 'tool kit' comprising 'publicly available symbolic forms through which people experience and

²⁶ Clifford Geertz, *The Interpretation Of Cultures* (Basic Books 1977) 89.

²⁷ Sewell, William H, 'The Concept(s) of Culture' in Victoria E Bonnell, Lynn Avery Hunt and Richard Biernacki (eds), *Beyond the Cultural Turn: New Directions in the Study of Society and Culture* (University of California Press 1999) 45.

express meaning’, with which individuals construct ‘strategies of action’.²⁸ If the participants of the Singapore Trials had different cultural backgrounds and meaning-making ‘tool kits’, how did they communicate with each other? To what extent did courtroom interpretation enable participants with different linguistic capabilities overcome their linguistic barriers? How did Japanese defence counsel manage to participate in trials based on the Western adversarial processes? How did Western judges respond to the culturally influenced norms, laws, and practices referred to by Japanese military defendants?

By viewing culture as a meaning-making ‘tool kit’ I do not treat culture as a predetermined thing or something ‘out there’ to be discovered. Rather I focus on how participants in the Singapore trials used culture to ‘do’ certain things and achieve certain ends.²⁹ Culture is not unchanging but can be shaped and manipulated to suit the ends of its users.³⁰ For example, as explained in Chapter 5, Japanese military leaders used and arguably distorted Japanese traditional ideas of family and bushido, among others, to promote a militaristic culture within the military. But this does not mean that culture is completely malleable or fluid. Those with insufficient exposure to the culture concerned may find it hard to employ such culture as a ‘tool’ to protect or advance their interests. For example, as explained in Chapter 4, Japanese defence counsel encountered some

²⁸ Swidler (n 7) 276–277.

²⁹ *ibid* 273.

³⁰ Woodman highlights how not only the content of cultures may change but that the population subscribing to a particular culture may change over time. Goodman R Woodman, ‘The Culture Defence in English Common Law: The Potential for Development’ in Marie-Claire Foblets and Alison Dundes Renteln (eds), *Multicultural Jurisprudence: Comparative Perspectives on the Cultural Defense* (Hart Publishing 2009) 13.

participation difficulties in the Singapore Trials as they were unfamiliar with the trials' adversarial culture.

Nevertheless, as emphasised by researchers like Sewell, culture is subject to reinterpretation or contestation by its users.³¹ As demonstrated in the Singapore Trials, the culturally influenced arguments offered by Japanese participants were given different interpretations by non-Japanese participants. Our cultural 'tool kits' are also not watertight or walled off from each other; they have different degrees of porosity and openness.³² With repeated or intensive exposure to a new cultural practice, an individual may pick up the knowledge and skills needed to participate in this practice. Some participants in the Singapore Trials learned cultural knowledge and skills through their repeat participation in the trials. Those with different cultural backgrounds or different cultural 'tool kits' may mutually influence each other through exposure and contact, though the degree of influence may not be the same depending on other factors such as power dynamics.³³

While cultural difference impeded trial communication in many ways during the Singapore Trials, the defence also referred to such culturally related communication problems to serve the interests of defendants or as a defence tactic in these trials. As demonstrated in Chapter 4, many Japanese defence counsel challenged the accuracy of interpreted pre-trial statements with the aim of undermining the statements' reliability in court. Defence counsel also argued that the defendants' conduct was acceptable or

³¹ Sewell, William H (n 27) 45.

³² *ibid* 53.

required by Japanese practices, norms, and laws. This is not to say that such culturally related issues were not real or that they were purely concocted by the defence. There were in fact many recurring culturally related communication issues in these trials, and the judges were aware of this. The Japanese defence capitalised on the existence of such issues and raised them as a tactical strategy.

By paying attention to trial actors' strategic use of culture to achieve their interests, I also pay attention to the power dimension of culture. Sociologists and anthropologists have underlined the importance of considering power-related issues when investigating questions of culture. To do so, I draw on the work of socio-legal scholars like Conley and O'Barr who have examined how courtroom speech styles questions of power in the courtroom.³⁴ The way cultural difference shaped the Singapore Trials had power implications. Some trial participants were more disadvantaged than others as a result of how cultural difference impacted power dynamics in the Singapore Trials. For example, how did culture-related problems impact the position of the defence vis-à-vis the prosecution and the judges? Did defence counsel's inability to confidently and capably present his case benefit the prosecution or did this undermine the legitimacy of the trial? The deployment of cultural difference as a trial tactic also had the potential to change power dynamics. How did defence counsels' invocation of British cultural superiority and appeal for British mercy improve the position of their clients? Throughout this study of the Singapore Trials, I paid careful attention to how culture and cultural difference functioned as a resource or an impediment for trial actors.

³³ Woodman (n 30) 13.

While culture serves as a useful analytical and explanatory framework, I do not argue that the communication problems in Singapore Trials should be understood completely in terms of culture. In my analysis of the trials, I highlight other non-cultural factors when these are relevant to understanding the communication problems that emerged during the trial process. Some of these factors operated to exacerbate cultural difference while others exerted an independent influence on the trial process in a way that affected communication. For example, political pressure for the Singapore Trials to be completed in an expeditious manner resulted in defence lawyers being afforded little case preparation time, and resource constraints resulted in the employment of inexperienced interpreters and lawyers. It is important to bear in mind that culture was an important, but not the only, factor influencing communication in the Singapore Trials.

(b) Collection of research data: trial records, military documents and media reports

I rely on three types of historical sources for my research: (a) case files of the Singapore Trials; (b) trial-related government and military records; (c) media reports on the trials.

Original versions of these trial transcripts are presently housed in the NAUK.³⁵ These

³⁴ John M Conley and William M O'Barr, *Rules versus Relationships: The Ethnography of Legal Discourse* (University of Chicago Press 1990).

³⁵ The original records of these trials and other British military records referred to in this chapter are housed at the National Archives of the UK (hereinafter 'NAUK'). The record group is 'WO 235 – Judge Advocate General's Office: War Crimes Case Files, Second World War'. The NAUK staff have entered sequential pagination onto the documents, many which do not have original page numbers. This pagination appears on copies held by the National University of Singapore's Central Library. For reference accuracy and as done by other scholars working with these trial records, I use this pagination as reference by putting a prefix 'SP' before the number.

transcripts are kept in case files containing court documents, affidavits, and other documentary evidence considered by the court. Copies of most case files are housed at the National University of Singapore (NUS)'s Central Library.³⁶ The NAUK also holds trial-related government and military records. Media reports on these trials are kept in microfilm format at the Singapore National Library.³⁷ Access to archival material was also not a problem as the NAUK and the Singapore National Library provide unrestricted access to the public.

When searching for documents in the NAUK, I bore in mind the need to question the completeness of these records. Archives receive and organise documents in 'collections', but do not maintain a record of individual documents within the collection itself.³⁸ A document may be located in a collection that may not as a whole appear relevant, resulting in it being overlooked by the researcher. I sought to minimise this missing data problem by keeping an eye out for data inconsistencies or information gaps that would alert me to the possible existence of missing data. To do so I used the ICC's Legal Tools Project (LTP), which houses primary trial documents related to the

³⁶ The National University of Singapore (NUS)'s Central Library's collection is not complete. Copies are held in microfilm format that may be consulted onsite. The library has also made copies available in PDF format that university members may access through the internal website.

³⁷ The Singapore National Library has made much of these media reports available electronically via its website: <http://eresources.nlb.gov.sg/newspapers/default.aspx>. It holds copies in microfilm format that may be consulted in the library.

³⁸ Collections in the UK National Archives are labelled according to the government body that created them, chronologically. Therefore, it is impossible to know what a collection contains unless a researcher goes through the collection itself. Fortunately, the UK National Archives has created WWII-related guides to these collections, which describe the WWII-related content at a general level.

Singapore Trials.³⁹ Specifically, I checked my independent archival research efforts against the list of cases made available by the ICC's Legal Tools Database. In terms of other primary data, I also studied trial-related military exchanges, kept at the NAUK, and Singapore newspapers reports on the trials, kept at the Singapore National Library.

With respect to media reports on the Singapore Trials, I focused on reports published in the Straits Times from 1945 – 1948. This mainstream English newspaper was read by British nationals and the English-speaking elite of Singapore.⁴⁰ Limitations of time and language abilities prevented me from doing a more comprehensive survey of post-Second World War media in Singapore.

(c) Reading archival material in their historical context

While I analysed a range of archival material, as described above, some description of the trial transcripts is necessary in light of my research focus on trial communication. First of all, I took steps to carefully familiarise myself with the case files as the Singapore Trials' transcripts and records look very different from present-day court documents. It took much careful reading to ascertain and understand their organisation and rationale. Also, while the case files were complete, they were not prepared in a systematic or structured way. It took time to determine where information was located in each case file and how

³⁹ The Legal Tools Database provides access to charge sheets, trial judgements, and advisory opinions, but not the entire trial transcripts and court records, which are available at the UK National Archives.

⁴⁰ When analysing these media reports, my focus was not on how they reported 'a reality 'out there'', but on how they 'filter, frame and report news and analysis in a manner supportive of established power structures'. Vella, Stephen, 'Newspapers' in Miriam Dobson and Benjamin Ziemann (eds), *Reading primary sources: the interpretation of texts from nineteenth- and twentieth-century history* (Routledge 2009) 193.

documents were arranged. Claudia Verhoeven, a historian who works extensively with court files, has observed how ‘reading widely, deeply and slowly’ is necessary for a historian to learn the rules and logic of sources that take a variety of forms.⁴¹

I also encountered a problem commonly faced by historians when my primary sources did not contain some information that I needed. I address this information gap challenge in two ways in my dissertation. First, I take care to clearly state what information is expressly stated in the historical record and what information I have had to infer from the record. For example, in Chapter 3, I explain that the trial records do not systematically record where some the names of interpreters and court monitors. Second, when making inferences from what is stated in the historical record, I explain how I have arrived at these inferences. For example, I describe in Chapter 2 how I used secondary literature and consulted with other researchers to infer the places of origin of trial participants based on naming conventions.

Apart from occasionally missing information, there is another limitation of the trial transcripts which I should explain, given my research focus on trial communication. While the transcripts record trial proceedings word for word, they capture only the original English and interpreted English versions of testimonies. They do not record linguistic features such as pauses or hedges. These transcripts also do not record the non-English testimonies given by non-English speaking witnesses or defendants; they only record the English portions of trial proceedings including the English interpretations

⁴¹ Verhoeven, Claudia, ‘Court Files’ in Miriam Dobson and Benjamin Ziemann (eds), *Reading primary sources: the interpretation of texts from nineteenth- and twentieth-century history* (Routledge 2009) 92.

given by courtroom interpreters. There is unfortunately no audio recording of these trials. In subsequent chapters, I explain in greater detail how I relied on secondary materials, such as media reports, and other clues in the transcripts, to fill information gaps when analysing the transcripts for culturally related communication challenges.

When reading and interpreting my archival material, I aimed to contextualise them in their socio-political and institutional context. To do so, I employed reading techniques developed by scholars of historical trial records to develop a context-sensitive reading of my historical sources.⁴² I first familiarised myself with secondary literature about wartime and post-war conditions in Singapore and the region.⁴³ This gave me an understanding of the broader social and political context in which these archival documents were created.

I also studied secondary research on the 1945 Royal Warrant, which regulated the Singapore Trials, to place the case files in their institutional context.⁴⁴ This enabled me to understand the purpose of these case files as intended by their creators, and to appreciate

⁴² I benefited particularly from the work of Ginzburg and Davis. Carlo Ginzburg, *The judge and the historian: marginal notes on a late-twentieth-century miscarriage of justice* (Verso 2002); Carlo Ginzburg, *The Night Battles: Witchcraft and Agrarian Cults in the Sixteenth and Seventeenth Centuries* (2013); Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford University Press 1987).

⁴³ A valuable overview of this period in Singapore is a collection published by the Singapore National Archives: *Reflections & Memories of War Volume 1: Battle for Singapore - Fall of the Impregnable Fortress* (National Archives of Singapore 2011); *Reflections & Memories of War Volume 2: Syonan Years (1942 - 1945)* (National Archives of Singapore 2009).

⁴⁴ A good overview of 1945 Royal Warrant trials would be APV Rogers, 'War Crimes Trials under the Royal Warrant: British Practice 1945-1949' (1990) 39 *International and Comparative Law Quarterly*. Pritchard has done work on 1945 Royal Warrant trials implemented in Asia, R John Pritchard, 'The Parameters of Justice: The Evolution of British Civil and Military Perspectives on War Crimes Trials and Their Legal Context' in John Carey, William V Dunlop and John R Pritchard (eds), *International Humanitarian Law: Origins, Challenges, Prospects*, vol 1 (Transnational Publishers 2003).

their potential and limitations. For example, it was important to understand that the trial transcripts were to be reviewed by confirming officers who would confirm or alter the decision and findings of the court. This meant these case files had a certain degree of comprehensiveness.

When reading the trial transcripts against their institutional context, I also kept in mind how the rules, expectations, and dynamics of an adversarial trial shaped the conversations recorded in the transcripts. The exchanges recorded took place in a legal institutional context governed by specific legal regulations and adversarial litigation practices. The prosecution and defence had conflicting interests and strategies that shaped what they said at trial. When analysing these trial transcripts, I did not read them to discover the participants' thoughts or their motives. Rather, I was interested in what the participants were doing. Specifically, I was interested in how they addressed culturally related communication issues during the trials. Bearing in mind the trial is an interactive event, I did not so much read the transcripts as listen to what they said and hear what something meant to the speaker.⁴⁵

(d) Data analysis of culturally related communication issues

I began my analysis of primary sources, including the trial transcripts, using an inductive approach. This inductive approach was appropriate as these archival materials, particularly the transcripts of the Singapore Trials, have not yet been subject to any in-

⁴⁵ Pendas, Devin O, 'Testimony' in Miriam Dobson and Benjamin Ziemann (eds), *Reading primary sources: the interpretation of texts from nineteenth- and twentieth-century history* (Routledge 2009) 231.

depth study. To avoid reading my data through predetermined conceptual lenses, I did not begin my study of the trials based on detailed research questions. I did, however, have a general interest in how questions of justice, culpability, and guilt were dealt with in these trials. When reading and analysing the transcripts and other primary sources in this inductive manner, I repeatedly revisited my research focus to reformulate and refine it. I adopted an iterative approach as described by Hammersly, ‘the analysis of data is not a distinct stage of the research’ but ‘feeds’ into research design and data collection.⁴⁶ My research questions and design thus evolved as I became more familiar with my data and identified possible lines of analysis.

When immersing myself in my data on the Singapore Trials, I noticed there were problems of understanding that recurred throughout the trials. This was particularly the case when Japanese participants referred to Japanese words, practices or concepts. For example, Japanese military defendants argued that due to Japanese religion and military culture, Japanese soldiers treated orders from their superiors as orders coming directly from the Japanese Emperor. Based on their responses, non-Japanese participants showed that they did not understand or were unfamiliar with the arguments raised by Japanese participants. This alerted me to the possibility that the cultural difference of the Japanese military defendants may have influenced the trials in interesting ways. In light of this, I revisited my research focus as well as my primary data, with the aim of studying communication problems that arose in the trials and the extent to which these could be explained by the cultural difference between trial participants.

⁴⁶ Martyn Hammersley and Paul Atkinson, *Ethnography: Principles in Practice* (Routledge 2010) 158.

Upon reformulating my research questions to focus on culturally related communication problems in the Singapore Trials, I then re-visited and started analysing my material from the beginning with these research questions in mind. Specifically, I compiled and analysed trial transcripts using NVivo 10 through multiple stages of coding.⁴⁷ First, I did an initial coding in which I went through the transcripts line by line while assigning codes to my data. At this stage, I kept my codes ‘very basic’ and descriptive in nature and avoided using theoretical concepts that may unduly narrow my subsequent reading and analysis of the data.⁴⁸ I also kept my codes as descriptive as possible, such as ‘interpretation mistake’ and ‘judge explains rules’. While undertaking this initial stage of coding, I familiarised myself with a broad range of secondary research done on culture and culturally related communication challenges.⁴⁹

I then reviewed my codes and undertook a more focused coding of my data that involved grouping different codes together and identifying themes and patterns across the cases. I then engaged in *a thematic analysis* of the identified codes. I considered whether some codes were referring to the same thing, in light of my research questions and existing literature, and whether they could be merged.⁵⁰ I asked myself whether one code in reality included two different phenomenon and whether I should develop more detailed

⁴⁷ In undertaking my coding, I drew on qualitative coding guidelines proposed by sociologists like Bryman, making as many ‘marginal notes’ as possible about the data based on my research interest on how cultural difference impacted trial communications. Alan Bryman, *Social Research Methods* (4th edn, OUP 2012) 576. Given the inductive nature of my research, I also benefited from coding insights developed by researchers using a ‘grounded theory’ approach. David Sliverman, *Interpreting Qualitative Data* (4th edn, SAGE Publications 2011) 67 – 73.

⁴⁸ Bryman (n 47) 576.

⁴⁹ I refer to this literature in Chapter 3-5, especially in the beginning of these chapters where I situate the Singapore Trials against comparable trials and research to show how the trials contribute to ongoing debates.

⁵⁰ Bryman (n 47) 577.

codes to reflect this difference.⁵¹ I also considered whether there were connections that could be drawn between codes.⁵² For example, at the initial coding stage, one of the codes I used was ‘interpretation mistake’ based on the identification of explicit complaints or observations raised by trial participants about the court interpreter. In my focused coding stage, I drew on secondary sociological research conducted on courtroom interpretation research. This led to my further analysis and categorisation of interpretation problems encountered at trial: interpretation errors due to quality of interpretation, interpretation errors due to difficulties in translating non-Japanese ideas or concepts in English, and interpretation errors raised by the defence as part of their legal strategy.

To cross-check the ‘themes’ or patterns identified through the focused coding of trial transcripts were also compared with other data sources such as archival records on military communications. For example, military communication records show some trial personnel raising concerns over interpreter quality. This confirmed my identification of interpreter quality as a theme through the coding of trial transcripts. I recorded and furthered my analysis by making memos. In these memos, I kept records of the codes I used, what they referred to, and how they developed. I also used these memos to develop my analysis, by examining the interconnection between codes and linking them to relevant scholarship.⁵³ I also included sample texts from my primary data in my memos. These memos enabled me to keep track of the evolving coding and analytical process, and brought together the different stages of my research.

⁵¹ *ibid.*

⁵² *ibid.*

⁵³ *ibid* 573.

In addition to using NVivo 10 to analyse and code trial transcripts, and memos to keep track of analysis and comparison of data sources, I also constructed an Access database of the trials containing information about trial actors (e.g. names of defendants, judges, lawyers, witnesses) and trial-related information (e.g. dates of trials and findings). This enabled me to identify repeat trial participants across trials as one of the issues I was interested in studying was whether cross-cultural communication was influenced by repeat participation.

4. Summaries of dissertation chapters

My dissertation comprises five chapters with an introduction and conclusion. The first two chapters reconstruct the trials' historical and socio-political context, highlighting the aims of trial organisers and the trials' multicultural setting. The subsequent three chapters undertake thematic explorations of culturally related communication challenges experienced by trial participants in the Singapore Trials.

In the first chapter, I trace how the history of British colonial rule in Singapore was shaped and legitimised by ideas of 'prestige' – the notion that the British were more qualified than locals to rule. Japanese victories in the early part of the Second World War seriously undermined such British prestige in the eyes of local populations, and the returning British were aware of this. Though the British faced numerous social and economic challenges as well as anti-British resistance upon their return to Singapore, British military leaders were eager to commence war crimes prosecutions. I examine how the 1945 Royal Warrant, which authorised these trials, designed prosecutions to be

comprehensive and expedited. These trials were intended to achieve a variety of objectives, including the projection of a superior British justice that would facilitate the re-establishment of British colonial authority in Singapore.

Chapter 2 builds on Chapter 1's reconstruction of the Singapore Trials' social and political setting at the regional and global level by analysing the organisational challenges experienced in the implementation of these trials. The first part of the chapter highlights how these trials were under much media scrutiny and public attention. Trial organisers and court personnel were aware that these trials were being watched by the public. The crimes prosecuted in these trials were difficult to judge due to their institutional setting and complex facts. In addition to these challenges, I explain how trial organisers had to deal with resource challenges such as personnel shortages and competing governmental demands. The second part of this chapter gives an overview of the trials' diverse actor composition with the aim of drawing attention to a feature further complicating the Singapore Trials—the varied backgrounds of judges, defendants, lawyers, and witnesses. Participants had different cultural 'tool kits' as a result of their different places of origin, ethnicity, and legal training. This diverse trial actor composition gave rise to culturally related communication challenges that I proceed to explore in Chapters 3 to 5.

In Chapter 3, I focus on how most defendants and Asian witnesses did not speak English. They did not have the linguistic 'tools' needed to communicate with the English speaking judges. Interpretation was necessary to facilitate communication between English speakers and non-English speakers. I first give an overview of the legal framework regulating interpretation in these trials, the interpretation methods used, and a

profile of interpreters employed in these trials. The main part of this chapter then examines interpretation-related communication challenges encountered by trial participants. I study how interpretation issues resulted in genuine problems of understanding during the trials, but also how many defendants raised interpretation problems as a defence tactic, for example, by seeking to cast doubt on the accuracy of translated pre-trial statements. It was difficult for judges to identify interpretation errors as they were clearly not fluent in Japanese or Asian languages. Judges, nevertheless, used different strategies to check the accuracy of interpretations and test the competence of interpreters. I assess the extent to which such judicial interventions were successful.

The next chapter, Chapter 4, studies the law and procedure that applied in the Singapore Trials. Apart from not speaking the courts' working language, Japanese defence counsel faced the additional challenge of navigating laws and procedures foreign to them. These Japanese defence counsel were strangers to the professional legal 'tools' needed to navigate the Singapore Trials. I first consider the legal training that Japanese defence counsel would have had in pre-war Japan, whose legal system was based on European laws and employed an inquisitorial trial process. I then examine the law and procedure that applied in the Singapore Trials by virtue of the 1945 Royal Warrant, drawing attention to the adversarial system and British legal material employed in these trials. In the third part of the chapter, I analyse the participation challenges encountered by Japanese defence counsel and the steps taken by judges to facilitate defence counsels' trial participation.

While Chapters 3 and 4 examine communication challenges associated with two cultural aspects of the Singapore Trials, namely language and professional legal skills, Chapter 5 takes a broader look at how cultural difference impacted non-Japanese participants' understanding of culturally influenced arguments advanced by Japanese participants in the Singapore Trials. I study how Japanese participants often referred to Japanese norms, beliefs, and practices— what I refer to as culturally influenced arguments—and how non-Japanese participants gave differing interpretations to these arguments. I first assess contextual factors affecting communication and understanding between Japanese participants and non-Japanese participants in the Singapore Trials. The main part of this chapter then analyses culturally influenced arguments raised by the defence in the Singapore Trials and the different interpretations of these arguments by non-Japanese participants.

In my concluding chapter, I revisit the culturally related communication challenges experienced in the Singapore Trials and the factors influencing these challenges, namely, diverse actor composition, resource constraints, and political considerations. I recall the different strategies employed by trial participants to overcome or avoid these communication obstacles, in particular the informal and interventionist approach of many judges and the active cultural learning of some key trial actors. I then consider the possible lessons that my study of the Singapore Trials holds for present-day war crimes trials that continue to frequently feature diverse trial participants.

CHAPTER ONE: HISTORICAL CONTEXT OF THE SINGAPORE TRIALS

This chapter situates the Singapore Trials in their historical setting and explains how contextual factors influenced these trials. Among others, it explores then-prevailing socio-economic and political conditions, post-war reoccupation concerns of the British military, as well as broader Allied post-war trial policies. I explain how these contextual factors moulded the trials' comprehensive reach, their expedited nature, and their objectives. This section not only paints a more complete picture of the trials but also addresses my dissertation's focus on culturally influenced communication challenges by highlighting contextual factors that explain why trial actors responded to communication issues at trial in certain ways.

Section 1 reconstructs the socio-economic and political landscape in which the trials took place, and points out the many rebuilding and security issues confronting the British military in Singapore after the war. Section 2 zooms out to place the Singapore Trials in their larger global landscape, explaining how these trials were organised alongside other Allied war crimes trials pursuant to wider Allied policy. Sections 3 and 4 then shift our focus to the British military's conceptualisation of these trials and the military court system established to implement them.

1. Situating the Singapore Trials within Singapore’s political and social context

In this section, I reconstruct the political and social context in which the Singapore Trials took place. I start with a snapshot of pre-war Singapore society and British colonial policies. In particular, I highlight how British colonial rule was facilitated by the idea of British prestige, the idea that the British were able to provide locals with better government than local rulers. I show how such British prestige was severely undermined by Japanese victories and actions during the Second World War. I then elaborate on the many post-war challenges encountered by the British when they returned to Singapore after the war, including the need to rebuild British colonial legitimacy.

(a) Singapore’s pre-war society and British colonial policies

The island city-state of Singapore sits just below present-day West Malaysia along one of the busiest shipping routes in the world.¹ Singapore has had a long history of being a port city; Chinese, Southeast Asian, and European historical texts refer to a busy port settlement called Temasek in Singapore that flourished through the 13th and 14th centuries.² British rule of Singapore began in 1819 when Stamford Raffles of the East India Company set up a British trading post on the island. Singapore’s economic success attracted many migrants—Europeans, Chinese, Indians, and Arabs—who came in search

¹ Chong Guan Kwa, Derek Thiam Soon Heng and Tai Yong Tan, *Singapore, a 700-Year History: From Early Emporium to World City* (National Archives of Singapore 2009) 9–10. Singapore means ‘Lion City’ in the Malay language, and according to classical Malay history, Singapore was so christened by a Malay prince from the Srivijaya Empire who came across the island during his travels

of work and eventually settled down alongside the Malay ethnic community.³ For the British, Singapore was not only a profitable entrepot but also served as a gateway to Malaya's rich natural resources. The British commonly referred to the Malay Peninsula and Singapore as British Malaya.⁴ British Malaya in fact referred to three political units: the Straits Settlements colonies of Singapore, Malacca and Penang; the Federated Malay States of Selangor, Perak, Pahang and Negeri Sembilan; the Unfederated Malay States of Perlis, Kedah, Kelantan and Terengganu.

According to official census data, in 1931, the racial composition of British Malaya was as follows: 37.9% Malays; other indigenous races 6.6 %; Chinese 39.2 %; Indians 14.3 %; Europeans 0.4 %; Eurasians 0.4%; other communities 1.3%.⁵ A brief explanation on the categories of race or ethnicity used in these official census figures is necessary here because these categories may not coincide with present-day understandings. The category of 'Europeans' as used in official census figures refers not only to those from Britain or Europe but those with European ancestry.⁶ In addition, it should be noted that these official census figures depended on information provided by the person concerned to the censor; such information may be shaped by then-prevailing assumptions and prejudices. For example, Butcher observes how many Eurasians of

² ibid 19, 31–32.

³ ibid 108, 110, 122.

⁴ Cheah, Boon Kheng, *Red Star Over Malaya: Resistance and Social Conflict During and After the Japanese Occupation, 1941-1946* (2nd edition edition, Singapore University Press 2012) 3.

⁵ ibid 5.

⁶ John G Butcher, *The British in Malaya, 1880-1941: The Social History of a European Community in Colonial South-East Asia* (Oxford University Press 1979) 24.

mixed ancestry would have represented themselves as pure Europeans to avoid the ‘shame’ then associated with mixed ancestry.⁷

Though the British considered British Malaya a colony, not all those residing or born in British Malaya were considered British subjects. Under the arrangements concluded by the British authorities with Malay leaders or sultans, the British was responsible for the administration of the Malay states while the sultans remained responsible for customary law and religion.⁸ Malays were therefore the subjects of their sultans rather than British subjects. Chinese immigrants largely considered themselves as owing allegiance to China.⁹ However, those Chinese born in the Straits Settlements were considered British subjects.¹⁰ Indians who had immigrated to Malaya from India were generally British subjects as a result of India being under British rule.

British colonial rule of Singapore lasted until 1963 and was facilitated by, among others, British maintenance of ‘white prestige’—the belief that the white man was better placed than the native to provide the latter with good government. British practices of government throughout British Malaya were predicated on racial differentiation and hierarchy. Residential areas and public places were segregated.¹¹ The upkeep of ‘British prestige’ required the British population to maintain standards of living that were

⁷ *ibid* 25.

⁸ Cheah, Boon Kheng (n 4) 5.

⁹ *ibid* 13.

¹⁰ *ibid*.

¹¹ John G Butcher, ‘Towards the History of Malayan Society: Kuala Lumpur District, 1885–1912’ (1979) 10 *Journal of Southeast Asian Studies* 104, 116.

appropriate and that distinguished them from the colonised population.¹² And there was always the fear that British colonial officers or settlers may go ‘native’. This is not to say that the British did not resort to violence when necessary, as demonstrated by the British authorities’ brutal response to the Indian sepoy uprising of 1915.¹³ However, as Darwin observes, the British did not view colonial empire in solely economic, rational or strategic terms; British empire-building was also ‘driven by visions and fantasies, and sustained by myth and delusion’.¹⁴ The British were motivated by their ‘tenacious belief in a scale of racial capacities in which they stood at the top’.¹⁵

In the pre-war years, the spread of wealth and access to education in Singapore resulted in the gradual emergence of an English-educated Asian middle class.¹⁶ Nevertheless, high-ranking administrative positions continued to be reserved for ‘natural-born British subjects of pure European descent on both sides’.¹⁷ In 1932, the Straits Medical Service started admitting Asians; in 1934, a Straits Civil Service was established; and in 1937 a Straits Legal Service was created. Asians graduating from British universities could apply to these departments but very few Asians were in fact admitted.¹⁸ All this caused frustration among the local population but there was not yet persistent or organised opposition to British colonial rule.¹⁹ Despite pockets of local

¹² Butcher (n 6) 77.

¹³ C Mary Turnbull, *A History of Modern Singapore, 1819-2005* (Revised edition edition, Singapore University Press 2009) 130.

¹⁴ John Darwin, *Unfinished Empire: The Global Expansion of Britain* (Penguin 2013) 396.

¹⁵ *ibid* 397.

¹⁶ Turnbull (n 13) 150.

¹⁷ *ibid* 155.

¹⁸ *ibid*.

¹⁹ *ibid* 154.

discontent and demands for inclusion, British colonial rule remained firmly rooted in Singapore on the eve of the Second World War.

(b) The Second World War and the Japanese military's undermining of British prestige

Japan's swift invasion of British Malaya at the start of the war irrevocably undermined the myth of British prestige. On 8 December 1941, just before Japan's bombing of Pearl Harbour, the Japanese military successfully landed on the northern coast of Malaya and Thailand. Ten days later, on 18 December 1941, Japan had captured Penang on Malaya's upper west coast. On 11 January 1942, the Japanese took Kuala Lumpur city and were less than 200 miles away from Singapore. On 27 January 1942, the British withdrew all troops from Malaya to Singapore. The causeway linking Singapore to Malaya was destroyed by the British military in an attempt to block the Japanese military's unyielding advance. On 8 February 1942, the Japanese military set foot in Singapore, and eight days later, on 15 February 1942, the Japanese had forced the British to surrender.²⁰

Japan, a non-Western power, had easily overpowered the unprepared British. The British military were unable to stop the Japanese military's swift advance down Malaya or its assault on the north of Singapore, an attack that capitalised on the island's weak defences.²¹ British military personnel posted to Singapore did not expect to see heavy

²⁰ Chris Brown, *Battle Story: Singapore 1942* (The History Press 2012) 16–17, 130.

²¹ By landing in the north of Malaya and working their way down the Malay Peninsula, Japan had instead attacked Singapore from the north. Though the British had often described Singapore as a military fortress, the island's northern defences were in reality weak because the bulk of military planning which had taken place in the 1920s had proceeded on the basis that any attack would

battle. Former British officer Geoffrey Brooke recalls: 'I well remember, as a junior officer in the HMS *Prince of Wales*, the battleship en route for Singapore, expecting that at last we were going to get a little relaxation!'²² The majority of British and Allied troops in Singapore were not adequately trained or experienced, and the reinforcements requested did not come through.²³ Chin describes the quality of British fighting during this momentous period as 'shaky and insipid'.²⁴ The British civilian administration in Singapore was similarly inefficient. During Japan's first air raid on Singapore, no one switched off the island's city lights or scrambled aircraft to meet Japan's attack.²⁵

In contrast, the Japanese 25th Army attacking British Malaya was highly trained and highly organised. Lieutenant-General Tomoyuki Yamashita commanded 30 000 men of the Japanese army, though these exact numbers are contested.²⁶ On the British side, Percival led a force of 88 000.²⁷ Though Yamashita's men were less in number, they had fought in Japan's war against China and were experienced fighters. The Japanese decided to strike during Malaya's rainy season, taking the British by surprise.²⁸ Japanese soldiers were well-prepared for jungle combat and lightly armed, moving quickly by bicycle

come seawards from the south *Reflections & Memories of War Volume 1: Battle for Singapore - Fall of the Impregnable Fortress* (National Archives of Singapore 2011) 229.

²² Geoffrey Brooke, *Singapore's Dunkirk* (Reissue edition, Pen & Sword Military 2014) 7.

²³ This shortfall in reinforcements and resources was largely due to the policy decision taken by the British government in London to focus efforts on the war in Europe. *Reflections & Memories of War Volume 1: Battle for Singapore - Fall of the Impregnable Fortress* (n 21) 141.

²⁴ Chin Kee Onn, *Malaya Upside down* (3rd edition, Federal Publications 1976) 9.

²⁵ Brown (n 20) 60.

²⁶ Peter Doyle, *World War II in Numbers* (A&C Black Childrens & Educational 2013) 58.

²⁷ Percival's troops composed of mainly Indian troops who fought alongside Australian, British and Malay soldiers. *ibid.*

²⁸ *Reflections & Memories of War Volume 1: Battle for Singapore - Fall of the Impregnable Fortress* (n 21) 200.

down the Malay Peninsula.²⁹ Japan's invasion of British Malaya ended with 7500 were killed, 10000 wounded and 120000 captured on the British side.³⁰ On the Japanese side, only 1713 were killed and 2771 wounded.³¹ The victorious Japanese renamed Singapore 'Syonan-To' or 'bright island' and Malaya 'Malai'.³²

Japan also directly challenged British colonial legitimacy in its wartime propaganda. Japanese military leaders argued that Japan would free Asians from Western rule by displacing Western colonial powers. In 1942, Japan's then Prime Minister Tojo Hideki described Japan's aggression in his New Year radio address as a 'righteous war for constructing a glorious world of happy and peaceful nations by dispelling the evil forces of the United States and Britain'.³³ Japanese leaders declared that they would establish a 'Greater East Asia Co-Prosperity Sphere' encompassing present-day China, Hong Kong, India, Vietnam, Cambodia, Indonesia, the Philippines, and Thailand.

During Japan's attack on British Malaya, the Japanese military dropped propaganda leaflets aimed at provoking divisive and anti-British sentiment among ethnic groups. Some were addressed to the Malays: 'Malays, we are your friends, and intend to drive out the Europeans, who have enslaved you, also kill off the Chinese who have taken the wealth of your country. So that we can identify you at all times were your hats.'³⁴

²⁹ ibid 201.

³⁰ Doyle (n 26) 38.

³¹ ibid.

³² *Reflections & Memories of War Volume 2: Syonan Years (1942 - 1945)* (National Archives of Singapore 2009) 36.

³³ *Reflections & Memories of War Volume 1: Battle for Singapore - Fall of the Impregnable Fortress* (n 21) 34.

³⁴ ibid 200.

Others were addressed to the Indian soldiers serving in the British military: ‘All you Indian sepoys do not fight against us; we are your friends – go into the jungles with your arms and wait for us to come – we will look after you’.³⁵

Japan’s anti-Western claims resonated with a not insignificant number of Asians disenchanted with Western colonial rule. Spies from various Asian communities assisted Japan during its attack on British Malaya. These spies included Indonesians, Malays, Indians, Chinese, and Thais.³⁶ The Indian National Army (INA) of the anti-British Indian Independence League participated in the Japanese military’s attack of Singapore.³⁷ When Singapore fell to Japan, the Japanese military separated Indian prisoners of war (POWs) from European POWs, urging the former to renounce British allegiance and fight alongside Japan to liberate India from British rule. 20000 Indian soldiers immediately chose to take up arms against the British, with another 20000 doing so from June to August 1942.³⁸ In 1943, the Provisional Government of Free India in Singapore inspired many more Indians to join the INA which by then totalled 80000 men.³⁹ By 1945, 18000 Indian civilians had joined the INA. It should be noted that not all Indian soldiers switched allegiances voluntarily and many did so under duress or for self-interested reasons.⁴⁰ Indeed, those Indian soldiers who chose not to switch allegiance were brutally

³⁵ ibid.

³⁶ Chin (n 24) 5.

³⁷ Sumio Hatano, ‘The Anglo-Japanese War and Japan’s Plan to ‘Liberate’ Asia, 1941-1945’ in Ian Gow, Yôichi Hiramata and John Chapman (eds), *The History of Anglo-Japanese Relations, 1600-2000: Volume III, The Military Dimension, 1800-2000* (First Edition edition, Palgrave Macmillan 2003) 209.

³⁸ ibid.

³⁹ Warren, Alan, ‘The Indian Army and the Fall of Singapore’ in Brian Farrell and Sandy Hunter (eds), *A Great Betrayal? The Fall of Singapore Revisited* (Marshall Cavendish Books 2010) 236.

⁴⁰ ibid 235.

treated by the Japanese.⁴¹ News of Indian soldiers switching allegiance nevertheless demoralised many British military personnel.⁴²

Japan's wartime occupation of Singapore and the region quickly revealed itself to be a harsher form of colonial rule. In Singapore, the Japanese military committed numerous atrocities against Allied military personnel and civilians. The Japanese treated certain groups worse than others. For example, the Japanese military singled out the Chinese population for harsh treatment due to the latter's support of China in the Japan-China war.⁴³ Throughout Japan's wartime occupation of Singapore, detained POWs and civilians were ill-treated and abused by the Japanese military police and prison personnel. The Japanese military also forced Allied POWs and civilian labourers to work under inhumane and fatal conditions on construction projects, such as the Burma Siam Death Railway.⁴⁴ It is estimated that 24.8% of British POWs died in Japanese captivity while only 3.5% of British POWs died in German hands.⁴⁵

Though Japan's wartime atrocities quickly exposed Japan's claims to liberate Asia as wartime propaganda, Japan's wartime victories and actions had seriously undermined British colonial prestige. When the British returned to Singapore after the

⁴¹ Kevin Blackburn and Karl Hack, *War Memory and the Making of Modern Malaysia and Singapore* (NUS Press 2012) 177.

⁴² Warren, Alan (n 39) 236.

⁴³ Japan's conflict with China started well before Japan's 1937 Second World War invasion of China. As early as 1894-1895, Japan fought and won its 'first all-out war' with China over Korea. Rana Mitter, *Forgotten Ally: China's World War II, 1937-1945* (Allen Lane 2013) 34-35.

⁴⁴ *Reflections & Memories of War Volume 2: Syonan Years (1942 - 1945)* (n 32) 338-343.

⁴⁵ Doyle (n 26) 201.

war, they faced many reconstruction and political challenges, not least rebuilding their legitimacy as colonial power.

(c) Post-war challenges encountered by the British upon returning to Singapore

Japan unconditionally surrendered to the Allies on 15 August 1945, and the British returned to Singapore on 5 September 1945. On 12 September 1945, the Supreme Allied Commander of South East Asia Command (SACSEA) Lord Louis Mountbatten formally accepted Japan's surrender in Singapore. The Allies agreed that Mountbatten and his South East Asian Command (SEAC), which commanded the Allied Land Forces South East Asia (ALFSEA), would be responsible for re-occupying most of Southeast Asia, including British Malaya, Ceylon, Burma, Siam, and Borneo. SEAC would also occupy French Indochina and Dutch Indonesia until the return of the French and Dutch authorities to their colonies.⁴⁶ Thus, Mountbatten became responsible for 1 500 000 square miles, a population of 128 million, and 750 000 surrendered Japanese personnel.⁴⁷ On 1 December 1945, SEAC was disbanded and ALFSEA reorganised into South-East Asia Land Forces (SEALF).⁴⁸ It is noteworthy that while SEAC and ALFSEA have the 'Allied' word in their names, they were largely composed of British personnel and were in reality subject to British military command.

⁴⁶ Lord Killearn to Foreign Office, 17 June 1946, NAUK, CAB 21/1954, para 1. The land army responsible for post-war occupation was known as Allied Land Forces South East Asia (ALFSEA), which would be later called South East Asia Land Forces (SEALF) from 1 December 1946 upon the dissolution of SEAC. On 15 August 1947, the SEALF would be replaced by the Far East Land Forces (FAELF).

The British military understood its post-war reoccupation of territories in military administrative terms.⁴⁹ Military administration units were established in different areas. In Singapore, Mountbatten issued Proclamation no. 1 that established and charged the British Military Administration (BMA) in Singapore with ‘the prevention and suppression of disorder and the maintenance of public safety’.⁵⁰ The British military eventually handed over these military administrations to civilian governments. In March 1946, after six months of military administration, civilian administration of Singapore resumed.⁵¹ The British military however continued performing certain tasks in Singapore and the region, including the prosecution of war crimes. Based on British understandings of international law, the British military’s governance of these military administrations was governed by the principle of military necessity.⁵² This is an important point to keep in mind because it sheds light on the British military’s post-war activities, including the establishment of military war crimes courts.

i. Disillusionment and increasing resistance to British colonial rule

The British expected their colonial rule of British Malaya to continue for a significant time but faced increasing resistance to their rule when they returned to the region after the war. Before the war ended, the British government had discussed post-war colonial

⁴⁷ ibid para 14.

⁴⁸ HC Deb, 26 November 1946, vol 430, cc 245-6W.

⁴⁹ FSV Donnison, *British Military Administration in the Far East, 1943-46*. (First Edition edition, Her Majesty’s Stationary Office 1956) 289.

⁵⁰ Proclamation no 1 issued by Admiral Mountbatten, 15 August 1945, WO 203/5642, para. 1.

⁵¹ Kwa, Heng and Tan (n 1) 153.

⁵² Donnison (n 49) 289.

policies in Asia. The general agreement reached was that the UK would continue to administer existing colonies in Asia while preparing these colonies for eventual self-governance. British leaders rationalised that they should continue administering these colonies for the benefit of the local population and the wider international community. A joint memo by the Foreign Office and the Colonial Office recognised that continued British administration would ensure that Singapore's port continued to be the 'life and trade of the Malayan archipelago, as well as the ocean trade of the East' and that the Malay community would be protected against 'the more efficient and numerous Chinese and to a lesser extent the Indians'.⁵³

Nevertheless, the British were conscious of their loss of prestige in the eyes of the local population. When the British military returned to British Malaya, some wrongly assumed that the locals would continue to be loyal to the British especially in light of the harsh nature of Japanese military occupation.⁵⁴ Others in the British military were more aware of how the war had changed the political landscape of British Malaya, arguing for the need to carefully engage anti-Japanese local resistance movements.⁵⁵ When the British first set foot in Singapore, most of the flags waved by the local population were Chinese flags rather than British flags; the local population believed that they were being liberated by the Chinese-dominated Malayan People's Anti-Japanese Army (MPAJA) rather than the British. The MPAJA was a wartime resistance army run by the Malayan

⁵³ Joint CO-FO memorandum, August 1942, NAUK, CO 825/35/4, para 30.

⁵⁴ Lawrence James, *Churchill and Empire* (W&N 2013) 336.

⁵⁵ See conflicting approaches set out in, BAC Sweet-Escott, Commander Force 136 to SACSEA various departments, 19 August 1945, NAUK, WO 203/5642, para 1.

Communist Party (MCP), which would soon shift its energies to challenging continued British colonial rule.⁵⁶

British prestige concerns influenced the British military's organisation of Japan's formal surrender in Singapore on 23 September 1945. When preparing for the surrender ceremony, organisers became concerned that there would not be enough 'white' faces among British troops gathered in the field in front of the City Hall. Shore leave was quickly given to additional troops to ensure that 4000 'white' faces would be visibly present during the ceremony.⁵⁷ At the ceremony, Mountbatten accepted Japan's formal surrender from General Itagaki Seishiro. The Straits Times, a mainstream newspaper in Singapore, gave the ceremony substantial coverage and depicted Mountbatten in messianic terms, presiding over all that was orderly and at the head of a military comprising soldiers of different ethnicities. Mountbatten's arrival was heralded by 'British bugles sounding again on the Padang' and the 'polish and smartness of the parade was good to see' as Mountbatten inspected the parade, 'leisurely' stopping to speak to 'a British Marine, a Dogra, a Punjabi, a Commando, a British soldier, a French soldier and so on'.⁵⁸

After this formal surrender ceremony, the short-lived wartime honeymoon between the British and MCP disintegrated. The MCP reverted to its pre-war anti-British

⁵⁶ Donnison (n 49) 385.

⁵⁷ Romen Bose, *The End of the War: Singapore's Liberation and the Aftermath of the Second World War* (1st Edition edition, Marshall Cavendish Editions 2005) 111.

⁵⁸ 'Japanese in Malaya surrender in Singapore', Straits Times, 13 September 1945, 1.

stance, and began demanding more political power and organising mass strikes.⁵⁹ In addition to such MCP resistance, the British also encountered more broad-based calls for independence. Prior to the war, such demands for independence had been largely limited to the elite.⁶⁰ After the war, political activity and nationalism took on a ‘youthful, militaristic’ face.⁶¹ Even individuals and groups who had not actively opposed the Japanese during the war were changed by their wartime experiences. In British Malaya the Japanese had trained many Malays as members of the police and auxiliary forces, and this gave these Malays a certain confidence and ‘pride’.⁶² In 1946, the British attempted to operationalise the Malayan Union project that would bring British Malaya under one centralised administration. This ill-fated plan that would, among others, give equal citizenship to non-Malays. The plan was fiercely opposed by the Malay community and eventually had to be abandoned, resulting in ‘one of the Empire’s most serious political problems’.⁶³

Further complicating the job of the British military in post-war Singapore was local disillusionment with the BMA. The BMA lost the trust of locals due to the corrupt practices of some personnel and was nicknamed the ‘Black Market Administration’.⁶⁴ All this further undermined the legitimacy of the returning British.⁶⁵ In December 1945,

⁵⁹ Cheah (n 4) 241.

⁶⁰ Nicholas White, *Decolonisation: The British Experience since 1945* (1 edition, Routledge 1999) 48.

⁶¹ Tim Harper and Christopher Bayly, *Forgotten Wars: The End of Britain’s Asian Empire* (Penguin 2008) 16.

⁶² Ian Buruma, *Year Zero: A History of 1945* (Atlantic Books 2013) 112.

⁶³ ‘Malaya One Of Empire’s Most Serious Political Problems’, *Straits Times*, 11 July 1946, 2.

⁶⁴ Turnbull (n 13) 225.

⁶⁵ Harper and Bayly (n 61) 108–109.

Victor Purcell, who had served as the Chinese Protector in Singapore, described the fading of the local population's 'early goodwill' towards the British military. He criticised 'the rudeness and high-handedness of some officers', 'the careless way in which vehicles are often driven', and the 'ill discipline of many troops' which had become 'common subjects of conversation'.⁶⁶

ii. Humanitarian and infrastructural problems

In addition to political concerns, the British had to address numerous reconstruction issues in post-war Singapore. There were an estimated 70 000 POWs in the region who had to be rescued and evacuated.⁶⁷ About 53 700 POWs were repatriated by September 1945, mostly by sea through Singapore.⁶⁸ There were also serious law and order problems. In the interregnum between Japan's unconditional surrender on 15 August 1945 and the return of the British to British Malaya in September 1945, anti-Japanese resistance groups had started punishing Japanese collaborators throughout British Malaya.⁶⁹ Singapore was fortunate to escape much of the rough justice though there were a number of informal people's trials held in Singapore's Geylang area.⁷⁰

Singapore was affected by the general breakdown in law and order sweeping through British Malaya. When the British army reoccupied Singapore, they found the Singapore police force in tatters: the police were undernourished and had no uniforms;

⁶⁶ Purcell's report attracted much criticism within the British military, and in his response to one such criticism of unfair representation, he argued that while the feeling between troops and locals as 'individual human beings' may be excellent 'the feeling of the civil population concerning the Services' was quite different. 'Malaya's political climate IV', Report by Victor Purcell from Singapore, 3 December 1945, WO 203/5302, p3.

their offices in disarray; and their equipment had been destroyed or barely working.⁷¹ The police had also lost the trust of the Singapore population because some police had collaborated with the Japanese during the war.⁷²

The post-war years in Singapore were difficult, and Singapore's population continued to suffer greatly. There was a severe shortage of food, water, electricity, and other basic necessities. Arriving as a nurse at the Singapore General Hospital in August 1945, Catherine Baker wrote: 'It was insect-ridden, filthy, ill-equipped and overrun by monkeys.'⁷³ On 7 September 1945, the British made matters worse by declaring Japanese-issued currency worthless, and this caused panic among the population and runaway inflation.⁷⁴ A BMA report dated October 1945 described despondent living conditions in British Malaya: prices were 'high' and food staples were 'scarce', with ongoing 'profiteering' and 'considerable' unemployment'.⁷⁵ The mood and atmosphere was one of 'uncertainty and bewilderment'.⁷⁶

⁶⁷ Bose (n 57) 92.

⁶⁸ *ibid* 99.

⁶⁹ Cheah (n 4) 133.

⁷⁰ Turnbull (n 13) 218.

⁷¹ *Report on the British Military Administration of Malaya*, NAUK, FCO 141/15329, p 87.

⁷² *Ibid*.

⁷³ Reproduced in Bose. Bose (n 57) 92.

⁷⁴ *ibid* 101.

⁷⁵ BMA fortnightly report no 4, for the period ending 31 October, 31 October 1945, CO 273/675/5, p 1.

⁷⁶ *ibid*.

iii. Re-establishing law and justice processes under military administration

To address law and order concerns in post-war Singapore, the British military quickly put in place a basic system of courts. A moratorium was placed on most civil claims; there was to be a focus on criminal cases as this would be essential for the maintenance of order.⁷⁷ These post-war courts were influenced by courts martial procedure and had streamlined processes.⁷⁸ There was no right of appeal though in most cases, convicted persons could submit a petition for review to the military.⁷⁹ There was also a ‘reduction’ in terms of the records of proceedings to be prepared.⁸⁰ Superior and District Courts were established.⁸¹ Superior Courts could either be a British Officer Court, comprising a president and two military officers, or an Assessor Court, comprising a president and two civilian assessors. British Officer Courts heard more serious cases. District Courts were presided over by a single judge. In Singapore, a District Military Court was established on 5 October 1945 and the first Superior Military Court was established on 5 October 1945.⁸²

The British military also set up separate courts to try collaboration offences.⁸³ In Singapore, a Special Court to try collaboration offences was set up in October 1945.⁸⁴ These Special Courts would examine a case to see if there was a *prima facie* case against

⁷⁷ Donnison (n 49) 295.

⁷⁸ *ibid* 299.

⁷⁹ *ibid* 300.

⁸⁰ *ibid* 299.

⁸¹ *ibid* 295.

⁸² *ibid*.

⁸³ *ibid* 301.

the accused. If so, the cases would be heard at a District Court. The accused had the right to a final trial before a Superior Court. In Singapore, many members of the public demanded that such crimes of collaboration be prosecuted. The British authorities however found that many complaints were unfounded resulting in nearly half of the lodged complaints being dismissed.⁸⁵ British policy on collaborator trials were also influenced by political developments, such as Indian protests against the trials of INA soldiers.⁸⁶ As a general policy, the British decided that ringleaders would be severely punished while other collaborators would be treated leniently.⁸⁷

Apart from establishing courts to try ordinary crimes and collaboration offences, the British military also established courts in Singapore to try war crimes, resulting in the Singapore Trials. These courts were authorised and regulated by the 1945 Royal Warrant, the details of which are elaborated on below.⁸⁸ They were administered separately by staff of the Judge Advocate General.⁸⁹ Altogether 131 trials were held; the first trial started on 21 January 1946 and the last trial ended on 12 May 1948. As of May 1946,

⁸⁴ ibid 303.

⁸⁵ In the end it was decided that only those in leadership positions would be prosecuted while those who could prove they were acting according to the orders of their superiors should be treated leniently. ibid.

⁸⁶ For insightful work on collaboration trials conducted in Asia after WWII, see Konrad Lawson, *Wartime Atrocities and the Politics of Treason in the Ruins of the Japanese Empire, 1937-1953*, 2012, available <http://nrs.harvard.edu/urn-3:HUL.InstRepos:9795484>

⁸⁷ Donnison (n 49) 303.

⁸⁸ Royal Warrant 0160/2498, 18 June 1945, promulgated by the War Office, Army Order 81 of 1945, WO 309/1 ('1945 Royal Warrant'). See also attached regulations, Regulations for the Trial of War Criminals Attached to Royal Warrant 0160/2498, 18 June 1945, promulgated by the War Office, Army Order 81 of 1945 ('1945 Royal Warrant Regulations')

⁸⁹ Donnison (n 49) 301.

there were seven military courts hearing war crimes trials in Singapore.⁹⁰ It is important to bear in mind that the Singapore Trials were implemented in a military occupation context where all court proceedings—not only the Singapore Trials—were conducted in a streamlined and expedited manner.

To sum up, the British military had to deal with many urgent issues upon returning to Singapore. It had to set up a governmental apparatus and secure basic law and order. POWs had to be processed and repatriated. Hungry local residents had to be fed and housed. It also had to deal with the increased demands of local groups for political recognition and inclusion. Post-war Singapore was very different from pre-war Singapore. British military personnel had their hands full dealing with a plethora of humanitarian and reconstruction demands. It was against this backdrop that the Singapore Trials were organised.

2. Situating the Singapore Trials within the global universe of Allied and national war crime trials

The Singapore Trials were not the only trials conducted by the Allies in Asia after the war. In fact, the Singapore Trials were conducted alongside hundreds of other Allied war crimes trials in Europe and Asia, including the Tokyo Trial and Nuremberg Trial. This section situates the Singapore Trials within the larger international landscape of post-war trials with the aim of explaining how the Singapore Trials were influenced by international developments.

⁹⁰ Allied Land Forces South-East Asia, War Crimes Instruction No 1, 2nd Edition (4 May 1946), 57

(a) Allied wartime preparations for war crimes prosecutions

During the war, as news of atrocities trickled in from Axis-occupied territories, the Allies began publicly committing themselves to the prosecution of Axis atrocities. Many of these Allied wartime policies would later shape British war crimes prosecutions. At the 1943 Moscow Conference, the US, the UK, the Soviet Union and China adopted the Moscow Declaration proclaiming their intention to ‘act together’ on ‘matters relating to the surrender and disarmament’ of their ‘common enemy’.⁹¹ At the same conference, the US, the UK and the Soviet Union also adopted a Statement of Atrocities.⁹² In this Statement, the Allies declared their intention to prosecute Axis war crimes based on two organisational principles: first, those suspected of war crimes would be sent back to the countries where they had committed their crimes and ‘judged on the spot by the peoples whom they have outraged’; second, those whose crimes had ‘no particular geographical localization’ would ‘be punished by joint decision of the government of the Allies’.⁹³ The implementation of the first principle resulted in national war crimes trials by individual Allied Powers, such as the Singapore Trials, while implementation of the second principle gave rise to the Tokyo and Nuremberg Trials.

The 1943 Statement of Atrocities was originally passed by the Allies in response to German atrocities. However, the British authorities specifically recognised that this

WO 203/6092, UK National Archives (‘ALFSEA Instruction No 1’), para 27.

⁹¹ *Declaration of the Four Nations on General Securities, Moscow Conference of Foreign Secretaries 1943*, signed 30 October 1943 (‘Moscow Declaration’).

⁹² *Statement of Atrocities, Declaration of the Four Nations on General Securities, Moscow Conference of Foreign Secretaries 1943*, signed 30 October 1943 (‘Statement on Atrocities’).

⁹³ *ibid.*

Statement would guide war crimes prosecutions in both Asia and Europe. At a War Office meeting in 12 October 1945, it was decided that war crimes prosecutions in Asia would be ‘separately controlled’ but ‘framed on a similar pattern to that in Europe’ as set out in the 1943 Moscow Declaration’s Statement of Atrocities.⁹⁴ Accordingly, in Asia, ‘[m]ajor war criminals’ would be ‘segregated and tried by a suitable tribunal’ while ‘minor war criminals’ ‘would be tried by each nation in their respective territories’.⁹⁵

Allied intentions to prosecute Japanese war crimes were most clearly communicated to Japan in the 1945 Potsdam Declaration.⁹⁶ This Declaration contained the terms of surrender offered by the Allies to Japan, and was issued by the US, the UK, and China on 26 July 1945. In this Declaration, the Allies stated that while they did not ‘intend that the Japanese shall be enslaved as a race or destroyed as a nation’, ‘stern justice’ would be ‘meted out to all war criminals’.⁹⁷ The Potsdam Declaration did not detail how such ‘stern justice’ should be meted out, though the British would eventually organise war crimes prosecutions in Asia pursuant to the 1943 Statement of Atrocities, as further explained below. Japan eventually accepted the Potsdam Declaration’s terms of surrender on 2 September 1945.

Apart from jointly declaring their intention to prosecute Axis war crimes, the Allies also established the United Nations War Crimes Commission (the UNWCC) in

⁹⁴ Record of a Meeting held in Room 243, Church House, at 16.00 hours on Friday, 12th October 1945, to discuss Japanese War Criminals, 225 (A.G.3 (V/1), NAUK, WO 203/5594m p 1, para 2.

⁹⁵ *ibid.*

⁹⁶ *Proclamation Defining the Terms for the Japanese Surrender*, US-China-UK, signed July 1945 (*‘Potsdam Proclamation’*).

⁹⁷ *ibid.*, para 10.

1943.⁹⁸ Among others, the UWCC collected evidence on Axis war crimes and drew up lists of suspected war criminals for Allied prosecution after the war.⁹⁹ In 1944, a Sub-commission of the UNWCC was established in Chungking to focus exclusively on the investigation of Japanese atrocities committed in China.¹⁰⁰ The work of the UNWCC and its Sub-Commission influenced post-war investigations and prosecutions. For example, the British military in Asia made use of suspect lists prepared by the UNWCC when preparing for trials.

On 29 August 1945, the UNWCC expressly applied the principles adopted at the 1943 Moscow Conference to Japanese atrocities, recommending that those ‘Japanese who have been responsible for [...] crimes and atrocities committed in or against the nationals of a United Nation’ should be ‘apprehended and sent back to the countries in which their abominable deeds were done or against whose Nationals crimes or atrocities were perpetrated in order that they may be judged in the courts of these countries and punished’.¹⁰¹ British decision-makers would later cite this decision of the Commission when deciding on the framework of war crimes prosecutions in Asia.¹⁰²

⁹⁸ For the official record of the UNWCC’s work, see United Nations War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War* (His Majesty’s Stationary Office 1948).

⁹⁹ Dan Plesch and Shanti Sattler, ‘Before Nuremberg: Considering the Work of the United Nations War Commission of 1943-1948’ in Morten Bergsmo, Cheah Wui Ling and Yi Ping (eds), *Historical Origins of International Criminal Law*, vol 1 (Torkel Opsahl Academic EPublisher 2014) 450.

¹⁰⁰ *ibid* 456.

¹⁰¹ United Nations War Crimes Commission, ‘Summary Recommendations concerning Japanese War Crimes and Atrocities, Note by the Secretary General’, C.145(1), 29 August 1945, p 2, III.

¹⁰² D.A.G. to HQ ALFSEA, ‘Dutch right to claim war crimes suspects and hold them in N.E.I’, 5 June 1946, NAUK, WO 203/6086, para 3.

(b) Post-war Allied war crimes prosecutions

When the war finally came to an end, the Allies began organising war crimes investigations and prosecutions throughout Asia and Europe. It is hard to arrive at the exact number of war crimes trials held, as there continues to be access restrictions on some national trial records and archival research remains relatively young. Some latest estimates of the number of war crimes trials individually held by Allied Powers in Asia in the aftermath of the war are as follows: China (605 trials), the US (456 trials), the Netherlands (448 trials), the UK (330 trials), Australia (294 trials), the Philippines (72 trials), and France (39 trials).¹⁰³ In 1956, China prosecuted another four cases involving 1062 defendants, out of which 45 were sentenced and the rest acquitted.¹⁰⁴

These Allied war crimes trials were conducted before military courts pursuant to national laws of the Allied Power concerned.¹⁰⁵ Altogether 2244 war crimes prosecutions were conducted in Asia. 5700 defendants were prosecuted in these trials: 984 defendants

¹⁰³ Barak Kushner, *Men to Devils, Devils to Men: Japanese War Crimes and Chinese Justice* (Harvard University Press 2015) 9.

¹⁰⁴ *ibid.*

¹⁰⁵ For a general comparative overview of the various trials and the national laws pursuant to which military courts were established in Asia, see Philip R Piccigallo, *The Japanese On Trial: Allied War Crimes Operations in the East, 1945-1951* (University of Texas Press 2011). For groundbreaking work on Allied national trials: (Chinese trials) Kushner (n 103). (US trials in the Philippines and the Toyoda Trial in Japan) Yuma Totani, *Justice in Asia and the Pacific Region, 1945-1952: Allied War Crimes Prosecutions* (Cambridge University Press 2015) 21–55; 156–178. (Australian trials) Narelle Morris, ‘Justice for ‘Asian’ Victims: The Australian War Crimes Trials of the Japanese, 1945-51’ in Kevin Heller and Gerry Simpson (eds), *The Hidden Histories of War Crimes Trials* (OUP Oxford 2013); Georgina Fitzpatrick, ‘War Crimes Trials, ‘Victor’s Justice’ and Australian Military Justice in the Aftermath of the Second World War’ in Kevin Jon Heller and Gerry J Simpson (eds), *The hidden histories of war crimes trials* (2013). (French trials) Ann-Sophie Schoepfel-Aboukrat, ‘The War Court as a Form of State Building: The French Prosecution of Japanese War Crimes at the Saigon and Tokyo Trials’ in Morten Bergsmo, Wui Ling Cheah and Ping Yi (eds), *Historical Origins of International Criminal Law*, vol 2 (Torkel Opsahl Academic EPublisher 2014).

were executed; 3419 sentenced to imprisonment; and 1018 acquitted.¹⁰⁶ In contrast, 28 high-ranking individuals representing various government and military departments were charged at the Tokyo Trial.¹⁰⁷ Recent scholarship demonstrates how individual Allied countries used these trials to achieve a range of political objectives, such as the construction of international legitimacy and state-building.¹⁰⁸ In this section, I show how the British authorities similarly intended the Singapore Trials to achieve a variety of political objectives in post-war Asia.

Out of the 330 trials conducted by the British military in Asia, 131 trials were conducted in Singapore. How did the 131 Singapore Trials compare with other war crimes trials run by the British and Allies? The first British war crimes trial, *Joseph Kramer and Forty-Four Others* or the Belsen Trial, started in Lüneburg, Germany on 17 September 1945.¹⁰⁹ In October and November 1945, American and Australian war crimes trials of Japanese atrocities began.¹¹⁰ Back in Europe, the Nuremberg Trial commenced on 20 November 1945.¹¹¹ The British military then organised, two months later on 21 January 1946, the first British war crimes trial in Singapore, *Gozawa Sadaichi and*

¹⁰⁶ Kushner (n 103) 9.

¹⁰⁷ Yuma Totani, *The Tokyo War Crimes Trial: The Pursuit of Justice in the Wake of World War II* (Harvard University Asia Center : Distributed by Harvard University Press 2008) 65.

¹⁰⁸ Kushner shows how the two post-war Chinese governments used these trials in different ways to establish international legitimacy and inter-State relations. Kushner (n 103). Schoepfel-Aboukrat argues that French colonial authorities used Saigon war crimes trials to re-establish their colonial authority. Schoepfel-Aboukrat (n 105).

¹⁰⁹ Lori Charlesworth, 'Forgotten Justice: Forgetting Law's History and Victims' Justice in British 'Minor' War Crime Trials in Germany 1945-8' [2008] *Amicus Curiae* 3.

¹¹⁰ The first trial held by the US authorities was the much-criticised trial of Yamashita, who was arraigned on 8 October 1945 before an US military court in Manila, the Philippines, and whose trial began on 29 October 1945. A Frank Reel, *The Case of General Yamashita* (2nd Edition edition, Octagon Books 1971) 27, 33. The first Australian war crimes trial concerned a case of cannibalism and started in Morotai, Indonesia, on 29 November 1945. Piccigallo (n 105) 128–129.

others. A few months after that, on 3 May 1946, the Tokyo Trial began and continued for two and a half years, finally coming to an end on 12 November 1948.¹¹² Before the Tokyo Trial ended, the last of the Singapore Trials, *Mizuno Keiji*, concluded on 12 March 1948.¹¹³ The Singapore Trials were thus among the earliest Allied trials held in Asia, starting well before the Tokyo Trial but coming to an end before the Tokyo Trial.

British military leaders were aware of the many British and Allied trials planned and conscious of the need to manage British trials so as to preserve the UK's reputation among the Allies. Regarding the British trials conducted in Asia, the War Office's position was that the 'trials of Majors' or the Tokyo Trial should 'take precedence over trials of minors' as this was 'important for reasons of prestige'.¹¹⁴ British military leaders were concerned that British war crimes efforts would be unfavourably compared with that of other Allies. They were particularly worried about the British government's delay in authorising the start of war crimes trials. In a message sent at the end of 1945 to the Foreign Office, Mountbatten highlighted how it seemed that 'everybody has set up War Crimes Commissions' but 'no information of any similar action [has been] taken in the United Kingdom'.¹¹⁵

The organisers of British war crimes trials in Asia kept track of developments in other British war crimes trials in Europe. British military leaders in Asia discussed problems encountered by early Allied trials with the aim of preventing these problems

¹¹¹ Ann Tusa and John Tusa, *The Nuremberg Trial* (Skyhorse Publishing 2010) 146.

¹¹² Totani (n 107) 7–8.

¹¹³ *Trial of Mizuno Keiji*, NAUK, WO 235/1110 ('*Trial of Mizuno Keiji*')

¹¹⁴ War Office to S.A.C.S.E.A, 2 February 1946, NAUK, WO 203/4727A.

from occurring in British war crimes trials in Asia. In a 17 November 1945 memorandum, Mountbatten emphasised the need for British war crimes trials in Asia to avoid the delays and legal obstacles encountered in the British-run ‘Belsen trials’ and ‘Laval’s trial’ in Europe as well as the US-run Yamashita trial in the Philippines.¹¹⁶ In a 19 November 1945 memorandum to Mountbatten, Chief of Staff Frederick A.M. Browning observed to Mountbatten that they had ‘the advantage of seeing the mistakes made in Europe’ and that before trials started in Asia, they should ensure that the ‘drill’ was ‘absolutely simple, clear cut and speedy’.¹¹⁷

Most of the Allied Powers undertaking war crimes prosecutions cooperated with each other. The Americans, Australians, Dutch, and French had offices in Singapore, where British war crimes investigations in Asia was based.¹¹⁸ Cooperation was particularly close between the UK, the US, and Australia.¹¹⁹ The Americans assisted the British in obtaining permission from the Chinese government to arrest Japanese accused in China.¹²⁰ Such Allied cooperation aimed to ensure that no war criminal escaped investigation or prosecution. Personnel and information were exchanged between the Allies. On 24 October 1945, Mountbatten thanked the Australian Prime Minister for permitting the British military to benefit from the legal advice of R.C. Kirby, an

¹¹⁵ SACSEA to Foreign Office, 19 September 1945, NAUK, WO 203/4926A, para 3.

¹¹⁶ ‘Procedure for War Criminal Trials in SEAC’, 17 November 1945, para 1-4, NAUK WO 203/4571A.

¹¹⁷ Chief of Staff to Supreme Allied Commander, 19 November 45, NAUK, WO 203/4926A.

¹¹⁸ Piccigallo (n 105) 103.

¹¹⁹ *ibid.*

¹²⁰ *ibid.*

Australian judge.¹²¹ Kirby had provided substantial advice to the British military on prosecution strategy and legal matters. Mountbatten observed that such close cooperation would ensure that the Allies did not ‘fall between two stools in tracing these offenders’.

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While there was much cooperation among most Allies, emerging Cold War politics undermined cooperation between the Allies and the Soviet Union. The British had problems getting information or accused held by the Russians, and did not trust the Russians to treat known suspects fairly. When British war crimes investigators in Tokyo asked the UK Liaison Mission to contact the Russian mission in Tokyo for a number of Japanese accused known to be in Soviet custody, the UK Liaison Mission advised that nothing be mentioned to the Russians and that the British ‘simply wait’ till the accused were returned to Japan ‘in the normal course of repatriation’.¹²³ The UK Liaison Mission was concerned that giving the names of Japanese accused to the Russians would give the latter ‘an extra hold over the individuals’ who may then ‘voluntarily’ decide to remain in the Soviet Union.¹²⁴

From British military records, it seems that the Japanese authorities had attempted to conduct its own investigations into crimes committed by Japanese military personnel against Allied POWs. In October 1945, the Japanese military in Asia, which continued to

¹²¹ S.A.C.S.E.A to Canberra, ‘To Prime Minister of Australia from Mountbatten’, 24 October 1945, NAUK, WO 203/5593, para 1.

¹²² *ibid.*

¹²³ United Kingdom Liaison Mission in Japan to War Crimes Section, Foreign Office, London, 16 April 1947, NAUK, WO 311/541.

¹²⁴ *ibid.*

maintain its organisational structure so as to perform certain functions authorised by the Allies, received instructions from Tokyo to set up a committee to investigate Japanese military personnel involved in such crimes. The Japanese military depicted its work as in compliance with Allied demands, but this was highly criticised by British military leaders in Asia, who saw it as ‘repugnant to the whole policy regarding the treatment of War Criminals’; this Japanese initiative appears to have been suppressed.¹²⁵

In brief, the Singapore Trials were not the only trials taking place after the Second World War. Indeed, the Singapore Trials were among a multitude of trials and prosecutorial efforts spearheaded by the Allied Powers and other national authorities after the war. British trial organisers were concerned for British efforts not to fall behind other Allied trial efforts. The British also closely cooperated and exchanged information with other Allies such as the US and Australia, though cooperation with the Soviet Union did not proceed as smoothly. The organisers of the Singapore Trials thus saw their work as being part of larger Allied endeavours to prosecute wartime atrocities.

3. The British military’s approach to organising war crimes trials in Singapore

British military leaders were eager to start war crimes prosecutions. In this section, I outline how these prosecutions were implemented by British military personnel through their conceptualisation of trial policy and trial objectives. In doing so, I also highlight how British military personnel were influenced by local and international socio-political

¹²⁵ HQ, Allied Land Forces, South East Asia to Headquarters, Supreme Allied Commander, South

concerns. Among others, the British military hoped that these trials would demonstrate a superior British justice and contribute to the re-establishment of British colonial rule in Singapore and the region. It should be noted that the British military trial policy discussed in this section applied to the entire area under ALFSEA command and not only Singapore.¹²⁶

(a) The British government's delegation of trial responsibility to the British military

British policy discussions about the prosecution of war criminals distinguished between 'major' war criminals, who were to be jointly tried by the Allies in the Tokyo and Nuremberg Trials, and 'minor' war criminals, who would be tried by the British military under the 1945 Royal Warrant framework. However, it should be noted that the use of the word 'minor' to describe those prosecuted under the 1945 Royal Warrant was not intended to refer to the severity of crimes but aimed to distinguish Royal Warrant trials from the Tokyo and Nuremberg Trials.¹²⁷ Decisions relating to 'major' war criminals were the responsibility of the UK Foreign Office.¹²⁸ As explained below, the British government delegated much responsibility for the 'minor' trials in Asia to the British military on the ground.

East Asia, 12 October 1945, NAUK, WO 203/5592.

¹²⁶ To recall, most of Southeast Asia fell within AFLSEA jurisdiction, including present-day Indonesia, Thailand, Myanmar and Cambodia.

¹²⁷ 'Japanese war criminals', note prepared for the information of the DA and QMG of the Military Mission to Australia, 3 December 1945, para 2, WO 311/588.

¹²⁸ ALFSEA Instruction No 1, para 2.

In May 1945, the UK Parliament discussed implementing a centralised process for British war crimes prosecutions that included supervision by the Attorney General in London.¹²⁹ Nevertheless, when actual preparations for trials took place in the later part of 1945, a more decentralised framework was chosen. A confirming officer in Singapore was to be in charge of reviewing trial decisions, and reference was to be made to London only in ‘exceptional cases’.¹³⁰ While the UK government considered the early prosecution of Japanese war criminals ‘as a matter of the first priority’, responsibility for the implementation of these trials was in the hands of the military in charge.¹³¹ British military leaders in Asia were to be responsible for obtaining necessary trial personnel and making adjustments.¹³² War crimes investigations and prosecutions were to be ‘decentralised as far as possible to the authorities on the spot’; trials were to commence without constant referral to London and without need for the Attorney General’s fiat.¹³³

Throughout the trials, the Judge Advocate General (JAG)’s Office in London generally limited itself to ‘questions of policy’ and ‘general supervision’.¹³⁴ Legal and policy questions were indeed referred to the JAG Office in London by the British military in Asia from time to time. For example at the end of 1945, the British military in Asia

¹²⁹ HC Deb 29 May 1945, vol 411, col 36.

¹³⁰ War Office to Commander in Chief India and info SACSEA, 13 October 1945, NAUK, WO 235/5592. (43A)

¹³¹ F.G.T. Davis, D.J.A.G., Allied Land Forces, S.E.A. to A Div SACSEA, ‘Japanese War Criminals’, 8 November 1945, attached ‘Record of a Meeting held in Room 243, Church House, at 16.00 hours on Friday, 12th October 1945, to discuss Japanese War Criminals’ (n 94), paras 7 and 13.

¹³² *ibid*, para 13.

¹³³ ‘Record of a Meeting held on 16th October 1945 in Room 105, Curzon Street House, to discuss Japanese War Criminals’, p 3, para 12, NAUK, WO 203/5593, p 2, para 8.

¹³⁴ Minute by Henry Shapcott, Director of Army Legal Services, ‘War Crimes in Europe and the Far East’, 23 November 1948, para 21, NAUK, WO 311/646.

suggested that the punishment permitted under the 1945 Royal Warrant was too narrow, proposing that ‘hard labour’ and ‘flogging’ be included as possible punishments.¹³⁵ This request was considered but rejected by the War Office.¹³⁶

In terms of how cases were prepared, military personnel in Asia, and not London, were in charge of putting together ‘dossiers’ for trial.¹³⁷ The JAG Office in London did help with evidence collection. Staff in London examined and ‘tabulated’ information from the 36 000 questionnaires filled out by POWs upon their return and also facilitated the taking of detailed affidavits.¹³⁸ The UK police helped with the recording and collecting of affidavits from former POWs throughout the UK.¹³⁹ Over 2000 affidavits were prepared in the UK and sent to Asia. Military personnel returning to the UK were also asked to identify accused using photographs taken of detained Japanese military personnel; over 10 000 of such photographs were used in this process.¹⁴⁰

The British military in Asia was also given the discretion to liaise and negotiate with other countries in cases involving non-British victims. When only one other country was involved, the British military was to hand the accused over to the said country. However, when two or more countries were involved, the British military was to start discussions with the relevant countries and hand the accused over to the country agreed

¹³⁵ War Office to SACSEA, 4 December 1945, NAUK, WO 311/588.

¹³⁶ *ibid.*

¹³⁷ Minute by Henry Shapcott, Director of Army Legal Services, ‘War Crimes in Europe and the Far East’, 23 November 1948 (n 134) para 21.

¹³⁸ *ibid.*

¹³⁹ *ibid.*

¹⁴⁰ *ibid.*

by all to be the 'suitable recipient'. In both cases, military officials should only hand over an accused to the country concerned when certain conditions were met. The bona fides of the country was to be established, and the accused should 'likely' not be required as accused or witnesses in the Tokyo Trial or trial of 'major war criminals'.¹⁴¹ The British military in Asia was to independently conduct these negotiations and refer to the War Office only when there were 'special political consideration or exceptional circumstances' or when agreement was not possible.¹⁴² Responsibility for British war crimes prosecutions was thus largely delegated by the British government to the British military on the ground. It is therefore important to consider the views of British military personnel in charge of implementing the trials.

(b) The British military's aim for comprehensive trials that meet public demands for justice

British military leaders in Asia were eager to begin the organising of war crimes trials to address local demands for justice. In October 1945, Mountbatten sent a message to the Chiefs of Staffs emphasising the need to start holding such trials, stressing his 'anxiety at the delays' in trying those 'minor criminals'.¹⁴³ In another message in September 1945, Mountbatten stressed that the public were 'taking a marked interest in the matter' with questions 'constantly being asked by recovered Prisoners-of-War and the Press'.¹⁴⁴ He emphasised, in yet another message to the Foreign Office, that many POWs and internees

¹⁴¹ Cabinet Offices to SACSEA, 26 October 1945, NAUK, WO 203/4926A, para 4.(i)(a).

¹⁴² *ibid* para 4 (ii).

¹⁴³ SACSEA to Cabinet Offices, 2 October 1945, para 2, NAUK, WO 203-4926A.

¹⁴⁴ SACSEA to Foreign Office, 18 September 1945, para 2, NAUK, WO 203/4926A.

had ‘kept most careful records’ of war crimes committed and would ‘expect something to be done about them’; he observed that these demands would ‘likely to become more widespread’ as news spread and former detainees returned to the UK.¹⁴⁵

Trial organisers sought to respond to not only the justice demands of the military community but also the justice demands of local residents. The trials were planned to attract and maintain public interest. In January 1946, Principal Administrative Officer Major-General Reginald Denning explained to Mountbatten that while a ‘small number’ of cases were ready for trial, it would be better to delay the start of the trials until the military could ensure ‘a steady flow of cases’ to maintain constant public interest.¹⁴⁶ Trial organisers also believed that these trials would address the local population’s desire for retribution. For example, the British military decided that it would not be ‘useful’ for Yamashita, who was to be tried by the Americans in the Philippines, to be retried by the British in Singapore for crimes committed during the Japanese Malayan campaign. However, the British military recognised that information about Yamashita’s crimes and trial should be ‘released to the world’ as this would ‘satisfy to a large extent the strong local feeling against Yamashita’.¹⁴⁷ Throughout the holding of the Singapore Trials, the British military continued to receive queries from victims and their relatives.¹⁴⁸

¹⁴⁵ SACSEA to Foreign Office, 19 September 1945, para 2, NAUK, WO 203/4926A.

¹⁴⁶ Principal Administrative Officer Major General Reginald Denning to Mountbatten, 2 January 1946, NAUK, WO 203/4927B, paras 2 and 3.

¹⁴⁷ Chief Civil Affairs Officer to SACSEA Headquarters, 15 February 1946, NAUK, WO 203/4571A, para 4.

¹⁴⁸ Brigadier H. Shapcott to Air Vice Marshal Sir Paul Maltby, 18 February 1947, NAUK, WO 311/541. Those in charge found it difficult to address such queries as UK media reports of these trials were ‘meagre’ and as many did not know the names of perpetrators.

In the early stages of trial preparation and implementation, the British military intended to prosecute as many suspected war criminals as possible. Steps were taken to cast investigative nets far and wide. In late 1945, the British military established a recording centre to collect evidence against those suspected of war crimes.¹⁴⁹ The British military in Asia requested the UK War Office for lists of Japanese war criminals issued by the UNWCC.¹⁵⁰ Questionnaires also known as ‘pro-forma Qs’ were distributed to all liberated Allied POWs and detainees, who were asked to list down the particulars of any war crimes.¹⁵¹ Commanders-in-Chiefs were instructed to seize and detain Japanese military personnel belonging to military units or organisations associated with atrocities, such as the ‘Kempei Tai’, ‘Tekomu Kikan (Central Intelligence Organisation)’, ‘Hikari Kikan (Jap/Indian Organisation)’, and ‘Guards of POW and Allied internee camps’.¹⁵² By December 1945, the British military had 696 suspects in custody for war crimes committed in Asia.¹⁵³

Mountbatten’s plan was to focus on lower-ranking individuals who had directly perpetrated the crimes in question. Through these cases, a ‘chain of responsibility’ could then be established and cases made out against those who ordered or contributed to the

¹⁴⁹ Deputy Principal Administrative Officer to Secretariat of Supreme Allied Commander, attached brief, 6 September 45, NAUK, WO 203/4926A.

¹⁵⁰ SACSEA to War Office, 25 August 1945, NAUK, WO 203/4926A.

¹⁵¹ Deputy Principal Administrative Officer to Secretariat of Supreme Allied Commander, attached brief, 6 September 45 (n 149).

¹⁵² ‘Policy and Procedure in Connection with Japanese War Criminals’, 21 September 1945, NAUK, WO 203/4926A, section II.1. (42)

¹⁵³ ‘Note on War Crimes from M.G.A.S.G., SACSEA’, 14 December 1945, para (g), NAUK, WO 311/588.

crimes concerned.¹⁵⁴ Mountbatten was insistent that only cases with ‘very strong *prima facie* evidence’ be brought to trial, as he believed that British prestige would be severely undermined if it was perceived that the British were conducting ‘vindictive’ trials on charges that their own courts could not uphold.¹⁵⁵

The division of responsibility among Allies for war crimes prosecutions was based on the victim’s nationality though this was not to undermine British objectives of ensuring comprehensive prosecutions. As explained by Foreign Secretary Ernest Bevin in the UK Parliament, ‘where war crimes have been committed against the nationals of or on the territory of one of our Allies and there are no British victims’, the accused would be sent back to the countries where the crime took place to be judged and punished according to the laws of the countries concerned.¹⁵⁶ However, trial organisers were instructed to process cases that would normally be tried by other Allied countries if the latter chose not to take up the case. In September 1945, the War Office directed Mountbatten that ‘[i]n some cases of crimes against other Allied Nationals where no British National concerned if the interested Nation does not desire to take over you should after advice consider whether you will try.’¹⁵⁷ This principle was repeated a month later by Cabinet to the British military in Asia.¹⁵⁸

¹⁵⁴ Section E of the Report to the Combined Chiefs of Staff by the Supreme Allied Commander South East Asia 1943-1945 (London: HMSO, 1969), 311.

¹⁵⁵ *ibid* 312.

¹⁵⁶ HC Deb 12 December 1945, vol 417, col 378.

¹⁵⁷ War Office to SACSEA, 7 September 1945, para 3, NAUK, WO 203/4926A.

¹⁵⁸ Cabinet Offices to SACSEA, 26 October 1945 (n 141), para 4 (i)(b).

As the trials proceeded, the British military's aim of achieving comprehensive prosecutions would soon give way to a winding down of prosecutions, as further explained later in this chapter. A 12 July 1946 British military report on war crimes trials in Asia described then-prevailing sentiments: the 'general feeling about the future [was] that trials should go on until all criminals have been brought to trial' and that there was '[g]reat enthusiasm [...] displayed by all ranks in the organisation in the face of considerable difficulties'.¹⁵⁹ Based on this report, till as late as mid-1946, the British military continued to aim at achieving comprehensive prosecutions.

(c) War crimes trials as a demonstration of superior British justice

Given the British military's larger function of post-war administration in post-war reoccupied territories, political objectives were never far off from the minds of trial organisers. Trial organisers recognised the trials' potential to re-establish British legitimacy. The British military not only intended the trials to serve this function of promoting British legitimacy but also sought to manage public perceptions to ensure that the trials would be perceived favourably.

The trials were to be a civilised response to atrocity and a demonstration of British superiority. In September 1945, prior to the commencement of the Singapore Trials, Mountbatten issued a communique prohibiting private reprisals against Japanese

¹⁵⁹ War Office to Foreign Office and others, attached 'Report of Major RJH Pope', 15 July 1946, 3, NAUK, WMO 311/537. (11)

prisoners.¹⁶⁰ Some Japanese prisoners had been humiliated by their British captors, and there were incidents of Japanese commanders being forced by British personnel to ‘touch their foreheads to the ground’. Mountbatten noted that that ‘by bullying them in a childish way’ the British would ‘be descending to the level of those very elements among the Japanese which we fought the war to eliminate’. He declared that all Japanese war criminals would face justice but that this justice ‘must conform to the accepted civilized code’.

These British war crimes trials were to remind the local population of British superiority. The British encouraged and even facilitated trial attendance. In post-war British Malaya, the British encountered increasing demands from local groups for inclusion and outright independence. The Chinese-dominated MCP was becoming a particular problem, and the British sought to strengthen support for British rule among less radical Asian leaders in British Malaya. On 7 November 1945, the BMA Headquarters in Kuala Lumpur, Malaya sent a message to ALFSEA, noting that a number of local Chinese leaders, among them Tan Kah Kee and Yap Twee, had indicated that they were ‘anxious’ to attend the last stages of the trial of Yamashita who was being tried by the Americans in the Philippines. These Chinese leaders’ attendance of Yamashita’s trial was believed to be ‘politically most desirable’ as it would encourage ‘leaders of possible middle party to counter-balance Communists’. The Yamashita trial

¹⁶⁰ ‘Humiliation In Singapore Prison Lord Mountbatten’s Firm Action ‘Code of Civilised Justice’ – Not Individual Reprisals’, *The Straits Times*, 19 September 1945, 2.

would also remind locals of the ‘horrors of [the] Japanese regime’ and ‘ease over concentration on domestic politics’.¹⁶¹

Trial organisers believed that war crimes trials would help alter the public’s perceptions of the Japanese. In the early days, not many locals came forward to report wartime atrocities and this impeded the progress of war crimes investigations.¹⁶² The British military placed advertisements in the press explaining how public reports could be made to the war crimes investigation headquarters at Goodwood Park Hotel, and a woman officer was posted there on a daily basis to encourage complaints.¹⁶³ The British military believed that the public continued to fear the Japanese and were reluctant to make war crimes complaints. Mountbatten received a proposal for locals to witness the execution of Japanese war criminals on the basis that this would remove any remaining fear of the Japanese among locals and encourage more trial witnesses to step forward. Mountbatten refused to sanction this as it would be ‘inevitably morbid’, but gave permission for the media to attend, record, and publish such executions.¹⁶⁴

The British sought for these trials to be given much public exposure. The Singapore Trials were widely reported in the Singapore press, but war crimes trials conducted in Asia did not appear to have received wide coverage in the British press at home. On 28 February 1946, the Secretary of State Jack Lawson was asked in the UK parliament why ‘so little publicity’ was given to war crimes trials then being conducted in

¹⁶¹ BMA Headquarters Kuala Lumpur to ALFSEA, 7 November 1945, NAUK, WO 203/4571A.

¹⁶² HC Deb 19 December 1945, vol 417, col 1466W.

¹⁶³ ‘Jap activities’, Straits Times, 7 March 1946, 4.

Yokohama. Lawson admitted that more publicity should be given.¹⁶⁵ The British military was aware of this undesirable situation, but noted that it was difficult for local press representatives to ‘cable expensive articles which are never published’.¹⁶⁶ To ameliorate this situation, information on the trials was provided by the British military in Asia to the UK War Office in London, which in turn tried to get them into the UK press.¹⁶⁷

Criticisms of the trials as unfair were taken seriously and discussed within the military. In 6 February 1947, a Straits Times editorial criticised the trials for, among others, targeting those who were ‘only obeying orders from above’ and for being based on ‘atrocious forms’ filled out by POWs who had not been ‘in a balanced state of mind’ and who were not available for cross-examination at trial.¹⁶⁸ F.G.T. Davis, the Judge Advocate General’s Deputy based in Singapore, responded to these allegations, insisting that British military courts always considered the superior orders plea and this had ‘the effect of reducing the sentence to a very much lighter one’.¹⁶⁹ He also emphasised that only ‘two dozen’ forms had been used in earlier trials, and that these forms had only been used to strengthen cases or, in other words, to corroborate other evidence.¹⁷⁰

¹⁶⁴ Extract from SAC’s 317th Meeting on 11th February 1946, ‘Execution of Japanese War Criminals’, NAUK, WO 203/4827A.

¹⁶⁵ HC Deb 28 February 1946, vol 419, col 431W.

¹⁶⁶ War Crimes, GHQ SEALF, ‘Quarterly Historical Report’, for the quarter ending December 1946, NAUK, WO 268/102, 2.

¹⁶⁷ *ibid.*

¹⁶⁸ ‘Procession to The Gallows’, 6 February 1947, The Straits Times, NAUK, WO 311/541.

¹⁶⁹ Davis to Shapcott, 18 February 1947, NAUK, WO 311/541, 2.

¹⁷⁰ *ibid.*, p 1.

Not all British military personnel shared the view that these trials were unduly harsh. Some thought that the trials were being too lenient on the accused and that the trial procedure employed favoured the accused excessively. One such complainant argued that the British military trials were being conducted 'for the sake of preserving judicial procedure', and accused the court trying the first trial in Singapore as 'prejudiced from the start against the prosecution'.¹⁷¹ In a 12 June 1946 report, Davis refuted the various points raised in this complaint and referred to problems the British military had in persuading 'junior officers' with 'little or no experience of criminal investigation' that the prosecution had the responsibility of proving the guilt of the accused.¹⁷² The British military took internal and external allegations of trial unfairness seriously. It was important for the British that these trials were perceived by the public as delivering a fair justice.

To summarise, the British military, to whom the government delegated much of the responsibility for implementing 1945 Royal Warrant trials in Asia, therefore paid close attention to how these trials were publicly received. For the organisers, these comprehensive prosecutions were to meet the public's demand for justice. The trials were also to publicly project a superior British justice that would help re-establish the legitimacy of British colonial rule. Given these political objectives, it was important for trial organisers to ensure that the public had a favourable perception of the fairness and justice rendered in these trials.

¹⁷¹ Stewart to Shawcross, 5 April 1946, attached 'Extract from letter dated 26th February, 1946', NAUK, WO 311/541.

¹⁷² Shapcott to Shawcross, 4 July 1946, attached report from F.G.T. Davis, 12 June 1946, WO 311/541.

4. The 1945 Royal Warrant military court system established in Singapore

This section gives an overview of the military court system put in place by the British military in Singapore to prosecute war crimes. I first examine the different war crimes institutions established in Singapore. I then focus on the military courts and the trial process, in particular the trials' expedited nature. Last, I explore how these trials were gradually phased out by the British authorities. The British military's objective of comprehensive prosecution required efficient trial processes, and such processes were indeed implemented. However, the push for large scale prosecutions was eventually scaled back as a result of changing post-war politics, leading to the conclusion of the Singapore Trials in 1948.

(a) War crimes institutions established in Singapore

As stated above, the British military decided that its base for war crimes investigations and prosecutions in Asia should be established in Singapore. The British military initially put in place a war crimes organisation based on two departments. The first department, the Adjutant General's Branch, was in charge of case investigations and registrations and headed by the Adjutant General's Deputy. The second department, the Deputy Judge Advocate General (JAG)'s Branch, was responsible for prosecutions and providing legal advice. It was headed by the Judge Advocate General's Deputy.¹⁷³ As of March 1946,

¹⁷³ Minute by Henry Shapcott, Director of Army Legal Services, 'War Crimes in Europe and the Far East', 23 November 1948 (n 134), para 22.

these two branches employed over 600 British military personnel.¹⁷⁴ The system was centralised in 1947, with the JAG Branch taking charge of all work and staff.

In 1946, the British military had 17 investigation teams operating throughout Asia, though the base of war crimes investigations remained in Singapore. Each investigation team comprised about 15 members and was led by a member holding the rank of lieutenant colonel. There was to be a member who was legally trained, if available.¹⁷⁵ Civilians could be employed in these teams as interpreters and shorthand writers. The teams were numbered one to 17 and assigned to various locations across Asia, including Rangoon, Penang, Shanghai, Bangkok, Saigon, and Taiwan.¹⁷⁶ War Crimes Investigation Team No 17 was assigned to Singapore.

Also as of mid-1946, there were 12 British war crimes courts established in Singapore, Kuala Lumpur, Rangoon, and Hong Kong.¹⁷⁷ Seven of 12 courts established were located in Singapore.¹⁷⁸ There were also ‘travelling courts’ that would make their way to particular locations to hear a case. Each court was composed of at least three judges, a prosecutor, an interpreter and two shorthand writers. The accused was also to be represented by counsel. More details about the different trial actors will be elaborated in the next chapter, Chapter 2.

¹⁷⁴ The official figures of personnel were: 605 persons, out of which were 226 officers, 222 other ranks, and 157 civilians. But these numbers did not include defending officers, defence advisory officers, translators for the defence, or Japanese defence counsel. ‘H.Q. ALFSEA War Crimes Organisation’, table of organisation, March 1946, NAUK, WO 311/646.

¹⁷⁵ ALFSEA Instruction No 1, para 22.

¹⁷⁶ *ibid*, para 23.

¹⁷⁷ *ibid*, para 25.

(b) Military courts and the trial process

The military courts established by the British military in Singapore to try Japanese atrocities were governed by the 1945 Royal Warrant. The Warrant set out the legal framework regulating these courts as well as their basic structure and process. I will further elaborate on the substantive and procedural laws governing these trials in Chapter 4. In this section, my aim is to highlight the courts' military roots and the expedited trial process.

i. Military roots of the 1945 Royal Warrant courts

These British military courts, like all courts established under the 1945 Royal Warrant, were to be treated as though they were field general courts martial.¹⁷⁹ A general field court martial was one of three types of courts martial authorised under the then applicable 1926 Army Act. The other two types of courts martial were the general court martial and the district court martial.¹⁸⁰ Within the British military's ordinary courts martial system, military crimes would usually be tried before general courts martial or district courts martial.¹⁸¹ However, if an army was operating overseas or in active service, general field courts martial could be established.¹⁸²

¹⁷⁸ Minute by Henry Shapcott, Director of Army Legal Services, 'War Crimes in Europe and the Far East', 23 November 1948 (n 134), para 23.

¹⁷⁹ 1945 Royal Warrant; 1945 Royal Warrant Regulations, regulation 3, NAUK, WO 309/1.

¹⁸⁰ Army Act, Rules of Procedure, 1926, reproduced in Manual of Military of Military Law 1929 (Edition Reprinted December 1939), including amendments up to 31 December 1928, S.R.O. 989/1926 ('Army Act, Rules of Procedure 1926'), ss 48 & 49,

¹⁸¹ Army Act, Rules of Procedure 1926, s 48.

¹⁸² Army Act, Rules of Procedure 1926, s 49.

A general field court martial was more lightly regulated than other courts martial in the British courts martial system. For example, there was no requirement that court members hold their commissions for any length of time.¹⁸³ To bring war crime defendants within the category of accused subject to the jurisdiction of general field courts martial, the 1945 Royal Warrant required defendants to be treated as persons subject to military law and charged with committing offences on active service.¹⁸⁴ This directly linked the 1945 Royal Warrant military court system to the British army's courts martial system.

The 1945 Royal Warrant further simplified the procedure of its military courts by expressly exempting them from certain legal requirements that would normally apply to general field courts martial. The Warrant set out a list of provisions from the Army Act and Rules of Procedure that did not apply to military courts established under the Warrant and also enlarged the powers and discretion of these courts.¹⁸⁵ For example, due to a relaxation of evidential rules, military courts established by the 1945 Royal Warrant were able to consider a wide range of evidence. 'Any oral statement or any document' could be taken into account by these courts as long as it appeared 'on the face of it to be authentic' and was of 'assistance' in proving or disproving the charge.¹⁸⁶

For prosecutions in Asia, such a relaxation of evidential requirements was to be important due to the lack of official documentary evidence. In response to requests for information by Allied investigation teams, the Japanese military explained that all

¹⁸³ Army Act, Rules of Procedure 1926, s 49.

¹⁸⁴ 1945 Royal Warrant Regulations, regulation 3.

¹⁸⁵ 1945 Royal Warrant Regulations, regulation 3.

¹⁸⁶ 1945 Royal Warrant Regulations, regulation 8.

important documents had been burnt by Japanese personnel around the time of surrender as instructed by Japanese central authorities in Tokyo.¹⁸⁷ Allied investigation teams were unable to locate such documentation for trial.¹⁸⁸ As a result, British military courts had to rely on witness testimony about the content of Japanese laws and policies, evidence which would not have been admissible without the relaxed admissibility provisions of the 1945 Royal Warrant.

ii. Expedited trial proceedings

The trial process of these British military courts was to facilitate many trials over a relatively short time. Indeed, ALFSEA Instruction No 1 expressly recognised the ‘summary nature of trials’ and that ‘justice be administered promptly and efficiently’ by these courts.¹⁸⁹ In fact, Mountbatten had expected trial proceedings to be ‘short and formal’ and did not expect any trial to last longer than ‘30 minutes, including the time for interpretation’, with any execution of convicted accused occurring ‘within 24 hours’ of the trial’s conclusion¹⁹⁰. The main issue to be resolved at trial, Mountbatten believed, was

¹⁸⁷ From Field Marshall Count Terauchi, Supreme Commander, Japanese Expeditionary Forces, Southern Regions to 15 War Crimes Investigations Team, SACSEA Inter Service Mission to French Indo China, Saigon, P.I.C., 2 April 1946, TNA, WO 203/5596, para 1.

¹⁸⁸ Judge Röling of the Tokyo Tribunal would later express his doubts that all military documents had been burnt, observing that such documents ‘should’ have been discovered somewhere. While such a policy of destruction may have been implemented, lack of manpower and resources probably prevented the Allies from discovering them in time for trial. Bernard Victor Aloysius Röling and Antonio Cassese, *The Tokyo Trial and Beyond: Reflections of a Peacemaker* (New Ed edition, Polity Press 1995) 47.

¹⁸⁹ Allied Land Forces South-East Asia, *War Crimes Instruction No 1, 2nd Edition* (4 May 1946), WO 203/6092, UK National Archives (‘ALFSEA Instruction No 1’), para 40.

¹⁹⁰ ‘Procedure for War Criminal Trials in SEAC’, 17 November 1945 (n 166) para 1.

the identity of the accused.¹⁹¹ This turned out to be too optimistic an opinion. In Singapore, the shortest trial lasted one day while the longest trial lasted 31 days.¹⁹²

At the end of each trial, these British military courts were authorised to pass sentences of death, imprisonment, confiscation, or fines.¹⁹³ Sentences of death could only be passed with the agreement of all judges when the court was composed of not more than three judges.¹⁹⁴ When the court comprised more than three members, at least two-thirds of judges including the president needed to agree on the death sentence.¹⁹⁵ Acquittals were final. Findings of guilt and sentences were subject to confirmation by a confirming officer.

Within 14 days of the conclusion of court proceedings, a convicted accused may submit a petition against the finding or sentence of the court concerned.¹⁹⁶ During this post-trial stage, the petition and trial records would first be sent to the JAG Office in Singapore. The JAG Office would assess the petition and trial records, and issue a brief advisory report on whether the trial court's findings and decisions should be confirmed. JAG advisory reports in the Singapore Trials were usually brief and only a few pages in length. These reports normally contained a summary of trial proceedings, the facts of the

¹⁹¹ *ibid.*

¹⁹² This was the *Trial of Oisuka Misao and others*, NAUK, WO 235/975 (*'Trial of Oisuka Misao and others'*).

¹⁹³ 1945 Royal Warrant Regulations, regulation 9.

¹⁹⁴ 1945 Royal Warrant Regulations, regulation 9.

¹⁹⁵ 1945 Royal Warrant Regulations, regulation 9.

¹⁹⁶ 1945 Royal Warrant Regulations, regulation 10.

case, and some analysis. The JAG Office review stage normally took ‘about a week’ before a reply was sent to the confirming officer.¹⁹⁷

The confirming officer would then take about ‘several days’ to consider the trial documents depending on ‘their nature and length’, before the confirming officer’s decision was sent to the unit where the accused was attached for promulgation.¹⁹⁸ It is noteworthy that not all Japanese accused took advantage of the post-trial right of petitioning the confirming officer. In the Singapore Trials, Japanese accused who were sentenced to imprisonment as opposed to execution often did not submit petitions. Upon being considered by the confirming officer, the sentence was then promulgated. According to estimates offered by the British military, ‘at least a month’ passed after the trial’s conclusion before an accused sentenced to death was executed.¹⁹⁹ These estimates demonstrate the expeditious nature of the entire trial process.

This push for expediency resulted in some unconventional options being discussed within the British military. In December 1945, Mountbatten referred to an article he had read in ‘The Spectator’ and raised the possibility of using ‘penthonal, or any other suitable barbiturate’ to obtain ‘preliminary information from war criminals to speed up their trials’; he observed that this method should not be ‘illegal’ as it aimed ‘at getting the truth out of people’.²⁰⁰ Mountbatten’s suggestion was forwarded to ALFSEA

¹⁹⁷ Davis to Brigadier E.L.Ridley Thompson, D of O, HQ ALFSEA, 8 March 1946, NAUK, WO 203/5596

¹⁹⁸ *ibid.*

¹⁹⁹ *ibid.*

²⁰⁰ Supreme Allied Commander to Principal Administrative Officer, 27 December 1945, NAUK, WO 203/4927A.

for study and consideration. In its detailed response, ALFSEA noted that the compulsory administration of such drugs to accused persons would be ‘clearly illegal’ and ‘an assault both in civil and military law’.²⁰¹ The report considered whether the compulsory administration would be ‘ethically justifiable’ and concluded that this would go against the ‘well established rule that a suspected person should not be compelled to make a statement, and indeed should be cautioned before being permitted to make a statement’.²⁰²

(c) The winding down and concluding of trials in Singapore

Like other war crimes trials individually conducted by the Allies in Asia and Europe, the Singapore Trials were not intended to continue on a lengthy or indefinite basis. The British government set dates by which a certain number of trials were to be completed. In a message dated 19 October 1945, the UK War Office informed Mountbatten that the British government intended the majority of trials to be completed by 31 July 1946. At least 500 cases should have been completed by that date, on which a further decision would be taken whether more prosecutions would be needed.²⁰³ However, in another message dated 13 March 1946, the War Office explained that the trials ‘will not necessarily cease after 31 July’ and that the targets had been given to ensure that the trials were ‘treated as a matter of great urgency’.²⁰⁴

²⁰¹ Principal Administrative Officer to Headquarters, Supreme Allied Commander, attached letter, 8 February 1946, NAUK, WO 203/4927A, para 4(a).

²⁰² *ibid* para 5(b).

²⁰³ War Office to SACSEA, 19 October 1945, NAUK, WO 203/4926A, para 5.

²⁰⁴ War Office to SACSEA, 13 March 1946, NAUK, WO 203/4571A, para 1.

By late 1946, it was clear that war crimes investigations and prosecutions were winding down and could only be continued with difficulty in Singapore. In the same year, the British military adopted a policy stating that only cases likely to result in seven years imprisonment or more would be pursued and this led to many cases being dropped and suspects being released.²⁰⁵ This gradual limitation of prosecutions was not exclusive to war crimes prosecutions but also took place with respect to collaborator prosecutions. In March 1946, a policy was adopted to limit civil action against collaborators to ‘cases where persons charged with atrocities or brutalities, or where persons, through their activities as informers to the Japanese, directly caused atrocities or brutalities’.²⁰⁶ As of November 1946, altogether 85 collaborators had been convicted by the British military. Out of these, nine were sentenced to death, 95 to imprisonment, eight were fined and another two were bound over.²⁰⁷

Even with a policy limiting war crimes prosecutions to crimes attracting seven years imprisonment or more, the British military had difficulties completing war crimes prosecutions due to a severe resource shortages. This was then complicated by yet another change in policy. In late 1946, the War Office directed that only cases where ‘the accused has been in custody for six months or longer’ and where the ‘sentence is unlikely to be more than one year’ should be dropped and accused released. Davis raised concerns over this policy change, referring to the earlier policy that cases meriting ‘not less than seven years imprisonment’ be dropped.²⁰⁸ If the new one year policy was to be followed,

²⁰⁵ Brief for CGS, 1946, para 1, NAUK, WO 203/6087.

²⁰⁶ ‘Progress In Collaboration Inquiries’, Straits Times 23 November 1946.

²⁰⁷ *ibid.*

²⁰⁸ Davis to Shapcott, 5 December 1946, NAUK, WO 311/540, 2-3.

investigations and prosecutions would have to continue for some time. Davis also emphasised resource problems resulting from staff who were leaving the region and a lack of replacements, observing that by June 1947 there would be ‘practically no office staff or Prosecutors at all’ at the War Crimes Office in Singapore.²⁰⁹

Despite such concerns, on 13 December 1946, SEALF Headquarters confirmed that the one year policy of the War Office was to be implemented.²¹⁰ Only cases attracting one year or less of imprisonment would remain closed. This resulted in the reopening of many cases which had been abandoned. A review of the war crimes prosecution situation as of 27 November 1946 gives some insight into why the new one year policy was adopted. This review observed that the trials in Southeast Asia had been criticised as unjust in ‘rumours emanating from Japan’.²¹¹ This was due to the high number of death sentences handed out in these trials. The report explained that this high number of death sentences was due to the earlier seven years policy which had resulted in the abandonment of less serious cases which would have attracted lower sentences.²¹² It therefore appeared ‘desirable’ for less serious crimes to be tried so as to increase the

²⁰⁹ *ibid* 6.

²¹⁰ Col ‘A’, War Crimes to War Crimes Liaison Officer HQ Burma Comd; No 1 Australian War Crimes Section; Netherlands War Crimes Liaison Section; French War Crimes Liaison Section; HQ ALFDET, Saigon, F.I.C.; No 2-17 War Crimes Investigation Teams; British Minor War Crimes Liaison Section Tokyo; No 1 F.S.S. Johore Bahru; 95 F.S.S. Singapore; OC Changi Jail; SC War Crimes Changi Jail; HQ Singapore Dist: SC War Crimes, ‘War Crimes Liaison Letter No. 6’, 13 December 1946, NAUK, WO 268/102, para 5.

²¹¹ *ibid* para 2.

²¹² *ibid*.

number of imprisonment sentences relative to the number of death sentences passed.²¹³

The courts in Singapore were to continue and complete trials by 31 March 1947.²¹⁴

By the end of 1947, the British military was transferring military personnel who had become 'redundant' due to the winding down of war crimes investigations and prosecutions in Asia.²¹⁵ In Singapore, war crimes investigations had ceased, and all but one war crimes court had concluded its work.²¹⁶ The last of the Singapore Trials came to an end on 12 March 1948.²¹⁷ Similarly in Europe, the Western Allies scaled down trials as they sought to rehabilitate Germany as an ally in the Cold War.²¹⁸ In Singapore and Malaya, the British were also encountering political challenges that required attention and resources. After the war, the British had to deal with an increasingly insurgent MCP. The MCP's violent acts eventually culminated in the British declaring a state of emergency throughout Malaya in July 1948.²¹⁹

The Singapore Trials were thus continuously shaped by the circumstances and politics of their time. In the immediate aftermath of the war, these trials were implemented on an ambitious scale. The organisers intended these trials to display a superior British justice, and to deliver comprehensive and ambitious prosecutions.

²¹³ *ibid.*

²¹⁴ Davis to Shapcott, 5 December 1946 (n 208) p 4.

²¹⁵ War Crimes, GHQ FARELF, 'Quarterly Historical Report', for the quarter ending 31 December 1947, NAUK, WO 268/104, p 1, para 4.

²¹⁶ *ibid.*

²¹⁷ 'Last Jap' Gets Life Sentence, Straits Times, 13 March 1948.

²¹⁸ Kevin Jon Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law* (Oxford University Press 2011) 6.

²¹⁹ Leon Comber, *Malaya's Secret Police 1945-1960: The Role of the Special Branch in the Malayan Emergency* (Monash Asia Institute 2008) 38.

Despite other post-war reconstruction demands in Singapore, trial organisers pushed through with these trials and took them seriously. The trials were to contribute to the rebuilding of British colonial legitimacy in Singapore and the region.

5. Conclusion

The Singapore Trials took place against the specific historical circumstances of post-war Singapore. By appreciating then-prevailing socio-economic and political concerns, we are able to better understand the decisions taken by organisers and key actors of the Singapore Trials. For example, the British military's intention for these trials to project a superior justice could explain why, as explored in subsequent chapters, many judges in the Singapore Trials did not ignore and tried to address communication obstacles encountered by the defence. The many competing humanitarian and rebuilding needs in post-war Singapore also explain why the British military was reluctant to divert more resources and time into the trials.

Japan's victories over the British during the war had undermined the myth of British prestige, a myth that had played a big role in propping up British colonial rule in Singapore and the region. The returning British encountered resistance to its continued rule from different local groups in Singapore. However, the British had no intention of relinquishing their colonial rule over British Malaya for the considerable future. Rather, the British had made plans to consolidate and strengthen their influence in Singapore and Malaya for years to come. In addition to addressing anti-British political activities, the

British military had to address numerous post-war security and reconstruction challenges, including the organisation of war crimes trials.

These trials were not only shaped by local conditions and British colonial concerns. They were also shaped by Allied war crimes policy and took place alongside hundreds of other trials conducted by individual Allied Powers after the war. There was close cooperation and information exchange between the British authorities and some Allied Powers, particularly the US and Australia. The Singapore Trials were thus very much part of a larger Allied post-war effort to pursue justice, and much influenced by Allied policies and other Allied trials. More important, British military leaders were aware of these other Allied trials and eager to start British prosecutions. They were concerned that British efforts should be perceived favourably when compared to other Allied trial efforts.

The British military aimed for positive public reception of these trials in Singapore, and British military leaders took the trials seriously. The trials were to meet the public's demand for justice and to prosecute as many war crimes suspects as possible. The streamlined and expeditious trial process put in place by the 1945 Royal Warrant framework facilitated the pursuit of such comprehensive prosecutions. Trial organisers intended the Singapore Trials to project a superior British justice, one that would enhance the image of the British. Given the bold scope of these trials, who were the judges charged with delivering of justice? What were the crimes prosecuted, and what were the resources put into these trials? Who were the accused, lawyers and witnesses involved in these trials? The next chapter surveys the crimes, resources, and actors involved in the

Singapore Trials with the aim of elucidating the many challenges encountered, including culturally related communication challenges.

CHAPTER TWO: CRIMES, RESOURCES AND ACTOR COMPOSITION

In this chapter, I examine the challenges of organising the Singapore Trials. As explained in my previous chapter, British military personnel wanted these trials to achieve multiple objectives, including the demonstration of a superior British justice. Implementing these trials, however, was not simple. This chapter surveys the trial implementation obstacles encountered by the British military in Singapore. These obstacles gave rise to, and shaped, culturally related communication issues experienced by participants in the trials.

Section 1 explains how the Singapore Trials were closely followed by the local media and the public. Sections 2 and 3 then explore the complex nature of crimes prosecuted and the difficult post-war conditions under which these trials were conducted. Section 4 draws attention to an additional layer of complexity: the diverse backgrounds of the accused, judges, lawyers and witnesses participating in these trials. These trial actors came from different countries, legal systems, and communities. Most trial actors did not share the same cultural ‘tool kit’ and made reference to differing norms, beliefs, symbols, and associated practices during the Singapore Trials. By bringing together these various trial implementation challenges, this chapter sets the stage for my next chapters’ analysis of culturally related communication problems in these trials.

1. Media attention and public interest in the trials

This section describes the high levels of media and public attention on the Singapore Trials. Though living conditions continued to be hard for most residents in post-war Singapore, there was high levels of public interest in the trials. I first explain how the local media gave these trials wide and consistent coverage. I then highlight how certain trials attracted substantial public debate and attendance.

(a) Regular local media coverage of the trials and public trial attendance

As explained in my previous chapter, the British military intended the Singapore Trials to be a public affair and a constant reminder of the British authorities' pursuit of justice. The trials were given substantial coverage in the *Straits Times*, a local paper catering to the British and the English-speaking local elite. This paper carried daily reports of the Singapore Trials, reproducing parts of trial transcripts and publishing the number of trials completed and accused prosecuted.¹ Trial milestones were given significant press coverage. For example, the *Straits Times* ran a detailed report on the first execution of Japanese war criminals in Changi Gaol. It described how the three Japanese war criminals were 'calm' and showed 'no signs of emotion' as they went to their deaths.²

¹ 'Retribution comes to Jap criminals', *Straits Times*, 3 February 1947, 3; '660 Japs Still Await Trial', *Straits Times*, 15 May 1947, 7; '219 Jap Death Penalties', *Straits Times*, 18 September 1947, 4.

² '3 Jap war criminals hanged in Changi gaol', *Straits Times*, 15 March 1946, 4.

The condemned war criminals were reported to have ‘sung songs in their cells’, ‘shaken hands with each other and with other Japs’, and shouted ‘Banzai’ at the gallows.³

The press also reported unexpected or dramatic trial events, and this no doubt spiced up the trials for the reading public. On 21 June 1946, the Straits Times described the dramatic suicide attempt of accused Nobusawa Hisashi at the war crimes court at Nassim Road. Nobusawa took everyone ‘completely by surprise’ and ‘broke away while being marched out of the dock’. He then ‘leaped over the railings, where he stopped for a moment before throwing himself to the ground more than 20 feet below’.⁴ The press also reported interesting off-the-cuff exchanges in court. For example, in the Sime Road Camp Trial, the judge discussed the quality of wartime cigarettes with the witness:

‘Court: I believe they were shocking cigarettes, Mr. Worley.
Worley: They tasted very good to us at that time, sir.
Court: They tasted very bad to us in Europe!’⁵

While the trials were given wide media coverage, not all trials were well attended by the public. Some trials had a public turnout that was lower than anticipated. It is likely that Singapore residents were more interested in attending trials concerning crimes committed in Singapore. For example, trial organisers had expected a high public turnout for the first war crimes trial in Singapore, *Gozawa Sadaichi and others*, which prosecuted ten accused for ill-treating Indian POWs on Babelthuap Palau, an island of the Republic

³ ‘Changi gallows for condemned Japs’, Straits Times, 14 February 1946, 3; ‘‘Double Tenth’ Men Hanged At Changi’, Straits Times, 12 July 1946, 5.

⁴ ‘Condemned Jap leaps from court’, Straits Times, 21 June 1946, 1.

⁵ ‘The ‘V’ Sign and ‘V’ Cigarettes’, Straits Times, 29 August 1946, 3.

of Palau. However, the press reported that the ‘public gallery was not, as had been expected, filled to capacity’.⁶

In contrast, public attendance was overwhelming in the trial of *Nishimura Takuma and others*, more popularly known as the Chinese Massacre Trial. This trial dealt with the Japanese military’s mass killings of Chinese during Japan’s first few weeks of occupying Singapore. On the first day of the trial on 10 March 1947, ‘[h]undreds of Chinese had to be turned away’ from the courtroom at Victoria Memorial Hall because ‘the court was crammed to capacity at 10 a.m.’.⁷ The courtroom was similarly crowded on the day the court sentenced the accused. After the court’s announcement, ‘[a]bout 200 of the public went to the back of the Hall for a last glimpse of the seven officers’.⁸

Most trials concerning faraway crimes, such as individual beatings committed in the Andaman and Nicobar Islands, were held in smaller trial venues. These trials were reported in the press but did not appear to have attracted much public attendance. The public also flocked to trials dealing with notorious crimes or incidents. An example would be the trial of *Sumida Haruzo and others*, which dealt with the ‘Double Tenth Incident’, a 10 October 1943 Allied sabotage of Japanese ships in the Singapore harbour.⁹ 21 members of the Japanese military police, the kempeitai, were charged in this trial for torturing detainees from Changi Gaol whom the Japanese military suspected of being

⁶ ‘South-east Asia’s first war crimes trial opens ‘No mere cover for act of vengeance’ Alleged ill-treatment of Indian prisoners’, *Straits Times*, 22 January 1946, 3.

⁷ ‘Japs’ stories of the ‘chinese massacre’ Shinozaki a witness at opening of trial’, *Straits Times*, 11 March 1947, 1.

⁸ ‘Singapore Massacre Japs Guilty – 2 To Be Hanged, Five Receive Life Sentences’, *Straits Times*, 3 April 1945, 1.

⁹ *Trial of Sumida Haruzo and others*, NAUK, WO 235/891 (‘*Trial of Sumida Haruzo and others*’).

involved in the sabotage. This trial opened on 18 March 1946 to a packed courtroom in the Singapore Supreme Court. A radio show was also made on the basis of this trial, and a book on the trial was later published.¹⁰

In Singapore, the 1945 Royal Warrant trials were widely reported in mainstream media. In fact, the Straits Times carried regular updates of Allied trials conducted in other parts of Asia and Europe. While more coverage was given to trials involving notorious crimes, the media also reported on trials concerning less known crimes. Straits Times press coverage helped keep British post-war justice efforts in the eyes of the English-speaking educated elite, including local community leaders whom, as explained in Chapter 1, the British were beginning to court as political partners.

(b) Public debates about the Singapore Trials

Members of the public not only attended the trials but also vigorously debated controversial trial findings. For example, many criticised the court's sentences in *Susuki Sakae and others*, also known as the Sime Road Camp Trial. These sentences were seen as overly strict because the accused had not committed crimes comparable to the Japanese kempeitai, the much feared Japanese military police.¹¹ The court had sentenced the three accused to death, another to life imprisonment, and the last to 7 years

¹⁰ 'Radio play on 'Double Tenth' tonight', Straits Times, 15 May 1946, 5; 'Double Tenth' trial in book form, Straits Times, 25 June 1946, 3.

¹¹ 'The Sime Road Sentences: Appeal to the GOC', Straits Times, 16 September 1946, 4. *Trial of Susuke Sakae and others*, NAUK, WO 235/889 ('*Trial of Susuke Sakae and others*')

imprisonment. The confirming officer subsequently reduced all sentences; those sentenced to death had their sentences reduced to various imprisonment terms.¹²

Others, however, criticised the confirming officer's reduction of sentences in the Sime Road Camp Case. Writing to the Straits Times, Tan Beng Yeow compared the imprisonment sentences to that imposed for ordinary crimes of the day: 'What are present-day peacetime crimes compared to the water-treatment, beheading of innocent civilians, rape and wholesale murder of the Japanese Kempei-tai?'¹³ The editor responded to Tan, explaining that the accused in this case were not accused of committing the crimes raised by Tan.

Nishimura Takuma and others, or the Chinese Massacre Trial, was not only well-attended but also attracted much public debate. Local Chinese believed that the court's life imprisonment sentences were much too lenient and strongly criticised these sentences. The Overseas Chinese Appeal Committee, which comprised prominent Singapore Chinese and which was responsible for representing victims' families, called for the death penalty to be implemented against the accused and demanded a retrial.¹⁴ In spite of these public demands, the confirming officer confirmed the life imprisonment sentences handed down by the court.¹⁵

¹² 'Sime Road Sentences Reduced', Straits Times, 27 September 1946.

¹³ 'Sime Road and Civil Sentences', Straits Times, 1 October 1946, 6.

¹⁴ 'Chinese Want Death For Seven Japs', Straits Times, 5 April 1947, 3.

¹⁵ 'Massacre Trial Sentences to Stand; 2 to Die', Straits Times, 14 June 1947, 1. Interestingly, it was reported that the army authorities explained that the law 'prevents retrials with heavier sentencing than the original ones'. The 1945 Royal Warrant prevented any reconsideration at the confirmation stage of an acquittal but did not prevent the imposition of a heavier sentence.

These public discussions show that at the very least a portion of the public in Singapore was highly interested in at least certain trials. Courts were aware of the public's interest in their work and took steps to manage public's perception of the trials when necessary. In *Orimo Hirashi and another*, right before counsel's closing address, the court independently brought up a media report in the Sunday Times and corrected factual inaccuracies in this media report.¹⁶ The court criticised the media report for wrongly describing the responsibilities of one accused and reporting admissions that the accused had not made. The court went on to emphasise that the media report 'has had and will have no effect whatever upon the minds of the Court'¹⁷

In brief, trial organisers managed, to a certain extent, to ensure that the Singapore Trials were publicly followed. The trials were widely reported and some trials attracted much public debate and attendance. Indeed, the Straits Times carried regular reports of the trials right up to the last trial in 1948. The courts were aware that their trial proceedings and decisions were being reported and took steps to preserve the public's perceptions of fair trial.

2. The complex nature of war crimes prosecuted in the Singapore Trials

Apart from having their work scrutinised by the media and public, courts in the Singapore Trials were working with cases that were difficult to judge. First, many of these cases involved large groups of perpetrators whose individual criminal responsibility

¹⁶ *Trial of Orimo Hirashi and another*, NAUK, WO 235/949 ('*Trial of Orimo Hirashi and another*'), SP 80.

¹⁷ *ibid.*

had to be ascertained and evaluated by the courts. Second, many of these crimes had been committed in distant locations which were unfamiliar to the judges. Third, many of these cases suffered from a lack of evidence. Judges in the Singapore Trials had a difficult task before them.

(a) The complicated facts involved in group-based or institutional mass crimes

Singapore was the trial location for many mass crimes with complicated facts. On 16 October 1945, representatives of the British military, Allied militaries, and the United Nations War Crimes Commission (UNWCC) met to discuss war crimes prosecutions in Asia.¹⁸ Among others, they considered whether a trial's location should be based 'on the location of the crime' or the country 'against whose nationals' it was committed.¹⁹ Lord Wright from the UNWCC suggested that 'as in Europe' the 'rule of convenience' would be most 'useful', while Treasury Solicitor P.H.B. Kent suggested that trials should be held 'as far as possible' at 'places where the crimes had been committed'.²⁰ Later, at a 3 November 1945 meeting, British and Allied military representatives further agreed that 'unimportant cases might be tried wherever it was most convenient' while 'the more

¹⁸ 'Record of a Meeting held on 16th October 1945 in Room 105, Curzon Street House, to discuss Japanese War Criminals', NAUK, WO 203/5593 p 3, para 12.

¹⁹ *ibid.*

²⁰ *ibid.*

complicated or important cases' should be tried 'centrally' in places like Singapore, Rangoon or Saigon.²¹

Crimes prosecuted in Singapore included 'complicated' mass crimes, crimes committed in Singapore, as well as crimes that could not be tried at the crime's location due to a lack of facilities.²² There were many defendants who were jointly tried for mass crimes in Singapore. In these joint trials, judges had to decide how to apportion responsibility among the different defendants. 22 of the 131 war crimes trials in Singapore had 10 or more jointly tried defendants. 69 trials had two to four jointly tried defendants. Only seven trials prosecuted defendants on an individual basis. The 1945 Royal Warrant specially authorised the holding of such joint trials. For crimes resulting from 'concerted action upon the part of a unit or a group of man', Regulation 8 (ii) of the Royal Warrant stated that evidence given against a member could be prima facie evidence against other group members for the crime. In such cases, members of the unit or group could be tried jointly, and the court would not permit any application for a separate trial.

The largest number of accused persons jointly prosecuted in the Singapore Trials was 43 persons, in the trial of *Oisuka Misao and others*.²³ The defendants had been in charge of Outram Road Prison and were charged with prisoner ill-treatment and neglect.

²¹ Headquarters, Supreme Allied Commander, South East Asia to HQ ALFSEA; HQ ACSEA; HQ SACSEA, 'War Crimes', 13 November 1945, attached 'Minutes of a Meeting on War Crimes Policy in South East Asia held at P.A.O's Office at HQ SACSEA at 0930 hrs on 3 Nov 45, NAUK. WO 203/4571A', p 2, para 4(k).

²² Minute by Henry Shapcott, Director of Army Legal Services, 'War Crimes in Europe and the Far East', 23 November 1948, NAUK, WO 311/646, para 20.

²³ *Trial of Oisuka Misao and others*, NAUK, WO 235/975 ('*Trial of Oisuka Misao and others*')

The next highest number of defendants jointly tried was 29 persons, in the trial *Hachisuka Kunifusa and others*.²⁴ The defendants in this case were charged with POW ill-treatment and neglect in several POW camps in Sumatra. In both these trials, the defendants argued that they had done all that they could under the circumstances to care for the detainees and POWs. Some other persons and some other department within the Japanese military was responsible for captivity conditions and rations, not the defendants. To assess this claim of the defendants, the court would have needed to understand the Japanese military's organisation and structure, a challenge I explore in Chapter 5.

Apart from apportioning responsibility and understanding formal organisational structure, judges in the Singapore Trials had to pay attention to informal distributions of responsibilities among defendants. A lower-ranking individual may command more authority than a higher-ranking individual. The court in *Banno Hirateru and others* discovered such a situation. The case concerned two charges of 'inhumane treatment' and 'internment' of POWs in 'unhealthy and unhygienic conditions' along the Burma-Siam Railway. Seven defendants were tried.²⁵ The first accused, Lieutenant Colonel Banno Hirateru, was the most highly ranked among the seven defendants. However, the trial revealed that Banno was relatively weak compared to his immediate subordinate, another defendant in the same trial. Colonel Kappe, who was called as a court witness declared that it was 'impossible to be at daggers drawn with a man like Col. Banno – he is such an old fool'.²⁶ In this case, the court sentenced Banno to merely 3 years imprisonment and

²⁴ *Trial of Hachisuka Kunifusa and others*, NAUK, WO 235/952 ('*Trial of Hachisuka Kunifusa and others*')

²⁵ *Trial of Banno Hirateru and others*, NAUK, WO 235/1034 ('*Trial of Banno Hirateru and others*')

²⁶ *ibid* SP 583.

his immediate subordinate to death; the latter had his sentence later commuted to life imprisonment.

A large number of cases prosecuted in the Singapore Trials concerned mass atrocities, crimes involving numerous victims and perpetrators. These crimes were facilitated by groups or by different units or departments within the Japanese military. To identify the exact role played by a defendant, judges would have had to understand group dynamics within the Japanese military as well as the relationship between different departments in the Japanese military.

(b) The variety of crime locations involved in the Singapore Trials

The Singapore Trials dealt with war crimes committed in different locations across Asia. 37 of the 131 trials dealt with crimes committed in the Andaman and Nicobar Islands. 30 trials addressed crimes committed in Thailand related to the Burma-Siam Death Railway. Eight trials considered crimes committed in Indonesia; another four trials dealt with crimes in Vietnam; and two trials, including the first trial held in Singapore, attended to crimes in Palau. Only 29 of the 131 trials tackled crimes committed in Singapore.

Judges generally need some understanding of a crime's setting to assess facts and determine criminal responsibility. This was difficult for judges in the Singapore Trials due to the far-flung and varied geographical settings of crimes prosecuted in the trials. To overcome this, some courts organised site visits. For example, in *Kano Yoshihisa*, the defendant was prosecuted for beating and torturing civilians in Tanjung Balai on Great

Karimun Island, in Riau, Indonesia.²⁷ During the trial, defence counsel challenged the prosecution's witness' claim to have seen what happened, arguing that the witness could not have seen the crime based on where he was standing in the prison.²⁸ The court asked the prosecutor whether a plan of the prison could be provided but none was available.²⁹ Defence counsel then suggested a court visit to the crime scene; the court and prosecutor both agreed that this would be useful.³⁰ The court subsequently visited the site to determine whether the witness could have observed what he claimed to have observed from his position in the prison.³¹

The courts' ability to visit crime sites was limited by a site's distance from Singapore and the travel time involved. Ironically, such site visits would have been most useful the farther the crime site was from Singapore. Judges in Singapore would have been most unfamiliar with the layout and environment of such distant crime sites. This is especially true for crimes committed in the Andaman and Nicobar Islands, located hundreds of miles away from Singapore in the Indian Ocean. Out of 131 trials held in Singapore, 37 or 28% dealt with crimes from the Andaman and Nicobar Islands. Courts did not make site visits to these islands though the facts of some cases show that site visits would have benefited judicial fact-finding. For example, in *Hara Teizo and others*, the defendants were charged with involvement in the trial and execution of civilians

²⁷ *Trial of Kano Yoshihisa*, NAUK, WO 235/959 ('*Trial of Kano Yoshihisa*')

²⁸ *ibid* SP 00025.

²⁹ *ibid* SP 00024.

³⁰ *ibid* SP 00025.

³¹ *ibid* SP 00065.

caught trying to escape.³² The trial organised by the defendants had been held in Port Blair, and none of the victims had been heard or represented at this trial. The defendants argued that communication problems had made the transfer of victims to the trial location impossible. To accurately assess this claim, the court would have benefited from a visit to the islands to observe the distance between islands and the general topography.

In another trial dealing with crimes on the Andaman and Nicobar Islands, *Matsuoka Isamu*, the defendant was accused of beating a civilian suspected of stealing firewood at Port Blair on Andaman Island and causing the civilian's eventual death.³³ One of the prosecution's witnesses testified that he had witnessed the beating though he admitted that he could not see the beating clearly. The court asked the witness to explain how the victim had been positioned to determine the line of sight of the witness. A site visit with the witness would have been useful to determine this. In this case, the court resorted to asking the witness to produce a sketch of his position and that of the victim.³⁴

Most courts in the Singapore Trials thus did not visit crime sites even when witnesses or defendants made important claims about crime location or setting. The locations of most of these crimes were far from Singapore, and any court visit would require much time and resources. Trial organisers would have been reluctant to expend resources on such court site visits, especially if these visits undermined the expeditious completion of trials. The majority of courts in the Singapore Trials therefore had to work without the benefit of site visits.

³² *Trial of Hara Teizo and others*, NAUK, WO 235/ 818 ('*Trial of Teizo Hara and others*')

(c) Difficulties in locating documentary evidence and witnesses

The judging of war crimes in the Singapore Trials was made even more difficult by the fact that most cases suffered from a lack of evidence. Even today, it is usually difficult for investigators to collect and preserve war crimes evidence in post-conflict contexts. However, in the case of Japan, evidence preservation and collection was further complicated by the fact that near the war's end, the Japanese military had officially ordered the destruction of official records.³⁵ Historians have explained how subordinates systematically implemented this order to destroy records in the lead up to Japan's surrender.³⁶ While some Japanese military records nonetheless survived, this mass destruction of records made it difficult for the Allies to locate documentary evidence for war crimes prosecutions.

In many Singapore Trials, the defendants referred to orders, regulations, or decisions issued by the Japanese military but were unable to produce any documentary records. To overcome this problem, courts would allow defendants or witnesses to testify about the contents of these destroyed records. The 1945 Royal Warrant Regulations explicitly permitted such witness testimony in lieu of documentary evidence, authorising British military courts to take into account 'any oral statement or any document

³³ *Trial of Matsuoka Isamu*, NAUK, WO 235/871 ('*Trial of Matsuoka Isamu*')

³⁴ *ibid* SP 00029.

³⁵ Edward J Drea, *Japan's Imperial Army: Its Rise and Fall, 1853-1945* (1ST edition, University Press of Kansas 2009) 260.

³⁶ *ibid*.

appearing on the face of it to be authentic'.³⁷ In *Hirakawa Mitsuki and others*, the first accused, Hirakawa Mitsuki, explained that his superior had told him that the victim was sentenced to death by Japanese court martial for being a spy.³⁸ Hirakawa had then ordered the victim's execution.³⁹ The prosecution observed that the Japanese military must have expected such executions to be investigated after the war and must have kept such records, asking defence counsel to make more efforts to locate them.⁴⁰ Defence counsel insisted that he was unable to.⁴¹

The defence may have used the inability to produce documentary evidence as a defence tactic. In such cases, courts were forced to depend on court testimony about the content of Japanese military regulations or decisions, even when courts doubted the veracity of such testimony. In *Hara Teizo and others*, the defendants argued that the victims executed had been tried and sentenced to death by a Japanese military court established pursuant to Japanese military regulations.⁴² The court and prosecutor asked the defence to produce two sets of regulations governing the Japanese military court concerned: the South Western Zone Fleet Regulations and the Articles of the Regulations of the Military Law Breakers Trial.⁴³ The defence replied that the first set of regulations

³⁷ Regulations for the Trial of War Criminals Attached to Royal Warrant 0160/2498, 18 June 1945, promulgated by the War Office, Army Order 81 of 1945 ('1945 Royal Warrant Regulations') attached to Royal Warrant 0160/2498, 18 June 1945, promulgated by the War Office, Army Order 81 of 1945, WO 309/1 ('1945 Royal Warrant'), Regulation 8 (i).

³⁸ *Trial of Hirakawa Mitsuki and others*, NAUK, WO 235/856 ('*Trial of Hirakawa Mitsuki and others*'), SP 00038.

³⁹ *ibid* SP 00040.

⁴⁰ *ibid* SP00065.

⁴¹ *ibid* SP 00065.

⁴² *Trial of Hara Teizo and others* (n 32).

⁴³ *ibid* SP00075.

had been burnt as they were no longer necessary. In response, the court observed that it found it ‘extraordinary’ that regulations had been burnt when the superseding regulations stated that the former continued to be valid and was to be referred to.⁴⁴ The prosecution eventually requested the court to accept the documentary evidence available on these regulations as ‘incomplete’.⁴⁵

In addition to the difficulties of finding documentary evidence, both the prosecution and the defence had difficulties locating witnesses and securing their trial attendance. The trials’ regulatory framework required the convening officer to ensure ‘the personal attendance of as many witnesses as possible’ as requested by the prosecution or defence.⁴⁶ However, the trial organisers’ ability to call these witnesses was limited by a number of factors. Witnesses who were former POWs or military personnel had been repatriated back to their home countries far from the place of trial. Trial organisers also had problems locating witnesses who were residing in Singapore or the region due to address changes and post-war confusion. In addition, courts were unwilling to grant adjournments for witnesses to be located as they were under pressure to complete the trials in an expeditious manner. The 1945 Royal Warrant Regulations permitted the courts to accept ‘secondary evidence of statements’ made by witnesses who were ‘unable to attend’ trial. As a result, a substantial number of affidavits or statements were admitted in the Singapore Trials though the makers of these affidavits did not testify at trial.

⁴⁴ ibid SP 00076.

⁴⁵ ibid SP 00076.

⁴⁶ Allied Land Forces South-East Asia, *War Crimes Instruction No 1, 2nd Edition* (4 May 1946), WO 203/6092, UK National Archives (*ALFSEA Instruction No 1*), para 54.

These evidential difficulties raise fairness concerns for the defence. For example, in cases where prosecutors relied solely on an individual's out-of-court statements as evidence without calling the individual to testify at trial, the defence would not have had the opportunity to cross-examine the individual concerned. My main point here, however, is to emphasise how such evidential issues contributed to the difficult task of judging in the Singapore Trials. Trial organisers had difficulties locating documentary evidence and bringing witnesses to testify at trial. As a result of this, judges in the Singapore Trials were faced with limited types of evidence based on which they had to assess the complicated facts of a case.

Cases brought before the Singapore Trials were therefore not easy to put together or judge. Many of these cases involved crimes of a group-based or institutional nature. The court concerned had to ascertain and evaluate the role and responsibility of each individual accused. The crimes were set in locations and societies unfamiliar to British trial participants, including the majority of judges. To top it off, many of these cases suffered from a lack of clear documentary evidence or witness testimony. In other words, these were tough cases for courts to judge. This was especially so if these British courts were to maintain public perceptions of fairness and justice.

3. Difficult post-war conditions in Singapore

In this section, I explain how post-war resources affected the implementation of the Singapore Trials. Prosecuting war crimes is difficult enough in ordinary times of peace, when there is a stable government and a well-functioning legal system; organising such

trials becomes particularly difficult in post-conflict situations of administrative disorganisation and resource scarcity. The Singapore Trials were organised under post-war conditions of disorganisation and resource scarcity. I first describe how the trials were affected by personnel shortages as well as the repatriation and transfer of military personnel after the war. Second, I explain how the trials competed with other governmental departments for limited resources. Third, I assess the day-to-day operational challenges experienced by courts as a result of sicknesses, transport issues, and post-war administrative chaos.

(a) Personnel shortages and movement

The Singapore Trials were plagued, particularly in their early stages, by personnel shortages and post-war disorganisation. In its early days, British war crimes investigations in Singapore were held up by the transfer of South East Asia Command's Headquarters and the war crimes registry from Kandy, in Sri Lanka, to Singapore at the end of 1945. The war crimes registry in Singapore was to start functioning on 6 December 1945, but the last boxes of war crimes records from Kandy only arrived in Singapore on 31 December 1945.⁴⁷ There was confusion in the transfer of information between departments, resulting in delayed investigations and records falling through the cracks.⁴⁸

⁴⁷ M.C. Dempsey, Commander-in-Chief to Ronald F. Adam, Adjutant General, 'Delay in bringing Minor War Criminals to Trial', 32 December 1945, WO 203/4927A, p 2.

⁴⁸ In late November 1945, JAG London received 'a large bundle of reports on atrocities and war crimes' from Adjutant General's Directorates of Personal Services which had been received by the latter in the past 6 months. JAG London expressed its dismay at such late transfer of documents

There was also shortages in trial personnel particularly in the early stages of trial investigations as a result of the British military's rotation and repatriation of personnel at the end of the war. ALFSEA was expected to obtain all necessary trial personnel from its own ranks, but had problems doing so when scores of personnel were repatriated back to their homes.⁴⁹ Personnel shortages were met in ad hoc ways. For example, ex-policemen from Shanghai were given temporary commissions so they could assist with military investigations.⁵⁰

These ad hoc measures impacted the quality of investigative evidence prepared, and many out-of-court statements were not prepared according to legal requirements. In *Hasegawa Hidefumi*, where the defendant was prosecuted for interrogating and killing a British POW, the prosecutor referred the court to an out-of-court statement of the accused.⁵¹ The court expressed its strong disapproval after examining this statement, observing that the statement contained prejudicial material not linked to the war crime at hand; much prejudicial material had not been clearly excised or 'obliterated' from the statement.⁵² The judge described the statement's quality as 'very, very bad', noting more generally that he had never seen 'such bad statements as [...] in these war crimes trials'.⁵³

and requested 'any documents in connection with Japanese war crimes [to be] forwarded to this office at once'. From JAG Office to D.D.P.S, 30 November 1945, WO 311/542.

⁴⁹ War Crimes, GHQ, SEALF, 'Quarterly Historical Report', for the quarter ending December 1946, NAUK, WO 268/102, para 4 (b).

⁵⁰ M.C. Dempsey, Commander-in-Chief to Ronald F. Adam, Adjutant General, 'Delay in bringing Minor War Criminals to Trial' (n 47), 32 December 1945, p 3.

⁵¹ *Trial of Hasegawa Hidefumi*, NAUK, WO 235/1025 ('*Trial of Hasegawa Hidefumi*')

⁵² *ibid* SP 00060.

⁵³ *ibid*.

Apart from a shortage of investigators, the trials suffered from a lack of legally qualified personnel. Most panels in the Singapore Trials had at least one judge with legal qualifications. However, in the early stages, trial organisers doubted whether this minimum requirement could be met. In October 1945, the British military decided that ‘legal assistance’ should be ensured in the first few cases, which would then serve ‘as a model for the trials’ that followed.⁵⁴ At the end of 1946, the British military continued to report that a shortage of legal personnel was its ‘biggest administrative problem’ in organising the trials.⁵⁵ This shortage of legally trained personnel led to, among others, the use of Japanese defence counsel *in lieu* of British defence counsel in the Singapore Trials, which in turn resulted in counsel participation difficulties that I explore in Chapter 4. There were also problems obtaining skilled interpreters, and this led to communication issues that I discuss in the next chapter, Chapter 3. Personnel shortage was a challenge that trial organisers had to deal with throughout the trials.

(b) Competing demands from other governmental departments

Apart from manpower shortages, organisers of the Singapore Trials had difficulties finding sufficient and appropriate trial venues. Courtrooms were eventually set up by the British military in different buildings across the island, and war crimes investigators worked out of Goodwood Park Hotel, a grand colonial-style building that continues to stand on Singapore’s Scotts Road today. In the immediate aftermath of the Second World

⁵⁴ F.G.T. Davis, D.J.A.G., Allied Land Forces, S.E.A. to A Div SACSEA, ‘Japanese War Criminals’, 8 November 1945, attached ‘Record of a Meeting held in Room 243, Church House, at 16.00 hours on Friday, 12th October 1945, to discuss Japanese War Criminals’, NAUK, WO203/5594, para 8.

War, the British military found Singapore's three court buildings in good condition, and the first war crimes trials was in fact held in the Singapore Supreme Court.⁵⁶ However, as civilian life picked up pace in post-war Singapore, the British military were forced to vacate buildings needed for civilian functions; this led to a severe shortage of trial venues. On 16 May 1946, the case of *Sugihara Hikaru and another* had to be heard 'under a tent pitched in the grounds of the Goodwood Park Hotel'.⁵⁷ While the Straits Times stressed that such an arrangement was only 'temporary' and 'an emergency measure', this gives us a good idea of the infrastructural challenges the British military faced when organising the Singapore Trials.⁵⁸

Another courtroom that had to be abandoned by the British military was the Singapore Traffic Court which was located at a busy junction in front of the Singapore General Hospital. This courtroom had already heard a number of cases, but as traffic at the junction gradually increased in post-war Singapore, noise from passing vehicles started to seriously interfere with ongoing trial proceedings. On 24 July 1946, in *Amari Yaekuchi and others*, the prosecutor made his opening address 'at the top of his voice' but was still 'barely audible'.⁵⁹ Due to this, the court decided to adjourn till more appropriate

⁵⁵ War Crimes, GHQ, SEALF, 'Quarterly Historical Report', for the quarter ending December 1946 (n 49), para 4 (a).

⁵⁶ *Report on the British Military Administration of Malaya*, NAUK, FCO 141/15329, 90.

⁵⁷ 'War crimes court held under tent', Straits Times, 16 May 1946, 1.

⁵⁸ *ibid.*

⁵⁹ *Trial of Amari Yaekuchi and others*, NAUK, WO 235/896 ('*Trial of Amari Yaekuchi and others*')

courtroom premises could be found.⁶⁰ The case was eventually moved to courts on Robinson Road.⁶¹

The military eventually decided to build six ‘prefabricated buildings’ or ‘hutments’ on the grounds of Changi Gaol to serve as courthouses. These buildings were to have ‘the old Malayan system of fans – the Indian- type punkah – which will be operated by fatigues of Japanese prisoners’.⁶² The British military continued to make arrangements with the civilian authorities for trials of public interest to be held in larger and more accessible government buildings. For example, war crimes trials dealing with the Chinese massacre and detainee prison abuse were held at the Victoria Memorial Hall.

Due to the novel nature of the 1945 Royal Warrant British military court system, the military courts had an unclear relationship with other governmental institutions. When there was a conflict of interest between the court and a governmental department, whose interest should take priority? In *Tokumaru Daizo and others*, upon calling the third witness for the defence, the defence counsel explained to the court that prison rules required the witness to be back at Outram Road Prison in Singapore by 4pm.⁶³ The court expressed its exasperation at hearing this, noting that there were ‘continual interruptions’ and it did not know whether prison rules should have ‘priority’ over the trial.⁶⁴ The court nevertheless noted that it would comply with the prison’s request while making an

⁶⁰ ‘Protest By President Of War Crimes Court ‘An Insult To Men Who Suffered’’, 24 July 1946, Straits Times, p 5.

⁶¹ ‘Girl Testifies Against Local-Born Jap’, 25 July 1946, Straits Times, p 5.

⁶² ‘War Trials To Be Held At Changi Gaol’, 1 August 1946, Straits Times, p 5.

⁶³ *Trial of Tokumaru Daizo and others*, NAUK, WO 235/976 (*‘Trial of Tokumaru Daizo and others’*)

enquiry about whose rules took precedence.⁶⁵ In another instance in 1946, pressure on governmental resources resulted in the Governor of the Malayan Union insisting that war crimes suspects be removed from civil jails. A compromise was eventually reached, resulting in the release of suspects who had trivial charges against them.⁶⁶

There was a sense among military leaders of the distance between the British military in Asia and the authorities in London. The former did not believe that the latter appreciated the full extent of difficulties faced by those working on the ground. A report dated 12 July 1946, and forwarded to the Foreign Office, details the multitude of problems faced by British military personnel on the ground:

It is very difficult for those at home to realise the difficulties under which the war crimes organisation in ALFSEA has to work. The distances involved are so large, the area so vast. The monsoon delays all forms of transportation and no one can say that he will be at a specified place on a particular day. Mail is similarly affected. Sickness release and repatriation reduce the personnel strength daily to the detriment of continuity. Everyone works extremely hard and displayed the greatest enthusiasm as can be seen from the results.⁶⁷

Organisers of the Singapore Trials thus had to address the competing interests and demands of other government departments. Trial organisers had to find new venues for the trials when these venues were needed by other government departments or became impractical due changing post-war conditions. Trial organisers also had to devote time and resources negotiating with other government departments about whose rules or

⁶⁴ *ibid* SP 219.

⁶⁵ *ibid*.

⁶⁶ War Crimes, GHQ, SEALF, 'Quarterly Historical Report', for the quarter ending December 1946 (n 49), para 5(d).

⁶⁷ War Office to Foreign Office and others, attached report of Major RJH Pope, 15 July 1946, 6, NAUK, WO 311/537.

policies took priority. In addition, trial personnel in Asia were of the impression that their counterparts in London did not fully appreciate the many problems they were facing on the ground. These different inter-departmental issues added to the stress and challenges experienced by the British military when implementing the Singapore Trials.

(c) Day-to-day operational challenges in court

At the trial stage, some judges in the Singapore Trials found themselves having to address unexpected and basic operational matters. Transport problems, sickness, and inter-departmental conflicts caused frequent trial disruptions. Early 1947 saw a ‘[g]reat delay’ in the transport of suspects and other trial personnel from Japan to trial locations because the US occupation authorities in Japan refused to undertake such transportation until responsibility for costs was settled.⁶⁸ As late as September 1947, the British military continued to report problems ‘[t]hroughout South East Asia’ in getting accused and other trial personnel to trial locations on time.⁶⁹

Transport problems were also experienced at trial locations. In *Miyawaki Fumio*, the court started an hour behind schedule on the first day of trial because the accused had been sent by mistake to the wrong court.⁷⁰ The court requested a detailed explanation from the prosecution. It emerged that due to a ‘garbelling of instruction[s]’ given to the

⁶⁸ War Crimes, GHQ SEALF, ‘Quarterly Historical Report’, for the quarter ending 31 March 1947, NAUK, WO 268/103, p 2, para 4(f).

⁶⁹ War Crimes, GHQ FARELF, ‘Quarterly Historical Report’, for the quarter ending 30 September, 1947, NAUK, WO 268/104, p 1, para 4.

⁷⁰ *Trial of Miyawaki Fumio*, NAUK, WO 235/1100 (*Trial of Miyawaki Fumio*), SP 00026, SP 00047.

court guard, the accused had been conveyed to the wrong court.⁷¹ Judges, and not only defendants and witnesses, encountered transport problems. In *Hasegawa Hidefumi*, the court arrived one and a half hours late on the morning of the fourth day of trial.⁷² Upon re-assembling, the court apologised for the ‘unavoidable delay’ that had been caused by ‘transport difficulties’.⁷³

Apart from transport issues, some Japanese defence counsel had to deal with shockingly bad living conditions. In *Hakuzaki Toshikaru and others*, Japanese defence counsel Abe Taro requested an adjournment before starting his defence.⁷⁴ One of the reasons Abe gave was that defence counsel had been moved to a camp at Bukit Timah in Singapore where there was ‘no place for the lawyers and interpreters to stay’. Abe went on to describe the living conditions: ‘We are staying in the horse stables with the baggages, without any benches and we are sleeping on the concrete floor. The place leaks when it rains and we have been unable to sleep properly for two nights’.⁷⁵ The prosecutor informed the court that defence counsel had come to him for help and that he knew of ‘the appalling conditions’ defence counsel had to endure.⁷⁶ The court asked the British defending officer and the prosecutor to ensure that defence counsel’s living situation was improved.⁷⁷

⁷¹ ibid SP 00046, SP 00047.

⁷² *Trial of Hasegawa Hidefumi* (n 51).

⁷³ ibid SP 00074.

⁷⁴ *Trial of Fukudome Shigeru and others*, NAUK, WO 235-1102 (‘*Trial of Fukudome Shigeru and others*’)

⁷⁵ ibid SP 21.

⁷⁶ ibid SP 21.

⁷⁷ ibid SP 21.

Numerous witnesses and accused were sick or still recuperating from wartime injuries or illnesses, and had problems attending or participating in the Singapore Trials. Trial schedules had to be adjusted to accommodate the needs of ill defendants and witnesses. In *Tokumaru Daizo and others*, three accused were charged with the ill-treatment of civilians at Oxley Rise Kempeitai Headquarters.⁷⁸ One of the three accused, Staff Sergeant Tokumaru Daizo, was medically certified as suffering from tuberculosis. Before Tokumaru started his testimony, Japanese defence counsel Kurose Shozaburo, explained to the court that the accused suffered from tuberculosis and asked the court to permit him to rest for a few minutes at the end of each hour's examination. The court informed counsel that based on the doctor's instructions, the accused was to rest for one hour at the end of each hour's examination.⁷⁹ The court adhered to this and intervened to ensure that the witness did not testify beyond the prescribed time limit.⁸⁰ To save time, the court asked defence counsel to consider questioning another witness while Tokumaru rested.⁸¹

Many judges in the Singapore Trials took a flexible and ad hoc approach when addressing unexpected problems at trial. In *Okamoto Toshio and others*, which concerned the execution of allied POWs at Singapore's Seletar Naval Base and Nee Soon Rifle Range, the prosecution had problems obtaining the court attendance of one of its witness,

⁷⁸ *Trial of Tokumaru Daizo and others* (n 63).

⁷⁹ *ibid* SP 00196. When suggesting this, the court noted that this may reduce the value of Tokumaru's statement. And though it seems that defence counsel was willing to do this, he was unable to as the next witness he intended to call, Major Kamura, had been brought back to Outram Road Prison.

⁸⁰ *ibid* SP 00201.

⁸¹ *ibid*.

Horikawa Masao.⁸² This witness had a spinal injury and had been medically certified as unable to attend court. To avoid having the witness appear at court, the prosecutor referred to the 1945 Royal Warrant Regulations which authorised the consideration of secondary evidence if a witness is unable to attend court ‘without undue delay’.⁸³ However, defence counsel insisted on being permitted to cross-examine the witness, and the court agreed to this.⁸⁴ The court asked the prosecutor to investigate the possibility of hearing the witness at the gaol where he was recuperating.⁸⁵ At this point, the prosecutor appeared confused, asking the court if it was going to ‘sit in the Investigation Room with the witness on a stretcher or at the bedside of the patient’.⁸⁶ The court noted that it did not matter where the court heard the witness as long as the court, stenographer, and other relevant persons could also hear the witness.⁸⁷

In brief, the Singapore Trials were implemented under less than ideal administrative and resource conditions. Many of the administrative and operational issues encountered in the post-war Singapore Trials would not occur in trials operating in ordinary peacetime conditions. Trial organisers and courts had to deal with personal and resource shortages in post-war Singapore. Courts had to compete with other governmental departments for limited resources and buildings. Trials were often

⁸² *Trial of Okamoto Toshio and others*, NAUK, WO 235/1103 (‘Trial of Okamoto Toshio and others’)

⁸³ *ibid* SP 00044.

⁸⁴ *ibid* SP 00045.

⁸⁵ *ibid* SP 00053.

⁸⁶ *ibid* SP 00054.

⁸⁷ *ibid*. Yet, despite this exchange, the next day revealed a new development. The said witness was brought to court on a stretcher, and the prosecutor explained that the doctor had certified that Horikawa was able to give evidence. The court arranged for the interpreter and court monitor’s chairs to be placed beside the witness’ stretcher.

disrupted by transport problems, sickness, venue change, and a host of other unexpected events that courts operating in times of peace usually take for granted. These issues had to be dealt with by trial organisers and judges who did not have adequate resources, and who had to make do with improvised solutions. These sundry challenges encountered by judges and key actors in the Singapore Trials were further augmented by the trials' diverse actor composition, as elaborated in the next section.

4. Diverse actor composition as a challenge in the Singapore Trials

The work undertaken in the Singapore Trials was difficult on many levels. Trial organisers and participants were dealing with complicated crimes under public spotlight while working under post-war conditions of scarcity and disorganisation. On top of all this, a close analysis of trial participant background brings to light an additional factor complicating the Singapore Trials: the diverse composition of trial actors. This section surveys the backgrounds of judges, lawyers, defendants, and witnesses in the Singapore Trials. As my research questions on trial communication address themselves to the trial stage of criminal proceedings, I focus here on participants at the trial level rather than participants at the pre-trial or post-trial level. This diverse participant composition gave rise to the culturally related communication problems examined in subsequent chapters.

A clarification of sources is necessary at this point. As earlier explained in the Introduction Chapter, British trial records do not carry complete details of trial participants. The following information is clearly stated in the trial records: names; military ranks and units, when applicable; legal qualifications. Trial records do not

specifically state a person's place of origin or nationality. However, based on an individual's name, military unit and legal qualifications, it is possible to draw some conclusions about that individual's background and place of origin. I benefited from consulting secondary sources and getting advice from individuals with knowledge of naming conventions. By doing so, I was able to obtain an indication or approximation, though not a complete representation, of the diverse cultural backgrounds of trial participants.

(a) Judges

Altogether, around 70 judges participated the 131 trials conducted in Singapore. The majority of trials had 3-member courts. 5-member courts were convened in two cases. It will be recalled that, as explained in Chapter 1, these were military courts; judges serving on these courts were military personnel. Army Instruction No 1 required each 3-member court to be composed of a lieutenant-colonel, who was to be court president; a major; and a captain.⁸⁸ Some panels were composed of one lieutenant-colonel and two majors. As further explained below, most judges were from the British military though there were Allied military personnel who served as judges in some cases.

i. Places of origin

Only eight judges had Indian names. No more than one of these Indian judges served on a judicial panel at one time, and none were was appointed presiding judge. Out of these eight Indian judges, three held the rank of major and five held the rank of captain. Given

the lower ranks of these Indian judges compared to that of other court members, and the hierarchical nature of the British army, these Indian judges most probably had less influence on the decision-making process than their counterparts. This is not to say that these Indian judges did not play important or interesting roles in the Singapore Trials. As further explained in Chapter 3, in some cases, Indian judges were called upon to check courtroom interpretation or provide courtroom interpretation themselves.

Apart from judges from the British military, a small number of judges from other Allied militaries also took part in the Singapore Trials. Regulation 5 of the 1945 Royal Warrant Regulations authorised the convening officer, in cases ‘where he considers it desirable to do so’, to appoint officers of an Allied military to serve as a judge.⁸⁹ One or more Allied judges could be appointed as long as the number of Allied judges did not amount to more than half of the non-presiding members of the court.⁹⁰ This meant that for courts composed of three judges, not more than one non-presiding Allied judge could be appointed.

Three Dutch judges and one Australian judge were involved in 13 trials in the Singapore Trials. These cases concerned victims holding the same nationality as the Allied judges. For example, in *Anami Sanso and others*, the defendants were charged with war crimes committed against Dutch POWs, among others, on Ambon in Indonesia. For this trial, a Dutch judge, Major Monod De Froideville from the Royal Netherlands

⁸⁸ ALFSEA Instruction No 1, para 26.

⁸⁹ 1945 Royal Warrant Regulations, regulation 5.

⁹⁰ 1945 Royal Warrant Regulations, regulation 5.

East Indian Army, sat with two other British officers on the bench.⁹¹ Though many cases concerned Chinese victims, no judge from the Chinese military served in any case. The majority of judges in the Singapore Trials were from the British military, and were of European rather than Asian origin.

ii. Legal training

British military judges who held legal qualifications in the Singapore Trials were either legally qualified as solicitors or barristers in England or India. Regulation 5 of the Royal Warrant regulations required at least one judge appointed in a trial to have legal qualifications set out in Rule 93 (B) of the Army Act's Rules of Procedure. Rule 93 (B) stated that an individual would be considered 'properly qualified' if in possession of the appropriate qualifications in England, Northern Ireland, Scotland, or India. A person was also deemed 'legally qualified' if holding equivalent qualifications from 'any part of the Dominions' as recognised by the convening officer. The same regulation however also recognised the possibility that none of the judges appointed had legal qualifications. It stated that if the convening officer did not appoint a legally qualified officer to the bench, the former was to then pick an officer with the required legal qualifications to act as judge advocate in the case.⁹²

It was particularly important for court presidents to have knowledge of the law and procedure of the trials. The MML recognised that the president was to be

⁹¹ *Trial of Anami Sanso and others*, NAUK, WO 235/886 ('*Trial of Anami Sanso and others*')

⁹² 1945 Royal Warrant Regulations, regulation 5.

‘responsible for the proper conduct of every trial’.⁹³ Among others, the president was to ensure that the accused did not ‘suffer any disadvantage by reason of the fact that he was being tried’ or due to ‘his ignorance or incapacity to make clear either his defence to the charge of the grounds upon which he relies in mitigation of any punishment’.⁹⁴ Not all presidents in the Singapore Trials had legal qualifications. The British military’s position was that when a court’s president did not hold legal qualifications, it was ‘essential’ that at least one other court member should have such qualifications.⁹⁵ However, there were problems implementing this requirement due to a shortage of legal officers.⁹⁶

Three judges who served as court presidents in the Singapore Trials did not possess the required legal qualifications. Two of these sat on panels that had one other judge with the required common law legal qualifications. There was therefore one judicial panel in the Singapore Trials where none of the judges possessed any formal legal qualifications. Furthermore, trial records show that no judge advocate was appointed at the trial stage in any of the Singapore Trials similar to the Hong Kong Trials. As explained later in this chapter, this was probably due to serious shortage in legal personnel throughout the trials.

Courts did have the option of referring legal questions to the convening officer, who would then supposedly refer it to the appropriate authority within the JAG office. In

⁹³ Great Britain War Office, *Manual of Military Law 1929* (7th edn, Great Britain War Office 1929) (Reprinted December 1939) (HMSO, 1940) (*‘British Manual of Military Law 1929’*) 54.

⁹⁴ *British Manual of Military Law 1929*, 54.

⁹⁵ War Office to Foreign Office and others, attached report of Major RJH Pope (n 67), 15 July 1946, 5.

⁹⁶ *ibid.*

Ikegami Tomoyuki and others, the court was faced with the question of whether POWs who had switched allegiance to the Japanese were no longer considered British nationals and whether this would affect the court's jurisdiction over the case.⁹⁷ After hearing arguments by the prosecution and the defence, the military court decided it was unable to decide on this question and adjourned the case to refer this legal question to the convening authorities. The authorities subsequently confirmed the court's jurisdiction over the case.⁹⁸ In general, however, judges in the Singapore Trials took an informal rather than legalistic approach in the trials.

Judges in the Singapore Trials were therefore predominantly from the British military, though there were some judges from Allied militaries in cases involving Allied nationals as victims. A small number of British military judges had Indian names and were from the British Indian military. Not all presiding judges held legal qualifications and when they did, these qualifications were British in nature.

(b) Prosecutors

Near to 50 prosecutors took part in the Singapore Trials. According to ALFSEA Instruction No 1, the prosecutor was to hold the rank of Staff Captain from the Legal Section.⁹⁹ All prosecutors held military positions with the exception of one civilian who was on the prosecution's team in *Nishimura Takuma and others*. Most prosecutors in the

⁹⁷ *Trial of Ikegami Tomoyuki and others*, NAUK, WO 235/979 ('*Trial of Ikegami Tomoyuki and others*')

⁹⁸ *Trial of Ikegami Tomoyuki and others*, NAUK, WO 235/979 ('*Trial of Ikegami Tomoyuki and others*'), SP 00051.

⁹⁹ ALFSEA Instruction No 1, para 26.

Singapore Trials held the rank of captain or above. The highest rank held by a prosecutor was lieutenant-colonel, which was also the same rank as that held by the court president. One of the prosecutors in the Singapore Trials only held the rank of first lieutenant. This rank of first lieutenant is lower than the required rank of captain. In that case, the first lieutenant appeared together with another prosecutor who held the required military rank of captain.

i. Places of origin

Six prosecutors were Indian. One of the co-prosecutors in *Nishimura Takuma and others*, or the Chinese Massacre trial, had a Chinese name. Some trials were prosecuted by prosecutors from Allied militaries. Just like Allied judges, these Allied prosecutors were appointed in cases involving their nationals. Altogether four prosecutors were from the Australian military, four were from the US military, and one from the Dutch military. Interestingly, the 1945 Royal Warrant framework did not expressly authorise the appointments of Allied prosecutors. It is recalled that Regulation 5 of the 1945 Royal Warrant allowed Allied personnel to sit as members of the court, but the Warrant did not similarly permit Allied personnel to participate as prosecutors.

Discussions about whether non-British personnel could be appointed as prosecutors for British military trials arose when the Canadian government asked for its officers to serve as prosecutors. This was because Rule of Procedure 19 (A) which applied to British military courts stated that an officer 'is not legible for serving on a

Court Martial if he is not subject to Military Law'.¹⁰⁰ It is noteworthy that prior to the question being settled, Canadian officers had already prosecuted in similar British military courts.¹⁰¹ There was initially some confusion as to whether such appointment was possible. In a 6 July 1946 message, Shapcott from JAG London confirmed that it was 'essential' for Allied officers to be first attached to a British unit under the Visiting Forces (British Commonwealth) Act, 1933.¹⁰² However, on 7 August 1946, the Army Council's 'final opinion' on the matter was that no attachment was necessary as Canadian forces serving outside the Dominion of Canada were to be considered as 'serving together' with the British forces pursuant to Section 4 (4) (a) of the Visiting Forces Act.¹⁰³

In cases where Allied prosecutors were appointed, these Allied prosecutors would work with another British prosecutor on the same team. For example, two American prosecutors – Albert W. Schneider and Henry C. deJannette from the US Army JAG Department - were involved in *Mizutani Totaro* where the accused was charged with crimes linked to the Burma-Siam Death Railway that caused the deaths of American POWs, among others.¹⁰⁴ These two American prosecutors and a third British prosecutor made up the prosecution team. In many of these cases, the judicial panel would also

¹⁰⁰ Army Act, Rules of Procedure, 1926, reproduced in *Manual of Military of Military Law 1929* (Edition Reprinted December 1939), including amendments up to 31 December 1928, S.R.O. 989/1926 ('Army Act, Rules of Procedure 1926'), rule 19(A).

¹⁰¹ From H.R. Horne to Mr Eric Machtig, Dominions Office, 30 April 1946, WO 311/540, para 2.

¹⁰² From Shapcott to Adjutant General's Directorates of Personal Services, 6 July 1946, WO 311/540, para 4. For other communications on the same topic, see Deputy Assistant Adjutant General to JAG, 17 June 1946; JAG to Adjutant General's Directorates of Personal Services, 18 June 1946, WO 311/541.

¹⁰³ Shapcott to R.H. Horne, 7 August 1946, WO 311/540, p 2.

¹⁰⁴ *Trial of Mizutani Totaro*, NAUK, WO 235/911 ('*Trial of Mizutani Totaro*')

include an Allied member. In *Ushiki Kishio and others* and *Ishida Eiguma and others*, which were cases involving British, Australian and Dutch POW abuse along the Burma-Siam Death Railway, there was an Australian prosecutor as well as an Australian judge on the bench in both cases.¹⁰⁵

ii. Legal training

Not every prosecutor in the Singapore Trials had legal training. Several prosecutors did not have legal qualifications. British prosecutors who were qualified held legal qualifications from England or India. All except one of the Allied prosecutors held legal qualifications from their respective jurisdictions. About six prosecutors from the British military had their legal qualifications stated in trial records as ‘law student’. The fact that this was reflected in trial records shows that the British military considered such limited legal experience to be relevant and useful. The British military was probably forced to take a lenient approach to legal qualifications because they faced a serious shortage of legal personnel, as explained earlier.

There was also movement between prosecutorial and judicial roles, probably as a result of shortage of legal personnel. A.A. Hibbert, who served as a prosecutor in many early cases, was subsequently appointed as judge in two cases. Trial records also show that he had been promoted from captain to major before taking up his judicial role. Hibbert’s legal qualifications were recorded as ‘law student’ throughout his participation in the Singapore Trials, even when he served as a judge. His promotion to judge was

¹⁰⁵ *Trial of Ushiki Kishio and others*, NAUK, WO 235/918, (‘*Trial of Ushiki Kishio and others*’); *Trial of Ishida Eiguma and others*, NAUK, WO 235/963 (‘*Trial of Ishida Eiguma and others*’)

facilitated by his accumulated experience in the trials and his military promotion, rather than any advancement in his legal qualifications.¹⁰⁶

Most prosecutors in the Singapore Trials were thus from the British military and held English legal qualifications. Based on their names, a number were Indian. They also held Indian qualifications. There were a number of prosecutors from Australian, US, and Dutch militaries, and, exceptionally, one civilian from the Chinese community who served on the prosecution team for in *Nishimura Takuma and others*. The majority of prosecutors in the Singapore Trials were trained in British law and a common law adversarial system.

(c) Defendants

Who were the defendants tried in the Singapore Trials? The 1945 Royal Warrant specified the crimes to be prosecuted, namely, ‘violations of laws and customs of war’. But the Warrant did not identify or limit the individuals to be charged. Similarly, ALFSEA Instruction No 1 did not restrict the British military courts’ jurisdiction to any group of accused, stating that these courts bring to justice ‘perpetrators of war crimes against members of the armed forces of the Allies and against civilians of Allied or liberated countries’.¹⁰⁷

¹⁰⁶ T.A. Khan, a British Indian captain who was an advocate in India, also worked as a prosecutor and as a judge. Similar movement between the position of British defence advisory office and judge existed. See R.T. Wait.

¹⁰⁷ ALFSEA Instruction No 1, para 1.

There were altogether over 400 accused charged in the Singapore Trials. The majority held low to mid-ranking positions in the Japanese military though there were high-ranking military personnel charged in a number trials.

i. Places of origin

Though most defendants were from Japan, there were a minority of defendants from Korea and Taiwan. Imitating Western Powers of the time, Japan had absorbed these two societies into the Japanese Empire by 1910, undertaking a rigorous assimilative colonial policy that included, among others, undermining national languages in favour of the Japanese language and requiring Koreans and Taiwanese to take Japanese names.¹⁰⁸ In the Singapore Trials, defendants of Korean and Taiwanese origins were given Japanese names and, from the transcripts, spoke Japanese. For ease of reference, and as Korea and Taiwan were considered Japanese colonies at the time of the crimes, I will refer to the defendants collectively as Japanese defendants but will refer specifically to Korea or Taiwan when this is necessary.

The Singapore Trials also saw the trial of one Dutch national who was jointly tried with other Japanese defendants. In *Tokumaru Daizo and others*, one of the accused Josef Kutron had worked as an informer for the Japanese during the occupation.¹⁰⁹ He was represented by Captain Phillips, a British defending officer, while the other two

¹⁰⁸ *ibid* 23.

¹⁰⁹ *Trial of Tokumaru Daizo and others* (n 63).

Japanese accused were represented by Mr Kurose Shozaburo, a public prosecutor from Korea.¹¹⁰

In *Osada Yasue and others*, the three defendants were from Taiwan and argued that the British military court only had jurisdiction over Japanese. The defendants argued that the court did not have jurisdiction over them as they were from Taiwan.¹¹¹ The accused in that case were charged with the ill-treatment and death of two civilians in Port Blair. At the time of the crime, the accused were employed by Taiwan Takushoku Kabushiki Kaisha, a Taiwanese company that operated several farms in the Andamans during the Japanese occupation of these islands.¹¹² The victims were employed as coolies at one of these farms. The jurisdictional argument of the defence was considered by the JAG prior to the confirmation stage and dismissed on two grounds: Taiwan was deemed Japanese territory and the accused were working for a company engaged in furthering Japanese military objectives.¹¹³

Technically, as the 1945 Royal Warrant did not limit the courts' jurisdiction over potential accused, the British military could have tried Allied nationals for 'violations of laws and customs of war' as defined under the Warrant. In the early days, the British military seemed to have worked along the lines of this possibility. In a 4 October 1945 message, SACSEA sent a message indicating that 'Allied or Neutral Nationals' accused of war crimes against 'Allied PWs or Internees' in reoccupied Allied territory were to be

¹¹⁰ ibid SP 00015.

¹¹¹ *Trial of Osada Yasue and others*, NAUK, WO 235/908 ('*Trial of Osada Yasue and others*')

¹¹² ibid SP 00004.

¹¹³ ibid SP 00005.

‘arrested and held for trial as war criminals’.¹¹⁴ There was a change in position later on, when civilian administration replaced military administration in the region. On the advice of JAG London, the British military adopted the policy that no British national by birth could be tried under the Royal Warrant.¹¹⁵ This policy was based on the legal understanding that military courts could only try enemy aliens once civil courts were re-established on British territory.¹¹⁶ This no nationals policy reportedly caused ‘a drop in morale’ as many cases being investigated involved British nationals who had been working with Japanese Kempeitai as ‘local Kempei’, and who had been even ‘more brutal’ than the Japanese.¹¹⁷ As a result of this policy, no Allied nationals were charged in the Singapore Trials. The majority of accused in the Singapore Trials were from Japan, in addition to the smaller number from Korea and Taiwan.

(d) Defence counsel

Representation was provided to all defendants in the Singapore Trials, as required by the 1945 Royal Warrant framework. The 1945 Royal Warrant framework permitted accused to be represented by British defending officers or Japanese defence counsel. Regulation 7 of the 1945 Royal Warrant stated that ‘Counsel may appear on behalf of the Prosecutor

¹¹⁴ Headquarters, Supreme Allied Commander, South East Asia to Commander-in-Chief, East Indies Fleet; Commander-in-Chief, Allied Land Forces South East Asia; Allied Air Commander-in-Chief, Air Command South East Asia, ‘Arrest of Allied or Neutral Nationals’, 4 October 1945, NAUK, WO203/4571A, para 6.

¹¹⁵ Shapcott to Davis, 6 February 1947, WO 311/541, 1.

¹¹⁶ Davis to Shapcott, 15 January 1947, WO 311.541, 1.

¹¹⁷ Colonel R.B. Lambe, War Crimes Section, HQ ALFSEA to Colonel G.R. Bradshaw, Deputy Director Personal Services, War Office, WO 311/540, para 8.

and accused in like manner as if the Military Court were a General Court-Martial'.¹¹⁸ Based on this, the relevant provisions of the Army Act and Rules of Procedure regulating general courts-martial would have applied if not specifically prohibited by the 1945 Royal Warrant and Regulations.

According to the trials' legal framework, an accused not represented by counsel 'may' be represented by 'any officer subject to military law' who would be called 'the defending officer'.¹¹⁹ This was expressly recognised by ALFSEA Instruction No 1, which stated that '[i]f the accused wishes to be represented by a Defending Officer, the Commanding Officer will apply at once to the Convening Officer who will thereupon appoint a suitable officer, if possible, with legal qualifications'.¹²⁰ If the prosecutor was legally qualified, the defending officer 'must also' be legally qualified.¹²¹ However, if it was 'impossible' to find a legally qualified defending officer, the convening officer may detail an officer who had 'attended war crimes trials "under instruction"' with ALFSEA's agreement.¹²²

Regulation 7 of the 1945 Royal Warrant also provided for defendants to be represented by Japanese defence counsel. Regulation 7 stated that in addition to counsel considered legally qualified under the Army Act Rules of Procedure, 'any persons qualified to appear before the Courts of the Country of the accused' and 'any person

¹¹⁸ 1945 Royal Warrant Regulations, regulation 7.

¹¹⁹ Army Act, Rules of Procedure 1926, rule 87.

¹²⁰ ALFSEA Instruction No 1, para 46.

¹²¹ *ibid.*

¹²² *ibid.*

approved by the Convening Officer' shall be considered properly qualified.¹²³ This allowed Japanese lawyers and judges who were qualified in Japan to appear as defence counsel for the accused. ALFSEA Instruction No 1 stated that it should be 'pointed out' to the accused that 'legally qualified Japanese service personnel [was] available'.¹²⁴

i. British defending officers

A number of British defending officers served as defence counsel in the Singapore Trials. They served in cases that were of particular importance, in terms of the type of crime tried or the public attention attracted. British defence counsel were used in the first trial which involved the death of Indian POWs in Babelthuap.¹²⁵ British defending officers were also employed in three cases dealing with deaths and ill-treatment along the Burma-Siam railway.¹²⁶ Another case dealt with the torture of two Chinese civilians in Singapore, resulting in the death of one of the victims.¹²⁷ All British defending officers held the rank of captain and above, except for one M. Brash, who was a RAF Squadron Leader.¹²⁸

British defending officers were either solicitors or barristers, except for one Major A. Fairbairn, who served as one of two British defence counsel in the first trial held by

¹²³ 1945 Royal Warrant Regulations, regulation 7.

¹²⁴ ALFSEA Instruction No 1, para 46.

¹²⁵ *Trial of Gozawa Sadaichi and others*, NAUK, WO 235/813 ('*Trial of Gozawa Sadaichi and others*').

¹²⁶ *Trial of Aoki Toshio*, NAUK, WO 235/817 ('*Trial of Aoki Toshio*'); *Trial of Noguchi Hideji*, NAUK, WO 235/867 ('*Trial of Noguchi Hideji*'); *Trial of Chida Sotamatsu and others*, NAUK, WO 235/822, ('*Trial of Chida Sotamatsu and others*').

¹²⁷ *Trial of Sugimoto Heikichi and others*, NAUK, WO 235/821 ('*Trial of Sugimoto Heikichi and others*').

the British military in Singapore.¹²⁹ The 1945 Royal Warrant framework permitted accused to choose whether they wanted to be defended by a British defending officer or Japanese defence counsel. However, there is evidence that some defendants may have been encouraged or even pressed to go with Japanese defence counsel. In *Ishimura Gonhiro*, the defendant argued that he had been discouraged from choosing a British defending officer.¹³⁰ He had expressed some unhappiness with his Japanese defence counsel, explaining to the court that he had wanted to be represented by a British defending officer who would be much more familiar with the British military trial process.¹³¹ The accused explained that he had been told by the interpreter that other defendants would be represented by Japanese defence counsel and ‘why should [he] not ask for a Japanese defence counsel’.¹³²

The court in *Ishimura Gonhiro* did not ignore this complaint of the accused, and asked the accused whether he wanted to provide further explanations to the court on this issue.¹³³ In response, the accused merely said that he ‘did not wish to add any more’ representations.¹³⁴ The court continued to press its point, observing that the accused seemed to have not taken his Japanese defence counsel into his confidence, and asking the accused whether he wished to elaborate on this to the court. In reply, the defendant said that he did not know what points the court was referring to. The court explained to

¹²⁸ *Trial of Chida Sotamatsu and others* (n 125).

¹²⁹ *Trial of Gozawa Sadaichi and others* (n 125).

¹³⁰ *Trial of Ishimura Gonhiro*, NAUK, WO 235/879, (*‘Trial of Ishimura Gonhiro’*)

¹³¹ *ibid* SP 00058 – 00059.

¹³² *ibid*.

¹³³ *ibid*.

¹³⁴ *ibid*.

the accused that he had implied that he was ‘not satisfied’ with his Japanese defence counsel.¹³⁵ The defendant then said that he was merely describing what happened and was not saying he was discontented with his lawyer. The court warned the accused to be ‘careful’ of what he was saying as it had sounded like an ‘attack’ on his Japanese defence counsel.¹³⁶ The British military had probably encouraged Japanese defendants to choose Japanese defence counsel rather than British defending officers due to a shortage of legal personnel.

ii. Japanese defence counsel

Accused in the first few Singapore Trials had British defending officers as defence counsel while others in later trials had Japanese defence counsel. The first batch of Japanese defence counsel were considered Japanese Surrendered Personnel (JSP).¹³⁷ The British military had decided to assign this JSP status rather than POW status to all Japanese military personnel at the end of the war. JSPs were in a particularly precarious position as they were not entitled to POW rights.¹³⁸ As of March 1947, these ‘Unpaid

¹³⁵ *ibid.*

¹³⁶ *ibid.*

¹³⁷ 50697/AG/WCS, Memorandum by Col. R.B. Lambe, War Crimes Section, Adjutant General’s Office, HQ ALFSEA, on ‘Japanese Defence Counsel & Interpreters, War Crimes Trials’, 16 October 1946, addressed to HQ Malaya Command, HQ Singapore District, HQ Burma Command, HQ BT Siam, HQ Land Forces Hong Kong and HQ Armed Forces Netherlands East Indies, NAUK, WO 203/6987.

¹³⁸ Yoshita Kita, ‘The Japanese Military’s Attitude Towards International Law and the Treatment of Prisoners of War’ in Ian Gow, Yōichi Hiramata and John Chapman (eds), *The History of Anglo-Japanese Relations, 1600-2000: Volume III, The Military Dimension, 1800-2000* (First Edition edition, Palgrave Macmillan 2003) 270.

Japanese Surrendered Personnel Defence Counsel' were replaced by 'Paid Civilian Japanese Lawyers' from Japan on six month contracts.¹³⁹

As JSP, Japanese defence counsel had their movements and activities regulated and restricted by the British military. Japanese defence counsel were required to reside at the Japanese Contact Bureau.¹⁴⁰ They were only allowed to leave their living area between 8am and 6pm.¹⁴¹ When Japanese defence counsel left their accommodation, they had to be escorted. Also, defence counsel were only allowed to conduct interviews with locals only in the presence of British military personnel who understood the language used.¹⁴² Nevertheless, by the time the second batch of civilian defence counsel arrived, the British military had begun trying to improve the living and working conditions of Japanese defence counsel.¹⁴³

Most Japanese defence counsel were legally qualified but held Japanese legal qualifications. The majority were civilians rather than members of the Japanese military. Many held judicial positions in Japanese courts. Details about the legal training and education that these counsel would have received in Japan's pre-war legal system are set out in greater detail in Chapter 4. At this point, it suffices to note that these Japanese

¹³⁹ War Crimes, GHQ SEALF, 'Quarterly Historical Report', for the quarter ending 31 March 1947 (n 68), 2. Prior to that, Japanese defence counsel appear to have served on an 'unpaid' basis.

¹⁴⁰ Colonel R.B. Lambe, HQ Allied Land Forces, SEA to HQ Malaya Command, HQ Singapore Dist, HQ Burman Command, HQ BT Siam, HQ Land Forces Hong Kong, HQ AFNEI, 16 October 1946, WO 203/6087, 2.

¹⁴¹ *ibid* 2 (b).

¹⁴² *ibid* 2 (c).

¹⁴³ Steps were taken to improve their camp conditions and to ensure that they were supplied with clerks, drivers and cooks. Memorandum by Col. R.B. Lambe on War Crimes Defence Counsel & Interpreters, to HQ, Japanese Expeditionary Forces, Southern Regions, Johore Bahru, 5 November 1946, WO 203/6987.

defence counsel were trained in a different legal tradition and had different professional legal skills compared to their British-trained counterparts in the Singapore Trials.

(e) British defence advisory officers

British defence advisory officers were generally assigned to cases where the accused were represented by Japanese defence counsel. This was expressly required by ALFSEA Instruction No 1, but not all cases with Japanese defence counsel had British defence advisory officers. These British defence advisory officers were to assist the defence an ‘an advisory capacity’.¹⁴⁴ In 106 cases out of 127 cases defended by Japanese defence counsel, the British military assigned Japanese-speaking British defence advisory officers to assist Japanese defence counsel.

Based on ALFSEA Instruction No 1, prior to the trial, the advisory officer was to arrange for Japanese defence counsel’s interviews with the accused and witnesses.¹⁴⁵ He was also to be present throughout the trial to advise Japanese defence counsel on military procedure.¹⁴⁶ He was to assist the defence ‘in every way which is practicable and desirable’.¹⁴⁷

Based on records, only a few British defence advisory officers assigned to assist Japanese defence counsel held legal qualifications. Trial transcripts show that judges

¹⁴⁴ ALFSEA Instruction No 1, para 48, as amended by Amendment No 5, 6 November 1946, NAUK, WO 203/6087.

¹⁴⁵ *ibid*, para 49, as amended by Amendment No 5, 6 November 1946, NAUK, WO 203/6087.

¹⁴⁶ *ibid*.

¹⁴⁷ *ibid*.

treated the assistance of British defence advisory officers seriously. For example, in *Harada Kensei* the court noted that the Japanese defence counsel had not yet been assigned a British officer to assist him, and asked defence counsel twice whether he would ‘suffer no prejudice’ if the trial proceeded without a defence advisory officer.¹⁴⁸ The Japanese defence counsel stated that he was prepared to proceed. It is hard to ascertain how much assistance was in fact provided by British defending officers to Japanese defence counsel. However, it is noteworthy that in spite of some difficulties with law and procedure, Japanese defence counsel did manage to participate in various stages of the trial process, such as the questioning of witnesses.

When reflected in trial records, the type and degree of assistance given by British defence advisory officers varied across cases. Some advisory officers played a particularly active role at trial. In *Ishida Eiguma and others*, the said officer answered questions in court about admissibility and the sequence of witnesses being called.¹⁴⁹ Different courts allowed these officers to play different roles in the trials. In *Jotani Kitaichi*, the court reminded the defence advisory officer that he was only to give advice on procedure and not help Japanese defence counsel conduct the cross-examination.¹⁵⁰ Yet, in *Banno Hirateru and others*, the court permitted the defence advisory officer to conduct the cross-examination of witnesses.¹⁵¹ In *Hijiki Susumu*, the court originally prohibited defence advisory officer from reading out the closing statement, though this

¹⁴⁸ *Trial of Harada Kensei*, NAUK, WO 235/884 (‘*Trial of Harada Kensei*’), SP 00015.

¹⁴⁹ *Trial of Ishida Eiguma and others*, NAUK, WO 235/963 (‘*Trial of Ishida Eiguma and others*’), 231 and 238.

¹⁵⁰ *Trial of Jotani Kitaichi*, NAUK, WO 235/995 (‘*Trial of Jotani Kitaichi*’), 00040.

¹⁵¹ *Trial of Banno Hirateru and others* (n 25) SP 431.

was clearly included in the role of defence advisory officer in ALFSEA Instruction No 1.¹⁵² Given the inconsistent role played by British defence advisory officers across cases, it is hard to determine the exact amount of assistance given by these officers to Japanese defence counsel.

(f) Asian and European witnesses

More than 1000 individuals took to the stand to testify or give statements in the Singapore Trials. Based on their names and residential information provided in the trials, about half of these witnesses were of non-Japanese Asian origin. These witnesses came from different places across Asia: Singapore, Malaysia, Thailand, Indonesia, Myanmar, India, Palau, among others. 72 of the 131 trials in Singapore dealt with crimes involving only Asian victims. As a result, many Asian witnesses were called to testify in the Singapore Trials as victims or as relatives or neighbours who witnessed the crime committed. Some civilians with European names were also called as witnesses. Some researchers have criticised British post-Second World War prosecutions for focusing on crimes against British or Allied POWs. This was not the case in the Singapore Trials.

The Singapore Trials also heard many witnesses from the British military as well as other Allied militaries. Altogether, 55 of the Singapore Trials held in Singapore concerned war crimes committed against British or Allied military personnel. These included war crimes committed against military personnel in POW camps, interrogation centres, and forced labour projects. The courts also heard testimony from those who had

¹⁵² *Trial of Hijiki Susumu*, NAUK, WO 235/1108 ('*Trial of Hijiki Susumu*'), 00041.

been involved in war crimes investigations as investigators, statement-takers, or interpreters. These individuals were largely British military personnel but there were also some civilians employed by the British military as interpreters. In addition, both the prosecution and defence called a number of Japanese military personnel or employees as witnesses. These Japanese military personnel were usually called to give information about the crime at hand or about the Japanese military more generally.

To summarise, witnesses appearing in the Singapore Trials had varied backgrounds. There were Asian and European witnesses from different countries and communities. Many Asian witnesses resided in different locales throughout the region, and were brought to Singapore to testify in these trials. As explained in the next chapter, many of these Asian witnesses did not speak English. They spoke different Asian languages. The varied backgrounds of these Asian witnesses introduced much diversity into the actor composition of the Singapore Trials.

5. Conclusion

The British military had to tackle a host of challenges when implementing the Singapore Trials. Trial personnel had to deal with resource shortages and administrative chaos. The crimes prosecuted were complex and committed in different places, making evidence collection and witness transport difficult. Appreciating these different implementation challenges adds to our understanding of the Singapore Trials. Many decisions taken in these trials were shaped by implementation difficulties, including those taken in response to culturally related communication issues.

Organisers and judges were aware of the need to ensure that the trials would be perceived favourably. These trials were reported on a daily basis in the Singapore media, and this kept the work of the courts in the eye of the public. But key trial actors had a difficult task before them. Judges had to deal with crimes with complex facts. Many crimes were group-based, involving multiple defendants and joint trials. Some judges were not familiar with the geographical location of many of these crimes. They also had to work with limited types of evidence because investigators had difficulties locating documentary evidence and witnesses who could testify at trial.

The British military was unable to meet trial personnel requirements due to a lack of skilled personnel, personnel repatriation, and administrative transfers. There was a general shortage of resources, and trial organisers found themselves competing with other government departments for trial venues and scarce resources. Post-war conditions of resource scarcity and administrative chaos threw up unexpected problems during the trials. There were many disruptions due to venue changes, transport problems, or sickness.

In addition, the Singapore Trials featured actors with varied backgrounds. The defendants, judges, lawyers, and witnesses in these trials came from different countries, legal systems and communities. As I will show in subsequent chapters, these diverse trial actors spoke different languages, employed different legal skills, and drew on culturally specific norms, beliefs, and assumptions when making arguments in the Singapore Trials. Recalling Swidler's definition of culture as a 'tool kit', as explored in my Introduction, the participants of the Singapore Trials brought with them different meaning-making

'tool kits' as a result of their different backgrounds. What would be the consequence of this on trial communication? How did other trial actors respond to communication obstacles? I will seek to address these questions in subsequent chapters. Specifically, the next three chapters will examine three types of culturally related communication problems in the Singapore Trials: challenges of language and interpretation; counsel participation difficulties; and non-Japanese participants' interpretation of defence arguments.

CHAPTER THREE: LANGUAGE AND INTERPRETATION CHALLENGES

As explained in my previous chapter, participants of the Singapore Trials came from different countries, societies, and ethnic communities. Most participants did not speak fluent English, the official language of the 1945 Royal Warrant courts, and chose to give their testimonies in various Asian languages. Recalling Swidler's idea of culture as 'tool kit', the majority of trial participants lacked a common language and did not have the same linguistic 'tool' in their respective 'tool kits'. Extensive interpretation was necessary for participants to communicate in the Singapore Trials. This chapter analyses the impact of such extensive language interpretation on communication in the Singapore Trials.

Section 1 shows that the Singapore Trials' interpretation issues are not unique by highlighting interpretation issues also encountered in other historical and contemporary trials. Section 2 then focuses on the Singapore Trials' interpretation process, interpretation methods, and the interpreters employed. Section 3 takes a closer look at the interpretation difficulties encountered in the Singapore Trials and the judicial interventions made by judges to address these difficulties. I explore how these judicial interventions were hindered by various factors, such as judicial unfamiliarity with the languages spoken and an insufficient understanding of the interpretation process.

1. Situating the Singapore Trials: interpretation challenges in historical and present-day trials

In this section, I compare the Singapore Trials with other historical and contemporary trials that had interpretation difficulties. By highlighting the similarities and differences between the Singapore Trials and these other multilingual trials, my aim in this section is to delineate the former's continuing relevance for today's trials. I first examine how the Singapore Trials fared compared to other post-Second World War trials with interpretation issues. I then compare the Singapore Trials with present-day trials with multilingual participants.

(a) Post-Second World War trials with interpretation challenges

Most post-Second World War trials were marked by substantial interpretation problems. At the Tokyo Trial and the Nuremberg Trial, interpretation was particularly complex because of the multinational bench and legal teams. Judges at Tokyo and Nuremberg did not share a commonly spoken language and there was no official language of the court. In her important study on interpretation problems in the Nuremberg Trial, Gaiba highlights how interpretation into English, French and Russian had to be provided for the judges at Nuremberg.¹ This increased the chance of discrepancies between the different

¹ Francesca Gaiba, *The Origins of Simultaneous Interpretation: The Nuremberg Trial* (University of Ottawa Press 1998) 33.

interpretations, and research has pointed out differences between the English, French and Russian versions of Nuremberg's official judgment.²

Though the Singapore Trials did have non-British judges in some cases, trial records show that these non-British judges understood English and did not need interpretation into their national languages. It was therefore somewhat easier for interpretation to be organised in war crimes trials like the Singapore Trials, where the national language of the organising authorities was also the court's official language and where the majority of judges were fluent in that language concerned. Nevertheless, as Totani recognises, Anglo-American Allied war crimes trials such as the Singapore Trials also experienced serious interpretation problems.³ Former trial participants have also highlighted such interpretation problems. Ormsby, a former judge and lawyer in British-run Hong Kong trials, points to interpretation problems encountered in the Hong Kong trials.⁴ Reel, who was a defence counsel in the American-run Yamashita trial, also describes the Yamashita trial's major interpretation issues.⁵

While various commentators have referred to interpretation problems in post-Second World War national trials, no one has comprehensively studied the interpretation problems affecting these trials. Gaiba's work on the Nuremberg Trial is illuminating, but

² Guido Acquaviva, 'Doubts about Nullum Crimen and Superior Orders: Language Discrepancies in the Nuremberg Judgment and Their Significance' in Morten Bergsmo, Wui Ling Cheah and Ping Yi (eds), *Historical Origins of International Criminal Law*, vol 1 (Torkel Opsahl Academic EPublisher 2015).

³ Yuma Totani, *Justice in Asia and the Pacific Region, 1945-1952: Allied War Crimes Prosecutions* (Cambridge University Press 2015) 15.

⁴ Suzannah Linton (ed), 'Appendix: Major Murray Ormsby: War Crimes Judge and Prosecutor 1919-2012', *Hong Kong's War Crimes Trials* (OUP Oxford 2013) 277.

her findings on the Nuremberg Trial do not automatically apply to other post-Second World War national trials such as the Singapore Trials. The conditions under which the Singapore Trials were conducted differed from that of the Nuremberg Trial and presented specific linguistic challenges. For example, the Allied Powers, including the British, dedicated more resources to both the Nuremberg and Tokyo Trials. As explained in Chapter 1, British military personnel were instructed to prioritise the Tokyo Trial in Asia. The Singapore Trials also used streamlined procedures and were conducted expeditiously. Most of the Singapore Trials lasted only for a few days, unlike the Nuremberg Trial that lasted nearly a year and the Tokyo Trial that lasted two and a half years.

Different interpretation methods were also used at the Nuremberg Trial and the Singapore Trials.⁶ The Nuremberg Trial was the first trial in the world to take advantage of new technology enabling simultaneous interpretation.⁷ At the Nuremberg Trial, interpreters interpreted while speakers were speaking, and this permitted interpretation to proceed at a higher speed. The Singapore Trials, like most post-Second World War Trials, used consecutive interpretation, which is a less efficient method as further described below. My analysis of the Singapore Trials thus complements Gaiba's analysis

⁵ A Frank Reel, *The Case of General Yamashita* (2nd Edition edition, Octagon Books 1971) 145–146.

⁶ Elena M De Jongh, 'Foreign Language Interpreters in the Courtroom: The Case for Linguistic and Cultural Proficiency' (1991) 75 *The Modern Language Journal* 285, 288. The most common are sight translation, consecutive interpretation, or simultaneous interpretation. The interpreter would wait for a speaker to finish speaking before interpreting. Different interpretation techniques may be used for courtroom interpretations.

⁷ Virginia Benmaman, 'Legal Interpreting: An Emerging Profession' (1992) 76 *The Modern Language Journal* 445, 447.

of the Nuremberg Trial and gives us a more comprehensive idea of how interpretation impacted different post-Second World War trials.

Accurate courtroom interpretation, while always important, could be said to be even more crucial in war crimes trials of Japanese war atrocities than trials of German war atrocities. This was due to the different types of evidence presented at these trials. In Allied trials of German war atrocities, prosecutors were usually able to submit large amounts of official Nazi documentation as evidence.⁸ In contrast, in Allied trials concerning Japanese war atrocities, prosecutors were often unable to submit substantial official Japanese documentation because much of this documentation had been destroyed by the Japanese military in the lead up to the war's end, as explained earlier in Chapter 2. The documentary evidence submitted by prosecutors in the Singapore Trials comprised mainly of out-of-court statements instead of official documentation. Most of the authors of these out-of-court statements were not called as live witnesses as they had been repatriated to their countries of origin or were too far away. Their out-of-court statements were therefore not subject to cross-examination. It was therefore particularly important for judges in the Singapore Trials to have accurate interpretations of the courtroom testimony when such in-person testimony was available.

The majority of post-Second World War trials made considerable use of interpretation and had many interpretation problems. However, the nature and extent of these interpretation issues differed from court to court. As I have highlighted, the

⁸ Tusa and Tusa describe how the Allies got hold of voluminous Nazi records when preparing for the Nuremberg Trial. Ann Tusa and John Tusa, *The Nuremberg Trial* (Skyhorse Publishing 2010) 97.

interpretation issues of the Nuremberg Trial differed from that of the Singapore Trials due to the different interpretation methods employed, the nature of trial processes, and the resources invested. While many of the Singapore Trials' interpretation difficulties resulted from the trials' particular context, some are very similar to that experienced in present-day multilingual trials, as I explore in the section below.

(b) Contemporary trials with interpretation challenges

The interpretation problems of post-Second World War courts are not historically isolated. Today's courts often hear linguistically diverse trial participants and in doing so face similar interpretation challenges. This is particularly the case for internationalised war crimes courts. Many of these courts employ judges who have to hear and assess the testimony of defendants and witnesses who usually do not share the same linguistic skills of the judges.⁹ Researchers have described particularly serious courtroom interpretation problems at less resourced internationalised war crimes courts, such as the Serious Crimes Panel (SCP) of Timor Leste, the Special Court of Sierra Leone (SCSL), and Extraordinary Court in the Chambers of Cambodia (ECCC). These courts have had to operate under significant resource and staff shortages, like the Singapore Trials, and have had problems finding sufficiently skilled interpreters.¹⁰

⁹ Nancy A Combs, *Fact-Finding Without Facts: The Uncertain Evidentiary Foundations in International Criminal Convictions* (Cambridge University Press 2010). Kelsall examines linguistic issues, among other culture-related issues, encountered by judges at the Sierra Leone Special Court. Tim Kelsall, *Culture under Cross-Examination: International Justice and the Special Court for Sierra Leone* (2013).

¹⁰ Combs (n 9) 72.

However, it is noteworthy that interpretation challenges have also been encountered at better resourced war crimes courts, such as the International Criminal Tribunal of the Former Yugoslavia (ICTY) and the International Criminal Tribunal of Rwanda (ICTR).¹¹ While more resources and better resource prioritisation can improve courtroom interpretation, there may be some interpretation issues associated with the languages concerned. For example, many observers of Allied trials comment on how Japanese-English interpretation seemed particularly difficult at these trials. Ginn, a guard at Sugama prison which housed the Tokyo Trial defendants, observes that Japanese was ‘quite possibly the most difficult language on earth to translate accurately into English’.¹² Brackman, a US journalist who covered the Tokyo Trial, describes the Japanese language as ‘one of the most difficult to translate’.¹³ Though these comments do not prove that interpretation between Japanese and English is impossible, at the very least, they reflect a perception that Japanese-English interpretation is particularly difficult.

In addition, trial participants in present-day war crimes trials seldom appreciate the fact that interpreted trials are by their nature very different from monolingual trials. My study of interpretation issues in the Singapore Trials emphasise how important it is for trial participants to be aware of, and understand, the ramifications of interpretation. As Karton observes in his 2008 article, judges and lawyers of war crimes trials still tend to think of interpretation as a technical issue, one that is the responsibility of court

¹¹ *ibid.*

¹² John L Ginn, *Sugamo Prison, Tokyo: An Account of the Trial and Sentencing of Japanese War Criminals in 1948, by a U.S. Participant* (Reprint edition, McFarland & Co Inc 2011) 30.

¹³ Arnold C Brackman, *The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials* (Fontana Press 1990) 24.

administrators and one that is unrelated to legal work.¹⁴ As I will show below, judges in the Singapore Trials also took such a technical approach to interpretation. This is not an accurate understanding of courtroom interpretation. While interpreters are often envisioned as mere mouthpieces, sociological research demonstrate the varied ways by which interpreters substantively shape courtroom exchanges, such as by changing speech styles.¹⁵ Courtroom interpreters do not function as mere conduits of courtroom exchange. Their interpretive work influences the form, tone, and impact of courtroom communication.

Apart from war crimes courts, interpretation is also employed by domestic courts dealing with everyday crimes. In the course of their work, domestic courts may hear witnesses or accused from immigrant, minority, or indigenous communities who do not speak the language of the judges.¹⁶ Nevertheless, compared to the experience of these domestic courts, war crimes courts encounter interpretation problems at a bigger scale and at a more serious level due to the large number of witnesses testifying and the diverse spoken languages involved. This distinction needs to be remembered when comparing or extrapolating lessons from different courts.¹⁷

¹⁴ Joshua Karton, 'Lost in Translation: International Criminal Tribunals and the Legal Implications of Interpreter Testimony' (2008) 41 *Vanderbilt Journal of Transnational Law* 4.

¹⁵ Susan Berk-Seligson, *The Bilingual Courtroom: Court Interpreters in the Judicial Process* (1 edition, University Of Chicago Press 2002) 142.

¹⁶ Since the 1990s, in various English-speaking countries, researchers have highlighted how the growth of linguistic minorities alongside the continued use of English as the language of courtrooms has resulted in numerous communication problems in cases involving trial participants who speak a minority language. Benmaman (n 7) 445.

¹⁷ Combs observes how international crimes, like war crimes, 'span vast distances and lengthy time periods' are also often complex to judge, requiring larger amounts and different types of evidence. These complicating factors further complicate the multilingual nature of war crimes trials, making

War crimes trials, such as the Singapore Trials, are fundamentally multilingual in nature. Due to the geographical reach and group-based nature of war crimes, as well as other core international crimes, war crimes courts will more often than not hear defendants and witnesses from different cultural and linguistic groups. Furthermore, the international community's practice of employing international personnel in war crimes trials almost guarantees that there will be linguistic barriers between judges, lawyers, defendants, and witnesses. In these trials, due to the multiple languages spoken by participants, a single question or answer may have to be translated into different languages to be understood by all trial participants.

To sum up, many of the interpretation challenges encountered in the Singapore Trials continue to be encountered in present-day war crimes trials due to the diverse linguistic background of trial participants. Studying the Singapore Trials can add to our general understanding of how interpretation impacts multilingual trial proceedings. There are, however, some differences between the Singapore Trials and present-day trials due to the former's specific historical context. The following section elaborates on some contextual factors shaping interpretation in the Singapore Trials, namely, the interpretation process, interpretation methods, and the interpreters employed in these trials. These contextual factors give us a deeper understanding of the interpretation challenges encountered in the Singapore Trials.

them more difficult to organise and judge compared to domestic crimes. Combs therefore cautions that examples from domestic courts, while relevant, should be drawn carefully. Combs (n 9) 298.

2. Overview of the interpretation process, methods, and interpreters in the Singapore Trials

In this section, I closely examine how interpretation was implemented in the Singapore Trials with the aim of highlighting its extensive and complicated nature. First, I analyse the amount and type of interpretation undertaken in the Singapore Trials. Second, I examine how trial organisers had difficulties securing a sufficient number of skilled interpreters. Third, I consider the profile of interpreters employed in these trials.

(a) Extensive and complicated interpretation needs in the Singapore Trials

Due to the farrago of languages spoken by participants in the Singapore Trials, extensive interpretation was required to facilitate communication between English-speaking and non-English-speaking trial participants. Most accused testified in Japanese while Asian witnesses spoke Hokkien, Hakka, Malay, Javanese, Siamese, Urdu, Hindustani, Tamil, and Nicobere, among others. As explained in my Introduction chapter, the historical record only exists in English; non-English testimony was not recorded. Nevertheless, some interpretation issues attracted comments from judges and lawyers as to the language spoken or the interpretation mistakes made. Through these comments we can identify with relative certainty some of the languages used in the trials as well as the interpretation challenges.¹⁸

¹⁸ *Trial of Ueda Sueyoshi and others*, NAUK, WO 235/1005 ('*Trial of Ueda Sueyoshi and others*'). One of the accused Takahashi Yauichi chose to testify in English as he had studied in Canada. Having English as a working language was probably the most efficient option as the majority of

i. Interpretation required at various stages of the Singapore Trials

The legal framework governing the Singapore Trials anticipated the need for interpreters to be used in investigations as well as in courtroom trials. ALFSEA Instruction No 1 required investigation teams to have two interpreters who should hold the rank of captains but who could also be civilians ‘employed under the authority of the local Military Commander’.¹⁹ At the trial stage, the court employed courtroom interpreters and court monitors to ensure proper courtroom interpretation.²⁰ Trial transcripts of many Singapore Trials refer to the presence or intervention of court monitors who checked the interpretation done by court interpreters. However, as the transcripts do not systematically record the presence or absence of a court monitor in each trial, it is hard to determine if all trials employed court monitors. When judges in the Singapore Trials had doubts about the accuracy of interpretation provided by courtroom interpreters, some judges would ask the court monitor for his opinion.

Additionally, ALFSEA Instruction No 1 specifically required the convening officer to appoint a separate interpreter for the defence. This interpreter was to assist the defence in pre-trial and trial matters.²¹ The defence interpreter was to help the accused and his counsel understand the charges and applicable rules. More generally, the defence

judges and trial personnel in the Singapore Trials were British military personnel and thus native English speakers.

¹⁹ Allied Land Forces South-East Asia, *War Crimes Instruction No 1, 2nd Edition* (4 May 1946), WO 203/6092, UK National Archives (‘ALFSEA Instruction No 1’), para 22.

²⁰ As not all trial transcripts of each case include references to a court monitor, it is not sure whether court monitors were employed in every trial in the Singapore Trials.

²¹ ALFSEA Instruction No 1, para 50.

interpreter was to help the accused ‘prepare his defence’.²² It is not clear from the trial records of the Singapore Trials whether such interpreters were provided to the defence and, if so, whether such defence interpreters were provided in all cases. As explained in Chapter Two, those accused defended by Japanese defence counsel were also to be provided with British advisory officers who were supposed to be able to speak Japanese.

Apart from interpretation during trials, there was a large amount of interpretive work done at the investigative or pre-trial stages of the Singapore Trials. Investigators used interpreters when interviewing and recording the statements of non-English speakers. A large quantity of translated out-of-court statements were admitted in the Singapore Trials as evidence. As explained later in this chapter, the defence would often claim that these out-of-court statements had been wrongly translated. Apart from out-of-court statements, there was also the need for documents in Japanese to be translated into English for trial purposes. For example, the defence made reference to numerous Japanese laws and regulations to explain or justify the accused person’s conduct. These documents or the relevant provisions had to be translated for the court.

Another thing to be noted about interpretation in the Singapore Trials is how the accuracy of interpretation affected not only the trial stage but also the confirmation stage. As explained in Chapter 1, based on the 1945 Royal Warrant framework, trial judgments and sentences in the Singapore Trials only became final when they were confirmed by the confirming officer.²³ There were no hearings at the confirmation stage. Rather, the

²² ALFSEA Instruction No 1, para 50.

²³ Regulations for the Trial of War Criminals Attached to Royal Warrant 0160/2498, 18 June 1945, promulgated by the War Office, Army Order 81 of 1945 (‘1945 Royal Warrant Regulations’),

confirmation officer would make his decision based on trial records and the Judge Advocate General (JAG) advisory report. Clear interpretation was necessary so that those in charge of reviewing and confirming records of trial proceedings would not have problems understanding interpreted portions of trial proceedings in the trial records.

ii. Different interpretation methods used in the Singapore Trials

As mentioned earlier, the Singapore Trials did not use simultaneous interpretation as was done in the Nuremberg and Tokyo Trials. Based on trial records, courtroom interpretation in the Singapore Trials was conducted using two techniques: consecutive interpretation and sight translation.²⁴ Consecutive interpretation is when interpreters state the message in the target language after speakers of the source language have completed the portion to be interpreted.²⁵ Interpreters usually take notes while speakers are speaking, and speakers will stop from time to time to give interpreters time to interpret.²⁶ This method of interpreting is much more time consuming than simultaneous interpretation, which takes place extemporaneously.²⁷

From trial records, consecutive interpretation was the mode of interpretation employed for courtroom testimony in the Singapore Trials. For example, a prosecutor would ask a question in English, then the interpreter would translate it into Japanese for

regulation 8(iv). Attached to Royal Warrant 0160/2498, 18 June 1945, promulgated by the War Office, Army Order 81 of 1945, WO 309/1 ('1945 Royal Warrant').

²⁴ For a concise list and description of different forms of interpretation used in court, see Gaiba (n 1) 16–17.

²⁵ *ibid* 17.

²⁶ *ibid*.

²⁷ *ibid*.

the defendant, who would reply in Japanese. The interpreter would then translate the defendant's statement into English. In addition, the majority of opening and closing statements in the Singapore Trials were interpreted through sight translation.²⁸ Copies of these statements were provided to courtroom interpreters who would interpret from these copies.

The variety of languages spoken by trial participants in the Singapore Trials resulted in multiple chains of interpretations. As the defendants only understood Japanese, other Asian languages had to be interpreted not only into English for the benefit of English-speaking judges and trial participants but also into Japanese for the benefit of Japanese-speaking trial participants, in particular, the defendants. These time-consuming interpretations added considerable lapses between questions and answers. As explained by the prosecutor to a prosecution witness in *Kudo Hikosaku and others*: 'I will ask a question in English. It will be interpreted in Malay or Chinese to you, but don't answer that question until it has been interpreted by the Japanese interpreter into Japanese'.²⁹ Such multiple interpretations also risked having different versions of the same testimony presented to different trial participants, though it is not possible to identify such errors from the transcripts of the Singapore Trials because, as explained earlier, the transcripts only record the English portion of trial proceedings.

Interpretation was thus widely used in various stages of the Singapore Trials. Courtroom interpretation was largely conducted using consecutive interpretation and

²⁸ De Jongh (n 6) 288.

²⁹ *Trial of Kudo Hikosaku and others*, NAUK, WO 235/943 ('*Trial of Kudo Hikosaku and others*'), SP 56.

often involved multiple interpretations that complicated the interpretation process. Given such extensive and complicated interpretation, skilled interpreters would have been required for effective interpretation. Trial organisers were aware of this. As further explained in the next section, numerous efforts were made by trial organisers to secure skilled interpreters.

(b) Efforts made by the British military to secure skilled interpreters

Given the extensive amount of interpretation required at the pre-trial and trial stages, a large number of skilled interpreters were required for effective interpretation in the Singapore Trials. Trial organisers were aware that they needed such highly skilled interpreters. The use of interpreters was not foreign to the British military courts martial system, on which the Singapore Trials were based. Indeed, the British Manual of Military Law (MML) recognised the need to employ interpreters of high quality, and emphasised the need for ‘great caution’ to guard against inaccuracies and misunderstandings resulting from the interpreter’s ‘incompetence or possible bias’.³⁰ Those in charge of the Singapore Trials knew the importance of getting skilled personnel for trial-related interpretation. In February 1946, Mountbatten sent a message to the War Office highlighting the need for highly skilled interpreters.³¹ He emphasised that it was ‘essential’ that interpreters could ‘interpret rapidly and accurately in cross examination’.³² Further, while ‘normal standard

³⁰ Great Britain War Office, *Manual of Military Law 1929* (7th edn, Great Britain War Office 1929) (Reprinted December 1939) (HMSO, 1940) (*British Manual of Military Law 1929*), 55. This in the MML was based on the requirement to ensure accurate taking down of evidence stated in RP 95, note 1.

³¹ SACSEA to War Office, 10 February 1946, NAUK, WO 203/4571A.

³² *ibid* para 1.

British linguists and JAP P.W.’ were being used for ‘general work’ in the trials, courtroom interpreters needed to be of a standard ‘much above normal’.³³

When war crimes investigations began in Asia, the British military suffered from a severe shortage of interpreters. Much of the military’s concerns focused on Japanese language interpreters. In November 1945, the Commander in Chief of ALFSEA informed Mountbatten that ‘[q]uick action’ was needed to get interpreters required for war crimes investigations, proposing that such ‘first-class’ Japanese language interpreters be obtained from China.³⁴ The availability of ‘really fluent’ interpreters was crucial for investigations, and it was ‘very doubtful that the calibre required’ was then available.³⁵ Originally, the British military had intended to employ ‘NISEI’ or second generation children born to Japanese immigrants as interpreters.³⁶ However, using ‘English speaking Japanese’ as interpreters was seen as more efficient.³⁷ This option was adopted in the Singapore Trials, with Japanese language interpreters sought from Tokyo.³⁸

By November 1946, the British military reported that trial ‘bottlenecks’ caused by insufficient interpreters had been resolved and that ‘adequate numbers’ of Japanese

³³ *ibid.*

³⁴ C-in-C, Allied Land Forces, SEA to Headquarters, Supreme Allied Commander, South East Asia, ‘Provision of Personnel for War Crimes Investigation Teams and Interpreters’, 27 November 1945, NAUK, WO 203/5595, para 4.

³⁵ *ibid.*

³⁶ Director of Intelligence HQ SAC SEA to HQ ALFSEA, ‘Interpreters – Japanese War Crimes Trials’, 1 December 1945, NAUK, WO 203/5595, para 2.

³⁷ *ibid.*, para 2 and 3.

³⁸ War Crimes, GHQ, SEALF, ‘Quarterly Historical Report’, for the quarter ending December 1946, NAUK, WO 268/102, para 4 (b).

interpreters had been obtained from Japan.³⁹ Like Japanese defence counsel, Japanese interpreters were initially considered as Japanese Surrendered Personnel (JSP) and had limitations placed on their conduct and movements.⁴⁰ By early 1947, these interpreters had been replaced by paid civilian interpreters on six month contracts from Tokyo.⁴¹ While military records of that period state that ‘adequate numbers’ of interpreters had become available, trial transcripts show that some interpreters still struggled with the skills required for interpreting. Who were these interpreters? In the section that follows, I reconstruct the profile of some interpreters employed in the Singapore Trials.

(c) Profiles of interpreters employed in the Singapore Trials

Unfortunately, the transcripts of the Singapore Trials do not record details of courtroom interpreters in a systematic or clear manner. In a few trials, court records do refer to interpreters by name but this is not done systematically in all trials. Nevertheless, in this section, I aim to piece together a profile of interpreters based on available information from media reports and historical records.

On 25 March 1947, the Straits Times ran an interesting report on interpreters involved in the Singapore Trials. It stated that there were altogether 27 interpreters in the

³⁹ HQ ALFSEA War Crimes, ‘Review of the Situation on 27 Nov 46 (Reconsideration of the appreciation of Aug 46)’, NAUK, WO 268/102 p 2, para 6.

⁴⁰ Col. R.B. Lambe, MGA, HQ Allied Land Forces, SEA to HQ Malaya Command, HQ Singapore District, HQ Burma Command, HQ BT Siam, HQ Land Forces Hong Kong and HQ Armed Forces Netherlands East Indies, ‘Japanese Defence Counsel & Interpreters: War Crimes Trials’, 16 October 1946, NAUK, WO 203/6087, para 2(a); Col. R.B. Lambe, MGA, HQ Allied Land Forces, SEA to HQ, Japanese Expeditionary Forces, Southern Regions, Johore Bahru, ‘War Crimes Defence Counsel & Interpreters’, 5 November 1946, para 3.

War Crimes Section who could speak Japanese, five who could speak ‘Chinese’ and ‘Malay’, and another three who could ‘Indian’.⁴² Five of these Japanese-speaking interpreters were Westerners. The Straits Times profiled four female interpreters who were facilitating the questioning of war crimes suspects held in Changi Gaol.⁴³ Simone Besancon, who was among those profiled, spoke Japanese, Malay, Mandarin, French, Dutch, and English. She had been interned by the Japanese in Java during the war, and it was during her internment that she ‘studied Japanese secretly’.⁴⁴ The other profiled interpreters, W.J. Whitehouse and H. Walker had lived in Japan ‘for many years’ and had broadcast anti-Japanese propaganda during the war in Delhi.⁴⁵ ‘Minty’ Curtis, who was also profiled, had lived in Japan for a year and spoke English, Japanese, and ‘the Shanghai Chinese dialect’ ever since she was a child.

The Southeast Asia Translation and Interrogation Centre (SEATIC) was responsible for, among others, running examinations for interpreters.⁴⁶ But it is not clear from trial records whether all interpreters employed in the Singapore Trials had passed SEATIC examinations. An interpreter’s level of exposure to the language concerned is

⁴¹ War Crimes, GHQ SEALF, ‘Quarterly Historical Report’, for the quarter ending 31 March 1947, NAUK, WO 268/103, p 2, para 4(e). Prior to that, Japanese interpreters appear to have served on an ‘unpaid’ basis.

⁴² ‘Women Assist in War Trials’, 25 March 1947, Straits Times, 7. What is important to note, as further explained below, is that the Chinese and Indian communities speak a variety of languages and dialects that cannot be collapsed into ‘Chinese’ and ‘Indian’ languages, so this description does not really give an accurate description of the linguistic capabilities of the War Crimes Section, and also shows a limited understanding of the complexities of the linguistic landscape in these countries on the part of the journalist.

⁴³ The women profiled were Simone Besancon, W.J. Whitehouse, H. Walker, and one ‘Minty’ Curtis. ‘Women Assist in War Trials’, 25 March 1947, Straits Times, 7.

⁴⁴ *ibid.*

⁴⁵ *ibid.*

⁴⁶ *Trial of Minoru Kaneko*, NAUK, WO 235/832 (*‘Trial of Minoru Kaneko’*) SP 00031.

therefore an important indicator of interpreter capability. Trial records show that the British military faced a shortage of skilled language speakers and made efforts throughout the trials to secure such speakers. In March 1947, the British military reported that it had obtained the services of a number of specialists trained in Cantonese, Mandarin, and Hokkien from the School of Oriental and African Studies in London.⁴⁷ These specialists were to assist in war crimes investigations in Malaya and Singapore.⁴⁸ Despite a shortage in skilled language speakers, trial organisers also preferred to use male interpreters for courtroom interpretation. The earlier-mentioned Straits Times profile explained that the women profiled only provided out-of-court translation as it was believed that courtroom interpretation ‘may tire them more easily than male interpreters’.⁴⁹ Nevertheless, trial organisers made exceptions to their policy of using male courtroom interpreters when needed. Based on trial records, in *Shimada Chokichi and others*, one Miss Mohamed was called to serve as a Siamese-English interpreter.⁵⁰ Besancon herself testified in numerous trials as a witness though trial records do not show her serving as a courtroom interpreter.

It is hard to determine the detailed qualifications of courtroom interpreters used in British war crimes trials in Asia because, as mentioned above, trial transcripts do not always record the names and details of interpreters. However, we do have the details of Japanese language courtroom interpreters employed in a particular British war crime trial

⁴⁷ War Crimes, GHQ SEALF, ‘Quarterly Historical Report’, for the quarter ending 31 March 1947 (n 41), 1.

⁴⁸ *ibid.*

⁴⁹ ‘Women Assist in War Trials’, 25 March 1947, Straits Times, 7.

⁵⁰ *Trial of Shimada Chokichi and others*, NAUK, WO 235/1051, (*Trial of Shimada Chokichi and others*), SP 00030.

held in Penang, Malaysia. When complaints of inadequate interpretation were levelled against a Penang war crimes court in 1947, DJAG Davis responded in a letter that listed the details of the court monitor and two Japanese language courtroom interpreters: Mr. Wong, Muto Yoshizo, and Horuichi Hyogo.⁵¹

Wong, of Chinese ethnicity, was described as a ‘fluent English speaker’ and ‘a student of a Japanese University for several years’.⁵² Muto Yoshizo, of Japanese ethnicity, on the other hand, had resided four or five years in New York for business before the war.⁵³ He was then interned by the US government and repatriated to Japan.⁵⁴ Muto had first interpreted for the Japanese government during the war, then for the Japanese military, and then the court. It is interesting that Muto’s background did not raise concerns of potential interpreter bias for the British, but this may have been overlooked due to the shortage of appropriate interpreters. Horuichi Hyogo was a second generation Japanese from the US who had returned to Japan and who had studied for one and a half years at a Japanese university before the war.⁵⁵ Given the regional approach of British war crimes trials in Asia, and if this above-mentioned Penang war crime trial was reflective of regional policy, the British military did try to choose native Japanese language speakers or those with formal Japanese language education for courtroom interpretation.

⁵¹ Davis to Shapcott, 17 February 1947, NAUK, WO 311/541.

⁵² *ibid* 2.

⁵³ *ibid* 2.

⁵⁴ *ibid* 2.

⁵⁵ *ibid* 2.

The British military's policy of employing Japanese language speakers who had worked for the Japanese government or military, such as Horuichi as mentioned above, meant that some interpreters may have been involved in Japanese wartime atrocities or criminalities.⁵⁶ This was clearly so in at least one case and resulted in unexpected problems. In the trial of *Mabuchi Setsuo and others*, the courtroom erupted in commotion when the Japanese interpreter was suddenly arrested. In the middle of the trial, the military police entered the courtroom and 'suddenly arrested' the Japanese interpreter, Tsutada Itsuo, who was taken out of the court in a 'pale and surprised' state.⁵⁷

To round up, available archival records show that trial organisers did try to employ native Japanese language speakers as interpreters but were forced to employ some interpreters who had not received any formal education in the languages to be interpreted. This necessarily impacted the quality of interpretation given by some interpreters in the Singapore Trials. As explained earlier, there was extensive interpretation in the Singapore Trials. The interpretation methods used were both varied and complicated, often involving multiple interpretations for the benefit of diverse language speakers. Trial organisers were aware of the need to secure skilled interpreters and tried to do so, but based on some interpreter profiles available, not all interpreters had formal training in the languages interpreted. It is thus understandable why interpretation

⁵⁶ This may also give rise to questions of loyalty and bias. This has been a problem faced in more contemporary war crimes trials dealing with group-based atrocities. This however did not seem to be a concern of the British military in the Singapore Trials. Indeed, as explained in Chapter 1, the British military made extensive use of surrendered Japanese military personnel in post-war operations.

⁵⁷ 'Interpreter arrested in court', *Straits Times*, 8 June 1946, 1. *Trial of Mabuchi Setsuo and others*, NAUK, WO 235/869 ('*Trial of Mabuchi Setsuo and others*')

difficulties were encountered during the Singapore Trials. The next section takes a closer look at these interpretation issues.

3. Interpretation challenges in the Singapore Trials

This section studies the interpretation-related communication issues that emerged in the Singapore Trials and judicial interventions made in response to these issues. First, I examine trial organiser's difficulties in finding interpreters for uncommon languages spoken by participants in the Singapore Trials. Second, I highlight how some interpreters did not have the skills required to effectively interpret in these trials. This explains why errors were made by some interpreters. Third, I explore the common interpretation mistakes made and the judicial interventions. Last, I assess the difficulties that judges had when attempting to identify and remedy interpretation errors.

It should be recalled, as explained in the Introduction chapter, that the transcripts of the Singapore Trials do not record non-English testimony. Also, these trial transcripts do not record speech features, such as pauses and hedges, which impact how testimonies are perceived.⁵⁸ I was nevertheless able to identify interpretation issues by closely reading the trial transcripts for clues, such as gaps in logic between questions asked and answers given as well as inconsistencies in words used by speakers. Bearing this in mind, as well as the difficulties trial organisers had in finding sufficiently trained interpreters,

⁵⁸ Berk-Seligson has recognised that this is one of the drawbacks of conventional trial transcripts, the discrepancies between what is actually said in court and what is recorded in the transcript. Berk-Seligson (n 15) 145.

participants in the Singapore Trials probably had to grapple with more interpretation problems than that actually reflected in trial records.

(a) Lack of interpreters for uncommon languages spoken in the Singapore Trials

Some witnesses in the Singapore Trials spoke languages that were not common, and trial organisers could not find interpreters fluent in these languages. This was particularly true in trials involving witnesses from the Andaman and Nicobar Islands. Residents on these islands speak a variety of uncommon languages, including Nicobarese and Andamanese. Such interpretation problems were particularly obvious in *Itzuki Toshio and others*. In this case, the 16 Japanese accused were prosecuted for the torture, ill treatment, unjust trial, and subsequent execution of civilian residents on Car Nicobar on the Nicobar Islands. The prosecution called nine individuals to give evidence, eight of whom were Nicobarese witnesses from Car Nicobar. When calling these Nicobarese witnesses, the prosecutor explained to the court that the Nicobarese language is ‘a language not spoken outside’ and that they had been unable to secure a Nicobarese interpreter.⁵⁹

The prosecutor thus suggested to the court that one of two prosecution witnesses who spoke English serve as an interpreter. The first witness, Reverend John Richardson, was a priest. The second witness, Abednego, was a schoolmaster who could speak

⁵⁹ B.R. *Tamta Andaman and Nicobar Islands* (National Book Trust 2000). The common language among Nicobar islanders is Nicobarese which has links to Indo-Chinese languages and which may be further distinguished into six different dialects spoken in different regions. *Trial of Itzuki Toshio and others*, NAUK, WO 235/834 (‘*Trial of Itzuki Toshio and others*’), SP 00378.

English and Nicobarese.⁶⁰ The court noted that this situation was ‘most unusual’ but would not object to it unless the defence did.⁶¹ The court then asked the court interpreter to explain the situation to defence counsel and to highlight the ‘unusual’ nature of the prosecutor’s proposed arrangement.⁶² The defence counsel decided on Abednego as interpreter and the court granted this request.⁶³ Right after this was decided, the court adjourned for lunch. When the court reassembled, defence counsel explained that during lunch the defendants had told him that they were worried that Abednego would be biased as an interpreter. This reference to potential interpreter bias is noteworthy as this appears to be the only case where interpreter bias was expressly alleged and considered by the court.⁶⁴ As explained earlier, the British military did not see interpreter bias as a problem even when using persons of Japanese origins or nationality as interpreters.

Coming back to the trial of *Itzuki Tosio and others*, after raising concerns of bias, the defendants asked the court whether a Hindustani interpreter could be appointed instead of Abednego, explaining that they believed most of the residents of Car Nicobar spoke Hindustani.⁶⁵ The court pointed out that none of the witnesses spoke Hindustani.⁶⁶ The court also explained that having an interpreter in the person of Abednego was better than having no interpreter at all as Japanese defence counsel would be able to cross-

⁶⁰ Note that the trial transcripts reflect Abednego’s name also as Abnego in various places, though he is generally referred to as Abednego. Ibid SP 00379.

⁶¹ *ibid.*

⁶² *ibid.*

⁶³ *ibid.*

⁶⁴ My sincere thanks to Francesca Gaiba for highlighting this point on bias to me.

⁶⁵ *Trial of Itzuki Toshio and others* (n 59) SP 00380.

⁶⁶ *ibid.*

examine witnesses from Car Nicobar on their admitted statements through the interpreter.⁶⁷

The court took another unusual step later in the case. The prosecution's fifth witness was one Mohd Husen, who spoke Hindustani or present-day Hindi-Urdu, so the court arranged for interpretation to be provided by Captain Kohli, one of the judges who spoke the language.⁶⁸ Japanese defence counsel did not object to this arrangement and did not appear concerned about the possibility that this may divert the judge's attention from the case. Regardless, the examination of Mohd Husen proceeded relatively smoothly and without any significant communication issues.

Innovative ad-hoc measures were similarly taken by judges in other cases in the Singapore Trials. In *Tominaga Mosaburo and another*, no interpreter had been prearranged for the fifth prosecution witness R.P. Seventhian. When Seventhian hesitated at the second question, the court asked him whether he understood English. The witness explained that he only understood 'a little bit' and that it was 'better' if he had an interpreter, explaining that he spoke 'Tamil'.⁶⁹ The prosecutor suggested that the court monitor, who spoke Tamil, undertake such interpretation, and the court agreed with this suggestion rather than adjourning to locate a Tamil-speaking court interpreter.⁷⁰

⁶⁷ ibid.

⁶⁸ ibid SP 00412.

⁶⁹ *Trial of Tominaga Mosaburo and another*, NAUK, WO 235/990 ('*Trial of Tominaga Mosaburo and another*'), SP 00011.

⁷⁰ ibid.

In *Ueda Toraki*, the court decided to recall one of the prosecution witnesses Hari Gobind at the end of the defence case for further questioning by the court. The witness spoke Hindustani but the Hindustani interpreter was not available. Rather than adjourn the trial and recall the interpreter's return, the president Lieutenant Colonel B.E. Greene decided to question the witness himself in Hindustani.⁷¹ In *Hara Teizo and others*, after the court could not find someone who spoke Andamanese among the trial participants for interpretation purposes, the court called on an Andamanese from the public gallery to provide such interpretation.⁷² The fact that some courts would ask a judge or even allow a random member of the audience to undertake interpretation reflects the courts' insufficient understanding of the interpretation process. Judges assumed that courtroom interpretation was merely a matter of linguistic skills and that literally anyone who spoke the language could step in and perform courtroom interpretation.

(b) Some interpreters did not have all the necessary skills required for interpretation in the Singapore Trials

Apart from not securing interpreters for certain uncommon languages, some interpreters who were employed showed that they did not have the necessary skills needed to interpret in the Singapore Trials. As explained below, these interpreters did not have an adequate knowledge of the source or target language and had problems managing the

⁷¹ *Trial of Ueda Toraki*, NAUK, WO 235/899 ('*Trial of Ueda Toraki*'), SP 00086.

⁷² *Trial of Hara Teizo and others*, NAUK, WO 235/839 ('*Trial of Hara Teizo and others*'), SP 00172. The court decided to recall prosecution witness Saudagar after questioning the first witness of the defence to clarify a point. Saudagar spoke Urdu but the Urdu interpreter was not in court. The court suggested that a court member take over translation. After the court's second question, the court member in charge of interpretation had problems understanding the witness, and the

courtroom interpretation process. It also did not help that interpreters were required to pick up necessary skills under severe time pressure and meet some demanding judicial expectations.

i. Interpreters' inadequate knowledge of the languages concerned

Some interpreters in the Singapore Trials did not have a sufficiently well-rounded knowledge of the source or target language. The transcripts do not record which interpreter was making mistakes so it is hard to say whether comments about interpretation mistakes were directed at a few interpreters or at the majority of interpreters in the Singapore Trials. Trial transcripts show that, at the very least, there were interpreters who did not have the language training or experience to effectively interpret in the Singapore Trials. These interpreters could have conducted day-to-day conversations in the source or target languages but had problems understanding or expressing more complex ideas in these languages.

In addition, as observed by Benmaman, courtroom interpreters must also have knowledge about the 'legal process and a legal language which is acutely context specific and fraught with redundancies, archaisms, and intentional ambiguities'.⁷³ This becomes more complicated when interpreters are dealing source and target languages that are situated in different legal systems.⁷⁴ Some interpreters in the Singapore Trials showed unfamiliarity with straightforward legal terms. The lawyers and judges in the Singapore

prosecutor pointed out that there were English speaking Andamanese in the court. At this, an Andamanese from the public gallery was called to take over interpretation and sworn in.

⁷³ Benmaman (n 7) 446.

Trials used less legalese compared to present-day war crimes trials, but courtroom interpreters still had to be familiar with basic legal terms and the legal process.⁷⁵ For example, in *Susuke Sakae and others*, when the court questioned defence witness Saito Mesatoshi, the interpreter asked the court to clarify whether its reference to ‘allegations’ could be interpreted as ‘charges’.⁷⁶ Some interpreters in the Singapore Trials did not have had the legal vocabulary needed for courtroom interpretation.

ii. Inability to manage the courtroom interpretation process

Courtroom conversations are structurally different from everyday conversations.⁷⁷ Some interpreters in the Singapore Trials found it difficult to keep up with the speed and style of courtroom exchanges. A number of judges were aware of this problem and intervened to remind witnesses to speak more slowly. In *Awakuni Riyosuke and another*, during defence counsel’s cross-examination of prosecution witness Khan Mohamed, the court took the initiative to ask the interpreter whether the witness was speaking too fast. When the interpreter confirmed this, the court told the interpreter that he should ask the witness ‘to speak a bit more slowly’ to facilitate interpretation.⁷⁸

Some interpreters in the Singapore Trials were reluctant to interrupt witness testimony and did not confidently answer questions from the court. It is important for

⁷⁴ *ibid.*

⁷⁵ *ibid.*

⁷⁶ *Trial of Susuke Sakae and others*, NAUK, WO 235/889 (*‘Trial of Susuke Sakae and others’*), SP 325.

⁷⁷ John M Conley and William M O’Barr, *Rules versus Relationships: The Ethnography of Legal Discourse* (University of Chicago Press 1990) 13.

interpreters to know when to interrupt a speaker as overly long stretches of testimony affects the interpreter's ability to recall the testimony and accurately interpret it in consecutive interpretation. It is also important for interpreters to answer a court's questions so the court can identify the cause of interpretation mistakes and address them. Both of these interpreter shortcomings were exemplified in *Hachisuka Kunifusa and others* during the examination-in-chief of accused Yamakawa Yasuji, when the court expressed concern about the interpreted testimony and asked the interpreter and court monitor for their opinions.⁷⁹

(The Court expressed a doubt whether this was all that the witness had said, there seemed to be something more)

(Court) Is that all he said?

(Interpreter) I interpreted exactly what he said Sir. He is not answering the question. I myself don't understand?

(Court) Perhaps the Monitor can help us?

(Monitor) The witness, it seems to me, does not seem to answer the question. He (Interpreter) has translated exactly what the witness has said.

(Court) to (Interpreter) Then why did you say that you did not understand yourself.

[...]

(Court) I think it would be a good thing if the Interpreter translates a little bit at a time. In fact in the records there have been several things which have had to be amended due to faulty interpretation.

⁷⁸ *Trial of Awakuni Riyosuke and another*, NAUK, WO 235/835 ('*Trial of Awakuni Riyosuke and another*'), SP 00033.

⁷⁹ *Trial of Hachisuka Kunifusa and others*, NAUK, WO 235-952 ('*Trial of Hachisuka Kunifusa and others*'), SP 436.

In this example, the court had managed to identify an interpretation problem due to a mismatch in length between the answer offered by the witness and the interpretation provided by the interpreter. However, when asked by the court, the interpreter said he did not understand the witness, in addition to affirming that the witness was not answering the question. Untrained interpreters who do not have courtroom experience may find it intimidating to answer the questions of judges in court.

Interpreting in war crimes trials can also be tiring and stressful.⁸⁰ As Gaiba notes, there was a 100% turnover rate for interpreters involved in the Nuremberg Trial.⁸¹ Interpreter fatigue and high turnover rates may be caused by the nature of atrocities considered at these war crimes trials. Berk-Seligman explains that interpreters in ‘political trials’ often suffer from ‘unique’ stress and ‘psychological strain’ from having to listen to testimonies about atrocities that are not normally encountered in ordinary civil or criminal trials.⁸² Interpreting in the Singapore Trials was similarly demanding on interpreters. In *Miora Mitsuyoshi and others*, one of the interpreters was clearly getting tired and this prompted the prosecutor to suggest that the court monitor take over the interpreter’s job because the latter seemed fatigued.⁸³ After the prosecutor made this observation, the interpreter admitted to having such fatigue. It is important to note that the interpreter had not volunteered this information. Interpreters who were tired may have been reluctant to bring this to the court’s attention. At Nuremberg, the monitor could

⁸⁰ Berk-Seligson (n 15) 231.

⁸¹ Gaiba (n 1) 158.

⁸² Berk-Seligson (n 15) 231.

⁸³ *Trial of Miora Mitsuyoshi and others*, NAUK, WO 235/853 (*‘Trial of Miora Mitsuyoshi’*), SP 00039.

intervene on behalf of a tired interpreter but, based on trial records, it is not clear whether this was the practice in the Singapore Trials.⁸⁴

iii. Meeting the demanding requirements of some judges

Interpreters had a difficult job in the Singapore Trials. In addition, they also had to meet time pressures and varied court demands. Trial records show that some interpreters were given only a limited time to learn their jobs before being required to interpret in court. Due to the shortage of interpreters, some courtroom interpreters were put to work immediately in the Singapore Trials. In *Kano Yoshihisa*, the interpreter had great difficulties interpreting the questions of Japanese defence counsel. This eventually led the court to order a change of interpreters. The court also criticised how the interpreter in this case had been put to work immediately by trial organisers, without having the chance to observe courtroom proceedings.

Q. Can you tell me the location of that cell?

(Note: The morning's proceedings were continually interrupted by difficulties of translation)

President: In the opinion of this Court we are wasting our time carrying on with the interpreters we have. We must have better interpreters. Capt. Ward, will you see to it? These men must have an opportunity to sit in Court three or four days before they are put in the Court as interpreters. This line is very strange to them and they must have an opportunity to learn. Furthermore, it is very difficult for the Court to understand what they are interpreting. The Court will adjourn until 10.00 o'clock tomorrow morning to secure the services of better interpreters.⁸⁵

⁸⁴ Gaiba (n 1) 80.

⁸⁵ *Trial of Kano Yoshihisa*, NAUK, WO 235/959 ('*Trial of Kano Yoshihisa*'), SP 00082.

Based on the court's observations, a mere 'three or four days' would have been enough for the new interpreters to familiarise themselves with court proceedings. These interpreters were probably not legally trained, given the shortage of legal personnel, and 'three or four days' of court observation would hardly have been sufficient as 'an opportunity to learn'. It appears that the interpreters in this case had not been exposed to court proceedings before this case.

Based on present-day interpreting practices, courtroom interpreters would not be expected to meet some of the requests courts directed to interpreters in the Singapore Trials.⁸⁶ For example, interpreters in the Singapore Trials were at times asked by judges or lawyers to help 'control' the witness. In trials where judges and lawyers speak the same language as witnesses, judges and lawyers can directly instruct witnesses. However, in the Singapore Trials, judges and lawyers could only exercise control over witnesses through the interpreter. In some trials, the courtroom interpreter was asked to emphasise certain instructions or admonish the witness. In *Hachisuka Kunifusa and others*, during his cross-examination of Yamakawa, the prosecutor asked the interpreter to stress certain instructions to this witness. The interpreter was told to instruct Yamakawa to answer 'yes' or 'no' to the prosecutor's questions.⁸⁷ The prosecutor also asked the interpreter to tell Yamakawa to limit himself to answering the question asked.⁸⁸ It is likely that such instructions would be hard for some interpreters to execute given their inexperience.

⁸⁶ My appreciation to Francesca Gaiba for highlighting this point to me.

⁸⁷ *Trial of Hachisuka Kunifusa and others* (n 79) SP 457.

⁸⁸ *ibid* SP 458.

The court would sometimes ask interpreters to provide the court with cultural information that they did not have. This is different from expecting interpreters to interpret in a culturally sensitive manner. Such court requests were perhaps understandable as the court did not have access to expert testimony on Japanese or Asian cultures. In *Mizuno Keiji*, the Asian language interpreter was not familiar with the Western calendar system and could not translate a date based on the Chinese calendar to the equivalent date of the Western calendar. When asked by the prosecutor the date on which he had been shot, the eighth prosecution witness Chua Ting Teck, who was a Chinese casual labourer, stated ‘about the 5th or 6th day of the Chinese Moon’.⁸⁹ The court asked the interpreter whether he could provide that date to the court based on the Western calendar, but the interpreter said he could not do so. The court then asked the prosecutor whether he could do this. The prosecutor did not do so immediately, and trial records do not show who the prosecutor consulted, if he did consult anyone at all. After a while, the prosecutor provided the court with an estimation based on the known date of the Chinese New Year: ‘The first day of the Chinese New Year in 1942 was on the 15th of February, therefore the 6th day which the witness stated would be the 20th, I think’.⁹⁰

In *Ogasawara Makoto and others*, the court reminded the interpreter to interpret in a way that would ensure the confirming officer’s understanding of the trial record at the post-trial confirmation stage. The witness had used the Japanese word ‘tsubo’ several times to describe the layout of the Singapore Maru, a Japanese ship carrying Allied POWs. But the interpreter had not interpreted ‘tsubo’ into the equivalent English

⁸⁹ *Trial of Mizuno Keiji*, NAUK, WO 235/1110 (‘*Trial of Mizuno Keiji*’), SP 00073.

⁹⁰ *ibid* SP 00074.

measurement unit. The court told the interpreter to do so, reminding him that this was necessary so the trial's record could be understood by the British officer in charge of reviewing and confirming the trial's findings.⁹¹ Given the inexperience of most interpreters in the Singapore Trials, it was unrealistic for courts to expect interpreters to undertake such varied tasks.

(c) Types of mistakes made by interpreters in the Singapore Trials

Here I examine the common mistakes made by some interpreters in the Singapore Trials. Some interpreters changed the content of courtroom exchanges and certain changes in content had serious consequences for the accused. Other interpreters made mistakes because they had insufficient knowledge of the social and cultural context of the source or target languages.

i. The changing of content by interpreters

Some courtroom interpreters in the Singapore Trials had the tendency to edit or change content. Many interpreters in the Singapore Trials put forward their interpretations in indirect rather than direct speech, and this practice largely did not attract any negative comment from the judges. On its own, the fact that the courtroom interpreters used indirect speech in reporting interpretations may not be problematic in terms of factual accuracy. However, considering the other content-based interpretation mistakes captured

⁹¹ *Trial of Ogasawara Makoto and others*, NAUK, WO 235/1043 ('*Trial of Ogasawara Makoto and others*'), SP 00021.

in the trial record, it can be assumed that there is some possibility that interpreters were not only restructuring the testimony of witnesses but also changing their content.

Trials records show that some interpreters in the Singapore Trials omitted or added facts in a way that changed the content of the interpretation. Facts omitted by the interpreter may have been useful to the defence or the court in determining the guilt of the accused. It was hard for the court to identify such mistakes, unless the number of words left out by the interpreter was such as to significantly affect the length of conversation. In *Mori Mitsuzo*, the court detected the interpreter's editing of content perhaps due to the fact that one of the judges was Dutch and may have spoken Javanese, though the transcripts do not record which judge intervened in this particular case. The accused was charged with ill-treating labourers under his supervision in a labour camp located in Thailand. During the testimony of a Javanese witness, Wagimin Renewijeje, the court expressed concern over information being lost through interpretation.

Q. What was the medical aid situation in this 64 Kilos Camp during Mori's time?

A. No medical aid was received from Mori but once or twice a month a doctor would come from Karaburi and medical aid was given.

(Court to interpreter: Did he say anything about a doctor who is new in Changi Gaol?)

A: Yes he is at Changi Gaol.

(Court to Interpreter: This interpretation is making me very apprehensive of the whole thing. You are going to lose what may be very important to the Defence.)

[...] ⁹²

While some interpreters omitted facts when interpreting courtroom testimony, others added facts. In *Monai Tadamori and others*, during the prosecutor's cross-examination of defence witness Kuge Kotoku, the interpreter anticipated and added facts which the prosecutor had not mentioned. This addition of facts by the interpreter was caught by the prosecutor, who chided the interpreter for doing so.

Q: The Court had been told that this patient had been burned. Did he notice any marks of burning on the patient?

A. They did not look to be marks of cigarette burns.

Q: I never said cigarette burn! Ask him why he said cigarette burn?

Interpreter: I added it.

Prosecuting Officer: Well don't add!

Interpreter: I am sorry Sir. ⁹³

From the exchange above, the prosecutor had discovered that the interpreter had added in 'cigarette burn' due to the logical gap between the question asked and the answer given by the witness. If not for this logical gap, it is unlikely that the mistake would not have been identified.

Judicial concerns about content accuracy also arose when interpreters engaged in independent conversations with witnesses without explaining the content of these

⁹² *Trial of Mori Mitsuzo*, NAUK, WO 235/980 ('*Trial of Mori Mitsuzo*'), SP 00023.

⁹³ *Trial of Sumida Haruso and others*, NAUK, WO 235/891 ('*Trial of Sumida Haruso and others*'), SP 00399.

exchanges to the court. On the one hand, researchers have highlighted that additional explanations beyond the explicit text of what is spoken may be necessary when speaker and listener do not share a cultural background.⁹⁴ When cultural background is shared between speakers and listeners, some information may be left unspoken.⁹⁵ To ensure understanding between those who do not share cultural backgrounds, this implicit information needs to be made explicit, clarified, and explained. On the other hand, additional explanations or exchanges beyond the spoken text may reshape the content of the question asked or the answer given. As judges in the Singapore Trials did not understand the language concerned, they were unable to determine whether and how often such exchanges took place or their content.

When some judges became aware of such independent exchanges between the interpreter and witness, they tried to stop these conversations or asked for explanations about the conversation's content. In *Hara Teizo and others*, the court had to intervene a number of times to prevent the interpreter from conversing independently with witnesses.⁹⁶ During the examination in chief of the accused Teiso Hara, the court intervened to ask the interpreter to explain what was being discussed.

Q. Does the fact that there was no import of rice during that period mean there was no shipment from the rear towards Andaman Islands, or that the shipment was made but some accident had happened on the way? Which?

A. The condition of the food situation being so critical, we had several times asked for shipments of rice, and at the end of January I personally

⁹⁴ Cooke, Michael, 'Understood by All Concerned? Anglo/Aboriginal Legal Translation' in Marshall Morris (ed), *Translation and the law* (John Benjamins Pub Co 1995) 42.

⁹⁵ *ibid* 43.

⁹⁶ *Trial of Hara Teizo and others* (n 72) SP 00085, SP 00135.

went to Singapore to see the Commander of the 10th Zone Fleet, and consulted him concerning the food situation.

(As the interpreter and the witness appeared to be discussing together at this juncture, the Court asked for an explanation. The interpreter stated that the witness wished to make it clear that by the word ‘personally’ he meant he came personally to Singapore and not for personal affairs)⁹⁷

Most interpreters openly admitted their mistakes and offered corrections when their mistakes were pointed out to them in the Singapore Trials. In *Mizukami Iwao*, during the testimony of defence witness Fujiwara Ienaga, the interpreter took the initiative to ask for a clarification of the word ‘post-mortem’, asking whether it involved ‘dissecting’. He went on to apologise to the court for misinterpreting ‘post-mortem’ as ‘only examination of the body’.⁹⁸ In some cases, interpreters independently admitted their mistakes and interrupted court proceedings to offer corrections. The interpreter in *Tomono Shunio* interrupted the testifying accused to explain to the court that he had omitted a sentence.⁹⁹ These self-corrections and interruptions show that some interpreters in the Singapore Trials were aware of the importance of accurate interpretation and took a serious approach to their work.

Though the changing of content by interpreters may have been inadvertent, small changes in content could have significant implications on the responsibility or guilt of the accused. For example, in *Iida Kiyoji*, the accused Iida argued that he had not been involved in interrogations and had only undertaken interpretations.¹⁰⁰ During Iida

⁹⁷ *ibid.*

⁹⁸ *Trial of Mizukami Iwao*, NAUK, WO 235/902 (‘*Trial of Mizukami Iwao*’), SP 00042.

⁹⁹ *Trial of Tomono Shunio*, NAUK, WO 235/829 (‘*Trial of Tomono Shunio*’), SP 00020.

¹⁰⁰ *Trial of Iida Kiyoji*, NAUK, WO 235/909, (‘*Trial of Iida Kiyoji*’), SP 00043.

Kiyoji's examination-in-chief, the interpreter kept using the word 'interrogated' and 'investigation' when referring to the involvement of the witness. After several such references to 'interrogated' by the interpreter, the court asked the interpreter whether his interpretation was accurate. The interpreter had referred to Iida as an 'interrogator' though Iida had earlier insisted he was only an 'interpreter' and had not been involved in interrogations. The interpreter then admitted that there had been 'some mistake'.¹⁰¹

ii. Interpreters' inadequate knowledge about the cultural context of languages

To accurately capture meaning, interpreters need to be aware of, and sensitive to, the social and cultural context of the target and source languages.¹⁰² Some interpreters in the Singapore Trials gave straightforward answers to context-specific questions though their answers may not have been comprehensive. Some of the questions asked by judges were relatively simple and did not require detailed explanations from the interpreter. For example, in *Ueda Toraki*, when the prosecution witness referred to a Japanese whom he knew as 'Kariya San', the interpreter explained to the court that 'san' meant 'Mr.' in Japanese.¹⁰³ In *Hikiji Susumu*, during the examination in chief of the accused by the defence, reference was made to Japanese fencing or 'kendo'. The prosecutor interjected at this point and asked for a definition of 'kendo', specifically whether it involved 'sword

¹⁰¹ ibid SP 00044.

¹⁰² Benmaman (n 7) 446.

¹⁰³ *Trial of Ueda Toraki* (n 71) SP 00013.

fencing’ or ‘stick fencing’. The interpreter explained to the prosecutor that it usually meant ‘swordsmanship with the stick or bamboo’.¹⁰⁴

In addition to these straightforward questions, judges in the Singapore Trials also asked interpreters context-specific questions that required more nuanced explanations. The answers provided by interpreters in the Singapore Trials in these cases were brief but not necessarily inaccurate. In the first trial conducted, *Gozawa Sadaichi and others*, during the examination-in-chief of one of the accused Tanno Shozo, the court asked the interpreter to explain why the accused had used a particular expression before every answer.

By Court: Interpreter, what is the explanation he makes before he answers any question? He makes the same explanation before he answers a question.

Interpreter: ‘Hai’. That is the army way when he answers a higher officer.

By Court: He need not be quite so formal about it.¹⁰⁵

This explanation of the Japanese word ‘hai’ is not strictly complete. The word ‘hai’ literally translates into ‘yes’, but in ordinary Japanese conversations, ‘hai’ is usually used as a verbal cue to demonstrate to another his conversation is being followed. In the military context, ‘hai’ more closely translates to ‘yes, sir’. The interpreter’s explanation was therefore not comprehensive. However, it would have been easy to literally translate ‘hai’ as ‘yes’ when asked by the judges, but the interpreter did not do so.

¹⁰⁴ *Trial of Hijiki Susumu*, NAUK, WO 235/1108 (‘*Trial of Hijiki Susumu*’), SP 00031.

¹⁰⁵ *Trial of Gozawa Sadaichi and others*, NAUK, WO 235-813 (‘*Trial of Gozawa Sadaichi and others*’), SP 00186.

There is also evidence that some interpreters in the Singapore Trials may have inaccurately translated concepts from one context to another, without informing the court of such translation. In doing so, they could have inadvertently changed the meaning of what was being interpreted. Such interpretations would generally pass unnoticed by the court. However, such an error was caught by the prosecutor in *Hoko Kanemitsu and others*. In this case, there was some confusion during the examination-in-chief of accused Ohara Teiman by the defence. The interpreter had taken the initiative to represent ‘yen’ as ‘dollars’ in his interpretation. When the prosecutor asked for a clarification on this point from the court monitor, the latter explained that the interpreter had done so because ‘yen’ was ‘not generally familiar to Western people’.¹⁰⁶ The court asked for this to be reflected in the trial record. Due to the difference in currency values, an amount of ‘yen’ should not have been interpreted into the same amount of ‘dollars’. Not all interpreters in the Singapore Trials were sensitive to, or had sufficient knowledge of, the social and cultural context of languages interpreted. As a result, some interpretations failed to take context into account.

(d) Judicial difficulties in addressing interpretation issues at trial

Many judges intervened to address interpretation errors in the Singapore Trials. It was difficult for judges to monitor the quality of interpretation as the majority of judges did not have any knowledge of the languages concerned. Nevertheless, some judges detected interpretation errors and addressed them. In this section, I explore how judges intervened

¹⁰⁶ *Trial of Hoko Kanemitsu and others*, NAUK, WO 235/946 (*Trial of Hoko Kanemitsu and others*), SP 00142.

to address interpretation issues and the difficulties judges had when making such interventions.

i. Difficulties in ascertaining interpretation errors

Despite not having access to the same linguistic ‘tool kit’, some courts identified possible interpretation problems by relying on gaps in logic between questions asked and answers received. Some courts also took note of inconsistencies in words used by trial participants. In *Harada Kensei*, the court caught such an interpretation mistake due to an inconsistency in words used by counsel and the witness.¹⁰⁷ Interpreting the statement of the witness, the interpreter had used the word ‘arrest’ but when interpreting the question of counsel that built on witness testimony, the interpreter had used the word ‘eradication’.

Q: Of what nature was it?

A: In accordance with the attempted Allied landing I myself arrested the disaffected persons who were organising an attack on the Japanese army in the rear by the order issued from Lieut.-General Baba and Col. Machiguchi.

Q: Will you tell the Court the concrete meaning of the word which you used ‘eradication’?

Court: Q. Used when?

Defence: A. The witness said ‘eradicate’.

Court: I did not hear the word ‘eradicate’. I think he used the word ‘arrest’.

Interpreter: I myself was mistaken.

¹⁰⁷ *Trial of Harada Kensei*, NAUK, WO 235/884 (*‘Trial of Harada Kensei’*), SPs 00035-00036.

Court: Q, What was the Japanese word the witness used?

Interpreter: A. 'Senjo' meaning eradication.¹⁰⁸

From trial records, a number of judges had some knowledge of local languages and detected interpretation mistakes made. In *Tsuruoka Shroo*, during the cross-examination by the defence of the first prosecution witness Abdul Hasan, Hasan appeared to repeatedly not answer a question, but the court suspected that the question was being mistranslated. The court comprised of one Captain Teufiq Hasan, and it was possibly this court member who understood the language of the witness and who highlighted that the question put to Hasan had been misinterpreted.¹⁰⁹ Interpretation problems were also a possibility when there was a logical gap between questions asked by the defence and answers given by prosecution witness.

Q. Did you not go near to the Japanese provision store before Tsuruoka beat you?

A. For instance, if this is Chowkidar's house, my house was here. I was brought to the godown, whichw as here, and I was beaten in there. (Witness points to three imaginary positions.)

Q. Did you not go to the provision store before Tsuruoka came to call you?

A. For instance, this is my house, this is Chowkidar's house, and this is the provision store. (Witness demonstrates imaginary positions on the floor.) Chowkidar called me and I saw Tsuruoka sitting in Chowkida's house, and then I was taken to the godown.

¹⁰⁸ ibid SP 00036. A while later, during the same examination in chief of Harada, the interpreter asked for the court's permission to 'consult the dictionary to be more correct'.

¹⁰⁹ *Trial of Tsuruoka Shiroo*, NAUK, WO 235/838 ('*Trial of Tsuruoka Shiroo*'), SP 00014.

(A member of the Court, who understood the witness's language, said there had been a mistranslation of the question, and the President asked that the question be put again. Interpreter does so.)

A. No, I was in my house.¹¹⁰

Mistakes in some trials were pointed out by other trial participants who had some knowledge of the Asian language concerned. British defence advisory officers assigned to the defence were to be fluent in Japanese and could have identified Japanese language interpretation errors during the Singapore Trials, though it is not clear from trial records whether all defence advisory officers were sufficiently fluent in Japanese to identify interpretation errors.

Additionally, some British military prosecutors had some Japanese language knowledge. In *Hachisuka Kunifusa and others*, during the prosecutor F.E. Mostyn's examination in chief of prosecution witness Ihara Masao, Mostyn requested the interpreter to provide a close interpretation of the Japanese phrase 'Shigata nai', noting that the interpreter's translation 'as nothing could be done' was inaccurate and that the phrase should rather be interpreted as 'got to be done, it could not be helped'.¹¹¹

In some cases, the Japanese defence independently pointed out mistakes, though trial records do not explain whether this was because Japanese defence counsel knew English or whether such mistakes were pointed out by British defence advisory officers or the interpreter assigned to the defence. In *Teiso Hara and others*, the accused were defended by Konno Sanai and Komoro. During the examination in chief of the first defence witness Teiso Hara, the defence independently highlighted that names of '10th

¹¹⁰ *ibid* SP 00014.

¹¹¹ *Trial of Hachisuka Kunifusa and others* (n 79) SP 226.

Area Zone Fleet and 10th Naval Fleet’ had been wrongly interpreted and the interpreter apologised for his mistake.¹¹²

ii. Challenges in identifying the cause of errors and responding appropriately

Even when courts realised there was an interpretation problem in these trials, it was usually difficult for courts to identify and address the cause of this problem. Interpretation errors could have resulted from a number of different factors: unskilled interpreters, interpreter fatigue, language mismatch between interpreter and testifying witness, or the speed of courtroom exchange. As explained below, the person best placed to identify the cause of such interpretation errors—the interpreter himself or herself who spoke and understood both the source and target language—was often not sufficiently experienced to ascertain and explain such causes to the court.

For example, in *Osada Yasue and others*, it first seemed that interpretation errors were caused by a language mismatch between the interpreter and the testifying witness. However, it later turned out that the interpreter’s lack of skills was a factor contributing to interpretation errors. The accused whose testimony was being interpreted, Sugimoto, was from Taiwan and more fluent in Mandarin than Japanese.¹¹³ While the Japanese authorities occupying Taiwan had mandated the learning of the Japanese language with the aim of ‘Japanising’ the Taiwanese population, not all Taiwanese were fluent in Japanese. The Taiwanese accused Sugimoto clearly had problems communicating in Japanese through his assigned Japanese-speaking courtroom interpreter.

¹¹² *Trial of Hara Teizo and others* (n 72), SP 00134.

Q. Will you tell the Court the circumstances under which you heard about the interrogation of this Indian?

A. It was one day in the middle of June I came back from the farm for my lunch. The head of the coolies Budua Kashiwa by name brought 3 coolies to our bungalow. This coolie head asked if some rice had been stolen.

Court (To Monitor) Is that right?

Monitor: It is a little strange; I should like the question repeated.

Defence: As this witness is poor in Japanese he seems to have difficulty; he seems not to have completely understood the question. May I repeat the question?

Court: Do you understand the questions put to you?

Witness: I understand

Q: Will you repeat the last sentence?

A. The head of the coolies Budua Kashiwa brought 3 coolies to our bungalow and he asked me if our rice had been stolen.

Monitor: It should be: 'The head of the coolies told me that these coolies had stolen some rice' ¹¹⁴

The mistake identified by the court monitor was substantial. Based on the courtroom interpreter's interpretation, the head coolie had asked Sugimoto whether rice had been stolen. Based on the court monitor's interpretation, the head coolie had told Sugimoto that the coolies had stolen the rice. As a new Japanese interpreter had just been sworn before Sugimoto took the stand, interpretation mistakes cannot be attributed to interpreter fatigue, so the mistake could have been due to inadequate interpreting skills,

¹¹³ *Trial of Osada Yasue and others*, NAUK, WO 235/908 ('*Trial of Osada Yasue and others*')

though we do not know for sure. Despite the defence pointing out that the accused was 'poor in Japanese', the court continued hearing the accused through the same Japanese courtroom interpreter.

The court clearly had problems following Sugimoto's courtroom testimony, and finally intervened to check whether the witness could adequately express himself in Japanese:

Defence: The Accused seems to be more proficient in Chinese. With your permission, Sir, I would like to have a Chinese Interpreter.

Court: Do you fully understand the questions which the Interpreter is putting you?

Witness: I understand ordinary Japanese.

Court: My question was: Do you understand the questions which the Interpreter is putting?

Witness: I understand.

[...]

Court (To Interpreter) Do you understand the answers?

Interpreter: At times I cannot get what he wants to say.

Court (To Monitor) Do you understand what the witness says?

Monitor: Yes.

Court (To Witness) What is your native language?

Witness: Fukienese.

Court: Is that the same as Chinese?

Witness: Yes, Central Chinese.

Court (To Defence) Does it seem to you that your questions are not being understood by the witness?

Defence: Witness seems to understand what I ask but in making answers to my questions, witness shows signs that he cannot adequately express what he wants to say in Japanese.

¹¹⁴ *ibid* SP 00043.

Court (To Witness) Are you satisfied that you are able to answer the questions put to you? Is your knowledge of Japanese sufficient to express yourself properly when you answer the questions?

Witness: Yes, I can express myself.¹¹⁵

The exchange above illustrates a number of problems impacting interpretation in the Singapore Trials. First, the question asked by the court about whether ‘Fukienese’ was the same as ‘Chinese’ demonstrated the court’s unfamiliarity with different language dialects spoken by the Chinese. Though the witness told the court it is the ‘same’ as ‘Chinese’, the ‘Fukienese’ dialect is in fact different from other Chinese dialects and the standardised form of Chinese, which is also known as Mandarin. The court in fact did not know where Taiwan was located and asked Sugimoto to point out its location on a map.¹¹⁶ Second, Sugimoto explained that he could understand the questions put to him in Japanese. This indicated that he understood Japanese but did not necessarily mean the accused could express himself well in the language. This would be expected as Japanese was Sugimoto’s second language. It is noteworthy that though the interpreter had problems understanding Sugimoto’s responses, the court monitor could do so. The interpretation problems in this case could have resulted from a mixture of factors: a language mismatch between Sugimoto and the interpreter, Sugimoto’s inability to express himself in Japanese, and the interpreter’s inadequate interpreting skills.

The court in this case chose to allow Sugimoto to continue giving his testimony in Japanese, rather than making arrangements for an interpreter who spoke ‘Fukienese’. Courts in the Singapore Trials were in general reluctant to take steps that required trial adjournment. This decision of the court to allow the accused to continue giving his

¹¹⁵ ibid SPs 00044-00045.

testimony in Japanese is questionable, as communication problems continued to persist throughout Sugimoto's testimony. At a later point, the interpreter informed the court that both he and the court monitor were simply unable to understand the witness.¹¹⁷

While courts did attempt to address interpretation problems at trial, uncertainty about the root cause of these problems and pressures to complete trials expeditiously resulted, in some cases, in judges ignoring or papering over suspected interpretation issues that they had problems determining or resolving conclusively. This happened in *Terada Takao and others*.¹¹⁸ The five Japanese accused were charged with the ill-treatment and deaths of a number of Chinese civilians at Singapore's YMCA Building which served as the headquarters of Japanese military police or *Kempeitai* during Japan's wartime occupation of Singapore. The accused challenged the prosecution's accusations that the victims had died as a result of their ill-treatment.

In this trial, the interpreter employed was of Chinese ethnicity but did not appear to have formal education in Chinese. Throughout the trial, the British defending officer Colonel Blakemore had raised concerns about accurate interpretation. When cross-examining the prosecution witness Low Keng, the defence asked Low Keng whether he had agreed with another witness to describe the victim as having been 'beaten to

¹¹⁶ ibid SP 00055.

¹¹⁷ ibid SP 00055.

¹¹⁸ *Trial of Terada Takao and others*, NAUK, WO 235/819 ('*Trial of Terada Takao and others*').

death'.¹¹⁹ The interpreter revealed that he could not fully interpret the question asked into the target language of the witness.

(By Court to Interpreter) The question that was asked was: Did you and Lam Keong Kong agree that they would in future use that phrase with regard to the death of Lam Nai Ping.

(Interpreter) Yes in Chinese we have to use it colloquially, but in Chinese characters I cannot because I am not educated in Chinese.

(By Court) You mean you are unable to put that question in Chinese.

(Interpreter) In character way I cannot, but in ordinary speaking way I can.

(By Court) If you were to write it down?

(Interpreter) I do not know Chinese that is the whole trouble.

(By Court to Defending Officer) Do you consider this question essential to your case.

(Defending officer) As far as I am concerned it is a satisfactory answer, the interpreter is asking the question I ask him.

(Defending Officer) I understand them to say that they agreed to use the term 'beaten to death'.¹²⁰

Here, the court only realised there was an interpretation problem because of the logical discrepancy between Low Keng's answer of 'After Nai Ping died' and Blakemore's question of whether he had agreed to use the phrase 'beaten to death'. But what did the interpreter mean when he said that he could not put the question in an 'ordinary speaking way', but not 'in character way' or in written Chinese? The interpreter

¹¹⁹ *ibid* SP 00070.

was probably using a Chinese dialect to interpret for the witness, which he referred to as ‘ordinary speaking way’. He had not been formally educated in written Mandarin and therefore could not put the question in formal Chinese or ‘Chinese characters’. Due to interpretation problems, it is really not clear that Low Keng had indeed agreed to describe the victim as ‘beaten to death’. Despite this, Blakemore declared that he understood the witnesses ‘to say that they agreed to use the term ‘beaten to death’’. The court did not reject Blakemore’s suggestion and did not investigate the interpretation issue further.

iii. Differentiating between genuine errors and tactical claims

While there were serious interpretation problems in the Singapore Trials, defendants also frequently cited interpretation errors as a defence tactic. The defence frequently alleged that the out-of-court statements admitted as evidence were inaccurately translated. Assessing the accuracy of translated pre-trial statements was particularly problematic for courts. When dealing with interpretations in the courtroom, judges may identify errors in interpretation or problems in communication by observing the reaction of witnesses. Judges are denied the benefits of direct observation when it comes to translation or interpretation that has taken place outside the courtroom, the results of which are recorded in out-of-court statements. It is especially arduous, if nearly impossible, for courts to determine whether inconsistencies between courtroom testimonies and out-of-

¹²⁰ *ibid* SP 00070.

court statements result from translation mistakes, transcription errors, memory lapses, or witness mendacity.¹²¹

A representative case where the defence repeatedly used inaccurate interpretation as a defence tactic was in the trial of *Itsuki Toshio and others*.¹²² The defence in this case made frequent allegations regarding inaccurate interpretation of their out-of-court testimony. To establish its claims, the defence called witnesses who had been in charge of interpretation during the taking of out-of-court statements. Captain Cameron was one of these witnesses called by the defence. Defence counsel asked the court for permission to ask Cameron to translate certain words in Japanese, presumably to test his interpretation skills and undermine his credibility as an interpreter. After being repeatedly tested on words by Japanese defence counsel, Cameron admitted that he could not understand two of four Japanese words or phrases that had been put to him by defence counsel, specifically, 'Lamp no Shin' and 'Sukisasu'.¹²³

Here, the court was in a dilemma as it could not check for itself whether the interpretations given by the witness in response to defence counsel's 'testing' were accurate. To verify Cameron's ability, the court asked Cameron to interpret a portion of an admitted statement in court. After he had done so, the court asked the court interpreter whether he had any problems understanding Cameron's interpretation. The interpreter responded: 'Not much Sir'.¹²⁴ The court then asked Cameron for the Japanese

¹²¹ Combs (n 9) 218.

¹²² *Trial of Itsuki Toshio and others* (n 59).

¹²³ *ibid* SP 00602.

¹²⁴ *ibid* SP 00606.

interpretation of the word ‘to beat’.¹²⁵ Cameron explained that there were ‘at least 3 words’ for that.¹²⁶ The court followed up by asking: ‘If I were to say to you that I was beating a member of this Court with a short stick, could you mistake it for ‘I beat him with a stick?’¹²⁷ Cameron replied: ‘The Japanese can be very elusive. It can be both.’¹²⁸

Such tactics of the defence led to some judges getting frustrated. In the same case, after allowing Japanese defence counsel to repeatedly ‘test’ interpreters involved in the recording of out-of-court statements in court, the court expressed some irritation at the defence counsel’s continued challenging of interpretation accuracy. During defence counsel’s examination of defence witness Pilot Officer Stewart Kennedy Gibb, who had also served as an interpreter in British investigations, defence counsel asked Gibb whether he could remember if a particular word, ‘Sukitsatsu’, was used during investigations, Gibb replied he could not remember.¹²⁹ At this point, the court observed: ‘I cannot see how he would be expected to remember.’¹³⁰ And when the defence counsel sought to continue with the testing of Gibb’s interpretation skills, the court asked the defence counsel ‘how long’ the ‘tedious lesson in Japanese’ would continue.¹³¹ However, as the court did earlier with Cameron, the court proactively examined Gibb’s interpretation skills after he had been cross-examined by the prosecution. The court asked Gibb to interpret a portion of an admitted English statement into Japanese. It then asked

¹²⁵ *ibid.*

¹²⁶ *ibid.*

¹²⁷ *ibid.*

¹²⁸ *ibid.*

¹²⁹ *ibid* SP 00610.

¹³⁰ *ibid.*

¹³¹ *ibid.*

the court interpreter Furuya to interpret what Gibb had translated into English. This presumably allowed the court to check for interpretation mistakes.¹³²

To sum up, the defence employed courtroom interpretation as a trial tactic in many trials. The existence of genuine interpretation problems gave the defence sufficient ground to cite interpretation errors as a defence tactic. Trial records show that there were not enough interpreters for uncommon languages spoken at trial, and some interpreters did not have the training or skills to effectively interpret in the Singapore Trials. Judges were aware of interpretation problems and tried to address them in ad hoc ways, but were generally could not resolve these problems conclusively. Though English-speaking judges had problems distinguishing between tactical and genuine allegations of interpretation problems due to their limited linguistic capabilities, they did not summarily dismiss claims of interpretation errors as they were aware that interpretation was an genuine problem in these trials. In other words, the citing of interpretation errors as a defence tactic was particularly effective due to the prevalence of authentic interpretation problems in the Singapore Trials.

4. Conclusion

Given the diverse languages or linguistic ‘tools’ used by trial participants, and the extensive use of interpretation in the Singapore Trials, it was perhaps inevitable that these trials would experience substantial interpretation challenges. The 1945 Royal Warrant framework anticipated that interpretation would be needed in these trials, and trial

¹³² ibid.

organisers recognised early on that they would need to find sufficiently skilled interpreters. However, trial organisers had much difficulty finding adequate numbers of skilled interpreters.

This shortage of skilled interpreters may explain some of the interpretation problems encountered in the Singapore Trials. Some interpreters did not have the range of linguistic skills necessary for interpretation and did not know how to manage the courtroom interpretation process. Some changed the content of trial exchanges by omitting or inserting facts. Others misinterpreted or distorted concepts during the interpretation process. It should also be noted that trial transcripts may not reflect all interpretation errors as these transcripts only reflect the English portion of trial proceedings and it is therefore not possible to compare the different language versions spoken at trial. Given the difficulties trial organisers had in finding skilled interpreters, it is reasonable to surmise that there were more interpretation errors in these trials than that actually reflected in the trial transcripts.

Some of the interpretation errors reflected in trial records had serious consequences for those testifying, such as in *Iida Kiyoji*, a case discussed above, where the interpreter misrepresented the accused as an interrogator instead of an interpreter in the interrogation incident discussed at trial.¹³³ Some defendants and defence counsel however took advantage of the prevalence of interpretation difficulties and alleged interpretation errors as a trial tactic. In some cases, the defence argued that out of court statements had been wrongly translated by the interpreters involved in pre-trial

¹³³ *Trial of Iida Kiyoji*, NAUK, WO 235/909, (*‘Trial of Iida Kiyoji’*), SP 00043-00044.

questioning. It was hard for judges to differentiate between genuine and non-genuine interpretation errors due to their own unfamiliarity with the languages concerned. Indeed, it was hard for judges to ascertain and assess straightforward interpretation errors because they did not have the linguistic ‘tools’ needed.

Despite not having the appropriate linguistic ‘tools’, some judges did not hesitate to intervene to address interpretation issues in the Singapore Trials. These judges used different strategies to compensate for their lack of linguistic skills. Some relied on logical gaps and differences in lengths of conversations to identify possible interpretation discrepancies. Some judges called on the assistance of courtroom monitors, other trial participants, and even trial audience who spoke the languages concerned. A number of judges checked with witnesses to ensure that they understood the interpretation provided by the interpreter and were themselves fluent in the language concerned. Others tried to pre-empt possible interpretation issues when they intervened to prevent the interpreter from engaging in independent conversations with witnesses that may distort the questions asked or answers given.

Judges were however generally reluctant to take remedial action that would result in trial adjournment. Even when courtroom interpreters made serious mistakes, judges would usually permit the trial to continue rather than adjourning the trial to replace the interpreter concerned. In other words, when judges had to choose between trial expediency and accurate interpretation, they would choose the former. This does not mean that judges ignored interpretation issues in the Singapore Trials. Judges did try to respond to interpretation errors but were limited by their own linguistic unfamiliarity as

well as pressure to conduct speedy trials. Indeed, judges took a similar limited interventionist approach when dealing with other culturally related communication issues in the Singapore Trials, such as that related to defence counsel's trial participation, which forms the topic of my next chapter.

CHAPTER FOUR: PARTICIPATION DIFFICULTIES OF JAPANESE DEFENCE

COUNSEL

In addition to not being fluent in the courts' working language, many defence counsel from Japan had difficulties with law and procedure in the Singapore Trials. In this chapter, I examine the participation difficulties of Japanese defence counsel. Japan's pre-war legal system was influenced by German and French law, and Japanese courts used an inquisitorial trial process, while the Singapore Trials employed British law and an adversarial trial process. Compared to their British-trained counterparts, Japanese defence counsel did not have sufficient professional legal 'tools' to effectively participate in the Singapore Trials.

Section 1 explains how the participation difficulties of Japanese defence counsel compare with that of defence counsel in other war crimes trials. Section 2 then sets out what professional legal training Japanese defence counsel received in pre-war Japan, while Section 3 evaluates the training of Japanese defence counsel against the law and procedure of the Singapore Trials. Section 4 then analyses the participation challenges encountered by Japanese defence counsel and the interventions made by judges to facilitate counsel participation.

1. Situating the Singapore Trials: war crimes trials involving defence counsel with different professional legal training

In this section, I explain how the participation difficulties of Japanese defence counsel compare with that of defence counsel in other war crimes trials that also used law and procedure foreign to these counsel. The participation difficulties of Japanese defence counsel in many ways reflect that of defence counsel in other post-Second World War Trials. And while the participation difficulties of Japanese defence counsel in the Singapore Trials were necessarily shaped by the trials' historical context, some of these difficulties are similarly experienced by defence counsel in contemporary war crimes trials.

As explained in Chapter 2, the majority of accused in the Singapore Trials were defended by Japanese defence counsel. These counsel held Japanese legal qualifications and were not familiar with the law and procedure that applied in the Singapore Trials. Many defence counsel in other Allied war crimes trials were similarly unfamiliar with the law and procedure that applied in these trials. The participation difficulties of defence counsel have been commented on but have not yet been subject to any comprehensive study. This chapter aims to conduct such a comprehensive study of counsel participation challenges in the Singapore Trials.

Those who participated in post-Second World War trials have made negative observations about the performance of defence counsel in these trials. Ormsby, who served as a judge and defence advisory counsel in British war crimes trials in Asia, notes

that Japanese defence counsel were ‘too nice’ and that the accused would have been in a better situation if they were defended by British defending officers.¹ Röling, who presided as judge on the Tokyo Tribunal, refers to the clumsiness of Japanese defence counsel in the Tokyo Trial. At the Tokyo Trial, Japanese defence counsel had asked the court for assistance from common law lawyers.² The court at Tokyo agreed to this request of Japanese defence counsel, and the US paid for American counsel to be provided to each defendant.³ However, according to Brackman, a journalist who covered the Tokyo Trial, observes that Japanese defence counsel had performed ‘poorly’ at Tokyo.⁴

Similar problems were experienced by German defence counsel who represented accused before Allied courts in Europe.⁵ In their study of the Nuremberg Trial, Tusa and Tusa state that German defence counsel trained in the German legal system were uncomfortable with the common law adversarial system employed in the Nuremberg Trial. However, they also note that it was not only German defence counsel who had problems at Nuremberg; prosecutors from different Allied countries also had difficulties at Nuremberg because of the ‘hybrid’ nature of trial procedure and because they had not practised law for some time.⁶ Given the political pressure to begin war crimes

¹ Suzannah Linton (ed), ‘Appendix: Major Murray Ormsby: War Crimes Judge and Prosecutor 1919-2012’, *Hong Kong’s War Crimes Trials* (OUP Oxford 2013) 235.

² Bernard Victor Aloysius Röling and Antonio Cassese, *The Tokyo Trial and Beyond: Reflections of a Peacemonger* (New Ed edition, Polity Press 1995) 36.

³ *ibid.*

⁴ Arnold C Brackman, *The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials* (Fontana Press 1990) 316–317.

⁵ Röling and Cassese (n 2) 36.

⁶ Ann Tusa and John Tusa, *The Nuremberg Trial* (Skyhorse Publishing 2010) 256.

prosecutions, counsel were given little time to prepare or to study trial procedure. It was perhaps unsurprising that counsel found it challenging to master the law of these war crimes trials, especially when this law differed substantially from that of their home country. This was all the more so for counsel working in war crimes trials such as the Singapore Trials, which were conducted in an expeditious manner and under severe resource constraints.

Similar problems are experienced today by defence counsel in contemporary internationalised war crimes trials. In these trials, defence counsel are usually required to observe international law rather than a specific national law.⁷ Commentators observe that many defence counsel are not well-versed in the law and procedure of these courts, especially when compared to prosecutors who are more likely to be repeat players. Mose, a Norwegian judge at the ICTR, a court with procedure based on the common law model, observes that the bringing together of counsel from different legal cultures can be problematic and requires counsel to have specific working skills.⁸ Wald, who used to be a judge at the common law-based ICTY, notes that accused prefer to be represented by counsel from their own native countries despite the latter's lack of knowledge about the ICTY's law and procedure.⁹ Many defence counsel at the ICTY came from East

⁷ Some internationalised courts, also known as hybrid tribunals, apply a mixture of international law and domestic law.

⁸ Erik Møse, 'The ICTR: Experiences and Challenges' (2005) 12 *New England Journal of International and Comparative Law* 8.

⁹ Patricia Wald, 'Running the Trial of the Century: The Nuremberg Legacy' (2006) 27 *Cardozo Law Review* 572.

European countries with legal systems based on the civil law tradition; these counsel had difficulties following the common law rules that applied at the ICTY.¹⁰

While there are some similarities between the challenges faced by Japanese defence counsel in the Singapore Trials and that faced by defence counsel in present-day war crime trials, it is also important to note the different legal frameworks and contexts of these trials. Unlike present-day war crimes trials, the Singapore Trials were governed by more flexible procedural rules. Most judges and prosecutors in the Singapore Trials were not legally trained, and many took an informal non-legalistic approach in the courtroom. All this may have facilitated defence counsel's participation. However, as explained in Chapter 2, Japanese defence counsel in the Singapore Trials operated under resource limitations and time constraints that were more severe than that faced by defence counsel in present-day war crimes trials. For example, defence counsel in the Singapore Trials only had 'a minimum of one week or probably longer' between the first interview of the accused and the start of the trial.¹¹

On the other hand, while defence counsel in present-day trials are given more time and resources than that afforded to defence counsel in the Singapore Trials, the quality of defence counsel in contemporary war crimes trials continues to be criticised. Many contemporary war crimes courts use law and procedure that are international as opposed to national, but defence counsel may not be necessarily familiar with the 'international law' employed by the war crimes court concerned. In this sense, the

¹⁰ ibid.

¹¹ ALFSEA Instruction No 1, para 48 (b).

experience of defence counsel engaging with ‘international law’ in present-day war crimes courts may be compared to that of Japanese defence counsel engaging with British law in the Singapore Trials.

The experience of defence counsel in war crimes trials, however, continues to be under-researched compared to that of other trial actors, such as judges and prosecutors. When defence counsel participation is studied by legal researchers, this is generally from the perspective of the right to a fair trial and equality of arms.¹² While I do highlight fairness concerns in my analysis of defence counsel’s participation difficulties in the Singapore Trials, my focus here is on the types of participatory problems encountered by defence counsel at trial as well as the judicial interventions made to facilitate counsel participation.

2. The professional legal training of Japanese defence counsel in pre-war Japan

In this section, I examine the formal legal training that Japanese defence counsel received in pre-war Japan. My aim is to highlight the mismatch between the professional legal ‘tool kit’ of Japanese defence counsel and the law and procedure of the Singapore Trials. As explained in Chapter 2, trial records do not comprehensively set out the legal training of Japanese defence counsel. What we do know is that Japanese defence counsel held

¹² Sonja B Starr, ‘Ensuring Defence Counsel Competence at International Criminal Tribunals’ (2009) 14 *UCLA Journal of International Law and Foreign Affairs* 171. Starr lists some of the defence counsel incompetencies that have been pointed out by tribunals: ‘incoherent or incomprehensible’ counsel submissions’, failure to ‘raise potentially valid objections or arguments at proper time’, and ‘frivolous motions and arguments’.

Japanese legal qualifications and that many defence counsel were judges within the Japanese legal system. We do not know whether any counsel had obtained some legal education or legal training in Western countries.¹³ With these caveats in mind, this section examines the legal training afforded to defence counsel in pre-war Japan's legal system.

(a) Japan's pre-war criminal legal system: modelled on French and German laws and an inquisitorial process

Japan's pre-war criminal legal system was largely based on examples from continental Europe rather than the common law world. Prior to 1880, Japan's criminal law was governed by codes inspired by Chinese criminal law.¹⁴ After the 1868 Meiji Restoration, which Chapter 5 explores in greater depth, Japan adopted a series of new laws modelled on Western laws, including new penal laws and criminal procedural laws. In 1880, Japan adopted a Penal Code based on French developments. This 1880 Penal Code introduced a number of new ideas into the Japanese legal system, such as the principle of non-retroactivity and the idea of personal as opposed to collective guilt.¹⁵ The 1880 Penal

¹³ The second batch of Japanese defence counsel employed in British trials in Asia were hired on contracts with the Japanese government, and the latter may have made an effort to find lawyers with overseas experience.

¹⁴ Kenzo Takayanagi, 'A Century of Innovation: The Development of Japanese Law, 1868-1961' in Professor Hideo Tanaka and Professor Malcolm DH Smith (eds), *The Japanese Legal System: Introductory Cases and Materials* (University of Tokyo Press 1976) 170.

¹⁵ *ibid* 164.

Code underwent further amendments and incorporated German legal ideas that were becoming popular in Japan.¹⁶

Apart from the substantive criminal law, Japan's pre-war criminal legal procedure was similarly influenced by French and German law. In the same year of adopting the 1880 Penal Code, Japan adopted the Code of Criminal Instruction which implemented the French inquisitorial trial process in Japan.¹⁷ The 1880 Code of Criminal Instruction also introduced legal representation for the accused into the Japanese legal system.¹⁸ In 1922, Japan replaced the 1880 Code of Criminal Instruction with the 1922 Code of Criminal Procedure. This 1922 Code was more influenced by German legal procedure, but it maintained the French-inspired inquisitorial process.¹⁹ In 1928, Japan adopted the 1928 Jury Act that introduced some lay participation based on the English common law jury system. However, this provision for lay participation was not fully implemented in pre-war Japan and was suspended in 1943 by the military government.²⁰ In short, Japan's pre-war criminal law and procedure was heavily influenced by French and German law, and its criminal law procedure was inquisitorial in nature.

Defence counsel had a limited role in Japan's pre-war legal system and did not have the same standing as procurators who represent the state's interest at court.

¹⁶ ibid 166.

¹⁷ ibid 167.

¹⁸ ibid 170.

¹⁹ ibid 171.

²⁰ ibid 172. Malcom M Feeley and Setsuo Miyazawa, 'Legal Culture and the State in Modern Japan: Continuity and Change' in Robert W Gordon and Morton J Horwitz (eds), *Law, Society, and History: Themes of the Legal Sociology and Legal History of Lawrence W. Friedman* (Cambridge University Press 2011) 176.

Japan's procurators were treated similar to judges.²¹ Indeed, procurators who held positions at the Ministry of Justice were involved in decisions on judicial promotions.²² During trials, procurators would sit with judges on a raised platform while defence counsel would be seated at a lower level in the courtroom.²³ Judges in Japan's pre-war legal system were very active. Japanese judges discussed pleadings with lawyers and identified salient issues.²⁴ They actively questioned the accused and witnesses during the trial.²⁵ Trials were not concluded in a single hearing. There would be a 'series' of oral sessions during which judges would supervise the development of arguments and issues.²⁶ In Japanese trials, defence counsel were permitted to question adverse witnesses but had to put their questions to these witnesses through the judge.²⁷ Defence counsel thus played a relatively limited role in Japan's inquisitorial trial process. The role of counsel in Japan's pre-trial process was even more restricted. Similar to other inquisitorial systems today, pre-trial or preliminary investigations were conducted by *juges d'instruction*. No assistance by defence counsel was permitted at this pre-trial stage.²⁸

²¹ Hideo Tanaka and Malcolm H Smith (eds), *The Japanese Legal System: Introductory Cases and Materials* (University of Tokyo Press 1976) 557.

²² *ibid.*

²³ Takayanagi (n 14) 170.

²⁴ Jiro Matsuda, 'The Japanese Legal Training and Research Institute' (1958) 7 *The American Journal of Comparative Law* 372.

²⁵ Takayanagi (n 14) 170.

²⁶ Matsuda (n 24) 372.

²⁷ Takayanagi (n 14) 170.

²⁸ *ibid.*

Till today Japan's legal culture continues to be influenced by the inquisitorial civil law tradition; the tradition's enduring influence is reflected in the manner Japanese jurists continue to employ civilian methods of reasoning when interpreting Anglo-American rules introduced by the Americans after the Second World War.²⁹ When assessing the performance of Japanese defence counsel in the Singapore Trials, it is important to bear in mind how lawyers and judges in pre-war Japan were trained to participate in a criminal legal system with an inquisitorial legal process that was based on German and French law. In this inquisitorial criminal process of pre-war Japan, defence counsel had a limited role and were expected to act in a deferential manner to the prosecutor and judges.

(b) The study of foreign laws and international law in pre-war Japan

Based on Japan's pre-war curriculum of legal education and training, those trained in Japan would have had some exposure to British laws and Western international law through courses taught at university. The higher education system put in place by Japan's Meiji leaders in the mid-1800s aimed to educate students on Western ideas and technology. Such Western education was to further the Meiji government's plan of advancing Japan's interests and position vis-à-vis other Western Powers on the international stage.³⁰

Since the Meiji period, law schools taught foreign laws such as French law and English law. Since 1874, Americans, English and Japanese teachers were employed to teach English law at the Kaisen School in Tokyo which would become the Tokyo

²⁹ ibid 189.

Imperial University, though their study focused on English jurists like Bentham rather than case law.³¹ In 1887, with the increased popularity of German law, a German law unit was established in Tokyo Imperial University.³² German legal science remained popular in Japan until the end of the Second World War.³³ Japanese lawyers and scholars continued to be most familiar with civil law thinking in the immediate pre-war period. Indeed, the influence of German legal science is still reflected in the writings and analysis of Japanese scholars.

With respect to international law, Japanese universities started teaching international law in the 1860s.³⁴ Tokyo University, which was charged by the government with supervising all law schools, included public international law as a subject in its model curriculum.³⁵ Japanese law students would usually take international law during their undergraduate studies as a compulsory or elective course.³⁶ In 1887, the Japanese government put in place civil service examinations that placed an important emphasis on international law.³⁷ Two years later, in 1897, the Japanese Association of

³⁰ Feeley and Miyazawa (n 20) 174.

³¹ Takayanagi (n 14) 179–180.

³² *ibid* 182.

³³ *ibid*.

³⁴ Yasuaki Onuma, ‘‘Japanese International Law’ in the Prewar Period-Perspectives on the Teaching and Research of International Law in Prewar Japan’ (1986) 29 *The Japanese Annual of International Law* 34.

³⁵ Setsuo Miyazawa and Hiroshi Otsuka, ‘Legal Education and the Reproduction of the Elite in Japan’ (2000) 1 *Asian-Pacific Law and Policy Journal* 7. See also Table 4 of article.

³⁶ Onuma (n 34) 36.

³⁷ *ibid* 32.

International Law was established with the support of the Japanese government; the association started publishing its own international law journal in 1902.³⁸

As observed by Onuma, pre-war Japan did not have an independent tradition of international law. The international law taught in Japan was largely Western in nature, based on translated Western textbooks and Western approaches, though independent Japanese research improved through the years.³⁹ International law, like other Western laws and ideas, was taught in Japanese institutions with the aim of promoting the Japanese state's interests. Though such legal education was implemented in Japanese universities only in the Meiji era, its statist legal orientation had deeper origins in Japan's legal history and culture; Miyazawa and Feeley explain that ever since the Tokugawa period or 1600s, law in Japanese society has been understood as a 'feature of administration' and as 'one of the many sanctions' at the disposal of leaders.⁴⁰ Japanese militarism in the years leading up to the Second World War further exacerbated the state-oriented tendency in international law discourse.⁴¹ Given the statist emphasis of legal education in pre-war Japan, the majority of Japanese law students, lawyers, and judges would have been more familiar with international legal arguments justifying war than those on the wartime rights of POWs and civilians, which would feature in the Singapore Trials.⁴²

³⁸ *ibid* 34.

³⁹ *ibid* 29–30.

⁴⁰ Feeley and Miyazawa (n 20) 170–171.

⁴¹ Onuma (n 34) 35.

⁴² In his study of the international law training provided to the Japanese military, Kita concludes among others that there was a lack of training on POW rights. Yoshita Kita, 'The Japanese

To sum up, pre-war Japan's formal legal training included some exposure to foreign laws and Western international law. With respect to foreign laws, there was more emphasis on German law. International law courses were largely based on Western sources and focused on the rights of the State, as opposed to the treatment of POWs and civilians in times of conflict. These features of Japanese professional legal training explains some of the challenges experienced by Japanese defence counsel in the Singapore Trials, which I further explore below.

3. Applicable law and practice in the Singapore Trials

What was the law and procedure that Japanese defence counsel had to navigate in the Singapore Trials? This section analyses the law, processes, and legal material used in the Singapore Trials. In doing so, I point to the ways by which the Singapore Trials required Japanese defence counsel to employ professional legal skills that were unfamiliar to them. First, I study how the Singapore Trials' legal framework authorised participants to refer to predominantly British laws and legal material. Second, I explain how the trials' legal framework put in place an adversarial process that required Japanese defence counsel to play an active and assertive role, in contrast to the limited and deferential role assigned to defence counsel in Japan's pre-war system.

(a) Frequent reference to British and international legal material in the

Singapore Trials

The Singapore Trials were regulated by the 1945 Royal Warrant.⁴³ The Warrant was brief and had only 18 appended regulations. In Asia, the Warrant's implementation was supplemented by Allied Land Forces South East Asia (ALFSEA) Instruction No 1, which focused largely on procedure.⁴⁴ Nevertheless, as explained in chapter 1, the 1945 Royal Warrant also incorporated by reference international law and British law. In other words, trial participants could refer to a range of legal material when making substantive law arguments, including the Warrant itself, ALFSEA Instruction No 1, international legal materials and British legal materials. However, as explained below, trial participants referred to a large amount of British legal materials to the disadvantage of Japanese defence counsel.

i. The brevity of 1945 Royal Warrant and ALFSEA Instruction No 1

According to the 1945 Royal Warrant, British military courts were empowered to prosecute individuals for 'violations of the laws and usages of war'.⁴⁵ ALFSEA Instruction No 1 contained more detailed description of the phrase 'violations of the laws and usages of war'.⁴⁶ The Instruction set out a list of 14 '[m]ain offences constituting war

2000: *Volume III, The Military Dimension, 1800-2000* (First Edition edition, Palgrave Macmillan 2003) 261–263.

⁴³ Royal Warrant 0160/2498, 18 June 1945, promulgated by the War Office, Army Order 81 of 1945 ('1945 Royal Warrant')

⁴⁴ ALFSEA Instruction No 1.

⁴⁵ 1945 Royal Warrant, para 1.

⁴⁶ ALFSEA Instruction No 1, paras 2-3. The Instruction, which applied to the British military operating in Asia, recognises two types of criminals: 'Major war criminals' and 'Minor war criminals'. Major war criminals were those 'responsible for organised brutalities and the design and execution of plans for acts of aggression committed since 1931'. They were to be tried by an 'international tribunal' and fell under the responsibility of the Foreign Office. These major war criminals were those eventually tried at the Tokyo Trial.

crimes' that were to be tried by courts established under the 1945 Royal Warrant.⁴⁷ These offences were defined in such a way that there was a significant overlap with ordinary crimes, which may explain why trial participants made much reference to British law and British legal materials. Only three of the 14 offences listed in ALFSEA Instruction No 1 expressly referred to a wartime context.⁴⁸ The other 11 crimes listed did not expressly refer to a wartime context and were also crimes during peacetime. Examples of such crimes include '[a]ssault with violence causing death, and other forms of murder or manslaughter' and '[t]heft of money and goods'.⁴⁹

The Royal Warrant and ALFSEA Instruction No 1 also did not define the modes of liability or the defences that should apply. The closest reference to group-based modes of liability may be found in Regulation 8 (ii) of the Warrant, which stated that '[w]here there is evidence that a war crime has been the result of concerted action upon the part of a unit or group of men, then evidence given upon any charge relating to that crime against any member of such unit or group may be received as prima facie evidence of the responsibility of each member of that unit or group for that crime' and that in these cases, 'all or any members of any such unit or group may be charged and tried jointly in respect of any such war crime and no application by any of them to be tried separately shall be

⁴⁷ *ibid* para 5. ALFSEA Instruction No 1 also defined war crimes as including 'crimes and atrocities against the laws of humanity' by Japanese nationals or those 'acting in support of Japan' against civilians of any nationality 'during the continuance of hostilities', para. 5. But the Instruction gives no further explanation on the meaning of such 'laws of humanity'.

⁴⁸ *ibid* para 4. 'Employment on work having direct connection with the operations of the war, or on unhealthy or dangerous work'; 'Detaining Allied personnel in an area exposed to the fire of the fighting zone'; 'Making use of POWs or civilians as a screen; and such cases as attacks on hospitals or hospital ships, and on merchant ships without making provision for survivors'.

⁴⁹ *ibid* para 4.

allowed by the Court'.⁵⁰ By providing for joint trials, this regulation at least anticipated a court's consideration of group-based modes of liability. Neither did the 1945 Royal Warrant nor ALFSEA Instruction No 1 specified defences that could be raised by the accused.

In other words, the 1945 Royal Warrant and ALFSEA Instruction No 1 gave trial participants limited guidance in terms of substantive law. This was similarly the case for other instruments governing other post-Second World War trials, such as the Charters of the Tokyo Tribunal and the Nuremberg Tribunal. The 1945 Warrant did however authorise trial participants to refer to international law and British law, and some trial participants did do so. As the majority of judges and prosecutors were British, and as international legal instruments were relatively undeveloped, trial participants referred largely to British laws and British legal material, as discussed below.

ii. British and international legal materials referred to by counsel in the Singapore Trials

The 1945 Royal Warrant authorised British military courts to take judicial notice of the 'laws and customs of war'. This meant that trial participants could raise international law on the laws and customs of war. Counsel in the Singapore Trials did point to a number of international law treaties, specifically, the 1907 Hague Convention (IV) Respecting the Laws and Customs of War ('the 1907 Hague Convention') and the 1929 Geneva Convention Relative to the Treatment of Prisoners of War ('the 1929 Geneva

⁵⁰ 1945 Royal Warrant Regulations, regulation 8 (ii).

Convention’).⁵¹ Among treaty provisions commonly cited by trial participants were Article 31 of the 1929 Geneva Convention which prohibits the employment of POWs in work with ‘direct connection with the operations of the war’ and Art. 46 of the 1907 Hague Convention which protects ‘family honour and rights’, ‘the lives of persons’, ‘private property’, and ‘religious convictions and practice’.⁵²

Trial participants referred to more British legal material than international legal material when making their arguments before the court. Frequent references were made to the legal expositions set out in the British Military Manual (‘MML’). The MML was not a legally binding document but its comprehensive explanations made it the go-to source for many trial participants. Some issues that arose in the Singapore Trials, such as the question of superior orders, were not addressed in the 1945 Royal Warrant or in ALFSEA Instruction No 1; these issues were however addressed in the MML.

Apart from the British MML, trial participants also referred to British case law and principles, such as the principle of natural justice, and the presumption of innocence. This was to be expected given that, except for those provisions expressly excluded by the 1945 Royal Warrant, the English law of evidence that would apply to ordinary civilian trials was to apply to these trials.⁵³ The British MML expressly cited a number of English

⁵¹ 1907 Hague Convention (IV) Respecting the Laws and Customs of War (‘the 1907 Hague Convention’) and the 1929 Geneva Convention Relative to the Treatment of Prisoners of War (‘the 1929 Geneva Convention’). It is important to note that while Japan had ratified the 1907 Hague Convention, she had not ratified the 1929 Geneva Convention. And none of these treaties expressly require or propose the criminal prosecution of individuals who committed acts prohibited by the treaty.

⁵² 1907 Hague Convention, Art 46; the 1929 Geneva Convention, Art 31.

⁵³ Great Britain War Office, *Manual of Military Law 1929* (7th edn, Great Britain War Office 1929) (Reprinted December 1939) (HMSO, 1940) (‘*British Manual of Military Law 1929*’), 70.

law textbooks where these rules of evidence were ‘to be found’, such as Stephen’s Digest on the Law of Evidence and Phipson’s Law of Evidence.⁵⁴ Both of these treatises were referred to by lawyers in the Singapore Trials.

When counsel were citing such British material in the Singapore Trials, it is noteworthy that they did not argue that this material should be considered evidence of international law on the laws and customs of war. This would have required counsel to employ specific forms of international legal reasoning, such as representing the British legal material cited as evidence of state practice or *opinio juris*. Rather, counsel cited British material as direct and self-evident representations of law that should be followed. Such non-legalistic use of material may be due to the fact that most counsel in the Singapore Trials were not legally trained. This non-legalistic approach may also have made it easier for Japanese defence counsel to engage with the British legal material referred to in the Singapore Trials.

My aim here is not to assess whether trial participants accurately used such legal material based on then-prevailing or present-day international law reasoning and standards. Other commentators have evaluated this in the context of other trials governed by the 1945 Royal Warrant. Linton observes in relation to the trials conducted in Hong Kong that actors applied ‘a mixed regime of international law and domestic law’.⁵⁵ Zahar’s observations of the Hong Kong trials are more critical, arguing that the ‘multiple’

⁵⁴ *ibid* 70.

⁵⁵ Suzannah Linton, ‘War Crimes’ in Suzannah Linton (ed), *Hong Kong’s War Crimes Trials* (OUP Oxford 2013) 100.

and ‘indistinct’ sources made it ‘difficult to make sense of their combined effect’.⁵⁶ My aim in this section is to show that much of the legal material cited in the Singapore Trials was British and therefore foreign or, at the very least, less familiar to Japanese defence counsel.

(b) Counsel-led adversarial procedures in the Singapore Trials

The 1945 Royal Warrant framework of the Singapore Trials put in place an adversarial trial process. Here, I explain some features of this process that particularly differentiate it from the inquisitorial trial process that applied in pre-war Japan. Among others, in the Singapore Trials’ adversarial process, counsel were expected to take an adversarial and competitive stance when defending the position and interests of their clients.⁵⁷ Counsel were expected to undertake a meticulous examination of witnesses and evidence, and to respond effectively to the challenges raised by counsel of the other side.

i. The substantial responsibilities of counsel in the Singapore Trials

Based on the adversarial trial process implemented in the Singapore Trials, counsel were to be responsible for explaining and presenting the case to the court. Unlike courts employing the inquisitorial trial process, these British military courts did not conduct their own independent investigations. Relevant facts and legal arguments were to be

⁵⁶ Zahar, Alexander, ‘Trial Procedure at the British Military Courts, Hong Kong, 1946-1948.’ in Suzannah Linton (ed), *War Crimes* (OUP Oxford University Press 2013) 16.

⁵⁷ Adversarial trials assume that the truth is best determined through the competitive presentation and rigorous testing of evidence by counsel representing both sides. Gary Goodpaster, ‘Adversary System, Advocacy, and Effective Assistance of Counsel in Criminal Cases, The’ (1986) 14 NYU Rev. L. & Soc. Change 59, 69.

presented to these British courts by the prosecution and the defence. At the end of the cases put forward by the prosecution and defence, these courts would then pass judgement and sentences without lengthy judicial deliberations. In line with the applicable Rules of Procedure of the Army Act, British military courts in the Singapore Trials first heard witnesses whose testimonies went to guilt or innocence and adopted findings on guilt or innocence before hearing other witnesses for sentencing purposes. The court would adjourn for brief periods of time, such as 10 minutes, before passing judgement and sentence. Courts thus depended on counsel from either side to present the best possible case and all the relevant facts.

The British MML and applicable Rules of Procedure recognised that the prosecutor was not to be ‘partisan’; he was to be an ‘officer of justice’ who should ‘assist the court in ascertaining the truth’.⁵⁸ On the other hand, the court should afford ‘great latitude’ to the accused who was not to be stopped ‘merely for making irrelevant observations’.⁵⁹ These provisions did not detract from the adversarial nature of these British military trials. Apart from facts and arguments being led by counsel in these trials, the evidence of the prosecution and defence were set up in opposition to each other in these trials.

Trials under the 1945 Royal Warrant framework began with the prosecutor’s ‘opening address’, followed by the prosecution’s presentation of evidence and calling of

⁵⁸ *British Manual of Military Law 1929*, 55; Army Act, Rules of Procedure 1926, rule 60 (A) and (B).

⁵⁹ *ibid* 57.

prosecution witnesses.⁶⁰ These witnesses would first be questioned by the prosecutor during their examination-in-chief, then by the defence through cross-examination, and then again by the prosecutor through re-examination. At the end of the prosecution's case, the defence had the right to submit that the prosecution had not established 'a *prima facie* case'.⁶¹ This argument was successfully made by the defence in a number of the Singapore Trials.⁶² If the court agreed with this argument of the defence, the accused would be acquitted of the charge concerned.

After the prosecutor's presentation of his case, it would then be the turn of the accused to open his defence. If the defence intended to call witnesses who would testify on the facts of the case, the defence could make an 'opening address'.⁶³ Defence witnesses would be subject to questioning by the prosecutor just as how the prosecution's witnesses had been subject to questioning by the defence. After concluding the questioning of defence witnesses, the defence counsel would make a 'closing address'.⁶⁴ The prosecution would have the right to reply to this.⁶⁵ If the accused chose to call only witnesses to testify about his character rather than about the facts of the case, the prosecution would first give the closing address first and the defence then had the right to reply. Counsel from each side were responsible for putting forward witnesses in support of their case, arranging the order of these witnesses, and determining how these witnesses would be questioned.

⁶⁰ *ibid* 55.

⁶¹ Army Act, Rules of Procedure 1926, rule 40 (A), note 1.

⁶² *British Manual of Military Law 1929*, 644, note 1; Army Act, Rules of Procedure 1926, rule 40.

⁶³ Army Act, Rules of Procedure 1926, rule 41 (A).

Counsel had the right to question or cross-examine the other side's witness, though the right to cross-examine may be waived. The questioning of witnesses was to take place in a particular manner in line with common law rules, and this gave rise to problems for Japanese defence counsel, an issue I explore in the next section. After counsel from both sides completed their questioning of a witness, or after the re-examination stage, the court could pose questions to the witness.⁶⁶ British military courts often did this in the Singapore Trials. Additionally, the court had the power to recall any witness at any time prior to its finding, when requested by the prosecution or the defence who may put questions to the witness through the court.⁶⁷ The court could also decide to recall and question any witness at its own initiative when this was 'in the interests of justice'.⁶⁸ While the courts did engage in the active questioning of witnesses in the Singapore Trials, the theory of the case and evidence to be presented rested in the hands of the prosecution and defence counsel.

The adversarial process put in place for the Singapore Trials meant that counsel were expected to take an active role in these trials. Counsel chose the facts to put forward, the witnesses to call, and the order in which these witnesses would be called. They were in charge of eliciting information from witnesses and testing the veracity of opposing counsel's witnesses. Counsel were responsible for putting together and presenting the theory of the case. In contrast, it should be recalled that in Japan's pre-war

⁶⁴ Army Act, Rules of Procedure 1926, rule 41.

⁶⁵ Army Act, Rules of Procedure 1926, rule 41.

⁶⁶ *British Manual of Military Law 1929*, 55; Army Act, Rules of Procedure 1926, rule 85.

⁶⁷ *ibid* 57.

⁶⁸ *ibid* 57.

inquisitorial system, defence counsel played a very limited role and case development was steered by judges rather than counsel. As explained in the preceding sections, the professional legal training conducted in Japan's pre-war legal system did not adequately equip Japan-trained counsel to participate in the Singapore Trials. This was because Japan's pre-war legal system drew on German and French laws and used an inquisitorial trial process. In contrast, as explained in this section, the legal framework of the Singapore Trials authorised the application of British laws and imposed a common law adversarial system. Defence counsel trained in Japan thus did not have the professional legal 'tool kit' required to participate effectively in the Singapore Trials. This resulted in Japanese defence counsel having some participations difficulties in the Singapore Trials, which I examine in the section below.

4. Participation challenges of Japanese Defence counsel in the Singapore Trials

In this section, I study the participation challenges experienced by Japanese defence counsel in the Singapore Trials. First, I assess defence counsels' knowledge of the substantive laws employed in the Singapore Trials and counsels' ability to employ these laws effectively when making legal arguments. Second, I explore some procedural mistakes commonly made by Japanese defence counsel during these trials as well as the judicial interventions made in response to these mistakes. Third, I study the tendency of some Japanese defence counsel to make weak tactical choices despite being advised

against these choices by judges. Last, I analyse many Japanese defence counsels' failure to adopt an adversarial stance as expected of counsel in English common law trials.

(a) Japanese defence counsel's relative unfamiliarity with substantive law in the Singapore Trials

Compared to contemporary war crimes trials, there was relatively little legal doctrinal analysis at all stages of the Singapore Trials. Trial participants did however make reference to British law and international law materials. Trial records show that Japanese defence counsel were not as adept as their British counterparts when referring to such legal material. However, some Japanese defence counsel did learn how to make creative arguments with such sources.

i. Japanese defence counsel's use of international law and British law

The depth of counsels' international law arguments varied across the trials. In trials attracting more public attention, prosecutors and defence counsel would generally refer to more international legal material. In the Double Tenth trial of *Sumida Haruso and others*, the two Japanese defence lawyers, Suzuki Hisakazu and Nori Masakazo, demonstrated their ability to use international law materials and reasoning by arguing that the defendants were not required to observe a particular provision of the 1907 Hague

Convention because Japan's ratification of the treaty included a reservation to that provision.⁶⁹

Sumida Haruso and others was the second case defended by Suzuki and the first case by Nori. In their closing address, defence counsel argued that Japan was not bound by Article 44 of the Hague Convention because she had 'ratified the stated Regulations with the proviso that she has not accepted this Article 44'. In light of this, defence counsel argued, 'for the Japanese Army to take away, detain and investigate by compulsion the inhabitants of territory occupied by it in order to obtain information regarding the incident of sinking of transport ships by Allied activities are its natural rights and in no way infringe International Law'.⁷⁰ Prosecutor Staff Captain A.A. Hibbert argued in response that Japan's acceptance of Article 44 did not matter as the case concerned 'a crime against humanity, a flagrant and disgusting breach of the 'jus gentium' regardless of whether an interdict upon such a crime has been committed to paper, signed and ratified, or not'.⁷¹

As to be expected, British counsel demonstrated a higher level of familiarity with British legal material than their Japanese counterparts in the Singapore Trials. British defence counsel cited more British legal material than Japanese defence counsel. For example, in the first war crimes trial heard in Singapore, *Gozawa Sadaichi and others*, British defence counsel referred to British case law on conspiracy, corroboration,

⁶⁹ *Trial of Sumida Haruso and others*, NAUK, WO 235/891 ('*Trial of Sumida Haruso and others*') SP 00605.

⁷⁰ *ibid.*

⁷¹ *ibid* SP 00680.

treatment of a hostile witness and similar fact evidence in his closing statement.⁷² In comparison, Japanese defence counsel drew on less British material in their arguments. This disadvantage may have been somewhat ameliorated by the assignment of British defence advisory officers whose role, among others, was to provide Japanese defence counsel with assistance on British law. It should be noted, however, that most British defence advisory officers were not legally trained.⁷³

In some trials, Japanese defence counsel demonstrated a clear lack of basic legal knowledge about British law and the British military court system. For example, in *Tsuruoka Shiroo*, Japanese defence counsel asked the prosecution witness responsible for taking pre-trial statements whether the word '[a]ffirmed' had the same meaning as 'sworn'.⁷⁴ In *Hara Teizo and others*, the Japanese defence counsel objected to evidence taken at a court of inquiry because 'the Investigating Officer took this statement in the capacity of a Police Officer'.⁷⁵ Such statement taking fell within the usual responsibility of a British military court of inquiry. The court responded by noting that Japanese defence counsel may not have understood 'the nature of a Court of Inquiry' and that based on British military law, this was a court whose officers were authorised to collect information during investigations.

⁷² *Trial of Gozawa Sadaichi and others*, NAUK, WO 235/813 ('*Trial of Gozawa Sadaichi and others*')

⁷³ As explained in Chapter 2, the British military had difficulties finding legally trained military personnel to serve in these trials.

⁷⁴ *Trial of Tsuruoka Shiroo*, NAUK, WO 235/838 ('*Trial of Tsuruoka Shiroo*'), SP 00010.

⁷⁵ *Trial of Hara Teizo and others*, NAUK, WO 235/ 818 ('*Trial of Teizo Hara and others*'), SP 00035.

In some cases, Japanese defence counsel openly admitted their unfamiliarity with the law and procedure of the Singapore Trials. Such expressions of unfamiliarity undoubtedly held some truth, in light of Japanese defence counsel's inadequate legal training. Regardless, some defence counsel could have used such expressions to obtain judicial and public sympathy. In *Tagawa Masao and others*, the two Japanese defence counsel were not assigned any defence advisory officer.⁷⁶ At the trial's sentence mitigation stage, Japanese defence counsel argued for a lower sentence and referred to his inadequate grasp of English law: 'I do not pretend to learning of English law but as I understand it is the maximum penalty for manslaughter according to the Law of England is penal servitude for life.'⁷⁷

This case of *Tagawa Masao and others* is interesting because Japanese defence counsel, though expressing his unfamiliarity with British law, had put forward a legal argument on jurisdiction that seemed to have persuaded the court to some extent. In this case, the accused were civilian employees of a commercial firm engaged by the Japanese military in Port Blair of the Andaman and Nicobar Islands. Japanese defence counsel argued that these defendants were civilians and were not in the service of the military. Defence counsel argued that the civilian accused did not fall under the jurisdiction of British military courts.⁷⁸ The court eventually sentenced two of the accused to life imprisonment, one to ten years imprisonment, and another to eight years. However, when passing these sentences, the court publicly articulated its agreement with defence

⁷⁶ *Trial of Tagawa Masao and others*, NAUK, WO 235/848 ('*Trial of Tagawa Masao and others*')

⁷⁷ *ibid* SP 00086.

⁷⁸ *ibid* SP 00082; read also, defence counsel's explanations at SP 00062.

counsel's argument on jurisdiction, noting that the accused should have been prosecuted 'in 1944 by a Japanese military court set up by the Japanese Military Administration in the Andaman Islands'.⁷⁹ The court's observation that the accused should have been tried by a Japanese military court rather than by a war crimes courts reflected defence counsel's argument that the court did not have jurisdiction over the accused. Some Japanese defence counsel therefore employed British law in a persuasive way during the trials.

ii. Defence counsel's learning of legal materials through repeat trial participation

Despite the many challenges encountered, it is noteworthy that most Japanese defence counsel were responsible for questioning witnesses and navigating the procedural niceties of the Singapore Trials. This may have been facilitated by the relatively informal approach taken by most judges as well as the repeat participation of some Japanese defence counsel in these trials. The majority of Japanese defence counsel were involved in more than one case in the Singapore Trials. Some defence counsel also learned British laws through repeat participation in the trials. Two Japanese defence counsel in the Singapore Trials, Konno and Sachio Fukushima, were involved in seven cases, the highest number of cases taken on by Japanese defence counsel. In his first case, *Tamura Shinji*, Konno, who was a superior court judge of Tokyo, worked alongside Komori who

⁷⁹ *ibid* SP 00065. It should be noted that the DJAG disagreed with the court's findings on this point, noting that: 'Japanese civilian firms who went to the Andaman Islands after the occupation by the Japanese armed forces obviously went there at the request of and in the interests of the Military Administration. They were sponsored by the Military Authorities and there is no doubt that they were under the overall control of the Military Administration.' Judge Advocate Report, SP 0006.

was a lieutenant from the Imperial Japanese Navy.⁸⁰ In their closing statement, counsel referred exclusively to Japanese laws governing superior orders, such as the ‘Imperial Rescript given by the Emperor of Japan to Army and Navy in 1882’ and the ‘Manual on the Operational duties’.⁸¹ In other words, Japanese defence counsel in this case placed much reliance on Japanese law when making their arguments.

Yoshino Iku was the seventh case defended by Konno. In this case, the accused was charged with killing a civilian in British Borneo as ordered by the Japanese military police or Kempeitai. Konno continued to refer to Japanese regulations, this time in relation to orders given by the Kempeitai.⁸² However, he also referred to Chapter VII of the British MML to argue that the accused should not be penalised for following orders issued by the Kempeitai. This MML provision read:

Again, where a person commits an offence through the medium of an innocent agent, he is criminally responsible even though absent when the offence is committed. Thus, if a soldier, knowing a note to be forged, induces a comrade to get it changed or knowing that a pair of boots do not belong to him, induce a comrade to steal them by representing that they were the own property of the actual possessor, in both of these cases the soldier, but not his comrade, is criminally responsible.

Based on this provision, Konno argued in his closing statement that the accused should be considered such an ‘innocent agent’ while those who had given him the order should be held ‘criminally responsible’.⁸³ The British MML provision dealing with superior orders, which is further discussed below, expressly did not permit such orders to

⁸⁰ *Trial of Tamura Shinji*, NAUK, WO 235/816 (‘*Trial of Tamura Shinji*’)

⁸¹ *ibid* SP 00032.

⁸² *Trial of Yoshino Iku and another*, NAUK, WO 235-928, (‘*Trial of Yoshino Iku and another*’), SP 00039.

automatically exculpate the accused. The MML provision cited by counsel dealt with mistake of fact instances, as demonstrated by its examples, but was creatively deployed by Japanese defence counsel to apply to the facts of the case.

Counsel's use of British and international legal materials did not always serve as an indicator of effective lawyering in the Singapore cases. When the prosecution offered only weak evidence, and this happened in many cases, Japanese defence counsel could secure acquittals by attacking the strength of prosecutorial evidence. This was done by relatively experienced Japanese defence counsel in the Singapore Trials. Sachio Fukushima, like Konno, took up seven cases in the Singapore Trials. In his first case, *Kojima Hisajiro and Takayoshi Eizo*, which Sachio defended alongside K. Makino, the defence argued at the close of the prosecution's case that the prosecutor had failed to make a case against one of the accused.⁸⁴ The court agreed with the defence and acquitted the accused. In the last case defended by Sachio, *Ueda Toraki*, Sachio successfully secured the acquittal of the accused by challenging the reliability of prosecution's evidence and the pre-trial statement of the accused.⁸⁵

In short, some Japanese defence counsel showed a lack of basic knowledge about British law. However, despite their lack of training in British law and procedure, trial records show that Japanese defence counsel were largely responsible for questioning witnesses and making arguments at trial. The informal manner of trial proceedings and

⁸³ *ibid* SP 00041.

⁸⁴ *Trial of Kojima Hisajiro and another*, NAUK, WO 235-826 ('*Trial of Kojima Hisajiro and another*')

⁸⁵ *Trial of Ueda Toraki*, NAUK, WO 235/899 ('*Trial of Ueda Toraki*'), SP 00107.

the assignment of British defence advisory counsel to the defence probably helped ameliorate some participation challenges of defence counsel. Some Japanese defence counsel managed to put forward legal arguments that judges found persuasive. Defence counsel's repeat trial participation exposed them in some degree to relevant British legal material and effective defence strategies. Nevertheless, as explained below, some Japanese defence counsel made recurring procedural mistakes in the Singapore Trials.

(b) Procedural mistakes made by Japanese defence counsel in the Singapore Trials

Japanese defence counsel had difficulties with common law rules governing the asking of questions and introduction of evidence into court. This is understandable as these rules require information to be presented in ways that are significantly different from everyday communication. This section outlines the common procedural mistakes made by Japanese defence counsel. In studying these errors, such as the asking of leading questions, it should be noted that counsel may have chosen to make such 'mistakes' as part of their defence strategy. However, the frequency and nature of procedural mistakes made by Japanese defence counsel shows that many of these mistakes resulted from Japanese defence counsel's genuine unfamiliarity with applicable common law rules.

i. Difficulties with rules on questioning

A common procedural mistake made by Japanese defence counsel was the use of leading questions during examinations-in-chief. As explained in the MML, leading questions are questions 'suggesting the answer which the person putting the question wishes or expects

to receive’ or those ‘suggesting disputed facts, as to which the witness is to testify’.⁸⁶ The rule prohibiting counsel’s use of leading questions during examination-in-chief, which continues to apply in common law adversarial trials today, aims to prevent counsel from colluding with his or her own witness.⁸⁷ Judges in the Singapore Trials were generally patient with Japanese defence counsel who used leading questions and would intervene with a brief explanation. A representative example of the latter would be the court’s response to defence counsel in *Sato Tamenori and others*.⁸⁸ When defence counsel asked a leading question during examination in chief, the court explained to counsel that he ‘must ask the witness questions which do not obviously require the answers which he wants to obtain’.⁸⁹

Some judges gave procedural explanations that were particularly lengthy. In *Fukuei Shimpei*, the British court asked Japanese defence counsel whether he was ‘fully conversant with the rights of the accused in respect of his defence’.⁹⁰ Japanese defence counsel responded by admitting that he was not ‘fully conversant with the procedure’.⁹¹ The court then proceeded to give defence counsel a step-by-step breakdown of trial procedure:

Let me explain to him then that the accused is entitled to give evidence on oath or to make a statement not on oath and he is entitled, if he wishes, to

⁸⁶ *British Manual of Military Law 1929*, 99.

⁸⁷ Reference to objective of leading questions rule.

⁸⁸ *Trial of Sato Tamenori and others*, NAUK, WO 235/814 (*‘Trial of Sato Tamenori and others’*), SP 00032-00033.

⁸⁹ *ibid.*

⁹⁰ *Trial of Fukuei Shimpei*, NAUK, WO 235/825 (*‘Trial of Fukuei Shimpei’*), SP 42.

⁹¹ *ibid* SP 42.

make no statement at all. He therefore has three choices - give evidence on oath, to make a statement not on oath and to give no evidence at all himself. Secondly the accused is entitled to call witnesses for his own defence and those witnesses may be witnesses to fact or witnesses to character or both. If the defence calls witnesses to the fact then Counsel for the Defence is entitled to make an opening speech, but the Prosecution then has the right of final reply. If the Defence calls no witnesses to the fact whether or not he calls witnesses to character, that is no witnesses to fact other than accused, then Counsel for the Defence is not entitled to make an opening address, but is entitled to the final right to reply, and finally, if the accused gives evidence himself he should be the first witness for the Defence.⁹²

Such lengthy judicial explanations about trial procedure were not the norm. The court's lengthy explanation in *Fukuei Shimpei* may have been in response to defence counsel's open admission of his unfamiliarity with trial procedure. It was more common for judge to give defence counsel short descriptions of specific procedural rules.

While judges were generally lenient, some issued strict warnings to defence counsel who repeatedly made the same type of mistake. In *Hashimoto Minoru and others*, the court had issued a number of reminders to Japanese defence counsel to refrain from using leading questions.⁹³ When defence counsel again put a number of leading questions to witnesses, the court sternly intervened to put a stop to this. The judge admonished defence counsel for 'leading the witness shamelessly', going on to remind counsel that any 'question that demands a simple answer 'Yes or No' is a leading question'.⁹⁴ After receiving this judicial warning, it is noteworthy that Japanese defence counsel did not ask any further leading questions. In repeatedly asking such leading

⁹² ibid SP 43.

⁹³ *Trial of Hashimoto Minoru and others*, NAUK, WO 235/861 ('*Trial of Hashimoto Minoru and others*'), SP 00067.

⁹⁴ ibid.

questions, Japanese defence counsel could have hoped to benefit from the generally lenient approach of the courts. In this case, the defence had not been assigned a British defence advisory officer who would have been responsible for advising the defence on trial procedure. The Japanese defence counsel Uchida Zenjiro had nevertheless served as defence counsel in other cases and should have been aware of the rule against leading questions.

When cautioned by the court, some Japanese defence counsel made changes to align their questioning to the court's instructions. In *Minoru Kaneko*, the prosecutor had twice objected to Japanese defence counsel's use of leading questions.⁹⁵ At the prosecutor's third objection, the court stepped in to explain the nature of leading questions to Japanese defence counsel. The defence counsel responded to the court's explanation by reframing his question.⁹⁶

Q: Was there only one incident in which a local inhabitant died?

Prosecuting Officer: Sounds like leading again.

Court: Counsel for Defence will you please stop leading witness. You must frame your question in such a way that you don't give information to the witness as to the type of answer you require.

(Defence Counsel asks another question and wants to know if it is leading or not: the question was: - was there any other incident in which a local inhabitant died?)

Court: No, that is alright. Except he must not include in his question any hint as to the answer her requires.

⁹⁵ *Trial of Minoru Kaneko*, NAUK, WO 235/832 ('*Trial of Minoru Kaneko*')

⁹⁶ *ibid* SP 0071.

Interpreter: would that question be alright?

Court: That question is alright.

Like many common law procedural rules, the rule against leading questions can be confusing for those who are not legally trained in the common law tradition. It was to be expected that Japanese defence counsel would find these rules difficult to master. Regardless, some defence counsel grasped these rules and even pointed out mistakes made by the prosecution. In *Fukudome Shigeru and others*, Japanese defence counsel Abe Taro objected to the leading questions used by the prosecutor and had his objection sustained by the court. The prosecutor had asked the witness whether when he had ‘reported to Capt Matsuda was Capt Saito there?’⁹⁷ Defence counsel not only objected to this but also explained to the court why the prosecutor’s question was leading in nature, noting that ‘[i]f he had asked who was there it would not be a leading question but to mention a certain person’s name and ask who was there is a leading question’.⁹⁸ The court agreed with defence counsel.

Another common procedural mistake made by Japanese defence counsel was the introduction of new evidence at the re-examination stage. As explained in the British MML, questions asked by counsel as the re-examination stage ‘must be directed exclusively to the explanation of matters referred to in cross-examination’.⁹⁹ Some courts took a lenient approach to defence counsel’s contravention of this rule on re-examination. In *Yamaguchi Akuni and others*, Japanese defence counsel had made repeated procedural

⁹⁷ *Trial of Fukudome Shigeru and others*, NAUK, WO 235/1102 (*Trial of Fukudome Shigeru and others*), SP 52-53.

⁹⁸ *ibid.*

mistakes throughout the trial but the court addressed these mistakes patiently, at one point giving defence counsel an overview of the rules governing examination-in-chief, cross-examination and re-examination.¹⁰⁰ During defence counsel's re-examination of one of the accused, Yamaguchi Akuni, counsel sought to ask a question on a matter which had been raised by another witness but which had not been discussed during Yamaguchi's cross-examination. The court noted that though this question did 'not arise strictly out of cross-examination', it would be allowed.¹⁰¹

The British MML recognised that the court may give the other side a chance to cross-examine on any new matters introduced at the re-examination stage.¹⁰² The possibility of allowing the other side to cross-examine meant that the court could allow new matters to be introduced during re-examination by allowing the other side to later cross-examine on these new matters. In *Minoru Kaneko*, defence counsel introduced new evidence at the re-examination stage, and the prosecutor swiftly objected to this.¹⁰³ The court said that it would allow the prosecutor to put questions on this new evidence to the witness through the court after defence counsel's re-examination. Most courts therefore adopted a flexible approach to questioning mistakes made by Japanese defence counsel, perhaps implicitly recognising that such common law rules were particularly hard for those trained in a different legal tradition.

⁹⁹ *British Manual of Military Law 1929*, 102.

¹⁰⁰ *Trial of Yamaguchi Akuni and others*, NAUK, WO 235/843 ('*Trial of Yamaguchi Akuni and others*'), SP 00116.

¹⁰¹ *ibid* SP 00138.

¹⁰² *British Manual of Military Law 1929*, 102.

¹⁰³ *Trial of Minoru Kaneko* (n 95).

ii. Difficulties with evidence admission rules at trial

Even with judicial explanation and intervention, some defence counsel had difficulties mastering the ins and outs of particularly technical procedural rules, such as those governing the admissibility of out of court statements. In *Shimizu Kiyogo and others*, during Japanese defence counsel's cross-examination of prosecution witness Bachee, counsel sought to refer to an affidavit of Bachee that had not been produced by the prosecution in court as evidence, with the aim of demonstrating inconsistency between Bachee's court testimony and his affidavit.¹⁰⁴ The court explained to Japanese defence counsel that he was not allowed to ask questions on evidence that had not yet been proved during cross-examination, and that the prosecution was not obliged to introduce the said affidavit into court. The court gave a particularly detailed explanation to defence counsel on how he may achieve his purpose of showing inconsistency between Bachee's court testimony and his affidavit.¹⁰⁵ Like the rules on witness questioning, the method of cross-examining witnesses on previous statements was also set out in the MML.¹⁰⁶ Even with the assistance of British defence advisory officers and access to the MML, some Japanese defence counsel found these procedural rules difficult to master.

As explained in chapter 1, the 1945 Royal Warrant framework greatly relaxed the evidentiary rules that would otherwise apply to these British military courts. The courts were permitted to consider affidavits and other out of court statements without calling the

¹⁰⁴ *Trial of Shimizu Kiyoji and others*, NAUK, WO 235/882 ('*Trial of Shimizu Kiyogo and others*')

¹⁰⁵ *ibid* SP 00031-00032.

¹⁰⁶ *British Manual of Military Law 1929*, 101-102.

makers of these statements to the stand as witnesses.¹⁰⁷ The prosecution indeed made liberal use of such out of court statements in the Singapore Trials. Many makers of these statements were not called as witnesses due to distance and travel costs. Defence counsel could still argue that these statements did not meet the admissibility requirements of the 1945 Royal Warrant framework. However, defence counsel found it challenging to construct effective or convincing arguments against admissibility beyond objecting to the admission of these statements or stating that they wished the relevant witnesses to be called.

In *Sumida Haruso and others*, the court repeatedly asked Japanese defence counsel whether he wished to object to the prosecution's submission of a copy of an investigative report that was appended to an affidavit earlier admitted.¹⁰⁸ This exchange is worth reproducing in some detail.

The Counsel for the Defence objected to the production of the Report.

Court: (to Interpreter). Would you ask the Counsel for the Defence to put forward what arguments he wishes on the matter?

Interpreter: The Counsel for the Defence says that he is not clear on the legal validity of the said documents, and would like to ask whether it was properly done by a person legally authorized to investigate.

Court: Does the Counsel for the Defence object to the production of this document itself or merely to the copy which is at present in the possession of the Prosecuting Officer.

Interpreter: He objects to the production of the copy Sir.

¹⁰⁷ When the prosecution submitted these affidavits as evidence without calling affidavit-makers as witnesses, the defence was deprived of the opportunity to cross-examine these witnesses.

¹⁰⁸ *Trial of Sumida Haruso and others* (n 69) SP 00066-00067.

Court: According to the Regulations for the Trial of War Criminals. It is permitted to produce a copy of an original document where, in the opinion of the Court, the original cannot be produced without undue delay. Is it the submission of the Counsel for the Defence that the Regulation does not in that case apply?

[...]

Court: I take it that Counsel for the Defence have been given a copy of the Regulations concerning the Trials of War Criminals.

(The Counsel for the Defence found that he had left his copy of the Regulations at his quarters, and a copy was handed to him by the Prosecution).

Counsel eventually agreed that the contested report should be admitted. This exchange demonstrates a number of points. It was hard for defence counsel to understand how admissibility worked under the 1945 Royal Warrant framework. Despite numerous promptings from the judge, defence counsel did not articulate a procedural challenge based on the 1945 Royal Warrant framework. Defence counsel was also unprepared in other ways; he did not have a copy of the 1945 Royal Warrant and had to borrow a copy from the prosecution. Counsel's failure to bring with him a copy of the 1945 Royal Warrant may seem basic and unreasonable, but should be assessed in light of the limited preparation time afforded to counsel and post-war conditions of resource scarcity as explained in Chapter 2.

Many of the common law rules considered in this section had been influenced by the common law's use of trial by jury. Some evidential rules aimed to shield the jury from irrelevant or misleading facts. As mentioned earlier, Japan's legal process was inquisitorial in nature and lay participation was never actively implemented in Japan

despite Japan's pre-war Jury Act. There was no equivalent need for such technical rules in Japan's pre-war legal system; counsel trained in Japan must have found the rationale and workings of these common law rules hard to grasp.

(c) Tactical choices of Japanese defence counsel which disadvantaged the accused

Apart from making procedural mistakes, some decisions taken by Japanese defence counsel would generally be understood as going against the interest of the accused. Judges responding to such decisions of defence counsel would usually offer advice on the potential consequences of pursuing a certain tactic while stressing that decisions ultimately rested with defence counsel.

i. Judicial advice to Japanese defence counsel on tactical issues

When Japanese defence counsel made tactical decisions that were inconsistent with usual practice or that could undermine the interest of the accused, judges would usually explain possible consequences to defence counsel. For example, in a number of cases, Japanese defence counsel sought to introduce facts about the accused person's character prior to the court's findings of guilt or innocence, by asking character-related questions to witnesses or calling witnesses to testify on character. In *Takemoto Keiichi*, defence counsel asked the accused a question relating to his character.¹⁰⁹ The court intervened to caution Japanese defence counsel Yuze Kawaichi about the consequences of asking a

¹⁰⁹ *Trial of Takemoto Keiichi*, NAUK, WO 235/922 ('*Trial of Takemoto Keiichi*')

character-related question to the accused. Defence counsel had asked the accused whether he had done ‘any good for the POWs’ when he was serving at a particular camp not linked to the crime at hand.¹¹⁰ The court intervened, explaining to counsel that such evidence related to character rather than the crime in question and the prosecutor would be able to cross-examine on such evidence. At the court’s reminder, the defence stopped his line of questioning.¹¹¹

When highlighting such consequences to defence counsel, courts would often emphasise that the final decision on whether to proceed lay with defence counsel. For example, in *Awakuni Riyosuke and another*, Japanese defence counsel chose to call two witnesses Tsueda and Koga prior to calling Yamagushi, one of the accused, to testify.¹¹² The court explained to defence counsel that if he decided to call his witnesses in this manner, the court may choose to put less weight on the evidence of the accused as the accused would have heard the testimony of the two witnesses prior to testifying himself. The court elaborated that if the accused was heard after the witnesses, the court ‘may place as much weight as it considers fit on the evidence of the accused’ and that it ‘may judge that less weight is to be placed on the accused’s evidence because of that’.¹¹³

Nevertheless, the court in *Awakuni Riyosuke and another* explained to defence counsel that he was free to decide how he wished to call his witnesses, noting that the

¹¹⁰ *ibid* SP 00018.

¹¹¹ *ibid*.

¹¹² *Trial of Awakuni Riyosuke and another*, NAUK, WO 235-835 (‘*Trial of Awakuni Riyosuke and another*’), SP 00046.

¹¹³ *ibid*.

court ‘cannot lay down any order in which he wishes to call his witnesses’.¹¹⁴ While the court suggested ‘that perhaps it would be a better course to call the accused first’, it emphasised that counsel could ‘proceed as he likes’.¹¹⁵ In the same case, when the prosecutor later objected to defence counsel’s witnesses, the court highlighted that it was ‘entirely up to the Defence as to who they wish to call’.¹¹⁶ Judges intervening to advise defence counsel on tactical decisions thus took care to emphasise that the decision was ultimately to be made by defence counsel. This reflected judges’ own understanding of their hands-off judicial role in adversarial trials led by counsel.

ii. Defence counsel’s reaction to judicial suggestions on tactical issues

Not all Japanese defence counsel followed suggestions made by judges. Some defence counsel chose to stick to their choices even after courts brought to their attention the possible negative consequences of their decisions. In such cases, some courts would reiterate their explanation and concern. In *Wakayama Yukio and another*, Japanese defence counsel Ohshima Masayoshi explained to the court that some of his witnesses who would be called before the court’s finding of guilt or innocence would be witnesses of character.¹¹⁷ The court advised defence counsel that if he was doing so, the prosecutor would have the right to examine character and present evidence on bad character. Despite

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

¹¹⁷ *Trial of Wakayama Yukio and another*, NAUK, WO 235/972, (*‘Trial of Wakayama Yukio and another’*)

the court's reiteration of its warning, defence counsel continued to state that he wished to maintain that order of witnesses.¹¹⁸

Some Japanese defence counsel presented clear reasons to the court when choosing not to follow the advice of the court. In *Okada Seiichi*, Japanese defence counsel Saheki Kiuji, who was a judge of the Hiroshima Court, indicated to the court that he was going to ask questions about the character of the accused before the court's finding of guilt or innocence.¹¹⁹ The court explained that if he did so, the prosecutor would then be able to introduce evidence of bad character. Defence counsel replied that he had 'no objection' to this, and in response, the court explained it would 'be in the interest of the accused' to withhold that evidence.¹²⁰ However, defence counsel stuck to his position, stating that the accused person's 'character ha[d] a great deal to do with ascertaining the facts'.¹²¹ The fact that some Japanese defence counsel were willing to go against the advice of judges needs to be appreciated against defence counsels' procedural unfamiliarity. It shows that some defence counsel were able to exercise, when they wanted to, a not insignificant level of independence in the Singapore Trials.

Japanese defence counsel's ability to make considered choices during the trials also depended on the type of issue encountered. Some issues, such as witness order and questioning, could have been anticipated and considered by defence counsel before the trial. However, defence counsel were at times confronted with unforeseen and unusual

¹¹⁸ *ibid* SP 00091.

¹¹⁹ *Trial of Okada Seiichi*, NAUK, WO 235-919 ('*Trial of Okada Seiichi*')

¹²⁰ *ibid* SP 30.

¹²¹ *ibid*.

issues during the Singapore Trials. For example, in *Kojima Hisajiro and Takayoshi Eizo* when the prosecution proceeded to call one of his witnesses to the stand, the court discovered that the said witness was in the gallery¹²². The court observed that ‘[t]he trouble about a witness having been in court is that the weight of the evidence which he gives may be considerably reduced.’¹²³ The court then asked the defence counsel if he had any submissions to make on this point. In response, the defence counsel stated: ‘The Defence Counsel wish to request that the questioning of this witness be not carried out, sir.’ The court then asked the defence, ‘Not carried out because he has already heard what the evidence is?’ From this exchange, it is clear that the court had to highlight to defence counsel why the witness’ prior presence in court was problematic as Japanese defence counsel was probably unaware of the reason.

In the *Awakuni Riyosuke and another*, the court not only forgot to swear in the shorthand writer, it also found a prosecution’s witness sitting in the courtroom.¹²⁴ To address the belated swearing in of the shorthand writer, the court asked counsel if they had any objection to admitting the record already taken down by the shorthand writer before he had been sworn in. Counsel made no objection to this. Though the court specifically directed Japanese defence counsel’s attention to these unanticipated situations, Japanese defence counsel could hardly be said to be aware of the relevant legal issues and the implicated rights of the accused. No adjournment was given for Japanese defence counsel to consult with the accused or with British advisory defence officers in

¹²² *Trial of Kojima Hisajiro* (n 84) SP 00031.

¹²³ *ibid.*

¹²⁴ *Trial of Awakuni Riyosuke and another* (n 112) SP 00027 and SP 00045.

these situations. The limited intervention of the court in this case, as well as in other cases considered earlier, may be explained by the court's reluctance to be seen as overly active. A proactive judicial stance would have been inconsistent with the neutral and detached posture a court is supposed to take in counsel-led adversarial trials. Courts were therefore reluctant to disturb the tactical choices of defence counsel even when these undermined the interests of the accused.

(d) Japanese defence counsel's failure to adopt an adversarial stance

The majority of Japanese defence counsel in the Singapore Trials did not adopt the competitive attitude expected of counsel in adversarial trials. The deferential tone adopted by most Japanese defence counsel in the Singapore Trials may be explained by counsel's unfamiliarity with the trials' common law adversarial culture as well as by post-war power dynamics. As explained in chapter 2, the first batch of Japanese defence counsel were considered Japanese Surrendered Personnel and had their movement and conduct regulated by the British military. In addition to this, defence counsel in pre-war Japan were expected to adopt a polite and deferential attitude towards the prosecutor and court.¹²⁵ Indeed, this culture of politeness and respect on the part of defence counsel continues to exist today.¹²⁶

i. The persistent deferential styles of Japanese defence counsel

¹²⁵ Kohei Nakabo, 'Judicial Reform and the State of Japan's Attorney System: A Discussion of Attorney Reform Issues and the Future of the Judiciary' (2001) 10 Pacific Rim Law and Policy Journal 633.

Japanese defence counsel came across as deferential even when the court clearly came down on their side on particular issues. In *Kamei Kasaku*, the accused was defended by Shimokana Hisaichi and Hirose Washiro, who were judge and counsel of the Tokyo Supreme Court respectively.¹²⁷ The prosecution had raised an objection to defence counsel's line of questioning.¹²⁸

Q. Wasn't the coolie head responsible for allotting the coolies their work?

Prosecutor: My submission is that in this case I haven't alleged any apportionment of responsibility on the part of the accused or any other person, it is allegation of specific acts of illtreatment.

Court: I am afraid you must let the Defence Counsel proceed in his own line.

Prosecutor: I will point out to the Court that this is the line which I have taken, allegation of specific acts and not apportionment of responsibility.

Court: We do not know what the Defence Counsel is trying to bring out.

[...]

Defence: I heard the learned Prosecutor saying just now that the labourers were being made to work by force, therefore I am just trying to prove ...

Court: The Court approves that you may proceed on the line you are going.

Defence: If it is not necessary I can withdraw my question.

¹²⁶ In his contemporary study, Johnson notes how Japanese defence counsel believe they should act 'as cooperatively and constructively' with prosecutors as possible. David T Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan* (1 edition, Oxford University Press 2001) 75.

¹²⁷ *Trial of Kamei Kasaku*, NAUK, WO 235/997 ('*Trial of Kamei Kasaku*'), SP 00013.

¹²⁸ *ibid.*

Court: It is not a case of being unnecessary. The Court has said that you may carry on, on the lines you have taken.

Japanese defence counsel often backed down when judges asked them further questions on their submissions. For example, in the *Hara Teizo and others*, the prosecutor asked the court to declare one of his witnesses hostile as the witness was refusing to answer questions in a forthright manner.¹²⁹ The court then explained to Japanese defence counsel the meaning of a hostile witness, asking defence counsel whether he had any objections to the witness being declared hostile. Defence counsel then said that he did not wish for the witness to be declared hostile. However, when the court asked defence counsel to explain the basis for his objection, defence counsel stated that he had nothing further to say. Defence counsel may have been reluctant to be perceived as challenging the court. Or defence counsel may not have known the answer to the specific question posed by the court, though the court had explained what a hostile witness means, and was unwilling to expose his lack of knowledge.

Not all Japanese defence counsel failed to answer questions put to them by judges. Counsel may have had difficulty responding to questions or issues involving more technical terms, such as that relating to hostile witnesses. Japanese defence counsel had less problems answering questions on non-technical matters, such as the relevance of evidence or facts to the crime concerned. In *Kojima Takeharu*, the accused was charged with the deaths of three individuals in a ship-building yard.¹³⁰ In his opening address,

¹²⁹ *Trial of Hara Teizo and others* (n 75) SP 00074.

¹³⁰ *Trial of Kojima Takeharu*, NAUK, WO 235/851 ('*Trial of Kojima Takeharu*').

Japanese defence counsel explained that the deaths of one of these individuals was due to sickness and that the accused did not know of the other two deaths.¹³¹ During the trial, Japanese defence counsel called a particular witness, Ozaki Kuichi, to testify about two deaths that were apparently suicides in the ship-building yard. The court asked Japanese defence counsel about the significance of this evidence, specifically whether counsel intended for the court to infer that these two deaths were those referred to in the charge sheet.¹³² The defence counsel explained that his aim was for the witness to explain that apart from the two suicides there were no other deaths reported from the ship-building yard.¹³³ In other words, the argument put forward by defence counsel was that the two deaths were caused by suicide rather than the accused.

The ability of defence counsel to defend and persist in their line of questioning was particularly important as judges often became impatient at lengthy questions. Though judges were on the whole patient with Japanese defence counsel, judges did not hesitate to intervene when they perceived defence counsel's questioning to be meandering or irrelevant. For example, in *Furukawa Ichiji and others*, Japanese defence counsel sought to establish that the victim had been stealing rice and had been punished by the accused. In doing so, defence counsel questioned a witness who had seen the victim with a pail.¹³⁴ Defence counsel asked the witness how he knew the pail had contained hot or cold water. The court intervened at this point, informing defence counsel that whether the water was

¹³¹ *ibid.*

¹³² *ibid* SP 00058.

¹³³ *ibid.*

¹³⁴ *Trial of Furukawa Ichiji and others*, NAUK, WO 235-852 ('*Trial of Furukawa Ichiji and others*'), SP 00023.

hot or cold was ‘not material’ to his case and that the ‘only important fact’ was that there was water in the bucket.¹³⁵

Some judges gave questionable reasons for declining the requests of defence counsel, but defence counsel did not challenge these reasons. In *Hashimoto Minoru and others*, Japanese defence counsel requested for a particular witness Captain Kanenari to be brought from Japan.¹³⁶ Defence counsel explained that one of the victims was shot by Kanenari while the other victims were killed by someone else. He asked the court to adjourn the trial until the arrival of Kanenari but also indicated that the defence had no objection to the court proceeding with the case if it could be adjourned temporarily in the course of the trial to allow for Kanenari’s arrival. The court sought the prosecutor’s opinion, who stated that he had no objection to Kanenari being called if the court deemed it ‘necessary’ for ‘the ends of justice’ as long as he would arrive ‘without any undue delay’.¹³⁷ The court decided that it would continue with the trial, while making arrangements for Kanenari to be sent from Japan. After hearing the third witness for the defence, the court noted that as Kanenari and his subordinates involved had ‘probably’ been on the Andamans when the crime had been investigated, the British court of inquiry in charge would have interviewed them if their evidence had been ‘essential’.¹³⁸ This reason is problematic as it assumes the reason Kanenari was not called by the British court of inquiry was due to the fact that his evidence was not essential. The court of inquiry could have not called Kanenari for other reasons. Its reasoning was not

¹³⁵ ibid.

¹³⁶ *Trial of Hashimoto Minoru and others* (n 93) SPs 00021 – 00023.

¹³⁷ ibid.

¹³⁸ ibid SP 00071.

challenged by the defence counsel, who simply asked the court to cancel the signal sent to call for Kanenari.

ii. Interventions by judges to deal with aggressive prosecutors

Due to their non-confrontational stance, Japanese defence counsel faced particular difficulties when the prosecutor was especially aggressive. Some judges intervened to prevent what they perceived as unfair tactics or pressure being exerted by the prosecutor on Japanese defence counsel. In *Hashimoto Minoru and others*, the prosecutor had objected numerous times to the questioning undertaken by Japanese defence counsel.¹³⁹ Japanese defence counsel did not respond directly to the allegations made by the prosecutor. Rather it was the court that explained to the prosecutor why his objections were unwarranted and why defence counsel's questioning should continue unhampered.

¹³⁹ *Trial of Hashimoto Minoru and others* (n 93) SP 00061.

Q. When Corporal Kurosawa burned the three Indians did you think it was by an order given by Lieutenant Hashimoto?

Prosecuting Officer: Before the question is replied to, I wish to point out that this is already answered.

President: Prosecutor, there is no restriction on questions, and I do not want him to be hampered. Your objection originally was that he was asking questions that did not obey the ethics of cross-examination. The ethics of cross-examination are that the defence counsel and you yourself when you come to cross-examination may ask any question whether factual or otherwise and you may also suggest or offer words to the witness with which he may or may not agree. In my opinion up to now all the questions made by the defence counsel have been quite in order.

Judges also checked the behaviour of prosecutors to prevent any unfairness to the defence. In *Minoru Kaneko*, the prosecution put forward a highly unusual request to the court, asking for permission to discontinue his cross-examination of the witness and to pick it up later.¹⁴⁰ The court observed that the prosecutor's suggestion was 'rather unfair'. Defence counsel then submitted an objection because he deemed the questions asked 'unreasonable'. Directing itself to the prosecutor, the court observed that the defence counsel was objecting to the prosecutor's 'lengthy' questions and directed the prosecutor to keep his 'questions as simple as possible'.¹⁴¹ It should be noted that Japanese defence counsel had described the prosecutor's questions as 'unreasonable' without specifying exactly what he found 'unreasonable' about these questions. The judge more clearly interpreted this as referring to the 'lengthy' nature of the prosecutor's questions. Such judicial critique of the prosecutor's conduct is all the more noteworthy as judges and prosecutors were from the British military. Indeed, as highlighted in Chapter 2, there was personnel movement between the bench and the prosecution. Given this, judges may be

¹⁴⁰ *ibid.*

expected to act more favourably to prosecutors. While judges in the Singapore Trials generally identified with the trial efficiency concerns raised by the prosecution, they did not accede to all prosecutorial requests, especially when this would result in obvious unfairness to the defence.

Japanese defence counsel were more willing to defend their position and confront prosecutors when the court demonstrated a sympathetic or at least patient approach to the defence. In general, however, Japanese defence counsel did not adopt a competitive or combative posture against prosecutors or the court. Indeed, some Japanese defence counsel at times seemed more concerned about avoiding judicial criticism than obtaining the best possible result for their client. In *Takayamani Yoshinobu*, during Japanese defence counsel's examination in chief of the accused Takayamani Yoshinobu, the court twice criticised defence counsel for using leading questions.¹⁴² Upon completing his examination, Japanese defence counsel apologised to the court for using leading questions and explained that he had done so because the accused was being 'rather slow' and not answering his questions.¹⁴³ The court sympathised with defence counsel, telling counsel that it was 'quite alright' and that he 'needn't worry' as 'we all ask leading questions one time or another'.¹⁴⁴

Given the limited and subordinate role played by defence counsel within Japan's pre-war legal system, it was not surprising that Japanese defence counsel adopted

¹⁴¹ *ibid.*

¹⁴² *Trial of Takayamani Yoshinobu*, NAUK, WO 235/836 ('*Trial of Takayamani Yoshinobu*'), SP 00030.

¹⁴³ *ibid.*

deferential styles in the Singapore Trials. Apart from failing to adopt an adversarial posture, some Japanese defence counsel were also not familiar with the common law procedural rules that applied in the Singapore Trials. A number of Japanese defence counsel showed that they were able to learn these procedural rules through their repeat participation in the trials. Learning to adopt an adversarial posture was however more difficult for Japanese defence counsel. In general, from trial records, none of the Japanese defence counsel adopted adversarial postures against the prosecution in the Singapore Trials. However, the decision of defence counsel to adopt a more deferential style may also be explained as a conscious tactic given their professional legal training and the trials' context.

5. Conclusion

There was a mismatch between the professional legal 'tool kit' of Japanese defence counsel and the professional legal 'tool kit' required to effectively participate in the Singapore Trials. Legal training in pre-war Japan, especially at the university level, did include classes in comparative law and international law. However, the international law taught focused on State interests rather than on the rights of POWs and civilians. There was also more emphasis on European legal models than Anglo-American law. The designers of pre-war Japan's legal system drew on German and French law. Japan's pre-war criminal legal system employed an inquisitorial trial process that was inquisitorial in nature and where defence counsel had a limited and subordinate role vis-a-vis prosecutors and judges.

In contrast, the 1945 Royal Warrant framework governing the Singapore Trials authorised participants to refer to British and international laws. Furthermore, the Warrant imposed an adversarial process that required counsel to lead the trials and be in charge of case strategy and evidence presentation. The unfamiliarity of Japanese defence counsel with the law and procedure of the Singapore Trials revealed itself in different ways. Counsel had problems following common law rules on questioning and evidence admission. They showed that they were unacquainted with trial procedure and the consequences of their decisions. They also did not adopt an adversarial stance towards the prosecution. Some of these mistakes could have been part of the trial tactics of the defence, but their frequency and the response of other trial participants shows that a substantial number of mistakes made by Japanese defence counsel were genuine.

When addressing Japanese defence counsel's participation issues, judges generally took a flexible and lenient approach. They usually did not penalise defence counsel for making procedural mistakes, unless these mistakes were repetitively made. Judges also intervened to facilitate Japanese defence counsel's trial participation in different ways. Most commonly, judges would provide Japanese defence counsel with explanations of particular rules or procedures. In some cases, judges highlighted the consequences of decisions taken by defence counsel, especially when these decisions could lead to adverse consequences for the accused. Some judges set out the alternatives available to Japanese defence counsel. In addition to taking on such explanatory and advisory roles, judges in the Singapore Trials also sought to ensure fair play between the defence and the prosecution. Some judges took steps to rein in particularly aggressive prosecutors.

Based on the response of defence counsel to the explanations and suggestions of judges, some of the interventions made by judges in the Singapore Trials were clearly effective. A number of defence counsel were able to change their phrasing of questions or conduct in response to judicial explanations. Nevertheless, these judicial interventions were themselves shaped by how judges perceived their role in an adversarial trial. In adversarial trials, counsel are to be responsible for case presentation and direction, while judges are to remain somewhat above the fray. Judges in the Singapore Trials were careful to emphasise to defence counsel that ultimately, tactical decisions lay with defence counsel. The cultural ‘tool kit’ of these judges did not facilitate or enable the robust judicial intervention needed to ensure counsel participation or protect the interests of the accused.

Despite the participation challenges experienced by defence counsel, it is noteworthy that the Singapore Trials proceeded relatively smoothly, without any substantial breaks or disruptions resulting from defence counsel’s lack of acquaintance with the appropriate professional legal ‘tools’. This may have been due to the fact that some defence counsel were assigned British defence advisory officers, though it is not possible from trial records to determine the nature or extent of the latter’s help. In addition, many defence counsel were repeat players, and some counsel were able to pick up legal professional ‘tools’ along the way. However, certain legal professional ‘tools’ or know-how were more easily grasped by Japanese defence counsel than others. For example, while some defence counsel showed an ability to grasp procedural rules on questioning, no Japanese defence counsel appears to have mastered adopting an adversarial posture at trial. In other words, some ‘tools’ were more easily accessed and

learned than others. This was similarly the case when non-Japanese participants were interpreting culturally influenced arguments of the defence, my next chapter's topic of study.

CHAPTER FIVE. INTERPRETING CULTURALLY INFLUENCED ARGUMENTS

The previous two chapters, Chapters 3 and 4, examined communication difficulties associated with two cultural ‘tools’ used by participants in the Singapore Trials: language and legal professional knowledge. This chapter takes a broader look at culture’s influence on defence arguments in the Singapore Trials. I study how Japanese trial participants employed cultural ‘tools’—Japanese norms, beliefs and assumptions—when making arguments, and how these arguments were interpreted by non-Japanese participants in the Singapore Trials.

Section 1 positions the Singapore Trials against other trials where defendants have made similar culturally influenced arguments. Section 2 goes on to examine the then-existing circumstances that would have influenced non-Japanese participants’ interpretation of Japanese participants’ culturally influenced arguments in the Singapore Trials. Section 3, the main part of this chapter, then analyses the different interpretations given by trial participants to the defendants’ culturally influenced arguments. I illustrate how these interpretations were shaped by participants’ cultural unfamiliarity, misunderstandings, and assumptions.

1. Situating the Singapore Trials: culturally influenced arguments in historical and present-day trials

In this section, I show how the Singapore Trials compare with other trials where defendants raised culturally influenced arguments with the aim of explaining how my study adds to existing research on these trials. In the Singapore Trials, the defendants repeatedly argued that they were merely acting in conformity with Japanese norms, beliefs, and assumptions. They contended that these cultural elements invested their conduct with particular meanings, meanings that should be considered when determining guilt and punishment. For example, conduct which may be interpreted as cruel based on non-Japanese standards was only ordinary behaviour based on then-existing Japanese standards. Responding to such arguments by the defence, some prosecutors reminded the court that the accused were not being tried according to Japanese norms, beliefs, or assumptions; the accused were being prosecuted for violations of international law or ‘the laws and customs of war’, as defined in the 1945 Royal Warrant.¹ However, in spite of the prosecution’s arguments and the text of the 1945 Royal Warrant, judges did not prohibit defendants from raising culturally influenced arguments in the Singapore Trials.

In the previous chapter, I discussed how Japanese defence counsel had problems participating in the Singapore Trials due to their unfamiliarity with the trials’ law and procedure. This chapter goes beyond legal professional culture and considers the

¹ *Kasai Tsuguo and others*, NAUK, WO 235/941 (*‘Trial of Kasai Tsuguo’*), SP 00057. For example, in *Kasai Tsuguo and others*, the prosecutor reminded the court in his closing address that the accused were not being tried ‘under the provisions of any code whether of morals or law, that is peculiar to the Japanese Army’ but for violating ‘International Laws’ and ‘Usages of War’.

influence of national and institutional culture on the defendants' arguments at trial. As explained in previous chapters, the term culture, as used in this dissertation, refers to 'the system of symbols and meanings and their associated social practices, both the product and context of social action'.² As such, culture includes a diverse range of 'symbolic vehicles of meaning', including 'beliefs, ritual practices, art forms, and ceremonies, as well as informal cultural practices such as language, gossip, stories, and rituals of daily life'.³ It refers to implicit taken-for-granted beliefs, quotidian customs, expectations, as well as the analogies and frames used to make sense of social conduct.

Such culturally influenced arguments were not only encountered in the Singapore Trials. Similar arguments were raised in other post-Second World War trials involving Japanese defendants.⁴ We also encounter culturally influenced arguments in contemporary war crimes trials involving trial participants with diverse backgrounds. In these trials, as in the Singapore Trials, some defendants claimed that they were acting according to local norms, beliefs, and assumptions.⁵ This cultural aspect of today's war crimes trials remains understudied, though recent empirical studies have highlighted its negative impact on fact-finding and judging. In his work on the Special Court for Sierra

² Susan Silbey, 'Taming Prometheus: Safety Nets or Safety Cultures' 348 <http://citation.allacademic.com/meta/p_mla_apa_research_citation/3/0/3/2/5/p303259_index.html> accessed 3 April 2015.

³ Ann Swidler, 'Culture in Action: Symbols and Strategies' (1986) 51 *American Sociological Review* 273, 274.

⁴ Cohen highlights how different conceptions of fair trial were put forward by Japanese and non-Japanese trial participants in a number of post-Second World War trials, including a number of Singapore Trials. David Cohen, 'Military Justice from WWII to Guantanamo: Fair Trials, Judicial Murder, and International Standards in WWII Trials in Asia' in Rainer Maria Kiesow, Regina Ogorek and Spiros Simitis (eds), *Summa Dieter Simon zum 70. Geburtstag*.

⁵ Alison Dundes Renteln, 'Cultural Defenses in International Criminal Tribunals: A Preliminary Consideration of the Issues' (2011) 18 *Southwestern Journal of International Law* 267. For a case

Leone (SLSC), Kelsall criticises judges for failing to consider local cultural beliefs about magic, childhood, and marriage when deciding the defendants' criminal responsibility.⁶ As further explained below, the defendants in the Singapore Trials argued that their culpability and conduct should be assessed based on Japanese standards of behaviour, institutional relationships, and conceptions of legality.

Domestic courts dealing with ordinary crimes, as opposed to war crimes, also come across culturally influenced arguments. This is particularly the case in trials involving minorities. In these trials, recent immigrants, who are minorities in the country concerned, may refer to cultural norms, beliefs or assumptions to explain or justify their conduct. Judicial treatment of culturally influenced arguments in these domestic trials has received substantial attention from commentators. Many scholars argue that the defendants' culturally influenced arguments should be taken into account when determining their culpability and punishment.⁷ This is because our notions of appropriate behaviour are shaped by the communities that we live in, which inculcate in us a sense of

study on the Special Court for Special Leone, see Tim Kelsall, *Culture under Cross-Examination: International Justice and the Special Court for Sierra Leone* (2013).

⁶ Specifically he criticises the SLSC for dismissing these cultural arguments in favour of technical interpretations of international law and Western rationality. This, observes Kelsall, becomes 'a form of cultural imperialism'. Kelsall (n 5) 8.

⁷ Scholars supporting the consideration of culturally specific arguments generally focus on assessing whether these arguments can be accommodated by legally-recognised categories, such as mistake of fact, duress, or provocation. See, for example, Woodman's work on how culture-specific arguments may be incorporated into defences such as provocation, self-defence, duress, and mistake. Goodman R Woodman, 'The Culture Defence in English Common Law: The Potential for Development' in Marie-Claire Foblets and Alison Dundes Renteln (eds), *Multicultural Jurisprudence: Comparative Perspectives on the Cultural Defense* (Hart Publishing 2009).

what is right, wrong or suitable given the circumstances.⁸ As Renteln highlights, these communities exert a very real impact on the perception and conduct of their members.⁹

These cultural communities may exist on different levels within a national unit or state.¹⁰ Minority groups may subscribe to norms, beliefs, and assumptions different from that of the majority. Certain institutions within a society, such as the military, may promote particular norms, beliefs, and assumptions that differ from those subscribed to by ordinary civilians of the same society. These sub-national cultural communities may exert a higher degree of pressure on their members to conform to norms and expectations. For example, the military exerts a higher degree of pressure on its members by employing rigid indoctrination practices and supervisory mechanisms. Nevertheless, it is important to remember that the boundaries between cultural communities are not watertight or fixed. The nature of the cultural community therefore needs to be considered when assessing the impact of its practices and beliefs on the individual.

Not all commentators support judicial consideration of culturally influenced arguments when determining guilt or punishment. Scholars like Lacey argue that the consideration of such arguments will undermine the criminal law's primary function to enforce a uniform set of norms.¹¹ Regardless of the different scholarly positions taken on this matter, these discussions are premised on the fact that judges are able to understand

⁸ Some sociologists have referred to this process as 'enculturation' Alison Dundes Renteln, *The Cultural Defense* (Oxford University Press 2004) 12.

⁹ As Renteln explains, culture 'strongly influence but do not determine' actions. Ibid 13.

¹⁰ Scholars of multicultural national trials have often studied immigrant communities living within a state. See various chapters in Renteln, *Multicultural Jurisprudence* (n 7).

¹¹ Lacey, Nicola, 'Community, Culture, and Criminalization' in Will Kymlicka, Claes Lernestedt and Matt Matravers (eds), *Criminal Law and Cultural Diversity* (OUP Oxford 2014) 50.

the culturally influenced arguments of trial participants. My study of culturally influenced arguments made in the Singapore Trials intervenes in this debate by examining whether non-Japanese participants understood the arguments put forward by Japanese participants. It highlights and assesses the varying interpretations given by trial participants to culturally influenced arguments in the Singapore Trials.

2. Contextual factors influencing non-Japanese participants' interpretation of Japanese arguments

In this section, I examine contextual factors that influenced non-Japanese participants' interpretation of Japanese participants' culturally influenced arguments in the Singapore Trials. These contextual factors give us a better understanding of why non-Japanese participants interpreted the arguments of Japanese participants in particular ways. First, many anthropologists and researchers have depicted, and continue to depict, Japanese society as essentially different from Western societies. Though some researchers have put forward more nuanced views, Allied researchers whose views were particularly influential during the war believed that Japan was fundamentally different from the West. Second, despite many who subscribed to the view that Japan was inherently different from the West, many pre-war Japanese institutions and practices looked very similar in form to that in Britain and other Allied countries. These adopted pre-war Japanese institutions and practices nevertheless worked very differently within Japanese society. Third, I describe foreigners' popular pre-war assumptions about Japanese society. Fourth,

I give an overview of the legal rules and concepts which trial participants were expected to apply in these trials.

The factors considered in this section shaped non-Japanese trial participants' interpretations of the defendants' culturally related arguments. When studying how non-Japanese judges and trial participants understood the defendants' culturally influenced arguments, it is important to recall that judges did not issue fully reasoned decisions in the Singapore Trials. It is therefore difficult to conclusively determine how a court's interpretation of the defendants' arguments impacted its eventual finding or sentence. Nevertheless, by carefully reading trial transcripts, I am able to study how some non-Japanese participants interpreted the defendants' culturally influenced arguments. For example, many judges asked defendants and witnesses follow-up questions. By analysing the questions asked by these judges, one can ascertain how these judges interpreted the defendants' arguments and assess the conceptual lenses used in this interpretive exercise.

As explained in this section and the next, many non-Japanese trial participants, including judges, did not take these culturally related arguments seriously or did not appreciate their full implications due to insufficient cultural knowledge or awareness. Nevertheless, I also show how some non-Japanese trial personnel changed their interpretative stances as the trials proceeded, demonstrating a level of cultural learning and awareness. These are the main findings that I put forward here based on my analysis of the trials. My findings also give rise to some concerns over the fairness of these trials from the perspective of the defence. If judges did not fully appreciate the culturally related arguments put forward by the defence, these judges would probably not have

considered these arguments, at least as intended by the defence, when determining the guilt or sentences of the defendants.

(a) Research on Japanese society, particularly research during the war period

This section outlines enduring scholarly debates about the nature of Japanese society and introduces the reader to anthropological research that was particularly influential among the Western Allies during the war period. Contemporary researchers studying Japanese society continue to debate about whether Japanese society is fundamentally different from Western society and if so, how this difference should be explained. Some researchers argue that Japanese society is in some way unique compared to Western societies. Others argue that Japanese social practices are no less comprehensible than that of other societies, and that many of these practices may be explained in terms that similarly apply to other societies, such as social exchange or self-interest.

Researchers who see Japanese society as fundamentally different often focus on Japanese society's group-oriented nature.¹² For example, Creighton, in comparing American and Japanese society, explains that Japanese society values 'harmony' and group cohesion, while American society values independence and initiative.¹³ Other similarly oriented scholars focus on Japanese society's high level of compliance with social norms. Haley attributes this high level of social conformity to Japanese culture

¹² Some scholars describe how Japanese social relations, including their 'emotional content', are based on 'family relationships'. Chin Kim and Craig M Lawson, 'The Law of the Subtle Mind: The Traditional Japanese Conception of Law' (1979) 28 *Int'l & Comp. LQ* 491, 499.

¹³ Millie R Creighton, 'Revisiting Shame and Guilt Cultures: A Forty-year Pilgrimage' (1990) 18 *Ethos* 279, 301.

which lacks a ‘sense of universal standards’ beyond what is socially expected, and which has ‘no clearly demarcated dichotomy between good and evil evident in almost all other cultures’.¹⁴

Other researchers argue that this emphasis on the special position of Japanese society is mistaken. Rather, these researchers argue that Japanese social practices are best explained by motivational and structural factors that also apply in other societies. In other words, Japanese society is no less unique or incomprehensible than other societies. For example, Komiya argues that Japanese group-orientedness is better explained by the strong informal controls exercised by Japanese social groups rather than inherent cultural or ‘emotional’ factors unique to Japanese society.¹⁵ Similarly, Rohlen observes that to understand the high levels of social compliance in Japanese society, one should focus on analysing group-level socialising processes.¹⁶

Researchers who reject the view that Japanese society is essentially different from other societies are also applying more nuanced approaches to explain Japanese social practices and military conduct during the Second World War. I draw on much of this work when analysing the trial discussions about Japanese social practices in Section 3 below. Japanese and non-Japanese researchers working in this vein argue that Japanese soldiers are not historically or culturally predetermined to ill-treat their adversaries or prisoners, citing the Japanese military’s careful and legally consistent treatment of POWs

¹⁴ John Owen Haley, *The Spirit of Japanese Law* (New edition, University of Georgia Press 2006) 16.

¹⁵ Nobuo Komiya, ‘A Cultural Study of the Low Crime Rate in Japan’ (1999) 39 *British Journal of Criminology* 369, 381.

during the first Sino-Japanese War (1894-95) and the Russo-Japanese War (1904-05).¹⁷ Rather, these researchers argue that the cruelty of Japanese military practices during the Second World War is better explained by other factors, such as a rise in militarism in pre-war Japan, then-existing Japanese attitudes towards international law, racial discrimination, maladministration, individual cruelty, and others.¹⁸

Instead of pointing to fundamental differences between Japanese and Allied soldiers, these researchers draw attention to how Japanese soldiers were not much different from Allied soldiers in their motivations and emotions even as they turn to other factors to explain differences in military personnel's conduct. Referring to a study conducted by the Japanese military, Drea highlights that, like most Allied soldiers, Japanese soldiers fought better when in small groups, when there was emotional connection among soldiers, and when they believed they would be given support.¹⁹ Japanese soldiers were not 'robots' or automatons as popularly believed. Researchers also emphasise that not all Japanese military personnel behaved the same way, and that there were differences in how Japanese soldiers treated POWs and detainees across camps.²⁰ In his innovative study of Japanese, Chinese (Kuomintang) and US servicemen diaries,

¹⁶ Thomas P Rohlen, 'Order in Japanese Society: Attachment, Authority, and Routine' [1989] *Journal of Japanese Studies* 5, 26.

¹⁷ P. Scott Corbett, 'In the eye of a hurricane: Americans in Japanese custody during World War I' in Kevin Blackburn and Karl Hack (eds), *Forgotten Captives in Japanese Occupied Asia* (Routledge 2008) 111; Kaori Maekawa, 'Japanese guards in film and memory: *White Skin, Yellow Commander*' in Kevin Blackburn and Karl Hack (eds), *Forgotten Captives in Japanese Occupied Asia* (Routledge 2008) 179

¹⁸ Yoichi Kibata, 'Japanese Treatment of British Prisoners: The Historical Context' in Philip Towle, Margaret Kosuge and Yoichi Kibata (eds), *Japanese Prisoners of War* (Hambleton and London 2000)

¹⁹ Edward J. Drea, 'In the Army Barracks Of Imperial Japan' (1989) 15 *Armed Forces and Society* 329, 343

Moore highlights both ‘striking similarities’ between the three militaries as well as ‘subjectivity’ or ‘self-autonomy’ displayed by individual military personnel.²¹

However, during the Second World War period, anthropological research in the West on Japanese society revolved around the ‘national characteristics’ of Japanese society and how these characteristics made Japanese society unlike the West. Some of this research substantially influenced Allied political and military personnel. Ruth Benedict, an anthropologist who was asked by the US government to undertake a wartime study on Japanese society, described the Japanese as ‘the most alien enemy the United States had ever fought in an all-out struggle’.²² This research represented Japanese society and the Japanese military as particularly impenetrable and as essentially different from the West.

(b) Japan’s adoption of foreign models: similar in form but different in meaning

Though Japanese society continues to be contrasted with Western societies in some scholarly discussions, Japanese institutions and practices may at first appear very familiar to foreign eyes. In reality, these institutions and practices operate very differently and mean very different things to Japanese participants. This is due to Japan’s history of modernisation and her adoption of foreign models. Before 1853, under the Tokugawa

²⁰ See in general, comparative studies in Kevin Blackburn and Karl Hack (eds) *Forgotten Captives in Japanese Occupied Asia* (Routledge 2008)

²¹ Aaron William Moore, *Writing War: Soldiers Record The Japanese Empire* (Harvard University Press 2013) 293, 303

Shogunate, Japan maintained a 'closed country' policy that prohibited the entry of foreigners and restricted overseas trade.²³ Japan's 'closed door' policy came to an end in 1854, when the Americans forced the 'opening' of Japan through a show of force orchestrated by the arrival of Matthew Perry's 'Black Ships'. Japan was subsequently coerced into a series of treaties with foreign powers during the second half of the 19th century. These treaties contained an extraterritorial clause allowing the country concerned to exercise jurisdiction over its own nationals in criminal and civil cases on Japanese territory.²⁴ These foreign powers insisted on their nationals being protected by their superior 'civilised' law. Insulted and determined to pursue the revocation of these unequal treaties, Japanese leaders embarked on widespread institutional and legal reform that would secure Japan's recognition by foreign powers as a 'civilised' state.²⁵

Japan's rapid modernisation began with the overthrow of then-ruling Tokugawa Shogunate and the restoration of the Meiji Emperor in 1868. Meiji leaders proceeded to undertake wide-ranging legal and institutional reforms based on foreign models. New legal codes were adopted, along with a new constitution. Judges, procurators, and lawyers were trained for this new legal system.²⁶ As explained in chapter 4, Japan's criminal law and trial procedure was modelled on French law and later German law. Oda observes that

²² Ruth Benedict, *Chrysanthemum and the Sword: Patterns of Japanese Culture* (Houghton Mifflin 1988) 1

²³ Michio Asakawa, 'Anglo-Japanese Military Relations, 1800-1900' in Ian Gow, Yôichi Hirma and John Chapman (eds), *The History of Anglo-Japanese Relations, 1600-2000: Volume III, The Military Dimension, 1800-2000* (First Edition edition, Palgrave Macmillan 2003) 17.

²⁴ John Owen Haley, *Authority Without Power: Law and the Japanese Paradox* (New Ed edition, Oxford University Press 1994) 68.

²⁵ Hackett, Roger. F, 'The Meiji Leaders and Modernization: The Case of Yamagata Arimoto' in Marius B Jansen (ed), *Changing Japanese attitudes toward modernization* (Princeton University Press 1965) 245.

the reception of foreign law did not receive much resistance among ordinary Japanese who generally supported the government's modernisation call.²⁷ Japan's modernisation was admired by visitors, and this modernisation eventually led to the revision of British treaties.²⁸

The impressive modernisation process undertaken by Japan was nevertheless driven by fear and national insecurity among Japanese leaders.²⁹ Japan's leaders did not see their implementation of foreign practices as a break from the past. Rather, by adopting these foreign practices, the aim of Japan's leaders was to preserve Japan's continuity as an independent nation and prevent her domination by foreign powers. Even during this process of modernisation, Japanese reformers were careful not to introduce norms that contradicted pre-existing ones.³⁰ While foreign laws and institutions were introduced, Japanese society's underlying values and assumptions persisted.³¹ This blending of new and old gave rise to Japanese institutions and practices that, on their surface, looked very much like their Western 'counterparts' but that, in reality, worked very differently for their Japanese participants.³²

i. The pre-war Japanese military as an example of foreign borrowing

²⁶ Haley, *Authority Without Power* (n 24) 69.

²⁷ Hiroshi Oda, *Japanese Law* (3 edition, Oxford University Press 2011) 6.

²⁸ Jansen, Marius. B, 'Modernization and Foreign Policy in Meiji Japan' in Robert E Ward (ed), *Political Development in Modern Japan* (Princeton University Press 1968) 178.

²⁹ Hackett (n 25) 244.

³⁰ Haley (n 14) 71.

³¹ *ibid* 82.

³² David A Funk, 'Traditional Japanese Jurisprudence: Justifying Loyalty and Law' (1990) 17 *SUL Rev.* 171, 224.

Japan's pre-war military is a good example of how adopted foreign practices were shaped by a mixture of Japanese cultural beliefs, political interests and institutional factors. I have chosen to focus on the Japanese military institution here as many Japanese military practices were interpreted differently by non-Japanese judges and prosecutors in the Singapore Trials. In seeking to modernise the Japanese military during the Meiji Restoration, Japanese leaders sought advice from various foreign powers. British advisers contributed much to the modernisation of the Japanese navy. For the Japanese army, Japanese leaders drew on practices of the French army and, subsequently, the Prussian army.³³ While foreign advisers introduced foreign laws and practices into the Japanese military, the day-to-day operation of these adopted laws and practices were shaped by Japanese military needs, Japanese politics, and broader Japanese social practices. As an example, though the Japanese army had a courts martial system, the workings of Japan's courts martial system was shaped by Japanese society's preference for informal methods of dispute resolution. Japanese soldiers maintained discipline through informal means, at times setting up their own ad hoc tribunals outside of the formal court martial system.³⁴

While Japan's military leaders adopted foreign practices and technology from the West, these leaders used Japanese traditional ideas to construct and disseminate particular Japanese soldiering ideals.³⁵ Japan's military leaders deliberately employed traditional cultural ideas to cultivate a militaristic culture and to secure the soldier's unyielding

³³ Edward J Drea, *In the Service of the Emperor : Essays on the Imperial Japanese Army* (University of Nebraska Press 1998) 58. Japanese military leaders favoured the Prussian army because of its wartime successes.

³⁴ Edward J Drea, *Japan's Imperial Army: Its Rise and Fall, 1853-1945* (1ST edition, University Press of Kansas 2009) 68.

³⁵ Drea, *In the Service of the Emperor* (n 33) 330.

loyalty to the Emperor.³⁶ Japanese ideas of the family were used by military leaders to emphasise links of loyalty and submission between subordinates and their superiors in the army.³⁷ The Japanese tradition of bushido was deployed by military leaders as a propaganda tool before and during the Second World War. For example, the Japanese Ministry of War's 1871 instructions to the army listed loyalty, decorum, faith, obedience, courage, frugality, and honour as soldiering ideals reflecting the 'spirit' that 'made up the substance of the bushido of old'.³⁸ By referring to the Japanese bushido tradition, Japan's leaders sought to legitimise the development of a militaristic culture.³⁹ The deployment of these Japanese traditional ideas by Japan's leaders was politically motivated and resulted in the distortion of these very ideas, but it nevertheless shaped the practices of the Japanese military as well as the worldview and conduct of ordinary Japanese servicemen. Japanese servicemen viewed and rationalised their conduct through the lens of these traditional Japanese ideas. These same ideas may appear strange or absurd to non-Japanese.

However, when considering the differences between Japanese and Allied military practices, it is important not to neglect any similarities. Indeed some scholars argue that the difference between Japanese and Allied military practices is one of degree rather than type. Harries and Harries argue that the Japanese military's conception of 'spirit', which is often understood as other worldly dogma, should be understood instead as a more

³⁶ *ibid.*

³⁷ *ibid* 335.

³⁸ Karl F Friday, 'Bushidō or Bull? A Medieval Historian's Perspective on the Imperial Army and the Japanese Warrior Tradition' [1994] *History Teacher* 339, 340.

³⁹ *ibid.*

extreme form of the disciplinary standard pursued by all armies.⁴⁰ All militaries subscribe to customs and practices aimed at ensuring discipline and cohesiveness. Moore has observed how the US Second World War army had practices of inculcating self-discipline that were similar to that of the Japanese military.⁴¹ Within the Japanese military, practices aimed at ensuring obedience were implemented in an extreme form; hierarchy and peer pressure exerted a stronger pull on Japanese personnel. In other words, when assessing the impact of cultural difference on the behaviour of Japanese servicemen, it is important not to overestimate its influence but also consider other explanatory factors. The Japanese serviceman's conduct in the Second World War was shaped by a mixture of culture, politics—including the political use of cultural ideas—and institutional arrangements.

(c) Foreigners' limited pre-war knowledge of Japanese society and culture

Allied knowledge about Japanese society in the lead up to the Second World War was limited in nature, though the 'opening' of Japan did give rise to increased writings on Japanese society and history in Britain. Post-Meiji Western writings about Japan were generally positive; Japan was praised for her social stability and achievements.⁴² Nevertheless, the political upheavals and anti-foreigner attacks that took place in Japan in

⁴⁰ Merrion Harries and Susie Harries, *Soldiers of the Sun: The Rise and Fall of the Imperial Japanese Army* (Random House Inc 1992) 274.

⁴¹ Based on his findings, Moore observes that the US and Japanese serviceman were not 'categorically different'. Moore (n 21) 175.

⁴² Gordon Daniels, 'Elites, Governments and Citizens: Some British Perceptions of Japan, 1850-2000' in Gordon Daniels and Tsuzuki Chushichi (eds), *The History of Anglo-Japanese Relations 1600-2000: Social and Cultural Perspectives, Volume 5* (Palgrave Macmillan 2002) 3.

the wake of the Shogunate's concession to foreign powers also contributed to Western views of Japan as a feudal society and a country of 'primitive violence'.⁴³

Despite the growth of British writings on Japan, Gordon notes that most of these authors were not fluent in the Japanese language and were forced to depend on English language writings made available by Japanese government officials, who in turn aimed to project a favourable image of Japan to the West.⁴⁴ The Japanese government's aim was to impress Japan's advancement on Westerners visiting Japan. In 1910, the Japanese government sought to further disseminate positive representations of Japan. In that year, Japan organised the 1910 Japan-British Exhibition in London which aimed to introduce Japan to the ordinary British public and showcase Japan's modernisation.⁴⁵

Outsiders' views of Japan in this pre-war period focused on Japan's modernity as well as Japan's difference. Japan came to be popularly known among Westerners as 'a land of delicate exotic beauty'.⁴⁶ The 1910 Japan-British exhibition organised in London, like many Western popular representations of Japan, highlighted Japan's mysterious and exotic nature by including Japanese 'villages', Sumo demonstrations, and Japanese music.⁴⁷ This British perception of Japan as foreign and different would influence Britain's attitude towards Japan during and after the war.

⁴³ ibid 5.

⁴⁴ ibid 9.

⁴⁵ ibid 10.

⁴⁶ ibid 6.

⁴⁷ ibid 10.

In the years leading up to the Second World War, British perceptions of Japan became less positive and more wary. Japan's 1931 invasion of Manchuria, her abandonment of the League of Nations, and the militarisation of her government led to 'revived' British perceptions of Japan as feudal and uncivilised.⁴⁸ Such views of Japan as a strange and hostile adversary was broadly shared by other Allies, including America where public hostility towards East Asian immigration had resulted in various exclusionary laws in the late 1800s and early 1900s that affected the Japanese.⁴⁹ During the period of the Second World War, Britain and America both saw Japan as an enigmatic and incomprehensible enemy. Writing in 1943, Joseph C. Grew, the American pre-war Ambassador to Japan, lamented how Japanese 'strength and spirit' was still 'dimly perceived' by most Americans.⁵⁰

Britain and her Allies thus entered the Second World War with limited knowledge of Japan. They did however view Japan as different and foreign. This Western perception of Japan as more different than similar continued to shape British and Allied wartime and post-war assessments of Japanese conduct and behaviour, as reflected in post-war prosecutions like the Singapore Trials.

i. Allied wartime beliefs about Japanese 'national characteristics'

⁴⁸ ibid 12.

⁴⁹ Erika Lee, 'The 'Yellow Peril' and Asian Exclusion in the Americas' (2007) 76 *Pacific Historical Review* 537, 543.

⁵⁰ Joseph Clark Grew and Hillis Lory, *Japan's Military Masters: The Army in Japanese Life* (Literary Licensing, LLC 2012) 7.

Cross-cultural understanding under normal circumstances is a difficult undertaking, but it becomes particularly difficult when there are wide-spread assumptions about how individuals from a particular cultural group think or behave. During the Second World War, the Allies not only viewed the Japanese as different but also commonly attributed Japanese military conduct to Japanese 'national characteristics'. For example, it was commonly believed that the Japanese were incapable of original or spontaneous thought. In his work on British attitudes towards the Japanese military, Ferris argues that British negative attitudes towards the Japanese military also resulted from 'military ethnocentrism'.⁵¹ The British assessed the Japanese military based on their own military's standards; they tended to over-estimate the capabilities of the British military while under-estimating the capabilities of the Japanese military.

Prior to the start of the war, the Allied Powers were generally dismissive of the Japanese military's fighting capabilities. Since 1932, foreigners were unable to directly observe the Japanese military. Some Allied personnel judged the Japanese military based on generalisations rather than on fact. Assessments made by the British air force of the Japanese air force were particularly skewed, while those made by the British navy of the Japanese navy were more positive largely because the Japanese navy had been based on the British model.⁵² Ferris observes how assessors from the British air force used 'general causes' to explain observed 'specific weaknesses', extrapolating even broader

⁵¹ John Ferris, 'Double-Edged Estimates: Japan in the Eyes of the British Army and the Royal Air Force, 1900-1939' in Ian Gow, Yôichi Hiramata and John Chapman (eds), *The History of Anglo-Japanese Relations, 1600-2000: Volume III, The Military Dimension, 1800-2000* (First Edition edition, Palgrave Macmillan 2003) 94.

⁵² *ibid* 103.

conclusions from the former.⁵³ This resulted in some interesting beliefs. For example, it was believed that because the Japanese were poor horsemen, they did not have the social class structure that would produce good pilots.⁵⁴ British intelligence claimed that the Japanese were incapable of independent or creative thought due to the tedium imposed upon them from youth by the complicated Japanese writing system.⁵⁵

Assumptions about such Japanese ‘national characteristics’ were popular not only among military personnel but also among politicians and the general public. Among the latter, these assumptions about Japanese characteristics often crossed the line between inaccurate evaluations and negative racial stereotyping. Politicians and media from America and Britain referred to the Japanese as ‘apes and monkeys’.⁵⁶ The Japanese were depicted as a ‘swarm’ based on Western anthropological studies emphasising Japan’s group-oriented society.⁵⁷ Japan’s attack on Pearl Harbour was greeted with much shock as the Americans could not imagine that the ‘little sons of bitches’ could have pulled off such a feat.⁵⁸ Similarly, as described in Chapter 1, the British did not expect the Japanese military’s early successes in British Malaya.

When Allied soldiers encountered the unexpected success of the Japanese military in the beginning of the war, their perceptions of their Japanese counterparts came to be

⁵³ ibid 102.

⁵⁴ ibid.

⁵⁵ John W Dower, *Way of Forgetting, Ways of Remembering: Japan in the Modern World* (Reprint edition, The New Press 2014) 40–41.

⁵⁶ ibid 36.

⁵⁷ John Dower, *Cultures of War: Pearl Harbor/Hiroshima/9-11/Iraq* (W W Norton & Company 2010) 109.

⁵⁸ ibid 43.

governed by ‘fear and incomprehension’.⁵⁹ The Japanese soldier was seen as a particularly effective and cruel fighting instrument. He did not need to be bullied into pursuing suicide charges or taking futile stands.⁶⁰ General Slim described the ordinary Japanese soldier as ‘a fanatical enemy unsurpassed in his insect-like qualities of persistence and vicious ruthlessness, as ‘man-sized soldier ants’.’⁶¹ It is however important to note that at the official level, the British military did not try to further dehumanise the Japanese. Rather, military leaders tried to describe the Japanese military’s conduct in ordinary terms to counter the ‘inferiority complex’ among British military personnel.⁶² Researchers have since explained that much of the Japanese military’s wartime success may be explained by rigorous training and preparedness. For example, Japanese soldiers were more skilled in traversing overgrown jungle than Allied soldiers not because of any inherent Japanese capabilities but because they had trained on similar terrain on Hainan Island prior to invading British Malaya and carried less equipment than Allied soldiers when on the move.⁶³

These prevailing assumptions about Japanese ‘national characteristics’ amplified the difference between Allied and Japanese soldiers. Due to a focus on the fundamental difference between Allied and Japanese societies, the Allies often took the militaristic ‘cultural’ myths of Japanese military leaders at their surface value. For example, it

⁵⁹ ibid.

⁶⁰ Harries and Harries (n 40) 276.

⁶¹ John Ferris, ‘‘Ground of Our Own Choosing’’: The Anglo-Japanese War in Asia, 1941-1945’ in Ian Gow, Yōichi Hironaka and John Chapman (eds), *The History of Anglo-Japanese Relations, 1600-2000: Volume III, The Military Dimension, 1800-2000* (First Edition edition, Palgrave Macmillan 2003) 195.

⁶² ibid.

⁶³ Harries and Harries (n 40) 280.

became popular to believe that Japanese soldiers undertaking suicide or *kamikaze* attacks welcomed the opportunity to die for their Emperor. Researchers have challenged this belief; based on farewell letters written by Japanese *kamikaze* soldiers, these soldiers' actions were largely motivated by love for their families and home.⁶⁴ The Allies' simplistic and extreme beliefs about the Japanese soldier led to mistakes and lost opportunities during the war. As an example, the Allies did not try to persuade Japanese soldiers to surrender as they believed that Japanese soldiers would rather die than surrender. The Chinese military, in contrast, made more effective and strategic use of propaganda to persuade Japanese military soldiers to defect. These assumptions about Japanese 'national characteristics' not only impacted how the Allies responded to the Japanese military during the war, they also impacted how Allied trial personnel viewed Japanese conduct and motivations in post-war trials such as the Singapore Trials.

ii. Allied cultural assumptions about the Japanese soldier

After the war, some British military personnel involved in war crimes prosecutions of Japanese defendants continued to draw on Japanese 'national characteristics' to explain Japanese conduct and motivations. These assumptions about Japanese 'national characteristics' shaped British understandings about the responsibility of Japanese defendants as well as the veracity of Japanese witnesses. In a publication on the first Singapore Trial published in 1948, Stuart Colin Sleeman, who served as a prosecutor in the Singapore Trials, elaborated on various characteristics of the Japanese with the aim of showing what the British would be 'up against' when prosecuting Japanese war

⁶⁴ Dower, *Cultures of War* (n 57) 297.

criminals. He described the Japanese as ‘a docile people’, whose soldiers were ‘distinguished for their unquestioning obedience’.⁶⁵ They were said to be ‘technically and morally’ ‘dependent’ on the regulations of the Japanese army and ‘slogans of Army politics’.⁶⁶

Sleeman also argued that the dependence of Japanese soldiers on regulations and slogans led them to have a ‘curiously split personality’. Due to this, Japanese soldiers seek to ignore or deny any inconsistencies between rules and slogans, on the one hand, and the reality of the situation, on the other.⁶⁷ He argued that such self-deception led Japanese soldiers to assert that rules and slogans were in fact complied with, and that ‘he may be speaking honestly in the sense that he believes what he says’.⁶⁸ Sleeman argued that Japanese soldiers did not ‘reflect’ on such inconsistencies and their deception also aimed to ‘keep up appearances’.⁶⁹ Rather, they will twist the facts or hide inconsistent facts if these facts undermine their said belief. To support his argument, Sleeman referred to Japanese military’s preference for informal ‘corrective measures’ over formal ‘disciplinary punishment’ which would be recorded and which would reflect badly on the unit concerned.⁷⁰ He believed that this ‘infinite capacity’ for such ‘make-believe’ applied to all Japanese—Japanese defendants as well as witnesses.

⁶⁵ Colin Sleeman (ed), *The Gozawa Trial* (William Hodge and Company 1948), p xvii.

⁶⁶ *ibid.*

⁶⁷ *ibid* xviii.

⁶⁸ *ibid* xix.

⁶⁹ *ibid.*

⁷⁰ *ibid* xx.

These widespread beliefs about Japanese behaviour had detrimental consequences for trial discussions of culturally influenced arguments raised by Japanese participants in the Singapore Trials. As demonstrated below, some non-Japanese trial participants were influenced by then-prevailing cultural assumptions when assessing the testimony given by Japanese witnesses and the guilt of defendants. These beliefs of non-Japanese trial participants also influenced the trials in another way. Some Japanese defendants made decisions with the expectations of non-Japanese trial participants in mind. For example, Reel, who served as the defence counsel in the much criticised American war crime trial of General Yamashita, explained that Yamashita was concerned about how his decision to contest charges or submit a habeas corpus petition would be perceived by Americans rather than Japanese.⁷¹ Some Japanese defendants were aware, or became aware, of the beliefs held by Allied trial participants towards Japanese conduct, and aligned their conduct to meet these expectations. In other words, though the cultural assumptions held by Allied trial participants may not be accurate, some Japanese defendants nevertheless referred to these assumptions as a defence tactic during the trials.

(d) Legal framework that applied in the Singapore Trials

This section gives an overview of the legal rules, concepts and sources employed by participants in the Singapore Trials. Judges and lawyers in the Singapore Trials were expected to employ the legal framework put in place by the 1945 Royal Warrant. In the previous chapter, I explained how the 1945 Royal Warrant legal framework authorised the application of legal materials that were predominantly British and unfamiliar to

⁷¹ A Frank Reel, *The Case of General Yamashita* (2nd edn, Octagon Books 1971) 201.

Japanese defence counsel; this affected Japanese defence counsel's trial participation. The 1945 Royal Warrant legal framework also influenced how judges and other trial participants interpreted and assessed the defendants' culturally related arguments. First, even if a judge fully appreciated a culturally related argument of the defence, his ability to take it into account in deciding the case may be limited by applicable law. For example, as explained below, the British Manual of Military Law (MML), which trial participants treated as an authoritative legal source, expressly prohibited courts from treating superior orders as an automatically exculpatory factor.

Second, and less explicitly, legal rules and concepts may shape how judges perceive and understand defence arguments. For example, non-Japanese judges and prosecutors in the Singapore Trials often employed a concept of legality that assumed the existence of an independent standard of morality based on which the 'legality' of written laws and superiors' orders could be judged. As explained below, this differed from the concept of legality put forward by the Japanese defence. Also, some non-Japanese judges and prosecutors employed the common law concept of duress to assess defence arguments. However, a close assessment of these defence arguments shows that these defendants were not putting forward duress type arguments or claims of coercion.

Third, even if judges and prosecutors fully appreciated the culturally related arguments put forward by the defence, the former still had to translate or 'fit' these arguments into applicable legal categories in order for these arguments to be 'recognised' by the law. Judges do not have free reign in deciding cases; they are to decide cases by applying the law. Sometimes, the applicable legal framework simply does not have the

legal rules or concepts necessary to facilitate the recognition of culturally related arguments. As highlighted below, some defendants argued that they were conditioned to obey orders through Japanese military practices and norms. Such an indoctrination defence could not easily be ‘fit’ into any of the legal rules or concepts that applied in these trials. Indeed, such an argument is not recognised in present-day international criminal law.

i. International legal sources: treaties and customary international law

What then were the legal rules, concepts and sources applied by trial participants in the Singapore Trials? Based on the 1945 Royal Warrant that put in place the legal framework for these trials, the British military courts established were to try ‘violations of the laws and usages of war’, also defined by the warrant as ‘war crimes’. In contrast, the charters of the Tokyo Tribunal and Nuremberg Tribunal gave these tribunals jurisdiction over crimes apart from war crimes, namely, crimes against peace and crimes against humanity.⁷² The 1945 Royal Warrant trials dealt exclusively with war crimes. It should however be noted that, as explained further below, the 1945 Royal Warrant framework in Asia considered ‘crimes and atrocities against the laws of humanity’ as war crimes.⁷³

⁷² Article 6 of the Nuremberg Tribunal’s Charter gave the Tribunal jurisdiction over crimes against peace, war crimes, and crimes against humanity. Similarly, Article 5 of the Tokyo Tribunal’s Charter (the wording of the Tokyo Tribunal’s Charter was based on the Nuremberg Tribunal’s Charter) gave the Tribunal jurisdiction over crimes against the peace, war crimes, and crimes against humanity. Cryer and Boister observe that at the Tokyo Trial, crimes against peace were in fact ‘centre-stage’, Neil Boister and Robert Cryer, *The Tokyo International Military Tribunal: A Reappraisal* (Oxford University Press 2008) 115

⁷³ ALFSEA Instruction No 1, ‘Object’, para 4

Regulation 8(iii) of the 1945 Royal Warrant Regulations specifically authorised judges to take ‘judicial notice’ of ‘the laws and usages of war’.⁷⁴ The Warrant set out no further definition of war crimes. The then applicable version of the British Manual of Military Law (MML), which set out British courts martial practice and which trial participants extensively referred to in the Singapore Trials, defined ‘laws and usages of war’ as comprising ‘partly of customary rules, which have grown up in practice’ and ‘partly of written rules, that is, rules which have been purposely agreed upon by the Powers in international treaties.’⁷⁵

The British MML also set out a list of conventions and international instruments, including the 1907 Hague Conventions and the 1929 Geneva Conventions. As explained in the previous chapter’s discussion on legal counsel’s arguments, trial participants in the Singapore Trials most frequently referred to two international conventions: The 1907 Hague Convention Concerning the Laws and Customs of War on Land (1907 Hague Convention IV), as well as its attached Rules, and the 1929 Geneva Convention Relative to the Treatment of Prisoners of War (1929 Geneva Convention on Prisoners of War).

Japan had ratified the 1907 Hague Convention IV at the time of the war, but at the Tokyo Trial, the defence pointed out that Article 2 of the Convention excluded the Convention’s application when one of the belligerents was not party to the Convention.⁷⁶ The Tokyo Tribunal however found that the Convention had by 1939 become part of

⁷⁴ Regulation 8(iii), 1945 Royal Warrant Regulations

⁷⁵ *British Manual of Military Law 1929*, ch XIV (Amendment No 12 of 1936), 2. Note that in the 1939 reprint used in the trials, the space where ch XIV is blank. The reprint seems to have been rushed due to the war and the amendment inserted separately.

⁷⁶ Cryer and Boister (n 72) 181

customary international law.⁷⁷ It held that Japan was bound as a matter of customary international law rather than on the basis of treaty law or the Convention's provisions.⁷⁸ It is noteworthy that the British MML itself recognised that such conventions would be binding 'only in a war in which all the belligerent states engaged are parties to them'.⁷⁹ However, this point was not raised or debated by defence counsel in the Singapore Trials. While this casts doubt on the quality of defence argumentation, as explained in my previous chapter, prosecutors and defence counsel in the Singapore Trials did not make as much reference to substantive international law compared to counsel in the Tokyo and Nuremberg Trials or those in contemporary trials.

The more problematic international convention was the 1929 Geneva Convention on Prisoners of War. The British MML stated that its listed international instruments, which included the 1929 Geneva Conventions, were 'only binding on the Powers which have agreed to them, and have not subsequently denounced them'.⁸⁰ At the time of the Second World War, Japan had not ratified the 1929 Geneva Convention on Prisoners of War. Based on this, the Japanese defence in the Tokyo Trial had contended that the 1929 Geneva Convention did not bind Japan. The prosecution argued that Japan was bound because in response to Allied requests, Japan had promised to apply the provisions of this convention '*mutatis mutandis*'.⁸¹ The Tokyo Tribunal decided that Japan was indeed

⁷⁷ *ibid* 182.

⁷⁸ *ibid* 182-183.

⁷⁹ *British Manual of Military Law 1929*, ch XIV (Amendment No 12 of 1936), 4.

⁸⁰ *ibid*.

⁸¹ Cryer and Boister (n 72) 183.

bound by its assurances.⁸² In addition, the Tribunal also held that the Convention's provisions on humane treatment, which applied to the facts of the case, were in fact customary international law.⁸³

ii. Domestic legal sources: British military law and English criminal law

The 1945 Royal Warrant framework also authorised trial participants to refer to British domestic law. Based on the 1945 Royal Warrant, British military courts established pursuant to the Royal Warrant were to be treated as general field courts martial.⁸⁴ These courts martial were to be governed by then applicable Army Act 1926 and the Rules of Procedure enacted under this Act.⁸⁵ Section 127 of the Army Act explicitly stated that the law to be applied to these courts martial was to be English law.⁸⁶

In addition, the British military in Asia adopted additional rules to elaborate on the 1945 Royal Warrant framework. These rules were set out in Allied Land Forces South East Asia (ALFSEA) Instruction No 1.⁸⁷ For example, the Instruction elaborated on the different 'war crimes' to be tried by 1945 Royal Warrant courts in Asia by setting out a list of such crimes. Crimes set out in this list included '[s]hooting and killing on the false pretence that the prisoner was escaping', [a]ssault with violence causing death, and

⁸² *ibid* 184.

⁸³ *ibid* 187.

⁸⁴ Regulation 3, 1945 Royal Warrant Regulations.

⁸⁵ Army Act 1881, reproduced in *British Manual of Military Law 1929* ('Army Act 1881'); Rules of Procedure 1926 (amended 31 December 1928), reproduced in *British Manual of Military Law 1929* ('Rules of Procedure 1926').

⁸⁶ Section 127, Army Act 1881.

⁸⁷ ALFSEA Instruction No 1.

other forms of murder and manslaughter and '[s]hooting, wounding with bayonet, torture, and unjustified violence'.⁸⁸ ALFSEA Instruction No 1 also stated that 'war crimes' included 'crimes and atrocities against the laws of humanity committed by Japanese nationals, and by persons acting in support of Japan, against civilians of whatever nationality during the continuance of hostilities'.⁸⁹

Though the 1945 Royal Warrant legal framework was more comprehensively developed by ALFSEA Instruction No 1, this Instruction did not set out the types of defences that would apply. For this, British trial participants referred to the British MML or English criminal law. As I demonstrate in the section below, the British MML was often cited by trial participants when discussing superior orders. The then applicable section was paragraph 443 that was introduced by Amendment No 34 of 1944 into the British MML.⁹⁰ This amendment prohibited superior orders from exonerating an accused. Specifically, paragraph 443 stated that just because a 'rule of warfare' was 'violated in pursuance of an order', this did not 'deprive the act in question of its character as a war crime' or 'in principle, confer upon the perpetrator immunity from punishment by the injured belligerent'.⁹¹ This limited how judges could treat superior order arguments at trial, even if they were able to fully appreciate the arguments of the defence. Paragraph 443 prohibited judges from exculpating accused on the sole basis of superior orders.

⁸⁸ As touched upon in Chapter 4, this list included some crimes one would not normally consider 'war crimes', such as '[t]heft of money and goods' and '[i]nsufficient food, water and clothing' without more.

⁸⁹ ALFSEA Instruction No 1, 'General', para 4.

⁹⁰ *British Manual on Military Law 1929* (Amendment No 34 of 1944).

⁹¹ *ibid.*

Other English criminal law defences were cited and discussed in these trials. These defences applied by virtue of the fact that these 1945 Royal Warrant trials were to be treated as general field courts martial that applied English criminal law, as mentioned above. As explained more fully in the section below, British judges and prosecutors often had certain English criminal law defences in mind when asking questions or when evaluating the answers of Japanese accused and witnesses. In other words, these categories shaped how non-Japanese trial participants approached or interpreted the arguments of Japanese participants, at times distorting the arguments or causing important facts to be ignored.

There were thus a number of factors influencing how non-Japanese participants interpreted the culturally influenced arguments of Japanese participants in the Singapore Trials. There were genuine cultural differences between Japanese and non-Japanese trial participants. Japanese society subscribed to different conceptions of social relations and order; non-Japanese trial participants were not familiar with these authentic cultural differences. It was also easy for non-Japanese trial participants to forget such differences because many of Japan's institutions and practices looked very similar to that in their own countries as a result of Japan's deliberate and widespread importation of foreign models after the Meiji Reformation. These imported models however worked very differently in Japanese society. Apart from these genuine cultural and historical factors, non-Japanese trial participants were also influenced by then-prevailing assumptions about Japanese behaviour as well as the legal rules and categories they were to apply based on the 1945 Royal Warrant framework.

3. Interpreting culturally influenced arguments raised by the defence in the Singapore Trials

In this section, I focus on the culturally influenced arguments raised by Japanese participants in the Singapore Trials. Japanese participants referred to a variety of Japanese norms, beliefs, and assumptions when arguing why the defendants should not be deemed criminally liable. The majority of defendants did not dispute the fact that they committed the offences concerned; they argued that they should not be held liable because their actions were consistent with Japanese norms, beliefs, and assumptions. My aim here is to analyse how these culturally influenced arguments of Japanese participants were given different interpretations by non-Japanese participants. In doing so, I will also explain how these different interpretations were shaped by the cultural and historical factors discussed in the previous section.

(a) Evaluating Japanese standards of conduct and different understandings of harsh treatment

Many Japanese defendants in the Singapore Trials argued that they had acted consistently with then-prevailing Japanese standards of conduct. The actions of these defendants were ordinary when assessed against Japanese standards though these same actions may seem cruel based on British and Allied standards. Japanese trial participants attempted to elaborate on such Japanese standards during the trials but did not appear to be very persuasive. They used analogies and explanatory devices that were unconvincing to non-

Japanese participants, and in some cases, their descriptions of Japanese beliefs and practices were regularly treated by non-Japanese participants with distrust.

i. The Japanese military's practice of meting out unauthorised punishment to POWs and detainees

In many British war crimes trials held in Singapore, the defendants were accused of dealing out unauthorised punishments of civilian detainees and POWs. The defendants argued that such unauthorised harsh treatment was normal in the Japanese military and should not be interpreted as cruel or malicious. In advancing such arguments, defendants often used the analogy of a 'family' to describe how such harsh treatment was similar to the corporal punishment carried out within a family. In the trial of *Gozawa Sadaichi and others*, the prosecution witness Higotsu Tomiyama was asked by the prosecutor whether the beating meted out to victims was provided for in Japanese regulations.⁹² Tomiyama explained that if he had followed formal Japanese regulations, he should have sent the victims to the much-feared Japanese military police Kempeitai. The victims would have been punished more severely by the Kempeitai. Tomiyama insisted that he had hit the victims so they would not be sent to the Kempeitai.⁹³ He agreed to the prosecutor's suggestion that Tomiyama had beaten his victims 'out of kindness'.

The court treated Tomiyama's explanation with suspicion and intervened to question him further:

⁹² *Trial of Gozawa Sadaichi and others*, NAUK, WO 235-813, SP 00070.

⁹³ *ibid* SP 00070.

By Court: Ask him why he said one thing to the Prosecuting Officer one moment and another, another moment.

A. To we Japanese people slapping is carried out quite easily, even among the family, even the parents are used to slapping their children so the slapping I do not consider [...] it is carried out between Mother and children and among themselves, so I do not take it as punishment regulated in the regulation.

Q. Well, if a slapping was so severe that a man had an eye injured would the witness consider that as a punishment?

A. I do not know the regulations because I never read it so I do not understand if it is to be called a punishment or not Sir.⁹⁴

The non-Japanese judges were unconvinced by Tomiyama's use of the Japanese family as an analogy to describe the Japanese standard of unauthorised harsh treatment. To the judges, the strangeness of this analogy made Tomiyama's response seem more like an excuse than a genuine explanation.

As earlier explained, Japanese military leaders regularly used traditional Japanese ideas of family to enhance loyalty and cohesion among servicemen. Japanese servicemen were exposed to such family analogies from their very admission into the army, and would have viewed such analogy as commonplace. Before a soldier was sworn into the Japanese pre-war army, his nearest relatives would receive a 'letter of instruction' from the army asking for information that would help 'administer his education and guidance along the most rational lines'.⁹⁵ The letter declared that once 'your son and brother enters the barracks the officers of the company will take your place in looking after his welfare' that the army 'will be to him as a stern father and a loving mother'. The 1908 revision to

⁹⁴ *ibid* SP 00071.

⁹⁵ Grew and Lory (n 50) 25.

the army handbook for squad administration or *Guntai naimusho* states that the ‘company commander is a strict father’, the ‘NCO a loving mother’, and ‘lieutenants are relative’.⁹⁶ In other words, it was quite natural for Japanese military personnel to use the analogy of a family when describing Japanese military practices, though this would have come across as unusual to a non-Japanese.

The informal nature of such punishments was also ordinary within the Japanese military. It was common for Japanese military personnel to undertake punishment on an informal basis rather than secure punishment through official avenues. As mentioned above, the Japanese military seldom resorted to its formal court martial system, as offenders were punished on the spot for any wrongful behaviour by their superiors. Japanese military law expert Yoshita Kita states that a defendant’s choice to implement such informal harsh treatment may in fact reflect the defendant’s desire to avoid the imposition of even harsher punishments on the victims as mandated by formal rules.⁹⁷

Japanese military personnel did not view slapping or beating as particularly serious acts as such harsh treatment was regularly dealt out by superiors to their subordinates within the Japanese military. Slapping, beating, and harassment of subordinates was standard practice among Japanese military personnel. Some Japanese witnesses and defence counsel tried to explain this Japanese military standard to the non-Japanese judges in the Singapore Trials. In the trial of *Terada Takao and others*, the

⁹⁶ Dear (n 19) 329, 335.

⁹⁷ Yoshita Kita, ‘The Japanese Military’s Attitude Towards International Law and the Treatment of Prisoners of War’ in Ian Gow, Yōichi Hiramata and John Chapman (eds), *The History of Anglo-Japanese Relations, 1600-2000: Volume III, The Military Dimension, 1800-2000* (First Edition edition, Palgrave Macmillan 2003) 267.

accused were Kempeitai members and were charged for the unlawful arrest, confinement, and torture of civilians at the Kempeitai Headquarters in the YMCA Building of Singapore. British defence counsel Lieutenant Colonel A. Blakemore argued in his closing statement:

The word 'slap' had occurred often in this case. Slapping in Japan and by the Japanese is not looked upon as a serious act - in fact evidence has been given that it frequently takes place between soldiers. These men do not look upon slapping as a form of illtreatment but possibly as a minor corrective measure.⁹⁸

Blakemore highlighted the fact that slapping was common in the Japanese military, and argued for its significance should be considered from the perspective of the accused.

Some defendants were aware that the British frowned upon practices such as slapping and beating. Accordingly, these defendants chose to deny that such practices existed within the Japanese army. In *Nadamoto Hideo and others*, the accused were charged for beating and causing the death of a civilian labourer who was late for work at Port Blair, Andaman and Nicobar Islands.⁹⁹ During the trial, the prosecution called the attention of defence witness Lieutenant Nagasaki, who was in command of the defendants' workshop, to his claim that he had forbidden the beating of civilians. The prosecutor asked Nagasaki whether he had issued this order because it was Japanese practice to beat civilians. Nagasaki emphatically insisted that beating was 'not a custom' and that he had issued his instructions generally rather than to the accused specifically.¹⁰⁰

⁹⁸ *Trial of Terada Takao and others*, NAUK, WO 235/819, SP 00300.

⁹⁹ *Trial of Nadamoto Hideo and others*, NAUK, WO 235-827.

¹⁰⁰ *ibid* SP 00127.

In another case, *Kojima Hisajiro and another*, the defendants were accused of beating and causing the deaths of several civilian labourers who had run away and not showed up for work on Nancowry Island. The court expressed its disbelief when the witness insisted that he had never witnessed any slapping in the Japanese military.¹⁰¹

Q. Have you ever seen a Japanese soldier slapping a man on his face?

A. No. I have not.

Q. Does he realise that he is on oath. Does he? He expects the Court to believe that it is true? Have you ever seen a Japanese soldier slapping any one on the face?

A. He does not remember.

Judges thus encountered witnesses who simply denied the existence of such harsh practices or witnesses whose explanations appeared untruthful or strange. None of the judges in the Singapore Trials questioned witnesses in detail to ascertain the true nature of these Japanese military practices or determine how these practices impacted culpability. This may be due to widely held British beliefs about Japanese ‘self-deception’ as referred to in Sleeman’s book that was discussed earlier in this chapter.

Though there were no in-depth trial discussions about the Japanese military’s harsh practices and their impact on culpability, some British military decision-makers had some level of awareness of these practices as well as the need to adjust British war crimes prosecutions to consider Japanese understandings of normal treatment. In 1947, in a draft

¹⁰¹ *Trial of Kojima Hisajiro and another*, NAUK, WO 235-826, SP 00080.

reply to Deputy Judge Advocate General F.G.T. Davis in Singapore, Henry Shapcott, the Military Deputy of the Judge Advocate General, observed that acts of ‘kicking’ ‘slapping’ and ‘beatings’ were ‘part of the ordinary routine of the Japanese’, it would be ‘wrong to try a Japanese whose sole crime was that he on one or more occasions kicked or slapped a British prisoner-of-war’.¹⁰² These observations were made at a time when the British military was under much pressure to conclude war crimes trials. Shapcott may have made his observations with the aim of prioritising serious cases rather than addressing blameworthiness. I would argue otherwise. Shapcott stated that it would be ‘wrong’ to try such defendants, indicating that he did not believe they were to be treated as criminally culpable.

ii. Japanese understandings of beheading as a method of killing

Another form of harsh treatment highlighted in the Singapore Trials was the use of beheading as a means of killing. The Japanese military’s practice of beheading victims gained particular notoriety during the Second World War. Even before proof of such acts emerged after the war, there were widespread rumours about Japanese soldiers beheading Allied POWs and civilians. A significant number of war crimes trials conducted in Singapore featured beheadings by defendants.

Some defendants argued that for the Japanese, beheading was considered to be an ‘honourable’ method of execution. The defendants were aware that most non-Japanese

¹⁰² Draft reply of Shapcott to Davis, 6 February 1947, WO311/541. It is indicated in the draft letter that prior to sending out the letter, Shapcott had a discussion with Davis on the phone, though the topics discussed are not specified. Nevertheless, the draft letter reflects how Shapcott at one point understood the culpability of the Japanese for slappings.

viewed beheading as a particularly cruel form of execution. In *Kuwahata Tsugio and another*, the two defendants were accused of beheading two American POWs in French Indo-China. The prosecutor questioned the accused Kuwahata about decapitation as a means of execution, asking whether this was considered ‘more dishonourable’ than hanging or shooting. The accused replied that ‘for foreign people it might be considered dishonourable’, but for Japanese soldiers ‘they have different ideas’.¹⁰³ There was, however, no sustained discussion about what beheading meant from a Japanese perspective.

Research findings undermine the claims of defendants that beheading was a particularly ‘honourable’ practice in Japanese culture. Morimoto and Hirata’s study of decapitated skulls show that beheading as an ‘honourable’ practice of Japanese samurai applied only in specific circumstances.¹⁰⁴ Such beheading was only considered honourable if it was conducted as part of a samurai’s voluntary suicide and had to be conducted in a particular way. While beheading as assisted voluntary suicide in the samurai tradition was ‘honourable’, there was no such meaning attached to beheading as a means of execution. It is more likely that beheading was seen by Japanese perpetrators as just another means of execution. Some may have taken perverse pleasure in it. But most Japanese military subordinates ordered by their superiors to behead a victim probably did so in obedience to superior orders, a common explanation of subordinate behaviour that is further explored below.

¹⁰³ *Trial of Kuwahata Tsugio and another*, NAUK, WO 235/865, 00034.

¹⁰⁴ Iwataro Morimoto and Kazuaki Hirata, ‘A Decapitated Human Skull from Medieval Kamakura’ (1992) 100 *Japanese Anthropology Society Nippon*.

Though the non-Japanese judges in the Singapore trials did not subject the defendants' claims of beheading as 'honourable' killing to any extended inquiry, some judges used these claims to test the defendant's testimonial consistency. In *Hirakawa Mitsuki and others*, the three defendants were charged with beheading a civilian resident of Port Blair who was suspected of being a spy. The court asked one of the accused whether in Japan, beheading was considered to be 'more honourable' than death by shooting.¹⁰⁵ To this the accused replied yes. The court then proceeded to ask the accused why he had asked his superior to have the victim shot instead. The accused explained that he had not wanted to be the one to perform the beheading but had been ordered to do so as others were unable to perform the beheading properly. He had then suggested to his superior for the victim to be shot by others instead. Though the court used the act of beheading as an interrogation tool to test the defendant testimonial consistency, it did not engage in any detailed examination of what this practice meant to lower-ranking Japanese soldiers.

Similarly, the court in *Teizo Hara and others* did not enter into in-depth discussions about how Japanese defendants viewed the act of beheading. Though there was no in-depth discussion, the court viewed beheading as a particularly cruel means of execution, and took this into consideration when sentencing some of the accused.¹⁰⁶ As explained above, the victims in *Teizo Hara and others* had been executed by three of the accused pursuant to a decision handed down by a Japanese military court convened by the other three accused in the case. The British war crimes court acquitted the latter group

¹⁰⁵ *Trial of Hirakawa Mitsuki and others*, NAUK, WO 235/856, SP 00058.

¹⁰⁶ *Trial of Teizo Hara and others*, NAUK, WO 235/ 818.

of accused, who had been involved in the court decision. However, the British court sentenced the three other accused who had been involved in the beheading of the victims to death. In other words, the accused who had implemented the decisions were sentenced to death while the higher-ranking accused who had handed down the decision were acquitted. This differentiation between accused can be explained by the court's special finding in which it found that the accused sentenced to death had 'carried out the execution of the nine Burmese civilians in an unconscionably cruel manner'.¹⁰⁷

In summary, the non-Japanese judges in the Singapore Trials judged Japanese treatment standards based on non-Japanese standards, rather than using the opportunity presented at trial to gain more information about these practices from a Japanese perspective and considering how it may relate to the blameworthiness of the accused.

(b) Ascertaining the Japanese military's practice and understanding of superior orders

The most frequent explanation given by defendants in the Singapore Trials was that they were acting according to the orders of their superiors. All militaries, including that of the British and its Allies in the Second World War, required their military personnel to obey orders. The laws and practices regulating such obedience, however, differed from military to military and from country to country. Indeed, the British military itself

¹⁰⁷ *ibid* SP 00097.

changed its position on superior orders during the war.¹⁰⁸ This raises questions of legal retrospectivity when applying changed law to acts committed prior to its change. My focus here, however, is on discussions about the laws and practices on superior orders during the Singapore Trials. British law permitted judges to consider superior order arguments raised by the defence, but trial records show that non-Japanese judges and lawyers in the Singapore Trials had difficulties understanding how the law and practice of superior orders worked within the Japanese military.

i. Assessing inconsistent witness testimonies about the Japanese military's superior order practices

One of the problems encountered by non-Japanese trial participants seeking to understand the mechanics of superior orders in the Japanese military was the fact that witness testimonies on this topic varied and at times conflicted with each other. Testimonies especially varied on one point: whether a subordinate was permitted to question a

¹⁰⁸ Prior to 1944, the British Manual of Military Law (MML) recognised that superior orders would exculpate an accused and that those 'who commit such violations of the recognised rules of warfare as are ordered by their Government, or their commander, are not war criminals and cannot therefore be punished by the enemy'. Rather the enemy may 'punish the officials or commanders responsible for such orders if they fall into his hands, but otherwise he may only resort to other means of obtaining redress'. It was only during the Second World War, in 1944, that the British MML was amended to state that superior orders alone would not exculpate a subordinate. The new relevant portion stated that though superior orders did not 'confer upon the perpetrator immunity from punishment' a court 'is bound to take into consideration the fact that the obedience to military orders, not obviously unlawful, is the duty of every member of the armed forces'. However, 'the major principle' should be that military personnel were 'bound to obey lawful orders only' and cannot avoid liability if their acts 'violate unchallenged rules of warfare and outrage the general sentiment of humanity'. Based on the 1944 MML, while superior orders alone cannot automatically exculpate an accused, it was still be possible for the court to consider whether superior orders alongside other factors impacted the culpability of an accused. UNWCC, 281-282.

superior's order.¹⁰⁹ This testimonial variance may have been part of defence tactics, but it may also be explained by the fact that most of us seldom know the law or its practice in detail even in ordinary times.¹¹⁰ In *Takasaki Shinji and another*, the two defendants were charged with numerous incidents of ill-treating and killing POWs in various POW camps in Thailand and on the Burma-Siam Railway. Both accused argued, among others, that they were following the orders of their superiors. Takasaki Shinji, testified that a subordinate was permitted to 'submit his opinion' to his superior if he believed that the order was illegal. However, if the superior repeated this order after receiving his subordinate's opinion, the subordinate should then proceed to comply with this order.¹¹¹

A different position was put forward by the accused in *Tomono Shunio*. Here, the defendant Tomono was accused of organising and participating in the beheading of two captured American airmen in Saigon.¹¹² He had conducted one of the two beheadings personally while ordering one of his subordinates to behead the second victim. Tomono argued that he had been ordered by his superior to undertake these executions. When explaining the Japanese system of superior orders, the defence witness in *Tomono Shunio* Lieutenant Kuwahata distinguished between orders that subordinates could submit an opinion on and orders that had to be complied with. Specifically, when the court asked

¹⁰⁹ The relevant text was introduced by Japanese defence counsel into court in the trial of *Harada Kensei*: 'Those who oppose or disobey orders of superiors shall be punished in accordance with the following discriminations. 1. When in face of an enemy they shall be punished with death or imprisonment for life or imprisonment for the term of more than 10 years. 2. When operation or arrest under martial law, they shall be punished with imprisonment for a term of within one and ten years. 3. In other cases they shall be punished with imprisonment for a term not exceeding 5 years.' *Trial of Harada Kensei*, NAUK, WO 235/884, SP 00047.

¹¹⁰ John M Darley, Kevin M Carlsmith and Paul H Robinson, 'The Ex Ante Function of the Criminal Law' [2001] *Law and Society Review* 165.

¹¹¹ *Trial of Takasaki Shinji and another*, NAUK, WO 235/862, SP 00030.

¹¹² *Trial of Tomono Shunio*, NAUK, WO 235/829.

Kuwahata whether he was allowed to express his opinion to his superior about the order received, Kuwahata replied that this was only permitted if ‘the order was in the stage of being formed’. If the order ‘was issued regularly as a definite order’ then it would have to be obeyed. The court went on to ask Kuwahata whether the order given to him — ‘[t]ake 4 or 5 men and execute 2 airmen’ — was a definite order, to which Kuwahata said yes.¹¹³

In other cases, witnesses or accused denied that such an option of expressing one’s opinion to one’s superior existed. In *Okamura Hideo*, the defendant was charged, among others, with the killing of an Indian prisoner of war (POW) pursuant to orders received at Babelthuap, Palau. Okumura was a company commander of a POW camp on Palau Island. The victim had been caught stealing sweet potatoes. He was beaten and eventually shot by a firing squad on the orders of Okumura. Okumura argued that when he had reported the victim’s theft to the Kempeitai, the latter had passed down an order to him for the victim to be executed. Okumura emphasised that a superior order had to be ‘obeyed absolutely’ and that a subordinate had no discretion in that matter.¹¹⁴ The court however pointed to testimony in previous trials which indicated that subordinates did have some discretion when faced with illegal orders. In response, Okamura stated: ‘I am very surprised. That could not be true.’

These inconsistent answers about whether such an option existed could be explained by defence tactics. For example, in the case of *Okamura Hideo* mentioned above, Okamura had insisted that a subordinate did not have discretion to question the

¹¹³ *ibid* SP 00056.

¹¹⁴ *Trial of Okamura Hideo*, NAUK, WO 235/820, SP 00032.

legality or illegality of a superior's order.¹¹⁵ In his testimony, Okamura had admitted that he had not questioned or submitted an opinion to his superior when receiving the order concerned. It was therefore in Okamura's interest to say that Japanese law and practice did not provide for the possibility of submitting an opinion. In comparison, in the case of *Takasaki Shinji and another*, also mentioned above, Takasaki claimed that subordinates could submit an opinion to their superior when it came to certain types of orders.¹¹⁶ Takasaki testified that he had indeed submitted an opinion to his superior. When instructed by his superior to execute the victims concerned, Takasaki maintained that he had asked his superior whether the victims should be sent to the military police instead of being executed.¹¹⁷ According to Takasaki, his superior had continued to insist on the victims' execution. It must have been difficult for judges to assess the authenticity of these various claims and explanations about superior orders, given the court's unfamiliarity with the Japanese laws and military practice.

According to Kita, wartime Japanese military regulations did not require subordinates to obey orders that were illegal.¹¹⁸ Superior orders were regulated by a number of Japanese laws: the *Gunjin Chokuyo* or 1881 Imperial Rescript, which was most often cited by Japanese military personnel in the trials; the *Tokuho* or Articles of War; and the *Guntai Naimusho* or Internal Regulations.¹¹⁹ The Internal Regulations permitted subordinates to voice their opinion on the illegality of the order to their

¹¹⁵ *ibid* SP 00032.

¹¹⁶ *Trial of Takasaki Shinji and another*, NAUK, WO 235/862.

¹¹⁷ *ibid* SP 00029.

¹¹⁸ Kita (n 73) 269.

¹¹⁹ *ibid* 268.

superior.¹²⁰ If the superior insisted on the order being implemented, the subordinate was then not permitted to resist the order any further.¹²¹ The defendants' inconsistent testimony about whether this option existed may be explained by defence tactics, but such inconsistent testimony could genuinely reflect the different beliefs held by defendants on the law. This is especially so as most defendants in the Singapore Trials held low to mid-level positions in the Japanese army, and were themselves not specialists in military law. Furthermore, the procedure to be followed when submitting an opinion against a superior's order was particularly complicated. This made the exercise of this option virtually impossible.

As mentioned above, in *Tomono Shunio*, the witness drew a distinction between an order that was about to be 'formed' and one that was already 'formed'.¹²² A similar distinction between the types of orders received was put forward by defence witness Tazawa Teizo in *Tamura Shinji* where the accused were charged with the ill-treatment and killing of 152 civilians on Tarmgli Island in the Andaman and Nicobar Islands.¹²³ Tazawa argued that he had been ordered by his superior to organise the shooting of these civilians. When questioned by defence counsel, Tazawa explained that '[m]aking a suggestion against an order should be made before the order is issued formally, and there is no making suggestions against orders after they have been issued.'¹²⁴ The court later

¹²⁰ *ibid* 269.

¹²¹ *ibid*.

¹²² *Trial of Tomono Shunio* (n 88) SP 00056.

¹²³ *Trial of Tamura Shinji*, NAUK, WO 235/816.

¹²⁴ *ibid* SP 00020.

questioned Tazawa about the process by which a subordinate could submit an opinion before an order was formally issued.¹²⁵

Questioned by the Court:

Q: Will the witness give us some idea how a subordinate can make a suggestion against an order before the order has been issued?

A. There are many cases in which such a suggestion can be made; in one case a General Staff Officer suggests that a certain order be issued and in another case a subordinate approached that a certain order is going to be issued and in such cases a subordinate can suggest to his superior what he thinks.

(Court) It must be a laborious undertaking!

The court's exclamation may reflect its exasperation at what it perceived to be the witness' roundabout and vague answer. However, if military practice made such fine distinctions between orders that were 'formally' issued and those that were not, and between orders that were 'formed' and those that were not, it must have been very difficult for lower-ranking subordinates to decide when they were actually permitted to submit an opinion to their superiors.

ii. Analysing the impact of Japanese superior orders using a British common law duress framework

The court and prosecution would often ask accused persons or defence witnesses whether the disobeying of orders would result in immediate punishment or harm. The answer to

¹²⁵ *ibid* SP 00021.

this was seldom a straightforward yes. Instead, from the answers given, it seems that ordinary Japanese soldiers did not see the disobedience of orders as an option due to the military training and conditioning received. In *Tamura Shinji*, referred to above, the witness Tazawa recognised that a subordinate disobeying an order would have been dealt with through the crime of insubordination in the Japanese Army Penal Code.¹²⁶ However, when he was asked by the court as to what would happen if the defendant disobeyed his superior's order, the witness could not say what would happen in this concrete situation, replying: 'I have never thought of anybody disobeying and it is rather difficult for me to answer the question right now.'¹²⁷ While this vague response may be interpreted as disingenuous prevarication on the part of the witness, it may also point to the Japanese army's training of subordinates to obey orders without question. Tazawa could articulate the consequences of disobeying orders at an abstract level, namely, that the law on insubordination would apply. But he found it hard to apply this law to the concrete situation at hand because he could not envisage how disobeying a superior's orders would play out in reality.

By focusing on whether the accused had to obey superior orders on the pain of punishment, judges and prosecutors were trying to assess the arguments of the defence using a modified understanding of the duress defence in English common law, by focusing on compulsion.¹²⁸ The arguments of the defendants however did not fit easily

¹²⁶ ibid SP 00021.

¹²⁷ ibid.

¹²⁸ For the common law concept of duress to apply, the threat must be immediate and be in response to fear of serious physical injury. It is usually not permitted as a defence for crimes such as murder. Jia Bing Bing explains in the context of the Hong Kong trials that in cases where there was 'an element of compulsion' superior orders resulted in the mitigation of sentences. Bing Bing

within this framework. Most accused did not have such punishments in mind when they were committing the crime. Japanese defendants did not say that they had failed to resist their superior's orders because they were afraid of punishment. The defendants explained that they had failed to do so because they had been trained to obey orders absolutely and unconditionally. This strand of argument was in fact raised by defence counsel in the petition of *Shimizu Kiyoji and others*, where counsel argued that 'it is regulated by the Code, that a man in the army should be habituated to follow with their superiors' orders through fire and water'.¹²⁹ Because the ordinary Japanese soldier was thus habituated or conditioned to follow orders without questioning, he may not even have considered the options before him when receiving an order from his superior.

In *Takasaki Shinji and another*, considered earlier, the accused Takasaki stated that he had been aware that subordinates were permitted to submit an opinion to superiors when receiving a potentially illegal order.¹³⁰ Takasaki could not identify the type of punishment that would be given when a subordinate who had exhausted the opinion option continued to disobey orders. Specifically, Takasaki explained:

Jia, 'The Plea of Superior Orders in the Hong Kong Trials' in Suzannah Linton (ed), *Hong Kong's War Crimes Trials* (OUP Oxford 2013) 171.

¹²⁹ *Trial of Shimizu Kiyoji and others*, NAUK, WO 235/882, 00017.

¹³⁰ *Trial of Takasaki Shinji and another* (n 92).

I do not know what punishment would be given and in fact I did not consider at any time what the punishment would be because I was trained in the Army where I knew I could make one submission of opinion but after that to obey the order. So I had never thought what the punishment would be.¹³¹

In other words, Takasaki had followed his superior's order because of the conditioning he had received rather than because of any fear of punishment. This explained why Takasaki did not protest or question his superior's order.

It is easy to see why Allied prosecutors and judges would have been unwilling to accept these superior orders alone as a complete defence. Accepting the defence of superior orders would preclude the conviction of most low to mid-ranking subordinates in the Singapore trials who were acting according to superior orders. Yet the fine distinctions put forward by the accused seem to have appealed to some judges. In *Kuwahata Tsugio and another* mentioned above, the two defendants were charged for killing pursuant to the order of their higher-ranking superiors.¹³² The first accused Kuwahata Tsugio was of a higher rank than the second accused Murakami Isao and had organised the execution. At trial Murakami made a distinction between instructions and orders, with the aim of absolving Kuwahata. Murakami argued that a higher-ranking Major Tomita, who had not been charged in the case, had the power to give orders while the first accused had merely conveyed his order through instructions.¹³³

Murakami explained that unlike orders, instructions could be disobeyed. Specifically he claimed that he could have disobeyed the instruction given by Kuwahata

¹³¹ *ibid* SP 00030.

¹³² *Trial of Kuwahata Tsugio and another* (n 79).

to conduct the execution at a particular place if he had found a more suitable place.¹³⁴ Murakami also emphasised that Kuwahata could not have given an instruction to conduct an execution as power to give an order for such execution only lay with the commander-in-chief.¹³⁵ While the distinction between an instruction and order sounds duplicitious, the judges appear to have been somewhat persuaded by the defendants' arguments and sentenced them each to only one year imprisonment. During sentencing the court noted that the accused 'were acting under superior orders' and that though this was not 'a complete defence', it had decided to give the accused 'a sentence commensurate with [their] degree of responsibility'.¹³⁶ The JAG advisory report also noted the 'frank admissions' made by the accused and advised confirmation.¹³⁷

In brief, the superior order arguments of the defence were given different interpretations by non-Japanese actors involved in the Singapore Trials. Many judges tried to ask Japanese trial participants for more information about how superior orders worked in the Japanese military but did not get answers that were satisfactory from their perspective. The answers given by some Japanese trial participants about the system of superior orders seemed contradictory or incomplete to non-Japanese judges, but this could have been explained by the fact that the lower-ranking Japanese military personnel did not know details of the law governing these orders. More importantly, many non-Japanese participants, including judges, assessed the defendants' superior orders

¹³³ ibid SP 00041.

¹³⁴ ibid SP 00042.

¹³⁵ ibid SP 00042.

¹³⁶ ibid SP 00047.

¹³⁷ ibid SP 00004.

arguments using a duress framework drawn from English common law. This did not accurately capture the defendants' arguments about how they had been indoctrinated, rather than coerced, to automatically obey superior orders.

(c) Different interpretations of legality and the Japanese Emperor's authority

When examining claims of superior orders in the Singapore Trials, the non-Japanese prosecutors and judges often interrogated Japanese defendants about whether they were aware of the order's illegality. This reflected then-prevailing understandings about superior orders. The state of the law on superior orders was still in flux during the Second World War period. However, courts would generally consider superior orders when determining guilt or sentences if the accused did not know of the order's illegality and the order was not manifestly illegal.¹³⁸ Much judicial questioning in the Singapore Trials focused on whether the defendant knew the order was illegal and whether the defendant had independently assessed the nature of the order.

i. The Japanese military's hierarchical understandings of legality

When discussing the legality of superior orders, Japanese and non-Japanese trial participants put forward different interpretations of legality. The defence advanced an understanding of legality that focused on from whom the order came. In contrast, non-Japanese prosecutors and judges put forward an interpretation of legality that focused on the nature of the order.

In *Terada Takao and others*, the defendant Shin Shigetoshi explained that when assessing an order's legality one did not focus on the nature of the act but on whether the order was consistent with the intention of the higher commanding officer.¹³⁹ The prosecutor had asked the accused whether he would have burned down the Kempeitai headquarters if ordered to do so by his immediate superior. In response, the defendant said that he would not do so if his immediate officer's order went against the intentions of the commander. In such a case the order 'would not be an order'.

The prosecutor put it to the defendant that based on his reply, he obviously would not have to obey such an order as it was unlawful. However the defendant stated that his disobedience of the order would be based on his assessment of whether the 'order meets with the intention of the Commander'. Shigetoshi went on to explain that 'among us we had not put the criterion of whether lawful or unlawful in the act itself but in the fact whether the order embodies the intention of the Commander or not'.¹⁴⁰ In essence, the defendants argued that determination of an order's legality was to be based on from whom the order emanated and not on any independent assessment of the act's quality.

When asked why the orders of one's superior had to be absolutely followed, defendants explained that this was because the orders of superiors were deemed to be orders of the Japanese Emperor. In *Hikiji Susumu*, defence counsel succinctly stated: 'Orders issued by superiors were not to be questioned, but were to be obeyed to the full,

¹³⁸ Jia argues that the Nuremberg Judgment while rejecting superior orders as a defence or mitigation by recognising that it may be recognised when 'moral choice' was impossible, left the door open for it to be invoked as a defence in post-war trials Jia (n 104) 179.

¹³⁹ *Trial of Terada Takao and others* (n74).

¹⁴⁰ *ibid* SP 00234.

as though they were the orders from His Majesty the Emperor himself, as set forth in the Imperial Rescripts.¹⁴¹ This idea that the order of superiors were to be deemed orders of the Emperor permeated official documents and practices of the Japanese military. The Emperor Meiji's Imperial Rescript to Soldiers and Sailors called on subordinates to 'regard the orders of their superiors as issuing directly from Us'.¹⁴² Every morning, each soldier was given 10 minutes to read and meditate on the 2700 characters of this Imperial Rescript. The full Rescript was also formally read out in the army four or five times a year. Servicemen were required to be able to recite by heart a shorter version entitled 'Five Principles of the Soldier'.¹⁴³ Ordinary Japanese soldiers were thus trained to consider their superior's orders as that of the Emperor.

Did such a hierarchical understanding of legality leave any room for independent assessment of the order itself, other than assessing from whom the order came? In *Chida Sotamatsu and others*, a defence witness explained that a subordinate was still required to exercise some limited independent assessment about whether the order from his superior was one that could have come from the Emperor.¹⁴⁴ In this case, the defendants were accused of beating and maltreatment that led to the injuries or death of several British POWs in Kanburi Camp, Siam. During the trial, the defence called Major General Otsuka Misao, the Deputy Judge Advocate-General of the Japanese military to testify on how superior orders were understood in the Japanese military. When questioned by the court, Otsuka pointed to one historical instance when Japanese military subordinates had

¹⁴¹ *Trial of Hijiki Susumu*, NAUK, WO 235/1108 ('*Trial of Hijiki Susumu*'), SP 00015.

¹⁴² Grew and Lory (n 50) 242.

¹⁴³ Drea, 'In the Army Barracks of Imperial Japan' (n 19) 334.

¹⁴⁴ *Trial of Chida Sotamatsu and others*, NAUK, WO 235/822, SP 00066.

assassinated the Japanese Premier upon being ordered by their superiors to do so. Otsuka was referring to the 15 May 1932 assassination of Japanese Premier Inukai Tsuyoshi by cadets who were subsequently court martialled, but who received light sentences as a result of public pressure. The court asked the witness further questions on this event:¹⁴⁵

By the Defence. The extenuating circumstance in the case in which the General has quoted is it a fact that the soldiers who went to carry out the order knew that it was the Premier's house. Therefore, they should not have obeyed the order under ordinary circumstances. [...] They were guilty because when they killed the Premier they knew that it was the Premier whom they were killing and the Premier was a person entrusted by the Emperor to carry out orders and that the Emperor would not give such an order.

By the Court: It all depends on whether the Emperor would give an order or not?

A. Yes.

This conception of legality set out by the accused did not depend on his assessment of the act's nature, but on his assessment of whether the Japanese Emperor could have ordered such an act.

ii. Making sense of the Japanese Emperor's authority

The Japanese Emperor's Second World War authority has been subject to much scholarly scrutiny. After Japan's surrender, the Americans decided that Hirohito would not be prosecuted in the Tokyo Trial. The Americans believed that due to the Japanese Emperor's divine status within Japanese society, any attempt to prosecute the Emperor

¹⁴⁵ *ibid.*

would destabilise Japanese society, making America's post-war occupation of Japan impossible. This understanding of the Japanese Emperor's status and wartime role has been challenged by scholars, who argue that the Allies misunderstood and overestimated the Japanese Emperor's religious nature and influence in Japanese society. Non-Japanese trial participants displayed similar misunderstandings of the Japanese Emperor's divinity and authority in the Singapore Trials.

When assessing the role of the Japanese Emperor, Allied judges and trial participants were often influenced by their own cultural understandings of kingship and religion. This was reflected in the questions posed by the prosecution and the court. For example, in the trial of *Tomono Shunio*, the prosecution attempted to determine the ultimate source of the Japanese Emperor's authority.¹⁴⁶

Q. Is it not the basic doctrine of Japanese religion that the Emperor is guided by heaven? In fact the Emperor is called the son of heaven.

(By Defence) – Defending Lawyer objects. The matter seems to be far apart from this case.

(By the Court) – Oh no! The order, the Defence Counsel says, comes from the Emperor. What the Prosecutor wants to know is what happens behind the Emperor, whether it originates from the Emperor or from any other authority. There may be some authority which we do not know about.

Two things are going on here. First, the prosecution hints that the Emperor is 'guided' by heaven. This is closer to the European idea that kings function as a 'conduit'

¹⁴⁶ *Trial of Tomono Shunio* (n 88) SP 00054.

for divine power.¹⁴⁷ This in turn refers to a normative order that is external to the Emperor. Researchers have argued that instead of subscribing to an external normative order with clear notions of right and wrong, the Japanese sense of appropriate behaviour is context-driven.¹⁴⁸ Second, the court hints at the fact that there is a puppet master behind the Emperor. This echoes the prevalent narrative advanced at the Tokyo Trial that the Emperor had been deceived by his political and military leaders, which did not wholly capture the dynamics of the Japanese political system.¹⁴⁹

It did not help when the Emperor was referred to in religious terms in these trials without any deeper discussion about the meaning of religion in the Japanese context. In *Sato Tamenori and others*, Japanese defence counsel argued that it was ‘the religious belief of the Japanese military officers and men that orders from their superiors are simply orders from their Emperor’.¹⁵⁰ In *Tamura Shinji*, Japanese defence counsel explained that the Emperor was ‘sacred and inviolable in Japan’ and his position explicitly described so in the Japanese Constitution.¹⁵¹ Defence counsel in both these cases were Japanese and were probably using the term religion in a Japanese sense. Historians and sociologists have highlighted the difference in religion as understood in

¹⁴⁷ Ohnuki-Tierney observes that the Allies perceived the Japanese Emperor as having a divine status he never had, and raised him from being a god within a pantheon to something larger based on Christian ideas of God. Ohnuki-Tierney, Emiko, ‘Japanese Monarchy in Historical and Comparative Perspective’ in Declan Quigley (ed), *The character of kingship* (Berg 2005) 220.

¹⁴⁸ Richard B Parker, ‘Law, Language, and the Individual in Japan and the United States’ (1988) 7 *Wis. Int’l LJ* 179, 189.

¹⁴⁹ As Dower observes, this myth about the Emperor resulted in justice ‘rendered arbitrary’ and a failure to engage with questions of war responsibility. John W Dower, *Embracing Defeat: Japan in the Aftermath of World War II* (Allen Lane 1999) 278.

¹⁵⁰ *Trial of Sato Tamenori and others*, NAUK, WO 235/814 (‘*Trial of Sato Tamenori and others*’), SP 00094.

¹⁵¹ *Trial of Tamura Shinji* (n 99) SP 00032.

the West and in Japan.¹⁵² The Allies believed that the Japanese Emperor was viewed as a god in the Western sense by ordinary Japanese. During their post-war occupation of Japan, the Americans took various steps to deny the Japanese Emperor a god-like divinity. This was something ordinary Japanese never in fact believed he had.¹⁵³ Discussions in the Singapore Trials reflected and contributed to Allied understandings of the Japanese Emperor's divinity.

In pre-war Japan, the Emperor was regarded by ordinary Japanese in a religious way but not as a God in the Christian or Western worldview. Rather, in Japanese religion, the hierarchy of supernatural beings or 'kami' is not 'fixed or linear'. 'Kamis' have a strong human element, and can be manipulated by humans just as the kami can themselves manipulate humans.¹⁵⁴ As a 'kami', the Japanese Emperor would be more appropriately known as a Man-God. Though the reforming Meiji leaders sought to bestow a manifest divinity on the Japanese Emperor through constitutional changes and far-reaching popular education, ordinary Japanese continued to view the Emperor as human and religious at the same time. The British and Allies failed to fully comprehend this.

As mentioned earlier, due to their assessment of the Japanese Emperor's 'virtually totalitarian 'spiritual' control' over the Japanese, the Americans went to great lengths during their post-war occupation of Japan to shield the Japanese Emperor from war crimes prosecutions. The Americans believed that any destruction of the Imperial throne

¹⁵² Emiko Ohnuki-Tierney, 'The Emperor of Japan as Deity (Kami)' [1991] *Ethnology* 199, 10.

¹⁵³ *ibid* 207.

would destroy the ‘Japanese psyche’ and complicate Japan’s post-war reconstruction.¹⁵⁵ They also thought that they could use the Japanese Emperor’s imperial position to further occupation policies.¹⁵⁶ The Americans actively promoted the myth of the Japanese Emperor being led astray by a military clique to draw a ‘wedge’ between him and those to be deemed responsible for the war.¹⁵⁷ They also worked behind the scenes to prevent any mention of the Emperor’s involvement in the war by defendants at the Tokyo Trial.¹⁵⁸ These policies and myths were based on Allied misconceptions of the Japanese Emperor’s power and position among ordinary Japanese.

Given Japanese views of the Japanese Emperor as ‘kami’ and not all-powerful deity, it is unlikely that an ordinary Japanese serviceman obeying superior orders was motivated by his belief in the Emperor’s divinity or his desire to do the Emperor’s will. The Japanese Emperor’s divinity was not all-encompassing or overwhelming as that of a god in theistic religions. The conduct of ordinary Japanese servicemen during the war was largely shaped by the severe military training imposed by the Japanese military, which aimed to ensure unquestioning compliance of subordinates with superior orders while justifying this in the name of the Emperor. In other words, the behaviour of lower-ranking Japanese soldiers was less foreign and less strange than represented in these trials. This is demonstrated in the results of a 1939 study by the Japanese medical corps

¹⁵⁴ Ohnuki-Tierney, Emiko, ‘The Character of Kingship’ (n 147) 222–223.

¹⁵⁵ Dower, *Embracing Defeat* (n 149) 283.

¹⁵⁶ *ibid* 281.

¹⁵⁷ *ibid* 284.

¹⁵⁸ *ibid* 325.

of the 23rd Infantry Division's responses in battle.¹⁵⁹ This study shows that Japanese troops fought well when they had good leaders, when they believed they had the support of other units though temporarily isolated, and when there were healthy ties between individuals in smaller units.¹⁶⁰ Specifically, Kushner argues that the ordinary Japanese soldier's refusal to surrender had less to do with Emperor worship than the fact that most soldiers were resigned to death upon entering the Japanese military.¹⁶¹

To summarise, non-Japanese trial participants were thus influenced by different understandings of religion and authority when interpreting Japanese participants' references to the Japanese Emperor. Based on the questions asked, non-Japanese participants drew on different ideas of religion and political authority to make sense of the Japanese Emperor's power and influence, but these ideas did not reflect popularly held understandings of the Japanese Emperor among Japanese.

4. Conclusion

Japanese trial participants put forward a range of culturally influenced arguments in the Singapore Trials. Most Japanese defendants accepted that they had committed the acts charged, but argued that they should not be held liable because they had acted in line with Japanese norms, beliefs, and assumptions. Judges did not stop the defence from raising these arguments. However, these culturally influenced arguments were often given different interpretations by non-Japanese lawyers and judges in the Singapore Trials.

¹⁵⁹ Drea, 'In the Army Barracks of Imperial Japan' (n 19) 342–343.

¹⁶⁰ *ibid* 343.

Some judges tried to obtain the cultural ‘tools’ or knowledge required to assess defence arguments by questioning Japanese participants about the Japanese norms and practices implicated in the culturally influenced arguments of the Japanese defence. However, the testimony given by some Japanese participants, such as that on the law of superior orders, often seemed inconsistent and appeared duplicitous to non-Japanese trial participants. As explained in this chapter, such inconsistent testimony may be explained by genuine forgetfulness or institutional practices that influenced how the law worked in reality. But due to their unfamiliarity with Japanese culture, it was difficult for non-Japanese judges to distinguish authentic testimony from non-authentic ones.

Non-Japanese prosecutors and judges in the Singapore Trials did not fully appreciate the cultural references used by defendants. These cultural references had a different significance or meaning in the cultural ‘tool kit’ of non-Japanese trial participants. Due to this meaning mismatch, the arguments put forward by Japanese trial participants would have appeared unconvincing or clumsy to non-Japanese trial participants. For example, many Japanese defendants and witnesses who were from the military, used the father or elder brother familial relationship as an analogy to describe relations between superiors and subordinates in the Japanese military. This analogy was in fact widely disseminated by Japanese military leaders among military personnel and drew on wider notions of family within Japanese society. Non-Japanese trial participants were not aware of this, and Japanese trial participants did not have the cultural

¹⁶¹ Barrack Kushner, *The Thought War: Japanese Imperial Propaganda* (annotated edition, University of Hawaii Press 2007) 131.

knowledge needed to frame their arguments in a manner that would be persuasive to non-Japanese participants.

Very often, non-Japanese trial participants would interpret the Japanese defendants' culturally influenced arguments using lenses from their own cultural 'tool kits', rather than understanding these arguments on their own terms. For example, as explained in this chapter, non-Japanese trial participants used their own understandings of religion, legality, and individual responsibility to assess the arguments of the Japanese defence. Some British defence counsel displayed some understanding of the defendants' culturally influenced arguments and brought them to the court's attention on behalf of the accused. Also, as the trials proceeded, some British military personnel recognised that the Japanese attached a different meaning or significance to the practice of slapping. This led to a change in British prosecution policies mid-way through the trials, when the British decided not to prosecute crimes that only involved slapping. Cultural practices that are concrete and observable, like slapping, may be easier to learn and appreciate compared to cultural beliefs and assumptions that are less obvious, such as ideas about religion.

Some Japanese trial participants became aware of how their arguments were being received by non-Japanese participants and strategically adjusted their testimonies to conform to the latter's expectations. For example, as the trials continued, more Japanese participants denied the existence of slapping practices in the Japanese military as they were aware of how slapping was negatively perceived by non-Japanese participants. Also, some Japanese participants tried to benefit from Western perceptions of Japanese cultural difference by arguing that beheading was an 'honourable' form of killing based

on Japanese understandings, though there is no support for this in Japanese tradition or history. More likely, the Japanese participants concerned had come to see beheading as just another form of killing, due to desensitisation, rather than a form of killing that was 'honourable'.

Through their questioning of accused and witnesses, it was clear that many non-Japanese judges and prosecutors gave differing interpretations to the culturally influenced arguments put forward by the Japanese defence. Some non-Japanese participants dismissed the defendants' culturally influenced arguments as a defence tactic or interpreted these arguments through their own conceptual lenses from their cultural 'tool kits'. Though Japanese defendants were permitted to raise culturally influenced arguments in the Singapore Trials, the varied treatment and interpretations of these arguments by non-Japanese participants unfortunately did not lead to sustained trial discussion or a better understanding of these arguments or their possible impact on the defendants' criminal culpability.

CONCLUSION CHAPTER

On 12 March 1948, the last British-run war crimes trial in Singapore came to an end. By then, the British had held altogether 131 trials in Singapore. More than 400 accused had been tried in these trials for an assortment of crimes committed in different parts of Asia.¹ When the British started organising these trials in late 1945, Singapore still bore the deep scars of war. Life for ordinary civilians was hard. There were food shortages, inadequate medical facilities, and continuing security concerns. The returning British military had to grapple with numerous humanitarian and reconstruction demands. At the same time, British military leaders were determined to undertake wide-ranging and comprehensive war crimes prosecutions. They were aware of other ongoing Allied prosecutorial efforts and did not wish for British efforts to fall behind.

From 1946 to 1948, British military courts in Singapore heard the testimonies of hundreds of witnesses from different parts of Asia and Europe. Witnesses and the defendants were questioned by British and Japanese counsel before judges from the UK, India, the US, Australia, and the Netherlands. This kaleidoscope of trial participants spoke different languages and drew on varied legal and communal traditions. Recalling Swidler's sociological definition of culture as 'publicly available symbolic forms through which people experience and express meaning', a definition that I have employed in my

¹ Two accused, Terada Takao and Murata Yoshitaro, had been tried twice. Upon being found not guilty at their first trial, they were later tried for different crimes and had been convicted.

study, the participants of the Singapore Trials used an assortment of meaning-making ‘tool kits’.²

The coming together of these different meaning-making ‘tool kits’ resulted in some recurring culturally related communication challenges. My dissertation has ascertained and analysed the communication challenges encountered by trial participants in the Singapore Trials. I have explored how trial participants responded to these challenges and how some participants developed strategies to steer their way through these trials. Here, in my Conclusion Chapter, I consider what lessons the Singapore Trials hold for us today as we continue to organise war crimes trials involving international judges and multicultural defendants and witnesses.

1. Diverse actor composition and culturally related communication challenges in the Singapore Trials

My study has focused on trial participants’ use of three ‘tools’ drawn from their meaning-making ‘tool kits’ in the Singapore Trials: language, professional legal knowledge, and arguments drawing on broader norms, ideas, and symbols. These diverse linguistic, professional and argumentative ‘tools’ used by trial participants led to numerous challenges in understanding and communication among participants.

² Ann Swidler, ‘Culture in Action: Symbols and Strategies’ (1986) 51 *American Sociological Review* 273, 273.

(a) Language, participation, and interpretation obstacles in the Singapore Trials

Participants in the Singapore Trials spoke a multitude of languages. The majority of judges and prosecutors were English speakers by virtue of being from the British military. Hundreds of Asian witnesses and most of the accused chose to testify in these trials in Asian languages as they were not fluent in English. Extensive and multiple courtroom interpretation arrangements were necessary because of the large number of non-English speakers and the uncommon Asian languages spoken. Such complex interpretation arrangements and insufficiently skilled interpreters resulted in numerous communication problems at trial. Certain interpreters left out important information or added information, while some distorted concepts through their interpretations. There were also interpreters who had difficulties managing the interpretation process; they did not ask speakers to stop or slow down to facilitate interpretation and did not excuse themselves when fatigued or unable to continue. A number of interpreters had difficulties answering judicial queries, and this made it hard for judges to determine the root cause of interpretation issues.

Japanese defence counsel did not only have language barriers to overcome in the Singapore Trials, they also experienced participation difficulties due to the gap between their professional legal skills and the skills required to effectively participate in the Singapore Trials. The majority of defendants in the Singapore Trials were defended by Japanese defence counsel rather than British defending officers. The former were trained in pre-war Japan's legal system that was based on French and German law and that

employed an inquisitorial trial process. The Singapore Trials employed English law and international law as well as an adversarial trial process. Many Japanese defence counsel were less skilled than their British counterparts at formulating substantive legal arguments. Some made procedural errors in the Singapore Trials, and found it particularly hard to comply with common law rules on questioning and evidence admission. Certain Japanese defence counsel made tactical decisions that risked undermining their client's interests, and most adopted a deferential rather than adversarial posture towards the prosecution, in line with pre-war Japan's legal practices.

Cultural difference also had a broader impact on how non-Japanese trial participants interpreted the arguments of Japanese participants in the Singapore Trials. Japanese participants frequently referred to Japanese norms, practices, beliefs and assumptions when making arguments against the guilt of the accused at trial. Most accused in the Singapore Trials did not deny committing the acts for which they were prosecuted. Instead, the accused referred to Japanese cultural practices, assumptions and beliefs to explain or justify their acts, arguing that these acts should not be considered criminal. Among others, Japanese participants referred to standards of ordinary treatment, ideas of legality, and the authority of the Japanese Emperor. The questions asked and observations made by non-Japanese participants in these trials show that many Allied judges and prosecutors put forward interpretations that significantly differed from that of Japanese participants.

The use of diverse cultural 'tool kits' by participants in the Singapore Trials thus resulted in substantial communication challenges in the Singapore Trials: language

interpretation difficulties, counsel participation issues, and differing understandings of defence arguments. It should also be noted that not all of the culturally related communication issues encountered in the Singapore Trials would have been reflected in the trial transcripts studied, as these transcripts only capture speech and only the English portion of such speech.

(b) Factors contributing to culturally related communication challenges in the Singapore Trials

Due to large number of diverse trial participants brought together in the Singapore Trials, and the radically different nature of languages, legal traditions, and participant backgrounds involved, these trials would inevitably have had some communication difficulties. There were, however, contextual factors that further complicated communication issues in the Singapore Trials. The British military had to address multiple post-war needs in Singapore: the reestablishment of law and order, the repatriation of POWs, the population's welfare, and the rebuilding of infrastructure. The Singapore Trials competed with these multiple post-war demands for limited resources and personnel.

Trial organisers found it particularly difficult to secure a sufficient number of skilled interpreters and legal personnel for these trials. Finding skilled personnel for these trials was particularly important because personnel had to address not only culturally related communication problems but also complex crimes and unexpected organisational issues. There were so many things going on in these trials that it is understandable why

some inexperienced trial personnel may have overlooked less obvious cultural issues. The British military had also designed these trials to be ambitious in scope. The trials were to achieve many objectives, including the demonstration of a superior British justice that would help re-establish British colonial legitimacy in the region. Also, in contrast to the Tokyo Trial and Nuremberg Trial that prosecuted only a select number of high-ranking military and political leaders, the Singapore Trials targeted a wide spectrum of accused persons with sundry ranks and responsibilities.

The crimes prosecuted at these trials had complicated facts but courts had to work with limited evidence. Many of these crimes were mass crimes involving groups of perpetrators whose roles had to be ascertained and proved in court. The evidence considered in these trials was limited in nature and composed of largely out-of-court statements whose makers were usually not called to testify at trial. The prosecution had difficulties locating witnesses in post-war Asia, and courts were reluctant to adjourn trials to facilitate the travel of witnesses from faraway crime locations. It was also to find official Japanese documentation that could serve as evidence in these trials because the Japanese military had systematically destroyed such records near the war's end. The Singapore Trials involved crimes that were difficult to judge and prosecute, especially if public perceptions of fairness and superior British justice were to be maintained.

On top of all this, judges and key trial actors had to deal with an array of organisational issues normally taken for granted by courts operating in peacetime. The trials were disrupted by transport problems, sudden changes in venue, and participant sickness. Trial personnel were also under instructions to complete the trials in a prompt

manner. This explains why trial organisers and judges were reluctant to delay or adjourn the Singapore Trials, even when this was necessary to address culturally related communication issues. Trial expeditiousness meant that judges were under pressure to devote less time to addressing less obvious culturally related communication issues in the Singapore Trials.

Finally, then-prevailing Western assumptions about the ‘national characteristics’ of Japanese society aggravated culturally related communication problems by influencing how non-Japanese trial participants interpreted the claims and arguments of Japanese trial participants. There is evidence that British trial personnel were not well-informed about Japanese society or culture and were influenced by certain then-popular beliefs about the ‘national characteristics’ of Japanese society. These beliefs influenced their interpretations of Japanese defence arguments. In addition, there is also evidence that some British trial personnel approached defence arguments using Western cultural frameworks, such as Western concepts of religion and legality, which led to differing interpretations of defence arguments.

To sum up, there were recurring language, participation, and interpretation challenges in the Singapore Trials. While some of these challenges were unavoidable due to the trials’ diverse actor composition, many challenges were aggravated by contextual factors rooted in from Singapore’s post-war conditions. Trial organisers had problems securing the skilled personnel needed for the trials. The numerous post-war reconstruction tasks undertaken by the British military in post-war Singapore greatly strained the military’s limited resources. British military trial personnel were also under

instructions to ensure that these trials were conducted and completed in a swift manner. On top of this, some trial personnel were influenced by popular assumptions of Japanese conduct and motives. These contextual factors complicated culturally related communication issues in the Singapore Trials and shaped decisions taken by key trial actors in response to these issues.

2. Navigating cultural complexity in the Singapore Trials

The Singapore Trials featured substantial culturally related communication challenges stemming from the trials' diverse actor composition and their particular historical context. From military communication records, trial organisers did not anticipate the full impact of participant diversity on trial communication. Apart from trying to secure sufficiently skilled personnel, trial organisers did not take steps that would ameliorate the effects of culturally related communication difficulties. Nevertheless, despite resource shortages and inadequate preparation, some trial participants developed and deployed strategies that enabled them to circumnavigate culturally related communication challenges. Many judges adopted an informal and accommodating approach when intervening to resolve communication issues, while some accused and counsel picked up cultural knowledge through repeat trial participation and employed such knowledge in strategic ways. Nevertheless, there were some cultural issues that trial participants did not notice or address.

(a) Proactive and flexible judicial intervention

Most judges in the Singapore Trials did not share the language, training, or background of the Asian defendants and witnesses appearing before them. It was therefore challenging for these judges to identify and assess culturally related breakdowns in communication during the trials. For example, it was difficult for judges to spot interpretation errors in the Singapore Trials because these judges were themselves not knowledgeable about the languages spoken. Nonetheless, some judges identified possible interpretation errors by paying attention to logical gaps between questions asked by counsel and the interpretation of answers by witnesses; the difference in length between answers given in the original language and interpreted answers; and any independent exchanges between the interpreter and witness. By being conscious to the possibility of interpretation errors and by remaining alert throughout the trials, some judges drew attention to possible errors and called on interpreters to double-check their interpretation or address errors made.

Apart from keeping a look out for culturally related communication issues, such as interpretation mistakes, most judges took a non-legalistic and flexible approach when dealing with participation difficulties of Japanese defence counsel. Most judges dealt with defence counsel's procedural errors in a lenient manner unless these errors were repeated or heavily objected to by the prosecution. Judges also provided defence counsel with explanations of procedural rules and highlighted the implications of certain decisions taken by defence counsel. Some judges allowed deviations from rules to compensate for defence counsel's weaknesses. In *Banno Hirateru and others*, the court

allowed the British defence advisory officer to conduct cross-examinations, though this was to be done by the Japanese defence counsel according to applicable trial rules, as the court felt that the former was in a better position to do so.³ Taking a non-legalistic approach allowed judges to adjust their responses to the particular problem at hand.

Judges in the Singapore Trials did not hesitate to give instructions or ask questions for purposes of clarification when coming across culturally relevant communication problems. However, these questions or explanations were not always phrased in the most effective way. It will be recalled that many Japanese defence counsel had participation difficulties in the Singapore Trial as they were not fully cognisant of British laws and processes that applied in the Singapore Trials. Some judges tried to facilitate Japanese defence counsels' participation by explaining applicable procedural rules. These judicial explanations, even when detailed, closely tracked the explanatory provisions set out in the British Manual of Military Law. In other words, judges did not closely tailor their explanations to the particular background of Japanese defence counsel. None of the judges referred to the differences between British adversarial procedures and Japan's pre-war inquisitorial procedure when making procedural explanations to Japanese defence counsel. Nevertheless, as explained below, some Japanese defence counsel altered their behaviour in response to these judicial instructions.

Judges also cross-checked facts between cases and used details learned from earlier cases to assess information in later cases. This was possible as many judges were repeat players and because common arguments were raised in many trials. For example,

³ *Trial of Banno Hirateru and others*, NAUK, WO 235/1034 (*'Trial of Banno Hirateru and*

judges referred to testimony given about the Japanese military's superior orders system in earlier trials to test the veracity of testimony given by witnesses and accused on superior orders in later trials. In a number of cases, defendants explained that based on Japanese laws on superior orders, subordinates had one opportunity to question these orders. In *Okamura Hideo*, the court specifically asked the accused, who claimed that he did not wish to commit the crime ordered by his superior, whether he had made use of the opportunity to submit a protest against the order, referring to a previous case where information about such an opportunity was discussed.⁴

Though judges made many interventions to address culturally related communication issues in the Singapore Trials, not all of these were successful as it was hard for judges to identify the root cause of such communication issues due to their own cultural unfamiliarity. For example, an interpretation problem may be caused by different factors. It could be caused by interpreter fatigue or problematic interpreting skills, witness inability to understand, or witness prevarication or dishonesty. Different causes would require different responses. Judges also found it challenging to differentiate between authentic and tactical claims of culturally related communication issues. For example, some defence counsel repeatedly challenged the accuracy of interpretation or sought to be excused for their recurring procedural mistakes based on their unfamiliarity with common law procedure.

others'), SP 431.

⁴ *Trial of Okamura Hideo*, NAUK, WO 235/820, SP 00032.

Even so, though judicial differentiation of genuine claims from tactical claims was challenging, some judges adopted interesting methods to do so. When the defence challenged the competence of interpreters used to record out-of-court statements, the British judges involved could not independently verify the skills of the interpreter because they did not speak the language concerned. As explained in Chapter 3, during the trial of *Itzuki Toshio and others*, the court tried to determine interpreter competence by asking them interpret a portion of a document in court and then asking the court interpreter to verify the interpretation's accuracy.⁵

Judges in the Singapore Trials thus used a variety of ad hoc methods to overcome culturally related communication barriers between the court, the accused, and Asian witnesses. They adopted ad hoc observation methods to indirectly identify interpretation errors, and took a non-legalistic approach to procedural mistakes made by Japanese defence counsel. However, as I underscored in earlier chapters, judges in the Singapore Trials were highly reluctant to grant adjournments due to trial expediency pressures.

(b) The cultural learning of trial participants during the trial process

Some trial actors picked up cultural knowledge or 'tools' during the trial process through observation and repeat participation. Judges who asked for clarifications when encountering facts or practices foreign to them. For example, as highlighted in Chapter 3, in *Osada Yasue and others*, a case that concerned war crimes committed by defendants of

⁵ *Trial of Itzuki Toshio and others*, NAUK, WO 235/834 ('*Trial of Itzuki Toshio and others*'), SP 00610.

Taiwanese origin, the court did not know the location of Taiwan, or ‘Formosa’ as the island was then referred to, and did not hesitate to ask for Taiwan to be pointed out on a map.⁶ In *Hachisuka Kunifusa and others*, defence counsel arranged for rice, a common staple food of Asians, to be cooked before the court in a bid to demonstrate how rice expands in volume when cooked.⁷ One of the judges in this case also served as judge in another case where he volunteered his knowledge about how cooked rice expands when the question was raised.

Other trial actors apart from judges also demonstrated learning throughout the trials. Certain Japanese defence counsel adjusted their behaviour on the spot when judges pointed out the mistakes counsel made. Many Japanese defence counsel were repeat actors in the Singapore Trials, representing different accused in different trials. The legal knowledge of some of these defence counsel improved as they participated in more cases. For example, some Japanese defence counsel put forward detailed substantive legal arguments based on British law. Some Japanese counsel’s knowledge of applicable rules developed to the extent that they objected to the procedural mistakes made by prosecutors.

Certain trial participants deployed learned cultural knowledge in a tactical manner to advance their interests at trial. For example, some defendants adjusted their explanations of Japanese practices to meet the expectations of some Western judges and

⁶ *Trial of Osada Yasue and others*, NAUK, WO 235/908 (‘Trial of Osada Yasue and others’), SP 00055.

⁷ *Trial of Hachisuka Kunifusa and others*, NAUK, WO 235-952 (‘Trial of Hachisuka Kunifusa and others’), SP 438.

prosecutors. Other participants took advantage of the existence of culturally related communication problems in the trial and referred to such problems to gain an advantage or obtain the sympathy of judges. Japanese defence counsel often alleged translation errors in out of court statements or expressly attributed mistakes to their unfamiliarity with British procedure.

While trial records show such cultural learning taking place throughout the trials, some trial actors experienced difficulties learning certain cultural practices or ‘tools’. Most, if not all, Japanese defence counsel did not adopt an adversarial stance against the prosecutor. This was even so in cases where the court intervened to encourage defence counsel to maintain his position against that taken by the prosecutor. Japanese defence counsel generally adopted a polite and deferential attitude in the Singapore Trials. As explained, Japanese defence counsel’s difficulties in adopting an adversarial approach may have been influenced by the lower status of defence counsel compared to judges and prosecutors in the Japan’s pre-war legal system. Japanese defence counsel may have found the learning of an adversarial stance or attitude more difficult due to its implicit nature as compared to observable facts or the black letter of the law. Nevertheless, it should be noted that defence counsel’s decision to adopt such a deferential style may have been tactical in nature.

(c) Cultural challenges that were not confronted by trial participants

Some of the more difficult communication challenges in these trials were encountered by non-Japanese participants when interpreting culturally specific arguments put forward by

Japanese trial participants. Japanese trial participants often argued that the Japanese accused were merely acting in compliance with then-existing Japanese beliefs, norms, or practices and therefore should not be held culpable or punished for their actions. Non-Japanese trial participants often approached these culturally specific arguments of the defence using their own interpretative frames or schemas. This gave rise to different interpretations of defence arguments. For example, some Western trial participants interpreted the authority of the Japanese Emperor using Western frameworks of religion.

Pre-war Japan had adopted many Western institutions, laws, and practices. These Western models worked in very different ways when implemented in Japan. However, Western trial actors who were familiar with how these models worked at home may have expected them to work the same way in Japan, dismissing or ignoring explanations to the contrary. For example, the Japanese pre-war military had adopted the Western court martial system, but the formal court martial process was seldom resorted to and in fact avoided among Japanese military superiors. Rather, the Japanese military heavily relied on an informal system of punishment by lower level superiors, and this preference for informal punishment reflected broader social practices within Japanese society. Many Japanese participants referred to this practice of informal punishment in the Singapore Trials, but its details and implications on guilt were not fully explored by non-Japanese trial participants.

Some British participants also applied concepts from English criminal law when approaching the arguments of the defence. It will be recalled that the 1945 Royal Warrant framework governing the trials incorporated by reference elements of English criminal

law. Some British judges and lawyers used the English common law defence of duress to approach superior order arguments raised by Japanese trial participants. This failed to take into account defence arguments that did not include situations of duress or coercion. Some defendants argued instead that they had been obeyed their superior's orders as the result of military training and indoctrination. By using the legal category of duress to approach defence arguments, some British trial participants overlooked certain facts raised by the defendants and misrepresented the culpability arguments raised by the defendants.

The understanding and interpretation of arguments in these trials was also shaped by the language interpretation provided at the Singapore Trials. Some interpreters did not provide sufficiently detailed cultural context to facilitate non-Japanese trial participants' understanding of Japanese trial participants. This at times had significant consequences. It is worth referring to the example I highlighted in Chapter 3 concerning the interpretation of the Japanese phrase 'shigata-nai' in *Hachisuka Kunifusa and others*.⁸ This is a common expression in Japanese culture and is usually used to indicate norms or circumstances beyond one's control. Different interpretations of this phrase were put forward by the court interpreter and the prosecutor at trial. When the court interpreter interpreted this phrase as 'nothing could be done', the prosecutor suggested that the correct interpretation should be 'its got to be done, it could not be helped?'⁹ Trial records show that there was no further discussion of the cultural context that would facilitate the

⁸ *Trial of Hachisuka Kunifusa and others*, NAUK, WO 235-952 ('*Trial of Hachisuka Kunifusa and others*'), SP 266.

⁹ *ibid.*

judges' choice between the two interpretations presented and contextual understanding of this phrase.

In some domestic legal systems, like Australia, it is accepted good practice for interpreters to provide the court with cultural information to facilitate judicial understanding of culturally specific arguments raised by participants from minority groups.¹⁰ Some interpreters in the Singapore Trials may have been trying to elicit further information from witnesses in order to provide such further information or clarifications, but were required by judges to adopt a literal approach to interpretation. In *Harada Kensei*, the court observed that the interpreter 'appeared confused' and proceeded to explain to the interpreter that he was 'to interpret verbatim everything that is said in English'.¹¹ Such a literalist or word-for-word approach to interpretation is not conducive to conveying the meaning of culturally specific information across cultural barriers, and may have contributed to culturally related communication issues in the Singapore Trials.

Trial participants adopted different means to steer their way through the many culturally related communication issues experienced in the Singapore Trials. Some participants benefited from the active intervention and flexible approach of judges. Others, including judges, acquired cultural knowledge through observation and repeat participation in the trials. Trial records demonstrate that participants found some types of culturally related communication issues particularly challenging, such as the adopting of an adversarial or combative stance at trial. In addition, some non-Japanese trial

¹⁰ Holly Mikkelsen, 'Towards a Redefinition of the Role of the Court Interpreter' (1998) 3 *Interpreting* 9.

¹¹ *Trial of Harada Kensei*, NAUK, WO 235/884 ('*Trial of Harada Kensei*'), SP 00023.

participants adopted differing interpretations of Japanese participants' arguments due to certain cultural assumptions and language interpretation. Certain types of cultural 'tools' or knowledge were more easily absorbed and utilised by participants in the Singapore Trials.

3. Possible lessons for today from the Singapore Trials

What are the lessons for today that we may take away from the Singapore Trials? Many of the problems encountered in the Singapore Trials were in large part due to the unprecedented nature of Allied trials and post-war conditions. It was the first time that such large scale war crimes trials were organised by the British. Many trial organisers and key trial actors did not anticipate the challenges involved in organising such war crimes prosecutions. Trial personnel also had to work under conditions of resource shortage and faced pressures to complete trials in an expeditious manner. In particular, no one seems to have fully appreciated the communication difficulties that would arise as a result of bringing together trial participants with diverse backgrounds. The Singapore Trials and these trials' culturally related communication challenges thus need to be appreciated against this specific historical context. Nevertheless, the Singapore Trials' experience with culturally related communication challenges do offer us some insights and lessons for today. This is especially so as many present-day war crimes trials continue to bring together accused, judges, lawyers, and witnesses with diverse backgrounds.

Based on military communications and transcripts of the Singapore Trials, one of the most striking things is how trial personnel prioritised trial expeditiousness over ensuring that there were sufficiently skilled trial personnel in place at these trials. While trial organisers made efforts to locate and secure skilled interpreters and legal personnel, trial records show that some interpreters and legal personnel were put to work in trials before being given enough time to familiarise themselves with the process, and this had an adverse effects on their performance. Furthermore, when judges encountered serious culturally related communication problems in these trials, such as interpretation errors or counsel unfamiliarity, they seldom adjourned the trial to properly address the problem but would instead adopt ad hoc measures that allowed the trial to continue, such as by immediately replacing an insufficiently skilled courtroom interpreter with a member of the bench, a witness, the court monitor, or even a member of the audience.

Commentators call attention to how many present-day war crimes courts begin investigations and prosecutions without sufficient resources and personnel.¹² Prosecutors of some courts have been criticised for submitting requests for arrest warrants without credible investigations or evidence.¹³ Public expectations and political circumstances may pressurise war crimes courts into commencing trials before these courts have the necessary resources and personnel in place, such as was the case in the Singapore Trials. My study adds to research critical of these courts' inadequate preparations. The Singapore Trials show that expediting investigations or trials may exacerbate culturally related communication issues. My study reminds us that culturally related

¹² Nancy A Combs, *Fact-Finding Without Facts: The Uncertain Evidentiary Foundations in International Criminal Convictions* (Cambridge University Press 2010) 275.

communication issues may be worsened or overlooked when war crimes trials proceed without suitable preparation and in a rushed manner.

My study of the Singapore Trials also underscores the need for a culturally sensitive approach when implementing war crimes trials. As some scholars have critically observed, international criminal law and war crimes tribunals are usually presented in universal or ‘global’ terms while its cultural aspect underappreciated.¹⁴ Nouwen and Werner warn that this has resulted in war crimes trials ‘overpowering other conceptions of justice’.¹⁵ A number of empirical studies challenge this universal view of war crimes trials by demonstrating the cultural contestation that takes place during these trials. For example, in his case study of the Sierra Leone Special Court (SLSC), Kelsall is critical of what he sees as the court’s failure to be more ‘open minded’ and argues that the court should have considered the role of local rituals and belief in magic when determining the superior responsibility of defendants.¹⁶

This dissertation contributes to critical literature on the culturally contested justice imposed during war crimes trials, and emphasises the need for a more culturally aware and sensitive approach when implementing these trials. For example, with respect to courtroom interpretation, some judges adopted a literal approach to interpretation in the Singapore Trials. In a number of cases, judges appointed fellow judges, witnesses, or

¹³ ibid 240–241.

¹⁴ Sarah MH Nouwen and Wouter G Werner, ‘Monopolizing Global Justice: International Criminal Law as Challenge to Human Diversity’ [2014] *Journal of International Criminal Justice* 6.

¹⁵ ibid 18.

¹⁶ Tim Kelsall, *Culture under Cross-Examination: International Justice and the Special Court for Sierra Leone* (Cambridge University Press 2013) 262.

members of the public who could speak the language to take over the courtroom interpreter's duties. Interpretation was viewed as concerned only with linguistic competence; anyone who spoke the language was seen to be competent to deliver courtroom interpretation. Karton observes in 2010 that scholars and practitioners of war crimes trials are 'largely unaware' of how interpretation works and view it as 'a technical issue'.¹⁷ It would be beneficial for trial actors to be made aware of the cultural dimension of interpretation and of the need for interpreters to convey the cultural context of the language concerned when interpreting.¹⁸

A similarly culturally sensitive approach should be taken when selecting and preparing judges and lawyers for war crimes trials. With respect to defence counsel, researchers of present-day trials highlight the need to ensure that defence counsel are properly qualified and equipped.¹⁹ They argue that courts can do more with regard to selecting and monitoring the performance of defence counsel.²⁰ My study of the Singapore Trials contributes to this literature by drawing attention to the need to ensure that foreign defence counsel are adequately trained in the law and procedure of the relevant war crimes court. Nevertheless, my study also highlights how some Japanese defence counsel adjusted their conduct in response to judicial instructions and improved

¹⁷ Joshua Karton, 'Lost in Translation: International Criminal Tribunals and the Legal Implications of Interpreter Testimony' (2008) 41 *Vanderbilt Journal of Transnational Law* 4.

¹⁸ There has been much research on the cultural aspect of courtroom interpretation by researchers focusing on domestic trials. See, for example, Virginia Benmaman, 'Legal Interpreting: An Emerging Profession' (1992) 76 *The Modern Language Journal* 445; Susan Berk-Seligson, *The Bilingual Courtroom: Court Interpreters in the Judicial Process* (1 edition, University Of Chicago Press 2002). With respect to war crimes trials, the work of Karton and Combs has done much to draw attention in recent years to this issue. Karton (n 17); Combs (n 12).

¹⁹ Till Gut and others, 'Defence Issues' in Göran Sluiter Sluiter and others (eds), *International Criminal Procedure: Principles and Rules* (OUP Oxford 2013) 1271.

²⁰ *ibid.*

in legal skills as they participated in repeated trials. Judicial instruction and trial participation can facilitate defence counsel's learning of law and procedure. Sufficient preparation time and support can facilitate defence counsel's learning of laws and procedures that counsel are unaccustomed to.

This leads me to underscore the crucial role played by judges in the Singapore Trials when addressing culturally related communication issues. Judges made different types of interventions in response to communication challenges in the Singapore Trials. In doing so, some judges in the Singapore Trials showed that they did not want to come across as overly interventionist, emphasising that defence counsel had ultimate decision over case presentation and strategy, in line with common law conceptions of judges as neutral arbiters. Nevertheless, many judges gave explanatory advice to interpreters and defence counsel. Some judges did not hesitate to ask additional questions to witnesses for clarification purposes, and some prevented prosecutors from being too aggressive. My study of the Singapore Trials shows that judges can play an important role in mediating culturally related communication problems.

In her ground-breaking work on fact-finding in contemporary war crimes trials, Combs proposes a trial process model with 'judge-driven direct examination' followed by 'vigorous cross-examination conducted by opposing counsel'.²¹ Her argument is that a 'judge-driven direct examination' would facilitate better fact-finding in trials involving international or culturally diverse witnesses.²² I agree with Combs that judges are best

²¹ Combs (n 12) 319.

²² *ibid* 20.

placed among trial actors to facilitate communication in multicultural trials. My study of the Singapore Trials illustrates that judges are able to mitigate culturally related communication problems by taking a proactive and informal approach. Some judges, however, showed concern over being viewed as too interventionist. Some also demonstrated insufficient cultural awareness or knowledge. With this in mind, it may be useful for judges in present-day courts to be provided with some training on how cultural differences impact trial communication and how judicial interventions can play an important role in mitigating these problems.²³

4. The legacy of the Singapore Trials

By the time the Singapore Trials came to an end, 141 defendants had been sentenced to death; 43 to life imprisonment; and the rest to varying terms of imprisonment. 51 accused were acquitted. At the confirmation stage, 48 convicted accused had their sentences reduced, and 11 had their sentences not confirmed. In the next few years, most of those serving sentences would be released by the British for political reasons. Cold War politics and Japan's support in the Korean War were among political factors influencing the Americans and the British to grant generous sentence remissions and clemency to convicted war criminals in Asia.²⁴

²³ Indeed, Combs points to cultural training afforded judges in some countries with aboriginal minorities. *ibid* 299.

²⁴ R John Pritchard, 'The Parameters of Justice: The Evolution of British Civil and Military Perspectives on War Crimes Trials and Their Legal Context' in John Carey, William V Dunlop and John R Pritchard (eds), *International Humanitarian Law: Origins, Challenges, Prospects*, vol 1 (Transnational Publishers 2003) 315–326.

The ending and legacy of these trials, like their organisation and like most war crimes trials, were shaped by the politics of the day. My dissertation has drawn attention to a less researched complexity impacting post-Second World War Trials: the diverse backgrounds of trial participants and participants' employment of differing cultural 'tool kits' to communicate at trial. Trial participants experienced significant challenges to communication and understanding in these trials. And this may partially explain why many convicted accused felt that they had been unfairly treated. Many imprisoned accused wrote bitter letters to their family members and friends, arguing that they had been made scapegoats and had been unfairly treated.²⁵ It cannot be definitively said that such discontent would have been quashed by more culturally sensitive trials, but it is likely that the many communication difficulties experienced by participants in the Singapore Trials contributed to these feelings of injustice.

²⁵ R John Pritchard, 'The Gift of Clemency Following British War Crimes Trials in the Far East, 1946-1948' (1996) 7 *Criminal Law Forum* 25.

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