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School of Social Sciences and Humanities
Murdoch University
I declare that this thesis is my own account of my research and contains as its main content work which has not previously been submitted for a degree at any tertiary education institution.

Dean Aszkielowicz
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### ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ANZUS</td>
<td>Australia, New Zealand, United States Security Treaty</td>
</tr>
<tr>
<td>BCOF</td>
<td>British Commonwealth Occupation Force</td>
</tr>
<tr>
<td>FEC</td>
<td>Far Eastern Commission (Washington)</td>
</tr>
<tr>
<td>IMTFE</td>
<td>International Military Tribunal for the Far East (Tokyo)</td>
</tr>
<tr>
<td>JAG</td>
<td>Judge Advocate General</td>
</tr>
<tr>
<td>NAA`</td>
<td>National Archives of Australia</td>
</tr>
<tr>
<td>NARA</td>
<td>National Archives and Records Administration (US)</td>
</tr>
<tr>
<td>NOPAR</td>
<td>National Offenders’ Prevention and Rehabilitation Commission (Japan)</td>
</tr>
<tr>
<td>POW</td>
<td>Prisoner of war</td>
</tr>
<tr>
<td>PRC</td>
<td>People’s Republic of China</td>
</tr>
<tr>
<td>RSL</td>
<td>Returned and Services League (formerly Returned Sailors’, Soldiers’ and Airmen’s Imperial League of Australia)</td>
</tr>
<tr>
<td>SCAP</td>
<td>Supreme Commander for the Allied Powers (Tokyo)</td>
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<tr>
<td>SEAC</td>
<td>South East Asia Command</td>
</tr>
</tbody>
</table>
CONVENTIONS

Japanese personal names are usually given in the text with surname first, in accordance with Japanese custom. The war crimes trial records, however, are erratic in their recording of Japanese names, sometimes putting the surname first and sometimes not. When quoting from the trial records I have given the name in the order in which it appears in those records.

The titles of trial records include the names of all defendants in a case, which produces exceedingly long citations for the larger trials. I have therefore cited these records in an abbreviated format in footnotes and the bibliography, giving the name of the first defendant and the total number of defendants but not listing all names.
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
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<tbody>
<tr>
<td>18 May 1899</td>
<td>First Hague Convention</td>
</tr>
<tr>
<td>15 June 1907</td>
<td>Second Hague Convention</td>
</tr>
<tr>
<td>23 May 1921</td>
<td>Leipzig Trial</td>
</tr>
<tr>
<td>27 August 1928</td>
<td>Kellogg-Briand Pact signed in Paris</td>
</tr>
<tr>
<td>27 July 1929</td>
<td>Third Geneva Convention signed</td>
</tr>
<tr>
<td>3 September 1939</td>
<td>Outbreak of World War Two</td>
</tr>
<tr>
<td>7 December 1941</td>
<td>Japan attacks Pearl Harbor in Hawai’i, beginning the Pacific War</td>
</tr>
<tr>
<td>June 1943</td>
<td>Australian investigations into Japanese war crimes begin</td>
</tr>
<tr>
<td>30 October 1943</td>
<td>Moscow Declaration issued</td>
</tr>
<tr>
<td>26 July 1945</td>
<td>Potsdam Declaration issued</td>
</tr>
<tr>
<td>8 August 1945</td>
<td>London Charter of the International Military Tribunal signed</td>
</tr>
<tr>
<td>15 August 1945</td>
<td>World War Two ends</td>
</tr>
<tr>
<td>2 September 1945</td>
<td>Japan formally surrenders</td>
</tr>
<tr>
<td>November 1945</td>
<td>First Class B and C prosecutions of suspected Japanese war criminals begin</td>
</tr>
<tr>
<td>29 April 1946</td>
<td>International Military Tribunal for the Far East opens in Tokyo</td>
</tr>
<tr>
<td>12 November 1948</td>
<td>International Military Tribunal for the Far East closes</td>
</tr>
<tr>
<td>October 1949</td>
<td>Communist victory in China</td>
</tr>
<tr>
<td>December 1949</td>
<td>Liberal victory over Labor in the Australian federal election</td>
</tr>
<tr>
<td>June 1950</td>
<td>Manus Island prosecutions begin</td>
</tr>
<tr>
<td>June 1950</td>
<td>Outbreak of the Korean War</td>
</tr>
<tr>
<td>May 1951</td>
<td>Last Australian war crimes trial (and the last by any of the Allies) finishes at Manus</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
</tr>
<tr>
<td>-----------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>September 1951</td>
<td>San Francisco Peace conference and signing of peace treaty with Japan</td>
</tr>
<tr>
<td>September 1951</td>
<td>Australia, New Zealand and United States Security Treaty (ANZUS) signed</td>
</tr>
<tr>
<td>28 April 1952</td>
<td>Occupation of Japan ends</td>
</tr>
<tr>
<td>July 1953</td>
<td>Convicted Japanese war criminals repatriated from the Philippines</td>
</tr>
<tr>
<td>August 1953</td>
<td>Convicted Japanese war criminals repatriated from Manus Island</td>
</tr>
<tr>
<td>28 June 1957</td>
<td>Final release of Japanese war criminals in Australian custody, from Sugamo Prison, Tokyo</td>
</tr>
<tr>
<td>December 1958</td>
<td>Last surviving Japanese war criminals released unconditionally</td>
</tr>
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ABSTRACT

After the war in the Pacific formally ended in September 1945, the victorious Allies occupied Japan and pursued Japanese militarism through democratisation programs and war crimes tribunals. Australian officials took part in the multinational effort to bring members of Japan’s leadership, the 'Class A' war criminals, to account for the war.

Between 1945 and 1951 the government and military also ran wholly Australian trials, prosecuting about 800 'Class B and C' suspects for mistreating soldiers and civilians during the conflict. The government needed to be seen to be addressing public outrage over Japanese atrocities, by bringing the perpetrators to justice. In the 1950s, however, as the Cold War escalated and US priorities changed, Australian authorities became conscious that they needed to promote good relations with the US and with Japan.

Australia’s harsh polices on war criminals proved to be a significant obstacle, and pressure to show clemency to imprisoned war criminals increased. The government eventually released all surviving war criminals in Australian custody by mid-1957.

Writing on the early post-war period in Australia generally acknowledges that Japan was a focus of an increasingly independent and energetic foreign policy agenda. Nevertheless, the BC trials have received very little scholarly attention. The trials and their aftermath, however, constitute a twelve-year foreign policy project that illuminates Australia’s relations with Japan and the US during an era when Australia sought to establish itself as an independent participant in Asia-Pacific politics. The increasingly political dimension of the BC trials, and their propensity to inflame domestic opinion and to become entwined with high-level policies, means they offer a unique perspective on post-war Australian politics, society and, especially, foreign policy.
INTRODUCTION

For Australia’s government, military and people, the conflict with Japan that lasted from December 1941 to August 1945 was by the far the most significant part of the Second World War. During those years Australian forces, alongside those of the United States of America and the rest of the British Commonwealth, battled the Japanese military on land, at sea and in the air, in a series of ferocious and bloody encounters. Japan achieved great military success early in its war against the US and its allies; at its peak the Japanese empire encompassed large areas of East and South East Asia and the Pacific. As a result of their sweeping early victories, Japanese forces captured roughly 320,000 prisoners, of whom 140,000 were Allied soldiers. The rest were civilians in areas that Japanese forces occupied.¹ Of the Allied soldiers, about 22,000 were Australian.² In August 1945 Japan surrendered unconditionally. The Allies occupied Japan from September 1945 until the San Francisco Peace Treaty came into effect on 28 April 1952. The Occupation was officially a multilateral undertaking by the Allies, whose interests were represented on the Far Eastern Commission (FEC) in Washington, which was intended to be the main policy-making body for the Occupation. In practice, however, the Occupation was dominated by the United States, and chiefly by the Supreme Commander for the Allied Powers (SCAP), General Douglas MacArthur,

and his vast supporting military and civilian organisation in Japan. Nonetheless, the Occupation of Japan formed a dynamic part of several nations’ post-war foreign policy, including Australia’s.

In the early period of the Occupation, the Allied authorities focused on removing Japanese militarism and reforming Japan so that it would become a democratic nation. A key part of this agenda was bringing alleged war criminals to justice. As the Second World War drew to a close, the Allied leadership had made special mention of war crimes, in particular signalling in the Potsdam Declaration of July 1945 an intention to call to account all war criminals, including those Japanese soldiers who were responsible for cruelties against prisoners of war (POWs). In areas occupied by the Japanese, treatment of Allied prisoners and of the native peoples had been unsympathetic, lacking in compassion and at times brutal. Moreover, as the tide of war turned against Japan, supply problems and the need to extract hard physical labour from POWs and civilians had led to further deterioration in conditions for those subject to Japanese authority. Japan’s treatment of foreign civilians and POWs thus became a major focus of a series of military trials for ‘ordinary’ war crimes, which were conducted separately from the international trials in Tokyo of political, military and diplomatic leaders. Australia was one of seven countries to prosecute Japanese soldiers for ‘ordinary’ war crimes. The Australian trials of alleged Japanese war criminals, and their political and social significance, are the subject of this thesis.

Overall, the crimes prosecuted at the Allied trials of Japanese war criminals were divided into three types, according to a categorization set out in Article 6 of the Charter of the International Military Tribunal of 8 August 1945, a document signed by the USA, France, Great Britain and the USSR which was initially supposed to provide the legal basis of trials of major European war criminals. Suspected war criminals were to be divided into ‘Class A’, ‘Class B’ and ‘Class C’. ‘Class A’ suspects were considered to be major war criminals and were charged with offences relating to the planning, initiating or waging of aggressive war. In the Japanese case, twenty-eight ‘Class A’ suspects faced trial in the International Military Tribunal for the Far East (IMTFE) in Tokyo between April 1946 and November 1948 and all twenty-five against whom verdicts were passed were found guilty of one or more charges. The Class B and C trials of Japanese suspects began very soon after the war ended, in late 1945. ‘Class B’ suspects were to be charged with ‘conventional war crimes’, whilst ‘Class C’ suspects would be charged with ‘crimes against humanity’. In practice, however, there was little difference between Classes B and C in court, and the two categories were usually treated together. The accused in BC war crimes trials

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ranged from the lowest-ranking Japanese soldiers to senior officers in command of units. The crimes ranged from, at the lower end, slapping, beating or mistreating a prisoner, to cases of murder and cannibalism. Some high profile cases involved questions of ‘command responsibility’, which assessed the guilt of Japanese commanders in failing to prevent war crimes perpetrated by their units.

Class B and C suspects were not prosecuted in international courts but rather by individual Allied governments. In all, 5,677 Japanese soldiers were prosecuted for Class B and C war crimes by seven different governments, namely those of the USA, Great Britain, the Netherlands, the Philippines, France, Nationalist China and Australia, in about fifty venues around Asia and the Pacific, and in Darwin. The USSR and the People’s Republic of China (PRC) also conducted trials of Japanese war criminals, but did not recognise the categories of ‘Class B’ and ‘Class C’, and thus operated outside the system in which Australia participated, and on a completely different timetable. As Communist countries, the USSR and the PRC did not work together with the other Allies, nor did they keep them or the Japanese government informed of the progress of their legal proceedings. In fact, the Soviet trials were conducted in secret and consisted of summary proceedings only.\(^6\) The Allied trials, by contrast, featured dialogue

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among the prosecuting countries, similar legal frameworks, and an effort to conduct transparent proceedings. For these reasons, the Communist trials are not considered in detail in this thesis. Trials by the six Allied governments apart from Australia will be referred to when they impinge upon the Australian prosecutions and on Australian official thinking about how to deal with Japanese war criminals.

The Australian trials were conducted according to the *Australian War Crimes Act 1945*, which was completed in October 1945 after the Australian government declined an offer to use the legal framework the UK had prepared for its trials. The Australian prosecutions began in November 1945 and concluded in April 1951. Australia was the last of the seven Allied governments to conclude its trials, although for its part the PRC did not even begin proceedings until 1956. Continuing trials into the 1950s was not originally part of the Australian government’s plan. Government officials initially thought the hearings would take twelve months to complete, but delays saw this loose deadline extended to 1947 and then finally to 1951. In total, 296 Australian trials were held, and 924 accused were prosecuted. Because some accused appeared in two or more trials, the actual number of defendants was fewer, at 814. Six hundred and forty-four accused were convicted, with 148 death sentences handed down, and a total of 137 individuals

actually executed. Some of the trials were conducted with a single defendant, whilst others were large, with as many as ninety-two defendants in the most extreme case. War criminals were prosecuted by the Australian government in Rabaul, Wewak and Manus Island in Australian New Guinea; Singapore; Hong Kong; Morotai in the Netherlands Indies; and Labuan in Malaya. Early tribunals were also convened in Darwin, although after three trials there in March and April 1946, the Australian government decided that no more prosecutions should be conducted on Australian soil, due to the intensely negative press reaction to the perceived leniency of the verdicts and sentences.

The Australian government pursued Japanese war criminals with particular tenacity. By 1949, most of the wartime Allies were bringing their trials to a close, or had actually completed them. Activity in the Australian trials, too, had stalled, but this was due to bureaucratic difficulties and a lack of resources rather than a desire to end the trials permanently. Many suspects remained in custody, still awaiting prosecution by the Australian authorities. There was a change of government at the federal level in December 1949, but the pursuit of war criminals proved to be a bipartisan policy. The Labor Party had been in power since 1941,

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under the leadership of Prime Minister Ben Chifley after John Curtin’s death in office in July 1945. The Party was firmly committed to war crimes trials, though its resolve was tempered at times by other considerations: determination to punish and resist any revival of Japanese militarism was balanced with a consciousness that the war had greatly diminished the financial and human resources available to the Australian military. War crimes trials absorbed considerable military resources, and the army faced tight financial restrictions in the federal budget immediately after the war and thus was restructuring in a period of economic austerity. Nevertheless, rather than end the prosecutions in the face of financial strain, or in an effort to follow its allies in winding down the trials, the Labor government began complicated negotiations in 1948 to restart prosecutions. As it happened, Labor was voted out of office in December 1949, before it could complete its planning to restart trials. A new government took office, representing a coalition of the Liberal and Country Parties and led by Prime Minister Robert Menzies. The Coalition built on Labor’s planning and rejuvenated the war crimes trial program, beginning a new period of prosecutions on Manus Island in June 1950.

The Australian government also retained direct custody of prisoners after conviction longer than other countries did. Prior to enactment of the San Francisco Peace Treaty on 28 April 1952, convicted war criminals were incarcerated either in an overseas prison controlled by the prosecuting government, or in Sugamo

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Prison in occupied Tokyo, under US military jurisdiction. After the end of the Occupation, Sugamo was transferred to Japanese administration. Article 11 of the peace treaty, however, stipulated that the convicting nation retained the sole right to vary sentences, and thus to release prisoners, whether on parole or unconditionally, regardless of where they were held. Prosecuting nations could keep control of convicted war criminals in areas under their direct jurisdiction if they chose, but by the end of 1952, all BC criminals except those held by the Philippines and Australia had been transferred to Sugamo Prison to serve out the remainder of their sentences. Although a small number of war criminals convicted by Australian courts in Hong Kong and Singapore had been repatriated to Sugamo by the end of 1951 along with their British-tried counterparts, the majority were by then imprisoned on Manus Island, where they were being used as cheap labour by the Australian navy.\(^1\)

In 1952, the Australian government began to consider repatriation from Manus Island. Pressure from Japan and a growing understanding that the world had changed had produced a softening of the government’s stance on war criminals, but negotiations over repatriation were nevertheless protracted and difficult. The last Japanese prisoners convicted by Australian courts were returned to Japan in July 1953, six weeks after the last prisoners from the Philippines, to serve out their sentences in Sugamo Prison.\(^2\) In 1954, the Australian government

\(^1\) ‘Cabinet Agendum – Appendix’, September 1952, NAA, Canberra, A1838, 140817.
\(^2\) ‘External Affairs to Australian Embassy in Tokyo Regarding the Repatriation of War Criminals’, 7/7/53, NAA, Canberra, A1838, 246874 and Military History
created a new set of policies on Japan, reflecting the view that Japan should now be regarded as a Western ally against Communism in Asia, rather than a potential military threat to the region, as well as a fear that Japan itself was at risk of falling prey to Communism. A key part of these new policies was a review of the parole system for war criminals convicted by Australian courts and an effort to ensure that all remaining Japanese war criminals would be released from Sugamo Prison by the end of the decade. The last war criminals convicted by Australia were in fact released in June 1957, a year and a half before the last of those convicted by US courts. The last Japanese war criminals convicted by any country were released from prison in Tokyo unconditionally in December 1958.

The Australian BC trials have not been widely studied. Existing works have mainly been produced by legal scholars, in attempts to assess the trials’ fairness or to catalogue them as legal precedent for possible future war crimes proceedings. This approach has contributed much to our understanding of the
legal and moral dimensions of the trials, but leaves aside broader consideration of their political and social significance, which is much greater than such an approach would suggest. In this thesis I investigate the broad significance of the trials in Australian politics and society between 1945 and 1957, when the last surviving Japanese war criminals prosecuted in Australian courts were released from prison. I seek to answer the question of how the BC trials were connected to Australian foreign policy, politics and social change in the second half of the 1940s and in the 1950s. Analysis of the Australian BC trials, plus the repatriation of prisoners to Japan and their eventual release, increases our understanding of Australia’s changing diplomatic and political agenda in the post-war era. The government’s treatment of issues relating to Japanese war criminals illuminates the shifts and tensions in political and social attitudes to Japan and its region, showing the beginnings of Australia’s new official relationships with Asian countries as well as its altered post-war relationships with major allies.

Though the government insisted that seeking justice for wartime wrongs was the motivation for the trials, the Australian prosecutions were never completely separate from politics and international diplomacy. The link between legal and political considerations became more pronounced as time went on, however, in particular because the continuation of the Australian trials after 1949 provoked tension with the US, Australia’s major ally. Examination of the trials and their aftermath provides valuable insight into the divergence between official

US and Australian assessments of Japan, of the Cold War and of Pacific security in the post-war years, showing also that official Australian views of Japan were slower to change after the San Francisco Peace Treaty than has been previously thought. Further, analysis of the trials and reactions to them contributes to a better understanding of retrospective Australian perceptions of the wartime experience. Like their counterparts in other countries, Australian politicians, officials and members of the public tended to see their wartime experience as unique. For many Australians, the apparent uniqueness of the wartime experience was reflected in an emphasis on the war crimes trials, and an insistence that they should continue until justice had been done. Australian officials were certainly resolute in their pursuit of war criminals, continuing to prosecute them longer than any other non-Communist country. On the other hand, however, a study of the war crimes trials that extends to include the later repatriation and release of convicted war criminals reveals that the Australian government was only prepared to maintain an emphasis on war crimes for as long as it was perceived to be politically valuable, and that eventually Australia exchanged its tough stance on war criminals for better relations with Japan. In summary, this thesis shows that the BC trials provide their own guide to the progression of Australia’s relations with both Japan and the US, and to official Australian perceptions of the Cold War. The trials and their aftermath reveal the Australian government’s determination to pursue Japanese militarism after the end of the war, its steadfast attitude towards war criminals in the late 1940s, the relative slowness to accept Japan, even after the peace treaty, as
a trusted friend, and then finally the commitment to better relations with Japan from the mid-1950s onwards.

**The Development of Modern War Crimes Law**

Modern war crimes law has its origins in the Hague Conventions of 1899 and 1907. These conferences attempted, amongst other things, to develop a set of rules and customs for the conduct of war and the treatment of POWs. The Treaty of Versailles, signed on 28 June 1919, also included statements by the victors in the First World War that war crimes trials would be convened and details of how the courts would function. The Treaty of Versailles is highly significant in the development of war crimes law because for the first time, the war effort of one nation, namely Germany, was condemned as a criminal action. The First World War had been the bloodiest conflict to that point in European history, and there was a strong desire to apportion blame for the war and its costs. With the fighting over, courtrooms and international politics were the only remaining arenas in which Germany could be brought to justice. The application of international agreements to war crimes trials, however, was not easy. Prosecutions of accused German war criminals were launched by the German government in Leipzig in 1921, but with very limited results. In the aftermath of a conflict that had killed

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sixteen million people, including roughly nine million civilians, only twelve people were tried and six found guilty. The court imposed only light sentences and the Leipzig trial process is regarded now as a deeply flawed undertaking.\footnote{Richard L. Lael, \textit{The Yamashita Precedent: War Crimes and Command Responsibility}, Wilmington, Delaware, Scholarly Resources Inc., 1982, pp. 42-43; War Department, ‘G-I Roundtable: What Shall Be Done With War Criminals?’, EM 11 G-I Roundtable Series, Special Board of the American Historical Association, Wisconsin, 1944, pp. 13-18.}

After Leipzig, discussion of the laws of war continued. Although it did not specifically deal with the laws of war, or war crimes, the Kellogg-Briand Pact, signed in 1928, proved to be significant in the development of war crimes law as the fifteen original signatories to the pact, which included Germany and Japan, renounced war as an instrument of foreign policy. The Kellogg-Briand Pact later formed the basis of the charge of ‘crimes against peace’ in trials after the Second World War. Similar to the Hague conventions, the Third Geneva Convention of 1929, that is, the agreement commonly known as ‘the Geneva Convention’, specifically dealt with the treatment of prisoners of war and constituted another step towards international consensus on an acceptable code of conduct for waging war.\footnote{Boister and Cryer, \textit{The Tokyo International Military Tribunal}, pp. 9-10, 121.}

The outbreak of hostilities in Europe in September 1939, however, preceded any serious international attempts to formalise war crimes courts, and the eventual trials were essentially ad hoc creations. The devastation caused by the Second World War and the information that emerged relatively early on about atrocities in both Europe and the Pacific meant there was always a strong
likelihood that trials would be held after the conflict ended. Much of the legal basis and jurisdiction for war crimes trials was based on the international agreements mentioned above and was set more specifically by various decrees and declarations originating in wartime conferences among Allied leaders. In October 1943, the leaders of the three major Allied powers, the UK, the Soviet Union and the United States, signed the Moscow Declaration, which indicated that those responsible for Nazi atrocities would be pursued and brought to justice. At the Yalta Conference in February 1945, the Allies reiterated that Nazi war criminals would be pursued. On 8 August 1945, three months after the surrender of Germany and one week before Japan’s surrender, the London Charter of the International Military Tribunal was signed by the US, the UK, the Soviet Union and France, beginning the process that led to the Nuremberg trials. Twenty-four key Nazi leaders were charged as war criminals and twenty-two of them were eventually tried at Nuremberg between November 1945 and October 1946.

In the Pacific, the situation was different. Japan had not signed the Third Geneva Convention of 1929 and it was difficult to determine the international framework under which trials could be held. As noted above, a comprehensive and

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19 ‘Yalta Conference’, in ibid., p. 27.
compelling international legal framework for war crimes trials did not exist. When
Japan signed the Instrument of Surrender on 2 September 1945, however, it
accepted the terms of the Potsdam Declaration with its promise that ‘stern justice
shall be meted out to all war criminals, including those who have visited cruelties
upon our prisoners’. Acceptance of the wording of the Potsdam Declaration
made war crimes trials in the Pacific legally possible.

The specific legal framework of the Class A trials in Japan, that is, the
International Military Tribunal for the Far East, was set forth in a SCAP
proclamation on 19 January 1946. The IMTFE convened in Tokyo on 29 April
1946. Eleven judges sat on the tribunal, representing the US, UK, Australia, New
Zealand, the Netherlands, the Philippines, India, China, Canada, France and the
USSR. The Australian representative, Sir William Webb, was appointed as
president of the court. On trial were twenty-eight Japanese civilian and military
leaders. Seven were sentenced to death, sixteen to life in prison, one to twenty
years and one to seven years. Two died before they could be sentenced and one
was declared insane.

‘Lesser’ war criminals, that is, those in Classes B and C, were tried
separately by the US, UK, Australia, Nationalist China, France, the Netherlands
and the Philippines, each according to its own war crimes legislation. The
Australian government was keen to conduct trials on as large a scale as possible.

In fact, Australian authorities had begun investigating possible war crimes before

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22 Potsdam Declaration, July 1945.
the Pacific War had ended, as had US authorities. The Queensland judge, Sir William Webb, who would later become President of the IMTFE, conducted a series of investigations in 1943 and 1944 into alleged war crimes against Australian soldiers in New Guinea. The result was a lengthy report, extending to over 400 pages, claiming that Japanese war crimes against Australian soldiers were widespread. At the end of the war, however, Australia did not have any war crimes legislation, reflecting the fact that the idea that war crimes trials should be a key element of a surrender was still in its infancy. This situation was quickly remedied, as will be explained in Chapter One.

The Australian BC trials are now generally regarded, both in Australia and by commentators in Japan, as flawed. Some believe the flaws seriously undermined the justness of the trials, while others see them as inevitable but not fatal. There were many obstacles to the smooth running of the tribunals. The Australian trials constituted a diverse and ambitious project that, like the trials conducted by the other Allies, faced serious challenges, including the difficulty of locating witnesses, time constraints and significant language barriers. Both Webb and the Australian Minister for External Affairs from 1941 to 1949, Dr Herbert Vere Evatt, stated that the trials were intended to provide an example of justice and fairness. Arguably, however, they fell short of this ideal. Legal procedures that would normally be accepted as essential safeguards were put aside: for

example, the rules of evidence were greatly relaxed.\textsuperscript{26} Also, there was considerable inconsistency in sentencing throughout the trials. Though avoiding vengeance and focusing on justice were stated goals, it is hard to argue that individuals connected with the prosecuting side were always free from a desire for vengeance. The fact is that Australian soldiers involved in the trials were angry, upset and outraged about Japanese wartime conduct, as were many people back in Australia. Almost certainly some trial personnel were motivated at least in part by a desire for vengeance. With so many legal safeguards removed, this emotional backdrop may help to explain the patchy record of the tribunals. Given these circumstances, it is difficult to make blanket assessments of the fairness of the trials. Detailed examination shows many of them to have been fair and effective while some appear unjust, either from a technical standpoint or a moral one. The issue of fairness will be addressed in more detail in Chapter Two, where I argue that we need to assess the trials in terms of their ability to meet the relevant principles of international law, of the degree to which they fulfilled their initial goals and of their effectiveness in punishing war criminals and punishing them in a fair and effective way.

\textbf{War Crimes Trials and the Occupation of Japan}

War crimes trials were only one part of the Allied effort to reform Japan after the Second World War. They took place in the context of the Occupation of the

Japanese home islands, which began in September 1945 and ended on 28 April 1952. The Occupation started with the goals of demilitarising and democratising Japan. Originally, General MacArthur wanted Japan to become a country that avoided involvement in military conflicts in the region but was nonetheless firmly aligned with US political and economic interests in the region. The Japanese economy was to be allowed to function and develop to the extent that it could support a peaceful population, but beyond this, the Occupation forces were not to take positive steps to aid economic recovery or rehabilitation. Ultranationalist influence was to be eliminated from the economy and government, and over 200,000 individuals were therefore removed from positions of responsibility in the ‘purges’ instituted by SCAP. War crimes trials sat comfortably with these early aims. Occupation policy, however, was neither monolithic nor static. Most historians identify a major change in direction towards the second half of the Occupation, a change known as the Reverse Course. With the intensification of the Cold War, US officials increasingly regarded Japan less as a former enemy that might rise again, and more as a key ally against Communism in Asia. Thus

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Occupation policies began to focus on recovery, rehabilitation and stability, rather than democratic reform for its own sake.\textsuperscript{30}

The changing geopolitical situation in Asia, chiefly the 1949 Communist victory in China and the Korean War that began in June 1950, meant that the potential threat posed by Japan to Pacific security came to seem less grave to the Allies than the danger posed by a vulnerable Japan. The Occupation authorities now began to focus on the ‘red purge’ of Communist influence from Japan.\textsuperscript{31} Not only did the change in emphasis discourage further pursuit of Japanese militarism, it also undermined the success of initiatives implemented in the early Occupation to counter militarism and promote democracy. By one count, over 300,000 Japanese military, government and other officials purged in the initial crackdown on militarism were allowed to return to positions of influence in the early 1950s and conservative government was encouraged. In fact, the last years of the Occupation had been so focused on combating Asian Communism that when the first post-Occupation national election was held in Japan in October 1952, 40\% of the candidates elected to the lower house of parliament were former purgees who


\textsuperscript{31} For the ‘Red Purge’ see Dower, \textit{Embracing Defeat}, p. 273; Takemae, \textit{Inside GHQ}, p. 491; Dower, \textit{Empire and Aftermath}, pp. 7-10, 273-278.
had been ‘depurged’ after the Reverse Course. The peace treaty enacted on 28 April 1952 and a security treaty between Japan and the US, which came into force on the same day, ensured that Japan was closely aligned with the US and other Western democracies during the Cold War and provided for the stationing of US troops in Japan after the Occupation ended.

In the latter part of the Occupation, war crimes trials were no longer seen to be in the best interests of the US, its allies or Japan. US officials as well as Japanese leaders believed that all prosecutions should be concluded before a peace treaty was signed. As early as 16 November 1948 the majority opinion on the Far Eastern Commission in Washington was that all trials should cease by 30 September 1949. In February 1949 this became the official FEC position and also that of SCAP: investigations were to be completed by 31 March 1949 and, if possible, all trials concluded by 30 September. Throughout 1948 and 1949, some suspects whom the Australian authorities still planned to try were being held in Sugamo Prison in Tokyo, where they had been since their arrest in Japan early in the Occupation. SCAP now insisted that war crimes suspects could not be held in prison forever without trials and should therefore be released. US moves to wind

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34 ‘SCAP Legal Section - Memorandum for Chief Of Staff’, 22 March 1949, Decimal 290-12-04-06, SCAP Legal Section, National Archives and Records Administration (US), RG 331, Box 1435.
35 Piccigallo, The Japanese on Trial, p. 137.
down the trials and release suspects, however, did not succeed in bringing the Australian trials to a close. Nor did the Australian government release the suspects in Sugamo.

Conducting war crimes trials was not the only way in which Australia contributed to the remaking of Japan after August 1945. Australia participated directly in the military activities of the Occupation as a member of the British Commonwealth. Some 22,000 Australian soldiers in total served in the British Commonwealth Occupation Force (BCOF), peaking at 12,000 between 1946 and 1948, along with troops from New Zealand, India and Great Britain. BCOF shared the military tasks of the Occupation with over 350,000 American troops. Australia’s contribution to BCOF was significant not only because of the large number of soldiers who served but also because BCOF was commanded by Australians for the entire period of the Occupation. As well as playing a considerable role in BCOF, Australians also contributed to the Occupation in other areas. The political scientist and public intellectual William Macmahon Ball represented the British Commonwealth on the Allied Council for Japan, the body that supposedly oversaw Occupation policy in Tokyo, on behalf of the Far Eastern

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Commission, which sat in Washington. From April 1946, as noted above, Australian judge Sir William Flood Webb served as the President of the International Military Tribunal for the Far East. Ball’s and Webb’s were prestigious appointments, as was the selection of the Australians to command BCOF.

Australian influence in the Occupation was thus not negligible. While Australia participated in the tasks of demilitarisation, however, it played little part in the governance of the Occupation. In BCOF, the Allied Council for Japan and the IMTFE, Australian officials acted within the framework set by SCAP or under heavy US influence. BCOF was directed by the US army. The Allied Council was dominated by SCAP and was riven with Cold War tensions, which made it less effective than it might otherwise have been. Webb was one of eleven judges and although he played the senior role in the IMTFE he was unable successfully to pursue top Australian initiatives, as evidenced by the fact that Emperor Hirohito was not tried for war crimes even though the Australian government pushed hard for this outcome.

In these circumstances Australia’s BC war crimes trials constituted a rare opportunity for the government to create and direct policy on Japan on its own terms. While US policy constrained Australian action in BCOF and on the Allied

37 William Macmahon Ball, Japan: Enemy or Ally?, London, Cassell, 1948, pp. 31-42.
39 For a description of the Australian government’s pursuit of Emperor Hirohito and the failure of that pursuit see Piccigallo, The Japanese on Trial, p. 124.
Council, the prosecutions of ‘lesser’ war criminals were governed by Australian legislation and investigations, and courts were staffed by Australian personnel. Each government’s BC war crimes trials program was its own responsibility and although the different countries’ trials shared much in common, there was also room for independence and for individual characteristics. Such capacity for independent action was reflected in the *Australian War Crimes Act*, which provided a very broad jurisdiction for the pursuit of war criminals.\(^{40}\) Furthermore, the Australian BC trials proved to be more resistant to US influence than were other policy areas on which Australia and the US disagreed, such as the pursuit of Hirohito, or later, the advisability of Japanese rearmament. The best evidence that the Australian government could operate independently in conducting the trials is that officials continued to prosecute suspected war criminals well after the US had called on them to stop. US officials applied pressure on Australian trial authorities but did not determine Australian policy. The FEC and SCAP recommendations to end prosecutions only served to provide a greater sense of urgency, rather than dramatically to change Australian war crimes trial policy. Australian trials continued until the government brought the program to a close in May 1951, almost two years after the FEC ‘deadline’ to end them.

Australia and the US did differ on the question of Japanese rearmament, a matter that arose with some force as the Cold War intensified and the peace settlement with Japan drew near. The Australian government did not favour Japanese rearmament. While the government accepted that the threat of

\(^{40}\) Ibid., xiii.
Communism in Asia was increasing, for far longer than the other wartime Allies, with the possible exception of New Zealand, it maintained a stronger emphasis on the danger of a Japanese military resurgence. Australian officials, including high-ranking members of the Department of External Affairs, expressed their anxiety openly. Evatt, the Minister for External Affairs, wrote a press article entitled ‘Has the Menace of Japan been Removed?’, which was published in the New York Times on 3 February 1946. Evatt suggested that the Occupation must remain vigilant and always focus on democratising and demilitarising Japan, so that Japan would not have the capacity to threaten the Pacific again. Evatt did not substantially change his view while he was minister, and in general, any concerns about Communism in Asia were secondary to the government until the 1950s. Part of the reason was probably that Australia, unlike the Philippines or Vietnam, for example, was not directly threatened by Communism, but on the other hand, was geographically closer to Japan than were the US and European powers. For most of the Occupation, Australian policy on Japan remained more or less consistent. There was broad bipartisan agreement, indicating that the official attitude to Japan reflected widespread Australian views, not simply tough talk against a former enemy for short-term, domestic political gain. The Labor Party, in opposition federally from December 1949, supported the Coalition’s opposition to Japanese rearmament, on the grounds that this stance conformed with the Labor Party’s own

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41 H.V. Evatt, Australia in World Affairs, Sydney, Angus and Robertson, 1946, pp. 141-146.
position when it had been in government.\textsuperscript{42} When drafts of the peace treaty and the process of negotiation revealed that the treaty would not include a statement prohibiting or seriously restricting Japanese rearmament, Australian officials initially resisted, having always favoured a peace settlement that would reflect the security concern for the Pacific at the forefront of Australia’s foreign policy agenda: that is, the supposed threat from Japan.\textsuperscript{43}

The different assessments of threats to Pacific security by Australia and the US became the basis of a significant divergence in policy. Both governments were committed to combating Communism in Asia, but the US believed that to achieve this goal, a peace treaty allowing Japan to defend itself militarily was needed, whereas Australia initially did not. The official Australian stance did not change until late in the treaty negotiations, in 1950-1951, when the government began to accept that a more lenient peace with Japan was likely. Two factors were significant in the Australian government’s eventual acceptance of a comparatively lenient treaty. First, the UK government abandoned its earlier opposition to Japanese rearmament and insistence on restrictions on Japanese industry, leaving Australian officials without a major wartime ally supporting their stance.\textsuperscript{44} Second, and most important, the US government agreed to another treaty, with Australia: the Australia, New Zealand, United States Security Treaty (ANZUS), which was signed on 1 September 1952, four months after the San Francisco Peace Treaty came into effect.

\textsuperscript{43} Ibid., pp. 50-51.
\textsuperscript{44} Rosecrance, \textit{Australian Diplomacy and Japan}, pp. 181, 198-199.
From Australia’s point of view, ANZUS had its roots in Australian concern for the Pacific after the war. Since 1945, the government had pursued a commitment from the US to enhancing Australia’s security. Officials had lobbied the US for a ‘Pacific Pact’, a security treaty that would rely heavily on US military backing for Australia’s defence. For a time, they also attempted to take advantage of US interest in retaining an existing naval base on Manus Island, in the Admiralty group of islands in New Guinea, which was Australian mandated territory after the war. The US base on Manus would effectively have functioned as an outpost protecting Australia. In the end, however, the US withdrew from Manus. If the US government had not subsequently agreed to ANZUS it is hard to imagine that Australia would easily have accepted the terms of the peace treaty, with its lack of comprehensive restriction on Japanese rearmament. ANZUS substantially allayed Australia’s concerns over the security of the Pacific.

The attitude of the Australian government to Japanese rearmament, and the initial divergence from US policy on this point, have long attracted the attention of Australian historians and diplomats. Difference on policy towards the end of the war crimes trials, on the other hand, is overlooked. The divergence between Australia and the US on war criminals persisted until mid-1953, when the Australian government repatriated convicted criminals to Japan. Thus, the

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difference in policy on war criminals remained in place longer than the divergence in policy over Japanese rearmament, which ended two or three years earlier. Alan Renouf has stated that Australia’s relationship with Japan can be divided into the periods before and after the peace treaty, and that the treaty created the opportunity for a new Australian policy on Japan.\textsuperscript{48} Alan Rix also identifies the peace treaty as the beginning of close political ties between the two countries, though he believes the groundwork had been laid earlier.\textsuperscript{49} The point is valid, but the fact that war criminals remained a difficult issue well into 1953 shows that signing the San Francisco Peace Treaty in September 1951 did not fully or quickly alter Australian perceptions of Japan, and indicates that the division between before and after in the relationship is not so clear as other writers have suggested. A study of the negotiations over repatriating war criminals demonstrates that whilst the peace treaty created an impetus for a new relationship, long-standing official Australian attitudes to Japan were slow to change, as was, according to official assessments, the opinion of the Australian public.

**Scholarly Context**

Although there were far more BC trials than Class A trials, works on the latter are much more numerous. Early work in English on the Class A trials concentrated on the question of ‘victor’s justice’: that is, on an examination of the fairness or otherwise of the trials and of the accusation that they represented exclusively the

interests of the victors in the war, rather than any balanced assessment of wrongdoing. Most notably, Richard Minear’s *Victor’s Justice* appeared in 1971 as a trenchant criticism of the IMTFE.\(^{50}\) Minear’s book has served as a departure point, for later scholars seeking to consider the question of ‘victor’s justice’ and to develop a more complex understanding of the IMTFE.

There is little consensus among recent scholars on the Tokyo trial, except an agreement that ‘victor’s justice’ is an inadequate characterization of the trials, and that more work needs to be done to elucidate the place of the tribunals within the history of post-war Asia and in the development of international war crimes law. Ushimura Kei, for example, focuses on the comment from the chief prosecutor in the Class A trials, the American George Keenan, that the hearings represented the ‘judgment of civilization’. Ushimura examines the trial proceedings and some of the writings of the accused war criminals in the way one might examine literature, constructing a history of the trials around the themes of civilization, barbarism and alleged cultural differences between the East and the West. He concludes that notions of civilisation are hard to quantify, that claims of barbarism could be levelled at both sides in the war and that the trials really amount to a clash of cultures revealing the differences between East and West.\(^{51}\) Using the Tokyo trials as part of his analysis, Gerry Simpson highlights the tension between war crimes law and politics, demonstrating that war crimes trials

\(^{50}\) Minear, *Victor’s Justice*.

are not immune from political interference. Rather, they represent a balance between the imperatives of getting a result and maintaining impartiality and fairness. Simpson also suggests that war crimes trials are as much about informing a community or nation about the immorality of the enemy’s campaign in a war, or the morality of one’s own campaign, as they are about punishing transgressions.\(^{52}\) Yuma Totani’s position is that the ‘binary’ scholarly understanding of the Class A trials, as victor’s justice or not, is insufficient. For Totani, understanding of the trials has been corrupted by, on the one hand, the knowledge that everything turned out well and Japan was restored to the international community after the Occupation, and on the other, the potential of the trials to serve right-wing agendas presenting Japan as a victim of foreign pressure. In seeking to move towards a truer understanding of the trials and their place in history, Totani has begun to consider war crimes justice in the Asia-Pacific area as a single undertaking, rather than focusing exclusively on the Class A trials and leaving aside the Class B and C trials.\(^{53}\)

Boister and Cryer distinguish between what they see as two approaches: one deriving from a ‘political science’ stance and the other, which they adopt, that attempts instead to disentangle the legal aspects of the trials from their socio-political history and to produce what they call the IMTFE’s ‘law story’. Their

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effort to restore the legal legacy of the trials seeks not to ‘deny their flaws’ but to ensure that the legal proceedings, including their limitations, are remembered as part of the foundation of modern war crimes law.\textsuperscript{54} Timothy Maga also rejects some of the criticism of the trials, asserting that they were as fair as they possibly could be and that they were based on good intentions. He suggests that the legacy of the trials was tarnished by the failure to create a standing international court for war crimes, soon after the Tokyo trial.\textsuperscript{55} Presumably, Maga means that if the trials had led to the establishment of a definitive precedent for the punishment of war criminals and had thus acted as a deterrent for future war crimes, their legacy would be stronger. A recent edited volume examines the Class A trials and some aspects of the Class B and C tribunals from many different perspectives, representing the multitude of views on the trials that now characterises scholarship in this area.\textsuperscript{56} Works associated with the Class A trials also encompass biographies and memoirs of convicted war criminals and leading suspects, including former prime minister and foreign minister Hirota Koki and the right-wing ideologue and businessman, Sasakawa Ryoichi.\textsuperscript{57}

This thesis draws on the above literature, especially on works that emphasise the tension in the trials between law and politics. Such tension was also

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\item \textsuperscript{54} Boister and Cryer, \textit{The Tokyo International Military Tribunal}, p. 2.
\item \textsuperscript{55} Maga, \textit{Judgment at Tokyo}, pp. 2-5, 120-151.
\item \textsuperscript{56} Yuki Tanaka, Tim McCormack and Gerry Simpson (eds), \textit{Beyond Victor’s Justice? The Tokyo War Crimes Trial Revisited}, Boston, Martinus Nijhoff Publishers, 2011.
\end{itemize}
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very much evident in the Australian tribunals. At the same time, I also show that approaches based on the theory of war crimes law are unlikely to reveal fully the distinctive elements of the Australian war crimes prosecutions and their connection with foreign policy and Australia’s evolving relations with Asian nations.

Studies of the BC trials have been preoccupied with the question of whether they were fair. Phillip Piccigallo’s 1975 work remains the most detailed English-language source. Piccigallo assesses each government’s trial process, and discusses the differences among the various approaches. He uses few archival sources, doubtless because not many were available when the book was written, relying instead on newspapers and parliamentary records. He provides much useful information on the trials themselves, though he does not discuss repatriation of convicted criminals to Japan or their eventual release. By contrast I make extensive use of archival material, and I cover the entirety of the war crimes trial process from Australia’s point of view, from investigation of crimes before the war’s end to repatriation and release of convicted prisoners. Piccigallo devotes a chapter to the Australian trials. He contends that the Australian trial authorities and the government pursued Japanese war criminals with unsurpassed determination because they were wary of showing leniency towards Japan during the Occupation, and because of enmity towards the Japanese in the Australian public. Piccigallo concludes that the trials overall were a fair exercise that upheld
the values they set out to defend.\textsuperscript{58} I will challenge this argument in the Australian context in Chapter Two.

Other works on the BC trials focus on one particular element of the process, or an individual case.\textsuperscript{59} One of the most significant is Richard Lael’s \textit{The Yamashita Precedent}, which focuses on the controversial ‘command responsibility’ trial of General Yamashita Tomoyuki, commander of Japanese forces in the Philippines in 1944 and the first person to be prosecuted by the Americans as a ‘lesser’ war criminal. Yamashita was held responsible for the war crimes committed by his troops in the Philippines and was executed in February 1946.\textsuperscript{60} Utsumi Aiko has focused on suspected war criminals of Korean ethnicity.\textsuperscript{61} As Japanese nationals during the war, and members of the Japanese

\textsuperscript{58} Piccigallo, \textit{The Japanese on Trial}, pp. 121-123, 215.
armed forces, some Koreans as well as Formosans faced Allied war crimes courts and many were convicted. Koreans and Formosans lost their status as Japanese nationals when Japan was immediately stripped of its overseas territories upon its surrender, but still were tried as Japanese. Their nationality became a difficult issue in negotiations in 1952-1953 over repatriating convicted war criminals, as will be discussed in Chapter Five. Australia held a considerable number of Formosan prisoners, and both the Australian government and the Japanese government were uncertain about how best to deal with Korean and Formosan war criminals. Uncertainty over the prisoners’ nationality in Japanese law unsettled the Australian government, contributing to the cautious Australian approach to the repatriation of ‘Japanese’ war criminals.

Two unpublished PhD theses deal principally with the legal history of the Australian BC tribunals. Caroline Pappas provides an overview of the prosecutions from a legal and to some extent political perspective, arguing that although the trials had limitations, they should be seen as fair and just, as vengeance was never part of the official motivation for the trials. Pappas also discusses the relationship between the legal proceedings and Australian politics, but only in very specific contexts. For example, she notes that the continuation of the prosecutions in 1950 was influenced by the change of federal government in Australia in December 1949, because the new Coalition was determined to complete the trials satisfactorily.62 Michael Carrel explores similar questions, concluding that while the trials should not be seen as an exercise in revenge, there

was indeed a strong feeling in Australia that Japan must be brought to a reckoning. Carrel argues, like Pappas, that the trials were just, and also that the legal process ‘strengthened humanitarian law’. These works do acknowledge in a preliminary way that political influence affected aspects of the Australian trials and their outcome, but they remain primarily concerned with questions of law, not of politics or diplomacy. I provide a much broader analysis of the political, diplomatic and social factors shaping the trials, showing that such considerations were present from the beginning of the official Australian concern with suspected war criminals and analyzing their impact at each stage of Australia’s dealings with Japanese soldiers.

There is far more academic and popular discussion of Japanese war crimes and ill-treatment of POWs than there is of the subsequent trials. Writing about war crimes is often highly emotive and this complicates attempts at scholarly analysis of the trials. Works on Japanese war crimes in the Pacific are very numerous and are still being produced, although with less frequency than before. In scholarly publications, the overall issue of war crimes during the Pacific War was dealt with most famously by John Dower in his 1986 prize-winning work *War Without Mercy*. Dower’s major concern is to explore the theme of race in the Pacific War; he concludes that the conflict became so fierce that mercy was extinguished on both sides. Dower discusses not only Japanese crimes but also offences committed by American soldiers. His assertion that war crimes occurred on all

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64 Dower, *War Without Mercy*.  

sides of the war has been criticised by some authors and former soldiers, mostly on the grounds that although war crimes were indeed perpetrated by Allied soldiers, they were not as widespread and numerous as Japanese offences.\textsuperscript{65}

Other notable contributions include Tanaka Toshiyuki’s \textit{Hidden Horrors: Japanese War Crimes in World War II} and Mark Felton’s \textit{Slaughter At Sea: The Story of Japan’s Naval War Crimes}.\textsuperscript{66} Tanaka offers academic analysis of the breadth of Japanese crimes in the Pacific. \textit{Slaughter at Sea}, on the other hand, is significant not because it is the first work on crimes perpetrated by the Japanese navy, but because it stimulated immediate response from readers, with many internet forums and blogs registering outrage and disgust, in support of the author’s own findings. The strong public reaction to this book demonstrates that Japanese war crimes, even sixty-five years after the end of the conflict, still generate great interest and draw emotive responses. The popularity of works that focus solely on illuminating Japanese war crimes suggests that the strong feelings of disgust felt in the Australian community at the time of the BC trials linger today. Such works otherwise have little scholarly value; they cover ground that has been thoroughly exhausted in the decades since the war.

Literature on the Allied Occupation of Japan also provides essential context for this thesis. The Australian prosecutions were influenced by the progression of US policy in Japan from the early years of the Occupation when the


US government supported Australia’s trials, to the period where the Australian government in resuming prosecutions resisted the change in US priorities in Japan. Moreover, the shift represented by the Reverse Course and then the urgency with which peace treaty negotiations were pursued in the intensifying Cold War undermined Australia’s pursuit of Japanese militarism and pressured Australia’s BC trials program. The Occupation has been studied from many perspectives and the collection of writings is very large. For the above reasons, my own work is informed mainly by analysis of policy matters, rather than studies which focus on key individuals, for example.  

Schaller, Takemae, and Ward, in their analyses of how and when the Reverse Course came about, are particularly crucial. Works specifically on Australia’s contribution to the Occupation are critical to an analysis of the war crimes trials because they help to establish the context of the trials and their relationship with other Australian policies and military operations. Literature on Australia’s role in the Occupation dates back to William Macmahon Ball’s *Japan: Enemy or Ally?*, published in 1948. In this book and also in his published diary, Ball reveals the challenges facing him as Australia’s and the British Commonwealth’s representative on the Allied Council

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68 Ball, *Japan: Enemy or Ally?*.

for Japan. Though he arrived in Japan believing that his role was to contribute to the development of Occupation policy, it was soon apparent that wherever possible SCAP would prevent the Allied Council from having any meaningful influence, and Ball’s frustration is palpable. More recently, several works have focused on Australia’s role in Occupation-period labour reform and in BCOF. Christine De Matos discusses Australia’s contribution to the improvement of conditions for workers and the reformist spirit in which Australian BCOF officials generally approached the Occupation.70 Robin Gerster provides a social history of BCOF, suggesting that although many Australian soldiers who went to Japan had little prior knowledge of the country and began their service with antagonistic feelings towards the Japanese, BCOF as a whole contributed greatly to repairing relations between Japan and Australia because the soldiers’ experiences of Japan were essentially positive.71 Other works on BCOF, some of which were written by former participants, broadly analyse its role in the Occupation; most writers agree that although it had its limitations, BCOF was a success that has largely been neglected in Australian military history.72

Works on Australia and the Occupation do not focus on war crimes trials in detail, though they may deal with Australian views of Japan and the perceived need to bring Japan to account after the war. According to De Matos, for instance,

70 De Matos, Imposing Peace and Prosperity; C. de Matos and R. Ward (eds), Gender, Power and Military Occupations: Asia Pacific and the Middle East Since 1945, New York, Routledge, 2012.
71 Gerster, Travels in Atomic Sunshine, p. 247.
the Australian government concluded that Japanese leaders bore far more responsibility for the war than did the ordinary Japanese person. De Matos thus argues that the ‘retributive aims of Australian policy’ were directed mainly at Japan’s leaders.\footnote{De Matos, \textit{Imposing Peace and Prosperity}, pp. 47-48.} It is my contention that Australia’s war crimes trials indicate otherwise. They have been overlooked, however, as a distinct aspect of the Australian government’s policy for Japan after the war, and writers on Australia’s contribution to post-war Japan fail to realise the full significance of the trials and their aftermath.

The late 1940s and the 1950s were a dynamic period in Australian foreign policy. The broad foreign policy context affected Australia’s war crimes trials, and the trials in turn had an impact on Australia’s changing stance towards its region and its major allies. Literature on post-war Australian foreign policy generally emphasises the importance of the Occupation or the peace treaty in Australia-Japan relations, neglecting the war crimes trials. Richard Rosecrance’s \textit{Australian Diplomacy and Japan} is the only specialist work specifically to chart the progression of Australian foreign policy towards Japan between 1945 and 1952. Rosecrance describes the Australian government’s focus on security in the Pacific from the early negotiations over maintaining a US naval base on Manus Island to the Japanese peace treaty and ANZUS, showing the divergence between Australian and US policy during the 1940s over Japanese remilitarisation and the key negotiations that eventually allowed the Australian government to support the
peace treaty. Renouf and Walker also discuss Australia’s approach to Pacific security and the post-war anxiety, both in official circles and in the community, about a potential threat from Asia. Undoubtedly a crucial aspect of Australia-Japan relations from 1950 onwards was the resumption of economic ties. Rix examines the re-emergence of trade between Japan and Australia, showing that firm steps towards better political relations, too, were taken after the end of the Occupation. The emerging Cold War also played a major role in aligning Japan and Australia as allies in Asia. Literature on Australian relations with the US, its role in the Cold War and Australian diplomacy more generally reveals Cold War politics in Australia to have been passionate and divisive. Evidently, the process of conforming with US goals was neither straightforward nor immediate.


76 Alan Rix, *Coming to Terms, the Politics of Australia’s Trade with Japan 1945-1957*, Sydney, Allen and Unwin, 1986.

Works on Prime Minister John Curtin’s role in the creation of independent Australian foreign policy during the war, and on Australia’s participation in regional politics and the United Nations immediately after the war, also shed significant light on the context in which war crimes trials took place. In particular, they help to explain the government’s desire to continue legal proceedings after other governments had ceased prosecuting, at a time when establishing an independent Australian stance was considered an urgent matter.  

Studies of Prime Minister Chifley and his Labor government after the war are similarly important in assessing how the context for the Australian trials changed, and particularly in highlighting the emergence of Communism as a major issue in Australian domestic politics in the late 1940s.

The development of Japanese public opinion on war criminals is an important part of the history of the trials. During the negotiations to repatriate and release war criminals, the Australian government had to contend not only with its own citizens but also with the Japanese public, which became very active in pressuring the Japanese, Australian, and other governments over issues relating to war criminals. A small amount of secondary literature in English examines lobby groups in civil society in Japan working on war-related issues in the early 1950s. Beatrice Trefalt discusses the campaign on behalf of the many Japanese civilians and soldiers stranded overseas still awaiting repatriation. Franziska Seraphim

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examines the emergence of grassroots political organisations during the Occupation, which embraced its democratic principles and often turned into mass movements aiming to pressure Japanese politicians to promote a change of policy or even to lobby foreign governments on behalf of the Japanese people. These groups campaigned on a range of issues, including repatriation of those stranded overseas, pensions for demobilized soldiers and allowances for war widows.\textsuperscript{80}

Sandra Wilson has examined the campaign by inmates in Sugamo Prison to secure the release of BC war criminals.\textsuperscript{81} Such analysis provides strong evidence of the continued vitality of war issues in Japanese society in the years after the war’s end, and helps to explain the pressure on governments that retained control of the sentences of convicted war criminals to renegotiate the terms of their imprisonment.

**Primary Sources**

A great many documents relevant to the war crimes trials are held in the National Archives of Australia both in Melbourne, the main repository for military records, and Canberra, which holds mainly government records. These expansive though not always well organised archives provide the bulk of the primary materials used


in this thesis. Parts of certain folders and in some cases entire folders are closed, and in some cases open folders have names removed to withhold details of a soldier’s death or torture.

The files contain the complete findings of Sir William Webb’s investigation into war crimes in the Pacific that began before the war had ended; questionnaires submitted by returned POWs on their treatment by the Japanese; correspondence between the military and government departments, mainly External Affairs and the Prime Minister’s Department, about how the trials were to be set up and conducted; details of the trials themselves, including the complete trial records; records of the legal review process by the Australian-based Judge Advocate General, with extensive notes; and correspondence and other materials relating to repatriation of convicted war criminals from prisons in Hong Kong, Singapore, Rabaul and Manus to Japan. There are also numerous documents concerning the release of Japanese war criminals as well as the entire collection of parole requests sent to the Australian government from Japanese authorities after April 1952. Other documents include telegrams and printed reports relating to communication with the other Allies about the trials, which contain many views from the British and US governments in particular. Such documents show that the Australian government was acutely aware of the progress of other BC war crimes trials, and indeed that the seven Allied countries conducting these trials remained in close touch and were aware of the progress of each other’s prosecutions, repatriation programs and policies on early release of convicted criminals. One of the major strengths of the National Archives records on war crimes trials,
especially in the folders from External Affairs, is the clarity with which government officials presented their views. Senior officials and legal personnel were forthright in their assessments of the trials and of relations with Japan. The Australian government also noted the views of the press and key lobby groups, as major issues relating to war criminals became public. For example, the National Archives contain official communications to the government from the Returned and Services League, in relation to war criminals amongst other issues.

Limited use has also been made of overseas archives. The US National Archives and Records Administration has an extensive collection of documents relating to the Occupation of Japan, and to war crimes trials, which have been used where they shed light on Australian decisions on trials and on the pressures on the Australian government in dealing with Japanese war criminals. Similarly, the National Archives in the United Kingdom, specifically the collection of Foreign Office documents, also contains records relevant to the Australian proceedings.

Parliamentary debates (Hansard) provide some of the most significant comments on Australian war crimes trials. Early post-war Australian politics was lively, and many issues relating to post-war reconstruction, foreign policy and war criminals were debated heatedly in parliament, both under Labor before December 1949, and under the Coalition thereafter. The tough stance of some Australian Members of Parliament on Japan after the surrender is startling. Parliamentary

debates give a strong sense of which aspects of the trials were considered significant to the electorate and what issues were divided along party lines. They provide a counterpoint to National Archives records: while the latter primarily reflect the position of the government of the day, Hansard grants an insight into the views of the parliament as a whole.

Newspapers followed war crimes and trials closely, providing information about what was happening, and editorials and other comment on policy moves or when news of crimes and of trials appeared. In this thesis I use newspapers from all of the Australian states and the Australian Capital Territory. Press coverage of the relevant topics was generally comprehensive and thoughtful. International events were given a high priority in the Australian post-war press and newspapers both revealed and helped to shape public reactions to the trials, the war itself and other international events, including the emerging Cold War. Records in the National Archives show that government officials followed the press closely when key issues relating to war crimes arose, suggesting that the government believed the press was a good indication of public views, and felt the need to respond to or at least be aware of public opinion.

Two manuscript collections are of particular use in a study of the Australian war crimes trials. The papers of the late, distinguished Australian scholar of Japanese history D. C. S. Sissons, held in the National Library of Australia, detail amongst other things Sissons’ long-term interest in the trials.83

Sissons’ papers are contained in thirty boxes, of which five relate to war crimes trials. They contain folders of extremely thorough hand-written notes on the court proceedings, personal reflections on the trials, published materials such as a guide to archival sources on the trials that Sissons produced for the Australian War Memorial and correspondence with experts in the field in Japan. Sissons focuses heavily on one case in particular that he investigated near the end of his research on the trials, involving the Japanese soldier Katayama Hideo, and I will make extensive reference to this case. The papers of John Myles Williams, a prosecutor in the Australian trials in Morotai, in the Netherlands Indies, are held in the Mitchell Library in Sydney. The 1990 film *Blood Oath* is based on his experiences in the BC trials. Williams’ papers consist of a collection of correspondence with other prosecutors and with war veterans, and record his overall thoughts on the trials. The papers include a diary. As personal reflections, the Williams papers present views of the trials and the conditions under which prosecutors were working that are not found elsewhere. They show that at least for some personnel, the trials were not free from a desire for vengeance against Japan, but also that the Australian and Japanese legal teams had friendly relationships, though both were under considerable stress. The Williams papers also highlight some of the techniques used by the prosecution to gain convictions.

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Athol Moffitt was another Australian prosecutor in the trials who produced a memoir of his experiences, published as *Project Kingfisher*. The memoir emphasises that for Australian soldiers taking part in the proceedings, the pursuit of Japanese militarism in the form of the BC suspects was a very serious matter. *Project Kingfisher* reveals a determination to bring criminals to justice, despite the supposedly impartial position of the military legal personnel, with senior personnel declaring that they will not let the Japanese get away, that they will see they are brought to justice.85 There was a strong sense that it was necessary to honour the sacrifices made by Australians who had suffered under Japanese militarism. The strain that this hefty responsibility placed on Australians connected with the trials seems to have led to further frustration and anger towards the Japanese in some cases.86 The Pacific War had been a fierce conflict and to those now face to face with the former enemy, the war’s end was also confronting and stressful.

Many soldiers have produced memoirs and reflective works on the Pacific War and a vivid picture has thus been painted of the Australian war experience, including the experience of captivity. Such works help to establish Australian views of the crimes that were on trial and also contemporary perceptions of the Australian war experience which in turn provided a key part of the impetus behind the trials. Australian images of the Second World War are mainly of heroic

86 Athol Moffitt, ‘Borneo Wartime Diary’, 1945, Australian War Memorial, Canberra, ID Number PR01378. This diary is part of a collection of papers that were the basis for the previously cited *Project Kingfisher*. 
suffering, pain and exhaustion, and this is especially the case for the Pacific. Even the triumphs, like defence of the Kokoda Track from the Japanese in New Guinea, are stories of endurance and ingenuity, not of sweeping military victories. Some memoirs seem to be designed primarily to heap criticism on the Japanese rather than to praise the Australians. Photographs commonly show a malnourished prisoner or a wounded soldier or the signs of strain and exhaustion on soldiers’ faces. Soldiers always exhibit good humour, however, in a reflection of another key element of the stereotypical image of the Australian serviceman. Although he was not a soldier, Rohan Rivett’s book *Behind Bamboo* is a significant and influential portrayal of time spent in Japanese captivity. Rivett was a war correspondent for the Melbourne *Argus* who was captured when Singapore fell, in February 1942. The work is a confronting and angry account of an enemy seen as fundamentally different from Australians.

Memoirs and first-hand accounts were also produced by Australian soldiers who served in the Occupation; the views expressed in these works are more varied than those in POW narratives. In his diary of 1946, the BCOF soldier Basil Archer portrays the Japanese as submissive, rather than aggressive, and even

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as efficient and courteous towards Australians.\textsuperscript{90} Another BCOF soldier, Allan Clifton, is at times critical of the behaviour of Australian soldiers during the Occupation.\textsuperscript{91} What the wartime and Occupation memoirs have in common is a focus on the tension or potential tension between Australians and Japanese at ground level. In the wartime memoirs this tension appears as anger and disgust at Japanese mistreatment of POWs and during the Occupation it manifests itself as either antagonism from Australian soldiers or uncertainty over cultural differences.

First-hand accounts of the Occupation from Japanese perspectives offer insight into views of the Japanese people or comment on the Occupation at ground level. \textit{Dear General MacArthur} is a collection of letters written to SCAP by ordinary Japanese.\textsuperscript{92} One section contains letters about the war crimes trials, and shows that Japanese people’s views on the trials varied. Though some letter-writers felt that US bombing of Japanese civilians had also been a crime and should have been prosecuted, many supported Allied military justice and advised on how to pursue the remnants of Japanese militarism. The book suggests the willingness of many Japanese people to comment on and even participate in the broad process of assessing war guilt. Such participation became a significant factor later in Australia’s war crimes trials program, when thousands of Japanese

\begin{itemize}
  \item \textsuperscript{91} Allan S. Clifton, \textit{Time of Fallen Blossoms}, New York, Knopf, 1951.
\end{itemize}
expressed their views on who was and was not guilty by signing petitions on behalf of convicted BC war criminals or otherwise participating in the campaign on their behalf. Grassroots pressure in Japan then provided impetus for official Japanese discussions with the Australian government over the repatriation of convicted war criminals imprisoned overseas, and later their early release.

Chapter One of the thesis, ‘Japan and Australia 1945-46: War and War Crimes’, examines the initial reporting of Japan’s surrender in the Australian press and the widespread coverage of alleged war crimes. The chapter tracks the early calls for trials and the steps taken to set them up. Chapter Two, ‘The Trials: Legalities and Limitations’, discusses the operation of the trials themselves. Issues of fairness and ‘victor’s justice’ are also examined. Chapter Three, ‘The First Phase, 1945-1949: The Trials in a Changing International Context’, analyses the initial period of the trials and also the shifting international context of the late 1940s as the Cold War began to change Occupation priorities. Chapter Four, ‘Manus Island: The End of the Trials’, describes the revitalization of the Australian prosecutions after the change in federal government in 1949, including the preparations for the Manus Island proceedings and the prosecutions themselves. In Chapter Five, ‘The Postscript to the Trials: Repatriation and Release of War Criminals’, I show that the issue of war criminals remained intertwined with Australian diplomatic and political policy in the early 1950s and up to 1957. The Australian government throughout the entire war crimes trials process balanced political concerns with the
determination to follow its agenda of punishing war criminals. Both considerations were evident through to the final executions of prisoners at Manus Island in 1951, the negotiations with Japan over repatriation after the peace settlement in 1952 and the move towards early release of war criminals and improved political relations from the mid-1950s onwards.
CHAPTER ONE

JAPAN AND AUSTRALIA 1945-1946: WAR AND WAR CRIMES

The last year of the war in Asia was violent and destructive. As the Allied forces, led by the United States, approached the Japanese home islands across the Pacific, they were forced into a number of island sieges that were the scene of some of the most ferocious fighting of the entire Second World War. ¹ The cost to the Americans was heavy but to the Japanese it was immense. From late 1944, US forces also bombed Japanese cities relentlessly. In August 1945 atomic bombs were dropped on Hiroshima and Nagasaki with enormous loss of life, the Soviet Union entered the war against Japan, and the Japanese government finally surrendered. The battle for post-war political and ideological supremacy began as soon as armed hostilities ended, ² and the surrender of Japan, like that of Germany three months earlier, quickly became entangled with the emerging Cold War. Meanwhile, the other combatants in the Second World War counted the financial and human cost of the conflict. No nation that endured the war for any length of time remained unchanged and few of them, if any, faced a secure and clear immediate future.

The post-war era in Australia began against a backdrop of relief, joy, pain and uncertainty. The government approached the new era with confidence in the nation’s standing, believing that Australia had lifted its international status because of its contribution to the war effort and could no longer be seen

as subordinate to its major allies. Nevertheless, the immediate post-war years were marked both by the ever-present memory of the war and its costs and by security concerns for the future of the Pacific region. Few other countries, leaving aside the Soviet Union and the USA, which were confronting each other as the major rivals in the Cold War, were as anxious about external security as Australia. Moreover, the government was confronted not only with the demands of recovery in a changing post-war world, but also with anger and shock in the electorate as servicemen returned home, sometimes in poor physical and mental condition. As for Japan, the war years had been much more traumatic there, and the future was much less certain. In the immediate post-war years the Japanese people had to come to grips not only with a devastated country, but also with massive social upheaval and with foreign occupation. Though the Japanese government continued to operate during the Occupation, in practice, unconditional surrender meant that the immediate future was in the hands of the Allied powers, which decided that Japan was to be occupied, demilitarised and democratised.³

In this chapter I show that in the early post-war years Japanese war crimes, Japan’s overall conduct of the war and the more general cost of the conflict emerged as important public issues in Australia. I discuss the way the Australian government approached the Japanese surrender and the immediate post-war world. The trials were a matter of justice and perhaps retribution for ordinary Australians. The war was not quite over yet: people felt that Japan

must not escape punishment. Many Australians felt a personal connection with the pursuit of Japanese war criminals; or at least, the Australian government took the view that the trials were important to ordinary Australians because of the public’s strong connections with returning POWs and desire for recompense for their suffering. There was no point in the trials, or in the lead-up to them, at which they were left to legal experts or were used only for the purpose of dispensing international justice. Politicians were quick to present a tough stance on Japan centred on demilitarisation and pursuit of war criminals, partly because they believed that was what the public wanted. Already in 1945, in fact, the prosecutions were a potential policy tool for the government.

A Newly Confident but Frustrated Australian Government

The government’s growing desire for influence in Pacific-region politics contributed to the dynamic context in which the BC war crimes prosecutions took place; the prosecution of war crimes constituted an important foreign policy initiative in the early post-war years. In the second half of the 1940s Australia was in an unprecedented position in the history of its engagement with Asia, and the new situation produced an energetic and confident foreign policy agenda. During the Second World War Australia had demonstrated a much enhanced capacity to develop its own distinctive foreign policies by taking independent action to address the Japanese advance in Asia while Britain was preoccupied with the war in Europe.\(^4\) Having drawn confidence

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from facing the Japanese threat, the government then vigorously pursued policies aimed at peace, security and a greater role in regional affairs.

The government believed that its wartime commitment had granted it the right resolutely to pursue its foreign policies in Asia, especially those concerning Japan. Policies relating to Japan were based on a genuine desire to bring Japan to account and promote peace in the region, and it was clear from early on that Australian policy in the immediate post-war years would focus heavily on the removal of Japanese militarism in all its guises. At the same time, the conduct of Australian foreign affairs in general and treatment of Japan specifically during this era had a distinctly nationalist tone. Government officials often spoke of the sacrifice that Australia had made during the war. In terms of personnel and resources Australia’s wartime sacrifice had indeed been significant; but politicians often seemed to mean something more abstract and even mystical when they spoke of ‘sacrifice’. References to ‘sacrifice’ were linked with pride in Australian endurance and a perception that Australia had elevated its status in Asia and amongst its allies. War crimes trials had an obvious role to play in commemorating, justifying and compensating for the sacrifices Australia was believed to have made.

The difference between the Australian government’s confidence in foreign affairs before and after the war is striking. On the one hand the war had reaffirmed Australia’s cautious approach to Asia and the ‘teeming millions’ who lived there. For the first time since European settlement Australia had been directly threatened by a foreign power. Not only had Australians been alarmed by the specific threat of the Japanese military, but the war also

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reinforced the longstanding prejudice held by a great many Australians, however irrationally, that Asia as a whole was hostile to Australia. On the other hand, the war brought about the realisation, within the government at least, that Australia needed to be stronger in its diplomatic and political approach to Asia, and to make its own mark in the region rather than relying on the foreign policies of the UK. As much as the war confirmed for many Australians that they had something to fear from Asia, it also granted Australia an opportunity to realign its perceptions of its role in the region.

Late in the war, the Australian government had feared that it would not be given the role in post-war Japan it considered it deserved. The government felt that Australia was being left out of the negotiations over the end of the war and therefore the initial planning for the peace. The government and army were prepared to take practical action to ensure they had a suitable role in post-war arrangements. On 21 January 1944 Australia and New Zealand signed the Australia-New Zealand Agreement calling for, amongst other things, a conference on the future of the Pacific, and even suggesting a zone across the South Pacific that should be defended by the two nations to ensure security. Paul Hasluck has argued that Australian forces also took direct military action to secure their place in post-war planning. Australian troops participated in campaigns on Tarkan Island in Borneo; Labuan in Malaya; Brunei; on the

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6 Ibid., p. 4.
8 Rosecrance, Australian Diplomacy and Japan, pp. 12-14.
north coast of Borneo; and at Balikpapan, in the Netherlands Indies, late in the war. These battles were all in the region designated by US forces as the South-West Pacific Area, close to Australia, and were no less fierce than earlier encounters of the war. Hasluck has criticised the decisions to engage in these battles as politically motivated, asserting that engagement with the enemy was designed primarily to keep Australians fighting vigorously against Japan until the end of the war to enhance the prospect of a prominent place at a future peace conference. Australian officials were concerned that their role in defeating Japan would be overlooked if the military did not remain active until the end, but the campaigns were actually irrelevant in the defeat of Japan and in Hasluck’s opinion led to an unnecessary loss of life.\textsuperscript{10} Whether Hasluck’s view is justified or not, such comments draw attention to the determination of Australian officials to be a major part of the peace, and also to the fact that the final months of the war and the immediate post-war period were so politically fluid that drastic measures may have appeared necessary to ensure a proper role for Australia. Through the last months of the war and after the surrender, Australian officials did loudly claim a stake in post-war affairs. The major powers were not always sympathetic.\textsuperscript{11}

The Australian government thus viewed itself as a major party in the peace and in the future of the region, and there was a clear sense of frustration at the degree to which the bigger Allied nations controlled the peace.\textsuperscript{12} Despite the disappointment at lack of recognition by others, however, Australian

\textsuperscript{12} Rosecrance, \textit{Australian Diplomacy and Japan}, p. 12.
officials spoke with an increasing sense of Australia’s worth. In December 1946, Evatt, the Minister for External Affairs, wrote:

The Potsdam ultimatum to Japan was issued without reference to Australia. We expressed the gravest concern at the time that our position had been disregarded in this way, and, when the terms of the proposed reply to the Japanese Government’s offer of surrender were under consideration, we made direct representation and suggestions to all the allied governments concerned. The energetic affirmation of our rights to be represented at the surrender was successful. Our efforts in this and other contexts have meant that in the Pacific and the Far East the Australian contribution to post-surrender arrangements generally has been that of a principal and not a subsidiary power.\(^{13}\)

Statements such as this show a growing confidence in Australia’s position, despite the simultaneous recognition that Australia had earlier been regarded as a subsidiary power by the other Allies.

Prior to the Second World War, Australian foreign policy had usually followed that of Britain rather than setting an independent agenda.\(^ {14}\) In the wake of Japanese military successes in late 1941 and early 1942, and especially the fall of Singapore in February 1942, John Curtin’s Labor government realised Britain no longer had the presence and military power that it had once had in Asia, and therefore Australia’s security depended on the US.

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\(^{13}\) Dr H.V. Evatt, untitled paper on post-war foreign policy which appears to have been used as the basis for speeches to the Australian Parliament and to the Australian Society in New York, in ‘Statements by the Minister for External Affairs Dr Evatt’, 1945-46, National Archives of Australia (hereafter NAA), Canberra, A1067, 193666.

rather than the strength of the Royal Navy.\textsuperscript{15} Recent scholarship has confirmed that in moving towards closer ties with the US, Curtin did not envisage a split with Britain; rather he remained committed to the British empire and desired a greater role for Australia in empire issues, seeing himself as an ‘architect of a new form of empire’.\textsuperscript{16} Still, the government gradually shifted further away from dependence on Britain for security. In a short space of time, the Pacific War had dramatically altered Australia’s official perception of its relationship with the UK. After the war, the government felt not only that Australia had claims as a major player in the Pacific War but also that it should be seen as the chief British Commonwealth nation involved in the peace.\textsuperscript{17} Such a stance indicated that the Australian government now saw itself as an equal partner in peace, as it believed it had been in war, with both the US and the UK.\textsuperscript{18}

In the initial post-war years, the Australian government under Prime Minister Chifley thus pursued a key role in the Occupation of Japan and the peace settlement, meaning that a significant part of its foreign policy agenda also relied on diplomacy with the US, the dominant power in the Occupation. Evatt as Minister for External Affairs played a major part in establishing Australia’s foreign policy agenda, which included launching the war crimes trials. After Robert Menzies took office in December 1949, as leader of the Liberal/Country Party Coalition, he visited the United States and thereafter

\textsuperscript{15} Millar, \textit{Australia in Peace and War}, pp. 136-161.
\textsuperscript{17} Ibid.
focused on building the closest possible ties with the US while also working for continued strong relations with Great Britain.\(^1^9\) The pursuit of Japanese war criminals was a bipartisan concern, as noted earlier, and one of Menzies’ first actions as prime minister was to decide how to conclude the trials satisfactorily.\(^2^0\)

A vigorous discussion of policy on Japan and post-war security had taken place in Australian politics since the war. Parliamentary debates from the initial months after Japan’s surrender show considerable concern amongst politicians for Australia’s security. Senator Charles Brand of Victoria, for instance, suggested in September 1945 that Japan had not yet been taught a lesson on the battlefield and would rise again, seeking revenge for its defeat.\(^2^1\) The fear that Japan could again go to war seems illogical or even irrational in hindsight given the scale of its defeat, the relative strength of its possible future enemies and the much changed geopolitical situation in Asia. Nevertheless, Australians and others did express apprehensiveness at the prospect of renewed Japanese militarism in the early post-war years. Comments in the press and in the broader community were equally as passionate as the discussion in political circles. As the Occupation progressed, the conviction that Japan might at some stage in the future move south and attack again weakened. The debate about

\(^{1^9}\) ‘Mr Menzies Talks on Task Ahead’, *The Advertiser* (South Australia), 21/12/49, p. 1; ‘Menzies Broadcasts in America’, *The West Australian*, 31/7/50, p. 2.

\(^{2^0}\) ‘War Crimes Trials: Full Statement by Menzies’, *The Sydney Morning Herald*, 24/2/50, p. 3.

Australia’s security, however, remained lively, and as we have seen, Australian officials opposed Japanese rearmament for most of the Occupation.\(^{22}\)

When peace was eventually made with Japan, the Department of External Affairs under Evatt’s leadership called for co-operation between Australia and the US in the Pacific and emphasised that co-operation meant, in part, a combined military contribution to Pacific security.\(^{23}\) Australian officials believed a strong alliance with the US would preserve Australia’s position in Asia, but the US government did not at first seem interested in maintaining a military commitment to Australia’s future security.\(^{24}\) The US was involved in a much broader struggle globally, to promote democratic ideals and prevent the resurgence of extremist right-wing governments and the spread of Communism. The Australian government was not oblivious to the global concerns of the US, and was certainly hostile to Communism, both externally and at home. Australian newspapers covered global events relating to Communism and international affairs on a weekly basis.\(^{25}\) Australian policy for Japan, however, focused on older and more regional concerns, and there is little evidence that at this early stage, government attitudes to Japan were altered by the acknowledged presence of a Communist threat. To this extent, Australia’s and America’s official priorities for Japan differed. Both governments considered a democratic Japan crucial for a secure Pacific. The US approach, however, was more ambitious and multi-faceted. By contrast

\(^{24}\) Millar, *Australia in Peace and War*, p. 197.
\(^{25}\) For one early example of the coverage see ‘Russia’s Maginot Line of Satellite States’, *The Sydney Morning Herald*, 10/10/45, p. 2.
Australian policy for Japan was both fearful and peremptory for the remainder of the 1940s. The government was confident that it had a major role to play in regional affairs, but nonetheless remained aware that diplomatic challenges lay ahead, especially concerning the future security of the Pacific.

**Pursuing Japan**

Australians were eventually given several key roles in the Occupation, as noted in the Introduction, but they did not necessarily deliver the influence the government sought. The appointment of Sir William Webb to head the International Military Tribunal for the Far East was a prestigious one, and must have pleased the government. Evatt initially thought, moreover, that Australia had achieved one of its major post-war goals by gaining membership in October 1945 of the Far Eastern Commission in Washington; he believed that membership signified Australia’s status in the region and afforded it the power to influence policy for Japan. Evatt soon realised, however, that even with a position on the FEC Australian officials’ ability to affect Pacific policy would be very limited as SCAP and the US government dominated Occupation policy. In Tokyo itself, the appointment of William Macmahon Ball to the Allied Council for Japan on 3 April 1946 was particularly prestigious because he represented not only Australia but the entire British Commonwealth, but Ball’s role, too, proved to be restricted in practice.

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Ball’s job was difficult as he often found himself occupying the middle ground between British and US policy for the Occupation and also negotiating with the principal British Commonwealth nations that he represented, which did not always agree on policy for Japan.\textsuperscript{28} Nonetheless, his position appeared to offer a significant opportunity for Australia to exert influence from within upon the future of Japan. Ball’s early impressions of his time in Japan confirm, however, that decisions were dominated by the US and were already influenced by the emerging Cold War, and that the decision-making power of the Allied Council was in practice negligible. MacArthur ruled in Japan with far greater authority than might have appeared on the surface, with the power of both the Japanese government and the Allied Council clearly subordinated to his goals.\textsuperscript{29} In his diary, Ball points out MacArthur’s dominance.\textsuperscript{30} He also refers often to US concern about Soviet influence in Japan. From the second day of his posting in Japan, on 5 April 1946, Ball was instructed directly by MacArthur to be wary of Russian tricks and infiltration of Japanese politics.\textsuperscript{31} The Soviet Union had a representative on the Allied Council, and as a result SCAP approached the Council with caution. In effect SCAP prevented it from functioning to its fullest potential as the Council was often seen as the chief area of official Soviet influence in Japan. Thus Ball’s high-profile appointment

\textsuperscript{30} Rix (ed.), \textit{Intermittent Diplomat}, for example, pp. 186-187, diary entry for 6/3/47.
\textsuperscript{31} Ibid., pp. 17-19, diary entry for 5/4/46.
was undermined and in practice was not as useful to the Australian government as it might originally have promised to be. Moreover, Ball had a major dispute with Evatt, and resigned his position in August 1947 while Evatt was on a visit to Japan.  

Australia’s contribution to the British Commonwealth Occupation Force, also noted in the Introduction, was the most significant of any country’s. Of all the forces participating, Australia bore the heaviest burden, providing the most soldiers between 1946 and 1948, a commitment of some 12,000 at that time, compared with 11,000 Indian, 10,000 British and 4,400 New Zealand troops. After September 1948, as other countries reduced their commitment and gradually withdrew altogether, Australian soldiers comprised virtually the entire force. Between 1949 and 1952, BCOF was composed solely of Australians.  

Australia also provided the two commanders of the force, Lt General John Northcott and his successor, Lt General Horace Robertson. Based in the southern part of the main Japanese island of Honshu, and later the island of Shikoku as well, Australian soldiers contributed at ground level to the disarmament, demilitarisation and democratisation of Japan. Their tasks included disposing of Japanese armaments, establishing health and welfare facilities and policing the black market. Thus BCOF played a significant role in promoting the Australian government’s policy for Japan.

Like the Allied Council for Japan, however, BCOF was unable seriously to influence the overall direction of Occupation policy. BCOF was unable

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34 Ibid., pp. 116, 311-312.
under the command of the US 8th Army. Senior Australian personnel found it difficult to communicate with both UK and SCAP officials from time to time. Moreover, BCOF was dwarfed by the size of the US military contingent in Japan, which numbered around 350,000, and Australian troops were confined to the relatively poor areas of southern Honshu and Shikoku, which were distant from the centre of Occupation activities in Tokyo. Australian soldiers at the ground level certainly had a strong sense that their role was subordinate to that of the Americans.  

Nevertheless, the Australian government had succeeded in securing important appointments for Webb and Ball, and a leading role in BCOF. Meanwhile the government, mainly through External Affairs, pursued further Australian policies in the region. An important initial expression of official priorities was the government’s strong stance on bringing the Japanese emperor, Hirohito, to trial, an attempt that was ultimately unsuccessful. Australian representatives in Tokyo and Canberra passionately pursued the issue of Hirohito’s prosecution. In August 1945, Evatt contacted officials in the UK several times about Hirohito. External Affairs hoped that the UK would agree with Australia that the emperor should appear on the initial list of Class A suspects. It appears the UK government was at first sympathetic to this

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view, but changed its mind. The eventual list of key war criminals produced by the UK government did not include the emperor.³⁶

As head of state, Hirohito represented Japan’s war of aggression in general and also the specific threat to Australia. Not only the Australian government, but also the army and many members of the public firmly believed he should be tried as a war criminal. An emperor cult was said to have driven Japanese soldiers to behave fanatically and according to what was assumed to be the style of the warrior code of Bushido.³⁷ Thus, the image of the emperor was inseparable from the memory of day-to-day fighting. The supposed emperor cult was thought to explain not only the battlefield behaviour of Japanese soldiers, but also, in part, why they treated prisoners the way they did. Australian prisoners of war were in contact with Japanese soldiers daily and they generally returned to Australia convinced that the emperor was the figurehead in a strict military system modelled on Bushido.³⁸

In this system, soldiers supposedly showed no mercy, compassion, or regard for a surrendered soldier. More recent scholarly views of Japanese soldiers and their alleged fanaticism are far more sophisticated.³⁹ During the period immediately after the war, however, the emperor became a key target in Australia’s pursuit of post-war justice.

Webb is the Australian most closely associated with pursuing Hirohito, but other officials, notably Evatt, were just as active. Evatt was specifically concerned that there was no mention of bringing the emperor to justice in the Potsdam Declaration. The Australian government issued a statement in August 1945, after Japan’s surrender, calling for an agreement with the other Allies that no Japanese would be exempt from prosecution, but this seems to have been an utterly forlorn gesture at a time when US policy for Japan was being made with little or no regard for Australian opinions. External Affairs and Australian officials in Japan did not give up, however, and continued to follow the issue closely.

Australia’s calls for the emperor to be prosecuted were indeed ignored and in one of the most controversial decisions of the Occupation, Hirohito was protected by SCAP and the FEC from prosecution. This decision was a blow to the Australian government. The explanation given to Australian officials in Japan was that his position as emperor had been weakened by the democratic process now in place and that he no longer had any real power in Japan. The Australian government, however, as well as Webb, clearly felt that any conversion of Hirohito to democracy, even if genuine, was irrelevant. Webb stated in a telegram to Cabinet in September 1945 that ‘it would be a travesty of justice’ to punish the common Japanese soldier and not their sovereign.

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42 See, for example, Telegram from External Affairs to War Cabinet, 23/1/46, NAA, Canberra, A816, 170273.
43 Rix (ed.), *Intermittent Diplomat*, pp. 73-78, diary entry for 25/6/46.
44 Telegram from William Webb to Prime Minister, External Affairs and Attorney General, 26/9/45, NAA, Canberra, A10953, 3170811.
Despite its disappointment that the emperor had escaped prosecution, the Australian government still vigorously pursued other leading Japanese military figures as well as lower-ranking soldiers in the trials which were by then already underway.

**Public Knowledge and Public Outrage**

Certainly Hirohito was a key symbol of Japanese militarism in Australia, along with Prime Minister Tojo Hideki, but with so much anger over the direct treatment of Australian POWs, the suspected BC war criminals appear to have been an equally important target of military justice. Of all the confusing and bitter aspects of the Pacific War, the treatment of POWs was the most shocking and proved to be the most enduring issue for the Australian people. The Australian POW experience has continued to occupy a complex space in the national memory. The humiliation of defeat and captivity quickly faded from the mainstream narrative about POWs, the focus shifting instead to the courage and heroism of Australian prisoners as they steadfastly faced their Japanese captors. Overall, anger towards the Japanese in the immediate post-war period did not discriminate as to rank; leaders and those who had committed crimes in the field were considered equally culpable. It had not taken long for returning soldiers to confirm the suspicion that conditions in

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45 For an assessment of the anger over Japanese war crimes see Waters, ‘War, Decolonisation and Post-war Security’, p. 112.
48 Cable from Cabinet to Evatt, ‘Those at Top Equally Guilty to Those at the Bottom’, 9/9/45, NAA, Canberra, A816, 170273.
Japanese prisoner of war camps had been dire. The apparently dreadful treatment of Australian prisoners seemed alien and outrageous, constituting a disregard for, or even betrayal of, the supposedly long precedent of good treatment of prisoners of war in the West. The suspected ‘ordinary’ war criminals thus represented the aspects of the Pacific War that Australians most resented, and the alleged depredations of Japanese soldiers provided an extensive catalogue of wartime atrocities. The failure to try Hirohito was a setback for the Australian government’s vision for post-war Japan but the government still had the right to prosecute suspected BC war criminals, themselves a very potent symbol of Japanese militarism, as it saw fit. Webb’s sentiment, that it would be inappropriate to try lower-ranking suspects if Hirohito avoided prosecution, appears to have been either ignored, or quickly forgotten; Australia’s interest in war crimes trials did not decrease after it became clear that Hirohito would escape prosecution.

By the time the Class B and C trials began in November 1945, outrage in Australia over Japanese war crimes had reached its zenith. It appears that knowledge of Japanese crimes had become widespread among the Australian public in 1944. The official Australian history of the Second World War comments that in 1944 the public was aware that Australians were being overworked and were starving in Japanese captivity, in contrast to Japanese POWs at Cowra in NSW, who were said to have been well treated. In September 1945, parts of Webb’s 1944 report on Japanese atrocities, which up to this point had been confidential, were made public, contributing greatly to

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the community outrage that had been slowly growing. As press stories of POW experiences became more frequent, there was a marked lack of surprise among the public.

It is hard to gauge what was generally known within the Australian army earlier in the war about atrocities. Although Australian authorities were investigating war crimes long before the conflict ended, it is unlikely that military personnel away from combat areas and POW camps and not privy to Webb’s report would have had concrete knowledge of war crimes. According to some soldiers’ memoirs and the flood of reports in the press after the Japanese surrender, however, it was common knowledge amongst Australian soldiers from early in the war that the Japanese were committing atrocities. A small number of Allied POWs did escape from Japanese captivity and they could have returned with stories of hardship during their captivity. It seems far more likely, however, that because of the wide dispersal of combat during the war, some of which took place in remote areas of the Pacific, knowledge of war crimes became truly widespread only after the surrender, when POWs began to be liberated.

Even though their suspicion was probably not based on concrete evidence, there was certainly a sense among both soldiers and members of the public that war crimes were occurring and that Japanese wartime conduct was barbaric. Such suspicion doubtless derived in part from propaganda associated

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with the Pacific War. Western images of the ‘East’ contributed to the feeling that the ferocious fighting seen in the Pacific would develop into widespread war crimes. High-ranking Allied military officers described the Japanese as barely human and as half-ape barbarians in a discourse that Dower believes dehumanised the enemy and fuelled the ‘race war’ in the Pacific.\(^5\) It is now widely accepted in scholarly circles that the Allies also committed war crimes and immoral acts: mutilating the remains of Japanese soldiers and taking body parts, for example, were not uncommon practices among Allied soldiers.\(^6\) With deeply negative impressions of the enemy and possibly the knowledge of potentially criminal practices on their own side, it is understandable that soldiers feared what might be happening to captured Allied soldiers. Speculation, assumption and perhaps partial information about Japanese war crimes proved to be accurate.

The Australian government, for its part, had been aware of war crimes for some years. Reports in April 1943 from organisations including the International Red Cross had alerted the government to the possibility that war crimes were occurring, and the Webb reports then gave the government a good idea of the scope of Japanese atrocities. The government, however, censored the reporting of Japanese crimes until late 1944. The reasons given were that officials did not wish to endanger captured Australian soldiers, perhaps by inflaming Japanese sensitivities, and wanted to avoid damaging morale among


both the public and the military.\textsuperscript{55} The strategy was undermined, however, when reports in a New Zealand newspaper in early 1944 detailing the mutilation by Japanese of Allied soldiers’ bodies confirmed that Australians were amongst the dead.\textsuperscript{56} Nonetheless, the full scale of Japanese atrocities was not revealed until after the surrender. From that time on, there was no lack of public information. Any policy of censorship contemplated after the war would have been pointless as thousands of former POWs returned to Australia seemingly eager to tell their story.

Already by early 1944 it was clear to Australian officials that censorship, despite the government’s efforts, could soon be redundant due to stories leaking into the press from sources such as those in New Zealand, and the government instead began to develop a process to manage the reporting of alleged war crimes. A body known as the Australian Political Warfare Committee, which had been established in July 1942, handled the matter. Members included personnel from the army, navy and External Affairs, with External Affairs also acting as secretariat. The original role of this committee appears to have been to formulate policy on propaganda to use both against Japan and for domestic purposes; eventually this work came to include the management of information about war crimes.\textsuperscript{57} A meeting held in early 1944 concluded that as the US government was releasing stories about Japanese treatment of prisoners, Australia must do the same. The committee

\begin{thebibliography}{9}
\bibitem{55} ‘Political Warfare Cable and Details of Meeting’, 27/1/44, NAA, Canberra, A816, 170273.
\bibitem{56} ‘External Affairs Telegram to Prime Minister of New Zealand’, 18/2/44, in Japanese Atrocities, NAA, Canberra, A816, 170273.
\end{thebibliography}
recommended that Australian newspapers should publish factual accounts of atrocities in a way that would strengthen the will of the people to fight. Committee members also agreed on how best to handle reports of war crimes as they emerged, suggesting the best method was to ‘give full play to Japanese cruelties to pale [sic] the Japanese as humans as a whole’. Reports were to avoid the word ‘revenge’ and were not to emphasise the ruthlessness of the Japanese to such a degree that they would seem superhuman. They should link crimes to Asiatic people generally, although it is unclear what the committee believed the benefit of this would be, and where possible should embarrass Japan. At the same time, care should be taken to avoid giving the impression to Europe that Australia was trying to take attention away from the European theatre of war.\textsuperscript{58}

These directions provide considerable insight into how the government wished the public to view war crimes. It is not clear, on the other hand, how the government communicated its wishes to the press or on what authority it could hope to control what was printed. The press did in fact report the crimes in the manner outlined by the Political Warfare Committee, but this may not have been because of government instruction. The strategy suggests, however, that the government was confident it could use the press to its advantage and could exploit the meagre public understanding of Asia. The ‘White Australia’ policy of restricting non-white immigration was in force, and the only knowledge many Australians had of Asia probably came from clichés about Asian cultures or from wartime propaganda. The Political Warfare Committee’s instruction to link the crimes to Asians in general, whatever the

\textsuperscript{58} ‘Political Warfare Cable and Details of Meeting’.
motivation in doing so, shows the race element that underpinned early
Australian understandings of Japanese war crimes.

The Japanese formally surrendered on 2 September 1945. Australian
censorship of war crimes stories also ended around the same time. Even before
the surrender instrument was signed war correspondents began to interview
liberated Australian POWs and to send back to Australia reports of
malnourished and brutally treated soldiers. The result of the increased access to
POWs and other sources was that for almost all of September 1945, POWs and
Japanese atrocities dominated the front pages of Australian newspapers. This
coverage represents a very striking emphasis, given the scale of the conflict
that had just ended and the many other social, political and economic issues
confronting Australia and the empire. The length and depth of the reports on
war crimes show just how important the issue of POWs was seen to be.

The manner of the reporting varied slightly among newspapers,
although all of the reports maintained an outraged tone. Headlines and the
reports themselves were direct and provocative. The Melbourne newspaper,
The Argus, printed one story headed ‘Japanese Sadists Who Should Die’.59 The
Argus also published an editorial piece from one of its correspondents, Rohan
D. Rivett, who had been captured by the Japanese. The letter detailed
conditions in POW camps and Japanese treatment of Australian soldiers in
graphic detail. Rivett’s article defined Japanese soldiers as subhuman monsters
and above all else demanded that they should not be treated as an honoured

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List’, The Argus, 11/9/45, p. 16. Another example of early press coverage is
Rivett’s coverage of POW issues is particularly confronting. The type of language he used, however, was representative of how Japanese soldiers were portrayed in the Australian press during the early post-war years. Some stories of a more general nature about the peace also appeared, especially in *The Sydney Morning Herald*, which commented, for example, on Australia’s forthcoming participation in the Occupation of Japan. During September, some newspapers carried stories on what they portrayed as the precarious state of the British Empire and editorials on Australia’s future security and defence. Otherwise, papers around the country mirrored the virulent tone of *The Argus* to varying degrees.

The extraordinary coverage of the prisoner of war issue and Japanese atrocities appears to have been based on genuine feelings of anger in Australian society. Officials seemed to see this kind of outraged press coverage as a desirable source of support for war crimes trials, as can be seen in the strategy developed to guide press reporting. In hindsight, though, the plan for dealing with the press that the government had put in place before the end of the war seems hardly necessary, given that the community appears to have been very supportive of post-war trials. Perhaps the government was not confident of the extent of public support for trials because it feared in these early post-war months that reports might surface to contradict the widespread perception that Australian prisoners had been mistreated. The Australian High Commissioner in New Zealand urgently cabled the War Cabinet in September.

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61 ‘Australia Invited to Become a Member of the Allied Commission for Japan’, *The Sydney Morning Herald*, 1/10/45, p. 1.
1945 to warn that an article had been published in New Zealand claiming that two soldiers had denied reports they had been ill treated by the Japanese. He considered that such softer views of the Japanese war record were potentially ‘disastrous for the Australian viewpoint on the treatment of Japan’.  

Again, it is not clear to what extent the Australian government could exert influence over the Australian press or shield Australia from stories appearing in New Zealand, but the attentive reaction by the High Commissioner is nonetheless instructive. If his opinion was shared by members of the Australian government then politicians and others might have feared the widespread condemnation of Japan in Australia could prove fragile or easily diluted. On the other hand, perhaps the government simply believed that the more outraged and energetic the public remained, the stronger the case for a harsh stance on Japan would be. In these circumstances press, parliament and government took up the issue of war crimes trials with alacrity. Evatt summed up the feeling of officials and the public in 1946:

If those responsible for those outrages [by Japanese soldiers] are allowed to escape punishment, it will be the grossest defeat of justice and a travesty of principle for which the war has been fought.  

As noted in the Introduction, many Australians considered their experience of the Pacific War to have been unique, and this is a crucial part of understanding attitudes to the BC war crimes trials. The high rate at which Australian soldiers had been captured by the Japanese was one distinctive feature. In fact, the most typical experience for an Australian soldier in the

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63 ‘Australian High Commissioner in New Zealand Cable to War Cabinet’, 22/9/45, in Japanese Atrocities, NAA, Canberra, A816, 170273.  
64 H.V. Evatt, Australia in World Affairs, Sydney, Angus and Robertson, 1946, p. 68.
Pacific War was as a POW of the Japanese, or fighting a valiant defensive action, or both.\(^{65}\) As the Japanese military secured its stunning victories in Malaya, the Netherlands Indies and Singapore in late 1941 and early 1942, it took 22,000 Australians captive,\(^{66}\) the majority in February 1942 at the surrender of Singapore, where the number of Australians captured, roughly 15,000, far exceeded the 1,789 who were killed.\(^{67}\) Hank Nelson discusses the frustration felt by those captured at Singapore, some of them without firing a single shot in the war.\(^{68}\) Within a short time many of the prisoners were taking part in the building of the Burma-Thai Railway, joining in the Sandakan Death March in Borneo, or seeing out the war in a Japanese prison camp. Ultimately, 8,031 Australians died in Japanese captivity.\(^{69}\) Nelson points to Australia’s previously proud military history and the expectation that soldiers in the Second World War would be the ‘new Anzacs’.\(^{70}\) The actual fate of this generation of Australian soldiers was very different. It was certainly less glamorous, but has been equally enduring in the national memory.

In comparison, US victories in the Pacific War were frequent after the Battle of Midway of June 1942, and often clearly displayed the superiority of US over Japanese forces, in a complete turnaround from the early period when the Japanese military had inflicted defeats on American forces. Australian forces lacked the resources to achieve decisive victories which would have

highlighted their military superiority. Though Australia was on the winning side, there had not been enough opportunity for the military to demonstrate Australia’s individual superiority over the Japanese with a crucial victory that made a major contribution to the overall Allied triumph. Australian units did win in New Guinea, Borneo and elsewhere, but these victories had limited impact on the overall course of the war. This may be part of the reason that press reporting and memoirs went to considerable lengths to stress the adaptability, determination and ‘mateship’ of Australian soldiers. Such qualities represent a kind of triumph, but unlike a crushing naval victory, they do not speak for themselves. The Australian BC trials catalogued Japanese cruelty towards Australian POWs and gave the military the opportunity to bring Japan to account in courtrooms, something rarely achieved by the Australian military through force of arms.

A further distinctive feature of the Australian war experience, compared with that of the US and the European powers fighting in Asia, was the apparent threat of invasion of home territory. Many Australians believed an invasion by the Japanese to be imminent in 1942, following the capture of Singapore and the Netherlands Indies,71 and the government encouraged this fear. The Japanese offensive of 1941-1942 was, and still is, perceived as the greatest external threat Australia had ever faced.72 Numerous air raids struck the north of Australia between 19 February 1942 and 12 November 1943, principally at Darwin but also Broome, Katherine, Wyndham, Derby and other locations. The 19 February 1942 attack at Darwin killed 243 people and

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71 Waters, ‘War, Decolonisation and Post-war Security’, p. 100.
72 The perception of the Japanese threat to Australia is the focus of Peter Stanley, *Invading Australia: Japan and the Battle for Australia, 1942*, Camberwell, Victoria, Viking, 2008.
overall the air raids killed roughly 900. Moreover, on the night of 31 May–1 June 1942 Japanese ‘midget’ submarines sank the *HMAS Kuttabul* in Sydney Harbour. Other small-scale Japanese submarine activity also occurred off the east coast. The raids on the mainland and in Sydney Harbour exacerbated fears of an invasion from the north that had been current for forty years, and had been worsened by a loss of faith in British military power since the Japanese severely dented British prestige in Asia by sinking the *HMS Prince of Wales* and the *HMS Repulse* off Singapore on 10 December 1941 and by capturing the key British naval port in the region, Singapore, two months later. The immediate sense of vulnerability helped make Australia’s war in the Pacific very different from Britain’s or America’s. Neither the US mainland nor the British Isles, by contrast, was ever bombed by the Japanese. For the UK, the conflict in Europe was the dominant experience of the Second World War. The shock of losing Singapore and of the Royal Navy’s loss of influence in the Pacific was significant, but the struggle against Germany was closer to home and threatened the actual survival of the country in a way that

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73 Complete details of the Japanese air raids on Australian mainland targets, including numbers of raids, dates and numbers of casualties, can be found in ‘Raids on Australian Mainland Showing Location - Number of Casualties and Damage Sustained’, 1949-1972, Australian War Memorial, Canberra, AWM54 812/3/12.


76 Waters, ‘War, Decolonisation and Post-war Security’, pp. 97-100.

77 Two very minor incidents involving attempted attacks on the west coast of the USA did occur and are described in David M. Kennedy, *Freedom from Fear: The American People in Depression and War 1929-1945*, New York, Oxford University Press, 1999, p. 746.
the battle with the Japanese never did. For the US, the story of the Pacific War from mid-1942 onwards was one of continual victories far from home.

Japanese soldiers never did invade Australia but the war inflicted many scars. Australian society was left shaken and politics cautious. Australians were able to rejoice as victors in the war, but significant questions remained about what the future held. It was clear that military security would rest heavily on relations with the USA, but the sense of vulnerability, as a Western nation on the doorstep of Asia, had not subsided. In fact, it seemed that those who had much earlier prophesied an invasion of Asiatic people from the north had almost been proven correct. Thus, while recovery from war and a return to normal life were important priorities in 1945, so was the eradication of Japanese militarism. In fact, the experience of Australian officials and BCOF soldiers facing the Japanese after the war did not suggest that the Japanese were planning to rise again. Though the Australian press continued to portray Japanese militarism as a threat, this assessment was not reflected at ground level in places where trials were imminent or underway. On Morotai in the Netherlands Indies, for example, Australian soldiers soon realised that the great majority of Japanese prisoners were unlikely to carry out sabotage or to rebel. Prisoners awaiting repatriation home and under guard of Australian soldiers were given tasks where rebellion or sabotage could well have been possible, but their guards did not find it necessary to take specific steps to prevent sabotage, and nor did it actually occur.78

Australian society was shocked and angry after the war. Life as a POW had been the dominant experience of the Pacific War for Australian soldiers.

War crimes, war criminals, POW camps and war crimes trials were thus a significant focus for the anxiety and emotion produced by the conflict. In the immediate aftermath of hostilities Australians felt strong ties to those who had served during the war. In the press, outrage and sadness at what had happened to them sometimes took the form of expressions of hate and a determination to pursue Japan for its alleged war crimes. Underpinning the public anger against the Japanese was widespread private grief. For women, as Joy Damousi explains, grief was often an accepted and open part of post-war life, although war widows faced their own struggles for recognition in commemoration services. Men, however, were generally not allowed to grieve in public in any obvious way. Gavan Daws contends that although the former Australian POWs were now free men, they found it very hard to adjust back to civilian life and their time in Japanese camps ‘turned out to be a life sentence’. But social conventions at the time required men to be tough, to get on with the job, moving on with their lives yet always remembering the fallen. Many emotions must thus have remained suppressed, and Australian society was in an unsettled state in the mid- to late 1940s. War issues lingered in the 1950s and beyond. According to Damousi, ‘shadows of war remained psychologically embedded in post-war Australia, challenging the tranquil image of the 1950s and 1960s’.

81 Daws, Prisoners of the Japanese, p. 376.
82 Damousi, The Labour of Loss: Mourning, Memory and Wartime Bereavement in Australia, p. 195.
Official perceptions of public opinion undoubtedly helped shape the cautious government attitude towards Japan after the war. Although the full details of what returned soldiers were going through psychologically were not widely discussed, the government apparently recognised that lingering unease and pain over the war meant that dealing with Japan remained a delicate task even in the early 1950s. Former Australian POWs seemed to feel that although Japan had lost the war it was somehow going to ‘win’ the peace, and the government appears to have been conscious, even at times fearful, of such public opinion. As late as 1953, the government concluded that public opinion still demanded a tough stance on Japan, and especially on war criminals. In fact, as will be shown in Chapter Five, the government continued to acknowledge anti-Japanese sentiment as late as 1957. Australian public opinion, however, was complex. Though examples of anti-Japanese attitudes could be found throughout the 1950s they were not universal. Anger towards and mistrust of the Japanese was not always dominant. For example, the response to the 1950 news that trials would resume at Manus Island was quite balanced. Some press articles even advocated leniency towards the Japanese, given the passage of time since the war’s end.

Press coverage of the trials and of Japanese conduct during the war presented Japanese people as very different from Australians. War crimes were often linked to Japanese culture as it was commonly supposed to be, and simplistic racial stereotypes provided one explanation for what had occurred in the Pacific from 1941 to 1945. Australian personnel had been confronted with

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84 For example, ‘Delay in War Crimes Trials’, *The Mercury* (Tasmania), 14/2/50, p. 3.
what appeared to be idiosyncratic, fanatical Japanese military behaviour. At the same time, some alleged Japanese war criminals obviously did believe in Japanese racial superiority. Dower contends that the Pacific War was fuelled by propaganda on both sides about the essential differences between the enemies, maintaining that the racial stereotypes applied by Westerners to Japanese remained potent after the end of the war, yet proved adaptable to the needs of the Occupation: the Japanese were now seen as misguided rather than as a threatening race with irredeemable war-like characteristics. In terms of dominant Australian perceptions of the Japanese, I will argue that while wartime stereotypes did indeed remain, they did not prove particularly adaptable to post-war circumstances. The old wartime sentiments seem to have continued far longer amongst the Australian public than elsewhere, and changed post-war circumstances had less effect on them. Fear in Australia of a possible conflict with an Asian nation, usually Japan, had been prevalent since the turn of the twentieth century and did not quickly dissipate. The White Australia Policy continued to be widely accepted on the grounds that it was based on sound racial theory and that it was absolutely crucial in the development of the country.

Preparing for the Trials: The Military and Political Process

The Australian BC war crimes trials began in November 1945, largely without the problems associated with other Australian policies for Japan. Arrangements for the trials had been hastily finalised after the war, but some aspects had been

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in preparation much longer. Outside interference had been minimal. From the beginning, Australian officials took a lead role among the Allies on war crimes. Overlooked in negotiations over Potsdam, the government was left with few areas in which it could truly influence policy on Japan and achieve the hard-line results it desired. Frustration only increased with the US refusal to send Hirohito to trial. The Australian press now suspected that the US would go easy on Japan, and the same sentiment also existed at official levels.  

The BC war crimes trials, on the other hand, did not depend on US policy. Though they took place within a generally agreed framework shared by the UK, US, France, the Netherlands, Nationalist China, Australia and later the Philippines, ultimately they could remain a wholly Australian project in which Australia could direct its own policy, and for which the Australian government could write its own legislation.

Preparations started during the conflict itself. As noted above, secret official investigations into alleged Japanese war crimes began as early as June 1943.  

By this time International Red Cross reports had suggested that war crimes were occurring. Red Cross representatives in Australia then petitioned the government to investigate, expressing serious doubts over Japanese claims that conditions in POW camps were suitable. The Red Cross maintained that reports from its representatives were being altered by the Japanese.  

The government does not appear to have made the Red Cross claims public but

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87 For example, Glen Johnston, ‘Alarm at Policy to Japan’, The Argus, 20/9/45; Rosecrance, Australian Diplomacy and Japan, p. 13.
89 Alfred Broam, ‘Report from Australian Red Cross’, 14/4/43, NAA, Melbourne, B1535, 392337.
responded by commissioning Webb to investigate them. Webb’s report covers this investigation process, the ways in which specific rules or conventions had been broken by the Japanese and details of the kind of atrocities being committed. It also seeks to justify the secrecy surrounding investigations of alleged crimes by claiming that a more open approach would endanger troops in Japanese-held areas, presumably as Japanese soldiers might worsen their treatment of Australian soldiers as a reprisal. After its forces began to prevail in Japanese-occupied areas in early 1945, the Australian military applied itself diligently to the task of preparing as complete a record as possible of war crimes and indeed to trying to ascertain the fate of all of its servicemen. By May 1945, the military had gathered a significant amount of evidence of crimes. The methods by which it did so are discussed in Chapter Two.

The Australian trial authorities originally intended to investigate all instances of alleged war crimes and to prosecute all suspected Japanese war criminals. Given that crimes included slapping prisoners, and depriving them of food or medicine, there must have been a daunting number of ‘leads’ to pursue. By the end of the trials, the Australian authorities had prosecuted 814 Japanese soldiers, which is a considerable number at face value. Roughly 142,000 Japanese soldiers were in Australian-controlled areas after the surrender, however, and the number was higher initially, before some were transferred to Dutch and British control, so 814 represents a very small proportion. Trials were aimed at soldiers associated with POW camps in

particular, and the total number of Japanese prisoners included many who were not. Nevertheless, it must have been a demanding task for the Australian troops to identify suspected criminals and to arrest most of the ‘notorious’ candidates. Australian forces receiving the surrender of the Japanese in Australian-held areas numbered roughly half the Japanese forces, and apprehending war criminals was only one of their three major responsibilities. In addition to the arrest of suspected war criminals, priority was given to the liberation of prisoners in these areas, and the disarmament of Japanese forces and securing of the armaments that were recovered.  

Such was the fervour surrounding Japanese war crimes, partly by government design, that an ambitious attempt to bring as many war criminals to justice as possible was apparently the only realistic way of appeasing the public and returned soldiers. It is difficult, however, to assess how successful the authorities were in bringing war criminals to account. Most Australian soldiers returning from the war seem to have claimed that Japanese war crimes were very common. Webb’s report also highlighted widespread crimes. Officials had known of war crimes since 1943, while the public and army claimed that it had known about them ‘all along’. Moreover, the *Australian War Crimes Act*, as we will see below, allowed authorities a broad jurisdiction. Yet with 142,000 surrendered Japanese at their disposal, Australian authorities charged fewer than 1,000. It is fair to conclude that either trial authorities fell woefully short of the goal to prosecute all Japanese war criminals, or the frequency of crimes had been considerably exaggerated. If the allegations that

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92 Ibid., pp. 207-208.
crimes were widespread are true, as some Australian historians assert,\textsuperscript{93} then one point that has been overlooked is how statistically unlucky a Japanese soldier had to be to be convicted of a war crime.

The prospective course of the war crimes trials was charted in broad terms by the Australian government before the public outcry over the treatment of POWs began. In October 1945, however, officials were still gathering evidence, the parameters of the trials were still being decided, in secret, and goals were being set for the number of trials to be completed before the end of the following year, as will be explained in Chapter Two.\textsuperscript{94} In truth, at the end of the war, how best to try Japanese war criminals was far from clear. Japan was not a signatory to the Geneva Convention and, as we have seen, war crimes trials were a relatively new concept.

At the conclusion of the war, the Australian government had two main courses of action open to it. The government could try war criminals under the existing British Royal Warrant for war crimes, or could devise new legislation of its own. Existing Australian military law was evidently considered insufficient for the prosecution of war criminals. In the \textit{Australian Edition of Manual of Military Law 1941}, war crimes were only briefly defined as ‘Violations of the recognized rules of warfare by members of the armed forces’.\textsuperscript{95} The British Royal Warrant, issued for war criminals on 14 June

\textsuperscript{93} Daws, \textit{Prisoners of the Japanese}, pp. 365-370.
\textsuperscript{94} External Affairs to Sir William Webb, 25/10/45, in Japanese Atrocities, NAA, Canberra, A816, 170273.
\textsuperscript{95} Military Board (Australia), \textit{Australian Edition of Manual of Military Law 1941 (Including Army Act and Rules of Procedure as Modified and Adapted by the Defence Act 1903-1939 and the Australian Military Regulations)}, Canberra, Commonwealth Government Printer, 1941, p. 287. This definition was similar to the one used by the US during the BC trials. See United States Department of State, \textit{Foreign Relations of the United States}, Vol. V1:
1945, was the instrument applied by British war crimes courts. A Royal Warrant is essentially an expression of the Royal Prerogative and the authority of the crown. In practice, the warrant defined the jurisdiction and the structure of British war crimes courts, stating that ‘His Majesty deems it expedient to make provision for the trial and punishment of violations of the laws and usages of war’. The Australian government, however, decided that its BC trials should be conducted under new legislation and the separate *Australian War Crimes Act* was speedily put together in October 1945, allowing the military and government to try Japanese war criminals on their own terms. The Act was based on the British Warrant but provided a greater jurisdiction to charge alleged war criminals with offences and a degree of flexibility in determining what a war crime was. For example, the *War Crimes Act*, in addition to defining a war crime as a violation of the laws of war, also included any crime defined by a board of inquiry as a war crime. The offence in question could have been committed in ‘any place whatsoever, whether within or beyond Australia, during any war’. Pappas points out that little is known about the creation of the Act as few relevant notes and sources were left behind. It was written by a small team using special wartime powers, and much of the comment on its creation is little more than speculation.

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Australia’s war crimes legislation departed from that used by other governments conducting BC trials in a few respects. The most significant was that the Act specifically listed rape and enslaving women into prostitution as war crimes, even though such crimes are generally regarded as having been overlooked in international military law.\(^\text{100}\) On the whole, however, the Australian War Crimes Act closely resembled other nations’ legislation, including in some contentious respects, like the rejection of the defence of Superior Orders, that is, the claims by some defendants that they had committed a crime under orders.\(^\text{101}\) The wish to try alleged Japanese war criminals under a specifically Australian Act confirms the pattern in Australian foreign policy that I have already mentioned: the government was continuing to exhibit the growing independence from British foreign policy that had been evident during and near the end of the war. The Australian War Crimes Act was a further sign that the government wished to handle sensitive matters itself at this stage. Australians felt so strongly about alleged Japanese war crimes in particular that leaving the trials in other countries’ hands was not acceptable. The idea of a specifically Australian reckoning with Japan was a powerful one.

The Australian government took active steps to ensure its interests were protected in all matters relating to war crimes trials. The Cabinet cabled Evatt in October 1945 suggesting that Australia should, in negotiations with its allies, state its desire to investigate all war crimes in South East Asia, as

recognition of the scale of its war effort. In fact, each of the seven
governments conducting Class B and C trials had the right to try Japanese
soldiers for war crimes committed against its own soldiers and for crimes
committed against native civilians in Japanese-occupied areas in which the
Allied country’s troops were stationed at the time of the Japanese surrender.
The Australian trials were conducted within the area of the Pacific that during
the war had been subject to the US-led South East Asia Command (SEAC), the
headquarters of Allied military operations in the South East Pacific. According
to a US directive, war crimes trials in the SEAC area were the responsibility of
the Commander in Chief of SEAC in the case of the US, or otherwise of the
individual governments whose troops were active in that area. It was similar
elsewhere in the Pacific: trials were conducted by the Allied wartime military
command in a particular area, the occupying Allied nation or the individual
Allied government that believed a crime had occurred in that area against its
personnel or interests. Local agreements, for example within SEAC, ensured
that in cases where more than one government was interested in trying a
particular suspect, each nation concerned could send a representative to
observe the trial and would retain the right to try the suspect if the original
prosecuting government dropped the charges against him. An External
Affairs telegram in December 1945 asked the British Foreign Office to allow

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102 Cable from Cabinet to Evatt 8/10/45, in Japanese Atrocities, NAA, Canberra, A816, 170273.
103 Memorandum from State-War-Navy Coordinating Sub Committee for the Far East – War Criminals, 5 November 1945, Decimal 390-39-14-1, National Archives and Records Administration (US), Washington DC, RG 165, Box 612.
104 Ibid.
an Australian military representative to be present at all British trials that involved an Australian in any way.\textsuperscript{106} It is evident that the Australian military and government were determined not only to take responsibility for Australia’s own trials but also to ensure that justice was served to their satisfaction whenever Australians were involved.

Under the Department of Army’s Directorate of Prisoners of War and Internees, 1 Australian War Crimes Section was set up and attached to South East Asia Command in Singapore.\textsuperscript{107} The Directorate served as the headquarters for all the initial Australian trials. As noted earlier, trials were held at Darwin, Labuan, Rabaul, Morotai, Singapore, Hong Kong, Wewak and Manus Island. It is not absolutely clear why each venue, other than Manus, was chosen. It seems likely, however, that trials were conducted at the closest and most suitable venue in relation to where Australian personnel had uncovered war crimes or arrested suspected war criminals.

The Australian trials began under extraordinary circumstances which included many non-legal dimensions. The lead-up to the trials encompassed investigations, the bloody end to the war, press outrage at Japanese treatment of POWs, the ad hoc creation of the \textit{War Crimes Act}, and the government’s desire to present Japanese war crimes in the worst possible way to the public. In early trials in Darwin, as we will see in Chapter Three, public zeal for a tough stance on Japan turned against the government over the sentencing. It was evidently impossible for the trials to be dedicated solely to the pursuit of

\textsuperscript{106} Secretary of the Army in Contact with British External Affairs, 19/12/45, NAA source in Papers of D. C. S. Sissons, Manuscript, National Library of Australia, Canberra, Box 36.

international justice. Political and social factors obtruded in very significant ways.

Chapter Two discusses the way in which the tribunals functioned, especially in the early period. In examining the trial procedures, the chapter also discusses the question of the fairness of the Australian tribunals, a matter that has preoccupied the small number of scholars who have dealt with Australian prosecution of Japanese war crimes suspects.
CHAPTER TWO

THE TRIALS: LEGALITIES AND LIMITATIONS

From the start, the BC war crimes trials were much more than a set of legal proceedings. In practice they represented an intersection of legal and political ideals. Webb stated in 1945 that the primary goal of the ‘lesser’ trials was to show what kind of war Japan had waged and to help build the case against the Class A war criminals while also punishing ‘minor’ ones along the way.¹ From Webb’s comment it is clear that authorities considered that ordinary Japanese, as well as the Japanese leadership, must bear responsibility for the Pacific War, even if the Class A suspects were more important to Webb. The ‘lesser’ trials did indeed provide a catalogue of crimes that illuminate the way the war in the Pacific was fought. They also reveal, however, the political dimensions of the Australian government’s handling of Japan’s surrender and subsequent events. Trial records show that, despite Webb’s own view, the Australian authorities in general did not consider the BC cases to be subsidiary to those in Class A. The ‘minor’ war criminals were important in their own right in the development of Australia’s post-war policy for Japan. A delicate balance between meeting political goals and ensuring fair and just trials emerged. The balance, however, was not always successfully maintained. The Australian government’s desire to show Japan how a war should and should not be fought also clashed with the practicalities of prosecuting crimes in extraordinary circumstances, when

convictions even under normal court conditions would have been difficult to attain.

The way in which the trials were set up, and the way they operated in the initial period, confirm the Australian government’s determination to pursue Japanese militarism, and to be seen to do so expeditiously and successfully, despite difficulties that included limitations in the government’s and the army’s human and financial resources. It was clear from early on that a pragmatic approach was needed if the trials were to operate efficiently and successfully. Thus, for example, rules of evidence were relaxed, and large group trials were permitted. Other governments running Class B and C trials employed similar measures. Such features of the trials attracted criticism at the time, and have been controversial among historians and other commentators ever since. Indeed, the fairness or otherwise of the trials has often been taken to be the most salient aspect of their history. While I demonstrate in this thesis that the social and political significance of the trials goes far beyond questions of fairness, it remains important to examine the criticisms levelled at the trials, because such an examination highlights the fragile balance between legal and political objectives in the Australian prosecutions.

Australian officials appear to have been conscious of this issue from the beginning. There is little evidence of trial authorities openly discussing how to balance politics and legalities, but some comments indicate an official awareness that the prosecutions might seem to be motivated by a desire for revenge. On 10 September 1945, six weeks before the first Australian trial, Evatt, Minister for External Affairs, commented as follows:
In its demand that all Japanese war criminals be brought to trial, the Australian Government is actuated by no spirit of revenge, but by profound feelings of justice and of responsibility to ensure that the next generation of Australians is spared such frightful experiences [as those of the prisoners of war].

Evatt’s comment was an attempt justify Australia’s tough stance on Japan. His remark also foreshadowed the tension between achieving justice from the Australian viewpoint and holding trials that would appear fair to those observing them from outside, as well as introducing the idea that future generations of Australians needed to be protected from Japanese militarism. This was a common theme in early post-war Australian discourse on Japan, and war crimes trials were clearly intended to play their part in providing such protection.

The question of the trials’ fairness is complex. In the main, Australian authorities attempted to conduct just trials that punished guilty Japanese fairly. In this chapter I describe the process of investigating war crimes and of setting up the Australian tribunals. I discuss the modifications that were made to courtroom practice, compared with civilian prosecutions and ordinary courts-martial, to accommodate the extraordinary requirements of war crimes trials. I then provide five case-studies from the early period of prosecutions to illustrate the workings and consequences of these modified practices. Throughout the chapter I address the issue of the fairness of the Australian trials as that issue arose in preparations for the prosecutions and in particular

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cases. At the end of the chapter I provide an overall assessment of the fairness or otherwise of the trials.

Criticisms of the Australian trials, both at the time and later, can be divided into two categories. First, the trials are sometimes attacked from a general moral standpoint. In some cases it is hard to argue that a trial verdict was legally unjust, but it may be possible to say that on the balance of all the evidence the verdict seems misplaced in a moral sense. Japanese historians and contemporary Japanese commentators on the trials have often focussed on this moral dimension, referring, for instance, to Japanese soldiers who were made to pay for the crimes of their superiors, or who were in hopeless situations at the time of the alleged crimes.³ I do not seek to judge the morality of the Australian trials overall. I do show, however, that while there was room for trial authorities to weigh broader considerations against the letter of the law, Australian authorities only did so if there was no risk of undermining the primary goal of running efficient and successful trials. The goal of running successful trials outweighed the goal of running trials that were always absolutely fair. Second, from a more technical standpoint, critics often note that the procedures in the Australian war crimes courts were altered to remove legal safeguards so that the trials fell short of ‘international legal standards of justice that we have evolved today’.⁴ For example, it was not always required that witnesses be produced in court to give direct testimony; instead, signed affidavits could be presented. In such cases, witnesses could not be cross-

examined, and thus a basic legal principle in a normal trial was abandoned.\textsuperscript{5}

From the official Australian perspective, the changes to the trial procedures functioned well and made convictions much easier to attain.

**Investigating War Crimes**

The majority of personnel involved in the trials were responsible for the investigation of possible crimes.\textsuperscript{6} As I have already mentioned, Webb himself had compiled an early report on Japanese atrocities, but this was not the only source of leads for investigators to pursue. As POWs were liberated and returned home, the Australian government issued questionnaires to all those who had been in Japanese prison camps. Between twelve thousand and fourteen thousand completed questionnaires, that is, virtually all the surveys originally sent out, were recorded by the military.\textsuperscript{7} The questionnaires were two pages long, with one to two further pages of a full statement by the ex-POW if he had indicated that he had witnessed or had knowledge of a war crime. The questionnaires were completed in the presence of an officer who countersigned the document and commented in writing on the reliability of the witness. Completed questionnaires were used both in pursuing investigations and to provide evidence in court, though only 248 were used directly in the


trials. They proved useful to prosecutors; legal personnel believed they had helped in gaining guilty verdicts. Other Allied governments used similar means of gathering information.

If written or verbal evidence from an Australian soldier indicated that a war crime might have occurred, the army investigated further, beginning by identifying the area in which the crime was alleged to have occurred. Evidence was also gathered separately by the air force. A number of cases dealt with crimes against Australian airmen who had crashed in Japanese-occupied areas. The air force investigated crash sites to discover the fate of the plane and crew. If it appeared that the crew had survived the crash but had later died, the cause of death was then investigated. Once it was decided that a war crime was likely to have occurred, a process began to find which Japanese units had been in the area and who had commanded those units. It was not always easy to find the commanding officers. Australian units had received the surrender of many thousands of Japanese soldiers in areas where the two sides had been fighting. The Australian War Crimes Commission requested at the end of the war that all Japanese commanders and staff of POW camps be detained in the area in which they had surrendered. Although many arrests were made, it appears that this directive was not always followed, despite a further instruction that staff of POW camps should be held even if there was no evidence of wrongdoing. Many Japanese were allowed to leave the area to which they had been posted,

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8 D. C. S. Sissons, ‘Details on POW Questionnaire’, Papers of D. C. S. Sissons, Folder 28, Box 3.
9 Captain Williams to Lt Van Nooten, 21/2/46, Papers of John Myles Williams (Manuscript), Mitchell Library, Sydney, 1927-1989, MLMSS 5426 Box 3.
to be repatriated to Japan, for example, and this must have made it far more complicated to identify suspects.

The search for written records of confinement and treatment of Allied POWs was often fruitless. In at least one case, surprisingly, the prosecution claimed to have received a great deal of help from Japanese authorities, who provided them with documentation on the soldiers under investigation, probably in order to ensure that other innocent soldiers were not tried mistakenly for the alleged crime. In general, however, it seems highly unlikely that the Japanese navy or army provided any significant assistance in the pursuit of their men. In most cases, the investigation process was fairly rudimentary, and focussed on line-ups and photo identification of suspects by Australian soldiers. Even these procedures were time-consuming and difficult given that many Allied soldiers struggled to distinguish accurately between Japanese people even though they had been their captives for a considerable time. In one particular case concerning alleged crimes on Ambon Island in the Netherlands Indies, several Australian soldiers in turn failed to identify in a line-up the Japanese soldier suspected of committing the crimes. The case was nevertheless successful in the end, because one Australian soldier did recognise the alleged criminal. In fact, where several soldiers had failed to recognise even a single suspect, this one soldier was able to recognise over forty across a number of cases. The investigating and prosecuting authorities, however, do not seem to have acknowledged any problem in accepting one soldier’s word over that of many others.

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11 Captain Williams to Lt Van Nooten, 21/2/46, Papers of John Myles Williams.
12 Ibid.
Identifying Japanese by name was also difficult. Many Japanese had given false names when they surrendered, fearing reprisals from their own military. The resulting confusion was then compounded by the difficulty that Australians had with spelling Japanese names, and the fact that there were some very common surnames, such as Tanaka, Suzuki and Watanabe. It is possible that the wrong Japanese were tried in some cases due to such confusion.

The Trials

Two main factors increased the pressure for the trials to be both efficient and successful: early media attention, and time constraints and logistical difficulties. Both of these factors undermined the tribunals’ capacity to deliver verdicts and sentences that were conspicuously fair.

In Australia, there was intense media interest in the trials, especially early on. The army kept the press informed mainly through press releases, although journalists were also present at the courts. Through both channels, the public was able to follow the trials closely. Australian officials had publicly taken a tough stance on Japan since the surrender and as seen in the Introduction, BC war crimes trials had emerged as a key part of the government’s plan to deal with Japanese militarism. The result was a sense of urgency and public pressure to achieve ‘results’. Public expectation of a large number of guilty verdicts was high.

13 ‘Cable from External Affairs to Australian War Crimes Commission’, 26/11/45, National Archives of Australia (hereafter NAA), Canberra, A6238, 3073837.
Initial Australian assessments predicted that the trials would take twelve months to complete, and the government set a goal of 500 cases to be concluded by 31 July 1946.\textsuperscript{15} The target number of cases was ambitious; eventually it took almost seven years to complete the 296 trials that constituted the entire Australian program. The reasons for the large discrepancy between the target and the actual number of prosecutions are not clear. There were shortages of resources and trial personnel after 1947 which will be discussed in later chapters. On the other hand, however, the trial legislation was constructed with efficiency and pragmatism in mind. One factor is that Australian prosecuting authorities repeatedly ignored calls from legal experts for smaller trials, rather than group trials featuring large numbers of defendants. It is likely that in conducting mass trials, the target of 500 cases was in effect reduced, as one large trial could make up for what would otherwise have been several smaller trials. A further factor was the amount of outside assistance initially available to trial personnel. In the early cases, Australian staff worked closely with their British counterparts in Singapore and Hong Kong, and the British war crimes authorities were keen to assist Australia to conclude its trials promptly.\textsuperscript{16} In the second phase of the trials, on Manus Island, Australian prosecutors worked alone, which presumably slowed the completion rate. At this stage Australian authorities found both the UK and the US governments unwilling to assist them, for a number of reasons that will be discussed in Chapters Three and Four. Even taking these factors into account, however, the target of completing the trials within twelve months remains very wide of the mark.

\textsuperscript{15} ‘EA Cable to Webb’, 25/10/1945, NAA, Canberra, A816, 276977.
\textsuperscript{16} Pappas, ‘Law and Politics’, p. 52.
The trials absorbed a significant amount of money and a large number of personnel, which became a drain on government, military and legal resources. Transferring witnesses, prisoners and staff between venues after the Pacific War was a difficult exercise. Though trials were conducted mostly in areas close to where war crimes had allegedly occurred, the logistical undertaking was nonetheless significant. As an example, the twenty-six trials on Manus Island in 1950 and 1951 were reported to have cost £100,000. On balance, it appears that Australian officials completely underestimated how demanding the tribunals would be, and their desire to ensure that Japan faced comprehensive justice placed their personnel and resources under significant strain.

All the same, the Australian trials began swiftly and with great impetus. The first were held in November 1945, in Wewak, in Australian New Guinea. Roughly two-thirds of the total number of trials were completed by the end of 1946. After 1946, however, the trials proceeded slowly and so the schedule was less likely to meet public expectations. Time pressures led to shortened periods between trials and to exhausted staff. In such circumstances, verdicts and sentences were not always conspicuously fair or consistent. Moreover, the fact that in some cases very large numbers of defendants appeared meant that evidence could be confusing and

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18 Information in this section, unless otherwise noted, is taken from ‘Japanese War Criminals Charged under the War Crimes Act 1945’, 30/5/58, NAA, Canberra, A1838, 581869.
19 See Table A in Sissons, ‘Sources on Australian Investigations into Japanese War Crimes in the Pacific’.
contradictory. In some of the larger trials, the quality of justice that was handed out can be seriously questioned and there is evidence of individual Japanese soldiers being either wrongly found guilty or inappropriately sentenced. One of the Australian prosecutors, John Myles Williams, recounts a case where, in an attempt to gain convictions, the prosecuting team decided to put as many soldiers on trial as possible to see whether, during the trial, evidence about those against whom they had no case might emerge. Such methods may or may not have led to convictions of innocent Japanese soldiers, but either way they appear to be unscrupulous.

The general framework of the trials was similar to that of Australian courts-martial. Each court was set up by a convening officer, whose responsibilities were to appoint the president and members of the court, and to decide if the charges in any particular case warranted a trial in the first place. The military personnel who made these decisions were, where possible, of a higher rank than the accused and from the same service. The tribunals were staffed mainly by military personnel with legal training. Usually three or four officers sat in judgment. If personnel with appropriate legal training were not available to hear a case in a particular court, a military lawyer acted as Judge Advocate and was appointed to sit in the courtroom. The role of Judge Advocates was to ensure that proper legal procedures, as set forth by the War Crimes Act and the various guidelines pertaining to Australian military courts-martial, were followed. The Judge Advocate also asked questions during the trial, if he felt that a part of the evidence or the procedure needed to be

21 Captain Williams to Lt Van Nooten, 21/2/46, Papers of John Myles Williams.
clarified, and provided a summary of the evidence for the trial record. At times, it was difficult to recruit personnel to sit in judgment on the military tribunals; one reason may have been their remote locations, as Webb suggested. The problem was compounded after January 1947 when all staff except those who had volunteered for the trials were released from court duty and returned to Australia, leaving trial authorities understaffed in all areas.

Trials were subject to review by the Judge Advocate General (JAG), a civilian legal expert who was located in Australia. Two JAGs served in the Australian trials, J. Bowie Wilson until April 1946, and W. B. Simpson thereafter. The JAG was responsible for reviewing trials and also defendants’ petitions against the verdicts or sentencing. In the absence of any opportunity for formal appeal, these reviews appear to have functioned like an appeals system and were designed to offer a legal safeguard. Crucially, however, neither the findings of the Judge Advocate nor those of the JAG were legally binding.

The JAG’s legal opinion then accompanied the trial documentation to the confirming officer, a military official in Australia who reviewed and confirmed or rejected sentences. On occasion the confirming officer, on the advice of the JAG, altered a sentence that the court had handed down. Both the JAG and the confirming officer usually referred to the process of reducing a sentence as ‘mitigation’, though the term ‘commuted’ was sometimes used.

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25 See, for example, ‘Record of Military Court – Ito Hiroshi and Others’ and ‘JAG Review - Ito Hiroshi and Others’, 27/11/50, NAA, Canberra, A471, 739669. These documents show the details of the case, the JAG’s opinion and the confirming officer’s decision.
when a death sentence was reduced to a prison term. The decision of the confirming officer was legally binding. For most of the trials the confirming officer was Lt General Vernon Sturdee, Commander in Chief of the Australian army, who had no legal training.\textsuperscript{26} In 1948 Sturdee handed over responsibility for confirming the sentences of war criminals to Adjutant-General of the army W. M. Anderson, who continued to act as confirming authority for the later prosecutions on Manus Island as well. Anderson does not appear to have had legal training either. The new Coalition government, elected in December 1949, became involved in the confirming process during the Manus trials when reviewing the case of General Nishimura Takuma, which will be discussed in detail in Chapter Five. After the Nishimura case, in the final months of the trials, Cabinet was active in confirming or commuting death sentences: at this stage the only sentences yet to be confirmed were for death, in contrast to the early years when the army confirming officer, first Sturdee and then later Anderson, had been the sole authority to confirm all sentences. The trials remained a military undertaking, not subject to the restrictions of a civilian legal system. Cabinet’s decision on death sentences was binding, however, just as the confirming officer’s had been in the early trials.

Records of the trials include detailed transcripts from the court, but they do not normally include comprehensive reasons for the judgment. The best guide to the reasons a court reached its decision is often the summation of the evidence by the locally-based Judge Advocate.\textsuperscript{27} The Judge Advocate’s


\textsuperscript{27} Pappas, ‘Law and Politics’, p. 129.
comments at the trials and the JAG’s review from Australia constitute the clearest examination of trial procedure available and together with the trial transcripts make up the complete record of each Australian BC trial.

The need for clarification and confirmation of judgments suggests that the military personnel at the tribunals were not always clear in their written assessment of the evidence. Indeed, findings of the courts could be erratic and at times appear unreasonable, as sentencing was not always uniform, even for similar crimes committed in similar circumstances. Twenty per cent of the sentences were altered at the JAG’s suggestion and his role at home, along with that of the Judge Advocates at the courts, probably did ensure that a reasonable number of the problematic findings or sentences were overturned. On the other hand, there were many occasions on which the JAG’s recommendations were ignored. Compelling arguments for reduction of a prisoner’s sentence were dismissed by the confirming authority even in serious cases where a prisoner faced a death sentence. Examples can be found in the case studies at the end of this chapter. Removing accepted legal safeguards and expecting the review system to handle all problems that arose during the trials, then not making those reviews binding in any way, seems an inadequate method of ensuring that the trials met their legal goal of being just and fair in all cases. On the other hand, this method of procedure would certainly allow the trials to continue to fulfil their role politically, as successful and expedient means of dealing with Japanese war crimes.

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In the trial records, the legal proceedings seem straightforward and the prosecutions were sometimes concluded rapidly, once they had been convened. Non-official sources reveal, however, that at the ground level, commencing the trials was far from simple, and that legal and military personnel were often frustrated because they felt, for instance, that the Japanese involved were guilty but trying to trick their way out of being held accountable for their crimes. Captain Athol Moffitt’s diary, later published as *Project Kingfisher*, gives a raw account of the initial period of the trials. Moffitt, an Australian military legal officer working for the prosecution side in Rabaul, portrays an emotional and highly charged atmosphere. He feared that the US authorities would go easy on Japan, and considered that they displayed a lax attitude towards Japanese soldiers. This perception seems to have contributed to Moffitt’s determination to prosecute the Japanese as effectively as possible. He remarks on one occasion that he was comforted to hear an Australian officer who was about to sit in judgment on a case say ‘I am not going to let this bastard get away’. In another entry he comments that if the Australian soldiers who had actually fought the war could have stayed to deal with Japan’s surrender, a harsher form of justice that was more appropriate for the trials, in Moffitt’s opinion, would have been carried out. It is difficult to see exactly what Moffitt meant by this comment, however, as some personnel in the trials certainly had fought the Japanese.

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31 ‘Borneo Diary’, p. 33, Papers of Athol Moffitt.
In practice there was not a great burden on prosecutors to gather evidence locally, as the rules had been altered to allow written statements to be used by the court. The relaxed rules of evidence made it easier for the prosecution to attain convictions and whilst the prosecution was often frustrated with the Japanese defendants, the trial records reveal that the courtrooms rarely, if ever, saw dramatic exchanges between the defence and the prosecution or detailed examination of Australian witnesses. Nevertheless the strain on the prosecution teams was high, due more to the complexities of the investigation process and the physical conditions in the trial venues than to the proceedings themselves. From the beginning, the Australian legal personnel who were to prosecute the Japanese faced a difficult task. Identifying individual prisoners and establishing their correct names was often challenging, and in general the language barrier presented many obstacles. The army did have interpreters but they sometimes struggled, especially during the early years. Basil Archer, a BCOF linguist who participated in intelligence work in Japan, though not in war crimes trials, notes that even though he had been near the top of his language class in Sydney, when he got off the plane in Ambon in the Netherlands Indies on the way to Japan and approached two Japanese soldiers with the aim of testing his language skills, he found that he had no idea what the prisoners were talking about. Archer claims that this was a common problem and that it took considerable time for him to understand the

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Japanese language as it was actually spoken outside the classroom and by military men.\textsuperscript{34}

Trial personnel faced unique circumstances and a task that was emotionally very taxing as well as physically and mentally tiring. The army legal personnel were often working in difficult climates and remote locations with the additional burden of knowing that Australians were relying on them to deliver justice. Personal memoirs, such as Moffitt’s, provide evidence of the pressure they were working under. The papers of John Myles Williams also indicate that prosecutors were often exhausted and low on morale. Correspondence between Williams and other prosecutors shows dissatisfaction with their job and conditions and a desire to return home.\textsuperscript{35} The prosecutors appear concerned about JAG reviews of their trials and attentive to rumours that death sentences would be overturned. Williams’ correspondence indicates, however, that despite the workload and dissatisfaction with aspects of the process, prosecutors were committed to bringing war criminals to justice. Williams himself does not appear to have been motivated by strong anti-Japanese sentiment, as he made friends with the Japanese defence teams and conducted a professional relationship with them. On the other hand, he was very aware of the significance of the trials for former Australian POWs and felt that he was now partly responsible for punishing on their behalf those Japanese who had committed war crimes against Australians.

\textsuperscript{34} Basil Archer, edited and with an Introduction by Sandra Wilson, 
\textsuperscript{35} ‘Letter from Captain Mackay to Williams’, 31/3/46, Papers of John Myles Williams, Vol. 1.
Anti-Japanese sentiment was high in Australia after the war, and as noted above, some of the military personnel working on the trials had actually fought the Japanese. Taking these factors into account, it is not surprising that some staff harboured feelings of resentment against the Japanese. Outspoken officers did sit in judgment at times, and were heavy-handed in their sentencing. Some officers were renowned for their aggressive sentencing; indeed, they seem to have had no intention of hiding their feelings.\(^{36}\) As we have seen, the Australian government had stated that the trials would not be marked by any spirit of vengeance. At ground level, such a spirit was nevertheless evident at times. Tellingly, and contrary to the opinions of others at the trials, Williams wrote in 1988 that the prosecutions had been an ‘expression of contemporary national sentiment’, adding that a ‘spirit of vengeance in this sentiment is not denied’.\(^{37}\) The JAG reviews were often critical of sentencing and thus they had the potential to moderate the effects of the aggression shown in the courts. Arguably, however, the review process, especially a non-binding one, was an inadequate substitute for the removal of those officers who could not restrain their desire for vengeance.

Trying Japanese war criminals uncovered issues about Australian as well as Japanese conduct during and after the war. Japanese prisoners made several accusations of ill-treatment against their Australian guards. For example, an Allied interrogator, Captain Sylvester, was the subject of a relatively lengthy investigation into his interrogation techniques which allegedly included coercing confessions and evidence out of Japanese soldiers

\(^{36}\) Pappas, ‘Law and Politics’, p. 130.

by violent means. The investigation ultimately found, however, that Sylvester did not have a case to answer.\(^\text{38}\) It appears that the Australian military authorities took such accusations seriously and attempted to investigate them thoroughly. Investigations were not received well by Australian personnel; the investigators were referred to as ‘white nips’.\(^\text{39}\) Investigations also uncovered accusations of bad behaviour among Australian soldiers during the war. Australian POWs were alleged to have stolen from each other or otherwise to have taken advantage of each other.\(^\text{40}\) The details in the trial records thus reveal that not everyone was able to cope with the intense pressure on Australian POWs as stoically as the popular stereotype suggests.

The fairness of the trials themselves has been challenged on several grounds, with changes to the rules of evidence as the chief area of criticism. Carrel suggests that while these changes were questioned at the time, it was the huge public pressure for convictions that made relaxation of the rules acceptable to the Australian authorities.\(^\text{41}\) It would be wrong, however, to see the changes primarily as the result of vindictiveness towards the Japanese. The rules were changed because of legitimate concerns over how an existing courtroom process could be adapted to the special needs of war crimes trials, which were, on this scale, a new aspect of international law. Moreover, as

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\(^\text{39}\) ‘Investigations into POW Conduct’, NAA, Melbourne, MP742/1, 391800.
Pappas shows, the procedures used in Australia’s trials were very similar to those in the BC trials conducted by other Allied nations.\(^{42}\)

The rules of evidence dictate what evidence may be presented to the court and how. A major problem for prosecutors in the BC trials was the lack of written evidence confirming alleged orders to lower-ranking soldiers to mete out brutal treatment to prisoners or perform executions: even if written orders had been issued in the first place, documents had been destroyed by Japanese soldiers at the POW camps at the war’s end.\(^{43}\) Moreover, many witnesses who might have been produced to the court in person were thought to have died, and it was hard to find and produce witnesses even if they were theoretically available to testify.\(^{44}\) Thus, rules of evidence were greatly relaxed, as can be seen in several case studies later in this chapter. The most notable change was that signed affidavits were deemed to be acceptable as evidence, even if the person making the statement was still alive and able to be presented to the court.\(^{45}\) A certain amount of protection was provided by the fact that tribunals were staffed mostly by the military, and personnel with legal training were provided to the courts where the military personnel did not have any. Therefore, unlike in a civil or criminal court in Australia, lay jurors would not be deciding the case but rather people familiar with military law and the circumstances of the crimes. The review system was also designed to pick up any flaws in the trials. Arguably, however, neither the review system nor the

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\(^{44}\) Sissons, ‘Sources on Australian Investigations into Japanese War Crimes in the Pacific’.

expertise of the personnel in the trials was sufficient to overcome the problems that the acceptance of affidavit evidence created.

Because of the changes to the rules of evidence, there was little opportunity for the defence to cross-examine witnesses. The quality of the defence was thereby seriously reduced in some cases. Affidavits were not always even read out in court, but were simply admitted into evidence. In one Australian case, the accused was found guilty without hearing any evidence in court at all, an aspect of the trial that was criticised by the JAG.\textsuperscript{46} Estimating the number of convictions that may have been affected by the relaxation of the rules of evidence is difficult and in any case the JAG review process provided a safeguard. The outcome of most trials was probably not seriously affected, but some cases were built almost entirely on affidavit evidence and this would at least have lessened the ability of the defence team to examine the prosecution’s case. Convicting a person on affidavit evidence alone would not have been acceptable in a normal courtroom in Australia or in Australian courts-martial. It seems unlikely, moreover, that the review process picked up every injustice in the trials, and for that matter, as we have seen, the JAG’s findings were not binding.

Whether in practice they led to unfair convictions or not, such aspects of the trials provided opportunities for criticism and suspicion about fairness. The credibility of the trials would have been better served by maintaining as many conventional legal safeguards as possible, rather than removing them. There were certainly practical limitations to consider, however, and it is unlikely that a more conventional system could have operated effectively

\textsuperscript{46} ‘Memo from JAG to Army Headquarters’, 25/6/46, NAA, Melbourne, MP742/1, 394048.
under the prevailing circumstances. Without the relaxed rules of evidence, it is
doubtful that as many convictions could have been gained and this would have
been highly problematic for the Australian government. In fact, the trials
would almost certainly have been a disaster politically if normal courtroom
conventions had been observed. The Australian community’s connection with
POWs and the way the issue of Japanese war crimes had been driven by the
press in the early post-war period meant that the government could not afford
to hold unsuccessful trials. Only effective and far-reaching pursuit of Japanese
war crimes would be acceptable to the electorate. The rule changes allowed the
trials to be far more effective than they would otherwise have been. This does
not mean that the tribunals amounted to no more than victor’s justice, but some
individual trials or sentences were manifestly unfair.

The liberal use of capital punishment in the BC trials has also attracted
criticism. Within Australia the use or otherwise of capital punishment was a
state rather than a federal issue and practice therefore varied. For example,
Queensland abolished capital punishment in 1922, and New South Wales in
1955, but the last person executed in Australia was Ronald Ryan in Victoria in
1967.\(^47\) Application of the death penalty in the war crimes trials, however, was
necessarily a federal matter. Nelson notes that the Australian Labor Party, in
power at the federal level during 1945 and 1946 when the majority of death
sentences were handed down, strongly opposed capital punishment in
Australia, but yielded to public pressure and the enormity of Japanese war

\(^47\) Mark Finnane, *Punishment in Australian Society*, Melbourne, Oxford
crimes. Nelson sees this as a ‘massive exception to policy’.\(^{48}\) Leaving aside the application of the death penalty in civilian cases in Australia, capital punishment was more widely available for use against the Japanese than it was for Australian soldiers in their own military courts. The number of offences that could attract the death penalty was far higher in the BC trials than in Australian courts-martial.\(^{49}\)

Domestically, by the 1950s, the argument justifying the retention of capital punishment on the basis of its value in achieving retribution for crimes was becoming less prominent. By this stage public discourse emphasised almost entirely the value of capital punishment as a deterrent.\(^{50}\) Justification of the use of the penalty in the war crimes trials mirrored this emphasis in part. Public and official assessments of the threat from Japan after the war seem to indicate that Australians believed Japan could quickly regain strength and threaten the Pacific a second time. War criminals would then be in a position either to reoffend themselves or to transfer militarist ideals to the next generation of Japanese. Debate in parliament over punishment of war criminals in the post-surrender period often focused on preventing such a resurgence, and thereby also preventing any opportunity for alleged war criminals to offend again, and to encourage others to follow their example.\(^{51}\) Capital punishment provided the ultimate guarantee. War crimes are committed in unique circumstances, however, and for any of the war criminals to have had


\(^{50}\) Finnane, *Punishment in Australian Society*, pp. 136-137.

the chance to reoffend, or for others to have committed similar crimes, dramatic changes to the political situation in Asia would have had to occur. The argument that the death penalty would deter war crimes in a future conflict may be plausible, but the assertion that it provided any protection specifically against resurgent Japanese militarism is very weak. In practice, the death penalty provided only retribution.

There was strong support in the Australian press for the death penalty for war criminals and if the Labor Party had constructed war crimes legislation that did not provide for its use, it would have done so at great cost politically. For example, in early 1946, when reports appeared of a hold-up in executions, newspapers expressed a fear that they would cease. *The Herald Sun* was quick to defend capital punishment, in an article entitled ‘No Room for Mercy Here’.

Whether the abolition of the death penalty in its civil application is wise or even humane can be argued. But that it should be replaced by lifelong confinement for Japanese convicted of some of the worst savageries of a brutal army would have been galling sentimentalism. Australia therefore will expect to hear – and soon – that the death sentences are being carried out.\(^5^2\)

The writer of this article separates debate about the domestic use of capital punishment from war criminals but also issues what almost amounts to an ultimatum to the Labor government. The press wanted swift and final retribution; there seemed to be no thought that criminals of this kind could be rehabilitated. In many Australian eyes the alleged Japanese atrocities meant

\(^5^2\) ‘No Room for Mercy Here’, *The Herald Sun* (Victoria), 21/1/46.
that Japanese soldiers had in some way forfeited any right to be seen as equal to others where the use of the death penalty was concerned.

The government also discussed how decisions should be made on whether or not to execute a prisoner. For reasons that are unclear, Secretary of the Department of Army Frank Sinclair suggested in early 1946 that the army should not be responsible for confirming death sentences. Sinclair evidently believed a convicted Japanese soldier should have his death sentence independently reviewed. Webb, however, was not impressed, remarking to the Minister for the Army, Eric Forde: ‘Apparently Mr Sinclair thinks we owe the same duty to Japanese guilty of war crimes as we do our own soldiers. This is wholly erroneous’.  

Webb was arguing a point of law here and he was correct: war criminals were subject to Australian war crimes legislation, not Australian military law or Australian civilian law. In September 1948, however, Webb objected to the application of the death penalty to the Class A war criminals in Tokyo because he had concerns over the findings of the court, particularly in light of the non-trial of Emperor Hirohito. It seems that Webb was more confident of the verdicts of the BC trials than the Class A, though it is not clear exactly why he held this view. In any case, it was never likely that the Labor government would choose not to use the death penalty, nor that the army would give up the chance to administer it. Australian officials, politicians and journalists were well aware that Japanese soldiers were facing execution for a greater range of crimes than Australian soldiers normally did, but both the

53 ‘Letter from Webb to Minister for Army Forde’, 8/1/46, NAA, Melbourne, MP742/1, 393762.
press and the government made a firm distinction between Japanese war criminals and Australian soldiers and civilians.

In practice the death penalty was applied in a confusing and inconsistent manner across the trials as a whole. As will be seen in the case studies later in this chapter, there are startling examples of a Japanese soldier being executed for a very minor offence. The death penalty, once carried out, is by definition final and irrevocable and therefore, unlike a life sentence, is not open to any future exercise of clemency. The availability of the death penalty made it all the more serious that Australian military courts were not always able to provide uniformity in sentencing proportionate to guilt.  

The issue of Command Responsibility has also been controversial in commentary on the BC trials, though less so in the Australian than the US prosecutions. The trials sought to punish not only lower-ranking individuals who had committed war crimes, but also the commanding officers of Japanese forces and units that had committed large-scale crimes. The offences for which commanders were held responsible ranged from the mistreatment or murder of prisoners and civilians to the use of POWs for military purposes such as building gun emplacements and loading munitions. The Command Responsibility or ‘senior officer’ trials dealt chiefly with how a commander met his responsibilities; what he knew or should have known at the time of the alleged atrocities; and whether and how he had acted to prevent them. On this scale, Command Responsibility was a new principle in international military law. Australia conducted twenty-two Command Responsibility trials,

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55 Sissons, ‘Sources on Australian Investigations into Japanese War Crimes in the Pacific’.
56 For an example of the latter charge see ‘Charge Sheet - Trial of Colonel Sugasawa Iju’, 3/1/47, NAA, Melbourne, MP742/1, 30297583.
following the early precedent set by the American prosecution of General Yamashita Tomoyuki between 29 October and 7 December 1945 in Manila.

The Yamashita trial was not only a test case for the principle of Command Responsibility but was also the first of all the BC trials. Its political value was significant. General Yamashita had led the Japanese capture of Singapore and Malaya in February 1942, the success of which earned him international notoriety. After his early victories, he spent most of the war in less prestigious roles, before taking command of the Japanese 14th Area Army in the Philippines on 9 October 1944. In US eyes, Yamashita was also a notorious commander because of the extensive atrocities committed against Allied prisoners and Filipino locals by soldiers under his command, including during the siege of Manila in January and February 1945. Yamashita’s knowledge of the atrocities, however, was severely limited at best because of the division of the command structure of the Japanese forces in the Philippines into three groups, which were dispersed over difficult terrain and hastily organised under the pressure of an imminent US invasion. Yamashita had instructed his subordinate commanders to act independently of each other and during his subsequent trial claimed he had not been able to stay in contact with those forces not under his direct command. One of his subordinate officers confirmed this during the trial. It was an important point because most of the atrocities were committed in areas outside Yamashita’s direct command. US prosecutors did not attempt to prove what Yamashita knew at the time about the atrocities. Instead, they produced testimony of extensive war crimes committed by soldiers under Yamashita’s ultimate command, with barely any effort to link Yamashita himself to any of the crimes or even to establish that
he knew or could have known of them. The charges against Yamashita thus did
not imply any form of criminal negligence or intent: he was in effect sentenced
to death not for what he had done, or known about and failed to prevent, but
only for who he was, that is, a commander. Yamashita was executed on 2
February 1946, after unsuccessful appeals to the US Supreme Court and to US
President Harry S. Truman.57

The Australian trials did not enforce the principle of Command
Responsibility as strictly as in the Yamashita case, but did use the principle
that a crime could be committed by omission as well as commission. One of
the flaws in the Yamashita trial was that court officers had insufficient
understanding of the practicalities of military command over difficult terrain
and of the challenge of managing such a large force as the 14th Army, or a lack
of willingness to accept such factors as mitigating or even removing
Yamashita’s guilt. The fact that none of the presiding legal officers had combat
experience was presumably a major reason for the failure to take such
circumstances into account. The Australian trials appear to have been more
sensitive to such factors. Senior military personnel dealt with the Japanese
senior officers, theoretically providing a level of understanding about the
rigours of military command. A common defence for a Japanese commander
was that he had had no knowledge at the relevant time that crimes were
occurring. The prosecution was sometimes able to prove conclusively that a
commander had in fact known of the crimes. In the trial of Lt General Baba
Masao, sentenced to death at Rabaul in June 1947 for his responsibility for the

Responsibility, Wilmington, Delaware, Scholarly Resources Inc., 1982, pp. 7-
8, 13, 82-83, 86, 97, 137-138. See also A. Frank Reel, The Case of General
Sandakan Death March in Borneo, for example, it was proven beyond doubt that he had known of the conditions on the march. Although he had issued orders for the march to be better provisioned, the court decided he had not taken sufficient action to prevent the loss of life that occurred. Baba’s was an uncommon case, however, in that there was clear evidence, partly by his own admission, that he had given orders to his troops to continue the marches and knew of the crimes that were occurring. Most such trials relied at least in part on less direct evidence, paying particular attention to the scale of atrocities, with the implication that commanders could reasonably be assumed to have known that large-scale crimes were occurring. Practical factors such as the nature of the terrain and the distance between the commander’s position and the place the offences occurred were taken into account.

Command Responsibility was nevertheless a tricky issue. How much of a commander’s leadership is a matter of personal responsibility and how much can be delegated is a difficult matter to assess. Commanders should be able to trust their subordinates, yet can be held accountable for their actions. The Pacific War was fought over difficult terrain, often bitterly and at great cost, with many thousands of soldiers involved in battles. Commanders were under great pressure. Generally the personnel at Australian Command Responsibility trials were careful to ascertain how much control a commander could reasonably have been expected to exercise over his troops, and the sentencing in such trials was usually light, unless it was proven beyond doubt that a commander had had actual knowledge of crimes in time to take steps to

prevent them. Thus, the Australian Command Responsibility trials have not been criticised to the same extent as the Yamashita trial has been.

Treatment of the defence of Superior Orders has been another controversial matter. Superior Orders refers to a claim that a soldier committed a war crime under orders, and is thus in a sense the mirror image of Command Responsibility. In the Australian BC trials, the defence of Superior Orders was deemed by the courts to be incomplete. That is, the accused might be eligible for mitigation of sentence with a defence of Superior Orders, but it was not a defence against guilt. A defendant was expected to have known if an order he received was illegal, and if it was, he was expected to have refused to carry it out, however impractical this may have been in the Imperial Japanese Army (or any other army). The position of legal experts working on the trials was that the assertion that an alleged war criminal had been adhering to the general Japanese military code of the time, which stressed obedience, or was following specific but unwritten orders, was not a valid defence against guilt. In effect this means that the imperative to follow the general laws of one’s own military should have been superseded by a knowledge of, and regard for, internationally accepted military practices. Examples of the use of the defence of Superior Orders can be found in the case studies later in the chapter. A number of criteria were used to determine the legitimacy of this defence, including the rank of the soldier concerned and the war situation at that point. Australian courts considered that Japanese officers should have known better than to carry out an illegal order from a superior. Very low-ranking soldiers (enlisted men,

60 ‘Memo from JAG to Army Headquarters’, 25/6/46, NAA, Melbourne, MP742/1, 394048.
not officers), however, often received mitigation of sentences by using the defence.

In the case of the Nuremberg trials, it was recognised that the crucial point was not whether an order had been given, but if, for the defendant, a ‘moral choice was in fact possible’. In the Australian trials the courts apparently expected the Japanese soldier to have resisted an illegal order, though it is unclear how he could have ascertained that the order was unlawful, how he was expected to have resisted it or what would have constituted a sufficient protest. The way the courts and the JAG treated the defence of Superior Orders was erratic: on some occasions the JAG recommended mitigation of sentence because of a defendant’s junior rank, while on others the soldier’s rank was ignored. In some cases the JAG engaged in more complex assessments, evaluating, for instance, whether the soldier had had any reason to doubt claims by the senior officer that the order he was giving was lawful. The moral choice that was a key part of the Nuremberg trials was often impractical for both low-ranking Japanese enlisted men and low-ranking officers, who were themselves usually young and inexperienced soldiers answering to men senior in rank, experience and age. The inability to use Superior Orders as a complete defence has seemed to some observers to constitute an example of how ordinary, lower-ranking Japanese soldiers, whether officers or not, were made to pay for the crimes of their superiors.

Japanese military manuals, moreover, made clear that Superior Orders constituted a legitimate defence, which meant Japanese defendants were being

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63 Wilson, ‘War, Soldier and Nation in 1950s Japan’, pp. 196-197.
tried according to rules that had not applied in their own military at the relevant time. In fact, Superior Orders had also been listed in the *Australian Edition of Manual of Military Law 1941* as a complete defence:

> Members of the Armed forces who commit such violations of the recognized rules of warfare as are ordered by their government, or by their commander, are not war criminals and cannot therefore be punished by the enemy.\(^{64}\)

It is unclear why, but this provision was removed from Australian manuals in 1943 and by the time of the BC trials the relevant section read as follows:

> The fact that a rule of warfare has been violated in pursuance of an order of the belligerent Government or of an individual belligerent commander does not deprive the act in question of its character as a war crime; neither does it, in principle, confer upon the perpetrator immunity from punishment by the injured belligerent. Undoubtedly, a court confronted with the plea of superior orders adduced in justification of a war crime is bound to take into consideration the fact that obedience to military orders, not obviously unlawful, is the duty of every member of the armed forces and that the latter cannot, in conditions of war discipline, be expected to weigh scrupulously the legal merits of the order received. The question, however, is governed by the major principle that members of the armed forces are bound to obey lawful orders only and that they cannot therefore escape liability if, in obedience to a command they commit acts which both violate

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unchallenged rules of warfare and outrage the general sentiment of humanity.\textsuperscript{65}

The situation was, therefore, that a Japanese soldier claiming the defence of Superior Orders in the Australian tribunals was being tried by the victor’s military law rather than his own and also by a law that the victor had only recently changed. It is difficult to understand how a Japanese soldier could realistically have made a decision to ignore his own military regulations in preference to those of another nation, or how he could have followed Australian military law closely enough to have evaluated changes in regulations during wartime. If the argument is that the new Australian position represented an accepted international norm, it is not obvious that the average Japanese soldier would have known that either.

Defendants often claimed they had had to obey orders because of the Japanese military code. The idea of a ‘Japanese military code’ is a vague one. There were a number of ‘military codes’, specific to particular services or periods of history, but the fundamental one was the Imperial Rescript to Soldiers and Sailors of 1882.\textsuperscript{66} The Rescript states that orders from a superior should be treated as if they came from the emperor himself and that soldiers must render total obedience to their superiors. There was no room to interpret an order from a superior as unfair, if the soldier did not wish to contravene his own military code. In practical terms the penalty for disobeying an order could

\textsuperscript{65} Ibid. (The manual from which this information was drawn has the new section attached over, but not covering, the old section.) For other discussion of this change see Carrel, ‘Australia’s Prosecution of Japanese War Criminals’, p. 251.

be death or other physical punishment; soldiers certainly seem to have assumed they would be very severely punished.

Fighting in the Japanese military during the war placed ordinary soldiers in extraordinary circumstances. Australian authorities seemed happy to acknowledge the need for their own trial procedures to work around extraordinary circumstances in order to gain convictions, for example by relaxing the normal rules of evidence, but not to recognise the extraordinary wartime circumstances that Japanese soldiers had also been in. As noted above, there was little uniformity in the recognition of ‘Superior Orders’ to mitigate sentences. The JAG review often pointed out inconsistency in sentencing, especially in relation to Superior Orders, but his review was not binding, and such comments were sometimes ignored. In any case, those soldiers who believed they had had no choice but to follow orders surely saw themselves as not guilty of a war crime. Even if they were spared the death penalty, it must have been little consolation for arguably innocent men spending time in prison.

**The Process in Practice: Case Studies**

As a result of the Trial of Sub-Lt Katayama Hideo and Two Others between 25 and 28 February 1946 on Morotai in the Netherlands Indies, three Japanese soldiers were sentenced to death and shot for their part in the execution of four captured Australian airmen on Ambon Island, also in the Netherlands Indies. The Katayama trial attracted more popular interest in Australia than any other BC war crimes trial, though much after the event, when a series of articles by
journalist Philip Cornford appeared in *The Australian* newspaper in 1981. It was Katayama’s defence of Superior Orders that attracted the most attention. The final article in *The Australian* series maintains that Katayama had been acting under orders that he could not have refused, although the journalist nevertheless concludes that Katayama himself was guilty.

According to archival sources, the facts of the Katayama case are as follows. Katayama was ordered by Lt Commander Baron Takasaki Masimitsu to organise an execution squad for four captured Australian airmen whose plane had crashed near Ambon Island in March 1944. He did so, and personally executed one of the airmen. A wartime directive from the Japanese High Command in Tokyo had made the bombing of civilian structures an offence punishable by death, and according to Japanese witnesses, before the Australian plane crashed it strafed a native hamlet, killing a number of Indonesian civilians. In 1946, however, the Australian prosecutors alleged that the airmen had not faced a court-martial and had certainly not formally been found guilty of an offence. This had seemingly been confirmed by the admission of a Japanese officer in another trial, Kobayashi, that no courts-martial had been held in the area at the time. Kobayashi informed Australian authorities of this in writing, and his evidence was tendered as ‘Exhibit C’ by the prosecution during the Katayama trial.

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68 ‘Trial Records of Military Tribunal - Katayama Hideo (Sub-lieutenant)’, 25-28 February 1946, NAA, Canberra, A471 720882.  
70 Kobayashi’s assertion that no courts-martial were convened in the area during the period in question was raised by the prosecution a number of times during the trial. See ‘Trial Record - Sheet 1’ for the tendering of the exhibit.
Kobayashi, however, was not presented to the court in the Katayama case. The Australian prosecution argued that Sub Lt Katayama, as senior officer in the execution squad (albeit still of a low rank), should have known the order to execute the men was illegal under international law, as they had not been formally tried, and that Katayama should not have allowed the executions to be carried out. The Judge Advocate General reviewing the case in Australia found it difficult to believe Katayama’s claim that he had sincerely believed the men had been found guilty in a court-martial.

Sub-Lt Katayama in evidence insisted that these prisoners had been tried and sentenced by court-martial. I do not for a moment believe that this was so and there was evidence in fact that no court-martial was held at the relevant times. The truth is, I believe, that instructions were given to Katayama by Lt Commander Baron Takasaki at H.Q. that the men were to be executed without trial and it was in obedience of such orders that Katayama proceeded with the executions. I am of the opinion that Katayama should at least have known that such an order without trial was illegal and may therefore be held responsible for it though the fact that he was ordered to do it by a much superior staff officer may be considered mitigation for the sentence of death.

Baron Takasaki was not tried for the incident and escaped the war crimes trials unpunished, despite being interrogated about this case by Australian investigators. It appears, as Nelson suggests, that he escaped trial

and ‘Trial Record Sheet 29’ for an instance of the prosecution questioning Katayama on 25/2/46 over Kobayashi’s statement. NAA, Canberra, A471 720882.

71 ‘JAG Review - Katayama and Others’.
72 Ibid.
because the Australian authorities believed what he said when he denied he had given an order for the executions, or in other words they took his word for it.\textsuperscript{73} The Judge Advocate General in the Katayama trial stated in his review that Takasaki was fortunate to have avoided responsibility for the crime, noted that he had been tried (though found not guilty) for the deaths of two other airmen in a case unrelated to this one, and recommended that his evidence in that earlier trial should be reviewed, presumably because the JAG felt the Katayama case had revealed that Takasaki was likely to be a war criminal.\textsuperscript{74}

Katayama had not been alone in the execution squad. Sub Lt Uemura Juro (at the time a Warrant Officer, a lower rank than Sub Lt) and Sub Lt Takahashi Toyoji were also present. The JAG recommended that Takahashi’s death sentence should not be confirmed, given how junior he was. He felt it was unreasonable to expect such a junior officer to have had detailed knowledge of the orders for the executions or to have been able to judge how legitimate they might be. Moreover, the JAG strongly suggested that Sub Lt Uemura should not have been convicted at all, as no evidence indicated he had been involved in the actual executions. Evidence that Uemura had driven the vehicle to the execution site but had not executed any of the prisoners had been accepted in court. Nor was he the senior officer present.\textsuperscript{75} Despite the Judge Advocate General’s recommendation, Uemura’s death sentence was confirmed on 3 May 1946 and he was executed the following day, and Katayama and Takahashi had their sentences confirmed on 22 October 1947 and were

\textsuperscript{74} ‘JAG Review - Katayama and Others’.
\textsuperscript{75} Ibid.
executed the day after. The reason for the long delay in confirming the latter two sentences is not evident.\(^{76}\)

The defence of Superior Orders was a key element of the Katayama case. Katayama had been given a direct order to form the execution squad by a far more senior officer. If Katayama realised that the order was illegal, it is doubtful he had many reasonable options to refuse it. Although Katayama was an officer and not an enlisted man, he was still of a low rank and the JAG suggested the defence of Superior Orders justified a lighter sentence. The JAG’s recommendation was not binding, however, and the confirmation of the death sentence was legally legitimate. In terms of responsibility for the actual crime, the case against Katayama was very strong. He confessed to executing a man in a way Westerners viewed as particularly brutal, that is, by beheading him. Without any doubt Katayama did execute one of the Australian airmen and had led the whole execution party. The Australian authorities had failed to produce a character witness requested by his defence, Barney Porter, but even if Porter had been presented to the court, there is no guarantee that his character reference for Katayama would have swayed the court in any way.\(^{77}\) The fact that Katayama had surrendered himself to the Australian authorities and the fact that he was a Christian had not persuaded the court to show leniency, so it seems highly unlikely that testimony to his good character would have done so.

By any measure, under the *Australian War Crimes Act*, both Katayama’s trial and his death sentence were legitimate. On the other hand, however, Katayama’s sentence does not accord with the lofty goals of the

\(^{76}\) ‘Trial Record of Katayama and Others’.

\(^{77}\) ‘Letter to Stockdale’, Papers of D. C. S. Sissons, Box 35.
trials. The verdict raises moral issues and several significant points relating to trial process. In the opinion of the JAG, Katayama was no guiltier than Takasaki, the senior officer, yet Takasaki escaped punishment and Katayama did not. Katayama may have led the execution party but Takasaki gave the order for it to be formed. If it were not for Takasaki’s order, the Australian airmen, at least for the time being, would not have been executed. Not only does Katayama seem to have been unable to refuse Takasaki’s order, he later appears to have been powerless even to prove the order had been given: the Australian authorities took the senior officer’s word over Katayama’s that he had not given the order and Takasaki was not presented to the court during the trial for cross-examination. The JAG asserted that Takasaki was guilty and expanded on his comments, quoted earlier, by stating that he should have been sentenced to the same fate as Katayama, yet Takasaki did not face punishment for this particular incident, or any other, though he had been prosecuted for other crimes. Leaving aside Takasaki’s own guilt, his involvement should at least have mitigated Katayama’s guilt and the chance for mitigation of Katayama’s sentence should have been taken, but it was not and Katayama received the maximum penalty. Thus, the more junior officer with relatively less control over his own fate was sentenced to death, and a senior officer who gave the order, deemed to be illegal, that ended the lives of the four airmen, walked free. The fate of Uemura is even more disconcerting. He was shot for driving the execution party to the scene of the crime. It is exactly this kind of situation that suggests some senior Japanese escaped their crimes while lower-ranking soldiers paid dearly for them.

78 Ibid.
Katayama himself believed that he was innocent and that his trial was unfair. He wrote personally to Evatt as Minister for External Affairs, complaining about the trial process and claiming that he had been treated poorly by Australian guards, although this claim was baseless in the view of Australian officials.\textsuperscript{79} If the aim of the trials was to remove so-called fanatics or militarists, then Katayama was a poorly chosen target. As a graduate of the Tokyo Foreign Language School, his background was not humble, but he was in fact of relatively low rank for an officer and had no record of violent conduct.\textsuperscript{80} He was a Christian, a significant factor given the importance placed by Australian authorities on the supposed link between Japanese treatment of POWs and bushido, Shinto and the emperor cult.\textsuperscript{81} According to two Australians who have since informally testified to Katayama’s character, Barney Porter and Don Bill, his general conduct towards POWs was good. Katayama had also turned himself in to authorities when he found that he was wanted for questioning, even though he had made it back to Tokyo successfully, having been posted there three weeks after the offences he was eventually tried for occurred. Once in Tokyo, Katayama married and resumed civilian life. He would not speak of the events on Ambon until after the war, when he saw his name in a newspaper, as a wanted criminal. He reportedly turned himself in on the advice of his English aunt, who convinced him he could trust British justice.\textsuperscript{82}

Katayama’s rank and experience worked against him. Although he was senior enough to be the leader of the execution party, he was too inexperienced

\textsuperscript{79} Ibid.
\textsuperscript{82} Cornford, ‘The Ghost of Katayama’, 18/7/81.
to have built a long history of good conduct as a senior officer. The BC trials often took into account a senior officer’s position and his general record as an officer throughout his career. In the Command Responsibility trials, an officer’s war record and training were considered when the court was assessing how much he had known about atrocities in his area. Takasaki’s senior position certainly influenced Australian authorities, who believed his story. Katayama, by contrast, had joined the navy in 1941 and therefore the Second World War was his first chance to compile any kind of war record. Although it was a record that included no history of violent conduct, it was not long enough to convince anyone that he was a military man of substance.

Aside from the workings of the defence of Superior Orders, the Katayama trial raises other questions about the fairness of the Australian prosecutions, including the military’s capacity to produce witnesses in court. Katayama’s defence team expected to be able to rely upon an Australian character witness, Barney Porter, but Porter was never brought before the court; the Australian military claimed he could not be contacted. Porter would later assert that he had been contactable and that he would certainly have wished to testify on Katayama’s behalf. Although it seems doubtful that it would have helped in this case, character witnesses in other comparable trials proved to be successful in getting a defendant a lesser sentence.

The Katayama trial also shows how significant an impact the changes to the rules of evidence could have. The defence was unable to cross-examine crucial testimony because affidavit evidence was deemed admissible and witnesses therefore did not need to be presented in person. Thus, Baron

Takasaki was not produced as a witness, meaning that the defence could not question him over the orders Katayama claimed he had received. Regardless of how compelling Takasaki appeared to be to Australian authorities before the trial, things may have been different when he faced cross-examination. In this case, the JAG concluded from the evidence that orders to Katayama had in fact been given, though he did not specify how he reached this conclusion. Moreover, in the unlikely event that a witness had testified that a court-martial of the four airmen had taken place, Katayama would surely have gone free or at least received a reduced sentence. Every effort should have been made to afford Katayama’s defence the opportunity to achieve this result. In the end, Katayama’s fate rested chiefly on the likelihood that the court would take into account his unsupported defence of Superior Orders and sentence him to a period in prison. As Takasaki was neither found guilty of any charges nor cross-examined by Katayama’s defence, however, it was his word against Katayama’s.

The appointment of experienced legal personnel to review proceedings was intended to ensure that trials remained fair despite their individual idiosyncrasies. Considerable evidence suggests that in many cases, the review was an effective counterbalance, so far as it went. Even in the Katayama case, the JAG, despite the lack of cross-examination of Takasaki by the defence, did recommend prison rather than a death sentence for Katayama, also recommending that the sentences passed on Uemura and Takahashi should not be confirmed. The JAG was able to discern from the evidence something that the court perhaps was not. In other words, the inference from the Katayama trial is that the technical shortcomings of the trials may have had a great impact
on the courts, but less impact on the JAG. In Katayama’s case, the review criticised all three sentences or convictions in some way. That constitutes an especially damning assessment of the case, suggesting that none of the sentencing was appropriate and that one of the convictions, that of Uemura, was completely unfair. The fact that even though inadequacies in the trial were uncovered by a senior legal expert his recommendations were not implemented suggests that the ability of the JAG to act as a true safeguard is highly questionable. The sole authority to confirm the death sentences in this case was the Commander in Chief of the Australian army, Lt General Vernon Sturdee. Unfortunately, the paperwork concerning Sturdee’s role in the war crimes trials is unavailable, so there is no record of his reasoning. Sturdee claims to have burnt his personal papers from this period immediately after he retired in 1951, on the grounds that the job was finished.85

In many cases the confirming authority agreed with the JAG recommendations, but in this case Sturdee chose to ignore them. The lack of transparency at this final stage of the trial process is another area that leaves the prosecutions open to criticism. According to what is known of Sturdee, he was a very professional soldier.86 He was well within his rights to ignore the JAG, but it is hard to see why he did so in this case. Perhaps commuting the death sentences of Katayama and the others in the case might have seemed an embarrassing option. It would not only have indicated that a war criminal in Baron Takasaki had escaped punishment, but would also have meant that the executions of four Australian airmen were not punished by any death sentence.

85 Wood, ‘Sturdee, Sir Vernon Ashton Hobart (1890-1960)’.
86 Ibid.
Katayama’s case has on occasion been treated sympathetically in Australia, unusually for a BC war criminal, because of the hopeless position he appeared to be in. The lead Japanese character in the 1990 film *Blood Oath* is loosely based on Katayama and is sympathetically portrayed. Much of the Cornford series of articles is also sympathetic to Katayama. His story reinforces the impression that was prevalent in Japan in the 1950s and later that the wrong people were prosecuted in the BC trials and that ordinary Japanese were made to suffer for the crimes of people higher up the chain of command. Accounts of Katayama’s case like those in *Blood Oath* and the Cornford articles emphasised the point that the trial authorities had failed to acknowledge his plight, and had also failed to punish one of his superiors who had contributed greatly to his hopeless situation.

In the case of Okada Toshiharu and Others, prosecuted in January 1946 at Labuan, a number of soldiers of low rank were found guilty for their role in executing seventeen ‘or thereabouts’ soldiers during the ‘Sandakan Death March’. In June 1945, 536 Australian and British POWs were made to march roughly 260km from Sandakan to Ranau in Sabah, British North Borneo. The health of the POWs even before the march was generally very poor and conditions on the march were oppressive. Only about 140 of the POWs survived. By late July 1945, most of those survivors had died from illness. The

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88 Other prominent fictional or semi-fictional treatments of war criminals that took this line included the 1958 television series and 1959 film *Watashi Wa Kai ni Naritai* (I Want to Be a Shellfish), based loosely on the writings of Kato Tetsutaro. See Wilson, ‘War, Soldier and Nation in 1950s Japan’, pp. 197-198; S.Wilson, ‘Film and Soldier: Japanese War Movies in the 1950s’, *Journal of Contemporary History*, forthcoming, 2013.
89 ‘Record of Military Court: Okada Toshiharu and Others’, January 1946, NAA, Canberra, A471 692746.
march itself was not the focus of this particular trial; the incident in question occurred in June when Japanese soldiers began to shoot, bash or bury alive some of the survivors.\textsuperscript{90} Seventeen or so of the surviving, but ill, men were shot by Japanese guards in a cemetery near where the prisoners were camped.\textsuperscript{91} The JAG in this case commented at length on the sentencing of the defendants who were found guilty. First, he suggested that the sentences, which ranged from eight years to life, were excessive. He noted that the men had been acting under orders, which could be considered reason to mitigate their sentences. He commented as follows.

I am of the opinion that it is unnecessary and uneconomical that these men should be kept for such a length of time in Australian prisons and would recommend for your consideration that the sentences should be mitigated to imprisonment for 3 years and that at a future date, such sentences should be considered and the accused returned to Japan.\textsuperscript{92}

The sentences were in fact all reduced to three years. The ultimate result of this trial appears reasonable under the circumstances of Superior Orders, in comparison with other cases including Katayama’s. This trial raises the question, however, of why a recommendation of mitigation was accepted by the confirming authority in some circumstances and not in others. It was not because of a change in the confirming authority. Sturdee remained in this role until the Hong Kong prosecutions in 1948. The JAG’s comment regarding the cost of keeping the men in prison, moreover, suggests that although neither he

\textsuperscript{91} ‘Record of Military Court: Okada Toshiharu and Others’.
\textsuperscript{92} ‘JAG Review of Okada Toshiharu and Others’, January 1946, NAA, Canberra, A471 692746.
nor the confirming officer, as legal professionals, should have had any role in assessing the cost of trials and subsequent imprisonment, they did take account of such concerns rather than concentrating solely on the facts of the case. It is even possible to speculate, on the basis of this comment, that economic considerations might have affected Katayama’s sentence: there was less cost in executing Katayama than there was in giving him life in prison. It is unlikely that such considerations did play a role in the determination of Katayama’s sentence, but the comparison of the two cases shows that the thinking of the courts, the JAG and the confirming officer was sometimes blurred, and leaves the sentences open to criticism.

In the case of Lt Asaoka Toshio, Superior Private Suzuki Asamasa and Private Oichi Tuichi, the JAG again accepted Superior Orders as a justification to mitigate the sentences of two very junior Japanese soldiers. The two low-ranking soldiers and Lt Asaoka were tried in mid-December 1945, on Morotai, for bayoneting Australian prisoners. It was originally alleged that Lt Asaoka had ordered Suzuki and Oichi, during a military parade, to step forward with fixed bayonets towards prisoners who were tied to crosses on the parade ground, and on command, to lunge with their bayonets, stabbing the prisoners through the heart. Eventually, the court only had to decide on the fate of the two privates, as it was revealed by another Japanese officer, senior to all of the men, that Lt Asaoka had not in fact given any orders for Suzuki and Oichi to bayonet the prisoners. The lieutenant had previously confessed to the crime, but later claimed that he was confused during interrogation. The two privates

were sentenced to ten years in prison, but the sentences were reduced to five
years after the JAG review.

In this case the JAG went into great detail about the way in which the
defence of Superior Orders should be treated in the BC trials, presumably
because it was one of the earliest prosecutions. He quoted from the Australian
Edition of Manual of Military Law, noting that the defence of Superior Orders
had previously precluded soldiers following orders from being considered war
criminals, but that Superior Orders later became an incomplete defence in the
Australian manuals.\footnote{95 ‘JAG Review of Asaoka Case’. The JAG erroneously stated that the change
occurred in 1940, whereas it was actually 1943, as noted earlier in this chapter.} He went on to recommend that the two men not receive
any punishment as they could not be expected to have known what was and
was not a lawful order. This would seem to have been the fairest result
possible. Staff officers in the Japanese military would likely have known of
major changes in international military law but to expect low-ranking men to
have known the rules of the most recent version of another country’s military
code, or to have accepted these rules as some kind of universal norm, appears
unrealistic. Furthermore, the men were accused of committing the crimes in
front of the unit on parade, in what must have been an intense situation where
they would not have wished to face punishment for publicly refusing to obey
an order. Nor would they have had a great deal of time to discuss their orders
with their superior. Despite the mitigating circumstances in the Asaoka case,
the confirming authority still gave the two junior men five years in prison.

Without any way to assess how and why the confirming authority
arrived at his decisions following the JAG reviews it is impossible to ascertain
why a defence of Superior Orders ultimately attracted different sentences in
different cases. The three cases described here all arose from similar circumstances yet produced different sentencing. The only substantial difference among the three is that the accused in the Katayama case were officers; however, they were still low in rank and in experience, and their death sentences were far more severe than the three years given to those found guilty in the Okada trial, or the five years given to the two privates in the Asaoka trial.

The JAG reviews are useful in assessing how the trial processes and verdicts appeared to senior legal professionals, who themselves were as unfamiliar as everyone else with war crimes trials. The JAG often uncovered legal shortcomings in a trial. This was the case in the trial of Shirozu Wadami and Others, at Morotai in January 1946. Ninety-two prisoners were tried as a group, in what appears to be the largest of all the BC trials run by Allied governments. It was alleged that the accused had mistreated Australian (and Dutch) prisoners by beating them and not supplying them with sufficient food and medical supplies. The JAG commented as follows.

The number of accused was 92 and I desire to enter the most emphatic protest against the administrative system that asks a court to try such a number at once or expects the reviewing or confirming authority to be able to do justice to all of the accused. I have spent six full days on this file and am far from satisfied that I may not have overlooked, through sheer inability to remember some cogent detail of the trial, something in favour of one or other of the accused.  

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A large number of defendants were acquitted in this case, as is discussed in the next chapter. It is likely that in some ways, rather than easing the burden on the JAG, the acquittals made the trial records even more difficult to follow and the verdicts even trickier to weigh up. The JAG’s role was to assess not only the severity of sentencing, but also the basic question of guilt or innocence, and significant variation in the verdicts in a large trial must therefore have complicated his task. Despite his protest, in this case, the JAG found that most of the guilty sentences, which ranged from six months’ imprisonment to death, could be confirmed. He admitted that he was not certain of the validity of the verdicts and sentences given the large number of defendants, but recommended that the sentences be confirmed anyway, an approach that seems to give the benefit of any doubt to the prosecution. The case certainly demonstrates the pressure the authorities were under even from this early point to try as many suspects as possible. The JAG review shows that the cost of achieving the political goals of the trials was a reduced capacity to present cases to the courts in the fairest possible way. Had time pressures been less, there would have been no necessity to try ninety-two people simultaneously.

A similar case concerned forty-six guards at Kuching Prison Camp in Borneo. The guards were mainly Korean and were tried together, at Labuan in January 1946, for allegedly frequent assaults on prisoners between May 1942 and September 1945. Sentences varied from one year to life, with three acquittals. This case received a damning review from the JAG, for procedural reasons. The JAG made an issue of a large amount of irrelevant evidence, though he did not give much detail on which parts he considered to be
irrelevant, and also criticised the failure of the court to produce witnesses rather than affidavit evidence:

This trial is unsatisfactory. The great number of the accused tried jointly make [sic] it extremely difficult to follow and allocate evidence to the individual and in addition, the evidence for the prosecution consisted of wholly written documents a great deal of the contents of which was irrelevant, even taking into context the relaxed rules of evidence by the [War] Crimes Act and it is difficult to be sure that such irrelevant evidence did not have some effect on the members of the court.

The JAG also commented on the impact that the changes to the rules of evidence had had on the defence.

It is a serious disadvantage that an accused person has no opportunity of cross examining upon such [damning] statements. When an accused person is before a court with the power to award a death sentence, every opportunity for the accused to defend himself should be given.

The JAG suggested that where possible witnesses should be brought before the court. Apparently this could have occurred in this trial, but no effort was made to produce witnesses. The suggestion seems to be that the court was unfairly taking advantage of the relaxed rules, rather than relying on the written documents for lack of a more suitable and traditional alternative.\footnote{‘JAG Review - Shoji Kuraji and 45 Others at Kuching - JAG Report’, 4/3/46, NAA, Canberra, A471, 739151.}

The JAG also questioned the considerable variation in sentencing in this case, further noting that three of the men were acquitted, when all forty-six had faced the same charge. He questioned the verdicts, and even the basis for
the case, concluding that the increase in mortality among Allied prisoners towards the end of the war was not due to an increase in ‘slapping’ of prisoners, as was implied by the prosecution, but rather to the shortage of food and medical supplies. The JAG concluded his review by stating his overall disquiet.

These proceedings are so unsatisfactory that I would suggest instructions should be given that in the future such a great number of men should not be tried together and also that when tendering written statements, only such particulars as are relevant as being evidence against some of the accused should be admitted by the court. If this had been a court-martial and governed by the laws applying to courts-martial, I would have recommended that none of the sentences should be confirmed [instead he suggested that the sentences overall were too harsh], but as previously stated, the laws of evidence for war crimes courts have been greatly relaxed.98

The JAG review of the Kuching Guards case once again reflects the intersecting moral and legal ambiguities of the trials that were discussed earlier in the chapter. From a legal standpoint, the JAG’s review clearly shows the difficulty that the relaxation of the rules of evidence posed for defence counsels. Commentators on the trials have claimed that defence counsels often put up spirited cases for the accused.99 Yet it seems unlikely that their fervour could have overcome the handicap they were under in some cases. The JAG’s reference to Australian courts-martial again raises the question of how far the trials should have deviated from what would be expected in prosecuting the

98 Ibid.
99 See, for example, Pappas, ‘Law and Politics’, p. 285.
soldiers of the country conducting the trials. Legally, there was no need for the
JAG to consider this difference, and indeed other governments tried war
criminals in very similar ways to Australia. The trials are often portrayed,
however, as not only legally sound but also morally justified. The examples
given here suggest that moral, as opposed to legal, justification was weak in
some cases.

The prosecutions examined here are not typical of all proceedings.
Katayama’s case is a particularly famous example, and large trials such as that
of the Kuching Guards and Wadami and Others were not typical in all trial
venues. The tribunals were neither uniformly fair nor uniformly unfair, and it
is not particularly enlightening to seek to characterise them in either of these
ways. They were very much part of the starting-point in a new era of
dispensing international justice after a war, and not the end-point. It is
reasonable to assume that a number of war criminals escaped any kind of
justice; Baron Takasaki is just one example. It is also clear that some of those
accused, including Katayama, Takahashi and Uemura, received more than their
appropriate share of the tribunal’s justice. The pressures on the trials that
brought about the relaxation of rules of evidence and the conduct of the courts
that allowed obviously questionable tactics and even verdicts suggest the
difficult circumstances in which the trials were conducted and indicate the
priority given by the Australian authorities to speed and efficiency.

**Fairness: An Assessment**

Almost all of the literature on the war crimes trials in the Pacific attempts to
answer the question of whether the trials were fair or not. Despite extensive
discussion, no consensus exists, except an acknowledgment that the question is more complicated than was first thought. In my view, however, the problem with the issue of fairness derives from the way the question is posed, rather than from any inherent difficulty in finding the answer. It is the search for a comprehensive assessment of such a complex issue that leads to distortion. One would be unlikely to interrogate any other civil or criminal legal system with such an overarching question in mind, and far more likely to acknowledge that legal systems have elements of both fairness and unfairness. In an effort, however, to gain a better understanding of the trials I propose that their fairness can be assessed on the basis of four different though overlapping criteria. The first is whether there was a legitimate legal and moral basis for the prosecutions. The second is whether the people who committed crimes were punished. The third is whether they were punished proportionately, and the fourth is whether the procedures used in the trials were fair. These four separate questions constitute what is commonly thought of as the one question, whether the trials were ‘fair’.

To take the first point, the trials of suspected Class B and C war criminals after August 1945 were undoubtedly without precedent and without a solid basis in codified law, despite a growing consensus among the elites of various countries in the interwar period on general principles of international war crimes justice, but that does not automatically mean they were illegitimate. Certainly it would have been preferable for an international doctrine on war crimes to have existed before the outbreak of hostilities and for the Australian War Crimes Act to have existed as well. The BC trials, however, helped to create such legal standards and indeed set down legal precedents on how to
deal with war crimes in the future. If international moral consensus on what constituted a war crime in the B and C categories had been established, as appears to be the case, then the belatedness of the formulation of the law, though undesirable, does not fatally undermine the legitimacy of the trials. The defendants were prosecuted under laws that did not exist at the time the crimes were committed, but the acts for which they were charged were generally regarded as criminal and the international community had agreed, broadly, that the conduct of war needed to be guided by rules and conventions, and regulated by punishment of the guilty. The tribunals were, undeniably, influenced by politics and one of the key advantages in studying them is that they illuminate Australia’s political stance on Japan and on the Cold War in the late 1940s and 1950s. The fact that they were influenced by politics, however, does not automatically impair their legitimacy. In very few cases, and never conclusively, does it appear that political influence directly affected the outcome of a particular trial. The Australian government’s zeal for developing international war crimes law, indicated by its vigorous contribution through its own trials, tells us much more about post-war Australian policy on Japan than it does about the fairness of the Australian tribunals. The government’s decision to continue prosecutions on Manus Island does represent a stern and resolute stance, but resolute justice does not necessarily mean justice that was overly heavy-handed. Doubtless, some individuals on the prosecuting side desired vengeance against Japan, but again, this does not necessarily indicate that each trial was a ‘witch hunt’ aimed at satisfying a thirst for revenge.
Second, on the whole, the people who committed crimes were punished. The fact that Allied conduct during the war was not legally examined remains contentious. In terms of the BC trials of Japanese suspects, however, crimes were investigated and the perpetrators were prosecuted. Doubtless, some guilty men escaped punishment and some who were not guilty, or were less guilty, were punished. In the confusion of some of the Australian mass trials scope certainly existed for both of these outcomes. There is also a question over how reliably trial authorities were able to identify perpetrators. It is likely that the authorities misidentified some Japanese soldiers and incorrectly apportioned blame for some crimes, but it is difficult to assess how widespread these errors were. The complaints made by convicted war criminals suggest that these kinds of errors were not common, as prisoners complained far more about being caught in circumstances beyond their control, or of being made to take the blame for their superiors’ actions, or of the trial procedures not affording them a satisfactory defence.

On the question of whether those convicted received proportionate punishment, the Australian trials are more problematic. Sentencing was erratic, mainly due to the inconsistent treatment of Superior Orders, as demonstrated in the case studies in this chapter. Doubtless, a soldier should have some responsibility to question the validity of orders that appear to be illegal, and this responsibility should be reflected in war crimes law. Such responsibility needs to be interpreted very carefully by war crimes courts, however, because it can also serve to absolve senior commanders from blame by allowing them to take advantage of more junior soldiers by not issuing orders in writing and by intimidating them into believing that the order must be carried out. It is
fanciful to believe that executions of POWs occurred solely at the whim of junior officers and enlisted men, who, without orders from commanding officers, organised execution squads and attempted to cover up evidence of the crimes. In the Australian trials, moreover, it is far from clear why some convicted criminals had their sentences mitigated by the confirming officer and some did not. The decisions of the confirming authority throughout the early years of the trials are not transparent. It is difficult even to assess how seriously Lt General Sturdee regarded the JAG’s opinion. In the next chapter, while examining differences among trial venues, I speculate on what may have guided Sturdee’s decisions, but without his papers a definitive answer is not possible. The sentencing issue is compounded by the fact that convicted war criminals could not appeal their cases formally. Indeed, the JAG himself could not issue a binding opinion, which undermined his ability to act as a safeguard in place of an appeals system.

The fourth question, about process, is ultimately a matter of balancing legal ideals and the practicalities of the situation. There were certainly very significant differences between the legal proceedings in the Australian trials of suspected Japanese war criminals and those used in normal Australian civil and military courts. Legal experts in the trials, the JAG especially, were moved on occasion to comment on unsatisfactory legal procedures and to complain about, for example, the confusion produced when large numbers of defendants were prosecuted together, or the difficulties for defence counsel when witnesses could not be cross-examined because of reliance on affidavits. On the other hand, the consensus in the scholarship thus far is that the legal proceedings, while not ideal, were still capable of producing fair trials. This
seems to be a plausible conclusion with regard to allowing affidavit evidence, which was probably a necessary change given the unique circumstances in which war crimes were perpetrated and prosecuted. The use of affidavit evidence in place of a witness who could actually have been produced was unfair, but this probably did not happen on a large scale. The same assessment does not hold for the practice of prosecuting large numbers of suspects in mass trials, however. Some alteration of procedure was necessary, as acknowledged above, but in holding mass trials the authorities seem to have taken pragmatism too far, with the result that the need for efficiency undermined the principles of justice. The fact that large trials continued despite stern criticism from the JAG underlines the point.

Addressed individually, these four questions provide a clearer picture of the fairness or otherwise of the Australian tribunals. Taken as a whole, the trials do not measure up to the lofty goals set by the Australian government, but nor do they exhibit enough flaws to justify the most damning or dismissive views of them. There was a sufficient moral and legal justification to hold BC war crimes trials. The need to balance political considerations with what was ostensibly a legal undertaking did not always produce fair results in individual cases. On the other hand, political influence in the trials was not overwhelming. It did not seriously undermine the legal verdicts and it did not turn the trials overall into an example of ‘victor’s justice’, that is, arbitrary justice carried out by the victorious nation. By and large the perpetrators of war crimes were punished and usually punishment was proportionate, though it could also be erratic. Procedural changes, introduced in response to the special circumstances of the trials, did not systematically result in unjust outcomes,
but they did permit individual claims of injustice, which were sometimes well founded, and there were few procedures for remedying such cases. A blanket assessment of the tribunals is thus difficult to reach. Essentially, two aspects appear highly problematic: the inconsistent handling of the defence of Superior Orders and the practice of conducting mass trials. These issues could have been resolved. On balance, however, the trial system was not unjust, although it did fail individual defendants on some occasions.

The case studies in this chapter are drawn from the first period of the trials and are designed to highlight the procedural issues and questions of fairness I have discussed. In Chapter Three I deal more systematically with the early period of the prosecutions and the international context in which they occurred. As mentioned above, the trials began swiftly and progress in 1946 was good, though it fell short of the initial targets set by the Australian government. Progress remained solid throughout most of 1947, but the number of Japanese facing court began to drop off. Eventually there was a hiatus in the prosecutions. In 1950 a second era of proceedings began on Manus Island. In Chapter Four I show how the tension between politics and legal goals developed in this second stage of Australia’s war crimes trials.
CHAPTER THREE

THE FIRST PHASE, 1945-1949: THE TRIALS IN A CHANGING INTERNATIONAL CONTEXT

The first of the two phases of the Australian trials lasted from November 1945 to December 1948. Progress between January and June 1946 was steady. Prosecutions took place at three major centres, Rabaul, Labuan and Morotai, with a small number of trials at Darwin and Wewak as well. Prosecutions slowed in the second half of 1946, however, and delays accumulated in 1947 as the tribunals began to encounter logistical difficulties. By the end of 1948, the future of the Australian prosecutions appeared to be in jeopardy and in 1949 the trials did in fact cease. It was not because the government considered them to have been satisfactorily completed: in fact seventy Japanese suspects remained in Sugamo Prison in Tokyo awaiting trial and a number of known suspects were still at large in Japan, having not yet been arrested. The Australian government did want to continue the trials but problems with resourcing them in 1947 and then in securing access to a venue after 1948 became significant obstacles.

During the first twelve months, the international political context for the trials was favourable. The Occupation of Japan began with an emphasis on reform. Allied policy there focused on the eradication of Japanese militarism, a project in which war crimes trials played an important role. The Occupation began to change in 1947, however, and certainly by 1948 US policy for Japan had turned away from punitive measures and towards the promotion of economic, political and social recovery. The political context for prosecutions was no longer
advantageous: to Australia’s key allies, war crimes trials were part of an old policy and were associated with the early and now less relevant period of the Occupation, not with the future. As a result Australia’s major allies began to wind their trial programs down. This meant that just when Australian tribunals were beginning to encounter disabling practical difficulties, causing them to slow markedly, challenges were also emerging politically that would eventually place the program under considerable pressure.

The perception that Communism was becoming a major threat to the prospects of democracy in Asia grew increasingly influential in US policy during the late 1940s, and was the most significant factor in the change in Occupation policy in Japan. Australia did not feel the effects of the Cold War as acutely or directly as some of its allies. Nonetheless, the alleged danger of Communism was a factor in Australian politics too. In the December 1949 general election Labor’s loss was due in significant part to the Coalition’s successful campaign to link the left in Australian politics with susceptibility to corruption from socialist influence. The result of the election meant that the Coalition inherited the stalled war crimes trials program and the political and diplomatic challenges that were associated with it.

This chapter examines the period from the beginning of the Australian trials to the period of stagnation in which difficulties were encountered in all venues. I begin by discussing the political context in Australia, in Japan and in Asia more broadly, and the political changes that eventually affected Australian policy on war crimes trials and on Japan. I then describe the proceedings at each
trial venue in the early period, the differences among the trials at each location, and the 1948 negotiations over a new venue and over future Australian trials. During the latter negotiations, the political context of the trials became problematic. For the first time since the clash of views over prosecuting Emperor Hirohito, the Australian government found itself opposing the policies on war crimes trials of its main allies. Nevertheless, the government maintained its tough policy on Japanese war criminals and on eradicating Japanese militarism. The tension between the need to conduct just trials and the need for pragmatic procedures, and also the tension between the desire to complete a substantive number of prosecutions but also to proceed with the program speedily, were already evident in this early period.

**Before the Communist Threat: Foreign and Domestic Policy in the Late 1940s**

The Australian government entered the post-war era committed to becoming more prominent in politics relating to Asia and more active in pursuing Australia’s interests in Asia. After the war, the Chifley Labor government concentrated, for the most part, on regional rather than global issues and threats.¹ Asia remained the focus of defence policy. As we will see, on matters relating to war criminals the

government acted confidently even when it was at odds with the US, showing a marked willingness to pursue its own path in foreign relations.

Throughout the second half of the 1940s, Australia pursued a vibrant foreign policy on Japan. Australia’s agenda began with the push to try Hirohito, followed by the negotiation of important roles in the Occupation machinery and in the war crimes trials, as discussed in earlier chapters. Outside of Japan, the major post-war foreign policy initiative in Asia was the support for Indonesian independence. By 1948, Australia was the fledgling Indonesian Republic’s greatest ally in international politics. At times on this issue the government was at odds with the US and the UK, providing an early sign that Australia in the post-war era was prepared to follow its own agenda, despite a possible cost to its relations with its allies. Even as the USA and Britain backed the Dutch presence in Indonesia, Australia spoke out favourably at the United Nations about an independent Indonesian republic. The government’s desire for a stronger presence in Asian politics was frustrated, however, by the fact that the United Nations was not functioning as Australia had hoped it would, in that the machinery seemed to favour the major powers and provided only limited opportunity for the Australian government to influence regional affairs. This frustration may have contributed to the government’s eagerness to speak out on regional issues directly, where opportunities existed. The government remained

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aware, nevertheless, of the need to avoid openly offending Britain or the USA: it appeared to believe that a balance had to be struck. 4

In domestic politics, there was strong support for the Chifley Labor government between 1945 and 1947. The electorate approved of the way Labor had handled the war, and wartime issues were still prominent. The government, for example, advocated interventionist management to secure Australia’s immediate economic future, including rationing and tight government control of the economy. By 1948, however, support for Labor was decreasing. Liberal leader Robert Menzies began to attack Labor for taking Australia close to socialism and this position started to resonate with parts of the electorate. At times Labor played into the Coalition’s hands, especially in the adoption of its key policy during 1948, a plan to nationalise Australia’s banking system. The policy proved a disaster for Labor partly because of its socialist undertones, but also because of Labor’s stubbornness in promoting it. The High Court of Australia ruled against nationalisation of the banking system but Prime Minister Chifley refused to back down. Along with Labor’s unwillingness to abandon other policies, such as rationing, as they began to become unpopular, this inflexibility reduced the party’s prospects in the forthcoming election of December 1949. Meanwhile, conservatives adopted Cold War rhetoric to portray Labor as an advocate of the ideology of socialism. 5

Although Australia was a long way from Europe, initially the frontline of Communism, the fear of Communism was nonetheless prominent after the war.\textsuperscript{6} During 1948 the press gave considerable amounts of space to the spread of Communism in Europe and elsewhere, and in a climate of growing uncertainty the electorate reacted increasingly negatively to domestic moves or policies that could be characterised as socialist. It does not appear that the Australian people felt a Communist revolution in Australia was likely, but concern about Communism led to a general distrust of left-wing politics. Menzies linked Labor’s allegedly socialist domestic policies to external security issues, suggesting that Chifley was unable to take a tough stance on Australia’s potential enemies because of subversive left-wing influences throughout the union movement and the Labor government.\textsuperscript{7}

Labor’s prospects continued to dim during 1949. As December drew near, the election campaign was characterised by a clash of ideologies. Chifley’s Labor appears to have been genuinely committed to a socialist ‘spirit’ in governance, while the Coalition condemned such a position and portrayed itself as focused on security, democratic values and recovery from the war.\textsuperscript{8} The election resulted in a complete turnaround of Labor’s position, ending the longest period that Labor had

\textsuperscript{7} The press contains numerous instances of Coalition comments on the susceptibility of the left to socialism. For one example, see ‘Communists Support Labour Men’, \textit{The Sydney Morning Herald}, 6/12/49, p. 4.
been in power and bringing a 5% swing to the Coalition.\textsuperscript{9} Years later, Menzies declared that the election had prevented state socialism from taking hold in Australia.\textsuperscript{10}

**Emerging Perceptions of a Communist Threat to Asia**

Australia and the US remained more or less aligned on policy on Japan in the early post-war years, with the question of trying Emperor Hirohito as one major exception. This relative harmony was changed by the Reverse Course in US Occupation policy. By 1948 at the latest, many US officials perceived the threat of Communism in Asia to have increased to the point that it presented a far greater danger to Japan and to Pacific security than did ultra-right influence within Japan.\textsuperscript{11} They began to note increased Communist activity in Japan and to perceive a vulnerability to Communist influence in some areas, especially the labour movement.\textsuperscript{12}

Japan’s economy was struggling to recover from the war without direct US economic aid, and under the weight of the Occupation democratisation program.


that was intended to produce major changes and upheaval in Japanese industry.\textsuperscript{13} Food was scarce in 1945-1946 and there was insufficient housing. Poor economic conditions seemed to be fostering unrest among workers throughout the country. At the end of the war, moreover, exiles and political prisoners, many of whom were Communists, had returned to Japanese society. Communists enjoyed much greater political freedom than ever before: under SCAP they became a legal party for the first time.\textsuperscript{14} Communist views were at first allowed to flourish, in the interests of promoting pluralist politics, and were much less subject to suppression than were ultranationalist views. SCAP’s media censorship focussed not on left-wing material, but on stories attacking SCAP, promoting militarism or reporting on any fighting that might still have been occurring in the Pacific islands.\textsuperscript{15} Thus, on the one hand, Japan’s economy was struggling, and on the other, Communists had been granted a greater voice than ever before. Consequently, Communist influence strengthened in Japan’s major trade unions and elsewhere. Industrial action became aggressive and ambitious, especially in 1946 and 1947. SCAP was initially content to counter Communist influence by promoting liberal democratic principles in contrast to left-wing activity, and took a sympathetic view of the exercise by workers of their democratic rights.\textsuperscript{16} When a general strike across

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Japan was planned by trade unions for 1 February 1947, however, SCAP abandoned its tolerance of left-wing activity and banned the strike action directly.\footnote{General Douglas MacArthur, ‘Statement Calling Off the General Strike’, 31/1/47, in Supreme Commander for the Allied Powers, \textit{Political Reorientation Of Japan}, Vol. II, p. 762.}

At the same time, US officials were also concerned about events outside Japan, and the prospect that Communist activity in China or even Europe might influence Asian countries. The Reverse Course in Japan more or less coincided with the deteriorating outlook for democracy in China. When the Second World War ended, China had been the logical hope to promote US interests in the region as it had been an ally of the US (and Australia) in the war and had received US aid. The situation in China immediately became very complicated, however. China was soon divided once again by two groups racing to gain control of land, the Nationalists and the Communists. The result was a three-year civil war, despite attempts by the US to mediate negotiations. The US government attempted to aid the Nationalist forces, to varying degrees over time, maintaining some hope that the non-Communist power would win; but ultimately, in October 1949, the Communists gained control over China.\footnote{Rana Mitter, \textit{A Bitter Revolution: China’s Struggle with the Modern World}, New York, Oxford University Press, 2004, pp. 182-183; Immanuel C.Y. Hsu, \textit{The Rise of Modern China}, New York, Oxford University Press, 2000, pp. 619, 624-639.}

To the US government, losing China as a potential democratic ally in East Asia reinforced the importance of Japan, and thus also the need to maintain

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Japan’s economy, especially with a significant external Communist influence now close at hand. As if to bolster US anxieties about Communist influence in Asia, the January 1949 national election in Japan was a very successful one for the Communist Party. The Communists gained nearly 10% of the popular vote and won thirty-five seats, an impressive result for a party that had been illegal until late 1945. Before the end of the war, membership of the Japan Communist Party had remained well under 1,000 but by April 1950 it had reached nearly 110,000.\footnote{Paul J. Bailey, Postwar Japan: 1945 to the Present, Cambridge, Blackwell, 1996, p. 39.}

The ‘fall of China’ and the electoral success of the Japanese Communists further marginalised anti-militarist policies in the Occupation, in favour of anti-Communist policies.

Occupation policy thus began to change. The start-date of the Reverse Course is contested by historians, but is generally placed in the period 1947-1948, with MacArthur’s banning of the general strike on 30 January 1947 as one prominent landmark. US policy for Japan began to focus on economic rehabilitation and institutional stabilisation, rather than on punishment or democratisation, in order to strengthen Japan as a bulwark against Communism in Asia.\footnote{Ward, ‘Conclusion’, pp. 405-406.} The Reverse Course encompassed forthright policies such as the purge of Communists from Japanese institutions, the provision for limited Japanese rearmament, the curtailment of the program to reform Japanese industry, which had had the side-effect of dangerously weakening the economy, and the 1949
suspension of US war crimes trials.\(^{21}\) The US government now avoided any policies that continued to treat Japan as an enemy. Eventually many of the Japanese once considered to be militarists and purged from public office by SCAP returned to positions of influence.\(^{22}\) The Australian government, meanwhile, remained cautious towards Japan, suspicious that the Reverse Course, by strengthening Japan and downplaying reform, could in itself threaten Japan’s neighbours and the Pacific.\(^{23}\) The government continued war crimes trials and did not fully accept the need to promote a democratic Japan against the danger posed by Communism, at least not at the expense of Australia’s tough policies for Japan. This stance endured until the government agreed that Japan should be brought ‘back into the fold’ in 1954 and created a series of policies to reflect this new position, as discussed in Chapter Five. Thus, from the beginning of the Reverse Course up until 1954, the Australian government was to varying degrees at odds with US policy for Japan, due to differing interpretations of how to meet the rise of Communism in Asia.

The Australian government does appear to have shared the US concern about the Communist threat in Asia, but crucially, officials took a different view of the role that Japan should play in meeting the new challenge. As we have seen, the government was determined to be active in politics relating to Asia after the


Second World War and to pursue initiatives it felt were important to the future security of Asia, even if its policies clashed with those of the US or of European powers. Though the Australian government relied heavily on US military power for protection, it would not easily relinquish its existing views on the best course of action to guarantee Pacific security. To both of the Australian federal governments of the late 1940s, Japan did have a future role as a democratic nation in Asia. Nevertheless, official Australian assessments of Japan remained cautious and rooted in the immediate post-surrender fear of, and anger at, Japanese militarism. The Communist victory in China apparently did not obviate the need for watchful policies on the old threat from Japan. The government was reluctant fully to support Japan as a true and reliable ally; it hoped to meet any new security challenges in the Pacific without undermining the policies it had designed to counter Japanese militarism. Anti-Japanese sentiment was still strong in Australia in 1950 and some politicians seemed genuinely convinced that Japan remained a danger. Senior government ministers claimed on public record that Australia must guard against any possible resurgence of Japanese militarism and that the nation had not forgotten the war. Though the government acknowledged the apparent Communist threat, Communism joined Japanese militarism as twin foci of a security policy that was based on promoting democracy and maintaining a firm military commitment to the region, strongly backed by the US.

26 Waters, ‘War, Decolonisation and Post-war Security’, pp. 118-121.
While events in Asia were developing and the 1949 federal election campaign was underway, the Australian military was trying to proceed as efficiently as possible with its war crimes trials. The proceedings in the early period represent the bulk of Australia’s prosecutions, spread over little more than twelve months. I turn now to the trials themselves in this first period of the program.

The Initial Progress of the Trials

The first trials conducted by Australian authorities were at Wewak in Australian New Guinea, in Borneo, and in Morotai, in the Netherlands Indies’ Maluku Islands. In the very first trial, in Wewak, Tazaki Takahiko was accused of cannibalism. According to Piccigallo, the shocking nature of the initial case was not an accident: a particularly gruesome crime was deliberately chosen.27 If indeed this first case was selected for its confronting nature, it follows a pattern of deliberate manipulation of the press by the Australian government where war criminals were concerned, in an attempt to create or strengthen an atmosphere of outrage and shock in Australia. It is difficult to assess why this might have been considered necessary. The war was over so there was no need to compel the public to fight. Recruitment to BCOF had been strong and there was little or no opposition to the Australian government’s policies on Japan. Preparations for war

crimes trials were progressing smoothly and more trials soon began in other areas. By the end of 1945, trials had started in Labuan and Rabaul.

Only two trials were held in Wewak, with a single defendant each. One was convicted, and one acquitted. The man convicted was Tazaki. His case provides a significant though unusual example of the post-trial mitigation of a sentence, and also constitutes a relatively rare instance of a defendant who was prosecuted for a crime against an Australian soldier who was not a POW. Tazaki’s victim had not been under his care at any point as a POW but rather had been killed in combat between Japanese and Australian forces.

Tazaki faced trial on 30 November 1945 on two charges, the first of mutilating the dead on 19 July 1945 and the second of cannibalism on 20 July, at a place called Soarin Ridge. He was sentenced to death, but the sentence was mitigated by the confirming officer to five years’ imprisonment. A death sentence changed to five years in prison must have been one of the most generous sentence reductions in the Australian trials. Yet no petition had been filed by, or on behalf of, the accused. The JAG report did not exactly recommend mitigation, but passed on the recommendation of the unnamed officer, most likely the court’s Judge Advocate, who had forwarded the trial proceedings to him. That written recommendation noted that the defendant had no history of cannibalism and took such drastic action because of the conditions in which he had been living at the time. The recommendation also states that cannibalism was not a crime under

28 ‘Record of Military Court – Tazaki Takehiko’, 30/11/45, National Archives of Australia (hereafter NAA), Canberra, 1348852. It is not clear whether Soarin Ridge is an area of combat during the war, or simply a minor geographical location.
British law or under any other international convention, though maltreatment of the dead body of an enemy was.\textsuperscript{29} It is unclear why this was thought to be relevant, since cannibalism was certainly a crime punishable under the \textit{Australian War Crimes Act}. The record of the court proceedings listed most of the mitigating circumstances surrounding the crime, but also noted that the defendant had an intense hatred of Australians. In the transcript of the court proceedings, Tazaki even cites this hatred as one reason for eating the Australian soldier, presumably rather than one of his own dead comrades.\textsuperscript{30}

In March 1946, trials began in Darwin, scene of the most destructive Japanese wartime air raid on an Australian target. These tribunals were a public-relations disaster for the government, so much so that they lasted less than two months, and war crimes trials were never held on mainland Australian soil again. Three cases were heard in Darwin. Twenty-two accused were tried; ten were convicted and twelve acquitted. One of the ten convicted was sentenced to death and one received ten years in prison. The other eight received sentences of less than ten years. Several sentences of less than a year were handed down.\textsuperscript{31} The apparently light sentencing produced a furore in the Australian press. Newspapers asserted that the public should be affronted by the sentencing and that an official explanation was expected. Members of the government were soon called upon to

\textsuperscript{29} ‘JAG Report – Tazaki Takehiko’, 30/11/45, NAA, Canberra, 1348852.
\textsuperscript{30} ‘Trial Transcript page 2 – Tazaki Takehiko’, 30/11/45, NAA, Canberra, 1348852.
\textsuperscript{31} A full list of sentences including those handed down at Darwin is in ‘Japanese War Criminals Charged Under the War Crimes Act 1945 by Australian Military Authorities 30 Nov 1945 to Apr 1951 Against Whom Findings and Sentences were Confirmed’, NAA, Melbourne, MP927/1, 393718.
defend the Darwin verdicts.\(^{32}\) The President of the Darwin court, Lt Colonel Arnold Brown, stood by the decisions, expressing his belief that once the full facts of the cases were made public, the sentencing would be seen as fair.\(^{33}\) The press responded with graphic details of the torture inflicted on Australian prisoners by the Japanese on trial at Darwin. Prisoners had had their beards set alight and had been hung from rafters for long periods of time.\(^{34}\) Veterans’ organisations also expressed astonishment at the sentencing. A spokesman from the Returned Sailors’, Soldiers’ and Airmen’s Imperial League of Australia, the organisation that from 1965 onwards was known as the Returned Services League of Australia (RSL), J. R. Lewis, suggested that future courts should have presidents who had experienced Japanese brutality at first hand.\(^{35}\)

The intense press focus and resulting political pressure put the government in a difficult position. Discussion of Japanese war criminals had become unreasoned and blinded by sorrow and anger. The RSL’s suggestion that ex-prisoners should be given key positions in the courts was legally absurd but it reveals how the trials were viewed by the veterans’ organisation: the RSL obviously expected retribution. It is unclear how much of the public fervour is attributable to the government’s own encouragement of the press to report fully on Japanese cruelties, though the Australian public did not seem to need encouragement to take a tough stance on war criminals. Public reaction had now

become a problem, however. The government had promised the people ‘justice’ and sentences of less than a year, let alone acquittals, were seen to be insufficient. Of course harsher sentencing was occurring elsewhere but Darwin was the closest to the public eye. Henceforth, trials were staged in far-flung locations well away from the Australian public.

Of all Australian trial venues, Rabaul was easily the largest, with almost 400 suspects prosecuted in 188 trials between 12 December 1945 and 6 August 1947. Rabaul accounted for over half the number of Australian trials and also the majority of the death sentences, eighty-seven in total. In terms of the number of defendants in a case, however, hearings at Rabaul were often small in comparison with other venues. At Labuan, by contrast, only sixteen trials were held, but 145 defendants were tried. Rabaul, a port in New Britain, had been captured by the Japanese in 1942 and used in the build-up to the proposed assault on Port Moresby, becoming the largest Japanese military base in the region. The attack on Port Moresby never actually happened because of strong Australian resistance in the area and the general turning of the tide of the war against the Japanese. Rabaul, however, was the scene of significant war crimes against POWs. After the war, 155,000 Japanese surrendered to Australian forces there. With so many surrendered Japanese in the area, a wealth of evidence of war crimes and a


comparatively large contingent of adequately resourced Australian forces, Rabaul was always likely to be a busy area for war crimes trials.

The second biggest trial venue, by number of defendants, was Morotai. Between November 1945 and February 1946, 148 suspects were tried there in twenty-five cases. Only eighty-one were convicted, but twenty-five death sentences were handed down, making Morotai also the second busiest trial venue by measure of death sentences. The high rate of death sentences on Morotai can be explained by the nature of the cases there. A number of them dealt with the execution of Australian airmen who had crashed in nearby areas during the war. Details of the case of Katayama and Others and the Tsuaki case, which are examples of such prosecutions, can be found in Chapters Two and Four. These trials dealt with what were perceived as brutal executions of crashed airmen and therefore were far more likely to result in death sentences. Mitigation of death sentences in such cases was less frequent than, for example, in the trials on Labuan, which commonly dealt with the forced march of prisoners. Forced marches also resulted in charges of murder, but the circumstances were different. The crime of directly executing a soldier was gruesome and the defence of Superior Orders was harder to justify, or perhaps harder for the court or even the JAG to accept. On the other hand, Morotai had a relatively high number of acquittals, at sixty-seven. The reason appears to be that Morotai was the location of the largest single BC trial ever held, with ninety-two defendants, as described in
the previous chapter, and in that trial alone, fifty-five defendants were found not guilty, a result that somewhat distorts the picture of the Morotai trial results.  

Labuan’s trials ran for a short period of several weeks in December 1945 and January 1946. Of the 145 accused, 128 were found guilty, which is a fairly high rate of conviction compared with some of the other venues in the Australian trials. The majority of those convicted received relatively moderate sentences of between ten and twenty-four years in prison. Only seven death sentences were handed down by the court. The Labuan trials were often large ones, dealing mainly with crimes arising from forced marches of Allied prisoners between Sandakan and Ranau, in British North Borneo, during 1945.

The case of Nagahiro Masao and Twenty Others, tried at Labuan between 7 and 9 January 1946, suggests some of the reasons for the comparatively light sentencing. The defendants in this case were alleged to have murdered Australian (and British) POWs between 29 May and 26 June 1945, somewhere between Sandakan and Ranau. All except two of the accused were found guilty. Sentences ranged between eight and twenty-six years in prison, but the JAG recommended that the sentences should be mitigated to reflect the circumstances in which the crimes had been committed. The JAG commented that at this point the area near the POW camp run by the Japanese was being bombarded by Allied forces and that according to the Hague Convention of 1899, the prisoners therefore

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38 In the notes on Sissons’ table, he comments on this trial and its influence on the numbers at Morotai. For the trial record itself see ‘Record of Military Court - Shirozu Wadami and others’, 2/1/46-15/2/46, NAA, Canberra, A471, 721016.  
needed to be moved. The track along which the prisoners were moved was not
suitable for vehicles and although the prisoners were clearly not capable of
making the journey on foot, the JAG believed the men on trial in this case had
been acting under orders in forcing them to do so.\footnote{‘JAG Review – Nagahiro and Twenty Others’, 8/2/46, NAA, Canberra, A471, 822577.} The confirming authority
apparently took the JAG’s comments into account, reducing all the sentences by
half.

This case illustrates several typical features of the Labuan tribunals. Large
numbers of defendants appeared in comparatively few trials: it seems from the
records that it was not so much their individual conduct that was on trial, but their
representative part in a much larger collection of war crimes, that is, the forced
marches from Sandakan. In other words, these cases reflected an apparent
emphasis on collective responsibility rather than individual guilt. The courts
themselves showed some leniency and the JAG’s recommendations to the
confirming authority evidently were compelling, sparing the lower-ranking
Japanese from heavy sentences in most cases. The large trials, however, may also
help to explain the high rate of conviction. Once the court was certain that some of
the defendants were guilty, it seems to have assumed that most of the accused
were implicated in the alleged crime. But if this line of reasoning was indeed
followed, it contrasts markedly with the trial of the ninety-two defendants on
Morotai, in which fifty-five were found not guilty.

Singapore and Hong Kong began operating as trial venues after the initial
surge of prosecutions in early 1946. Hearings at Singapore opened in June 1946
and the last trial concluded in July 1947. The British were also prosecuting
Japanese for war crimes in Singapore at the same time, and Australia shared the
British venue and facilities. The Australian courts at Singapore dealt with alleged
crimes arising from Japan’s use of Allied prisoners in constructing the Burma-
Thai railway. In the Australian cases, sixty-two defendants were tried in twenty-
three cases. Fifty-one were found guilty and eighteen sentenced to death. When
the Singapore courts closed after Britain had completed its trials there, the
Australian government still wanted to continue prosecutions. The trials at Rabaul
were about to wind up, and those in other venues had finished. A new location was
needed. The British had completed their prosecutions at Hong Kong, leaving a
venue available, and Hong Kong was seen as the most suitable location. The
Australian trials in Hong Kong opened in November 1947 and closed in
November 1948. At Hong Kong, the rate of conviction was also high. Forty-two
suspects were tried in thirteen cases and thirty-eight were found guilty, though
only five were sentenced to death. The high rate of conviction there can probably
be explained by the fact that resources for war crimes trials were beginning to be
severely strained by this point and only prosecutions of serious crimes backed by
considerable evidence were likely to proceed. A further feature of the Hong Kong
trials was the change to a new confirming officer, Adjutant-General W.M.
Anderson.

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41 Caroline Pappas, ‘Law and Politics: Australia’s War Crimes Trials in the Pacific
1943-1961’, Unpublished PhD Dissertation, Australian Defence Force Academy,
UNSW, 2001, p. 60.
The Singapore and Hong Kong trials occupy a liminal position between the initial burst of Australian activity in early 1946 and the Manus trials in 1950-1951. The Hong Kong trials, in particular, became the subject of delicate negotiations among the Australian government, the British colonial authorities in Hong Kong and SCAP during a period of limbo for the Australian prosecutions. These negotiations will be discussed in detail later.

As shown in the Wewak and Labuan cases described above, a good number of sentences in the Australian trials were reduced by the confirming officer, at this point Sturdee. It is difficult to reconcile this willingness to reduce sentences with the examples of other cases where mitigation seemed appropriate and was recommended by the JAG, but was not enacted by the confirming officer. It seems unlikely that Sturdee would treat war criminals from different areas differently, simply because of where they had committed their crimes. One possible explanation for his decisions on which JAG recommendations to uphold and which to ignore is that it depended on the type of crime. It also appears, however, that the context mattered a great deal. As we have seen, both the type and context of the crimes tried at Labuan were different from those prosecuted on Morotai. It is likely that Sturdee weighed defences such as Superior Orders differently depending on the crime and the circumstances. In the crimes associated with forced marches tried at Labuan, Sturdee took the JAG’s advice and was lenient. When soldiers had been ordered to execute airmen, as in Katayama and Others, he was not lenient. The charge in all these instances was murder, but evidently the different circumstances mattered. Sturdee was surprisingly sensitive,
too, to the difficulties faced by the soldier in Wewak who had eaten an Australian soldier, and greatly reduced his sentence. Thus, to add a further layer of complexity to the question of fairness, the fate of a convicted war criminal seemed to depend to some degree on Sturdee’s personal opinion of the seriousness of different types of crime and the circumstances in which they had been committed. Without his personal papers, it is impossible to know how he weighed the difference between the crimes committed by soldiers who had been ordered to guard prisoners on a forced march, resulting in a charge of murder, and those committed by soldiers forced to execute prisoners directly, but it appears that he regarded the latter as worse than the former.

Convicted Japanese war criminals who received a death sentence and whose sentence was confirmed were executed where they had been tried. Those who were sentenced to terms of imprisonment were initially held where they had been tried. Eventually, however, most surviving prisoners appear to have been moved to Rabaul, where they remained until 1949. The Australian military contingent at Rabaul was significantly larger than in the other trial venues and also had the assistance of local civilian personnel, so it would have been easier to manage prisoners there. Moreover, criminals in Australian custody in Rabaul were not idle but were used as cheap labour on a civilian construction project. In March 1949 all prisoners on Rabaul were shifted to Manus Island to assist a small number of war criminals who were already there to complete the base that the Australian navy was building.\[42\] Rabaul and Manus Island did not account for all

\[42\] Ibid., p. 81.
of the surviving war criminals convicted in Australian courts, however. About
sixty convicted in Singapore and Hong Kong went neither to Manus nor to
Rabaul, but instead remained in Hong Kong and Singapore, before being
repatriated to Japan in 1951 along with prisoners convicted in British courts, to
serve out their time in Sugamo Prison in Tokyo. Eventually, after a series of
protracted negotiations, all surviving war criminals prosecuted in Australian courts
were transferred to Sugamo, as will be discussed in Chapter Five.

While Australia’s prosecutions were progressing, the Class A trials were
also being conducted in an international courtroom in Tokyo. Twenty-eight
Japanese leaders had been selected for indictment from a much longer initial list,
and the trials began on 29 April 1946. Verdicts were handed down in December
1948. By this time the Reverse Course was underway and Allied priorities had
changed. There was little appetite to continue prosecuting Japanese leaders.
Australia, as one of the eleven prosecuting nations, had in fact agreed in
November 1947 that the Class A trials should end. According to External Affairs,
the reason was that the government no longer considered the trials to have much
political value, given that press reports usually focused on the defence.
Presumably, this means that the government believed the trials did little more than
afford the Japanese wartime leaders the chance to promote their own cause, rather
than revealing the detail of the crimes they had committed and making an example

43 ‘Continuation of War Crimes Investigations and Trial of Japanese Suspect
Minor War Criminals’, 19/12/49, NAA, Canberra, 1334903.
44 N. Boister and R. Cryer, The Tokyo International Military Tribunal: A
45 ‘External Affairs Cable – Japanese War Crimes Trials’, 27/11/47, Papers of D.
C. S. Sissons, Manuscript, National Library of Australia, Box 35.
of them. Moreover, the government needed Sir William Webb for several key legal cases in Australia.\textsuperscript{46}

To Australians, however, there remained an imperative to bring Japan to account. There was also a growing suspicion that the other Allies did not fully understand Australia’s position; they were too pragmatic and lenient.\textsuperscript{47} This belief that Australian policy for Japan was different from that of other governments, and that the Australian BC trials ‘belonged’ to Australia whereas the Class A trials did not, helps explain the apparent contradiction that although the trials of senior Japanese were seen as no longer useful to the government, those of ‘lesser’ war criminals remained politically significant.

\textbf{The Slowing of Australia’s Trials}

Despite the continuing enthusiasm for completing the BC trials in a resolute way and fully punishing those Japanese suspects who were in Australian hands, prosecutions began to slow in 1947, chiefly because of a shortage of trial personnel. In 1947 all non-volunteers serving in the tribunals returned to Australia. Pappas suggests that getting further volunteers to work in oppressive tropical conditions was difficult.\textsuperscript{48} In 1948 many Japanese suspects were still being held in Australian custody without trial, but prosecutions proceeded slowly. In June 1948 thirty-five cases were ready for trial and a further 125 were open for investigation;

\begin{itemize}
\item \textsuperscript{46} Ibid.
\item \textsuperscript{48} Pappas, ‘Law and Politics’, p. 59.
\end{itemize}
officials estimated that to hear all of these cases would have taken roughly another two years. ¹⁴⁹ Hong Kong was the only place in which Australian trials were still being conducted, but the Hong Kong venue was only available until August that year, as the lease on the premises was due to expire. All UK trials, regardless of venue, had ended in March 1948, meaning that Australia was the only country pursuing war crimes in Hong Kong at this stage. The Australian High Commissioner in Singapore, who also covered Hong Kong, advised that it would be impossible to secure another venue in Hong Kong once the current premises became unavailable. ¹⁵⁰ Nor was any other space available that would be suitable for trials anywhere in the colony. ¹⁵¹ If it wanted to continue trials, the government had to find a new venue.

The government first had to resolve the question of whether further trials should go ahead at all and if so, for how long. In February 1948 the Australian army asked External Affairs for the Minister’s opinion on whether further trials should be held. External Affairs replied that prosecutions should continue until they were properly completed, adding, however, that although finishing the job was important, the ‘effectiveness’ of trials would be lessened if they continued for too long. ¹⁵² It is unclear what the Minister meant by ‘effectiveness’ but the remark implies there were limits to the trials’ perceived political and diplomatic value.

¹⁵⁰ Ibid., p. 3.
¹⁵¹ Chief of Legal Section - Memo for Record, February 1950, Decimal 290-12-04-06, SCAP Legal Section, National Archives and Records Administration, Washington DC (hereafter NARA), RG331, Box 1435.
¹⁵² ‘Secretary Shawn of External Affairs to Secretary of the Army’, 3/3/48 (refers to communication from Dr Evatt in February), NAA, Canberra, A2700, 5490451.
which might not last much longer. By 15 June 1948, the question of whether to continue or not had been presented by the Minister for Army to Cabinet for consideration. Cabinet decided that trials should continue after 31 August 1948, the date on which the Hong Kong venue would become unavailable, for roughly twelve months, and that a suitable new venue should be identified in the area of Japan managed by BCOF. Cases ready for trial were to be ‘expedited as much as possible’ with a view to completing the program by June 1949.53

Given the slow progress in the previous twelve months, the aim of completing the trials within another twelve months of Cabinet’s June 1948 decision seems highly ambitious. The government was, however, prepared to concede that the two-year period that had initially been suggested as the necessary time-frame to complete investigation of the 125 outstanding cases was too long and that only the thirty-five cases now ready for trial should be convened.54 The drastic decision to abandon a significant number of cases was made because the government was now very conscious of other governments’ policies on the war crimes trials. In June 1948, Cabinet was informed that the UK had completed its trials in March. The US authorities were attempting to complete their prosecutions by 31 October 1948,55 and SCAP took the view that other governments should also finish prosecuting by 31 December.56 External Affairs, after considering the

54 Ibid.
56 Piccigallo, The Japanese on Trial, p. 47.
views of the US and the UK, had informed the Minister for Army that the department’s stance had changed and that External Affairs now believed Australian trials should only continue to June 1949.\footnote{Cabinet Secretary Memo to Minister for Army Chambers – Agendum Item 1471’, 15/6/48, NAA, Canberra, A2700, 5490451.}

This position provides an early indication that Australian officials were conscious it was not in the government’s best interests to have a war crimes policy that was dramatically out of step with those of the UK and the US. SCAP and the Far Eastern Commission in Washington had little control over other countries’ policies on war criminals. They could recommend that certain actions should be taken, but war crimes trials outside of Japan were legally the business of the prosecuting nation.\footnote{Piccigallo, \textit{The Japanese on Trial}, p. 47.} Therefore, any influence that the US had on trials conducted by other countries was in the form of political pressure to support US objectives in Japan. The Australian government did sense this pressure and was attempting to match the actions of its allies, but balanced this approach with the desire to complete its own trials more or less in the manner originally planned. The target of thirty-five cases in twelve months appears to have been a compromise. By insisting that the thirty-five cases ready for trial should be completed, which, after all, would still take Australia’s trials six months past the December deadline that SCAP was pushing for, the government would show it was not prepared to abandon prosecutions altogether just to match SCAP’s and the UK’s policy.

Whether the government could actually have managed to conclude its cases in the twelve-month period proved to be irrelevant because the main
problem with Cabinet’s June 1948 decision was the plan to conduct future trials on Japanese soil. Throughout the 1948 discussions, Australian officials only considered two venues to be viable, Japan and, in theory, the Australian mainland. Japan was seen as a better option, because it would be easy to call witnesses and the number of personnel available to the trials would be significant, presumably because members of BCOF would be available. Under these circumstances, perhaps meeting the twelve-month goal would have been possible. It does not appear that the government seriously considered holding further trials in Australia; the difficulties encountered with public reaction to the 1946 Darwin cases must have been a significant disincentive. The issue of hearing cases in occupied Japan, however, turned out to be complicated. Trials could not be held without the approval of SCAP. According to Cabinet documents, SCAP was initially opposed to the holding of Australian trials in Japan but at some point indicated to Australian officials that it would be open to the idea if prosecutions were conducted according to US procedures. The Australian government, however, did not wish to conduct trials under SCAP regulations, because it would necessitate new legislation, as previous trials had been conducted according to the *Australian War Crimes Act 1945*. The Minister for Army advised Cabinet on 10 June 1948 that a venue in Japan should be found and trials conducted according to Australian procedures. It is not clear how the government thought it could get around the key stipulation that SCAP had made: that trials would only go ahead under SCAP regulations.

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59 ‘Cabinet Agendum Item 1471’.
In any case, in August 1948 SCAP advised the Australian government that it was not prepared to allow Australian trials on Japanese soil as they would have ‘no direct connection’ to the Occupation and ‘for this and other reasons’ trials could not go ahead.\(^\text{60}\) The Australian government then revisited the idea of maintaining a war crimes court in Hong Kong. Space for military and bureaucratic offices there was very tight. After several attempts, the government could only manage to secure an extension of its lease on the existing premises until December 1948.\(^\text{61}\) In itself though, this appears to have been a minor diplomatic victory.

Meanwhile, the FEC had decided that all BC trials should end during 1949. An FEC policy decision of 24 February 1949 called for all investigations to cease by June and trials by September.\(^\text{62}\) The US authorities were already trying to complete their own prosecutions, so in practice the FEC directive did not put any further pressure on them. In fact, the FEC decision endorsed what had been SCAP policy for some time already.\(^\text{63}\) Nor did the FEC policy exert any unwelcome pressure on Australia, at least initially. The first of two FEC decisions to call for the trials to end had been passed by the steering committee on 16 November 1948 and even though opinion on the committee at that point was not unanimous, Australia voted to bring the trials to a close, despite the fact that the government was then searching for a new venue in which to conduct its own cases.\(^\text{64}\)

\(^{60}\) ‘Department of Army (New Liberal Government) Cabinet Briefing on Actions Taken by Previous Government – Appendix A’, January 1950, NAA, Canberra, A4940, 1334903.

\(^{61}\) Ibid.

\(^{62}\) Ibid.

\(^{63}\) Piccigallo, \textit{The Japanese on Trial}, p. 47.

\(^{64}\) Chief of Legal Section - Memo for Record, February 1950.
Evidently, when it first appeared, the FEC’s stance was not considered to be overly restrictive. Moreover, the Australian government expected to be able to wrap up its trials quickly. Presumably, the government also felt that opposition to the FEC directive would damage relations with the US. The fact that other representatives voted against the directive must have provided Australian officials with some diplomatic relief. The vote was still not unanimous in February 1949, when it was put to the full Commission, but the motion was carried, again with Australian endorsement.65

The FEC could not actually prevent Australia from holding trials outside of Japan. The Australian government was in a difficult position, nonetheless, for three reasons. First, SCAP held Japanese suspects in Sugamo on Australia’s behalf, and could release them if it chose. Second, repeatedly ignoring SCAP and FEC policies, even if they were not binding, was diplomatically undesirable. Third, the Australian government did not have a viable long-term trial venue anywhere and was forced to negotiate with SCAP for assistance in getting access to a venue. The FEC directive to end the trials quickly went from something the Australian government supported, and which in any case was not strictly binding, to something with which the government struggled to comply. Without other options, the government returned to the possibility of trials in Japan, requesting in February 1949 that SCAP reverse its policy on permitting Australian trials there. Despite the FEC directive, SCAP did still appear sympathetic to Australia’s situation, at least according to official Australian documents: it offered to convene

65 Ibid.
courts itself to try cases in which Australians were interested, or even possibly to
delegate that authority to BCOF.\textsuperscript{66} This offer was withdrawn in March 1949,
however, when SCAP stated it had been ordered to cease trials by June 1949.\textsuperscript{67} It
is odd that the FEC directive was interpreted as an order to SCAP at this point,
since it had been SCAP policy to end trials promptly long before it became FEC
policy. It appears either that the FEC ruling meant SCAP no longer had scope to
negotiate on the issue, or that MacArthur used the FEC directive to put an end to
Australian requests for trials in Japan. After all, Australia had a representative on
the FEC and could have opposed the FEC directive on the trials but had chosen
not to.

Leaving aside the FEC directive, it is evident that at least some SCAP
officials believed the Australian requests should be rejected out of hand. Official
US records portray the issue of further Australian trials in Japan in a slightly
different light from how it appears in Australian Cabinet documents. US legal
opinion apparently decreed that trials conducted under Australian law could not
take place in Japan, where war crimes trials were legally under the jurisdiction of
SCAP. There were other considerations as well, as is made clear by the comment
of senior officials from SCAP’s Legal Section, whose chief wrote in an internal
communication in July 1948:

\begin{quote}
It would be a serious loss of prestige, as well as a derogation from the
authority of the Supreme Commander if he did not control and exercise
\end{quote}

\textsuperscript{66} ‘Department of Army (New Liberal Government) Cabinet Briefing on Actions
Taken by Previous Government – Appendix A’.
\textsuperscript{67} Ibid.
supervision over the conduct of these proceedings [i.e., Australian trials in Japan].

Furthermore, in the opinion of SCAP’s Legal Section, Australian trials in Japan would be ‘inconsistent’ with SCAP’s policy, which had been moving away from war crimes trials for some time. On the matter of SCAP taking responsibility for further Australian trials itself the Legal Section was equally forthright, suggesting that the extra responsibility would place a burden on the American taxpayer and have the ‘highly undesirable effect’ of delaying completion of the US trials by adding an entire new set of prosecutions. These comments do not appear in the Australian files, suggesting that SCAP was not prepared to be this blunt in discussing the issue with the Australian government.

Internal opinion in SCAP was thus not receptive after July 1948 to the idea that Australia could conduct independent war crimes trials in Japan, and the apparent US offer to hear cases on Australia’s behalf was short-lived.

Nevertheless, Australian officials were complimentary about how helpful and cordial SCAP had been in dealing with the issue. In an effort to resolve the situation, it appears that SCAP indicated privately to Australian officials that despite the setback of not being able to hold trials in Japan, scope to continue prosecuting the worst war criminals still existed and Australia could pursue trials of serious crimes at a venue such as Manus Island. How Manus Island came to

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68 ‘SCAP Legal Section Chief of Staff on Request for Trials in Japan’, 22/07/48, Decimal File, NARA, RG 331, Box 1413.
69 Ibid.
70 ‘Department of Army (New Liberal Government) Cabinet Briefing on Actions Taken by Previous Government – Appendix A’.
be recommended as a venue or who first suggested it would be suitable is not clear, but it was not the only possibility examined. Port Moresby and Dreger Harbour in New Guinea were also considered but were ruled out, as the majority of Australian personnel in those areas had been redeployed elsewhere.\textsuperscript{71}

On top of all these confusing and difficult negotiations, in late 1949, SCAP indicated to the Australian government that it intended to release from Sugamo Prison the sixty or so suspects held there who were awaiting trial by Australia. Such action was prompted partly by the new FEC policy but also by the belief that many suspects had been held without trial for too long. In part, SCAP appeared to be losing patience with Australian officials, and did not seem to believe that the Australian government would make a timely decision on what to do with its suspects. The government was able to negotiate an extension until 1 January 1950 on SCAP’s decision to release prisoners, by claiming that Cabinet was about to decide on the issue. In the meantime, Australian officials began to assess Manus as a venue.\textsuperscript{72}

Throughout 1948 the future of the trials was in limbo, but ultimately the government was at least able to negotiate with the US authorities to prevent suspects from being released. Eventually it was able to secure a suitable trial venue, on Manus Island, and to hold further prosecutions. The next chapter discusses the resumption of the Australian government’s war crimes trials.

\textsuperscript{71} ‘External Affairs, Department of Army, Attorney-General Cabinet Submission Agendum No. 2A’, January 1950, NAA, Canberra, 1334903.
\textsuperscript{72} Ibid., pp. 4-6, 7-9.
CHAPTER FOUR

MANUS ISLAND: THE END OF THE TRIALS

The last Australian trials, which were also the last trials of suspected Japanese war criminals by any of the wartime Allies, began on Manus Island, in Australian New Guinea, in June 1950. They ended in April 1951, roughly five and a half years after the first Australian trials began. The Manus prosecutions concluded Australia’s pursuit of Japanese war criminals, finally punishing some Japanese just a few months before the San Francisco Peace Treaty was signed and almost a decade after their crimes had been perpetrated, as some defendants were tried for crimes committed in 1942. It was a very late point at which to be completing a trial program that had commenced early in the Occupation as part of the project to demilitarise and reform Japan, a project that had since been abandoned. In this second era for the trials, the legal framework remained the same, but both domestically and internationally, the social and political context was dramatically different. The trials were by now part of an old policy of dealing with Japan as former and perhaps future enemy, whereas Japan had since become an acknowledged ally of democratic countries opposed to Communism. The nature and scale of Western political and diplomatic interventions in Asia had changed radically by this stage. The Manus trials are intriguing because of their late timing and the resistance they offered to the changing international context in which they took place.
This chapter discusses the lead-up to the Manus trials and the prosecutions themselves. As the Australian government planned the Manus trials, the Occupation was moving steadily towards its conclusion and the restoration of peace. These last trials indicate the Australian government’s resolve to punish Japanese war criminals to the extent that it regarded as appropriate, even if that punishment no longer served the best interests of the Occupation. Procedurally, the prosecutions exhibited many of the flaws of the earlier trials. One key difference, however, was that they focused almost entirely on crimes against Australian soldiers rather than local civilians; another was that the government became heavily involved in the confirming of death sentences for the first time.

Other writers on the BC trials have acknowledged that the ‘Reverse Course’ changed the context of the Australian trials.¹ The significance of this point in Australian foreign policy, however, has been understated. The decision to resume trials on Manus Island was made deliberately and against SCAP’s wishes. The Australian government did not negotiate on or compromise its own goals in dealing with Japan. It was a strong stance to take considering that the trial program had been encountering serious logistical obstacles for the previous two years. The Australian position on the trials is even more significant when one considers how closely the Australian government was co-operating with the US in other ways,

and what was at stake in displaying opposition to the ‘Reverse Course’. Australia had worked hard in BCOF and on the Allied Council for Japan, and through Webb and others in the Class A trials. Australian officials and personnel had thus zealously supported early Occupation projects, including demilitarisation in general and war crimes trials specifically. Prior to the ‘Reverse Course’ it is hard to see how any nation could have been considered a closer ally to the US in the Occupation of Japan, or a more important one. Australia was also the first country to commit to assisting the US in the Korean War. Clearly, co-operation with the US was an important priority in almost all situations in the late 1940s and early 1950s. Even while the Australian military was contributing soldiers to the anti-Communist cause in a new war in Korea, however, and the government was supporting the new cause of Indonesian independence, Australians were still dealing with leftover issues from the Second World War in their prosecutions of suspected Japanese war criminals.

As discussed in the previous chapter, the Australian government needed a new venue if trials were to continue after 1949. Eventually, Manus Island was chosen and the trials began. At face value the prosecutions appear to represent the completion of unfinished business by the Australian government and military. The Manus trials, however, were more than that. As much as the finishing of a job, they also constituted a positive assertion that official Australian views on Japan

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had not greatly changed despite the US-led new direction of the Occupation and
the more general change of US policy for Asia. The Australian government
believed that Japan should still be treated as a threat and was not afraid to say so.

It would have been more convenient and efficient for Australian officials
serving either the Labor or the Coalition government to have concluded the trials
in 1948 when they began to encounter bureaucratic problems, or to allow the
program to lapse in 1950 rather than rejuvenate it. Many war criminals, after all,
had already been convicted. The government remained conscious of anti-Japanese
sentiment in Australia until well into the 1950s, however, and the fact that neither
federal government in the 1940s was prepared to abandon the war crimes trials
when it would have been convenient to do so, instead exploring difficult and
costly ways to reinvigorate them, suggests an acknowledgement in political circles
that the trials had high political value domestically. The political value of the trials
lay in the fact that they allowed the government to demonstrate a response to the
perceived pressure from the electorate for a tough stance on Japan. An early end to
the trials was thus never likely. The BC prosecutions had been an important part of
the government’s post-war foreign policy agenda as well, intended in part to
secure Australia’s status and position in Asia. As mentioned in earlier chapters,
the Australian trials were virtually unique as an area of policy on Japan over
which Australian officials had total control. This was still the case in 1950. If the
trial program were to cease before the government was satisfied with its progress,
very few, if any, areas would remain in which Australia could deal with the Japanese independently.

A major effort was made for the Manus Island trials. New suspects were arrested in Japan in 1949-1950, which came as a shock to those who knew suspected war criminals as sons, lovers, husbands and community members, and had assumed that at this late stage no more former soldiers would be charged. In the spirit of reconstruction in Japan after the beginning of the ‘Reverse Course’, pulling people from their communities appeared unjust to many Japanese. Eventually an increasingly vocal Japanese campaign for the repatriation and release of convicted criminals would place significant pressure on the Australian government, as we will see in Chapter Five. The news of the Manus trials also drew reaction from the Australian press. Reports first appeared in December 1949, just prior to the federal election. The revelation that trials would resume at such a late stage worried some Australians who believed Australia should be treating the Japanese fairly. Others, however, seemed less concerned about fair treatment of Japan and more concerned that war criminals might escape prosecution because of the government’s tardiness in bringing them to trial.

Planning for Manus

Official sources show that despite the slowing of the trials under the Chifley government, Labor had had no intention of abandoning them. As Pappas suggests,

\footnote{‘Australia to Try Japs on Manus Island: Delay in War Trials’, \textit{The Sunday Herald} (Sydney), 4/12/49, p. 5.}
in December 1949 Menzies inherited a flawed and stalled process but not one that was totally dead.¹ Labor’s commitment to the trials appears to have fluctuated during 1948 but by the middle of 1949 the government had been investigating the possibility of restarting prosecutions, and had laid the foundations for what would later become the Manus Island trials. Menzies and the Coalition thus built on the planning conducted under the previous regime, rather than rescuing the trials solely through their own policies and energy. As a matter of fact, discussions were well advanced by the time the Coalition took them over. As shown in the previous chapter, Labor conducted vigorous diplomacy with the US and with officials in Singapore between June 1948 and April 1949 in the search for a new trial venue, and it is doubtful that Australian officials could have done much more to expedite the process at that time. Had the Labor government been able to secure a venue promptly, Australia might well have managed to finish its trials by mid-1949, and thus to have remained in line with other prosecuting countries.

Labor was voted out of office before it could complete the task of restarting the trials, and Menzies inherited the problem. By this time, Manus had emerged as a possible venue, though nothing had been settled.⁵ In December 1949, the new government considered the question of continuing the trials: Menzies claimed it was one of the first issues on which he took action and that the previous

⁵ ‘Memo to Department of External Territories’, 21/2/50, National Archives of Australia (hereafter NAA), Canberra, A1838, 551834.
delay ‘violated the fundamental concepts of British justice’. After discussions with SCAP the government decided that only cases already prepared for trial and covering serious offences would be pursued, in an effort to minimise the time that Manus would be operational. Cases already prepared covered fifty-one suspects; the remaining suspects in custody were to be released. The government took the view that those to be released were only minor criminals and that their cases were far from ready for trial. The Coalition criticised the previous Labor government in parliament for the slow progress of the prosecutions so far. In fact, however, the new government restarted the trials with a lower number of cases than had been planned under Labor.

The government was keen to start the Manus trials as soon as possible, and began to make preparations. Suspects had to be transported to Manus, along with legal personnel. The government initially thought the trials would take roughly four months, not the twelve months they eventually required. The biggest factor affecting how soon prosecutions could begin would be organising Australian personnel and Japanese legal teams. Fortunately for the government, staff who had been investigating war crimes elsewhere were now available to prepare the trial venue, organise other personnel and the suspects, and work in actual tribunals, as

7 ‘Coalition Cabinet Agendum on Continuation of War Crimes Trials’, January 1950, NAA, Canberra, A4940, 1334903.
all Australian investigations then underway had stopped to focus solely on the
cases that were ready for trial at Manus. As agreed, SCAP had held on to suspects
in Sugamo Prison on behalf of the Australian government, and upon receiving
confirmation of the decision to continue trials, organised for the transfer of
prisoners from Tokyo to Manus Island. The initial cost projection for the entire
Manus program was £37,000, though the press later claimed the trials had actually
cost £100,000.

Taken as a whole, the negotiations with SCAP over the Manus
prosecutions indicate a number of things about the Australian trials. First, the trials
had bipartisan support in Australia even in the face of the changing political
landscape in Asia. Second, the Australian government was not oblivious to the
changes in US and other Allied policy for Japan, and made efforts to conform with
those changes but only up to a point. The Australian governments of 1948, 1949
and 1950 were conscious that their actions on war criminals would stand apart
from those of other key Allies, if they went ahead with Manus Island. Government
assessments showed that Australian policy on war criminals was closer to that of
the Philippines, a minor Pacific power, than it was to that of the US and UK, two
countries officials would have considered more important to Australia’s standing

9 ‘Coalition Cabinet Agendum on Continuation of War Crimes Trials’.
10 ‘Chief of Legal Section - Memo for Record’, February 1950, Decimal 290-12-04-06, SCAP Legal Section, National Archives, Washington DC (hereafter NARA), RG331, Box 1435.
in the region.\textsuperscript{12} The government did make an effort to complete its trials as quickly as possible after the Manus hearings were set to go ahead, and did agree to drop all cases except those ready for prosecution. This foreign relations pragmatism had its limits, however, and at no point in the discussions, within either the Labor or the Coalition governments, were war crimes trials likely to be abandoned. Third, the continuation of the trials had new implications. Prosecuting Japanese war criminals had been a part of Australian foreign policy ever since the final stages of the war. These late-stage tribunals at Manus, however, potentially portrayed Australia as too harsh on Japan or unwilling to support ‘Reverse Course’ policy, and thus might have serious political and diplomatic ramifications. In short, the Australian government was taking a risk in holding the Manus trials.

At Manus Island, the trial process itself remained more or less the same as in earlier Australian tribunals but officials were even more conscious that they were under time pressure. Though the authorities had decided to deal only with the most serious cases, and the press openly noted this point,\textsuperscript{13} the government does not seem to have believed that that decision undermined the tribunals in any way: there was no sense that the government was ‘giving in’ on war criminals. Again, this decision shows that the government was willing to compromise, but not to concede the trials altogether. The decision to concentrate almost solely on crimes

\textsuperscript{12} ‘Coalition Cabinet Agendum on Continuation of War Crimes Trials’.
against Australian personnel, rather than local civilians,14 was also made in the interests of speedily concluding the hearings by narrowing the normally broad scope of the prosecutions. One trial at Manus did deal with crimes committed against Indonesians, as will be discussed below, though the reason for inclusion of this case remains unclear.15

Public Views of the Trials, 1949-1950

The Coalition government acted quickly on war crimes trials and was able to make its plans public relatively soon after taking office. A press release was prepared by the new Minister for Army and Navy, Josiah Francis, in January 1950, the month after the election, stating that action would be taken against remaining prisoners with the ‘utmost expediency’.16 The press announced on 24 February that Menzies was about to clarify the government’s stance on further trials, and he did so in parliament, later that day.17 It was then over two months since the election, but Menzies’ action still appears swift in contrast with the gradual loss of momentum in the trials under Labor.

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14 ‘Exhibit 20 – Article in The Sydney Sun and The Nippon Times Regarding the Focus of the Manus Trials on Crimes Committed Against Australians Only. Tendered in Evidence to the Court at Manus Island in the Trial of Nakamura Hirosato’, 11/2/50 (date of article), NAA, Canberra, A471, 720962.
16 ‘Statement for the Minister for Army and Navy’, 11/1/50, NAA, Canberra, A1838, 551834.
The two-month gap since the election, however, did allow pressure to build from veterans’ and other grass-roots political organisations that wanted to ensure the new government would be firm with Japanese war criminals. For example, the Lidcombe Branch of the NSW Housewives’ Association wrote to Minister for External Affairs Percy Spender to advise him as follows.

We view with alarm the benevolent attitude towards those responsible for the welfare of those who were in Japanese P.O.W. camps and all those who suffered and were killed and we demand that these criminals be brought to justice.18

To accuse the government of displaying a ‘benevolent’ attitude towards war criminals was a clever tactic. The delay in organising the Manus trials had evidently produced a robust reaction amongst sections of the general public, and apparently much of the discussion on war criminals was occurring out of the public eye. The New South Wales Ex-Prisoner of War Association wrote to the Department of the Prime Minister in late December 1949 registering its ‘strong protest of their [suspects’] release before trials and strong disapproval of the time it has taken to bring them to trial’.19 The letter was a follow-up to one that had been sent to the outgoing Labor government. It, too, highlights how passionately some Australians still felt about war criminals. The news that prosecutions were to be held on Manus Island led to an increase in reporting on war criminals once

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18 Housewives’ Association to Spender, 16/3/50, NAA, Canberra, A1838, 551834.  
19 NSW Ex-POWs to Menzies, 21/12/49, NAA, Canberra, A1838, 551834.
again, after a period during the lull in the trials when few stories had appeared.\textsuperscript{20} The public comment in 1949 and 1950 suggests there might have been a significant backlash from the press and lobby groups had either the Labor or the Coalition government decided to abandon war crimes trials.

In 1950, the press initially expressed concern that the government had mishandled the situation and that guilty Japanese were going to escape punishment, because of the decision to drop all cases except those ready for prosecution. Some stories suggested that SCAP might take a hard line on releasing untried war criminals and that many could be freed: that is, they suggested that SCAP might release even those prisoners who were scheduled for trial at Manus. As late as this, the prospect of suspected Japanese war criminals escaping trial was evidently still unpalatable to some Australians. The press informed readers that Japan remained a possible threat to Australia.\textsuperscript{21} Politicians and other prominent figures added to the concern over leniency by speaking out publicly on the issue.\textsuperscript{22}

The Coalition deflected some of the criticism by blaming the previous government, triggering heated debate in parliament in early 1950 over the reasons for the lapse in prosecutions in 1948-1949. When questioned after losing office on the trials' progress in 1948, Labor's position was that Australia did not have the


\textsuperscript{21} For example, ‘Australia to Try Japs on Manus Island’.

resources to complete its trials as efficiently as had its allies. The new Coalition government claimed upon taking office, however, that departmental bickering under Labor and a willingness to appease the Japanese during 1948 had been key factors in the decline of the trials. Some Coalition comments were later retracted, but in responding to uproar in parliament triggered by the Coalition’s allegations, Labor reiterated that delays had been inevitable, insisting that the chief cause of delay in 1948 was that the government could not secure a suitable venue to hold further trials: there had been no intention of releasing suspects in order to end the proceedings or appease the Japanese. Minister for the Army and Navy Francis nevertheless claimed publicly that under-resourcing of the trials had been only partially to blame for the delay. The fact that as late as 1950, one side of politics was prepared to accuse the other of ‘appeasing’ the Japanese, and that the charge was so hotly refuted, suggests the continuing political potency in Australia of decisions on how to treat post-war Japan. The commitment to prosecuting war criminals may have been bipartisan, but policy on trials could still become a political football, and when it did, the stakes were high. Most press stories, meanwhile, suggested that Australians still viewed further BC trials as necessary.

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24 ‘Labor Row on Jap Trials Exposed’.


26 ‘Lab Cabinet Blamed for Lag in Trials (Government Record of Press Coverage)’, no date, NAA, Canberra, A1838, 551834.
and that anger about Japanese war criminals had not greatly subsided.\textsuperscript{27} The subtext to some articles was that Japan was deliberately harbouring militarists and the language used in reporting Australia’s pursuit of suspects was emotive.

At the same time, the press expressed concern that Australia’s reputation might be tarnished by the delay in conducting further trials or because Australia now found itself at odds with the US. Though the FEC had no actual power over Australian prosecutions outside Japan, one Sydney report suggested that the US government was questioning whether it was legal for Australia to continue trials, given that the FEC had stated that the prosecutions should end in 1949.\textsuperscript{28} Veterans were said to be disappointed that Australia’s reputation was in danger because alleged Japanese war criminals had been held for over three years without trial.\textsuperscript{29} One veterans’ association, the Council of the 8\textsuperscript{th} Division, claimed that to leave people in such an uncertain state for so long was almost a war crime in itself.\textsuperscript{30} Such comment shows that the issue of war criminals was recognised as a complex one; it was not simply a matter of the public opposing leniency towards the Japanese. By 1950 there was also pressure on the government to conduct the trials fairly and to be seen internationally to be doing so.

\textsuperscript{28} ‘US Queries on Jap Trials’, \textit{The Sydney Morning Herald}, 15/2/50, in NAA, Canberra, A1838, 551834.
\textsuperscript{29} ‘Australia to Try Japs on Manus Island’.
\textsuperscript{30} Ibid. The Council for the 8\textsuperscript{th} Division represented the 8\textsuperscript{th} Division of the Australian Imperial Force, raised in 1940. Many of its members had been POWs. Its first commander was Major General Vernon Sturdee, who later became Commander in Chief of the Army and confirming officer for the early trials.
Matters relating to war criminals were always closely entwined with public concern for the well-being of returned POWs. In 1950, returned Australian prisoners were still experiencing problems reintegrating into society. During the lead-up to the Manus trials, the press began to report on how ex-POWs were recovering from their time in captivity; this coverage added a further layer of complexity to the planning for Manus. In January 1950 the Australian Repatriation Department began calling up ex-POWs to undergo complete health checks. In reporting on this, the press drew attention to the fact that former POWs were still dealing with health issues from the war. Indeed, during this period, returned servicemen’s organisations appear to have been making a conscious effort to give full play to the harshness of conditions under the Japanese, as a reminder to the general public of the great sacrifices that had been made.

The government was sensitive to press reaction to matters associated with war criminals. Official sources make clear that the government closely followed reports on the Manus Island trials and related issues; it even took positive action on occasion to try to lessen potential press reaction. In June 1950, Japanese Bishop Michael Yashiro, presiding Bishop of the Anglican Church of Japan, visited Australia. The purpose of the visit from Yashiro’s point of view was to promote

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32 “Four Years On” - Sydney Herald Report’, 22/1/50, NAA, Canberra, A1838, 551834.
33 See, for example, ‘Australia to Try Japs on Manus Island’.
reconciliation between Australia and Japan. He was also attempting to gain support, presumably from the government or from the Anglican Church in Australia, for a campaign to Christianise Japan, a campaign that accorded with MacArthur’s own wishes. Many Australians were indignant at his proposed visit, a reaction that bemused Anglicans in Japan, and it was evident from an early point in the planning that Yashiro’s visit would be controversial. He had travelled outside occupied Japan before, to attend the Anglican Church’s Lambeth Conference in England in May 1948. Although he was on a SCAP list of approved travellers, the Australian government, however, had not previously allowed him to visit Australia. Government correspondence concerning the forthcoming visit underlines the official sensitivity to public opinion on war criminals. A letter from the Prime Minister’s Department to the Australian Embassy in Tokyo in March 1950 states:

Press and Radio have already given some prominence of forthcoming visit to Australia including report that Bishop will seek reduction on sentence of convicted Japanese War Criminals. Please point out to Bishop Yashiro importance of refraining from any remarks that may be taken in Australia as focal point for public controversy. He should be under no illusions of delicate nature of situation likely to meet him here and the care which he

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will have to exercise over his actions before arriving and while in
Australia.\textsuperscript{36}

In June 1950, the \textit{Canberra Times} summarised the opinions of various veterans’ organisations in Canberra about Bishop Yashiro’s visit. Although one group pointed out that Japan had been Australia’s ally in World War One and that a man should not be judged solely on the actions of his countrymen, most associations viewed the visit as hypocritical and poorly timed, given that the Manus trials were beginning, and generally protested at the visit.\textsuperscript{37} On the other hand it was reported that BCOF soldiers in Japan held the Bishop in very high regard, even helping to pay for his travel to the Lambeth conference, and that the Bishop himself had been persecuted by the Japanese wartime regime.\textsuperscript{38} The visit passed without major incident, although the Bishop was guarded by Australian police officers at certain times.\textsuperscript{39}

**Reaction in Japan**

In 1949 and 1950, the ‘Reverse Course’ was underway and Japan was moving towards a new role in Asia aligned with the US against Communism. Some Japanese war crimes suspects, however, had only just been released and further

\textsuperscript{36} ‘Bishop Yashiro Memo and Related Coverage’, April/June 1950, NAA, Canberra, A1838, 551834.
\textsuperscript{38} ‘Bishop Yashiro’, \textit{The Advertiser}, 14/6/50, p. 2. For examples of positive and negative reactions to the Bishop’s visit see also the two letters in the article ‘Bishop Yashiro’, \textit{The Sydney Morning Herald}, 8/6/50, p. 2.
\textsuperscript{39} ‘Police Guard Dr Yashiro at Armidale’, \textit{The Sydney Morning Herald}, 14/6/50, p. 4.
Australian trials were still in prospect. At the beginning of January 1950, SCAP had released prisoners from Sugamo who had been arrested at Australia’s request but had faced a long period without trial and were not on the Australian list of suspects for the Manus tribunals. Meanwhile, convicted war criminals were still incarcerated in Manila amongst other places overseas, in the custody of the Philippines, the UK and Australia, and Australia was still holding untried suspects in various places outside Japan who eventually ended up in the Manus trials. Thus, while peace had become the prime goal for Japan, and reform of Japanese institutions had halted under the ‘Reverse Course’, many former soldiers still faced retribution. Meanwhile, SCAP began to develop a parole system at Sugamo Prison around the same time that the Manus Island trials were being initiated, a move which probably reinforced the sense that Australia, in preparing for a whole new set of trials, was a long way behind other countries.\footnote{‘List of Parole and Procedures’, 13/5/50, NAA, Canberra, A1838, 551834.}

In these circumstances, the Manus trials caused a wave of uncertainty in Japan, even though the number of trials was relatively small. The Australian government planned to try around 150 suspects, some of whom remained in Sugamo awaiting transfer to Manus Island, with the agreement of SCAP. There were, however, other suspects still at large and on 28 January 1950 SCAP announced that it had ordered the Japanese government to arrest forty-three new suspects, making it clear that this action was a response to the request of the
Australian government and that the men were to be tried on Manus Island.\textsuperscript{41} This public announcement distanced SCAP both from the decision to arrest the suspects, laid squarely at the feet of the Australian government, and from the process of arresting them, which was to be the responsibility of the Japanese police. In Australia, the press reported that a great new ‘man hunt’ for war criminals was taking place with the backing of General MacArthur.\textsuperscript{42} One newspaper claimed, however, that the Japanese police were refusing to assist in the pursuit of suspects and that many wanted men had gone ‘underground’.\textsuperscript{43} Australian officials also seem initially to have feared that suspects would go into hiding, but the government came to believe that, in reality, few suspects were avoiding apprehension.\textsuperscript{44}

The very public announcement that there would be new arrests and trials must also have contributed to the growing unease and shock amongst the seven million demobilised soldiers in Japan and their families. As a consequence of the uncertainty and anguish over the continued pursuit of war criminals, the Australian Embassy in Tokyo was overwhelmed with petitions and pleas for leniency from Japanese families, individuals and organisations. Petitions often attested to the character of individual prisoners, claiming that the prisoner in question was a good human being and an important member of his community. Some petitions took up the cause of family members who had only recently been

\textsuperscript{42} Ibid.
\textsuperscript{43} ‘AAP War Crimes Hitch’, 21/1/50, NAA, Canberra, A1838, 551834.
\textsuperscript{44} ‘Coalition Cabinet Agendum on Continuation of War Crimes Trials’.
arrested in Japan and sent to Manus Island to await trial. The wife of Nonaka Masaichi wrote that her husband was the only support for her family. He had returned to Japan from the war with no money, then was purged by the Occupation and forced into ‘a miserable line of work’, though the nature of the work is left unexplained. Nonaka Hanako claimed that her husband was gentle and timid and that he had been forced to fight the war. Since the end of the war she had adjusted to life with her husband again.45 This petition highlights the fact that the Manus trials were convened at such a late date, and that new suspects were detached from their communities in Japan a long time after the cessation of hostilities. The petition for the release of Nakaya Morie, signed by over 1,000 members of the Ni-O Village Women’s Society, outlined the impact that removing him from his family would have.46 It was said that Nakaya had a family of six, with only his wife able to provide a small income for them in his absence. They had no property and no other way of acquiring funds. This petition was typical in attesting to the suspect’s good character and stature in his community, while also asserting that his removal from the community would have severe consequences for his dependants.

Such petitions to the Australian government, usually sent through the Embassy in Tokyo, portray the Japanese suspects and convicted criminals in a far different light from the way they were depicted in the Australian press. Though they were seen as evil symbols of militarism in Australia, most Japanese suspects

46 ‘Morie Nakaya Petition’, NAA, Canberra, A1838, 551834.
were ordinary men with families. They were part of a community and, if the petitions from their families and villages are accurate, they exhibited normal levels of humanity and compassion whilst in their home country. This is not to deny that most of these soldiers had committed cruel crimes against POWs and local civilians; there is overwhelming evidence that atrocities were committed. It is clear, however, that the trials were viewed differently in each country. What was seen as a just trial of a suspected war criminal in Australia could easily be perceived in Japan as an exercise in revenge against a community member who had been forced into desperate circumstances. This clash of views was most marked in the context of the Manus trials. Though individual pleas for leniency for family members had been received since the beginning of the trials, organised Japanese action on behalf of BC war criminals did not occur immediately after the surrender.\(^47\) By the time of the final prosecutions, however, the Japanese public was more active on behalf of suspects. Moreover, the Manus trials came after repatriates, including former soldiers and war crimes suspects, had returned to life in Japan, and thus the sense of injustice and dislocation from post-war peace was much stronger.

On behalf of the Nationwide Repatriates Convention, Konishi Kyosuke petitioned the Australian Embassy in February 1950:

> According to a newspaper report, it was, in the month of January this revealed [sic] that Japanese war criminal suspects concerned with your

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country would be arrested. This caused a keen interest among Japanese people. If such things would come to take shape, we cannot help worrying about the fact that, not only Japanese people but the public opinions of whole world would become apt to entertain a doubt on fairness and generosity by your country up to here. We are firmly convinced in that [sic] your country would take lenient steps on this matter, while today in all other Allied powers Japanese war criminals have been sent back to Japan to serve their sentences. By god we hope that newspaper reports were in error.  

It is clear from this letter that the repatriates who took part in the convention had been shaken by the prospect that their partially rebuilt lives could be uprooted yet again. The letter mentions the concepts of both justice and generosity, indicating that repatriated soldiers clearly felt there was something morally wrong with holding trials at such a late date, but also that they wished to beg the Australian government to leave them to get on with their lives. Konishi’s letter also shows that the repatriates recognised Australia’s action on war criminals as separate from that of the US and other Allies.

Questions about Australia’s extension of war crimes proceedings, usually carefully phrased, came from diverse sources. The Australian Embassy in Tokyo

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received a call, for example, from an Archbishop in the Vatican on behalf of petitions sent to him. Apparently the Vatican had been discussing war crimes trials in general and the archbishop felt the need to ask the Australian government to be more selective and lenient in choosing the cases that went to trial. The Archbishop made it clear that he was acting on his own initiative but that the Vatican had raised the issue of war criminals.49

Although policy on war crimes trials was decided at the highest levels of government, it really was an issue that concerned ordinary people. The matter of war criminals was still topical in both Australia and Japan in 1950, which was not the case in many other countries. In the main the Australian people seemed to wish to remain vigilant, whilst the Japanese people, or at least the families of former soldiers, seemed despairing and exhausted in the face of the continuation of Australia’s trial program. Decisions made by the Australian government on further trials directly concerned only a small number of people. Yet the ramifications would in some ways affect millions. As Konishi Kyosuke’s petition shows, although only a few Japanese suspects would be prosecuted on Manus Island, no-one knew who might be arrested and the trials unsettled all of those who had fought overseas. On the other hand, although there must have been suspicion in Australia that not all war criminals had been prosecuted, the extra trials at Manus would prove sufficient to settle the issue, more or less, for thousands of returned

servicemen and their families. The effects of the Manus trials were thus far-reaching.

Despite the dramatic political and diplomatic changes of the late 1940s, plans to continue Australian trials survived, indicating their perceived importance to the Australian people and resilience in the face of the wider goals for the region expressed by the Australian and US governments. The Australian government expected Japan to take part in new regional arrangements but still wanted to deal cautiously with Japan. The government was engaged in discussions with the US about South East Asian security, as Australia pushed for a regional security arrangement, partly to insure against any further threat from Japan. The ongoing salience of war crimes trials in Australian foreign policy underlines the point that the significance of the prosecutions extends beyond the question of whether they were ‘fair’ or not. The continued pursuit of war criminals shows how resilient Australian anger towards Japan was, at both the government and popular level, and how unwilling the government was to abandon wartime concerns.

**The Korean War, the San Francisco Peace Treaty and ANZUS**

The timing of the Manus proceedings was awkward for Australian diplomats and for US officials in Japan. As the prosecutions progressed into 1951, new developments in Japan and Asia began to shape Australia’s foreign policy agenda. Peace with Japan was imminent: Australia’s trials ended on 9 April 1951, just five

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months before the signing of the San Francisco Peace Treaty on 8 September.

Australia also signed the Australia, New Zealand, United States Security Treaty
(ANZUS) on 1 September 1951 and the US signed a separate security treaty with
Japan on 8 September. The time for war crimes trials had passed.

When the Coalition entered office at the beginning of 1950, it faced the
difficult tasks of both continuing to deal with Australia’s most recent enemy in the
Pacific and helping to find a way to protect the Pacific from the potential threat of
Communism. Six months after the new government took office, the onset of the
Korean War made the Communist threat more visible than ever. The war began on
25 June 1950 and ended on 27 July 1953, a period that coincided with Australia’s
resumption of war crimes trials, their conclusion, and then the repatriation
negotiations between Australia and Japan. Communist forces on the side of North
Korea, including the Soviet Union, were ranged against a United Nations coalition
of the US and sixteen other nations including South Korea, Australia and Japan,
though the Japanese personnel were in non-combat roles.\footnote{On the Korean War
generally see William Stueck, \textit{The Korean War: An International History}, Princeton,
New Jersey, Princeton University Press, 1997. For Australia in the Korean War see
Richard Trembath, \textit{A Different Sort of War: Australians in Korea 1950-1953}, Melbourne,
Australian Scholarly Publishing, 2005; Robert O’Neill, \textit{Australia in the Korean War:
1950-1953}, Canberra, Australian War Memorial, 1981.}
The Korean War appeared to signal the start of the conflict between democracy and Communism in
Asia for which US policy had been preparing since at least the beginning of the
Reverse Course in Japan. The war heavily influenced US security policy for the
region in the 1950s, contributing strongly to the decision to sign security treaties with Asian and Pacific nations, including Australia.\textsuperscript{52}

Australian policy on Japan was slow to change, and, as we will see in the next chapter, did not undergo a significant shift until 1954, after the war in Korea had ended. Nonetheless, the Korean War had an impact on the BC war crimes trials. The conflict strengthened the official US conviction that Japan was now an important ally, and concerns about a resurgent Japanese militarism faded even further. The contrast between US and Australian policy thus became very clear in this period. In June 1950, Australia committed troops to the Korean War in order to combat Communism and support the US. Just two months previously, however, the government had commenced a new set of war crimes prosecutions of defendants from a nation that was now an important ally in the new conflict in Asia.

Australia’s political attitude to Japan in the late 1940s and in 1950 was more or less bipartisan, with the foreign policy agenda of the new Coalition government closely aligned to the core goals that the Labor Party had pursued during its time in power.\textsuperscript{53} Percy Spender became the new Minister for External Affairs after the 1949 election and although he was aware that his predecessor had had some success in negotiating with the US over bolstering Pacific security to guard against the possible resurgence of Japan, he also acknowledged that the diplomatic landscape had changed. Spender in fact privately agreed with US

\textsuperscript{52} Stueck, \textit{The Korean War}, pp. 4-5.
assessments that the growing Communist influence in Asia had emerged as a
greater threat than Japanese militarism, especially later in his tenure as the Korean
War began. On the official level, however, US and Australian evaluations of
Japan’s place in Pacific security were now at odds.

The San Francisco Peace Treaty, signed on 8 September 1951, brought the
Occupation of Japan to a close when it took effect on 28 April 1952. Japan and the
US also signed the Security Treaty Between the United States and Japan on the
same day as the San Francisco Peace Treaty. The peace treaty turned out to be
more lenient than Australian officials could have envisaged early in the
Occupation. It included a key provision on war criminals that will be discussed in
the next chapter, but the issue that most vexed the negotiations over the agreement
was a completely separate one: the question of Japanese rearmament. According
to the dominant Western democratic viewpoint, Japan needed to be able to
contribute to its own defence in order to ensure the stability of the Pacific. The
treaty-writers thus chose not to outlaw rearmament, and actually allowed for a
certain degree of rearmament through the creation of the National Police Reserve,
a force that was in practice a military organisation, or at least a police organisation
armed with military hardware including tanks and fighter aircraft. The US

54 Gifford, ‘The Cold War Across Asia’.
55 The treaty was renewed and updated in 1960 as the Treaty of Mutual
Cooperation and Security Between the United States and Japan.
56 Richard Rosecrance, *Australian Diplomacy and Japan, 1945-1951*, Parkville,
57 John W. Dower, *Embracing Defeat: Japan in the Wake of World War Two*,
government envisaged that Japanese rearmament would both help to defend the country against the Communist threat and ease the burden on the US forces which were to remain in Japan after the Occupation under the terms of the security treaty. The 1951-1952 stance was one that conformed with US policy for all its allies, which emphasised that they should do their utmost to contribute to their own defence.  

For the Australian government, Japanese rearmament was the chief sticking-point in the peace treaty. As we have seen, long-standing caution towards Japan initially made it difficult for Australian officials to accept that the rise of Communism was significant enough to alter Japan’s status to that of a close and trusted ally. This stance weakened over time, however. Remnants of older attitudes remained important, but increasingly, the government did come to believe that Communism posed a significant danger in Asia, that the potential threat from Japan had greatly diminished, and that it was in Australia’s interest to cultivate better ties with Asian countries, including Japan. Moreover, given the realities of power politics, the government ultimately had no choice but to ‘carry

out Australian Pacific policies as far as possible in co-operation with the United States. For these reasons, the Australian government eventually agreed to a peace settlement with Japan that it had initially criticised, and which seemed to allow for the much-feared Japanese rearmament.

There was one major safeguard. During the period of heightened tensions in Korea and discussions about the peace treaty, the Australian government successfully negotiated a new treaty with the US government, the Australia, New Zealand and United States Security Treaty. More than anything else, ANZUS was a compromise among US, New Zealand and Australian officials. It was not specific about military commitments, but in general terms it guaranteed Australia’s and New Zealand’s security in the Pacific, a matter of concern for all three post-war governments. ANZUS formally acknowledged that the US would stay involved in Pacific security. The new treaty provided the Australian government with peace of mind about security issues and, in conjunction with the reluctant acceptance that policy for Japan must change, made the Japanese peace settlement far more palatable. Rosecrance has suggested that at the beginning of the Occupation, the Australian government sought ‘direct’ control of its security by maintaining support for a harsh and restrictive peace with Japan. In the end, he contends, Australia gained security ‘indirectly’ through ANZUS, and with the

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signing of the peace treaty in 1951, Japan was included within the Western
democratic fold.63

The international context discussed above developed gradually during the
planning for the Manus trials and the operation of the tribunals. Throughout the
whole period, however, the diplomatic climate always appeared to be shifting
towards better relations between Japan and the former wartime Allies. Thus it was
necessary to complete the Manus prosecutions in a timely manner.

The New Prosecutions

In all, twenty-six trials were held on Manus, making it the second-largest
Australian venue after Rabaul in terms of cases heard. Like the earlier Australian
trials, the Manus prosecutions covered a diverse set of crimes and produced a wide
range of verdicts. One hundred and thirteen defendants were tried, with sixty-nine
found guilty of one or more charges and five executed.64 As will be seen later in
this chapter, the number of death sentences handed down in the courts was higher,
but a significant number were commuted. The trial process itself did not change
greatly between the first Australian prosecutions in November 1945 and those on
Manus Island, and the Manus trials largely exhibit the same flaws and limitations
as their early counterparts. The rules of evidence remained the same, Japanese
legal personnel were still under severe time pressure and the JAG was critical of a

64 For the complete list of the Manus trials see ‘Japanese War Criminals Charged
Under the War Crimes Act 1945 List 7 – Manus Island Trials’, 17/7/51, NAA,
Canberra, A1838, 551834.
number of the trials. There were some differences from the previous trials, however. As mentioned earlier, the Manus Island trials mainly focused on crimes against Australians, whereas in previous cases a number of defendants had been prosecuted for crimes against local civilians in Japanese-occupied areas. Another change was that as the Manus trials wore on, the new Coalition government became increasingly involved in the process of confirming sentences, whereas in the past, sentences had been confirmed solely by a military ‘confirming officer’.

The Manus prosecutions reaffirmed Australia’s image as a nation that was tough on Japanese militarism and active in shaping the future of Japan, an image that both the Labor and the Coalition governments promoted. The new tribunals were designed to achieve the same political outcome as their earlier counterparts: a relatively efficient pursuit of Japanese militarism that satisfied political and electoral sentiment in Australia. After Manus, as we will see in the next chapter, the Australian government remained wary of the Japanese but increasingly felt the need to soften its stance on war criminals, either due to diplomatic pressure from Japan or to the clearer recognition that Japan had become a political ally of democratic nations. The Manus trials, in fact, are one of the last issues through which the Australian government pursued its uncompromising stance on Japanese militarism.

There was a wealth of legal expertise available to the Manus trials. Justice Kenneth Townley from Queensland was appointed as president of the court, while W. B. Simpson remained the Judge Advocate General in Australia. The quality of
defence for the Japanese on trial was arguably higher at Manus than at any other Australian venue. For a start, the defence personnel were all Japanese, an advantage in overcoming the language barrier, at least between lawyer and defendant, that had been an obstacle at other trial venues, where few Japanese defence personnel had been used. Also, defence personnel appear to have had a good knowledge of the rules and customs by which the court operated, judging from the trial records. Correspondence between Townley and the government indicates that by this point the experience of Australian personnel had also led to a better understanding on their part of the trial process. For example, Townley, anticipating that the trials might take far longer to complete than was first thought, wrote to the government with a list of recommendations for speeding them up. His suggestions were mainly about procedure; he recommended, for instance, that the sequence of trials should be arranged so that Japanese defence personnel would not have to appear in consecutive trials, a situation that in the past had often led to requests for an adjournment to allow defence personnel to prepare for a case.  

Despite their expertise, the Japanese defence teams still faced significant challenges. Australian authorities were under pressure to complete the trials promptly. Twenty-six trials in twelve months seems a fairly moderate burden on trial personnel: it is comparable to the schedule at Singapore and Hong Kong, though far less efficient than the progress made at Morotai, Labuan and Rabaul. There was a sense of haste at Manus, however, and the Japanese defence teams

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65 Townley to Army HQ, 26/6/50, NAA, Melbourne, MP742/1, 391800.
clearly began to feel the pressure. Time constraints are evident in the trial records, on both sides of the courtroom.

The Ito Hiroshi trial provides an example of the severe pressure on Japanese defence lawyers. Between 18 January and 8 March 1951, Ito and Fifteen Others were prosecuted for executing prisoners in February 1942 near Babaoe in the Netherlands Indies. On 18 January, the first morning of the trial, the defence counsel, Sakai Yusuke, asked for an adjournment:

[I]…wish to ask the court for an adjournment of this case after the case for the prosecution until 0830 hours January 31st because I have not had sufficient time to prepare for this case on [sic] the following reasons: that since 8th August 1950 for about 160 days I have been busy with other cases and had no time to see Ito and the 15 others of this case.66

Sakai then outlined the other cases on which he had worked, including some with large numbers of accused. He mentioned that he had become ill and had not had the opportunity to see Ito and the others until the previous day. The courts appear to have acknowledged the time pressures on the Japanese lawyers, and granted short adjournments where possible. In this instance, an adjournment was granted after the case for the prosecution had been heard, on 19 January, with the trial resuming on 31 January. For a lawyer under the strain that Sakai was experiencing, a short adjournment would have been welcome, but would hardly have been sufficient for him to operate at his best in court.

While using Japanese defence personnel removed the language barrier between defendants and lawyers, language issues still presented difficulties, as they had done throughout the trials. Often, the defence lawyers requested clarification or asked for the prosecution to speak more slowly as they had a hard time understanding the Australian lawyers. It is obvious from the trial records that accused Japanese soldiers as well as the lawyers had great difficulty in understanding the courtroom proceedings on occasion. Time pressure also meant that large trials were again a feature, including for crimes of a very serious nature, and the Manus tribunals attracted the same criticisms from the Judge Advocate General on this point as had earlier proceedings. Large trials contributed to legal confusion, and right up until the end of the Manus hearings, the JAG reviews reveal dissatisfaction about this. It appears that Australian authorities either could not come up with a better way to try the numerous suspects in a timely manner, or did not agree with the JAG’s previous criticisms of large trials. After the trial of Ito Hiroshi and Fifteen Others the JAG wrote:

I have previously had cause to comment unfavourably on the practice of trying a large number of Japanese together. This is another case where

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67 For example, Ito Hiroshi Case for the Prosecution, ‘Trial Proceedings – Presenting Evidence to the Court Day One’, 18/1/51, NAA, Canberra, A471, 720988.
Justice could be more readily have been done [sic] had the present accused been tried individually or in small numbers.68

The JAG saw fit to deal with this matter first and foremost in his report on the trial, even before the key factual and procedural matters, though he did not expand further on the consequences that the large number of accused may have had.

In the records of this case the confusion highlighted by the JAG is immediately clear.69 The evidence of the sixteen defendants appears contradictory at times. Some evidence was judged by the court as unlikely to be true when weighed against other evidence from similarly credentialled witnesses or defendants, but such assessments do not seem to rely on clear evaluation of each piece of evidence, or at least there appears to be insufficient evaluation of the evidence in the trial records at some points. There were also complex and confusing procedural issues. One particularly confusing aspect of the defence was the legal issue of duplicity.70 Duplicity refers to a situation in which a defendant is accused of committing two different crimes under the one charge. A defendant can be charged with multiple offences, but normally, each offence should constitute only one count. If multiple offences were allowed under the one charge not only would it be confusing for the court, but it would also be very hard for the court to

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assess guilt for the separate crimes involved, and to sentence the defendant accordingly. In this case, the defence alleged that multiple offences were contained in just two counts. The transcript in the trial records, which contains many pages of evidence presented to the court, covers only briefly the allegation that the trial was ‘bad’ because of duplicity. The Japanese lawyer appeared to struggle to make his point to the court at first, but eventually when it was clear that the lawyer was alleging duplicity, the court briefly consulted the prosecution and after an adjournment of two hours, decided that the case was not ‘bad’ because of duplicity, without elaborating further to the Japanese lawyer. Overall the case record is lengthy and confusing, and lacks detail and clarification at points where they appear very necessary.

Given the time constraints it seems that the only way to avoid large cases such as Ito and Fifteen Others would have been to release some of the prisoners and cancel trials. Such a course of action was unlikely to be palatable to Australian officials. Cramming as many defendants and as much evidence as possible into each trial, however, brought serious consequences. The results were highlighted best in the JAG’s review of the trial of Rear Admiral Tanaka Kikumatsu and Fourteen Others of the Imperial Japanese Navy, one of the last of the BC trials. The defendants were charged with murdering four Australian prisoners of war at Surabaya in Java in April 1945. In all, one defendant was sentenced to death and


had that sentence confirmed, one had a death sentence commuted, one received seven years, commuted to five, and two received five years, commuted to three. The other ten to face trial were found not guilty. The JAG commented that the volume of information presented to the court in these large trials could be overwhelming.

In my opinion to try all of these accused at one time was most unsatisfactory. The transcript exceeds 1000 pages and the exhibits number 193 and approximate 1000 pages. The evidence was most voluminous therefore and is most contradictory and confusing. I have found it very difficult to follow the evidence and it seems to me the court would have been in an equally difficult position.73

Even without the huge volume of evidence it would have been a difficult case. Tanaka and Captain Shinohara Tameo were both sentenced to death, but Tanaka’s sentence was commuted, though Shinohara’s was not. Shinohara, who was Tanaka’s staff officer, had admitted to drafting a written order for a prisoner to be executed, but he also claimed that he had done so because he received an order to do so from higher up, presumably from Tanaka. It is not clear if this written order was presented to the court. Tanaka admitted in evidence that he had given orders to a junior officer, Lt Yoshimoto Katsuki, who was also on trial in this case, for Australians to be executed. Tanaka maintained, however, that he

himself had received orders in writing to execute prisoners from a higher-ranking officer, Vice-Admiral Shibata Yaichiro, who was found not guilty in this same trial. In this case, the JAG apparently accepted Tanaka’s claim that he acted under orders, even though the only man senior to him in the trial was found not guilty, and it appears that the JAG’s position may have deterred the confirming officer from approving a death sentence for Tanaka. The court at Manus had clearly become overwhelmed by the volume of evidence during this large trial and it seems obvious that without the committed efforts of the JAG, the final sentencing could have been much harsher. On the other hand, the JAG also seemed uncertain of the events examined in the trial. The final result was that the senior commander, Shibata, was found not guilty but probably should not have been, the second highest ranking defendant, Tanaka, had his death sentence commuted, the lieutenant in charge of the execution party, Yoshimoto, had his sentence commuted to five years, but the middle-ranking defendant, Shinohara, received no leniency and was executed. The case against Shinohara was strong and he appears at times to have been proactive in organising the executions, but there was evidence that all four officers mentioned were implicated in the executions so it is not clear why Shinohara was the one officer that did not receive leniency.

In many of the larger trials, not only were there multiple defendants, but they were being tried for different levels of involvement in each crime. A court not only had to assess who was involved in a crime but also what each of the accused had done. Very different sentences were often necessary for different defendants. There were large amounts of evidence to sort through and, at times, something that appears close to utter confusion in the court. In the JAG’s opinion the Tanaka and Others case again provided an example. In this instance the JAG unambiguously outlined what he felt was one consequence of the confusion. It is the clearest example at Manus that the JAG gives of a problem resulting from trying many Japanese at once.

I might quote the case of Kumero Nakayama [in the Tanaka and Others trial], a former Seaman who was indicted on the first charge of murder. He was found not guilty, yet on page 327 he admitted that he had decapitated a Caucasian prisoner of war.

The JAG then quotes from the evidence showing the Japanese soldier clearly stating, in evidence tendered to the court, that he had indeed beheaded a white prisoner of war. The JAG makes no further comment on the issue, but moves on to deal with the other facts of the case.76 The ‘not guilty’ verdict may have been an oversight by the court, but if not, there was no explanation of the court’s reasoning sufficient to convince the JAG. This trial included a great deal of what the JAG referred to as contradictory evidence, which the court did attempt to assess. Often,

for example, discrepancies in the evidence over the number of victims of a crime or the date and time of the events led to lengthy attempts at clarification.\textsuperscript{77}

The Tanaka case provides further evidence of the arbitrary nature of the trials on the individual level. The JAG himself recognised the limitations to the justice dispensed in this case: the trial was just for some and unjust for others, including, presumably, the defendant who was acquitted despite confessing to the crime. The key accused in the case were sentenced to prison terms. Some lower-ranking Japanese escaped punishment and some higher-ranking defendants received moderate sentences, while an officer of middle rank, Captain Shinohara, was hanged.\textsuperscript{78}

At Manus, sentencing and even verdicts in cases that included the defence of Superior Orders were thus inconsistent, as they had been in earlier hearings. Apart from the Tanaka and Others case, the Manus Island trial records detail one other case where the defence of Superior Orders appears to have persuaded authorities to mitigate a sentence. In the trial of Lt Col. Sumizu Junichiro and Others, one of the defendants, Captain Kagiyama Kaneki, admitted to receiving an instruction to execute prisoners of war and to carrying out the orders in July-August 1945 on Ambon Island, part of the Maluku Islands in the Netherlands.

\textsuperscript{78} Australian Military Forces, ‘Record of Military Court- Front Pg. and Appendix’, 14/2/51, NAA, Canberra, A471, 510472.
Indies. In this case, the defendants went to great lengths to point out that they had opposed the orders. Kagiyama claimed that he had repeatedly campaigned for the prisoners not to be executed as he realised that the orders were not legal, and apparently these claims could be supported, though it is not entirely clear how. The JAG recommended that death sentences not be imposed. The differences among trials were often very slight; although trial records do not specify why one sentence was confirmed and another was not, it seems that in this case Kagiyama’s proven representations to his superior officer on behalf of the prisoners saved him, while others claiming Superior Orders in other trials were not deemed to have done enough on behalf of the victims. The accused were from all ranks of the Japanese military, but this consideration would seem to favour soldiers of higher rank, with experience in dealing with senior officers and readier access to those officers.

The Manus trials were diverse, and not always as complex as in the above cases. Some prosecutions were fairly straightforward. In the trial of Tsuaki Takahiko and Two Others, there is little doubt that Tsuaki was guilty and deserved a harsh sentence. Tsuaki had been a sailor on a minesweeper, that is, a small naval vessel usually confined to coastal operations, that was sunk on 2 February 1942 by an Allied mine in Ambon Bay, an area of Ambon Island. Although many of his

79 ‘Record of Military Court – Lt Col. Sumizu Junichiro and Others’, 1/9/50, NAA, Canberra, A471, 721022.
colleagues died in the incident, Tsuaki survived. He later took part in the execution of surrendered Australian soldiers near Laha airfield on Ambon on or around 14 February 1942, and for this he was sentenced to death and hanged.\textsuperscript{82}

The transcript of his trial reveals that some Japanese military personnel had considered executions to be an intriguing novelty. When Tsuaki asked to ‘try out’ executing a prisoner, he was told by a superior that ‘anyone that wants to try it can do so’.\textsuperscript{83} Apart from novelty, the motivation for Tsuaki appears to have been revenge. The transcripts describe Japanese soldiers calling the names of their fallen comrades during the executions. In this case there also appears to have been a group of interested onlookers.\textsuperscript{84} The incident is confronting in that it portrays the bold and blatant use by some soldiers of unlawful executions as a way of gaining revenge for the deaths of friends, and demonstrates that for some, executions were fascinating. The Tsuaki Takahiko case seems to be an example of a just and necessary war crimes trial but also a clearly functioning one, free of confusion.

There is no doubt that the execution of surrendered Australian prisoners without trial deserved punishment, and that the guilty verdict in this case was justified. The events of the Tsuaki case appear to be clear and indeed brutal. The case is even more compelling given that Tsuaki remained brazen and unrepentant throughout.

\textsuperscript{82} Australian Military Forces, ‘Record of Military Court – Trial of Tsuaki Takahiko and Two Others’, 19/3/51, NAA, Canberra, A471 1348852.


his trial. Tsuaki’s case was also short and easy to follow. Hence, the evidence against him was clear to the court.

As with the earlier trials, the Manus cases continued to catalogue not only Japanese military conduct but also the strained racial dynamics among the soldiers of the Pacific War. The tribunals show the disastrous consequences of each side’s contempt for the enemy. As Dower suggests, conditions in the Pacific War were out of the ordinary: ‘a race war’ developed and the fighting was particularly brutal.\textsuperscript{85} The Manus trials, like the earlier prosecutions, showed how this ferocious clash of cultures and of mentally strained men had played out at times in prison camps around South East Asia. When Tsuaki’s case is placed next to a trial such as Katayama Hideo’s, described in Chapter Two, it is easy to see the diversity of the alleged war criminals and of the situations in which they found themselves. Tsuaki was vicious and remained unrepentant, while Katayama and the other defendants in his trial appear to have been caught in a situation beyond their practical control. The BC trials have been considered a catalogue of Japanese brutality but it should be acknowledged that Japanese misdeeds took many forms, from brazen and unjustified violence to unwilling participation in illegal acts.

One of the more unusual crimes tried at Manus was that of Surgeon-Captain Nakamura Hirosato and Others, in Soerabaja (now Surabaya) in the Netherlands Indies, in which two men were sentenced to three and four years in prison respectively for killing fifteen natives on Lombok Island around April

The Indonesians had been condemned to death by a Japanese military tribunal, a verdict that the defence and the prosecution during the war crimes trial agreed was legitimate, although not all the details of the Japanese tribunal are clear in the BC court record. After the local inhabitants were condemned, Nakamura began inoculating them with experimental toxins. Nakamura was found guilty at Manus of unlawful killing and sentenced to four years, imprisonment. He was unusually creative in his petitions against the verdict, alleging first that ‘unlawful killing’ was not covered by the War Crimes Act. According to the JAG, however, this claim was unfounded. Nakamura also petitioned that his case was selective, in that his crimes were not committed against Australian soldiers and that in February 1950, Australian authorities had stated that only crimes against Australians would now be pursued. He further claimed that the charge of unlawful killing was added to the prosecution at short notice and that the defence had not had sufficient time to prepare for it. The JAG rejected these points in their entirety, and gave his view that the guilty verdict for unlawful killing was legal, judging that although the Australian government had wished to pursue only crimes against Australians, the courts still had jurisdiction in this case.

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87 Trial Records of Nakamura Hirosato and Others, ‘Case for Prosecution’, 20/3/51, NAA, Canberra, A471, 720962.
The Australian press naturally covered the Manus prosecutions, though not in as great detail as the initial trials. *The Sydney Morning Herald* commented on 1 June 1951 after the last of the trials:

> During the hearing of the 26 cases two facts stood out in bold relief. One was the inflexible discipline of the Japanese Military code. The other was the cool courage of the young Australian soldiers and airmen faced with execution.\(^90\)

The references to fanatical behaviour amongst the Japanese soldiers and to magnificent character amongst Australian soldiers recall the reporting of earlier years.

**The End of the Manus Trials**

The Manus Island trials ended in April 1951, with fourteen death sentences (covering thirteen individuals) handed down by the courts and awaiting confirmation.\(^91\) Immediately, representations to the highest levels of politics in Australia were made from Japan, asking for the death sentences to be commuted. Asai Kenkyo, a Buddhist priest and part of the Japanese defence team on Manus, wrote the following to Prime Minister Menzies on 9 April 1951.

> Your honour, the trials of Japanese war criminals by your country have finished today, and all the crimes have been brought to light to be punished


\(^91\) Minister For Army Josiah Francis, ‘Memo for Cabinet Outlining Death Sentences at Manus’, 3/5/51, NAA, Canberra, MP742/1, 393108.
and a warning has been given to the world so that no war crimes can be committed again. The aim of the military court has been fully attained.

Asai made further appeal to the benevolence of the prime minister and the Australian people.

On this memorable day of the close of the military court on Manus Island, I humbly petition for the mitigation of the death sentences of these poor persons, which I eagerly wish, would be accorded by your Honour and the people of your country who have good understanding and benevolence and lay the love of god to the heart.  

From Asai’s letter, it is clear that the Japanese defence counsel acknowledged the trials’ grander goals, or at least recognised their importance in the Australian government’s justification of the prosecutions. Asai not only appealed for benevolence, but also on the grounds of logic: the aim of the Australian government to make an example of Japanese militarism had been achieved. Asai’s petition was forwarded to and considered by Cabinet, which then rejected the call for commutation of the death sentences.

Overall, the Coalition government took a more hands-on approach to the trials than had the Labor government when it was in power. The change had come about after the trial of one of the first defendants at Manus, Lt General Nishimura Takuma, who was found guilty of illegally ordering the execution of a number of

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93 Secretary to Cabinet, ‘Circular Informing Cabinet Members that the Decision to Not Uphold the Petitions was Made’, 28/5/51, NAA, Canberra, A4940, 1337410.
Allied soldiers in Parit Sulong, Malaya, on 22 January 1942. Nishimura petitioned against the sentence, but his death sentence was upheld by the confirming officer. In his case, however, the procedure for ultimately confirming the death sentence was unusual. Cabinet became involved in the process, for reasons that are not totally clear. This was a new step entirely, as Cabinet had not previously interfered with the confirming officer’s role. Nishimura was a very senior officer and Cabinet sought the opinion of a number of legal experts, aside from the JAG, before approving the confirmation of the death sentence. From this point on, Cabinet was more heavily involved; the final death sentences at Manus needed Cabinet approval before they were carried out. The Coalition government had accused Labor of handling the trials poorly, and after taking office may have been attempting to ensure that proceedings ran smoothly in adding another layer of political interference to the process. There must also have been a recognition, however, that these particular trials were occurring long after other governments had concluded theirs, and therefore needed careful handling.

In the end, the sentences of eight of the thirteen criminals condemned to death were commuted to life imprisonment or even lesser terms, and only five prisoners were executed at Manus. Five facing death had their sentences commuted in one single case, that of Ito and Fifteen Others, described above. Government interference in the confirmation of sentences invites speculation that

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94 ‘Record of Military Court – Nishimura Takuma and Nonaka Shoichi’, 22/6/50, NAA, Canberra, A471, 726998.  
the decision to show leniency was politically motivated. Official records show, however, that Cabinet was initially prepared to approve the confirmation of death sentences, pending the full review of cases by the JAG.96 The JAG did advise, eventually, that a number of death sentences should be commuted and the confirming authority, technically still Adjutant-General Anderson, but with Cabinet also heavily involved in the process, followed the JAG’s advice. It is unlikely that any petitions had a role in the commuting of the death sentences, given the initial stance of the Cabinet and the general refusal of anyone involved with the prosecutions to be persuaded by the petitions for clemency from Japan or elsewhere.97

The retrospective view of the Manus Island trials is significantly altered by the commutation of nine death sentences to prison terms. Had twenty-six cases produced fourteen confirmed death sentences, so long after the war had ended and so near the peace treaty, the trials might have been considered heavy-handed. When the JAG commented on the complex nature of the Manus trials and made recommendations, however, Anderson and the Cabinet appear to have listened. The inference is that the JAG’s recommendation is the factor that saved the convicted criminals’ lives. The JAG’s influence in the earlier trials was only sporadic, though perhaps the comparatively small sample of the Manus trials distorts the impression. On the other hand, Cabinet’s deliberations were much

96 Secretary to Cabinet, ‘Note on Cabinet Submission 1’, 28/5/51, NAA, Canberra, A4940, 1337410.
more transparent than Sturdee’s had been as confirming officer and head of the army for the majority of the trials; Sturdee was never, as far as can be seen from official records, required to explain his decisions, whereas Cabinet was prepared to make a press statement on at least part of its reasoning for commuting certain sentences.\footnote{98 For example, ‘Statement by Prime Minister’, 1/6/51, NAA, Canberra, A471, 726998.} Perhaps as the context of the trials had altered and the process of confirming death sentences had expanded to include political figures with a strong grasp of this changing context, it was not as easy to pursue Japanese militarism as unmercifully as in the past. The question of why so many death sentences needed to be altered, however, has no clear answer. It would seem better for the courts to have delivered verdicts in the first place that were more in line with the reasonable sentencing suggestions of the JAG. On the other hand, the amendments suggested by the JAG and approved by the confirming authorities again reflect the confusion in the courtrooms on Manus that had made sentencing difficult in the first place.

The Menzies government appeared more willing to associate itself closely with the sentencing of Japanese war criminals than the previous government had been. The political climate had certainly changed from the early years of the trials, and more explanation and government involvement in the legal process was perhaps required. On 1 June 1951, the national press reported that Menzies had confirmed the commutation of the death sentences of seven Japanese men, and that the government had on the other hand confirmed the death sentences of five
prisoners, four on the previous day and one on the day of the announcement.\textsuperscript{99} The previous Labor government had never been so closely associated with the death sentences, remaining content for the responsibility to fall to Lt General Sturdee, as confirming officer in the majority of cases. Presumably, though, Labor could have chosen to become involved in the confirmation process if the government had wished to, as the legal framework for Manus was the same as it had been for the previous trials.

The five death sentences remain a grim finish to the Australian BC trial proceedings. Though the government did commute the sentences in some cases, the decision to do so appears to have been based on legal advice rather than goodwill or political pressure. The US executed its last seven prisoners in Japan in early 1950, though they had been sentenced in 1948. Thus the Australian government in fact executed two fewer Japanese prisoners in the 1950s than the US did. The key difference is that by the time the Manus trials finished, the US had not sentenced a Japanese war criminal to death for three years.\textsuperscript{100} There were also fourteen executions in Manila on 19 January 1951, however, so Australia was not alone in executing prisoners at such a late date.\textsuperscript{101} The Manus trials revealed a

\textsuperscript{100} GHQ SCAP Press Release, ‘Seven War Criminals Executed’, 7/4/50, NAA, Canberra, A1838, 551834.  
well functioning relationship between the JAG and the confirming authorities and the result of the trials, in the face of a changing political landscape in Asia, seems to have satisfied Australian calls for justice for war criminals. No evidence appears of widespread public disapproval when the trials concluded. Nevertheless, the 1951 death sentences constitute a marker of the endurance of the Australian prosecution program.

The trials ended in April 1951 but the fate of the surviving Japanese war criminals was still years from being finalised. Elsewhere, dealings with war criminals had moved rapidly away from convictions and executions. The parole system at Sugamo was functioning fully in 1951. After the end of the Australian trials, calls from Japan for repatriation of war criminals intensified. In amongst the official documents discussing the decision not to commute death sentences at Manus in response to petitions from Japan are records showing that the Australian government was simultaneously considering US policy on parole and other forms of early release for war criminals in the post-treaty period. The Australian government opposed any suggestion that the Japanese government should be able to participate in the decision to grant any future form of leniency to war criminals, preferring to retain full control over prisoners’ futures.\(^{102}\) and after the trials, the official Australian focus quickly shifted from convicting war criminals to working

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\(^{102}\) Secretary to Cabinet, ‘Note on Cabinet Submission 1’, 28/5/51, NAA, Canberra, MP742/1, 393108.
out how to keep them in prison. In the next chapter I discuss the repatriation and eventual release of Japanese war criminals and the Australian government’s reluctant acceptance that its approach to diplomacy with Japan needed to move on from the war and to recognise Japan’s status as an ally of Western democracies in Asia.
CHAPTER FIVE

THE POSTSCRIPT TO THE TRIALS: REPATRIATION AND RELEASE OF WAR CRIMINALS

The war crimes trials on Manus Island were the final act of the Australian military courts in the aftermath of the Pacific War, but there was a lengthy and significant postscript. The government still had to decide what to do with the prisoners in its custody, and the process of dealing with the convicted criminals lasted for six more years. During the final months of the Manus trials, Australian officials began to discuss creating a parole process for those convicted.¹ After the proceedings ended in April 1951, however, 206 prisoners remained in Australian custody on Manus Island and fifty in Sugamo prison. As discussed in Chapter Three, the fifty in Sugamo had been convicted in courts in Singapore and Hong Kong and repatriated to Japan along with those convicted by the UK, while the prisoners on Manus had been transferred there from other Australian trial venues, or taken directly to Manus from Japan for the court proceedings.² In Japan, pressure for repatriation of those war criminals who remained overseas had been growing since before the Australian trials ended, increasing around the time the San Francisco Peace Treaty came into effect in April 1952. Repatriation of war criminals from other Allied nations had begun well before this point, in some cases years earlier. By mid-1953, only Australia and the Philippines still held convicted war criminals.

¹ See for example Secretary to Cabinet, ‘Note on Cabinet Submission No. 1 (Death Sentences Imposed by the Court at Manus Island)’, 28/5/51, National Archives of Australia (hereafter NAA), Canberra, Series No. A4940, 1337410.
outside Japan. The issue of whether and when to repatriate the Manus prisoners to serve out their sentences in Japan had to be resolved.

The Dutch in Indonesia, and the Nationalist Chinese, had ceased trials and repatriated all convicted war criminals to Sugamo Prison in Tokyo by the end of 1949; the Nationalist Chinese then unconditionally released all their prisoners in August 1952. During 1951, at the request of officials in Borneo, Malaya, Singapore and Hong Kong, the UK had transferred all prisoners under British jurisdiction to Sugamo.³ The French government repatriated prisoners from French Indo-China to Sugamo on 3 June 1950. Nearly all of them were then released by commutation of sentence on 1 June 1953,⁴ and the last few were freed in April 1954. The US already held its prisoners in Sugamo as the great majority had been tried in Yokohama, and those convicted overseas had been transferred to Tokyo. The Philippines, which came closest to matching the persistence of the Australian stance on war criminals, announced the repatriation of all surviving convicted war criminals from Manila on 27 June 1953; the prisoners arrived in Yokohama on 22 July. Australia, with its 200 or so prisoners on Manus, was thereafter the only country holding Japanese war criminals outside Japan. By the end of 1953, all prisoners convicted by the Philippines had been unconditionally released from Sugamo.⁵

³ Ibid.
The Australian government showed close interest in the actions of other countries on repatriation and release of war criminals, also analysing how relations between Australia and Japan might be affected by Australia’s action or lack of action on repatriation. The willingness to take notice of such broader perspectives indicates an acknowledgement that Japan’s position in regional and international diplomacy had changed after the peace treaty. To take account of regional and global affairs in its deliberations may seem like a small concession, but this was the same government that only two years earlier had purposefully gone its own way when it decided to continue prosecutions on Manus Island. Discussions on potential repatriation, then, suggest a significant change in thinking about war criminals, seemingly supporting Renouf’s claim that the treaty created the opportunity for a new Australian policy on Japan.6 The negotiations over repatriating war criminals also demonstrate, however, that the peace treaty did not eliminate entrenched official Australian attitudes to Japan.

In this chapter I examine the negotiations over the repatriation and eventual release of Japanese war criminals convicted by Australian courts.7 Discussions began in earnest in 1952, and prisoners were repatriated from Manus in August 1953. The last of them were released from Sugamo in June 1957. During these years, Australia’s official position on Japan changed dramatically. The chapter confirms that the Australian government, though conscious of other governments’ policies and not wanting to be out of step

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7 An earlier version of part of this material was published as Dean Aszkiewicz, ‘Repatriation and the Limits of Resolve: Japanese War Criminals in Australian Custody’, *Japanese Studies*, Vol. 31, Issue 2, September 2011, pp. 211-228.
with its allies in a general sense, still desired to direct its own policy on war criminals, rather than simply following the US, UK, or any other nation. The repatriation of convicted war criminals was a complex issue involving inter-departmental discussions within the government, contact with foreign governments and considerable public pressure from Japan and within Australia. There were still ill-feelings towards the Japanese in Australia through the early years of the 1950s, and the government remained cautious towards Japan during the repatriation negotiations. After 1954, however, the government increasingly recognised that Japan had become an ally against Communism and that this implied a new bilateral relationship. Relations steadily improved and by 1956 Australia’s tough stance on war criminals had fully given way to efforts to encourage rapprochement with Japan. In fact, the balance in relations had changed so much that by 1957 Japan was showing confidence in its dealings with the Australian government, and appears even to have had the upper hand at times in negotiations on war criminals.

The chapter also discusses the grass-roots political organisations in Japan and Australia that were active on issues relating to war criminals in the early 1950s. A nationwide petition movement arose in Japan that pressured both the Japanese government and other governments to return war criminals to Japan and then to release them. This movement demanded that the Japanese government make representations to the Australian government for the repatriation of prisoners. Meanwhile, in Australia, veterans’ organisations and other grass-roots bodies sent letters to the government and press calling for the

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8 This is the argument of W. Macmahon Ball’s ‘Japan, Enemy or Ally?’, Melbourne, Cassell, 1948, discussed earlier in this thesis. Press reports about the book include The West Australian, 31/7/48, p. 17; ‘Japan - A “U.S. Ally”’, The Courier-Mail (Brisbane), 16/8/54, p. 5.
maintenance of a firm stance on war criminals. Despite the fact that they had won the war, throughout the trials the Australian people saw themselves very much as victims. By 1952, protection of the dignity and memory of soldiers who had fought in the Pacific War was already a strong motivation for veterans’ groups. Although their primary concern was the present and future wellbeing of veterans, few issues seem to have ignited their reaction as much as possible leniency towards Japan. Issues relating to war criminals, then, were a lively part of grass-roots democracy in both Australia and Japan, and accordingly, the Australian government faced a significant task in balancing domestic opinion with diplomatic pressure where repatriation and release were concerned.

English-language literature on the repatriation and release of war criminals is even more scarce than material on the trials themselves. Piccigallo’s key work on the BC trials does not mention repatriation at all. By the same token, most of the work on Australian relations with Japan in the early 1950s focuses on the San Francisco Peace Treaty and the negotiations over ANZUS, without reference to repatriation of war criminals as a diplomatic issue. New research on repatriation of war criminals has begun to appear only very recently. My chapter thus makes a significant contribution to

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the writings on Australian policy on Japanese war criminals and on foreign policy in the 1950s.

**The Legal Framework for Repatriation**

The San Francisco Peace Treaty dealt specifically with war criminals in Article 11, which stipulated that decisions on the fate of convicted criminals remained the prerogative of the Allied governments that had prosecuted them, even after full sovereignty returned to Japan. Article 11 stated:

> Japan accepts the judgments of the International Military Tribunal for the Far East [the Class A trials] and of other Allied War Crimes Courts both within and outside Japan, and will carry out the sentences imposed thereby upon Japanese nationals imprisoned in Japan. The power to grant clemency, to reduce sentences and to parole with respect to such prisoners may not be exercised except on the decision of the Government or Governments which imposed the sentence in each instance, and on recommendation of Japan. In the case of persons sentenced by the International Military Tribunal for the Far East, such power may not be exercised except on the decision of a majority of the Governments represented on the Tribunal, and on the recommendation of Japan.\(^\text{10}\)

Article 11 did not mention repatriation. It did, however, provide a general framework for returning war criminals who remained overseas to Japan, because it guaranteed the Allied government concerned that the convicted

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criminals would stay under their control rather than being immediately released by the Japanese authorities.

On 28 April 1952, the day the peace treaty came into effect, the Japanese government also promulgated Law No. 103, which stated in Article 1:

The purpose of this law is properly to carry out the sentences rendered by the International Military Tribunal for the Far East and other Allied War Crimes Courts and to grant clemency, to reduce sentences and to parole with respect to persons upon whom sentences were imposed, in accordance with the provisions of Article 11.\textsuperscript{11}

The law was designed to manage prisoners’ incarceration and parole, to reward good behaviour through managing the remission system and to protect prisoners’ health by allowing for temporary release if medical attention were needed. As the Australian Cabinet was informed in September 1952, clemency for the fifty war criminals convicted by Australia and already held in Sugamo Prison was under Australian control according to Article 11, but Japanese law also applied, specifically Law No. 103. This meant that the conditions of imprisonment and supervision of parole were governed by Japanese law, but the Japanese authorities could not release the prisoners convicted by Australia without Australian government consent.\textsuperscript{12} Article 11 took precedence over the Japanese law and protected the rights of the convicting nation.


\textsuperscript{12} ‘Cabinet Agendum No. 347 – Final Draft’.
Both Article 11 and Law No. 103 dealt with forms of justice that were notionally administrative, such as parole and remission of sentence, and clemency, which is usually regarded as a form of discretionary justice and as a political exercise.\textsuperscript{13} When it came to BC war criminals, however, there was little difference in practice between administrative and discretionary justice. As will be discussed later, for all the convicting governments the release of war criminals by whatever means – parole, general amnesty or remission of sentence - was a political issue and the policies they put in place to manage sentences were as much acts of discretionary justice as they were administrative measures. Political influence was more obvious in some cases than in others. The US, UK and to a lesser extent the Australian government wanted to ensure that the reduction of sentences appeared to be primarily a legal and administrative matter rather than a political one, but most of the decisions they made on war criminals were actually responses to diplomatic and political considerations. For example, both Australian and US parole and remission guidelines set out formulas for the ‘automatic’ reduction of sentences for war criminals after they had served a certain percentage of their time. These guidelines were overridden, however, by the provisions of Article 11 which prevented any prisoner from being released without the specific consent of the convicting authority, and on many occasions a prisoner who became ‘eligible’ for parole failed to gain immediate release. Thus, the supposedly ‘administrative’ measure of reducing sentences after a certain

period of incarceration had a significant discretionary component. When the US and Australian governments eventually decided to speed up the release of war criminals in the mid-1950s, they manipulated their own remission and parole systems to achieve the rate of release they desired – for instance, by reducing a prisoner’s sentence so that he immediately became eligible for parole on the basis of time served. The governments of France, the Netherlands and Nationalist China were more open in approaching the management of prisoner sentences with a political outcome in mind. In light of these factors, there is little to be gained by distinguishing between ‘administrative’ and ‘discretionary’ measures; in this chapter the term ‘clemency’ is used to refer to all reductions of prisoner sentences, granting of parole and other acts of leniency.

All prisoners incarcerated in Sugamo during the Occupation of Japan had come under US jurisdiction, regardless of which country had convicted them. When the peace treaty came into effect, the prison was transferred to Japanese administration. Law No. 103 produced a framework for how those prisoners would be managed thereafter. It would also provide the basis for Japanese 'recommendations' to foreign governments for parole and other forms of clemency, under the provisions of Article 11. The new Japanese law devised mechanisms to handle these recommendations, and in doing so, set down guidelines on eligibility for parole, even though the Japanese authorities had no actual power to decide on such eligibility, which was now a matter for the government that had originally convicted the prisoner. In recording guidelines for parole, the drafters of Law No. 103 closely followed the regulations that
SCAP had put in place in Sugamo in early 1950. Presumably, the intent was to put pressure on foreign governments to introduce parole systems that were similar to SCAP's, which were relatively generous and with which Japanese officials were by now thoroughly familiar. The Japanese law also incorporated SCAP's provisions for such matters as remission for good behaviour.

The transfer from US to Japanese control of Sugamo in April 1952 entailed minimal disruption for existing inmates in terms of day-to-day operations. Regulations for the management of prisoners replicated SCAP rules as far as possible. Moreover, Japanese guards had been working alongside Americans in Sugamo during the late Occupation period. Prisoners who had been held away from SCAP jurisdiction, however, and by extension outside the sort of arrangements outlined in Law No. 103, faced new circumstances once they were repatriated to Japan. Moreover, for all prisoners, even those who had been in Sugamo before the transfer to Japanese administration, the situation was now radically different in terms of possible variations to sentences. SCAP's rules for parole no longer applied to any of the prison's inmates. Even the Americans devised a new parole system after April 1952, which now applied only to inmates who had been convicted in their own courts. All the other prosecuting governments also had the right and responsibility to determine variations to sentences, regardless of how long the prisoners under their jurisdiction had been in Sugamo. As for prisoners convicted in Australian courts, all war criminals on Manus Island had been

14 ‘SCAP Circular No. 5 – Clemency for War Criminals’, 7/3/50, Decimal 250-49-25-06, State Department Legal Advisor Parole Board, NARA, RG59, Box 25.
eligible for remission of sentence, on the basis of good behaviour, but not parole under the *Australian War Crimes Act*\textsuperscript{16} and no parole system for war criminals yet existed.

Before April 1952 the circumstances of Australian-convicted prisoners on Manus and in Japan were thus very different, and the differences need to be carefully considered when assessing the Australian government’s deliberations over repatriation and release of war criminals. Prisoners convicted by Australia and transferred to Sugamo before April 1952 were subject to SCAP law, whereas those on Manus were not. After the peace treaty took effect, Australia regained control of the war criminals in Sugamo, but they were subject to Japanese law as well, at least to the limited extent that was compatible with Article 11 of the peace treaty, while those on Manus remained under Australian law only. The gap between SCAP laws and practices and the Australian system before April 1952 was perceived as a problem during the government’s repatriation discussions, and even after April 1952 the Australian government apparently feared that Law No. 103 might somehow take precedence over Article 11, if prisoners were returned to Japan.

The government recognised that its own practices in relation to parole – that is, to allow remission of sentence only - were harsher than SCAP’s, and feared that if the Australian military were to repatriate war criminals to Japan and thus turn them over to the jurisdiction of Law No. 103, some of them could apply to be released immediately, because of the different approaches to sentencing and parole that underlay the Japanese law. Under Law No. 103, time credits for remission of sentences for good behaviour were slightly more

\textsuperscript{16} ‘Cabinet Agendum No. 347’, September 1952, NAA, Canberra, A1838, 140817.
generous than under Australian law. Also, in cases where a war criminal had received more than one sentence, the US system (which was then incorporated into Law No. 103) applied the sentences cumulatively, whereas the Australian procedure was to apply the sentences concurrently. For example, if a prisoner had received two ten-year sentences concurrently and was eligible for a 25% remission of sentence, he would have two and a half years of the ten year sentence deducted and be out of prison in seven and a half years. If he were serving consecutive ten-year sentences, the total time he would spend in prison according to the original sentence would be twenty years, not ten. He would have the same amount of time deducted from each sentence, which would amount to five years in total, but he would be out of prison in fifteen years, not seven and a half. If remission and parole were granted according to recommendations made on the basis of Law No. 103, the prisoners convicted by Australian courts would receive more liberal treatment than those convicted by the US.\footnote{\textit{Cabinet Agendum No. 347}.}

The main issue for the Australian government, however, was that under Law No. 103, war criminals became eligible for consideration of parole after serving one-third of their sentences.\footnote{\textit{AMF Minute Paper on Cabinet Agendum’}, 19/8/52, NAA, Melbourne, MP729/8, 452815.} Moreover, eligibility for parole was to be calculated after good time credits had been applied. Prisoners on Manus were not eligible for parole. The official assessment communicated to Cabinet in 1952, however, was that after remission of sentence was applied, of the roughly 200 prisoners on Manus Island, 150 could possibly apply for parole.
immediately upon entering Japanese jurisdiction, given the terms of Law No. 103.19

The government’s anxiety on this point is puzzling. No releases could occur without the Australian government’s permission, under Article 11 of the peace treaty, so the authorities were free to impose any restrictions they wished, and to refuse any application for parole. The Japanese government, however, could recommend the prisoners for parole as soon as it considered them to be eligible. Probably, the Australian government did not want this extra pressure and was unwilling at this stage to be seen to be refusing all requests for parole. After prisoners convicted in Australian courts were transferred to Sugamo from Singapore and Hong Kong in 1951, while the prison was still under SCAP control, it appears that some had been released, under the relatively lenient US systems of remission and parole which were later incorporated into Law No. 103. With SCAP in control of Sugamo, the Australian government had not needed to grant approval for a prisoner to be released, unlike the situation after Article 11 took effect. In the end, it appears the Australian government simply refused to allow parole, as distinct from remission of sentence for good behaviour, until it created its own parole system, much later, in 1954.

Elsewhere, as mentioned previously, war criminals had already been repatriated and while hundreds of prisoners remained under the control of foreign governments because of Article 11, most had at least been transferred to Japan. Australia’s reluctance to begin repatriation would further complicate an already complex situation. The UK, for example, had avoided certain

19 ‘Cabinet Agendum No. 347’.
problems by transferring its prisoners in 1951. All of the prisoners sentenced by UK courts were already in Sugamo when Law No. 103 was passed, and thus were already subject to the parole terms outlined previously by SCAP, which were then mirrored in Law No. 103.\textsuperscript{20} Whilst Law No. 103 made the transfer of prisoners held by SCAP to Japanese authorities straightforward, however, it actually made the Australian repatriation process more complicated, for the reasons outlined above.

Meanwhile, in Japan, a public campaign on behalf of war criminals was gaining strength. In the early 1950s, the Japanese public was increasingly well informed on issues relating to war crimes.\textsuperscript{21} Information in the press about prisoners still held in Manila was fairly plentiful. The Australian army, however, kept to a tight security policy that restricted the flow of information to and from Manus Island\textsuperscript{22} and officials allowed very little reporting of conditions there. That said, the January 1952 edition of the Red Cross newspaper in Japan, \textit{Ai no Hikari} (Light of Love), included a report outlining the conditions that prisoners faced. The article first explained the geographical location, terrain, and climate on Manus Island. According to the paper, most Japanese suspected that Manus was in Siberia, where thousands of former Japanese soldiers were held captive in labour camps after the Second World War. The article then highlighted how little Japanese people knew about the place where hundreds of their compatriots were being held as war criminals, going on to explain that the prisoners were enduring a hard life, with illness

\textsuperscript{20} Ibid.
\textsuperscript{22} For example T. Hawkins, ‘Memo from Department of Navy to Department of External Affairs Regarding Transfer of Rag Dolls to Manus Island’, 29/5/53, NAA, Canberra, A1838, 246874.
The Beginning of Negotiations

Discussions and negotiations over the return of prisoners from Manus to Japan were complex and cautious. The Australian government began by tracking international interest in the situation and also the way that its allies were themselves responding to Japanese government requests for repatriation. Meanwhile, the volume of requests and petitions for repatriation sent directly to the Australian authorities from within Japan steadily increased. The government thus had considerable external pressure to balance against possible domestic repercussions of a lenient approach to war criminals.

Although discussion between the Japanese and Australian governments on the matter increased after April 1952, repatriation in general was already a key issue for the Japanese government even before the war crimes trials had ended. As noted above, the Dutch and the Nationalist Chinese had repatriated prisoners as early as the end of 1949, and SCAP had begun to parole prisoners in Sugamo in 1950. From that time calls for the return of prisoners serving their time overseas intensified. The Australian government, however, was still conducting trials at that stage. During the final months of the Manus tribunals the government was also involved in negotiations with the US and other allies over the terms of the forthcoming peace with Japan, which included presenting

\footnotesize{\textsuperscript{23} ‘Excerpt from Ai No Hikari’, January 1952, NAA, Canberra, A1838, 140817.}
\footnotesize{\textsuperscript{24} Ibid.}
Australia’s views on drafts of Article 11. Thus, while the Manus trials indicated that Australia’s stance on Japan remained tough, diplomatic moves elsewhere were laying the broad foundations for repatriation of war criminals.

All the same, the Australian government maintained a notable level of vigilance where war criminals were concerned. Although the final versions of Article 11 of the peace treaty left control of convicted criminals solely with the governments that had prosecuted them, earlier drafts of the same article had suggested different arrangements, including a provision for decisions to be shared with the Japanese government. At the suggestion of Great Britain, Article 11 was changed, removing Japan’s role in altering the sentences of war criminals and substituting only the power to ‘recommend’ clemency. 

Remarkably, the Australian government nevertheless still objected to the article, as official US documents show. This objection was surprising to the US government. One official commented on the Australian position in May 1951:

Japan’s rights and powers are now reduced simply to the right to recommend clemency to an Allied power which convicted a war criminal imprisoned in Japan. It is difficult to see how Australia could maintain strong objection to this.

The strong stance taken by the Australian government on this issue contrasts with the moderation of the prime minister, at least, on other matters concerning the peace treaty. In a conversation at the Australian Embassy in Washington on 28 July 1951 Menzies remarked to high-level US and Japanese officials, including US Secretary of State Dean Acheson and John Foster

Dulles, Special Envoy to Japan and negotiator of the peace treaty, that Japan should not be punished further in the treaty, that it should progress quickly, and even that its capacity to rearm should not be significantly restricted, with the possible exception of the capacity to build an offensive navy. Acheson indicated that these views coincided with those of the US. Dulles then suggested to the prime minister that he return to Australia via Japan to assess the situation there in person and mentioned to Menzies that the only opposition to the terms of the peace treaty from the diplomatic corps in Japan at this stage was coming from the Head of the Australian Mission in Japan, Colonel William Roy Hodgson. Menzies reassured Dulles that Hodgson’s views did not carry much weight with the Australian government. It is unclear whether Menzies communicated with Hodgson in person, though he certainly did not visit Japan as Dulles suggested, but Australian opposition to the treaty did eventually recede.

From this conversation it is clear, if the personal views of the prime minister are anything to go on, that on rearmament and the official Australian attitude to a lenient peace with Japan, diplomacy between the US and Australia had made up considerable ground by mid-1951. Despite the prime minister’s accommodating stance on these matters, however, some Australian officials apparently persisted in opposing even the insignificant level of power granted to the Japanese in Article 11. Such opposition provides evidence of the continuing importance of war criminals in official Australian thinking on the peace, a consistently underplayed theme in scholarly writing both on

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Australian war crimes trials and on Australia’s stance on the San Francisco Peace Treaty.

On 7 April 1952, the Japanese government formally requested that the Australian government begin the repatriation of convicted war criminals held on Manus Island.28 It was several weeks before the enactment of the peace treaty, but the Occupation was coming to a close. Further requests for repatriation and release were made by the Japanese government after the treaty came into effect, prompting the Australian government to start discussing repatriation in detail, even though it was clear that under the terms of the peace treaty, the government was under no obligation to repatriate prisoners, let alone release them.29 Diplomatic and political pressure built up around the issue of war criminals for both Australia and the Philippines, the only countries still holding prisoners outside Japan after the end of the Occupation. From this point on, the Japanese campaign to repatriate and eventually to free BC war criminals increased in momentum, as Sandra Wilson has shown.30 Repatriation of convicted criminals in Australian (and Filipino) custody became virtually inevitable.

The Australian government became ever more conscious of the actions of other governments. On 20 June 1952, the Department of External Affairs received a letter from Foreign Affairs in Manila, stating that the Philippines government would now consider, case by case, whether to repatriate convicted criminals in Australian (and Filipino) custody became virtually inevitable.

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Repatriation had become an important matter in Japan-Philippines relations around the same time that the issue emerged in Australia, and lobby groups within Japan applied considerable pressure on the Japanese government to negotiate the return of prisoners from Manila. As was the case in Australia, the Philippines government was aware of the changing dynamics of Japan’s relations with the rest of Asia after the peace treaty and the need for a new era of diplomatic relations to begin. Nonetheless, the process of reaching this conclusion had been as difficult as in Australia, with the Philippines government very aware in the early 1950s of high levels of resentment towards the Japanese domestically. On 27 June 1953, the Philippines announced the repatriation of all of its remaining war criminals. Those sentenced to prison terms were to be released upon arrival in Japan and those who had originally been sentenced to death had their sentences commuted, but were to serve out their time in Sugamo. In December 1953 the latter were unexpectedly granted an amnesty by Philippines president Elpidio Quirino.32

Several government departments in Australia were keenly interested in the peace treaty and its implications for war criminals, and concerned about aspects of it. The Department of the Army, for example, was evidently confused over whether the treaty would have an immediate impact on Australian control of convicted war criminals, and even after the treaty had come into effect, with the safeguard of Article 11, was seeking assurances

32 See Chamberlain, ‘Justice and Reconciliation’; Trefalt, ‘Hostages to International Relations?’.
from External Affairs that prisoners would see out their sentences.\textsuperscript{33} External Affairs, for its part, was confused about other complexities surrounding Japanese war criminals. For instance, a significant issue relating to the treatment of Korean and Formosan prisoners was emerging. As noted in the Introduction, a number of Koreans and Formosans had been convicted as Japanese nationals. They remained in Sugamo Prison after the enactment of the peace treaty in April 1952, even though they no longer had Japanese nationality, a situation that prompted considerable argument and a major legal action in the Tokyo civil court.\textsuperscript{34} On 24 June 1952, External Affairs urgently contacted the Australian Embassy in Tokyo outlining the general confusion in relation to this point.

A Japanese Attorney... is at present arguing before the Tokyo district court that with the coming into force of the Peace Treaty these prisoners cease to be Japanese nationals and should therefore be released.

The case in question looked likely to progress to the Supreme Court in Japan and the Japanese government was seeking the opinion of the Australian government as well as those of the United Kingdom and the Netherlands on what status these prisoners now held. The Japanese attorney mentioned above

\textsuperscript{33} F. R. Sinclair, ‘Memo from Department of Army to External Affairs’, 24/6/52, NAA, Canberra, A1838, 140815.
went to great lengths to point out to External Affairs that this was a delicate situation politically.\(^{35}\)

Arguably, the nationality of the prisoners concerned should not have affected their liability for prosecution or the validity of their sentences, so long as they had committed the crimes for which they were convicted. It did, however, affect the question of repatriation, as it raised the problem of where the prisoners would be repatriated to. The Nationalist Chinese thought the Formosans should go to Taiwan. On 1 July 1952, External Affairs contacted the Australian Embassy in Tokyo about this point.

When approached in December 1947 by the Chinese Embassy here [in Australia] for repatriation to Formosa of war criminals of Formosan origin held on Manus, we informed the Embassy that in our view these persons were Japanese subjects at the time crimes were committed. Please advise by cable the outcome of Supreme Court case, as this would be a consideration in deciding if war criminals are to be repatriated.\(^{36}\)

In mid-1952 the Australian government was maintaining its stance that Koreans and Formosans were still to be considered ‘Japanese’ as they had been during the war, but clearly had grave concerns over whether Japan had the legal means to receive such prisoners as repatriates. Officials from External Affairs had met with Chinese officials on more than one occasion to discuss the issue. In November 1951, External Affairs confirmed that seventy-four

\(^{35}\) Minister of External Affairs and Minister for Army, ‘Cable from External Affairs to Australian Mission in Tokyo’, 23/6/52, NAA, Canberra, NAA, A1838, 140815.

\(^{36}\) ‘External Affairs Cable to Australian Embassy Tokyo’, 1/7/52, NAA, Canberra, A1838, 140815.
Formosan prisoners remained on Manus Island and that the Nationalist Chinese government in Formosa had received petitions from the families of these men for their repatriation. The court case in Japan over Korean and Formosan prisoners made their repatriation problematic because the Australian government believed these prisoners should serve out their sentences in Japan (if repatriated) and should not be released to Formosa or Korea, largely because proper monitoring of their imprisonment could not be guaranteed there. If the Japanese Supreme Court found that the Japanese could no longer hold them, the Formosan prisoners on Manus would thus present a significant diplomatic issue. It could mean that it was illegal for the Japanese government to accept the repatriation of further Formosan prisoners, who were now foreign nationals. External Affairs also believed that any release of prisoners on the basis of their nationality would be undesirable as the Japanese government could see it as grounds to argue that other war criminals should be released from Sugamo Prison as well.  

There appears to have been no basis for this fear, other than Australian government reluctance to take any action that might encourage the Japanese government to undo the results of war crimes trials. The Supreme Court case in Japan was dismissed in July 1952. A small number of Koreans were released from Sugamo Prison, however, because they had no family or other ties in Japan, although it is not clear why this constituted grounds for release. They were not prisoners convicted by Australian courts, but the Australian government viewed the decision as a

38 See ‘Decision in the Habeas Corpus Case Involving Korean and Formosan War Criminals’, 30 July 1952, Decimal Files 1950-54 State Dept Central Decimal Files, NARA, RG59, Box 3020.
precedent that might be used to demand the release of all prisoners who no longer held Japanese citizenship. A widespread release by the Japanese government was unlikely and perhaps even impossible, but the Australian concern did have some basis. The Japanese government clearly did not want anything to do with these prisoners, who were now foreign nationals. When Formosan and Korean soldiers were demobilised after the war they had not been treated as Japanese citizens by the Japanese government and were not considered eligible for military pensions or financial aid.\(^{39}\) It is conceivable that the government would do what it could to avoid taking continued responsibility for any of them. To the Australian government, or at least to the Department of External Affairs, the possibility that Korean and Formosan prisoners might have to be released, even against the will of the prosecuting country, appeared contrary to Article 11 of the peace treaty. The potential precedent of the release of the Koreans in 1952 further complicated Cabinet consideration of repatriation, but also increased the sense that the issue needed to be dealt with by the government soon.\(^{40}\)

**Pressure from Japan Builds**

Apart from elite members of society, some of whom were manoeuvring to retain influence under Occupation conditions, and on the other hand those actively involved in the labour movement and Japan Communist Party, it is often assumed that the Japanese populace was so preoccupied with survival in the early post-war years that it ignored other issues, or simply acquiesced to the Occupation. Recent work has shown that this was not always the case, and

\(^{40}\) ‘Cabinet Agendum No. 347- Appendix’.  

that many Japanese people were active in grass-roots political organisations where they exhibited a new understanding of the possibilities for political action in a democratic society. Democratic principles may have been imposed from above by the US Occupation, but they were embraced by many Japanese, not simply accepted as a necessary part of the defeat.

The past war was a dynamic presence in Japan in the 1950s. At the beginning of the decade, former soldiers, victims of the original Occupation purges and some convicted war criminals who had served short sentences were returning to public life. Repatriates were coming back to Japan after the war and in some cases after long periods in the former colonies. War memoirs and reports of the atomic bombings of Hiroshima and Nagasaki were entering the public domain. Franziska Seraphim describes the state of affairs at the end of the Occupation:

The return of convicted war criminals to public life (and even national politics), the belated disclosure of the real horrors of the Hiroshima and Nagasaki atomic bombings, the stories of repatriates from Japan’s former empire, and the bestselling collections of war testaments brought a flood of memories to public prominence and provided fertile ground for liberal democrats, pacifists, and nationalists of different

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vintages to formulate their respective political agendas with great urgency.\textsuperscript{44}

One important example of an issue that stirred community action was the campaign to press the Japanese government and other governments to return war criminals to Japan, then to release them from custody.

Individual Japanese had long petitioned Australian government and army officials on behalf of war criminals. There was no formal appeals mechanism in the Australian trials, so the only way to ‘appeal’ was to add a petition to a prisoner’s file for review by the JAG. In the great majority of Australian BC trials, a guilty verdict was followed by a petition from the convicted Japanese himself. These petitions, along with the JAG review, provide the only real retrospective assessment in the trial records of an individual’s circumstances (though similar comments appear later, in parole applications), and are also valuable in assessing the attitudes of Japanese war criminals to their conviction. As we have seen, family members and a variety of Japanese organisations also sent petitions and letters on behalf of convicted or alleged war criminals.

After the peace treaty, civilians at home in Japan continued and intensified their active role in petitioning the Australian government. It is difficult to assess how many petitions the government received overall. One indication comes from a Tokyo Embassy official who noted to External Affairs in September 1952 that a ‘heavy volume’ of petitions was coming to the Embassy; the latest one made a total of seventeen that week. From this count it is likely that the total petitions sent to the Embassy numbered in the

\textsuperscript{44} Seraphim, \textit{War Memory and Social Politics in Japan}, p. 18.
hundreds. A nationwide petition movement, ‘ai no undo’ (campaign of love), arose in 1952, in effect institutionalising the campaign by ordinary Japanese to pressure their own politicians and, directly and indirectly, foreign nations such as Australia. The peace treaty and the repatriation of prisoners held by some governments had galvanised sections of the Japanese public.

The petitions help us to modify the common view that ordinary Japanese people turned their backs on the war as soon as peace came. Moreover, even those not involved in grass-roots organisations likely were among the large number of Japanese who became interested in the plight of BC war criminals. Fifteen million people, for example, were said to have signed petitions demanding the release of war criminals by the end of 1952. Odagiri Akira, chairman of the Yamanashi Prefectural Assembly, that is, a regional government west of Tokyo, claimed to represent the views of his prefecture in sending the following to the Australian Embassy in Tokyo in May 1952.

When we think of those Japanese war criminals still detained and of their families, we cannot help feeling anxiety and worry. By those Japanese war criminals we mean our prefectural people who are war criminals detained abroad or under servitude at Sugamo prison in Tokyo. Our hearts flow out in sympathy to those war criminals who are heavily burdened with the responsibilities of the war living lonesome lives in strange countries and also to their families who are leading

unhappy, helpless lives at home separated many thousand miles away from their chiefs [sic], their supporters. All of us [it appears that he means the families and officials of the prefecture], to say nothing of the war criminals themselves, keenly feel the responsibilities for the last war, and we are now determined, with the help of god, not to repeat the same mistake we made before.48

Odagiri asks for the release of the prisoners, appealing to the Australian authorities for mercy and prefacing his request with thanks to the Australian government for granting Japan the opportunity to rebuild its relations with other countries. Presumably this refers to the Occupation of Japan and to the forthcoming peace treaty. The acknowledgement that Japan had made mistakes and the commitment to learn from those mistakes was common to a number of petitions. It is impossible to say whether the sentiments were designed only to appeal to the targets of the petitions, or were part of a genuine attempt to embrace the democratic idealism that was associated with other aspects of the Occupation.

The Yamanashi Prefecture petition links the guilt of the war criminals to the responsibility for the war of the ordinary Japanese civilian. Often war criminals were portrayed in petitions as ‘ordinary’ Japanese family men, but some petitions claimed that all Japanese felt responsible for the war. In saying that the entire prefecture felt responsible, the petition suggests that reflection on wartime conduct was widespread, or at least, this is what the petitioner wanted to convey. In the petition there is very little distinction between those facing military justice and those at home struggling with Japan’s

reconstruction. This was not a particularly common sentiment in petitions sent to the Australian government. The consciousness of responsibility for the war here also seems to contradict the standard Occupation line, which was that the population had been led astray by militarism which was now being removed, leaving behind the great majority, who had had no responsibility for the war. The Yamanashi Prefecture petition suggests a deep sense of community: the citizens of Yamanashi Prefecture are portrayed as sharing the trauma of the end of the war and embracing Japan’s future together. The issue of war criminals seems, if anything, to have united them. They appear unlikely to try to pin all blame for the war on a small group of war criminals in order to free themselves from responsibility, and they also seem prepared to be very active in trying to bring the convicted criminals home. By this stage, many Japanese people must have been frustrated that petitions of this kind appeared to have no impact on the Australian government. Nevertheless, they persisted in their efforts.

Indeed, a suggestion of strong community sentiment was always present in the petitions. The close association with the guilt of the war criminals and responsibility for the war that was in the Yamanashi petition was often missing, but most petitions expressed some level of regret for the war, or a form of apology. For example, one petition from Saitama Prefecture, sent on behalf of the prefecture’s assembly directly to Prime Minister Robert Menzies, called for a return to Japan of all prisoners held overseas. The wording of the

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petition is simple. The petitioners apologise for the pain caused in the war and pledge never to wage war again.

Upon reflection we Japanese inflicted a damage [sic] on the lives of your people and materials of your country and we feel very regretful that we made your people have an indelible spiritual grudge against us.... However, when we think of those family-members leading their lives in tears, worrying themselves about the welfare of beloved ones who are in a foreign prison as war criminals and eagerly longing for a day when they may return to their native land, we cannot help feeling a heart breaking sympathy for them.  

Though there is no close association here with the guilt of the war criminals and the petitioners do not actually claim responsibility for the war, they express a strong community sentiment and acknowledge that Japanese actions during the war caused damage to Australia and Australian lives.

The Yamanashi and Saitama petitions are just two of many forwarded to the Australian government or the Japanese government. The Netherlands and British governments also received many petitions, in their case, at this stage, for the release of war criminals, while prisoners convicted by the Nationalist Chinese and most of those convicted by the French had already been released by mid-1952. On 10 July 1952, the Japanese Foreign Minister, Okazaki Katsuo, indicated to the Australian Embassy in Tokyo that many petitions on behalf of prisoners held by Australia had been forwarded to the Japanese government. The Foreign Minister said he might be forced to make

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continued representations to the Australian government for the release of war criminals, as pressure was building in the Diet. Cabinet noted:

Increased pressure both in the Diet and in the public is being applied in Japan in an attempt to effect the transfer of Japanese war criminals detained abroad. Organisations at present carrying out nationwide campaigns include the ‘League for the release of Japanese overseas’, which is composed of members of the Diet of all main parties, and a recently formed association under the sponsorship of influential ex-war criminals and suspects who served in Sugamo prison.

Clearly, high-powered political action was occurring, and Japanese people were applying continued and widespread pressure on their own government as well as appealing to the goodwill of the Australian and other governments. Large numbers of people in Japan were mobilised in some way to act on behalf of war criminals: by signing petitions, attending mass rallies or contacting politicians. Cabinet documents like the one quoted above indicate that the Australian government was becoming aware of the pressure being exerted in Japan during 1952 and recognised that the campaign to have war criminals returned to Japan included powerful figures such as members of the Diet. External Affairs noted that this high-level political involvement could mean the unresolved issue of repatriation would have a negative impact on relations between Japan and Australia.

The Australian government continued to receive a large number of petitions from Japan, in what was described by the Australian Embassy in

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51 ‘Memo from Japanese Foreign Minister to Australian Government’, 10/7/52, NAA, Canberra, A1838, 140817.
52 ‘Cabinet Agendum No. 347- Appendix’.
53 Ibid.
Tokyo as a ‘concerted campaign’. The movement to bring Japanese war criminals home and to release them was gathering so much momentum that the terms of the discussion changed for some Japanese people. An Embassy memo on 6 September 1952 reported on petitions received from Yamaguchi Prefecture, in the south-west of Honshu, the main island of Japan.

Among those [petitions] received this week are several from organisations in the Yamaguchi Prefecture, Southern Honshu. At a meeting of the welfare committee of the Yamaguchi Prefectural Assembly on 7th of August a resolution was passed deploring the fact that 41 sons of the Prefecture are still serving sentences for war crimes. The resolution states, inter alia, that ‘it is not too much to say that [the imprisonment of these 41 citizens of the prefecture] was the result of partial and unfair justice and many of the imprisoned were not guilty.’ In support of this opinion the resolution quotes the remark of the Indian Judge on the International Tribunal for the Far East Judge Pearl [Pal] to the effect that the war criminals sentenced by the Tribunal were the objects of official revenge of the winners for the defeat of Japan.

Legally speaking, it was not possible to link the dissenting opinion of one judge in the Class A trials, Justice Radhabinod Pal of India, to the repatriation of BC war criminals tried by the Australian military courts. The tone of this petition, however, shows that for some Japanese, the situation was changing. This petition does not appeal as much as previous petitions did to the goodwill of the Australian authorities, but appears more steadfast and aggressive. In the

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eyes of the Yamaguchi Prefecture petitioners, the moral balance of the situation had been reversed; they had passed a resolution that did not portray them as at fault for the war, but suggested the whole trial process was the result of ‘victor’s justice’. The Embassy memo goes on to indicate that many Japanese petitions were now going much further, even to the point of requesting compensation from Australian authorities for the imprisonment of war criminals.

Each petition appeared to be trying its own tactics to persuade or pressure the Australian government. Petitioners in Chiba Prefecture enlisted the aid of a member of the Japanese parliament and met with Australian Embassy officials in person in September 1952. Women from rural areas in Chiba cried in front of Australian officials while the men outlined the hardships being faced by prisoners before leaving with the Australian officials a petition signed by 5,000 Japanese. The Australian official who communicated this event to External Affairs described the scene as ‘novel’. 56

As well as family members, interested citizens and those with political agendas, there was another key group working for the release of BC war criminals. By the early 1950s, the BC criminals themselves were active in publicising their plight from within Sugamo Prison. Sugamo, which held all three classes of war criminal, had become a centre of considerable political activity. War criminals were able to publish their thoughts in periodicals and other publications that were well received by the Japanese public, many of whom did not see the BC criminals as responsible for the war, or as a group that should be cast aside by society. Sugamo Prison was relatively easy to

56 ‘Memo Australian Embassy to External Affairs - Chiba Prefecture Petition’.
access by the early 1950s, with frequent visitors taking information in and out of the prison. This was not the case, of course, with Manus Island. As Wilson points out, by 1952, high-profile visits to Sugamo had become openly political, as prisoners sought to insert the repatriation and release issue firmly in Japanese government discussions with the former Allies. The campaign for release by the war criminals themselves seems to have been quite sophisticated, with rallies and panel discussions within the prison and even a meeting in December 1952 with the outgoing Japanese Ambassador to Australia, Nishi Haruhiko, regarding the prisoners on Manus. Sugamo inmates appear far from silenced, far from ignored and far from shunned by the Japanese public. They constituted an active, effective and passionate element of the campaign to release war criminals.

From an Australian government perspective, the key aspect of the public campaign was that it had gained widespread support in Japan, including high-level political support. The movement on behalf of war criminals had grown to a point that it had electoral worth to Japanese politicians. Grass-roots petitions were met with cynicism at times by Australian officials and had little direct effect. Embassy officials often derided the petitions, as in the case cited previously of the petition delivered in person from Chiba. Lobbying through the Japanese government, however, appears to have been successful up to a point. For example, as mentioned earlier, repatriation became a key consideration for the Australian Cabinet due to repeated requests from the Japanese government, which came about partly because of domestic pressure to take action on war criminals.

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58 Ibid.
Australian organisations too were vocal in commenting on war criminals in the early 1950s, as we will see below. The complex repatriation negotiations were thus set against a backdrop of two societies that included organisations and individuals who were active on post-war issues and particularly interested in the treatment of BC war criminals. Given the combination of such domestic lobbying and the changing international context, most importantly the signing of the San Francisco Peace Treaty, the Australian and Japanese governments faced difficult negotiations domestically, and with each other. For Australia, the issue was further complicated by the fact that the trials had long overshot their expected deadline. As a result, the last of the actual trials and sentencing, not just the prospect of repatriation and release, were occurring in a new context.

Government Activity and Public Pressure in Australia

As noted above, the government was clearly anxious about repatriation and desired to assess the actions taken by the other prosecuting countries. At the same time, Canberra indicated to US officials in August 1952 that if it could secure a guarantee from the Japanese government that an ‘undue’ number of remissions of sentences would not occur and that they would be calculated according to the Australian system, repatriation from Manus would go ahead.59 This is not an accurate representation of how discussions were proceeding in Australia, however. Government documents indicate that the issue was far from settled at this point. In any case, the government evidently either did not receive a sufficient guarantee from the Japanese government or was internally

59 ‘Telegram from Canberra to Secretary of State’, 21/8/1952, Decimal 250-39-29-6, State Department Central Decimal Files, NARA, RG59, Box 3021.
divided on whether repatriation should go ahead. The latter appears more likely, since Article 11 ensured that the Australian government controlled releases, making a Japanese guarantee redundant.

The government contacted the Netherlands authorities in late August 1952 to assess their position on clemency for war criminals. The Dutch had repatriated convicted war criminals from the Netherlands Indies in late 1949, but were still faced with the issue of release and other forms of clemency, and thus still had to negotiate with the Japanese, as did the Australians over repatriation. The Dutch reply to the Australian enquiry made it clear that releasing war criminals was linked with Cold War concerns.

As far as the matter of granting clemency is concerned the Netherlands government feel in principle - and notwithstanding the absolute necessity of judging any and every specific case on its merits – an early release of war criminals might be instrumental in facilitating Japan’s re-entry into the international community. They are convinced such an attitude would contribute to Japan staying within the Western orbit.

Nevertheless, there were also other considerations, chiefly that the Netherlands government was still seeking compensation from the Japanese government for wartime losses to its citizens in the Indies. The Japanese government had agreed in principle to compensate the Netherlands financially for wartime losses, but no action had yet been taken. The Dutch government accordingly indicated it would not be able to grant clemency just yet.

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Neither the Netherlands Parliament nor the public in general are likely to approve of any major concessions to the Japanese government with regard to the release of a considerable number of Japanese war criminals, unless the Japanese show their good intentions in respect of compensation.

In short, the Dutch memo informed the Australian government that the time was not right for a mass release of war criminals from the Dutch government’s point of view. In fact, the Dutch government held out until 1956, releasing the last of its war criminals shortly after the Japanese government finally arranged to pay compensation.

The communication between the Australian and Netherlands governments is revealing. The Netherlands government did not appear to have any desire to hold Japanese war criminals for much longer, aside from using them to force Japan into providing financial compensation for lost assets in the Netherlands Indies; nor did it have serious concerns over how they would be paroled or serve out their sentences. Indeed, the Netherlands government could see the wider benefits, in terms of the Cold War, of acting generously. Thus, in matters of leniency towards Japan, there was a significant difference between the motivation of the Netherlands and Australian governments. The Australian government was not using the war criminals as a way of getting money out of the Japanese government, or for any other utilitarian purpose. Ill-feeling over the war seems to have been translated into a desire for financial compensation in the Netherlands, probably because of the loss of a significant colony to the

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61 ‘Letter From Ministry of Foreign Affairs, The Hague – Outlining to Australian Embassy the Netherlands Position on War Criminals’.
Japanese during the war years and the subsequent disruption caused by the war for independence in the Netherlands Indies, followed by permanent loss of the former colony in 1949.

The Philippines, Burma and Indonesia also demanded compensation from the Japanese government, in their case as reparations rather than as compensation for losses sustained by private citizens.63 The Australian government, however, was not really able to measure its treatment by the Japanese in money, or at least the government did not consider it desirable to take this approach. The Japanese military had not invaded Australian territory. The lack of a reason for financial claim perhaps meant that the official Australian attitude to war criminals had to be based on other grounds. Meting out tough but fair sentences, displaying justice and holding on to convicted criminals appear at face value to be the equivalent of demanding compensation in monetary form, as the Netherlands, the Philippines, Burma and Indonesia did. In fact, for the Australian government, gaining satisfaction appears to have taken the form of steadfast adherence to its own agenda on war criminals most of the time, and a determination to pursue justice in the way it saw fit. In my view, honouring the sacrifices made by Australians in the Pacific War was the most important motivation for such commitment to the war crimes trials. Not being premature in repatriating, releasing or otherwise showing leniency to Japanese war criminals was in itself a great satisfaction to the Australian government. Neither was the government tied as closely to the Cold War, at this stage, as were the US, the UK, and the Philippines, which again allowed the Australian government more freedom in negotiations over war criminals.

63 Trefalt, ‘Hostages to International Relations?’, pp. 194-195.
The US and to a lesser extent the UK were prime movers on the side of the ‘free world’, while the Philippines was one of the countries in South East Asia most directly confronted by a left-wing threat, in the form of the Hukbalahap rebellion of the early 1950s. Concerned though it was about the spread of Communism, the Australian government was not nearly so involved in the Cold War and hence did not feel such a pressing need to cement new alliances with anti-Communist countries.

By September 1952, the Australian press was reporting on the issue of repatriating war criminals, though the transfer of prisoners to Japan would prove to be further way than the media expected. An article on 10 September stated that repatriation from Manus Island would be discussed soon, presumably referring to the Cabinet agenda documents being produced around this time for a meeting originally planned for September 1952. A report on 14 September stated that the government was almost certain to grant the repatriation of all war criminals still on Manus Island, predicting that several conditions would be placed on the transfer, and stating that Australia was now the only country holding prisoners outside of Japan, which was in fact not the case as the Philippines still held its prisoners in Manila. The report also detailed the hardships that prisoners were facing on Manus, commenting that several prisoners were ‘willing themselves to death’. The writer believed that most Cabinet ministers and also the returned servicemen’s organisations accepted that Japan was now Australia’s ally against Communism in Asia, and

65 ‘Jap Jail Plea to Be Studied’, The Daily Telegraph (Sydney), 10/9/52. Copy of article in NAA, Canberra, A1838, 140817.
so it was appropriate to repatriate war criminals.\textsuperscript{66} Parliament confirmed that the government was planning to discuss the issue in a Cabinet meeting but that no decision had yet been made.\textsuperscript{67}

The Department of External Affairs had been in contact with the Returned Sailors’, Soldiers’ and Airmen’s Imperial League of Australia (later the RSL), in the weeks prior to these press reports. On 10 September 1952 the Department received a letter stating that the members of the organisation ‘almost unanimously’ believed that Japanese prisoners should continue to be held at Manus Island and should not be released unless the Australian government declared that they could be.\textsuperscript{68} This of course was actually the case, due to the provisions of Article 11 of the peace treaty, but public knowledge about the conditions surrounding repatriation was evidently not great. The Minister for External Affairs responded to the letter by assuring the organisation that no-one was being released at present although the request to repatriate war criminals from Manus to Japan was under consideration.\textsuperscript{69} The Council for the 8\textsuperscript{th} Division (of the Second AIF), another veterans’ association, with many members who were former POWs, was also active, writing to the government to insist that a move towards clemency would be premature and that ‘the Asiatic mind will see it as weakness’.\textsuperscript{70} The letter does not acknowledge any change in Australia’s relationship with Japan. A section of

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\item \textsuperscript{66} Oliver Hogue, ‘Jap Criminals Want to Go Home’, \textit{The Sunday Sun}, 14/9/52. Copy of article in NAA, Canberra, A1838, 140817.
\item \textsuperscript{67} ‘Record of Dr Evatt Debate with Minister for Army Casey’, 9/9/52, NAA, Canberra, A1838, 140817.
\item \textsuperscript{68} General Secretary Neagle, ‘Letter to Minister for Army Casey’, 5/9/52, NAA, Canberra, A1838, 140817.
\item \textsuperscript{69} R. Casey, ‘Reply Letter from Minister for Army Casey to General Secretary Neagle, RSL’, 5/9/52, NAA, Canberra, A1838, 140817.
\item \textsuperscript{70} ‘Council For the 8\textsuperscript{th} Division Letter’, 19/9/52, NAA, Canberra, A1838, 140818.
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the community evidently continued to believe that the Japanese should be treated as former combatants, not as present and future allies. In addition to these official representations from powerful veterans’ lobby groups, press articles also opposed the release, on parole or otherwise, of those Japanese already held in Sugamo Prison.\(^{71}\) Thus, public debate on war criminals continued, at least when they were in the news.

The government had in fact already repatriated several war criminals from Manus Island, before discussions on the overall policy on repatriation were complete. In most cases these prisoners had served their sentences and were free men. Such cases presented logistical difficulties, however, Katayama Fumihiko’s sentence expired on 30 May 1951 and he was repatriated, but not until 25 October, because of a lack of transport.\(^{72}\) In this case, a man who should have been free was held for five extra months in undesirable conditions, due to the practical difficulties of getting him home to Japan. On the other hand some prisoners were allowed to leave Manus a few weeks prior to the end of their sentences if transport was available then, but would be unavailable on the actual date of their release.\(^{73}\) The example of Katayama illustrates the fact that throughout the Australian trials and their aftermath, the resources available and the communication strategies in place were simply inadequate to allow the achievement of the lofty goals officially proclaimed as the purpose of the trials. No doubt the Katayama case confirmed in many Japanese minds the unfairness of Allied treatment of BC war criminals. As negotiations continued, more

\(^{71}\) For example, ‘Do Not Free Those Jap Prisoners’, *The Argus* (Melbourne), 9/9/52, p. 2.

\(^{72}\) ‘Excerpt from Ai No Hikari’.

\(^{73}\) ‘Request for the Arrangement for the Repatriation for those that Complete the Term of Imprisonment’, 16/4/53, NAA, Melbourne, MP375/13, 4346861.
Japanese prisoners neared the end of their sentences. Some twenty-two prisoners were repatriated from Manus in February 1952 on board the S. S. Nellore. Large-scale repatriations of this kind, especially in a context where other governments were releasing prisoners, likely suggested to some Japanese that a general repatriation of war criminals was about to take place.

Several other prisoners needed a transfer off the island for health reasons, and in some cases required a general release from their sentences. It seems that the medical facilities on Manus were not capable of providing adequate and long-lasting care for sick prisoners in the harsh climate. Bureaucrats were confused about the process of repatriation due to illness.

Three Japanese returned home on board the Osaka Maru in September 1952, but the process of repatriating them proved convoluted and complex. Officials at the Australian Embassy in Tokyo originally believed they would resume their sentences in Sugamo when they had sufficiently recovered their health, but the situation was unclear. The prisoners were in the custody of the Australian navy while they were being transported to Japan. The navy then advised the embassy that the prisoners would not return to Manus or serve out their sentences in Sugamo, and the embassy was prepared to treat the sentences as cancelled altogether. It is unclear why officials in the navy and the embassy concluded that prisoners would not resume their sentences. Next, and in complete contrast with its previous advice, the navy passed on orders to the embassy for the men to serve out their sentences at Sugamo Prison once they

74 ‘Japanese Nationals Being Repatriated in S. S. Nellore’, 1/2/52, NAA, Melbourne, MP927/1, 3217172.
75 Australian Embassy Tokyo to External Affairs, 3/9/52, NAA, Canberra, A1838, 140817.
76 ‘External Affairs Cable to Australian Embassy’, 6/9/52, NAA, Canberra, A1838, 140817.
had recovered their health, presumably on advice from the Australian government. The Japanese Foreign Office reported to the Australian Embassy that Japanese lawyers were preparing to argue that there existed no legal means, after the San Francisco Peace Treaty, to re-imprison a Japanese national in Japan who had originally been tried and incarcerated overseas and had once been released, presumably because no official agreement on repatriation had yet been reached between Japan and Australia. The entire issue appears to have been a complicated mix-up between governments and government departments, but the men in question did in fact return to captivity in Sugamo after receiving medical attention in hospital.

**Deciding on the Future of the War Criminals**

On 9 August 1952, the Japanese government made a verbal request to the Australian government to turn all remaining prisoners over to the Japanese authorities unconditionally. At this time, roughly 200 war criminals were still held on Manus Island and fifty prisoners tried by Australia were incarcerated in Sugamo Prison. In September 1952, the Minister for External Affairs and Minister for Army and Navy prepared a submission to Cabinet outlining the repatriation issue. The Soviet Union and the Republic of the Philippines were the only other countries yet to return to Japan war criminals convicted under their jurisdictions; the People’s Republic of China still had not prosecuted the

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77 ‘Note Verbale – Australian Embassy to Japanese Foreign Affairs’, 30/8/52, NAA, Canberra, A1838, 140817.
suspected war criminals it held.\textsuperscript{79} On the other hand, none of these nations had ratified the San Francisco Peace Treaty, whereas Australia had.

With the Japanese petition movement and diplomatic action in full swing, the Australian government, chiefly External Affairs and the Department of the Army and Navy, was revising its approach to war criminals and assessing how to respond to Japanese requests for repatriation. The Australian government should not be seen simply as under siege diplomatically during this period, however, as it was actively attempting to plan appropriate action on repatriation, despite the complexities of the process. The key issues at the Cabinet meeting that was originally planned for September, but was delayed until later in the year, would be how the government should respond to the formal Japanese request to return war criminals from Manus to Japan; whether to accept Law No. 103 as it related to paroling war criminals; and how to deal with the Japanese requests, contained in petitions, to release all war criminals.\textsuperscript{80}

No record of the actual Cabinet discussion exists, as Cabinet meetings are confidential, but papers attached to the agenda are revealing. In these papers, officials from External Affairs recommended that prisoners on Manus should be repatriated and that Law No. 103 should be accepted, providing acceptance were not taken to mean that the Australian government would automatically accept all requests for parole thereafter. It was recommended that the request for all prisoners to be released should be rejected. Those preparing the Cabinet agenda believed that this stance would conform with

\textsuperscript{79} ‘Cabinet Agendum No. 347- Appendix’.
\textsuperscript{80} ‘Revised Cabinet Agendum’, September 1952, NAA, Canberra, A1838, 140817.
the policies of almost all of the other governments that still held prisoners, in Manila in the case of the Philippines, or in Sugamo in the case of other countries. The Cabinet agendum predicted that the Australian public would be ‘justifiably wrathful’ if too much leniency were shown to war criminals, but that public outcry over returning prisoners to Japan would be fairly moderate provided they served out their sentences.\(^81\) This comment shows that officials from External Affairs were sensitive to public reaction, and also suggests they shared the sentiment that it would be improper for war criminals simply to be released.

In reality, Australian public opinion on repatriation and release of war criminals appears to have been far from simple. Early views were often very hostile, as we have seen. Macmahon Ball observed in 1948: ‘I was often told in Tokyo [in 1946-1947], not only by Japanese, but by Americans and others, that Australians seemed more bitter and revengeful towards the Japanese people than any other of the Allied peoples’.\(^82\) When the Manus Island trials were being set up in 1950 and prior to that, in 1949 when the hearings had stopped, press reaction reflected and stimulated a public feeling that as many Japanese suspects should be brought to justice as possible. There was genuine disappointment that the operations of the Australian military courts had been so long delayed, and that justice for the alleged war criminals had stalled.\(^83\)

While bringing war criminals to justice was a priority, however, press reports also indicate a concern that Australia should not inflict injustice on the Japanese through untoward delay. Justice must continue to be upheld, but from

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\(^81\) Ibid.
\(^82\) Ball, *Japan: Enemy or Ally?*, p. 12.
\(^83\) For example, ‘Australia to Try Japs on Manus Island: Delay in War Trials’, *The Sunday Herald* (Sydney), 4/12/49, p. 5.
everyone’s point of view. Moreover, attitudes towards Japan had softened to a
degree in the years after the war. General public opinion in the early 1950s
does not appear to have been preoccupied with revenge and indeed sometimes
appears to have been moderate, even among former Australian prisoners of
war. Nevertheless, some sections of the community were vocal in their
continued support of a harsh stance.

In 1952 the Australian government clearly believed that public opinion
still required a tough attitude to war criminals. Some officials also wanted
sentences to be specifically guaranteed by the Japanese government. Even
though Article 11 of the peace treaty seemed to secure the rights of the nation
that had convicted the criminal, certain officials and politicians still appear to
have feared the Japanese would release war criminals once they were out of
direct Australian custody. There is no suggestion in the peace treaty that
repatriating a group or approving clemency for an individual prisoner could
constitute a precedent applicable to all prisoners subject to Article 11.

Nonetheless, the Australian government was clearly suspicious of how matters
would develop in Japan. The concern over the future of war criminals after
repatriation appears to have been two-fold. First, there was a reasonably
plausible notion that some technicality relating to parole or the nationality of
the prisoner might result in early release. Second, and less plausible, there was
a notion that the Japanese government would take one special repatriation case,

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84 Sandra Wilson, ‘Reading Basil Archer’s Diary’, in Basil Archer, edited and
with an Introduction by Sandra Wilson, Interpreting Occupied Japan: The
Diary of an Australian Soldier, 1945-1946, Carlisle, Western Australia,

85 See, for example, ‘RSL Conference This Week’, 8/6/53, The Cairns Post
(Qld), p. 3; ‘Unrepentant War Criminals’, 2/8/53, The Sunday Herald
(Sydney), p. 9.
such as that of a prisoner who was ill, or one act of leniency, as a precedent for comprehensive leniency or even as an excuse to find a way of releasing unconditionally a number of prisoners convicted by Australian courts. It is unclear how serious these possibilities appeared to the Australian government to be, except that they were serious enough to be discussed formally by External Affairs and the Department of the Army and Navy in the preparation of the Cabinet agendum documents and were tabled for discussion by Cabinet.

No decisions were reached at this point, however. *The Sydney Morning Herald* reported on 28 September 1952 that several controversial Cabinet decisions were being postponed because of a looming by-election in the seat of Flinders in South Australia and that one of them concerned the request from the Japanese government to repatriate war criminals. *The Mercury* reported in December that no decision on repatriation would be made until at least the following year. Yet again, the war crimes trials had become entangled with domestic politics.

Despite the position of the Philippines, the People’s Republic of China and the Soviet Union, other governments that had conducted war crimes trials, or at least those of the US, the UK, France and Nationalist China, intended by the early 1950s to conclude matters and move towards better relations with Japan. The Netherlands, as we have seen, did not immediately share this goal, with compensation still to be resolved. As for Australia, it appears from the range of opinions in the official sources that attitudes to repatriation varied

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86 ‘Revised Cabinet Agendum’.
between reluctance and cautious acceptance. Reluctance seems to have been tempered by both the acknowledgment that the current diplomatic climate surrounding Japan was moving rapidly on from the period of war crimes trials and the recognition that Australia was again behind the other wartime Allies in softening its attitudes to the past war. In contrast to its 1949-1950 decision to resume trials on Manus, official sources in this period indicate that the Australian government was more aware that it must now make a greater effort to conform to its allies’ policies on war criminals.

There were many factors to consider, for and against repatriation. For one thing, the prisoners on Manus Island were not idle. At this point Manus was run by the Australian navy, and there were plans to make it a significant base for Australian units in the future defence of the Pacific. Japanese prisoners amounted to a cheap source of labour as part of various navy working parties on the island. The navy initially opposed repatriation on the grounds that war criminals were needed at Manus as labour. In April 1952, the Minister for Navy (and future prime minister), William McMahon, apparently believed that the prisoners were carrying out valuable work. The navy recognised, however, that the situation would change later: it had been calculated that by 1957 the number of prisoners on Manus would have fallen

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significantly as they completed their sentences, diminishing the source of
cheap labour.\footnote{Cabinet Agendum – Appendix}.

Pappas acknowledges that several issues contributed to the Australian
government’s reluctance to begin repatriation in the early 1950s, but suggests
that this financial incentive was significant.\footnote{Caroline Pappas, ‘Law and Politics: Australia’s War Crimes Trials in the
Academy, UNSW, 2001, pp. 81-86. Pappas also believes that in the context of
the Cold War, the Australian government was conscious that Soviet
propaganda might take advantage of an apparently harsh attitude to war
criminals.} In the Cabinet agendum
document, however, the labour issue is only one item out of many. There was
certainly a financial incentive for holding prisoners on Manus Island, but it
was evident that it would not last long, as the number of war criminals would
soon dwindle. Moreover, official sources suggest that other and more complex
issues held greater weight in discussions of repatriation. The Cabinet agendum
document framed the discussion broadly, focusing on the significant
diplomatic questions surrounding repatriation. The desire not to harm relations
with Japan, and to have repatriation policies similar to those of other
governments, seem to have been more important considerations for Cabinet as
a whole than the financial benefit of retaining prisoners on Manus. The view of
External Affairs was that a refusal to agree to repatriation would be taken by
the Japanese government as an indication of continued bitterness towards
Japan, and it was now considered undesirable to suggest any such bitterness.\footnote{Cabinet Agendum No. 347 – Final Draft.}

Even the navy eventually decided to support repatriation. External Affairs was
informed in January 1953 that after a visit to Japan, Navy Minister McMahon
had reconsidered his stance and now believed that ‘any gesture that could be
made to the Yoshida Government is desirable’. It is unclear exactly why the minister changed his mind after this trip, but his comment suggests that even the navy, the branch of government most opposed to repatriation, had come to appreciate the importance of improved relations with Japan and the broad political significance of repatriating war criminals.

The opportunities for trade with Japan probably also played a part in the government’s realisation that holding war criminals on Manus could be counter-productive to Australia’s image and interests in the region. Private trade between Australian and Japanese businesses had resumed in 1947, and by the time the peace treaty came into effect, a trade imbalance between the two countries existed in Australia’s favour. Trade was still small, but the opportunities for growth were evident. After all, Japan had already been Australia’s third-largest destination for exports in the 1930s, before the Trade Diversion dispute of 1936 and then war and occupation interrupted the pattern. The peace treaty enabled the resumption of more normal trading relations and brought trade between Australia and Japan into a new era. Trade expanded from the early 1950s, mainly through export of Australian wool but also in the acquisition of some products from Japan. Major steps to move on

94 ‘Memo from Prime Minister’s Department to External Affairs Concerning Minister for Navy McMahon’, 6/1/53, NAA, Canberra, A1838, 140818.
95 For details on the expansion of Australian trade with Japan in the decades following the war see Derek McDougall, Australian Foreign Policy: Entering the 21st Century, South Melbourne, Victoria, Longman, 1998, p. 169.
98 Rix, Coming to Terms, pp. 12, 125.
from the war needed to be taken, if the trade potential between the two countries was to be further exploited. In the economic arena, it was not advantageous to treat Japan as a former enemy.

After McMahon’s change of heart in early January 1953, all of Cabinet now supported repatriation in principle. The final decision, however, was deferred on 23 January after Cabinet received advice that the Japanese government had amended Law No. 103 to enable it to grant provisional parole to war criminals for periods of fifteen days for compassionate reasons, extendable for a further fifteen days, without limit to the number of provisional paroles that could be granted. A number of other amendments also made Law No. 103 more lenient.\(^\text{99}\) Australian officials were concerned about these changes, and also expressed uncertainty about whether Article 11 would apply to war criminals who were repatriated after the peace treaty was enacted. They remained anxious, too, about the question of parole under Law No. 103, and how it would be applied to prisoners repatriated from Manus.\(^\text{100}\) Hence any commitment to repatriation was considered premature.

The Japanese did in fact amend Law No. 103; it appears that by the time the US and other foreign governments could register their protest, Japanese officials had already decided on the amendments.\(^\text{101}\) The Japanese foreign office was, however, concerned that foreign governments might toughen their policies on war criminals as a result of the Japanese action and

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\(^{100}\) ‘Cabinet Minute Decision No. 731’, 2/7/53, NAA, Melbourne, MP729/8, 452815.

\(^{101}\) ‘Telegram from Embassy to Secretary of State’, 17/1/53, Decimal 250-39-29-6, Department of State, State Department Central Decimal Files, 1950-54, NARA, RG220, Box 3021.
Japanese officials moved to assure their US counterparts that the amendments to Law No. 103 were not intended to subvert Article 11 and that if any impression to the contrary had been conveyed, it amounted to a misunderstanding. In the end, US officials continued to view the Japanese actions as ill-advised but were satisfied with Japanese assurances that the spirit of Article 11 would be upheld and that US officials would still retain practical control over all forms of clemency. In essence, Australian officials appear to have followed the US lead on this matter.

The concerns of early 1953 were never truly resolved. Instead the Australian government simply agreed to repatriate prisoners conditionally, seeking extra assurances from the Japanese authorities on Law No. 103 and Article 11, just as the US had. On 7 July 1953, the government cabled the Australian Embassy in Tokyo requesting that the Japanese Foreign Minister be informed that Australia would now turn all prisoners over to the Japanese authorities at Sugamo Prison.

Cabinet has agreed to the transfer of War Criminals from Manus Island to Japan, providing that the Japanese Government gives an undertaking that the sentences will be faithfully carried out.

The cable also outlined further conditions. The Japanese government was requested to continue to comply with Australian law, presumably the *Australian War Crimes Act* and any future legislation on clemency for war criminals, and to consult with Australia before applying Japanese law in place of Australian law to a prisoner, presumably when questions of parole or other

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102. 'Telegram from Embassy to Secretary of State', 26/2/53, Decimal 250-39-29-6, Department of State, State Department Central Decimal Files, 1950-54, NARA, RG220, Box 3021.
forms of leniency arose, with reference to Law No. 103. The Japanese government provided these assurances, satisfying the Australian government that it would retain control of the sentences of the repatriated war criminals. A further condition from the Australian side was that prisoners would only be transferred if the Japanese government paid the costs of their transfer. The cable of 7 July 1953 also requested that the Japanese government take swift action to facilitate repatriation, as details of the Australian government’s decision had already been leaked to the press. In fact, however, this cable was sent roughly twelve months after the initial press leaks about repatriation. The prisoners were repatriated almost immediately, disembarking in Japan from the Japanese ship *Hakuryu Maru* on 8 August 1953.

After the decision to transfer war criminals was made in July 1953, official Australian views of Japan progressed positively and quickly from the suspicion and caution that had been notable during the repatriation negotiations. In August 1954, Cabinet met to discuss relations between Australia and Japan and it was decided that more needed to be done to foster amity between the two countries, in order to keep Japan from forming close relations with Communist countries. After the new policy was decided, US officials in Australia advised Washington of the following:

External Affairs official has informally suggested to Embassy representatives Australian Government “would now not be adverse” to

103 ‘External Affairs to Australian Embassy in Tokyo Regarding the Repatriation of War Criminals’, 7/7/53, NAA, Canberra, A1838, 246874. See also ‘Cabinet Minute Decision No. 731’.


follow any US initiative toward more liberal treatment Japanese war criminals. While for political reasons Australians still consider they cannot assume such initiative themselves, this approach believed to represent calculated effort bring Australian position more in line with US and to adopt more moderate and realistic attitude toward Japan if this can be done without arousing further public antipathy here.\footnote{106}`Memo from Embassy in Canberra to Secretary of State’, 9/7/54, Decimal 650-28-11-1, Clemency and Parole Board (Japanese), General Files, 1952-1958, RG 220, Folder 2.}

Presumably, this meant the Australian government was prepared to release Japanese war criminals if it could do so inconspicuously. In official Australian thinking, Japan was now accepted as an ally in safeguarding the security of the Pacific. The government reached this position roughly six years after the US did and after spending most of that period in opposition to the more lenient US policies for Japan.

**Parole, Reduction of Sentences and Release**

After repatriation, the next pressing issue was parole. Australia was, in fact, one of the last nations to start paroling prisoners in any significant numbers.\footnote{107}`The Present Condition of Japanese War Criminals Sentenced by Australian Military Courts’, 10/9/54, NAA, Canberra, A1838, 271955.}

An Australian system for reducing a prisoner’s sentence for good behaviour was in place; very small numbers of prisoners had had their sentences remitted under this system but there was not yet any provision for parole, even though the Japanese authorities were sending parole requests to the Australian government under the terms of Article 11. In December 1953, External Affairs circulated a draft Cabinet submission to several government departments
requesting their participation in setting up a Parole Committee for War
Criminals. The Attorney-General, Department of External Affairs and the army
all provided officials to sit on the committee, which recommended that an
official Australian system of parole should be set up.\textsuperscript{108}

It is unclear why it took so long to establish a system, but in April 1955
the government decided that prisoners would be eligible for parole after
serving two-thirds of a sentence of less than fifteen years and in the case of a
sentence greater than fifteen years, after serving ten years. The guidelines were
designed to match US policy, but Cabinet decided that parole should only be
granted on this basis if the rules matched the UK practice as well. This
produced considerable confusion, and the caveat quickly proved to be
unworkable as Australian eligibility for parole would necessarily be more
lenient than the UK practice because the UK did not parole Japanese prisoners:
it allowed only remission of sentences.\textsuperscript{109} In the end, prisoners held by
Australia were granted remission on a basis comparable to the UK practice.
The UK altered its policy in August 1955, however, by reducing war
criminals’ sentences. Thereafter, Australian officials felt that parole could go
ahead because it would not appear more lenient than the UK practice.\textsuperscript{110}
Releases from this point remained slow, without any significant progress until

\textsuperscript{108} ‘Japanese War Criminals: Establishment of a Parole Committee’, 26/1/54,
NAA, Canberra, A1838, 271954.
\textsuperscript{109} ‘Japanese War Criminals – External Affairs Note’, 29/4/55, NAA,
Canberra, A1838, 271956; ‘Japanese BC War Criminals – External Affairs
Note’, 14/9/55, NAA, Canberra, A1838, 271957; ‘Cabinet Submission –
contains material relevant to 1955 also.
\textsuperscript{110} ‘Cabinet Submission – Japanese Minor War Criminals’, 5/4/56, NAA,
Canberra, A1838, 2711960.
1956. As will be discussed later, the Australian government became dissatisfied with the rate of release and reviewed its parole system at that point. Although there were still significant obstacles to overcome before widespread release of Japanese prisoners occurred, the April 1955 Cabinet discussions were the starting point for an effort by the government to bring its policy on war criminals into line with Australia’s new general policy for Japan, created in 1954: that is, the decision to foster good political and diplomatic relations with Japan. In April 1955, External Affairs and the Department of the Army submitted to Cabinet that Australia needed to adopt a more lenient stance on war criminals for seven reasons: Pacific security relied on Japan being aligned with the West; the Japanese government had indicated that the continued incarceration of war criminals was a major obstacle in improving relations with the West; Australian officials believed that a moderation in Australia’s stance would create goodwill in Japan towards Australia; some Class A war criminals had already been released and the Australian public had not reacted badly; although Japanese foreign policy was firmly based on cooperation with the US the possibility that Communist propaganda might influence Japan could not be ruled out; Communist China had a far more lenient approach to war criminals than Australia (though it is unclear on what basis the government believed this to be the case), which could generate goodwill towards China in Japan; and, finally, the number of BC war criminals held by Australia was small and they would not present a security risk if they
were released, whereas they were currently treated as martyrs while in prison.\textsuperscript{111}

These assessments indicate that matters relating to BC war criminals, a dimension of Australia post-war foreign policy that has attracted almost no attention among historians, were intimately related to a number of the biggest issues that the Australian government was facing in the 1950s. In particular, issues associated with war criminals directly affected and were affected by discussions of regional security and Australia’s position in the Cold War. It was on the basis of these seven points, none of which mention economic benefits, that the government approved a system of parole.\textsuperscript{112} It is true that policy on war criminals was generally the domain of External Affairs and the army, so a tendency to focus heavily on Pacific security and geopolitics, rather than on the economic benefits of ties between the two countries, was likely. Nevertheless, the emphasis that the government placed on the war criminals’ role in relations with Japan, and to a lesser extent on Cold War considerations, is striking.

Under the provisions of Article 11, Australia retained control of all forms of clemency for war criminals, including parole, right up until the last prisoners it had convicted were released in June 1957. Recommendations for parole, however, came regularly from the Japanese authorities according to the provisions of the peace treaty. The National Offenders’ Prevention and Rehabilitation Commission (NOPAR), a Japanese government body that implemented Law No. 103, and hence dealt with Article 11, investigated a

\textsuperscript{111} ‘Cabinet Submission – Granting of Parole’, 1/4/55, NAA, Melbourne, MP729/8, 452819.

\textsuperscript{112} Ibid.
prisoner as he became eligible because of time served for recommendation for parole or a reduction in sentence. The investigation process was thorough and usually included details of the prisoner’s crime and sentence, and a review of his case and of his conduct and work during imprisonment. The investigation also noted what a prisoner intended to do upon release, and his family situation, including whether his family depended on him financially. The report usually claimed that a prisoner had completely reformed from militarism. Details of the investigation were summarized by the Japanese officials looking at the case, but documents from the prisoner himself, such as completed questionnaires, were also included in the materials sent to the Australian government, as were the original reports from Sugamo Prison and the Australian War Crimes Compound on Manus describing the character and behaviour of the prisoner and in the case of Manus, his work record. A lengthy explanation of the reasons for the recommendation for parole was also appended. These explanations usually included any reasons for clemency that could be found by NOPAR in the original trial. Mostly, the prisoners stood by their original defence, which makes them in some ways appear unrepentant. Often, however, the recommendation also claimed that the prisoner deeply regretted the incident in question. In this way the review of a prisoner’s case usually suggested he regarded himself as not guilty of a crime, but was deeply reflective on his wartime conduct all the same.\footnote{These documents can be found in the series of folders marked ‘Documents Relating to Parole’, NAA, Canberra, A1838, 575977, 575981, 575983, 575987, 575989, 575992, 575995, 575997, 576001, 576003, 576006, 576009.}

In its recommendations for parole, NOPAR explored some of the controversial aspects of the BC trials. For example, the claim of Superior
Orders was often used to justify the proposed parole of a prisoner. In some cases the recommendation implies that the original verdict was unfair. One example is provided by the recommendation for the parole of low-ranking Japanese soldier Kondo Norio, sentenced for executing prisoners at Gasmata in New Britain in March 1942. Kondo claimed he had followed orders to execute ten Allied soldiers. NOPAR noted:

> It seems, however, that in view of the fact that Commander Miyata committed suicide during his confinement as a suspected war criminal and, further, that Lieutenant Kawai and a surgeon attached to the garrison at Gasmata who were in a position to testify to the then circumstances were both dead at the time of his trial, he [Kondo] was held responsible for the execution as the highest responsible officer and then sentenced to a heavy penalty.\(^{114}\)

NOPAR thus suggested that Kondo received his heavy sentence of life imprisonment solely because he was the only one left to be held accountable for the crime. The implication is that the original sentence is explained either by the reluctance of the Australian authorities to allow a serious crime to be punished by only a light sentence, or by the failure of trial authorities to acknowledge that Kondo was in a difficult position, being one of few Japanese soldiers connected to the incident left alive.

It is striking that NOPAR criticised the trial process on behalf of the prisoner in its recommendation for reduction of sentence and for parole, at a time when it would seem that the prisoner would have benefitted from claiming to be totally repentant. In general, the goal of the recommendations

\(^{114}\) ‘A Decision on Recommendation (Translation) - Kondo Norio’, 27/5/54, NAA, Canberra, A1838, 576009.
appears to have been to cover all of the angles for clemency that might convince Australian authorities. The recommendations thus often amount to a contradictory collection of reasons for a reduction in sentence. For example, along with the veiled criticisms of the trial process in Kondo’s case, the recommendation also includes a statement that he had converted to Christianity and was no longer a militarist.\footnote{Ibid.} The latter claim suggests that at one point he had been a militarist, which contradicts the other argument that he had been unhappily following orders when executing the Australian prisoners.

By the mid-1950s, issues concerning war criminals had exceeded consideration of individual cases and had become an openly political matter between Japan and Australia. By 1956, Australian policy on the release of war criminals was almost totally focused on promoting good relations with Japan, while still maintaining the integrity of Australia’s system of dealing with the convicted criminals. The Japanese Embassy in Canberra approached the Australian government in March 1956 to request early release of war criminals convicted by Australian courts, noting that the Netherlands was expected to release its remaining prisoners soon, and the US and UK were also working towards early release.\footnote{‘Memo No. 150 Copy of Japanese Embassy Request for Early Release of War Criminals’, 12/3/56 (original received 7/3/56), NAA, Canberra, A1838, 271960.} The Japanese authorities provided a detailed analysis showing that Australian releases were behind those of the other countries.\footnote{‘Note Verbale on Release of War Criminals’, 9/2/56, NAA, Canberra, A1838, 271960.} The initial Australian parole system had indeed been slower to take effect than the parole systems of other countries for reasons that will be explained below; the Minister for External Affairs and the Minister for Army and Navy
submitted to Cabinet in April 1956 that Australia needed to alter its system for parole and other forms of clemency to expedite the release of Japanese war criminals. The issue appears to have been of genuine concern to the Australian government, regardless of Japanese pressure. External Affairs noted that by the end of the year, only prisoners convicted by Australian and US courts would remain in custody in Sugamo Prison.

The Australian government quickly sought to confirm with the governments mentioned by the Japanese Embassy in March 1956 whether the information provided was correct, and found that it more or less was. The Netherlands government had been releasing small groups of war criminals since 1952 and although Dutch officials assured the Australian government that a blanket release would not occur, they also stated in March 1956 that these releases would continue. In fact, the last prisoners held under Dutch jurisdiction were released in July 1956, less than six months after agreement had been reached with the Japanese government on compensation. External Affairs was concerned that if it did not make changes, Australia would appear overly harsh, which could harm attempts to improve relations with Japan. This attitude shows how dramatically Australian policy on war criminals had changed since 1945 and even since 1950. In those years there had been little concern for how Australian policy appeared externally and more concern to ensure policy did not appear too lenient internally. Moreover, the way the Japanese government applied diplomatic pressure on Australia, by showing that it realised how ‘out of step’ with the other wartime Allies Australia would

118 ‘Cabinet Submission – Japanese Minor War Criminals’.
120 ‘Cabinet Submission – Japanese Minor War Criminals’.
be if it did not change policy, suggests that the Japanese had a sound understanding of official Australian thinking in this period.

The slight differences between each government’s sentencing and clemency regulations meant that the release of war criminals was not uniform among the Allies. Conformity with other nations in policy on war criminals was thus difficult to achieve. The External Affairs submission to Cabinet in April 1956 noted two issues. One was that Australia was slightly reducing the sentences of those imprisoned for more than fifteen years upon Japanese request, but was not showing leniency to those with shorter sentences. The submission recommended reducing all sentences above ten years, which would get prisoners released faster, though war criminals convicted by Australia would still remain in prison until 1961. One of the reasons that Australia’s prisoners were remaining incarcerated for longer than those given the same initial sentences by the UK was that the UK applied sentences from the date of arrest whereas Australian courts imposed sentences from the date of the court proceedings. The difference between the two dates could be a significant one. Also, the UK appeared to be making a concerted effort to release war criminals as the government had recently reduced life sentences, and sentences of twenty years in prison, to fifteen years. In addition, the UK government was also applying further remissions, meaning that the few prisoners convicted by UK courts who remained in prison were to be released by the end of 1956.\(^\text{121}\) The second issue noted by External Affairs in April 1956 was that the status of Korean and Formosan prisoners had not been fully resolved. Granting parole to these prisoners would be difficult because they would not be able to serve their

\(^{121}\) 'Cabinet Submission – Japanese Minor War Criminals’. In fact the last prisoner held by the UK was released on 30 January 1957.
parole in Japan, as they were no longer Japanese citizens, and the conditions of their parole would therefore be less easily regulated and monitored. The Japanese government wanted Korean and Formosan prisoners to receive a general amnesty. In an indication that Australian officials were not yet prepared to forgo all of their rights over war criminals in order to secure better relations with Japan, however, External Affairs recommended that an amnesty not be granted and that instead the prisoners be allowed to serve out parole in their country of origin.\textsuperscript{122}

In May 1956 the Australian government decided that it would not alter the existing parole system in order to expedite releases, but instead would cease paroles altogether, in favour of exercising clemency for war criminals through a revised and more lenient system of remitting sentences. Moreover, throughout the rest of 1956 the government began to remit the sentences not only of prisoners who became newly eligible for parole but also retrospectively, for those who had been paroled already.\textsuperscript{123} This practice solved the problem associated with the Korean and Formosan prisoners – specifically, that their parole could not necessarily be supervised and monitored by the Japanese authorities under Law No. 103 because they might reside outside Japan - and also greatly sped up the outright release of war criminals.

The last war criminals convicted by Australian courts were released on 28 June 1957. The Australian government had informed the Japanese

\textsuperscript{122} Ibid.
government in March that this final release would occur.\footnote{124} Australia released prisoners at that point due to consistent pressure from the Japanese government as well as a general realisation that new regional circumstances required such a move. It appears that the impending negotiation of a trade deal between Japan and Australia in July 1957 and the planned visit of Japanese prime minister Kishi Nobusuke later that year were factors in the decision. Australian progress on matters relating to war criminals had been rapid since the mid-1950s. Meanwhile, the US government had been experiencing difficulties in concluding its release program, specifically in finding a way to release the worst war criminals, who had extremely long sentences, without totally undermining the principle of justice under which they had been tried in the first place.\footnote{125} As a result, Australia ended up releasing its last war criminals earlier than the US did, despite having been so far behind for so many years. In fact, US officials recognised that the final Australian releases put them under pressure to free the last war criminals under their control.\footnote{126}

In the final negotiations with Australia, Japan appears to have been very confident in its diplomacy. As one indication of this, in May 1957 the Japanese ambassador in Australia met a high-ranking member of External Affairs and requested that the release of prisoners be completed by 14 June as the Japanese prime minister was travelling to Washington and this would allow him to press strongly for the release of all US-sentenced prisoners. External Affairs Memo – Japanese War Criminals’, 21/5/57, NAA, Canberra, A1838, 271962.


\footnote{126} Telegram from Allison’, 30/6/56, Decimal 650-28-11-7, Records of Clemency and Parole Board for War Criminals (Japanese), 1952-58, General Files, NARA, RG220, Box 6.
Affairs found this request unacceptable. It is revealing, however, that the Japanese ambassador felt he was in such an advantageous position that he could request Australia’s participation in a scheme that might potentially embarrass the United States, Australia’s close ally.  

By the time the final releases of war criminals occurred, Japan had entered a new phase of political and economic ties with a number of former enemies, including a historic trade agreement signed in July 1957 with Australia. The Australian government and military had proven itself throughout the war crimes trials and beyond to be as determined to bring Japan to account for the war as any other nation. Eventually, however, the government took a pragmatic and political approach and after years of being behind the US, managed to conclude its dealings with Japanese war criminals ahead of the US. From the first trials to the last release, the entire process had taken roughly twelve years.

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128 See Rix, *Coming to Terms*, Ch. 9.
CONCLUSION

Commerce began to dominate relations between Japan and Australia in 1957. The Japanese prime minister, Kishi Nobusuke (1896-1987), and representatives of the Australian government, signed the Japan-Australia Agreement on Commerce in Hakone, Japan, on 6 July 1957, in what was considered in both Japan and Australia to be a landmark trade deal. The agreement was ratified by the Australian parliament later that year. Kishi visited Australia in December 1957, addressing several functions and speaking at length on a number of occasions. Kishi was a controversial figure with close ties to Japan’s war-time regime. He had been a senior bureaucrat in Japan’s puppet government in Manchukuo in the late 1930s and served as Minister for Commerce and Industry from 1941 to 1943 and as Deputy Munitions Minister in 1943-1944. He was purged during the Occupation and arrested as a suspected Class A war criminal, though he was released without charge in December 1948. In 1952, he was depurged and won election to the Diet as a conservative. Kishi’s visit to Australia may have been about the future, but he also represented the past.

There were two main themes in Kishi’s speeches to Australian officials in December 1957. He expressed gratitude at the welcome he had received in Australia, and focused heavily on the economic futures of the two countries,

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which he believed were on a parallel course and had great potential to be mutually beneficial. Kishi gave his most significant address at Parliament House in Canberra on 4 December. In this speech he deviated from his strong focus on economic issues, highlighting Japan’s transformation into a democracy and also alluding to the history of the relationship between the two countries. Kishi noted ‘a long tradition of friendship between Australia and Japan, including, in the First World War, our cherished association with your immortal ANZACS’, but also referred to ‘four years of tragic interruption to that friendship’, offering ‘our heartfelt sorrow for what occurred in the war’. During his visit he laid a wreath at the Australian War Memorial in Canberra. In the early 1950s it would have been unthinkable to the Australian public that someone who so clearly represented the Japanese war-time elite might play a key role in rebuilding friendship between the two countries, but Kishi’s 1957 visit was met with only muted protest.

The landmark events of 1957 - the release of the last Japanese war criminals in Australian custody, the trade deal and the Kishi visit - mark a new era in relations between Japan and Australia and the end of post-surrender diplomacy between the two countries. Kishi’s professed regret over the war, the welcome that

5 The ceremony at the war memorial in Canberra took place on 4 December 1957. Veterans' associations do not appear to have protested strongly against Kishi’s visit overall, but did try to convince the government to cancel the wreath-laying ceremony. See W. E. Fisher, ‘Council of the 8th Division Letter to Menzies’, 26/11/57, NAA, Canberra, 3024467. For other reactions to Kishi’s visit see Alan Rix, The Australia-Japan Political Alignment: 1952 to the Present, London, Routledge, 1999, pp. 32-33.
he claimed he received from Australian officials and the strong focus on the future of the two countries suggest that both governments were making a concerted effort to move on from the war. The emphasis was firmly on the opportunity associated with the future, not the record of the past, and in Australia, government policy on Japan was dominated for the next fifteen years by commerce officials. External Affairs was no longer central to Australia’s relations with Japan, in marked contrast to the crucial role played by that department during the 1950s.\textsuperscript{6}

The apparently bright outlook for rapprochement between the two countries in 1957 followed a twelve-year post-war period in which relations between Japan and Australia had been far less amicable. During the Second World War Japan had posed a direct threat to Australia and in 1945 Australia’s future security remained highly uncertain in the eyes of many officials. Internally, Australian society was still in shock after the acute sense of danger produced by Japan’s early victories in the war, the human and financial cost of the conflict, and especially the condition of returning prisoners of war. The sense of shock was fuelled by government manipulation of the press, which contributed to anger against Japan and overwhelming public support for war crimes trials. Japan’s unconditional surrender had not been enough to satisfy either the government or the public that the problem of Japan had been dealt with. The government and the Australian people felt that they had sacrificed a great deal during the war and that this sacrifice ought to be recognised. Pursuing Japan quickly became a key part of

\textsuperscript{6} External Affairs played a minor role during Kishi’s visit, holding a discussion with him on security in South East Asia that focussed on the Communist threat. See ‘Agenda for Discussion with Kishi and Handwritten Notes’, 4/12/57, NAA, Canberra, 3024467.
the government’s foreign policy agenda, driven by the imperative to act on the widespread outrage over Japanese war-time conduct, the need to preserve Australia’s security against a possibly resurgent Japan and a desire to emerge from the war as a significant diplomatic player in regional political affairs.

The government secured a degree of representation in regional affairs when Australian officials were selected for several important roles in the Occupation of Japan. The government soon found, however, that its ability to act independently and to express its vision for Japan’s future was hampered by US domination of the Occupation. Moreover, the key Australian policy of the early Occupation, to ensure that the Emperor was placed on trial, ended in disappointment. Australians thought their war-time experience had been unique, and wanted to bring Japan to account for the war and have a strong say in its future. The prosecution of Class B and C war criminals was one matter over which the government had almost complete and independent control. Through the trials, suspected war criminals could be brought to justice and, at least potentially, Australia could thereby exert an influence over the future course of Japanese society, politics and foreign policy. Thus, from the beginning, the tribunals reflected Australian national sentiment.

Senior Australian officials publicly described this national sentiment as a pursuit of justice, while at least one prosecutor later admitted it had also incorporated a desire for vengeance. In fact the trials included both dimensions: they constituted a political issue that afforded Australian officials the opportunity

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to respond independently to Japanese war-time conduct and at the same time they provided the Australian military and the public with an opportunity for revenge, by bringing actual perpetrators of crimes to account in military courts. The enthusiasm to do both of these things was such that it is difficult to see how Australia could have developed a policy on Japan in the initial years after the war without the opportunities presented by the war crimes trials.

The US-led Occupation of Japan generally embraced retribution against Japan’s wartime regime during the early years, but support for measures such as war crimes trials later receded. The Occupation began with the goals of democratising and demilitarising Japan. By 1948, however, US aims for Japan were heavily influenced by the escalating Cold War. This shift in US policy contributed to the decision of most of the war-time Allies to conclude their prosecutions of suspected Japanese war criminals. Retributive policies focusing on the old regime in Japan were becoming less important in the new direction of the Occupation, and in any case the separate governments conducting war crimes trials had other pressing concerns. The effect of the Reverse Course on the Australian trials, however, was different. The Australian government disagreed with the new US policies in Japan, and was reluctant to accept the role the US defined for Japan in the future security of Asia. Australian officials continued until 1952 to view Japan as a potential danger to the region, which limited their appreciation of Japan as an ally against the apparent Communist threat. While Australian officials did not necessarily want Japan permanently to remain an international pariah, the government did believe that policies created to punish the
war-time regime and remove Japan's capacity to wage war should not at this stage make way for measures to reintegrate Japan into the community of nations and to rehabilitate its economy.

In late 1945 the Australian authorities had taken up the task of prosecuting suspected war criminals with alacrity, and with the intention of trying all those who deserved to be brought to account. In 1948 and 1949, however, they faced serious logistical difficulties. Despite these obstacles, which came on top of the now unfavourable international context, the government did not cancel its legal proceedings. Instead it began planning for new prosecutions on Manus Island. In 1949, as a formal peace seemed to draw nearer, US officials, concerned primarily with rehabilitating Japan to become a successful member of the democratic camp, tried to ensure that all prosecutions would finish well before the peace treaty was signed. It would have been easier for the Australian government to end its trials at this point, avoiding the danger of falling out of line with US policy for Japan and also saving time and resources, but it does not appear that this was ever considered a suitable option. In Australia the desire for trials was evidently still strong.

The Manus prosecutions began in 1950, reaffirming Australia’s image as a nation that was tough on Japan. The proceedings represented much more than just unfinished military business. In fact, many suspects were released in an effort to conclude the trials as quickly as possible, so the effectiveness of Manus in ‘finishing the job’ was, at best, token. The real reason the trials continued into 1950 and 1951 was that the two imperatives driving them from the start remained
very potent. The government wanted to take a stand on Japan for political and
diplomatic reasons, and both the government and the people wanted revenge.

The Australian government’s hard line on war criminals in 1950 reflected
an emerging tension between policies to deal with the former enemy and policies
aimed at building friendships with its allies in the region. One of the strategic and
diplomatic realities the government faced after the war was that it could no
longer rely on British strength in the Pacific. In the post-war world, Australia had
to rely heavily on the US for security. Yet despite this dependence on good
relations with the US, Australian policy on Japan was at odds with that of the US
on several points. Australian officials objected to the proposed role for Japan as a
US ally in the region, and were anxious about US willingness to encourage
Japanese rearmament. Most of their concerns were allayed during the negotiations
over the peace treaty, and especially with the agreement on the ANZUS security
pact with the US and New Zealand. Nevertheless, Australia and the US remained
at odds over war criminals.

The Australian government managed to conclude its prosecutions prior to
the signing of the peace treaty in September 1951 but it remained tough on war
criminals and negotiations over the repatriation and release of Japanese prisoners
after the end of the Occupation in April 1952 were protracted and difficult. There
would seem to have been little external political value in maintaining a strong
stance on war criminals, especially when Australia’s allies were moving on
rapidly from retribution against Japan. A combination of mistrust of the Japanese
government and wariness of domestic public opinion, however, compelled the
government to continue to deal with Japan resolutely. Australian officials opposed the idea that Japan might be granted any share in decisions on the future fate of convicted war criminals and they appear to have maintained an objection to Article 11 of the peace treaty even though it allowed Japan almost no power over the release of prisoners. Such a harsh approach to Japan and willingness to go against US preferences now contradicted the general trend of Australian foreign policy. The government supported the US in the Korean War and had lobbied US officials hard for a security pact between the two countries, but policies on war criminals indicated that a significant area of disagreement persisted over the status of Japan. As I have shown, the US remained outwardly supportive of Australia’s right to conduct war crimes trials in 1950 and appeared patient with the continuing tough stance by the government thereafter, but US internal documents also show a clear sense of frustration at Australia’s policies.

By August 1953 the Australian government had accepted that it could not indefinitely remain out of line with the policies of its allies on Japan and it agreed to repatriate war criminals. The matter was not yet resolved, however, as the government then had to consider how to apply clemency to those incarcerated in Sugamo Prison in Tokyo. Over the next six months Australian policy on clemency was slow to develop. In 1954, things began to change significantly. The government created a new general policy for Japan on the basis that Australia should do whatever it could to create better relations between the two countries and to prevent Japan from falling under the influence of Communism. Policy on clemency accordingly altered to allow more Japanese prisoners to be released
early. This change came almost two years after disagreement over Japanese rearmament had been resolved and two years after BCOF soldiers had returned home with the end of the Occupation. The delay indicates that policy on war criminals remained both important and lively, long after other issues affecting relations among Japan, Australia and the US had been resolved. At the grassroots level, reactions to the Australian government’s policies on war criminals indicate the authorities were probably correct in concluding that the majority of the public preferred a tough stance on Japan. A 1952 Gallup poll showed that 60% of respondents believed Japan would become a threat again in the future. Press coverage of the BC trials, on the other hand, suggests that public opinion was more complex than is commonly thought. At various points in the twelve-year process of convicting and then releasing war criminals, public reaction was muted. Though a hard core of anti-Japanese sentiment persisted well into the 1950s, some people also appear to have wanted Australia to move on from the war or at least to treat war criminals as justly as possible.

Australian scholars have commonly regarded the 1952 San Francisco peace treaty as the watershed in Australia-Japan relations that propelled the two countries into a new era. In light of negotiations over war criminals, however, 1952 is too early a date to consider as the beginning of a new relationship. The peace treaty was without doubt a very significant event in the post-war era but it did not resolve all of the lingering war-time issues between the two countries, and post-surrender politics continued for years after the treaty. The two countries

progressed slowly from being survivors of the war, to uneasy bit-players in US security policy and finally to trade partners and friends. The evolution of Australian policy on BC war criminals charts this progression of relations more accurately than does any division of the post-war era in Japanese-Australian relations into a pre-peace treaty and a post-peace treaty period. Australia’s BC war crimes trials constitute the one major foreign policy issue that spanned the entire era between the end of the war in 1945 to the landmark trade agreement of 1957.

Writing on the early post-war period in Australian history generally acknowledges that Japan was a significant focus of an increasingly independent and energetic Australian foreign policy agenda. Nevertheless, the BC trials have received very little scholarly attention. The topics commonly discussed in relation to Japan are the formation and operation of BCOF, the forthright Australian opposition to leniency on rearmament in the peace treaty and to any Occupation moves that could potentially allow Japan to threaten Australia in the future, and the burgeoning economic relationship between the two countries in the 1950s. Omitting the trials, however, omits a major part of the story of Australia's relationship with Japan, of the evolution of post-war foreign policy, and of the connections between foreign policy and domestic concerns. The omission is all the more glaring given the consensus among scholars that the POW experience was, and remains, particularly important to the Australian people. While the centrality of POWs in post-war Australian politics and culture is acknowledged, one of the issues most closely associated at the time with the returned prisoners - namely the trials of those Japanese soldiers suspected of mistreating them - is ignored.
Study of the BC war crimes trials makes two major contributions to the understanding of Australian foreign policy. First, the trials show how Australian policy on Japan developed when it operated free of direct US control, illuminating the distinctive aspects of the Australian government’s approach to Japan. An assessment of the government's dealings with Japan that does not pay attention to the determined attempt to bring war criminals to justice might well conclude that the authorities were cautious and even timid in their approach. A focus on the trials, however, shows Australian policy to have been much tougher. Second and more fundamental, the pursuit of war criminals establishes that throughout the period between Japan's surrender and the 1957 trade deal, Australian foreign policy attempted to strike delicate balances between domestic concerns and external political goals, between developing a distinctively Australian response to Japanese war-time conduct and promoting closer relations with the US, between maintaining a hard line on Japan and creating other policies that recognised Japan as an important partner in combating the new threat of Communism. No other policy matter so strongly combined such pressing social, diplomatic and security concerns and no other foreign policy issue in relation to Japan spanned the entire period from 1943, when investigations of war crimes began, to the new era of trade and friendship signalled by the 1957 commercial agreement.

Despite being an important feature of Australian foreign policy after the war and crucial to the development of Australia-Japan relations in the 1950s, the BC trials are most commonly studied to assess their fairness. The matter is far from settled, and the legal and moral fairness of the trials themselves is likely to
remain contested for some time. Perhaps another way of assessing the trials is to examine the release of prisoners. From 1950 onwards for most of the Allies, and from 1952 onwards for Australia, issues relating to war criminals were increasingly dominated by politics and diplomacy, rather than considerations of individual guilt or justice. In fact, political pressure and opportunity had driven Australia to pursue war criminals in the first place, and the same factors contributed to the moves to end the trials and show clemency to the Japanese prisoners. The prosecutions were always far more than a legal undertaking and this is why purely legal understandings of them are insufficient. The pursuit and release of BC war criminals is overwhelmingly a political story and political considerations, including idealistic ones like the need to punish militarism and create precedents for the conduct of war, produced trials and management of prisoner sentences that ultimately were focussed on imperatives other than the need to punish individual perpetrators of terrible offences. Thus, concerns about the guilt of individual Japanese soldiers made way for pragmatism, idealism and political gain, as did concerns for victims of Japanese crimes when the sentences of war criminals became a political bargaining chip after the proceedings had ended.

This thesis shows that the Class B and C war crimes tribunals and their aftermath constitute a twelve-year foreign policy project that illuminates Australia’s relations with Japan and the US during an era when Australia sought energetically to establish itself as an enthusiastic and independent participant in Asia-Pacific politics. The increasingly political dimension of the BC trials, their
propensity to inflame domestic opinion and to become entwined with high-level policies, and the persistence of issues associated with war criminals means they offer a unique perspective on post-war Australian politics, society and, especially, foreign policy.
APPENDIX 1

Example of Record of Military Court and Judge Advocate
General Review

‘Trial Records of Military Tribunal - Katayama Hideo’, 25-28 February 1946, National Archives of Australia, Canberra, A471 720882

9. I am of the opinion that the very junior officer Sub Lt. Takahashi cannot have been expected to have any knowledge that the orders for execution he was carrying out were illegal and would therefore recommend that his sentence should not be confirmed.

10. I would draw your attention to the fact that the name of Lt. Comdr. Baron Takahashi, who was found not guilty in a previous court-martial concerning two airmen executed at another place, occurs right through these proceedings and there appears to be little doubt that he, being a high officer, was responsible for the execution of some of these airmen. The evidence in this case concerning him might be reconsidered with the previous evidence at the trial when he, in my opinion, was very luckily found not guilty.

15.3.46.
JUDGE ADVOCATE GENERAL.
I have read through the proceedings of the Court convened under the War Crimes Act of 1945 for the trial of the above officers who were charged with murder in that they at Aspion on 15th August, 1944 murdered S/Ldr. Scott and Wgts. King, Wallace and Wright, being members of the R.A.A.F., and then prisoners of war held by the Japanese and all were found guilty and sentenced to death by shooting.

I have also read the petitions of the accused against the findings and sentences.

This trial arises from the execution of the four R.A.A.F. members. Their bomber had crashed and they had escaped to an island, were eventually captured and held by the Japanese.

An order had been issued by the Japanese high command that any airman captured who had bombed civilian places or civilians should be sentenced to death.

Sub Lt. Uemura, then a W.O., was in charge of the prisoners of war compound in part of which the airmen were held separate from the other prisoners of war. He received orders that the four airmen were to be executed the same day and he made arrangements for the taking of the prisoners of war to the place of execution.

Three officers, including Sub Lt. 1st Class Katayama who was the senior officer present, were detailed from R.O. to go to the place of execution and supervise and take part in the same. Each of these three officers beheld a prisoner of war. The fourth prisoner of war was beheld by a Warrant Officer who was junior to Uemura and a member of the prisoner of war guard.

I am of the opinion that there is no evidence to support the conviction of Sub Lt. Uemura as he took no actual part in the execution and was not by any means the senior officer present, the three officers who had arrived from R.O. all being senior to him.

Sub Lt. Katayama and Takehashi both beheld prisoners of war and the evidence shows that Katayama was the officer who received the direct orders for the execution and that it was he who selected Takehashi and another officer (not being tried by this Court) to take part in the execution and also gave orders to Uemura.

Sub Lt. Katayama in evidence insisted that these prisoners of war had been tried and sentenced by court-martial. I do not for a moment believe that this was so and there was evidence in fact, that there had been no court-martial held at the relevant times. The truth is, I believe, that instructions were given to Katayama by a Lt. Comdr. Baron Nakasaki at R.O. that the men were to be executed without trial and it was in obedience of such orders that Katayama proceeded with the execution. I am of the opinion that Katayama should at least have known that such an order for execution without trial was illegal and was therefore held responsible for it though the fact that he was ordered to do it by a such superior staff officer may be taken in commending mitigation of the sentence of death.
RECORD OF MILITARY COURT
(JAPANESE WAR CRIMINALS)

Accused: Sub-Lt. 1st Cl. KATAYAMA, Hideo
         UMEMURA, Shigeo
         TAKAMASU, Tetsuo

Court, Place: MOROTAI
Date and: 28/28 Feb. 46
Formation: MOROTAI FORCE

Charge(s): MURDER
at or near SALABA AIRSTRIP on or about
15 Aug 44 (of four RAAF P.O.

Plea: NOT
Finding: GUILTY

Precise of Evidence: In March 1944 four RAAF airmen from a crashed bomber were captured and brought to P.O. Compound Asbon on an outlying island. The KATAYAMA and TAKAHASHI received orders from their senior staff officer to execute the airmen. UMEMURA, platoon commander of the Compound Guards, was ordered by KATAYAMA to prepare for the execution. The airmen were taken by truck to the execution place on Asbon and were beheaded by KATAYAMA, TAKAHASHI and another.

UEMURA had sent guards and the burial party to the execution site, and was present at the execution. He did not actually execute a prisoner.

KATAYAMA on oath said he had reasons to believe that the airmen had been legally tried by temporary court martial. There was evidence in fact, that there had been no court martial held.

Sentence and Date: All accused to suffer death by shooting 28 Feb 46.

Confirmation and by Whom: Lt.-Gen V.A.H. Sturdee. 16 Apr 46

Promulgation: Confirmation of finding and sentence promulgated UMEMURA on 5 May 45 executed at Rabaul on 4 May 45; promulgated to KATAYAMA on 22 Oct 1945 executed at Rabaul on 23 Oct 1945; promulgated to TAKAHASHI on 22 Oct 1945 executed at Rabaul 26 Oct 1947.

Petition: Two petitions submitted against finding and sentence of the Court.

J.A.G.’s Report on Petition: Finding and sentence on Sub-Lt. UMEMURA, Shigeo should NOT be confirmed.
Action on Petition—Dismissed.

KATAYAMA, Hideo may be continued.

Filed in Attorney-General’s Department and Numbered: No. 809/8.
APPENDIX 2

Example of Documents Relating to Parole and Release

‘Application for Parole - Yoshino Shozo’, 25/6/52, National Archives of Australia, Canberra, A1838, 576009
Application for Parole

TO: Chairman of NOPAR Commission
FROM: YOSHINO, Sho zo, Applicant (Signed and Sealed)

1. Permanent domicile: 1189-15, Hitsumiso, Kohno-Machi, Saga-Shi

YOSHINO, Sho zo

Last Name First Name

Age: 48 Date of birth: 27 February 1904

Family members:

<table>
<thead>
<tr>
<th>Relationship</th>
<th>Name and Age</th>
<th>Occupation</th>
<th>Health</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wife</td>
<td>YOSHINO, Suma 48</td>
<td>Employee</td>
<td>Healthy</td>
<td>Same as permanent domicile</td>
</tr>
<tr>
<td>1st daughter</td>
<td>YOSHINO, Kazuko 17</td>
<td>Student</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>2nd daughter</td>
<td>YOSHINO, Michiko 15</td>
<td>*</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>2nd son</td>
<td>YOSHINO, Teijiro 10</td>
<td>*</td>
<td>*</td>
<td>*</td>
</tr>
</tbody>
</table>

2. Name and location of the court of justice or tribunal of sentence:

Australian Military Court, Hongkong
Sentence: 15 years imprisonment
Date of sentence: 17 December 1947

War Criminal Facts:

Under the war situation that the crucial moment of the Allied Forces' landing at Kavieng impended and all the Japanese garrison being prepared to face complete annihilation, I advised as a staff officer against the commander's order which he ordered to execute the whole internes (twenty three). But my advice was refused. As I was ordered again, I relayed the order at last to his subordinate without refusal to the last extremity. I was punished on a charge of violating the Laws and Customs of War.
3. Confinement:

<table>
<thead>
<tr>
<th>Period</th>
<th>Name of institution</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>From 5 Jul 1947 to 23 Oct 1947</td>
<td>Sugamo Prison</td>
<td>Tokyo, Japan</td>
</tr>
<tr>
<td>From 24 Oct 1947 to 17 May 1951</td>
<td>Stanley Prison</td>
<td>Hongkong</td>
</tr>
<tr>
<td>From 18 May 1951 to present</td>
<td>Sugamo Prison</td>
<td>Tokyo, Japan</td>
</tr>
</tbody>
</table>

4. Date of eligibility for parole under Article 16 of the Law:

5 July 1952 (Nevertheless terms of remand are included)

5. Accomplice:

TANURA Ryukichi death, SUZUKI Shozo 12 years, MORI Kyoji 20 years, SUGIYAMA Hichitaro 7 years, MORISUGI Yoshiro 4 years.

6. Circumstances for consideration:

1. The crime was conducted under the violent war situation that the crucial moment of the Allied Forces' landing at Kavieng impended and all the Japanese garrison being prepared to face complete annihilation.

2. Since before about half a month which the case occurred, the deputy command of the 33rd garrison twice required Headquarters "Let me have an answer how to manage the internees". I, as a staff-officer, refused both times the request following the liaison from the South East Fleet that the internees would be detained as it is at Kavieng. On the day of the case, the deputy commander for the time presented his strong opinion, "If the Headquarters can't manage the internees, the 33rd Garrison don't assume the responsibility". accordingly, I became impossible to manage the question and reported it to the commander.

3. When I was told from the commander to transmit the order that all the internees should be secretly executed, I advised him "Isn't there any other way?"

7. Health conditions during the confinement:

<table>
<thead>
<tr>
<th>Illness</th>
<th>Period</th>
<th>Present condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sunstroke</td>
<td>About 1 month</td>
<td>Cured</td>
</tr>
</tbody>
</table>
4. I was refused my advice. The commander said that the order was that from the commander of the 83rd Garrison. (Commander of the Headquarters held the post of the Commandant of the 83rd Garrison at the same time in addition to his own to the deputy commander. I was a staff officer of the headquarters and did not have any authority to interfere in the matter which was ordered from the commander to his deputy commander. Thereby I lost the right to advise and obliged to relay the commandant's order by telephone to his deputy commander. 5. The order was therefore exchanged between the commandant of the 83rd garrison and his deputy commander, so I had neither part not lot in regard to the date, time, place, executioners, method of executions and measures after the execution which had to be planned by a staff officer. I did not indicate nothing. I heard the execution a few days later for the first time after I returned to the headquarters from an official tour,
8. Parole destination:

Same as permanent domicile.

9. Persons to live with after release on parole:

<table>
<thead>
<tr>
<th>Relationship to the Applicant</th>
<th>Name</th>
<th>Occupation</th>
<th>Health</th>
<th>Financial condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wife</td>
<td>YOSHINO Susa</td>
<td>Employee</td>
<td>Healthy</td>
<td>Monthly 50,000 yen</td>
</tr>
<tr>
<td>1st daughter</td>
<td>YOSHINO Kazuko</td>
<td>Student</td>
<td></td>
<td>Income from salary</td>
</tr>
<tr>
<td>2nd daughter</td>
<td>YOSHINO Michiko</td>
<td></td>
<td></td>
<td>8,500 yen</td>
</tr>
<tr>
<td>2nd son</td>
<td>YOSHINO Teihiro</td>
<td></td>
<td></td>
<td>Family assistant aid</td>
</tr>
<tr>
<td>Father-in-law</td>
<td>MORIKAWA, Juichi</td>
<td>None</td>
<td>Weakness by age</td>
<td>8,500 yen</td>
</tr>
<tr>
<td>Mother-in-law</td>
<td>MORIKAWA Tsuru</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

10. Living condition of family:

Since I have been arrested as a war criminal, my family has lost the prop of their living and all income, and lived by selling household goods. Following all of the articles they can sell have been sold out, they were last compelled to receive an allowance in aid from the country. Whereas, by reason of that my wife has found employment in a city office in July of last year my eldest daughter has entered a senior high, the allowance of the country has been suspended and only my wife's parents received the relief of monthly 1,500 yen. All their income of about 13,000 yen obliges them to make the lowest standard of living. As a result of poverty my second daughter is now under an insufficient nutrition.

11. Plan for living after release on parole:

1. After I am released on parole, I intend to accept a post in the Showa Aviation Co., Ltd., Tachikawa and work with my wife to give my children an education and bring up my wife's parents.
2. I have no property of my own.
ARCHIVAL SOURCES

1. National Archives of Australia, Canberra

*Series: A471 - Courts-Martial files [including war crimes trials]*

510472. War Crimes - Military Tribunal - TANAKA Kikumatsu (Rear Admiral) and Fourteen Others, Manus, 29 November 1950-14 February 1951

692746. War Crimes - Military Tribunal - OKADA Toshiharu (Sergeant) and Nine Others, Labuan, 11-13 January 1946

693062. War Crimes - Military Tribunal - ASAOKA Toshio (Lieutenant) and Two Others, Morotai, 13 December 1945

720882. War Crimes - Military Tribunal - KATAYAMA Hideo (Sub Lieutenant) and Two Others, Morotai, 25-28 February 1946

720962. War Crimes - Military Tribunal - NAKAMURA Hirosato (Captain) and Two Others, Manus, 20 March - 2 April 1951

720988. War Crimes - Military Tribunal - ITO Hiroshi and Fifteen Others, Manus, 18 January - 8 March 1951


721022. War Crimes - Military Tribunal - SUMIZU Junichiro (Lieutenant Colonel) and Four Others, Manus, 22 August - 1 September 1950

724239. War Crimes - Military Tribunal - BABA Masao (Lieutenant-General), Rabaul, 28 May - 2 June 1947

726998. War Crimes - Military Tribunal - NISHIMURA Takuma (Lieutenant General) : NONAKA Shoichi (Captain), Manus, 19 June and 22 June 1950

739151. War Crimes - Military Tribunal - SHOJI Kuraji (Sergeant) and Forty-Four Others, Morotai, 22-31 January 1946
739669. War Crimes - Military Tribunal - ITO Hiroshi (Lieutenant) and Two Others, Manus, 17 - 27 November 1950
822577. War Crimes - Military Tribunal - NAGAHIRO Maseo : and Twenty Others Labuan, 7-9 August 1946
1348852. War Crimes - Military Tribunal - TAZAKI Takehiko (Lieutenant), Wewak, 30 November 1945

Series: A816 - Correspondence files, multiple number series

Series: A1838 - Correspondence files, multiple number series
140815. Japanese war criminals - Australian war trials
140817. Japanese war criminals - Australian war trials
140818. Japanese war criminals
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